IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN RE: PANTHERA ENTERPRISES, LLC, Debtor.	Bankr. Case No. 19-00787 Chapter 11
PANTHERA TRAINING, LLC, Movant, v. PANTHERA ENTERPRISES, LLC, Respondent.	Document No. ____ Related to Doc. No. 34 Responses Due: 10/25/19 Preliminary Hearing: 10/28/19 at 2:00 p.m.

DEBTOR'S RESPONSE AND OBJECTION TO MOTION TO COMPEL

Panthera Enterprises, LLC (the "Debtor" or "Enterprises"), by and through its undersigned counsel, hereby files this response (the "Response") to the Motion to Compel Performance Under Subcontract (the "Motion") filed by Panthera Training, LLC ("Movant" or "Training"), setting forth as follows:

INTRODUCTION

1. The Motion filed by Training should and must be denied summarily for various reasons. First, although failing to set forth any definitive authority or bases for the relief purportedly sought, the Motion appears to assert something akin to an alleged breach of contract claim and request for an injunction against the Debtor. Accordingly, the relief that Training seeks can only be brought against the Debtor and before this court in the form of an adversary proceeding pursuant to Bankruptcy Rules 7001 et al. Specifically, Bankruptcy Rules 7001(1) and 7001(7)

apply to the relief requested. Debtor hereby advises the court that it has and will assert various defenses and counterclaims to any such action if and when appropriately commenced against the Debtor. Also, Training's characterizations of the terms of the Subcontract (which was not submitted to the Court) are disingenuous and mistaken at best and, intentionally misleading to this Court at worst.

2. Although the Movant cannot proceed with the relief it seeks via the motion proceeding that it has chosen, the Debtor will nonetheless take this opportunity to set forth various key points in response to the flawed and misleading allegations set forth in the Motion.

RESPONSE AND OBJECTION

3. The Debtor acknowledges that it entered into and executed several agreements with the Movant pre-Petition Date. Namely, the Debtor and the Movant executed that certain commercial lease dated June 1, 2018 related to the Debtor's 750 acre training facility (the "Property") located at 2506 Fish Pond Road, Old Fields, West Virginia 26845 (the "Lease"). It should be noted that the Debtor has given notice of termination of the Lease to Movant and that the Debtor has commenced an adversary proceeding in this Court to enforce its rights. The Debtor and the Movant also executed that certain Subcontract dated June 1, 2018 (the "Subcontract") pursuant to which the Debtor engaged Movant as a subcontractor to perform work for Debtor on various Prime Contracts (defined hereafter) held by the Debtor and its subsidiary.

4. The Debtor and/or its subsidiary, Panthera Training Center, LLC, is party to certain prime contracts with various United States government agencies or departments, including contracts with the United States Drug Enforcement Agency (the "DEA Contract"), the United States Army (the "Army Contract"), and the United State Special Operations Command (the "SOCOM Contract")(collectively, the "Prime Contracts"). The aforementioned government agencies and

departments are referred to in the Subcontract (and hereafter in this Response) as Debtor's "Clients."

5. The Subcontract relates to the Debtor's subcontracting of work to be provided under the Prime Contracts.

6. The Motion recites the aforementioned details correctly, but thereafter begins to rapidly stray from any reasonable interpretation of the facts and circumstances.

7. Important to understanding the mechanics of work under the Subcontract is an explanation of how the Debtor assigns work under the Subcontract by issuing individual task orders (the "Task Orders"). Specifically, the Debtor may issue a Task Order directing Movant to perform certain tasks and services to a particular Client for a particular time period. The Task Orders have individual and distinct work scopes and expiration dates. Issuance of Task Orders is the mechanism by which the Debtor requests and directs work to be performed by Movant under the Subcontract. Task Orders relevant to the instant Response are discussed more fully below.

8. Also, the Motion conveniently fails to cite to or set forth any actual language or terms contained in the Subcontract because any such citations would directly contradict the Motion's false allegations.

9. Relevant to such false allegations in the Motion, the Debtor points out the following key provisions from the Subcontract:

A. Section 1.1 of the Subcontract provides that "[t]he term of this Subcontract is from 1 June 2018 to 31 May 2023" but that "[i]ndividual task orders which may be issued under this subcontract will have their own, individual periods of performance." Accordingly, although the primary term of the Subcontract is through May 31, 2023, any work to be assigned and performed under the Subcontract is subject to the specific expiration dates set forth in any Task Orders issued by the Debtor. As of the Petition Date, only one Task Order was outstanding and active, which task order relates only to the SOCOM Contract. Furthermore, as of the Petition Date, all other Task Orders issued under the Subcontract were and are expired and have not been renewed by the Debtor.

B. Section 1.2(c) of the Subcontract provides that Subcontractor shall "provide appropriate office space at the Facility for [Debtor's personnel] to facilitate communications with Client personnel regarding the Prime Contract, and/or to monitor the training and Subcontractor's performance.." Accordingly, not only is the Debtor entitled to communicate with its Clients (the Government entities that are parties to the Prime Contracts) at its discretion, but Debtor is even entitled to be on site at the Property at any and all times in order to facilitate such communications. Movant's allegations to the contrary are patently false.

