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

WEST VIRGINIA ECONOMIC
DEVELOPMENT AUTHORITY,

Movant,

v.

PANTHERA ENTERPRISES, LLC,

Respondent.

DEBTOR'S OBJECTION AND RESPONSE IN OPPOSITION TO WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY'S MOTION TO CONVERT THIS CASE TO A CHAPTER 7 PROCEEDING, OR, IN THE ALTERNATIVE, DISMISS THIS BANKRUPTCY CASE FOR CAUSE

AND NOW, comes Panthera Enterprises, LLC ("Debtor"), by and through its undersigned counsel, and files this objection and response in opposition (the "Objection") to *West Virginia Economic Development Authority's Motion to Convert this Case to a Chapter 7 Proceeding, or, in the Alternative, Dismiss this Bankruptcy Case for Cause* (the "Motion"). In support of its Objection, Debtor states as follows:

JURISDICTION AND VENUE

1. This Court (hereinafter defined) has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334(b). This matter is a core proceeding under 28 U.S.C. § 157(b).

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

INTRODUCTION

3. The EDA feigns concern for the estate and all creditors, when in reality, it self-servingly seeks to short circuit the Debtor's opportunity for and efforts at reorganization in order to benefit only itself. The EDA's Motion is filled with speculation, innuendo and sophistry, but has little to no substance related to the legal principles on which it purports to rely. The Motion is further filled with irrelevant and unfounded allegations regarding not only the Debtor, but the Debtor's owners and principals and certain entities having some common ownership with the Debtor. Although cliché, the EDA employs the "red herring" method of pleading throughout its Motion. Regardless, much of the manufactured concerns asserted by the EDA have been recently remedied through the Debtor's efforts to resolve certain disputes and differences it has with its tenant, Panthera Training, LLC ("Training"). Said concerns, even if real, have been further allayed by the Court's recent Order denying the Debtor's request for preliminary injunction for possession of the Property (defined below). The Debtor recently advised the Court (and all parties) that the Debtor and Training reached an agreement whereby Training will conduct the December DEA Course, Training will be paid for conducting the December DEA Course and Training will also be paid $44,464.80 from Debtor's affiliate, Panthera Training Center, LLC ("PTC").

4. The burden is on the EDA to show that this bankruptcy case was actually filed in bad faith and that the Debtor has no objective, reasonable chance at reorganization. The EDA cannot make such showings. All of the "bad faith" allegations made by the EDA are common scenarios in the context of a distressed company and its pre-petition operations and financial difficulties. Even if the EDA's factual allegations are true (which the Debtor denies in some cases), those alleged facts do not support a finding of bad faith by this Court. The Debtor fully acknowledges

that its Property was subject to a foreclosure sale and that the Debtor filed this Chapter 11 bankruptcy in case in order to obtain breathing room to address and deal with the debt to the EDA underlying that foreclosure sale. That is another extremely common scenario that does not constitute bad faith. The EDA's assertion that the Debtor cannot (or even intends to) reorganize its debts and operations is patently false. It is now clear from the record in this case that the Debtor has valuable assets that it can utilize to restructure its operations, improve its profitability and pay its creditors through the mechanics of a Chapter 11 plan. Up to this point in these proceedings, the Debtor has been involved in an intense dispute with Training, which the Court has now preliminarily ruled upon. With that preliminary relief request resolved, the Debtor can pivot to its operations and business relationships. At the very least, the Debtor is entitled to an opportunity to develop and propose a Chapter 11 plan that will benefit all creditors and parties in interest. The EDA's Motion, if granted, would benefit only the EDA and would have the unfortunate effect of drastically diminishing the value of the estate to the detriment of all other parties in interest. As discussed more fully below, the EDA's Motion should accordingly be denied.

BACKGROUND

5. 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").

6. 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").

7. Beginning in or October, 2015, the Debtor's business of fulfilling government training contracts began experiencing financial difficulty due to uncontrollable issues with the government's defense budget and sequestration. Prior to that time, the Debtor had operated successfully and continued to grow its business.

8. Due to the financial difficulties it was experiencing, on or about June 1, 2018, the Debtor entered into a commercial lease with Panthera Training, LLC ("Training") (the "Lease") by which the Defendant was to occupy the Property and the Facility and conduct certain trainings (the "Trainings") to fulfill certain contracts held by the Plaintiff (the "Training Contracts"). A true and correct copy of the Lease is attached hereto as **Exhibit A.**

9. The Debtor subcontracted the Training Contracts to Training to allow Training to facilitate the Trainings while it was leasing the Property (the "Subcontract"). A true and correct copy of the Subcontract is attached hereto as **Exhibit B.**

10. Prior to entering into the Lease and the Subcontract, the Debtor performed all obligations under the Training Contracts through an affiliated subcontractor.

