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Honorable Christopher M. Alston  
Chapter 11  
Hearing Location: Seattle, Rm. 7206  
Hearing Date: June 9, 2017  
Hearing Time: 9:30 a.m.  
Response Date: June 2, 2017

8 UNITED STATES BANKRUPTCY COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT SEATTLE

11 In re:  
12 NORTHWEST TERRITORIAL MINT, LLC,  
13 Debtor.

Case No. 16-11767-CMA

**MOTION TO APPROVE SETTLEMENT  
WITH GATEWOOD-CALIFORNIA LLC  
PURSUANT TO FRBP 9019**

14 Mark Calvert, the Chapter 11 Trustee (the "Trustee") of Northwest Territorial Mint, LLC  
15 ("NWTM" or "Debtor") files this motion seeking approval of the terms of a settlement with  
16 Gatewood-California, LLC ("Gatewood"). As described below, the terms of the settlement are in  
17 the best interests of the estate and should be approved by this Court.

18 **I. FACTS**

19 1. At the time of its bankruptcy filing, NWTM leased commercial space located in  
20 Auburn, Washington (the "Premises"), from Gatewood pursuant to a Commercial Lease dated  
21 November 2, 2006, as amended September 11, 2014 (the "Auburn Lease").

22 2. On July 20, 2016, the Court entered an order extending the time period for the  
23 Trustee to assume or reject leases pursuant to 11 U.S.C. §365(d)(4). Dkt. No. 530.

24 3. On October 28, 2016, the Trustee filed a motion to assume the Auburn Lease  
25 pursuant to 11 U.S.C. §365(a). Dkt. No. 804.  
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FRBP 9019 - 1

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1           4.       On January 13, 2017, the Trustee filed a Notice of Withdrawal of Motion for Order  
2 Authorizing Trustee to Assume Unexpired Lease Regarding Auburn Lease Only (the “Withdrawal”)  
3 informing the Court that he no longer intended to assume the Auburn Lease. Dkt. No. 875.

4           5.       Gatewood opposed the Withdrawal, and asserted, among other arguments, that the  
5 Trustee could not oppose his earlier request to assume the Auburn Lease after the deadline imposed  
6 by 11 U.S.C. §365(d)(4)(B)(ii) without Gatewood’s consent. It is Gatewood’s position that the  
7 Trustee was obligated to assume the Lease, and, accordingly, it is entitled to an administrative  
8 priority claim for damages as a result of the Trustee’s breach. *See, generally*, Appellant’s  
9 Designation of Record and Statement of Issues on Appeal [Dkt. No. 927].

10          6.       On February 3, 2017, the Court entered an order denying the Trustee’s request to  
11 assume the Auburn Lease (the “Lease Order”). Dkt. No. 895.

12          7.       On February 17, 2017, Gatewood filed its Notice of Appeal, appealing the Lease  
13 Order. Dkt. No. 911. The appeal of the Lease Order is currently pending under case no. 2:17-  
14 00355-RSL (the “Auburn Lease Appeal”).

15          8.       At the time he vacated the Premises, the Trustee removed certain security cameras  
16 and related equipment which he believed belonged to NWTM (the “Security Cameras”). Gatewood  
17 asserts that pursuant to an agreement with NWTM, the Security Cameras are its property. The  
18 Trustee believes that the Security Cameras are worth less than \$1,000.

19          9.       The Trustee and Gatewood have agreed to a settlement to resolve the Auburn Lease  
20 Appeal (the “Settlement”). Under the terms of the Settlement, the Trustee will pay Gatewood the  
21 sum of \$5,000 within 30-days of the Court’s approval of the Settlement. Gatewood will also be  
22 granted an administrative priority claim in the amount of \$10,000 which will be paid at such time as  
23 the Trustee sells NWTM’s business operations as a going concern or upon liquidation of  
24 substantially all of NWTM’s assets. Gatewood’s claim will not bear interest. Finally, under the  
25 terms of the Settlement, the Trustee will turn over the Security Cameras to Gatewood. A copy of the  
26

1 negotiated agreement (the “Settlement Agreement”) memorializing the Settlement is attached to the  
2 accompanying Declaration of Mark Calvert as Exhibit A.

