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Honorable Christopher M. Alston
Chapter 11
Hearing Location: Seattle, Rm. 7206
Hearing Date: July 6, 2018
Hearing Time: 9:30 a.m.
Response Date: June 29, 2018

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 TERMS OF
SEVERANCE AGREEMENT WITH
EDGAR CHACON**

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 severance agreement
16 with Edgar Chacon. Mr. Chacon is one of the few remaining employees of the Debtor, and works out
17 of the Debtor’s Dayton, Nevada facility. It is imperative that Mr. Chacon, who manages the Dayton
18 facility stay employed through the end of July, 2018 to assist with the wind down of this case. Thus,
19 the Trustee has negotiated the terms of a severance agreement with Mr. Chacon, whereby Mr.
20 Chacon promises to continue working at the Dayton facility through closure at the end of July in
21 exchange for a severance payment.

22 **I. FACTS**

23 On April 1, 2016, the Debtor commenced this case by filing a voluntary petition under
24 chapter 11 of the United States Bankruptcy Code. On April 11, 2016, the Court appointed Mark
25 Calvert as chapter 11 Trustee. *See* Dkt. No. 51.

26 The Trustee’s goal in this case has been to maximize the recovery of creditors. Since
May 2017, the Trustee has engaged in extensive marketing efforts related to a potential sale of the

1 business. The Trustee entertained expressions of interest from multiple parties including offers to
2 purchase the assets of the estate on a going concern basis and for substantially all of the assets of the
3 estate, but no concrete offer materialized for such a sale on terms which provided any meaningful
4 return to the estate. Because no concrete offer materialized, and because of the inadequate cash
5 resources available to the Trustee, the Trustee closed the custom minting business on December 29,
6 2017 and prepared to liquidate the assets of the estate.

7 Since the beginning of the year, the Trustee has engaged in negotiations with multiple buyers
8 for various assets of the estate. The Trustee separately reached agreements with Industrial Assets
9 Corp. (“Industrial Assets”), Medalcraft Mint, Inc. (“Medalcraft”), and American Numismatic
10 Society, for the purchase and sale of certain assets of the Debtor. The Industrial Assets and
11 Medalcraft agreements were approved by the Court and have closed. The sale to Industrial Assets
12 Corp. included substantially all of the Debtor’s physical machinery and equipment. Medalcraft
13 purchased the Medallic Art name and website; marketing materials; Medallic archives; customer list;
14 sales history; vendor list; certain company owned dies associated with any customer for which there
15 has been a sale in the last 20 years; tools; and woodworking equipment and other assets. The sale to
16 American Numismatic includes older Medallic dies, medals, plaques, and other objects and archives
17 that were created prior to January 1, 1998. The sale to American Numismatic Society was recently
18 approved by this Court.

19 One of the Debtor’s facilities is located in Dayton, Nevada. That facility housed the majority
20 of the Debtor’s custom minting operations. The Trustee ceased business operations in Dayton at the
21 end of December 2017, and he now has until the end of July to vacate the Dayton premises before
22 Bob and Connie Hoff, the landlord, may commence an unlawful detainer action under state law. The
23 majority of staff in Dayton, Nevada has been laid off and only a skeleton staff of five employees
24 remains.

25 Edgar Chacon is the plant manager of Dayton and has a wide array of duties, which include
26 but are not limited to managing the shut down of the company, arranging the shipment of dies,

1 preparing items of property for sale, assisting with records retention or destruction, and maintaining
2 the building in accordance with lease obligations. There is no other employee in Dayton that has the
3 capability of performing the duties of Mr. Chacon. The Trustee has reached an agreement with
4 Mr. Chacon to ensure that he will stay employed through the closing and move-out of the Dayton,
5 facility (the “Severance Agreement”). A copy of the Severance Agreement is attached to the
6 declaration of Mark Calvert filed in support of this Motion.

7 The Severance Agreement with Mr. Chacon provides that the Trustee will pay Mr. Chacon
8 severance in the amount of \$14,700 (approximately two months of pay) on July 8, 2018. In
9 exchange, Mr. Chacon promises to continue working for the Trustee until such time that all tasks in
10 Dayton are completed or until the Trustee dismisses his services. Mr. Chacon will not seek, or accept
11 other employment during this time. Under the agreement, Mr. Chacon will continue to be paid his
12 existing normal hourly rate, at no less than 40 hours a week. All overtime, if approved, will be paid
13 as time and a half.

14 As described in the Declaration of the Trustee filed in support of this Motion, the Trustee
15 believes that there is a risk that Mr. Chacon will leave the company absent approval of the Severance
16 Agreement. If Mr. Chacon were to leave, the Trustee would be forced to hire someone to work on a
17 short-term contract basis. It would be very difficult to find such a person on short notice and such a
18 person will not have the institutional knowledge and experience of Mr. Chacon. Additionally, the
19 Trustee would be forced to travel to Dayton to supervise the efforts of the new hire and oversee the
20 sale and shipment of remaining property located in that facility.

21 II. ISSUE

22 Should the Court approve the Severance Agreement between the Trustee and Mr. Edgar
23 Chacon?

24 III. EVIDENCE RELIED UPON

25 This Motion relies on the Declaration of Mark Calvert.
26

1 **IV. ARGUMENT**

2 Mr. Chacon is an employee of NWTM, and is not a professional. Accordingly, his
3 employment is not governed by 11 U.S.C. § 327, and the Trustee does not believe it necessary to
4 seek approval of the Severance Agreement pursuant to Section 330 of the Bankruptcy Code. That
5 said, because the Severance Agreement is arguably outside the ordinary course of business, the
6 Trustee seeks approval of the Severance Agreement under 11 U.S.C. § 503(c)(3). Section 503(c)(3)
7 provides in relevant part that transfers or obligations that are outside the ordinary course of business,
8 must be justified by the facts and circumstances of the case.

9 Here, the Trustee believes, in his sound business judgment that the terms of the Severance
10 Agreement, are in the best interest of the estate and creditors and are amply justified by the facts.
11 Mr. Chacon has worked at the Dayton facility since prior to the bankruptcy case. The Trustee is
12 concerned that absent approval of the Severance Agreement, Mr. Chacon will seek and find
13 employment elsewhere given that his duties will terminate upon closure of the Dayton facility
14 anyway. The Trustee would be unable to hire someone with the skill and institutional knowledge of
15 Mr. Chacon to work for the estate on a short-term basis through the end of July. If Mr. Chacon were
16 to leave the company, Mr. Calvert would be forced to hire a short-term contract employee. The
17 Trustee would also be forced to travel to Dayton frequently himself in order to supervise the efforts
18 of that contract employee to comply with lease terms, arrange for the shipment of dies, and
19 coordinate the sale of the remaining items of property in the Dayton facility. In simple terms, given
20 NWTM's current status, the Severance Agreement is a necessary and is justified by the facts and
21 circumstances of the case.

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V. CONCLUSION

Based on the above, the Trustee respectfully requests that the Court approve the terms of the Severance Agreement.

Dated this 15th day of June, 2018.

K&L GATES LLP

By /s/ Brian T. Peterson
Michael J. Gearin, WSBA #20982
David C. Neu, WSBA #33143
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 June 15, 2018, 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 June 15, 2018, 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

Mr. Edgar Chacon
80 E. Airpark Vista Blvd
Dayton, NV 89403

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 15th day of June, 2018 at Seattle, Washington.

/s/ Denise A. Lentz
Denise A. Lentz