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

In Re:
Panthera Enterprises, LLC, Case No. 19-00787

Debtor in Possession. Chapter 11

UNITED STATES TRUSTEE'S RESPONSE TO JOINT MOTION TO CONVERT AND DEBTOR'S OBJECTION

The Acting United States Trustee, John P. Fitzgerald, III, by counsel, pursuant to the Court's directive hereby responds to the Joint Motion to Convert filed by creditors, Panthera Training LLC and West Virginia Economic Development Authority, (the "Movants") [Docket No. 132] and the Debtor's Objection thereto [147], as follows:

A. Allegation of Gross Mismanagement based on Operating Reports and Inappropriate Disbursements

1. The Movants assert that the Debtor has filed false and misleading Monthly Operating Reports and has used funds of the Debtor to pay non-debtor related entity expenses. The Movants assert this constitutes cause to convert the case pursuant to 11 U.S.C. § 1112(b)(4).
2. The United States Trustee has no independent knowledge as to the facts alleged by the Movants and is only aware of those facts that are of record as asserted by the Movants, which the Debtor contests.
3. If the facts as alleged by the movants are true, the U.S. Trustee would agree that it would

constitute cause to convert based on the reasoning and authorities cited by the Movants.

4. Independent of the facts asserted in the Motion, the record is clear that the Monthly Operating Reports that the Debtor has filed in this case thus far have lacked the clarity of disclosure consistent with the responsibilities of a debtor in possession in a Chapter 11 bankruptcy. This lack of clarity is particularly apparent with respect to transactions involving the Debtor and related entities. While this issue is discussed in greater detail in the Joint Motion, the United States Trustee would assert that a review of the Monthly Operating Reports on this issue would best be characterized as confusing or overly ambiguous.

5. Additionally, certain expenses, such as those characterized as travel expenses, are not sufficiently detailed.

6. Based on the lack of clarity and full disclosure in the Monthly Operating Reports, the United States Trustee would support conversion to Chapter 7 on these grounds.

B. Insufficiency of Casualty Insurance

7. In addition to the Motion and Objection that is the subject of this response, the motion filed by the United States Trustee to dismiss or convert based on the lapse of casualty insurance is pending [Docket No.112].

8. Following the filing of the U.S. Trustee's motion, the Debtor acquired casualty insurance, proof of which is attached as Exhibit A to the Debtor's Objection. The insurance procured by the Debtor is for the term of April 17, 2020 through April 17, 2021 and covers only replacement cost of the buildings on the Real Property. The total coverage amount in the casualty insurance, for replacement cost, is $2,149,000.

9. The Debtor scheduled its Real Property with a value of $15,050,000 and the amount of casualty insurance in place when the case was filed was $6,224,500.

10. As noted by the Debtor, Chapter 11 debtors in possession are required to maintain appropriate insurance to protect the estate and the public. See, 11 U.S.C. § 1112(b)(4)(c). The issue of appropriate insurance is a question of fact.

11. The only facts the U.S. Trustee has to present on this issue are the circumstantial facts of record which demonstrate that the current casualty insurance is dramatically below the scheduled value of the real estate and significantly below the value that was previously maintained. Thus, unless the Debtor can produce evidence that the $2,149,000 in casualty insurance is sufficient to protect the value of the estate, the United States Trustee maintains that this is a ground to convert or dismiss this case.

C. Allegation that Debtor's Continuing Loss and Diminution of the Estate with the Absence of a Reasonable Likelihood of Rehabilitation Supports Conversion

12. While ambiguous regarding certain transactions, the Debtor's Operating Reports clearly reflect a continuing loss and diminution of the bankruptcy estate as the Reports consistently show a continued accumulation of operating losses. The Debtor argues that this loss is due to issues related to its dispute with one of the Movants, Panthera Training LLC, and the effects of the COVID-19 pandemic.

13. The United States Trustee is without sufficient understanding of the facts which form the basis of the Debtor's defense to take a position with respect to the merits of this argument.

14. However, the lack of adequate disclosure in the Monthly Operating Reports as noted

above indicate that this case is not proceeding along a path to a confirmed plan, which is the ultimate purpose of a Chapter 11 filing.

15. Therefore, unless the Debtor can adequately explain how it may become a profitable enterprise and can demonstrate that the disclosure in the future will be complete, accurate and sufficiently clear so that parties in interest can draw reasonable conclusions with respect to a confirmable plan, the United States Trustee would support the Joint Motion on these grounds. As the record stands now, the Debtor has not made that showing in the U.S. Trustee's estimation.

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Dated: May 29, 2020

Respectfully submitted,

JOHN P. FITZGERALD, III
ACTING UNITED STATES TRUSTEE

By Counsel

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CERTIFICATE OF SERVICE

I certify that on this day I electronically filed the Response to the Joint Motion to Convert and Debtor's Objection with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all CM/ECF participants.

May 29, 2020

/s/ Gary O. Kinder

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