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

THIRD 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 *Third 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

A. Key Factual Backgound

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 Debtor 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 (the "Facility").

5. On or about June 1, 2018, the Debtor and Panthera Training, LLC ("Panthera Training") entered into a commercial lease (the "Lease") by which Panthera Training was to occupy the Property and the Facility (collectively referred to as the "Leased Premises") and conduct certain trainings (the "Trainings") to fulfill contracts held by the Debtor and an affiliate of the Debtor (the "Training Contracts").

6. The Debtor also agreed to subcontract certain of the work under the Training Contracts to Panthera Training to allow the Panthera Training to conduct the Trainings while it was leasing the Property (the "Subcontract").

7. Pursuant to the Lease, Panthera Training is required to pay fifty-two thousand dollars and 00/100 ($52,000.00) per month in "base rent," which amount is paid by Panthera Training directly to the Debtor's mortgagee, West Virginia Economic Development Authority ("EDA"), in satisfaction of the Debtor's monthly mortgage obligations to the EDA.

8. The Lease also requires the Defendant to pay certain monthly "Additional Rent" on the first day of each calendar month in an amount to be determined by and based on Panthera Training's profit and loss statement for each such calendar month.

B. ***Covid-19 Crisis Affecting the National Economy and Business Operations***

9. On March 11, 2020, just one day before the Debtor filed its Second Motion to Extend Exclusivity, the World Health Organization declared the novel coronavirus disease

(Covid-19) outbreak to be a pandemic. A day later, on March 13, 2020, the Trump administration declared a national emergency in response to the Covid-19 outbreak.

10. On March 16, 2020, a State of Emergency was declared for all counties in West Virginia. Shortly thereafter, on March 23, 2020, the Governor of West Virginia issued a "stay at home" or "shelter in place" Executive Order requiring, among other things, all non-essential businesses to cease operations (with limited exceptions) and mandating that individuals not leave their homes except in limited circumstances. See West Virginia Governor James C. Justice Executive Order, No. 9-20 dated March 23, 2020.

11. Eleven days ago on April 30, 2020, Governor Justice issued another Executive Order amending certain of the restrictions established by the March 23 Executive Order. The April 30 Executive Order is meant to replace the prior "Stay at Home" policy with a "Safer at Home" policy, allowing certain types of businesses to begin to re-open while being monitored under new guidelines and restrictions. Regardless, with certain exceptions, all non-essential businesses and operations are required to continue to temporarily cease operations. See West Virginia Governor James C. Justice Executive Order, No. 32-20 dated April 30, 2020.

12. The unprecedented, exponential spread of Covid-19 throughout the United States over the course of the past two (2) months, along with the resulting, state-imposed limitations and prohibitions on non-essential businesses operations, has brought many aspects of the Debtor's business plans to a standstill. As a result of the limitations placed on business operations, the government trainings that usually take place at the Facility have not been able to take place. At this time, there is no definitive time table as to when such business activities may resume. Even if allowed by the State of West Virginia in the near future, there is not guarantee as to when the federal governmental agencies that train at the Facility will be willing to resume training.

13. These extraordinary and unprecedented events have made it extremely difficult for

the Debtor and its advisors to engage in meaningful discussions with existing and potential business partners, contacts, resources and plan advocates because such parties understandably are waiting for some economic certainty to return to the situation. Without operations at the Facility, no revenue is being generated and, therefore, there is no opportunity for the Debtor to earn Additional Rent under the Lease. The lack of revenue generating activity and the overall uncertainty on timing has in many ways frozen activities that otherwise would be taking place in an effort to explore reorganization options. Although it is impossible to predict with any reliability how long the restrictive state orders will remain in effect, the Debtor (and all businesses in West Virginia) is hopeful that some certainty will be achieved in the coming months and that operations will be able to resume and return to normal.

14. As the Court is likely aware, various chapter 11 debtors across the country have even sought "suspension" of their chapter 11 proceedings pursuant to 11 U.S.C. §305 due to the restrictions and obstacles resulting from the Covid-19 crisis. See, e.g., *In re Modell's Sporting Goods, Inc. et al.*, Case No. 20-14179 (Bankruptcy Court for the District of New Jersey), Document No. 166. (Order Temporarily Suspending Chapter 11 Cases). The Debtor has contemplated seeking such an order from the Court, but has currently determined that not to be necessary as long as the status quo continues to be preserved and the Debtor is able to seek additional time to file a Plan.

15. Although the Debtor has encountered many of the obstacles commonly experienced by a Chapter 11 debtor in attempting to formulate a plan of reorganization, the last two months have brought about unprecedented obstacles that are entirely out of the Debtor's control. As some semblance of certainty begins to return to the business community in West Virginia (and the country), the ability of the Debtor to make substantive progress toward

developing future plans should return as well.

RELIEF REQUESTED

16. 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 currently set to expire on May 12, 2020 (the "Filing Exclusivity Period") and the Debtor has filed this Motion within this time period.

17. 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 July 9, 2020 (the "Acceptance Exclusivity Period", and collectively with the Filing Exclusivity Period, the "Exclusivity Periods").

18. 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).

19. 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).

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

21. 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).

22. By this Motion, the Debtor requests an extension of the Exclusivity Periods for an additional ninety (90) days to August 12, 2020 for the Filing Exclusivity Period and October 12, 2020 for the Acceptance Exclusivity Period.

23. Given the unprecedented national emergency, the resulting restrictions placed on all business activities in the state of West Virginia and the domino effect that such restrictions have had on the national economy and ability to do business, the Debtor asserts that sufficient cause exists for an extension of the Exclusivity Periods. Through no fault of the Debtor, these proceedings were essentially put "on hold" by the Covid-19 crisis and the Debtor has been deprived of substantial time to engage in productive discussions that would normally be necessary to develop a plan of reorganization.

24. The additional extension of Exclusivity Periods are consistent with the timeline that is currently anticipated to permit non-essential businesses to begin operations, even if under continuing monitoring and some restrictions. The certainty that will follow from the loosening of the current restrictions will allow the Debtor to meaningfully engage in substantive discussions regarding its reorganization.

25. As the Court is aware, the Debtor's primary assets are its Real Property and its substantial prime contract with a federal government agency. The status quo has been and shall continue to be maintained as to those assets during this process.

26. 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.

27. 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 *Third 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 August 12, 2020, (iii) extending the Debtors' exclusive time to obtain acceptance of a plan to October 12, 2020, and (iv) granting such other relief as this court deems just and appropriate.

Respectfully submitted:

Date: May 11, 2020

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that the within Third Motion to Extend Exclusivity Period was served via the CM/ECF system upon all parties and counsel of record on this 11th day of May, 2020.

Date: May 11, 2020

Respectfully submitted:
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