UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

In re:

PANTHERA ENTERPRISES, LLC,

Debtor-in-possession.

Case No. 2:19-787
Chapter 11

MOTION FOR ENTRY OF ORDER UNDER 11 U.S.C. § 1121(d) EXTENDING THE EXCLUSIVITY PERIOD FOR FILING AND CONFIRMING A PLAN OF REORGANIZATION AND DISCLOSURE STATEMENT

PANTHERA ENTERPRISES, LLC (the "Debtor") by and through its undersigned counsel, Bernstein-Burkley, P.C, hereby files this *Motion for Entry of Order Under 11 U.S.C. § 1121(d) Extending the Exclusivity Periods for Filing and Confirming a Plan of Reorganization and Disclosure Statement* (the "Motion") and in support thereof states as follows:

JURISDICTION AND VENUE

1. The Court (hereinafter defined) has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b).

2. Venue of this case and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

3. On September 13, 2019, the Plaintiff filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended, the "Bankruptcy Code") of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of West Virginia (the "Court") at case number 19-00787 (the "Case").

4. The Plaintiff owns the real property located at 2506 Fishpond Road, Old Fields, West Virginia 26845 (the "Real Property"), including the improvements, structures and various personal property situated on such real property (collectively, the "Property"), all of which is

utilized as a special operations training facility for various of the Plaintiff's clients and customers (the "Facility").

5. On October 17, 2019, the Debtor filed an adversary proceeding in the Case (the "Adversary Proceeding") seeking the turnover of the Property from the alleged tenant, Panthera Training, LLC ("Training").

6. Since the filing of the Adversary Proceeding, the Adversary Proceeding has been very active and the Court has held numerous hearings and required various briefings in the Adversary Proceeding. Notably, the Court has held two full days of evidentiary hearings on the issue of whether to grant certain preliminary injunctions.

7. During the ongoing Adversary Proceeding, the Debtor has also been required to reply to two (2) motions filed in the Case by the West Virginia Economic Development Authority (the "EDA"), one motion seeking conversion or dismissal of the case (the "Dismissal Motion") and one motion seeking relief from the automatic stay (the "Relief from Stay Motion").

8. During the first several of months of this case, the majority of the Debtor's time and efforts have been predominantly occupied by litigation with Training and the EDA.

9. The preliminary injunctive relief requests between the Debtor and Training have been resolved by Court Orders and the Debtor and Training have since entered into several interim agreements to allow and provide for all scheduled trainings to be conducted at the Property and for Training to be paid for such performance. Most recently, the Debtor and Training reached agreement regarding all federal government training to be conducted at the Facility during January, 2020.

10. On December 27, 2019, the Court denied the EDA's Dismissal Motion and, on January 9, 2020, the EDA withdrew its Relief from Stay Motion.

11. The deadline for alleged creditors of the Debtor (aside from governmental entities) to file a proof of claim for prepetition claims against the Debtor has been set for January 16, 2020 (the "Bar Date")

RELIEF REQUESTED

12. Section 1121(b) of the Bankruptcy Code provides that "only the debtor may file a plan until 120 days after the date of the order for relief under this chapter." 11 U.S.C. § 1121(b). The exclusivity period to file a plan in this case is set to expire on January 13, 2020 (the "**Filing Exclusivity Period**") and the Debtor has filed this Motion within this time period.

13. Further, under § 1121(c)(3), a debtor has an exclusive period of 180 days after the date of the order for relief under this chapter to have a plan accepted "by each class of claims or interests that is impaired under the plan." 11 U.S.C. § 1121(c)(3). This period is set to expire on March 11, 2020 (the "**Acceptance Exclusivity Period**", and collectively with the Filing Exclusivity Period, the "**Exclusivity Periods**").

14. During the Exclusivity Periods, no creditor or other party in interest may file a plan of reorganization. The purpose of this Exclusivity Period is to give debtors a reasonable time to obtain confirmation of a plan without the threat of a competing plan. *See, e.g. In re Mother Hubbard*, 152 B.R. 189 (Bankr. W.D. Mich. 1993).

15. Such time period of exclusivity may be extended pursuant to § 1121(d)(1): "Subject to paragraph (2), on request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period as referred to in this section." 11 U.S.C. § 1121(d)(1).

16. Debtor's instant request for an extension of the Exclusivity Periods is within the time limits established by § 1121(d)(2)(A).

17. The Debtor bears the burden of proving that "sufficient cause exists to justify an extension of the exclusivity period" and "the court is granted broad discretion to determine what is sufficient cause in each individual case." *In re Sharon Steel Corp.*, 78 B.R. 762, 765 (Bankr. W.D. Pa. 1987). *See also, In re Central Jersey Airport Services, LLC,* 282 B.R. 176, 184 (Bankr. D. N.J. 2002).

18. By this Motion, the Debtor requests an extension of the Exclusivity Periods for an additional sixty (60) days to March 13, 2020 for the filing Exclusivity Period and May 10, 2020 for the Acceptance Exclusivity Period.

19. This is Debtor's first request for an extension of the Exclusivity Periods.

20. The Debtor maintains that sufficient cause exists for an extension of the Exclusivity Periods.

21. The extension of Exclusivity Periods will allow the Bar Date to pass providing the Debtor with the ability to assess all creditors in this case and generate an inclusive plan addressing all claims.

22. The Debtor's creditors will not be prejudiced by the requested extension and, in fact, will be best served by an extension of the Exclusivity Periods past the Bar Date.

23. The Debtor continues to work in good faith with its creditors, specifically Training, and remains focused on facilitating a successful reorganization.

24. As noted above, the majority of the Debtor's time and resources were occupied by disputes that have now, to substantial degree, been either addressed by the Court preliminarily, resolved in full, or which continue to be addressed via interim agreements with Training. As a

result, the Debtor now has greater ability to focus on its reorganization efforts. The Debtor asserts that the additional time requested herein is both necessary and warranted under the circumstances.

25. While the Debtor intends to comply with the process of obtaining confirmation of the Plan within the extended Exclusivity Periods, this request is without prejudice to request any additional extensions of time should circumstances arise that make such an extension necessary and appropriate.

WHEREFORE, the Debtor respectfully requests that this Honorable Court enter an Order (i) granting this Motion for Entry of Order Under 11 U.S.C. § 1121(d) Extending the Exclusivity Periods for Filing and Confirming a Plan of Reorganization and Disclosure Statement, (ii) extending the Debtor's exclusive time to file a plan to March 13, 2020, (iii) extending the Debtors' exclusive time to obtain acceptance of a plan to May 10, 2020, and (iv) granting such other relief as this court deems just and appropriate.

Respectfully submitted:

Date: January 10, 2020

BERNSTEIN-BURKLEY, P.C.

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that the within Motion to Extend Exclusivity Period was served via the CM/ECF system upon all parties and counsel of record on this 10th day of January, 2020.

Date: January 10, 2020

Respectfully submitted:
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