11. In a related proceeding well known to the Court, the Debtor and Training traded requests for preliminary injunctive relief, all of which has been denied by the Court. In the process of that dispute, Debtor and Training have entered into an agreement to ensure that certain crucial December Trainings are conducted as scheduled, including the very important DEA Contract Trainings.

12. Even after the Debtor entered into the Lease and Subcontract, the Debtor has remained involved in various aspects of the business operations conducted at the Facility.

13. In particular, the Debtor's involvement in the Facility was and is crucial to the preparation of proposals to obtain new government training contracts since Training did not and does not have the experience, track record or resources necessary to prepare such proposals and be awarded such contracts. By way of example, as recently as June, 2019 the Debtor's principals, particularly Ray Jones, prepared an RFI to be submitted to the DEA for a proposed Disaster Readiness Course. Attached hereto are correspondence and draft RFIs prepared primarily by Mr. Jones as **Exhibit C**.

14. EDA is a secured creditor of the Debtor as a result of two prepetition loans made to the Debtor (the "Loans"). The Loans are secured by Deeds of Trust on the Debtor's Property and EDA has alleged first priority liens on the Property.

15. As of the Petition Date, the total amount due under the loans to EDA was $6,433,609.38.

16. As a result of the Debtor's Lease with Training, Training pays $52,000.00 a month to EDA as payment on the Loans. The $52,000.00 would otherwise be due to the Debtor as monthly rent, but Debtor has agreed that such monthly rent payments be made directly to the EDA by Training.

17. Since July of 2018, EDA has been timely paid all monthly payments due to it from Debtor.

18. EDA, the Debtor and various other parties entered into a forbearance agreement on July 6, 2018 (the "Forbearance Agreement"). Under the Forbearance Agreement, EDA agreed to forbear from exercising its rights under the Loans for a period of six months (the "Forbearance Period") and in exchange, the monthly rental payments in the amount of $52,000.00 that Training owed to the Debtor under the Lease were to be made directly to EDA.

19. The Debtor did not default on the Forbearance Agreement during the Forbearance Period and EDA timely received its monthly payments as required.

20. The Forbearance Period expired on January 6, 2019.

21. EDA waited until August 14, 2019 – more than eight months from the expiration of the Forbearance Period – to send letter a notice of default under the Loans and Deeds of Trust.

22. On November 2, 2019, West Virginia Economic Development Authority ("EDA") filed the Motion to convert this Case to a chapter 7 proceeding, or in the alternative, dismiss this Case (the "Motion to Convert"). Simultaneously, EDA also filed a motion for relief from stay to foreclose on the Property.

LEGAL AUTHORITY AND ANALYSIS

23. 11 U.S.C § 1112(b)(1) provides that "on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 of dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause…" 11 U.S.C. § 1112(b)(1).

24. "Cause" for converting or dismissing a case pursuant to 11 U.S.C. § 1112(b) has been interpreted by the Fourth Circuit to include a lack of the debtor's good faith, which requires a showing that (1) the debtor's reorganization is objectively futile and (2) the debtor's filing was motivated by subjective bad faith. *See Carolin Corp. v. Miller*, 886 F.2d 693, 698 (4th Cir. 1989). As a clear indication of high threshold for ordering dismissal or conversion, the *Carolin* court noted in adopting this stringent dual test that "it is better to risk proceeding with a wrongly motivated invocation of Chapter 11 protections whose futility is not immediately manifest than to risk cutting off even a remote chance that a reorganization effort so motivated might nevertheless yield a successful rehabilitation. Id. at 701.

25. The *Carolin* court succinctly pointed out that "[d]ecisions denying access at the very portals of a bankruptcy, before an ongoing proceeding has even begun to develop the total shape of the debtor's situation, are inherently drastic and not lightly to be made." Id. at 700. Clearly, the *Carolin* court recognized the relatively extreme remedy of ordering dismissal or conversion in the early stages of a Chapter 11 case. The *Carolin* court continued, "dismissal on grounds of bad faith filing should not be judicially [employed] as an easy alternative to other post-petition creditors remedies." Id. The *Carolin* court stated that "something more than even the most obvious likelihood of ultimate futility should be required to justify threshold dismissals for want of good faith in filing" and that requires "subjective bad faith on the part of the petitioner." Id.