C. Section 1.4 of the Subcontract provides that "[t]his is an Indefinite Delivery, Indefinite Quantity subcontract. This Subcontract shall have no guaranteed value except as provided for by each individual Task Order as issued. Nothing in this Subcontract shall be construed to contain any obligation by Panthera (Debtor) to issue any subsequent Task Orders under this agreement." Accordingly, the Subcontract has no value to Movant unless the Debtor decides to assign work to Movant by issuing Task Orders. The Debtor can cease assigning work at any time. As noted above, which Movant failed to mention in its Motion, the Task Orders under the DEA Contract and the Army Contract expired pre-Petition Date and no new Task Orders have been issued to Movant related to those Prime Contracts. As of the Petition Date, only one Task Order related to the SOCOM

Contract remains outstanding – the Motion does not refer or relate to the SOCOM Task Order.

D. Section 1.7 of the Subcontract, entitled "Limitation of Funding," provides that "[f]unding for this Subcontract shall be limited to the cumulative value of any Task Orders issued hereunder. [Debtor] shall not be obligated to compensate Subcontractor for any work performed or expenses incurred under this Subcontract in excess of the cumulative Task Order value." Accordingly, the Debtor is not responsible or liable for any work allegedly performed by Movant that is not authorized or covered by an outstanding Task Order.

E. Section 2.23 of the Subcontract, entitled "Communications with Client," provides that "[s]ubcontractor is expressly prohibited from communicating with the Client's personnel with respect to the Prime Contract and/or Subcontract management issues, pricing, payments, specific tasking or Subcontractor's performance under the tasks related to this Subcontract, without the prior consent of Panthera (Debtor). Any authorized communications, other than those expressly provided for herein, between Subcontractor's personal and the Client's personnel shall be conducted in the presence of Panthera's (Debtor's) Technical Representative or other authorized representative unless otherwise agreed by the Parties."

F. Part VI, Section 5 of the Subcontract, entitled "Non-Circumvention," provides that Movant may not "directly or indirectly initiate, solicit, negotiate, contract or enter into any business transactions, agreement or undertakings with any…third party identified or introduced by [Debtor]" and that Movant may not "seek to by-pass, compete, avoid or circumvent the [Debtor] from any business opportunity or by otherwise exploiting or deriving any benefit from certain Confidential Information" provided by Debtor. Part VI, Section 5 further confirms that Debtor has the primary relationship with its Clients and that Movant is prohibited from attempting to benefit therefrom or otherwise usurp the Debtor's business relationships under the Prime Contracts.

10. The above provisions of the Subcontract are merely key examples of express terms that contradict the entirety of Movant's Motion. To be sure, the initial focus of the Motion appears to seek payment for work allegedly performed related to the DEA Contract on September 19, 2019. As mentioned above, Movant failed to advise the Court that the operative Task Order related to the DEA Contract expired on September 10, 2019 and the Debtor did not issue any additional Task Order(s) under the Subcontract. Accordingly, any work performed by Movant purportedly pursuant to the Subcontract subsequent to September 10, 2019 was unauthorized and certainly not performed at the direction or request of Debtor. Importantly, Movant is the subcontractor and works for and at the direction of the Debtor. Again, Section 1.4 of the Subcontract expressly provides that Debtor may cease issuing Task Orders at any time and at its sole discretion. Furthermore, Section 1.7 of the Subcontract expressly provides that Debtor is not liable or responsible for any unauthorized or unrequested work performed by the Movant.

11. The Motion additionally purports to seek an order prohibiting Debtor from communicating with its Clients. The absurdity of this request should seem clear, but apparently not to Movant. As set forth above, the Debtor is the primary point of contact to its Clients and is not limited in any way in its communications with such Clients. In fact, the Movant is the party that is limited in its permitted communications with Debtor's Clients, as expressly set forth in Section 2.23 and Part VI, Section 5 of the Subcontract.

12. Based solely on the above, Movant's Motion is without merit and should be summarily dismissed.

13. Regardless, the claims and requests for relief sought by the Movant can only be properly brought as an adversary proceeding subject to the procedures and protections of all applicable Rules of Bankruptcy Procedure, including but not limited to Bankruptcy Rules 7001 et seq.

14. Additionally, the Debtor further points out that because the Subcontract is an executory contract subject to Section 365 of the Bankruptcy Code, Debtor has the right to reject the Subcontract at any time. Accordingly, the Debtor has complete control over the future administration of the Subcontract and Movant is subject to Debtor's discretion in that regard. Movant's Motion is an attempt to circumvent Debtor's rights under Section 365 including applicable time periods in which Debtor may exercise such rights.

15. Lastly, on or about October 4, 2019, the Debtor gave Movant written notice of various outstanding and continuing events of default under the Subcontract. Accordingly, it is Debtor's position that the Movant has in fact defaulted under the Subcontract. Moreover, as noted above, Debtor has and will assert defenses and counterclaims to any properly brought action against the Debtor based on the Subcontract.

WHEREFORE, the Debtor, Panthera Enterprises, LLC, requests that this Honorable Court enter an order denying Movant's Motion to Compel and entering such other and further relief as this Court deems just and proper.

Date: October 25, 2019

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