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

SECOND 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 *Second 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.

BACKGROUND

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. During the first few months of the Case, the Adversary Proceeding was very active and required numerous rounds of pleadings and hearings addressing preliminary injunctive relief requested by both parties. Notably, the Court has held two full days of evidentiary hearings on the issue of whether to grant certain preliminary injunctions. In December of 2019, the Court ruled on the parties' respective requests for injunctive relief, leaving the remaining matters in the Adversary Proceeding pending. Certain ongoing disputes between the parties have been addressed and agreed upon on a month to month basis from December, 2019 through the present date. In an effort to address such ongoing issues and disputes regarding prior payment obligations, and at the suggestion of the Court, the parties agreed to participate in a mediation. On February 27, 2020, the Court entered a Mediation Order referring the Adversary to United States Magistrate Judge, Robert W. Trumble. On March 5, 2020, Judge Trumble entered an Order Scheduling Mediation for March 30, 2020 at 9:30 a.m.

7. Additionally, Training has filed a Motion to Amend Counterclaim ("Motion to Amend") in the Adversary, which Motion is scheduled to be heard by the Bankruptcy Court on March 29, 2020. Training's Motion to Amend seeks relief related to a key contract between the

Debtor and Training. If Training is permitted to amend its Counterclaim, the issues raised by such amendment will be addressed and attempted to be resolved in the mediation.

8. Moreover, on February 12, 2020, another adversary proceeding was commenced against the Debtor by Bill V. Neff, Sr. seeking declaratory relief and potential recovery of various building structures located on the Property. Neff generally alleges that the Debtor does not have proper title to the buildings. The Debtor is in the process of investigating the Neff allegations and responding to the same. The deadline for Debtor to Answer or otherwise respond to the Neff complaint is currently April 20, 2020. It is the intention of the Debtor to seek a consensual resolution with Mr. Neff if possible.

FIRST REQUEST FOR EXTENSION

9. On January 10, 2020, the Debtor filed a Motion to extend the Exclusivity Periods (hereinafter defined) [Doc. No. 88] (the "First Motion to Extend").

10. On February 5, 2020, the Court entered an order [Doc. No. 95] (the "Order") granting the First Motion to Extend and extended the Filing Exclusivity Period (hereinafter defined) to March 13, 2020 and extended the Acceptance Exclusivity Period (hereinafter defined) to May 10, 2020.

RELIEF REQUESTED

11. 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). Pursuant to the Order, the exclusivity period to file a plan in this case is set to expire on March 13, 2020 (the "Filing Exclusivity Period") and the Debtor has filed this Motion within this time period.

12. 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 May 10, 2020 (the "Acceptance Exclusivity Period", and collectively with the Filing Exclusivity Period, the "Exclusivity Periods").

13. 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).

14. 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).

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

16. 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).

17. By this Motion, the Debtor requests an extension of the Exclusivity Periods for an additional sixty (60) days to May 12, 2020 for the Filing Exclusivity Period and July 9, 2020 for

the Acceptance Exclusivity Period.

18. This is only the Debtor's second request for an extension of the Exclusivity Periods.

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

20. The additional extension of Exclusivity Periods will allow the Debtor to meaningfully engage in the mediation process with Training in an effort to resolve the Adversary Proceeding. As the Court is aware, the relationship between the Debtor and Training is an important component in the Debtor's ongoing business operations. Whether or not the issues raised in the Adversary Proceeding are resolved will significantly impact the structure of a proposed plan. For example, Training's proposed Amended Counterclaim seeks to substantially affect the validity and enforcement of a key contract that the Debtor must address in its proposed plan. Any such proposed plan will be more productive and provide more certainty to all parties in interest if the issues raised in Training's proposed Counterclaim are resolved rather than pending.

21. Overall, the possibility of a resolution of the Adversary Proceeding is advantageous to all interested parties as such resolution will allow the Debtor to focus on reorganization and potentially seek submission of a consensual plan, rather than a plan that involves continuing litigation.

22. The Debtor also believes that potential resolution of the Neff Adversary will provide additional certainty to a proposed plan and, therefore, that additional time to explore such a resolution will be beneficial to the estate and creditors.

23. Therefore, the Debtor asserts that its creditors will not be prejudiced by the requested extension and, in fact, will be best served by an extension of the Exclusivity Periods.

24. As indicated by the aforementioned mediation, the Debtor continues to work in good faith with creditors and parties in interest, particularly Training, and remains focused on facilitating a successful reorganization.

25. The majority of the Debtor's time and resources had previously been occupied by disputes that have now, to substantial degree, been either addressed by the Court preliminarily, resolved in full, or which will continue to be addressed in the upcoming mediation with Training.

26. Once it can be determined whether the Adversary Proceeding will be resolved, the Debtor will have a greater ability to put forth a plan of reorganization that is in the best interests of all parties in interest, whether such plan reflects a resolution of the Adversary Proceeding or the failure to reach a resolution. The Debtor asserts that the additional time requested herein is both necessary and warranted under the circumstances.

27. The Debtor has advised Training of the filing of this Second Request for the Extension of the Exclusivity Periods and Training has advised (through its counsel) of its consent to the requested extension.

28. 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 *Second 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 May 12, 2020, (iii) extending the Debtors' exclusive time to obtain acceptance of a plan to July 9, 2020, and (iv) granting such other relief as this court deems just and appropriate.

Respectfully submitted:

Date: March 12, 2020

BERNSTEIN-BURKLEY, P.C.

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that the within Second Motion to Extend Exclusivity Period was served via the CM/ECF system upon all parties and counsel of record on this 12th day of March, 2020.

Date: March 12, 2020

Respectfully submitted:
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