26. The *Carolin* court described the "objective futility" prong as "designed to insure that there is embodied in the petition some relation to the statutory objective of resuscitating a financial troubled debtor" and that such analysis "should concentrate on assessing whether there is no going concern to preserve and no hope of rehabilitation." Id. at 701.

27. Regarding the "subjective bad faith" prong, the *Carolin* court stated that such "inquiry in designed to insure that the petitioner actually intends to use the provisions of Chapter 11 to reorganize or rehabilitate an existing enterprise, or to preserve going concern values of a viable or existing business" and further stated that the aim of such consideration is "to determine whether the petitioner's real motivation is to abuse the reorganization process and cause hardship or to delay creditors by resort to the Chapter 11 device merely for the purpose of invoking the automatic stay without an intent or ability to reorganize." Id. at 702.

28. As discussed more fully below, analysis of the matter at hand based upon the Fourth Circuit's established authority and stringent requirements for motions to dismiss or convert under §1112(b)(1) dictates that the EDA's Motion be denied in its entirety.

A. Under a Totality of the Circumstances Analysis, EDA has Failed to Show that the Debtor Filed its Chapter 11 Petition for Relief with Subjective Bad Faith.

29. EDA's Motion to Convert fails to establish that the Debtor's filing was motivated by subjective bad faith.

30. The Fourth Circuit recognizes that a totality of the circumstances inquiry is required in determining whether subjective bad faith exists and that "any conceivable list of factors is not exhaustive," further providing that "there is no 'single factor that will necessarily lead to a finding of bad faith.'" *Id.* at 701 (internal citations omitted).

31. EDA suggests consideration of the following "non-exhaustive list of factors" in order to determine subjective bad faith:

1. The Debtor has one asset;
2. Secured creditors' liens encumber the asset;
3. There are generally no employees except for the principals and there is no ongoing business activity;
4. The debtor has little or no cash flow and no available source of income to sustain a plan of reorganization or make adequate protection payments;
5. There are few, if any, unsecured creditors whose claims are relatively small;
6. There are allegations of wrongdoing by the debtor or its principals[1];
7. The timing of the debtor's filing evidences an intent to delay or frustrate the legitimate efforts of secured creditors to enforce their rights;
8. The debtor is afflicted with the 'new debtor syndrome' in which a one asset entity is created or revitalized on the eve of foreclosure to isolate the insolvent property and its creditors;
9. There is no realistic possibility of reorganization of the debtor's business;
10. The reorganization involves a two-party dispute; and
11. Bankruptcy offers the only possibility of forestalling loss of property.

Motion to Convert, ¶ 51.

32. Relying primarily on speculation and unfounded accusations, EDA incredibly suggests that "nearly all of these factors" weigh in favor of granting EDA's Motion to Convert. In reality,

EDA

however, EDA a thorough analysis of the relevant facts in light of these factors shows that there is little to no support for the EDA's bald assertions.

33. Addressing these enumerated factors in order below, it is clear that the facts and circumstances weigh heavily in Debtor's favor.

i. The Debtor has more than one valuable asset. Although the Real Property is a significant asset, the Debtor also has other valuable assets detailed in its Schedules and, importantly, has one very valuable contract with the United States Drug Enforcement Agency (the "DEA Contract"). The Debtor is in the process of determining how to maximize the value of these assets collectively and within the parameters of its legal relationship with its tenant, Training. To be sure, this is not a "single asset" case – as the Court is well aware as a result of its substantial judicial considerations to date. This is also clearly evidenced by the substantial focus placed on the DEA Contract so far in these proceedings.

ii. The most recent appraisal of the Property provided an appraised value of over $15 million. Despite the EDA's unfounded allegations, there is no evidence suggesting that such appraisal is inaccurate, and especially no evidence that it is grossly overstated. The EDA falsely states that the $15 million valuation includes trade fixtures and personal property that are no longer owned by the Debtor. To the contrary, the appraisal is based on the value of the land itself, the various structures located on the land and various site improvements (such as the driving track which alone has a value of $2.4 million). A true and correct copy of the Appraisal is attached hereto as **Exhibit D**. The Property is encumbered by approximately $8,857,337.00 in secured debt. Accordingly, there is a substantial equity cushion protecting the EDA's interest and, additionally, the EDA is receiving monthly payments of $52,000 which further adequately protects its interest in the Real Property.