3 **II. ISSUE**

4 Whether the Court should approve the terms of the Settlement Agreement.

5 **III. EVIDENCE RELIED UPON**

6 This Motion relies on the Declaration of Mark Calvert and the pleadings and papers on file  
7 with the Court.

8 **IV. ARGUMENT**

9 Compromises are a “normal part of the process of reorganization.” *Protective Comm. for*  
10 *Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). The Court  
11 has great latitude in approving compromise agreements and may approve a compromise if it is “fair  
12 and equitable.” *Woodson v. Fireman’s Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir.  
13 1988). The Court does not have to decide the numerous questions of fact and law raised by  
14 objecting parties. *In re Planned Protective Serv., Inc.*, 130 B.R. 94, 99 n.7 (Bankr. C.D. Cal. 1991).  
15 The focus of the Court’s inquiry is whether the settlement entered into by the Trustee was reasonable  
16 given the particular circumstances of the case. *Bache & Co. v. Loeffler (In re Equity Funding Corp.*  
17 *of Am.)*, 519 F.2d 1274, 1277 (9th Cir. 1975). An order approving a compromise will be upheld  
18 absent abuse of discretion. *Goodwin v. Mickey Thompson Entm’t Group, Inc. (In re Mickey*  
19 *Thompson Entm’t Group, Inc.)*, 292 B.R. 415, 420 (BAP 9th Cir. 2003). In considering whether to  
20 approve a compromise, the Court should apprise itself of:

21 all facts necessary for an intelligent and objective opinion of the probabilities of  
22 ultimate success should the claim be litigated. Further, the judge should form an  
23 educated estimate of the complexity, expense, and likely duration of such litigation,  
24 the possible difficulties in collecting on any judgment which might be obtained, and  
25 all other factors relevant to a full and fair assessment of the wisdom of the proposed  
26 compromise.

1 *TMT Trailer Ferry*, 390 U.S. at 424. Specifically, to determine whether a compromise is “fair and  
2 equitable,” the Court should consider: (1) the probability of success in the litigation; (2) the  
3 difficulties, if any, to be encountered in collection; (3) the litigation’s complexity and its attendant  
4 expense, inconvenience and delay; and (4) the paramount interest of the creditors with a proper  
5 deference to their reasonable view. *Martin v. Kane (In re A & C Prop.)*, 784 F.2d 1377, 1381 (9th  
6 Cir. 1986).

7 The Trustee has determined, in his reasonable business discretion, that the Settlement is  
8 reasonable and in the best interests of the estate. While the Trustee believes that the Court did not  
9 err in entering the Lease Order, there is scant case law on the issues raised by Gatewood in the  
10 Auburn Lease Appeal, creating some litigation risk. The Settlement eliminates the risk that  
11 Gatewood will be awarded a potentially substantial administrative claim as a result of the estate’s  
12 breach of the Auburn Lease. More importantly, the potential expense that the estate would bear in  
13 the Auburn Lease Appeal is likely more than the \$15,000 which Gatewood will ultimately be paid  
14 under the terms of the Settlement. Simply put, the economics of defending an appeal make the  
15 Settlement appropriate.

## 16 V. CONCLUSION

17 Based on the above, the Trustee respectfully requests that the Court approve the terms of the  
18 Settlement Agreement and permit the Trustee to take all necessary actions to carry out the estate’s  
19 obligations under the Settlement Agreement.

20 Dated this 17th day of May, 2017.

21  
22 K&L GATES LLP

23 By /s/ David C. Neu

24 Michael J. Gearin, WSBA #20982

25 David C. Neu, WSBA #33143

26 Brian T. Peterson, WSBA #42088

Attorneys for Mark Calvert, Chapter 11 Trustee

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**CERTIFICATE OF SERVICE**

The undersigned declares as follows:

That she is a Paralegal in the law firm of K&L Gates LLP, and on May 17, 2017, she caused the foregoing document to be filed electronically through the CM/ECF system which caused Registered Participants to be served by electronic means, as fully reflected on the Notice of Electronic Filing.

Also on May 17, 2017, she caused the foregoing document to be placed in the mail to the Parties at the addresses listed below:

Northwest Territorial Mint LLC  
c/o Ross Hansen, Member  
P.O. Box 2148  
Auburn, WA 98071-2148

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Executed on the 17th day of May, 2017 at Seattle, Washington.

/s/ Denise A. Lentz  
Denise A. Lentz