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

In re:

PANTHERA ENTERPRISES, LLC, **Chapter 7**

Debtor. **BK No. 2:19-bk-00787**

OBJECTION OF TR&L, LLC AND SMI, LLC TO CHAPTER 7 TRUSTEE'S MOTION FOR AN ORDER APPROVING THE SALE OF THE DEBTOR'S REAL PROPERTY AND NOVATING CERTAIN GOVERNMENT CONTRACTS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES <u>PURSUANT TO 11 U.S.C. § 363 [DOC. 302]</u>

Now come TR&L, LLC ("**<u>TR&L</u>**") and SMI, LLC ("**<u>SMI</u>**"), by and through counsel, and object to the *Chapter 7 Trustee's Motion for an Order Approving the Sale of the Debtor's Real Property and Novating Certain Government Contracts Free and Clear of Liens, Claims, Interests, and Encumbrances Pursuant to 11 U.S.C. § 363* [Doc. 302] (the "**<u>Sale Motion</u>**"). In support of their objection, TR&L and SMI incorporate by reference the factual allegations contained in the Counterclaim filed in Adversary Proceeding No. 21-ap-0002 (the "Counterclaim"). In further support of their objection, TR&L and SMI state as follows:

1. As anticipated with good reason by the Trustee in the Sale Motion, TR&L claims an interest in the "Modular Units" described in the Sale Motion. In fact, TR&L owns the Modular Units described in the Sale Motion, and thus the Trustee has no power to sell them.

2. As described in the Counterclaim and the Trustee's Sale Motion, the 38 Modular Units are listed as personal property in the Debtor's bankruptcy schedules.

3. As described in the Counterclaim, the rights of Panthera Training, LLC under its Commercial Lease Agreement with the Debtor are expressly subject to any *bona fide* security interest in place upon the Modular Units.

4. As described in the Counterclaim, on September 23, 2015, the Debtor, formerly known as TenX Group, LLC, executed a promissory note payable to SMI, LLC, or order, in the principal sum of $100,000, due and payable on or before October 31, 2015.

5. As described in the Counterclaim, also on September 23, 2015, the Debtor, Panthera Training Center, LLC, Blue Force Technologies, Inc., Panthera Worldwide, LLC, James Punelli and Raymond Jones, executed a Security Agreement in favor of SMI, to secure payment of the September 23, 2015 Promissory Note, and any other payment obligations however created, arising or evidenced, whether direct or indirect, absolute or contingent, then existing or thereafter arising or acquired, including but not limited to future advances, and all costs and expenses incurred by SMI. This Security Agreement granted a security interest to SMI in various described personal property, whether then owned or thereafter acquired, including all weapons accessories and equipment, all vehicles and tools utilized at its training center, and all assets, rolling stock, fixtures, equipment, intellectual property and other goods relating to its business operations.

6. As described in the Counterclaim, on June 16, 2016, the Debtor executed a promissory note payable to SMI, or order, in the principal sum of $400,000, in replacement of the September 23, 2015 Promissory Note.

7. As described in the Counterclaim, on September 5, 2017, the Debtor executed an Amended Promissory Note payable to SMI in the amount of $475,000.

8. As described in the Counterclaim, on June 15, 2018, James Punelli, Raymond Jones, the Debtor, Panthera Training Center, LLC and Panthera Worldwide, LLC, as "Sellers", executed a Bill of Sale, selling, assigning and transferring to SMI, or its assigns

> all of Seller's rights, title and interest in the assets, inventory, vehicles, office equipment, furnishing [sic.], other equipment, munitions, firearms, and other personal property and equipment owned by the Seller located at Panthera Training Center and located offsite used in the operation of the Panthera Training Center or other entities listed above as Seller, including but not limited

to:

> All of Seller's equipment, furniture, fixtures, machinery, merchandise, firearms, vehicles, supplies and appliances, including, but not limited to, the specific items listed on the attached Schedule A.

9. As described in the Counterclaim, the property listed on Schedule A to the Bill of Sale includes weapons, ammunition and vehicles used in the operation of the Panthera Training Center. This property, together with all other personal property covered in the Bill of Sale and used in the operation of the Training Center, is included in the "Personal Property" described in the Sale Motion, which the Trustee alleges "is no longer in existence and if in existence, is at or beyond its useful life." Sale Motion at ¶91. Moreover, none of the property used in the operation of the Training Center, other than the Modular Units, is listed as an asset in the Debtor's bankruptcy schedules.

10. As described in the Counterclaim, the 38 Modular Units, were also conveyed to SMI by the Bill of Sale on June 15, 2018.

11. The 38 Modular Units are listed as personal property on the Debtor's bankruptcy schedules. However, if in fact the Modular Units are personal property, then they were conveyed by the Debtor to SMI in the Bill of Sale dated June 15, 2018, perforce.

12. As described in the Counterclaim, the Bill of Sale was executed by the Debtors and others in partial satisfaction of the debt owed by the Debtor to SMI.

13. In the Sale Motion, the Trustee alleges that he can sell the 38 Modular Units free and clear of the interest of TR&L pursuant to 11 U.S.C §363(f)(4), because it is subject to a *bona fide* dispute. However, it is equally true that the Estate's interest, if any, in the 38 Modular Units is also subject to a *bona fide* dispute. If the 38 Modular Units are, in fact, personal property, then

they are not property of the estate, and the Trustee has no power to sell them. *See, e.g., In re Rodeo Canon Development Corporation*, 362 F.3d. 603, 608-09 (9^{th} Cir. 2004).

14. As there is a *bona fide* dispute regarding whether the 38 Modular Units are property of the estate, the Trustee's Sale Motion must be denied or deferred, until the dispute regarding ownership is resolved.

15. Similarly, the Trustee contends that he can sell the Debtor's Real Property free and clear of TR&L's interest in the Timber Agreement described in the Sale Motion, pursuant to 11 U.S.C. §363(f)(4), on the basis that it is also subject to a *bona fide* dispute. However, once again, it is equally true that the Estate's interest, if any, in the timber on the Real Property is also subject to a *bona fide* dispute. If the timbering rights in fact were conveyed to SMI prepetition, then the Trustee has no power to sell the real property free and clear of TR&L's rights, unless it consents to the sale. *Rodeo Canon,* 362 F.3d. at 608-09.

WHEREFORE, TR&L LLC and SMI, LLC request this Court to deny the Trustee's Sale Motion as presently framed, together with such other and further relief as equity requires and as the Court deems proper.

TR&L, LLC, and

SMI, LLC

By Counsel,

/s/ Steven L. Thomas

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing ***Objection of TR&L, LLC and SMI, LLC to Chapter 7 Trustee's Motion for an Order Approving the Sale of the Debtor's Real Property and Novating Certain Government Contracts Free and Clear of Liens, Claims, Interests, and Encumbrances Pursuant to 11 U.S.C. § 363 [DOC. 302]*** was filed and served via the Court's CM/ECF system on this the 20th day of April, 2021.

/s/ Steven L. Thomas
Steven L. Thomas (WVSB #3738)