iii. The EDA attempts to place significance on the Debtor's lack of employees. As noted, the Debtor has no employees but rather utilizes a subcontractor to perform its DEA Contract. The Debtor always operated in this manner, previously using PTC as a subcontractor to perform its trainings. The EDA further falsely states that the Debtor "has no operations." The EDA is either wholly disingenuous in making such assertions or simply fails to understand the relationship of contractor/subcontractor and landlord/tenant. The Debtor is operating as a landlord to a fully functioning special operations training facility and as the prime contractor to the most valuable training relationship serviced at the facility. In addition, the Debtor has the right to have a representative present at the facility at all times to oversee such trainings (See Subcontract, Sections 1.2(C), 1.8 and 1.9) – the Debtor intends to avail itself of this right to the fullest going forward, which will further establish its involvement in day-to-day activities at the facility.

iv. The Debtor has significant fixed cash flow and the potential for significant additional cash flow. The Debtor earns $52,000 per month through its Lease with Training, which income is paid directly to EDA, and the Debtor may begin to directly collect its administrative fee of $20,000 per month. The Debtor is also entitled to payment of "Additional Rent" under its Lease, which Debtor asserts will provide a lucrative revenue source in the very near future. In fact, operations at the facility from October, 2018 through October, 2019 generated revenue of $3,961,595.00. True and correct copies of the applicable Profit and Loss Statements showing monthly revenues are attached hereto as **Exhibit E**. Revenue has generally increased over the past year, due in part to the lucrative DEA Contract which began operations in October, 2018. This trend of increasing revenue should continue and Debtor expects to be due Additional Rents on a go forward basis (even utilizing Training's method of calculating Additional Rents due, which Debtor does not concede).

v. The Debtor would suggest that the existence of other significant creditors is a very important factor to be considered in the analysis of whether or not to convert or dismiss the case. Yet the EDA failed to address this factor at all. The Debtor would further suggest that the EDA failed to address it because it clearly is not in the EDA's favor. The Debtor has multiple general unsecured creditors and they have significant claims. Protection of their interests by preserving the Real Property and allowing the Debtor to seek to reorganize is wholly against the EDA's self-interest of attempting to foreclose on the Real Property for only its benefit. Substantial emphasis and weight should be allocated to this factor in order to preserve value in the estate and seek to accomplish what is in the best interests of **all** creditors.

vi. The EDA focuses the bulk of its argument on various allegations levied against the Debtor's principals. Despite the EDA's characterization of any alleged acts by the principals, nothing alleged was done in bad faith. The EDA states that the principals overestimated projected revenue to be derived from the Property, while at the same time acknowledging that the principals may have just been "unrealistically optimistic." The Debtor is not aware of any legal authority pursuant to which "unrealistic optimism" would amount to bad faith and the EDA does not cite to any such authority. Regardless, , the DEA Contract did not begin operations until September, 2018, after which time revenue has been relatively consistent. With regard to the list of customers referenced by EDA, the list provided to Training was a list of existing customers and such list was accurate at all times. EDA also implies that since the Debtor's estimates of projected revenue as provided to Training did not come to fruition, there must have been malicious intent when in fact the estimates were just that: estimates. Even if the estimates were "optimistic," such does not constitute bad faith. In fact, as the beneficiary of Additional Rents, the Debtor (as much as Training) had a vested interest in the actual revenues being consistent with the estimates In any event, the projections of revenue provided by Training to Debtor reasonably relied on the contracts that the Debtor had at that time as well as contracts, such as the DEA contract, which the Debtor expected to, and indeed did, win.

The EDA claims particular significance related to the Debtor's relationship with SMI and the Debtor's conveyance of personal property to SMI. What the EDA fails to mention is that SMI had and has a valid security interest in the Debtor's personal property. A true and correct copy the SMI Security Agreement is attached hereto as **Exhibit F**. SMI's demand for its collateral due to a loan default by the Debtor resulted in the conveyance of the Debtor's personal property (SMI's collateral) to SMI. There simply is nothing nefarious or even questionable about this transaction. SMI had a valid interest in all such property and the right to foreclose upon it at any time. If SMI had not taken title to such property pre-petition, it would be a first lien secured creditor against such property in the bankruptcy. In a related transaction, the Timber Agreement was executed in favor of SMI at SMI's demand as additional security for SMI's debt. The Timber Agreement simply creates a lien and the Debtor intends to pay off SMI's lien through its plan of reorganization. Although the granting of such security interest may be an alleged default under the EDA loan documents, it is in no way evidence of bad faith. Rather, it was an instance of the Debtor attempting to appease the demands of another aggressive creditor.

