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

In re	:	
	:	Bankruptcy Case No. 2:19-bk-00787
Panthera Enterprises, LLC,	:	Chapter 11
Debtor.	:	

WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY'S OBJECTION TO DEBTOR'S THIRD MOTION FOR EXTENSION OF EXCLUSIVITY PERIOD

West Virginia Economic Development Authority ("WVEDA"), by its counsel, objects to Panthera Enterprises, LLC's ("Debtor") *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*, filed May 11, 2020 (Doc 135) ("Third Motion to Extend Exclusivity"), and as grounds for its Objection, WVEDA states as follows:

1. WVEDA incorporates by reference as if fully stated herein, its Objection to Debtor's Second Motion for Extension of Exclusivity Period, which was filed March 31, 2020 ("Second Objection"). (Doc 111).

2. On April 29, 2020, the Court heard the Debtor's Second Motion for Extension of Exclusivity Period ("Debtor's Second Motion to Extend Exclusivity") and WVEDA's Second Objection, which was overruled by Order entered May 12, 2020. (Doc 137) Debtor's exclusivity period was extended to May 12, 2020.

3. On May 11, 2020, Debtor filed its Third Motion to Extend Exclusivity. (Doc 135) Objections are due June 5, 2020.

4. In its First Motion to Extend Exclusivity, the Debtor argued its "time and resources [had been] occupied by disputes [with Panthera Training, LLC ("Panthera Training") and WVEDA]," which were resolved or addressed with interim agreements, allowing the Debtor

to focus on rehabilitation issues. (Doc 88) Nonetheless, the Debtor did not propose a plan of reorganization and sought a second extension.

5. In its Second Motion to Extend Exclusivity, the Debtor argued once again its time and resources had been occupied by the adversary proceeding and now there was a second adversary proceeding filed against the Debtor. Debtor suggested that resolution of the adversary proceedings would allow the Debtor to focus on reorganization and proposing a plan of reorganization. (Doc 100) But again, no plan of reorganization, nor even a possible proposal, was proposed by the Debtor.

6. Debtor's Third Motion to Extend Exclusivity omits the pending litigation arguments as cause for another extension, but to the extent Debtor relies on such at hearing, WVEDA incorporates by reference the arguments made and legal authority cited in its Objection to the Debtor's Second Motion to Extend Exclusivity. (Doc 111) Specifically, pending litigation is not, by itself, cause for extending the exclusivity period. *Id.*

7. Debtor's Third Motion to Extend Exclusivity relies on the Covid-19 pandemic to argue the Debtor should be granted an extended exclusivity period to August 12, 2020. The Debtor claims that "the last two months have brought about unprecedented obstacles that are entirely out of the Debtor's control," impeding the Debtor's efforts to make "substantive progress toward developing future plans." (Doc 135, p. 4)

8. What the Debtor glosses over is that it made no substantive progress toward developing a plan of reorganization in the five or six months before the Covid-19 pandemic. The Debtor filed its voluntary petition for bankruptcy protection on September 13, 2019. Its initial exclusivity period expired on January 13, 2020 -- before Covid-19 was considered a pandemic in this country. During this time, there was no progress made toward developing or proposing a

plan of reorganization. Likewise, there was no progress made before the first extended deadline of March 13, 2020, nor after that.

9. On May 7, 2020, Panthera Training and WVEDA filed its Joint Motion to Convert this Case to a Chapter 7 Proceeding for Cause Pursuant to 11 U.S.C. § 1112(b)(1) ("Joint Motion"). (Doc 132) Movants assert that cause exists based upon the Debtor's (a) gross mismanagement of the bankruptcy estate; (b) failure to maintain appropriate insurance; and (c) continuing loss and diminution of the estate and the absence of a reasonable likelihood of rehabilitation. *Id.* All of these causes are likewise bases for not granting the Debtor's Third Motion to Extend Exclusivity. WVEDA incorporates by reference the Joint Motion and the arguments made therein in further support of its Objection to granting Debtor a third extension of the exclusivity period.

10. Moreover, the Debtor's assertion that it has not been able to "engage in meaningful discussions with existing and potential business partners, contacts, resources and plan advocates" because of the Covid-19 pandemic rings hollow. On April 15, 2020, The Washington Post reported that the Federal Emergency Management Agency ("FEMA") had awarded a $55 million contract for N95 masks to Panthera Worldwide LLC, the Debtor's subsidiary. Another article was published by The Wall Street Journal on April 18, 2020, according to which Panthera Worldwide LLC was to deliver 10 million masks by May 1, 2020. Attached as Exhibit A to this Objection are copies of articles regarding the N95 mask contract Panthera Worldwide LLC negotiated with FEMA.

9. Panthera Worldwide LLC defaulted on the FEMA contract. According to an article published by The Wall Street Journal on May 12, 2020, FEMA extended the May 1

delivery date once to May 11, and when the masks were not delivered, the contract was cancelled. See WSJ Article attached to this Objection as Exhibit B.

10. The Covid-19 pandemic has not delayed progress on a plan of reorganization for this Debtor. Rather, the Debtor's principal, Mr. James Punelli, who is also the principal of Panthera Worldwide LLC (Doc 52-5, p. 29:4-6), has devoted his time and resources these past months to working a $55 million contract with FEMA to the expense of the Debtor's rehabilitation. Further, given that the Facility this Debtor purports to own relies heavily on government contracts, default on a large government contract by the Debtor's subsidiary may be more detrimental to the Debtor's prospects for reorganization than Covid-19.

11. For all of the reasons cited herein, this Debtor does not have a realistic possibility of rehabilitation, and the Debtor's creditors should not be held in abeyance any longer while the Debtor's principal waits for some unknown infusion of capital. WVEDA requests this Court to deny the Debtor's Third Motion to Extend Exclusivity.

WHEREFORE, for all of the reasons cited above, West Virginia Economic Development Authority respectfully requests this Court to deny the Debtor's Third Motion to Extend Exclusivity Period, and to grant such other and further relief as the Court deems appropriate.

Dated: June 5, 2020

WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY
By Spilman Thomas & Battle, PLLC

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CERTIFICATE OF SERVICE

I, Debra Lee Allen, hereby certify that on this 5th day of June, 2020, the foregoing *West Virginia Economic Development Authority's Objection to Debtor's Third Motion for Extension of Exclusivity Period* was served through the Court's ECF system on all parties registered to receive CM/ECF notices, including:

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