The EDA also asks the Court to attach particular significance to the fact that the $20,000 administrative fee owed to the Debtor and PTC was paid directly to the Debtor's principals. As has been set forth on the record in this case, all such transactions were properly accounted for and evidenced in the Debtor's general ledger as receipts and payments. To the extent that the EDA or any other party does not believe that the principals were entitled to compensation, or that they were only entitled to some other amount of compensation, that is an issue that has not been raised by EDA. Nevertheless, the principals performed valuable services both prior to and subsequent to execution of the Lease and they accordingly were entitled to compensation from the Debtor and/or PTC. As mentioned above, as recently as June, 2019, Mr. Jones prepared an RFI to be submitted to the DEA for a proposed Disaster Readiness Course. See attached Exhibit B. Substantial time, resources and, perhaps more importantly, personal knowledge, ability and experience are required to prepare any such proposal. Moreover, during the period from June 1, 2018 and August 31, 2019, the principals contributed over $300,000.00 to cover various Debtor expenses, including certain expenses related to research and creation of proposals such as the RFI referenced above. If Training or the Debtor were to hire an outside company to complete these proposals, the cost that would be incurred in that process would be no less than the payments made to the principals from the Debtor.

There is no evidence of bad faith in these transactions and EDA has not shown any and, in fact, the evidence is to the contrary.

Lastly, the EDA purports to associate some bad faith to a lawsuit involving Blue Force Technologies, Inc. which was settled after only one preliminary hearing with the judge. *See* Motion to Convert, ¶ 84-88. Such allegations were made against Debtor's principals in unrelated and irrelevant litigation. That litigation was settled with no admission of liability. As such, EDA's allegations of wrongdoing amount to nothing more than allegations about allegations, with no factual support whatsoever.

vii. The Debtor readily acknowledges that it filed this petition prior to the EDA's attempt to foreclose on the Property. In fact, the Debtor filed its petition in order to gain breathing room and seek to rehabilitate. It is undisputed and well established that such is a legitimate and even wise use of the bankruptcy process. See e.g., *In re Carolin*, 886 F2d 703 ("it is quite common and not inappropriate for a debtor to use chapter 11 to obtain a respite from a creditor or creditors aggressively seeking to collect on a debt, even when execution is imminent." The EDA's allegations that this is evidence of bad faith are unfounded and unsupported by applicable legal authority.

viii. There was no change in the Debtor's ownership structure pre-petition, therefore no instance of "new debtor syndrome

ix. The Debtor absolutely has a realistic possibility of reorganization given its valuable assets and options for addressing the remaining disputed issues with Training. This factor is discussed more fully below in Section B.

x. Although the EDA states that this bankruptcy is a "two party" dispute, that allegation belies the clear fact that the Debtor is currently addressing numerous creditors and parties in interest, including both the EDA and Training. In addition, there are numerous other creditors with significant claims and interests that have a stake in the outcome of these proceedings. Protecting the interests of ALL creditors is paramount, despite the EDA's attempt to liquidate the Debtor's most valuable asset for the sole benefit of the EDA.

xi. The Debtor may have been able to prevent any loss of the property outside of bankruptcy. In any event, this factor is not determinative. See again, *In re Carolin*, 886 F2d 703 ("it is quite common and not inappropriate for a debtor to use chapter 11 to obtain a respite from a creditor or creditors aggressively seeking to collect on a debt, even when execution is imminent.")

34. Accordingly, the EDA fails to support the vast majority of these factors in a meaningful way and ignores the realities of the circumstances out of self-serving convenience. When each factor is analyzed and the true nature of the attendant facts are considered, it is clear that this bankruptcy case was not filed in bad faith and that the Debtor has both the intent and ability to reorganize under Chapter 11. Because the totality of the circumstances analysis does not indicate that the Debtor has filed its case with subjective bad faith, the first prong of the "bad faith" analysis from *Carolin Corp.* is not met and the Court cannot find that the Debtor lacked the requisite good faith. *See* 886 F.2d at 698. The EDA's Motion must accordingly dismissed on this basis alone.

B. The Debtor has a Realistic and Objective Possibility of Reorganizing

35. The EDA's position that a reorganization if "objectively futile" in this case is wholly unsupported by any credible evidence and, in fact, ignores the realities of the circumstances. Because the Debtor's reorganization is not objectively futile, the EDA cannot meet the second

prong of bad faith. Based upon this alone, the Court cannot find that the Debtor has filed the case in bad faith.

36. The Debtor fully intends to file a Chapter 11 plan of reorganization that will maximize the value of its substantial assets, preserve its business as a going concern and pay creditor claims pursuant to requirements of the Bankruptcy Code. The Debtor acknowledges that most bankruptcy reorganizations involve obstacles and challenges, but it is clear that the Debtor has several options for proceeding as a going concern. The Debtor first acknowledges that its dispute with Training has its own challenges and that such litigation is always uncertain. Under those circumstances, the Debtor recognizes that one potential version of its Plan may involve maintaining the status quo as to Training. In that regard, the Debtor and Training recently reached a temporary agreement to accommodate certain required December, 2019 trainings, including under the valuable DEA Contract. In such scenario, as discussed above, the Debtor will have consistent fixed revenue and the inevitable receipt of Additional Rents as revenues have increased and stabilized. The Debtor is also in discussions with potential investors and/or lenders that may infuse capital into the Debtor if necessary.

37. If, on the other hand, the Debtor continues to seek and regains possession of the Property, it will proceed with preparations for performing its obligations under the DEA Contract. The EDA has implied that the Debtor is not capable of performing necessary trainings, but any such assertion is patently false. Although the Debtor experienced financial difficulties as a result of federal government budget cuts and sequestration, the Debtor never experienced any issues with its ability to provide the required Trainings. The Debtor would remind the EDA that the Debtor (or its predecessor or affiliate controlled by the principals) was awarded government Training Contracts as early as July 26, 2013. Prior to that, the Debtor performed obligations under

government contracts as a subcontractor for the Naval Special Warfare Community and Linxx Training Diplomatic Security Mobile Security Teams. Furthermore, the Debtor performed Trainings for the Department of State, Diplomatic Security, Mobile Security Deployment Teams and High Threat teams from 2013 through 2016. These groups form the high-end response teams for the State Department and only reluctantly ceased receiving Trainings through the Debtor and the Facility because the government constructed a facility in Virginia for such Trainings. Additionally, from 2013 to 2017, the Debtor also performed Trainings under an ad hoc purchase order with USTAD/CST.

38. Again, it was only federal budget cuts and sequestration that brought an abrupt halt to the Debtor's profitable operations. Because the defense and intelligence budgets have since been reestablished and are healthy, the Debtor's belief in its ability to successfully reorganize is rational and supported.

39. Additionally, notwithstanding EDA's liens on the Property, the Debtor retains significant equity in the Property as set forth above.

40. "[W]hether there is net equity in a principal or single asset could be of importance of successful reorganization…" *Carolin Corp.*, 886 F.2d at 705.

41. Further, EDA's allegation that the Debtor "has no going concern" and "does not operate a business" is simply wrong. *See* Motion to Convert, ¶ 90. As stated above, the EDA is either wholly disingenuous in making such assertions or simply fails to understand the relationship of contractor/subcontractor and landlord/tenant. The Debtor is operating as a landlord to a fully functioning special operations training facility and as the prime contractor to one of the most valuable training relationships serviced at the facility. In addition, the Debtor has the right to have a representative present at the facility at all times to oversee such trainings (See

Subcontract, Sections 1.2(C), 1.8 and 1.9) – the Debtor intends to avail itself of this right to the fullest going forward, which will further establish its involvement in day-to-day activities at the facility.

42. The Debtor has significant assets and a viable business enterprise. The Debtor's purpose in filing this Case was to obtain a respite from execution activities that would only benefit one party, and allowing it to formulate a Plan to repay its creditors and continue as a going concern.. This potential is clearly real and in no way objectively futile.

43. The Debtor's goals are consistent with the purposes of the Bankruptcy Code and, contrary to EDA's bald assertions stating otherwise, the Debtor has *both* the intent and the ability to reorganization.

WHEREFORE, the Debtor, Panthera Enterprises, LLC, respectfully requests that this Court enter an Order denying West Virginia Economic Development Authority's Motion to Convert this Case to a Chapter 7 Proceeding or to Dismiss the Bankruptcy Case for Cause, and order any further relief the Court deems proper.

Date: December 11, 2019

BERNSTEIN-BURKLEY, P.C.

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that the within Objection and Response to Motion to Convert and/or Dismiss was served via the CM/ECF system upon all parties and counsel of record on this 11th day of December, 2019.

Date: December 11, 2019

Respectfully submitted:
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