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Honorable Christopher M. Alston
Chapter 11
Hearing Location: Seattle, Rm. 7206
Hearing Date: August 24, 2018
Hearing Time: 9:30 a.m.
Response Date: August 17, 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 FOR ORDER APPROVING
SETTLEMENT WITH BILL ATALLA**

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 Bill
16 Atalla pursuant to Fed. R. Bankr. P. 9019. As described below, the terms of the settlement are in the
17 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 billed itself as the largest private mint in
20 the United States. As of April 1, 2016 it had approximately 240 employees located at facilities in six
21 states. On April 11, 2016, the Bankruptcy Court entered an order appointing Mark Calvert as
22 chapter 11 Trustee. The Debtor’s business is primarily comprised of (a) the sale of precious metals
23 such as gold, silver, and platinum; and (b) the minting of medallions, coins, and other awards.

24 2. Bill Atalla was employed as the Chief Executive Officer (“CEO”) of NWTM
25 pursuant to an order authorizing his employment that was entered on February 7, 2017. *See* Dkt.
26 No. 897. Mr. Atalla’s office was located in the Debtor’s Dayton, Nevada facility. On December 29,

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WITH BILL ATALLA - 1

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1 2017, the Trustee terminated Mr. Atalla's employment in connection with his closing of the Debtor's
2 Dayton, Nevada facility.

3 3. On April 20, 2018, Bill Atalla filed his Motion for Allowance and Payment of
4 Administrative Expense Claim (the "Atalla Admin Motion"). *See* Dkt. No. 1609. In the Atalla
5 Admin Motion, Mr. Atalla sought allowance of an administrative expense claim in the total amount
6 of \$223,509.00. The request consisted of the following: (i) deferred salary in the amount of
7 \$12,500.00; (ii) vacation pay in the amount of \$25,000.00; (iii) severance pay in the amount of
8 \$100,000.00; (iv) unreimbursed expenses of \$2,909.00; (v) late payment fee of \$25,000 for last
9 paycheck; and (vi) services rendered after his termination date (calculated at \$400 per hour) in the
10 total amount of \$54,800.

11 4. In the Atalla Admin Motion, Mr. Atalla further argued that the portion of his claim he
12 stated was due and payable upon his termination as CEO, in the amount of \$165,409.00, should be
13 payable immediately, according to the same priority as wages paid to active employees. The Trustee
14 filed an objection to Mr. Atalla's motion. While the Trustee agreed that Mr. Atalla was entitled to
15 deferred salary in the amount of \$12,500 and severance of \$75,000, the Trustee objected to
16 allowance of the other components of Mr. Atalla's alleged administrative priority claim.

17 5. At the hearing on the Atalla Admin Motion, the Court ordered that the Trustee pay
18 Mr. Atalla \$2,909, representing Mr. Atalla's alleged unreimbursed expenses. The Court also ruled
19 that Mr. Atalla should be allowed an administrative expense claim in the amount of \$75,000 for
20 severance. According to the Court's order on the Atalla Admin Motion, "[t]he issues of timing of the
21 payment of this claim and whether it should be paid pro-rata with other allowed chapter 11
22 administrative expense claims" shall be determined at an evidentiary hearing on August 7, 2018. The
23 Court further ruled that it would consider the other amounts requested by Mr. Atalla at the scheduled
24 evidentiary hearing.

25 6. Prior to the scheduled evidentiary hearing, the Trustee and Mr. Atalla reached the
26 terms of a compromise to fully resolve all issues between Mr. Atalla and the bankruptcy estate of

1 NWTM. The terms of the settlement are contained in the detailed settlement agreement attached as
2 Exhibit A to the Declaration of Mark Calvert filed in support of this Motion (the “Settlement
3 Agreement”). According to the terms of the Settlement Agreement, Mr. Atalla waives any and all
4 claims against the bankruptcy estate in exchange for \$122,500 in cash to be paid by the Trustee.

5 II. ISSUE

6 Whether the Court should approve the terms of the Settlement Agreement the Trustee reached
7 with Bill Atalla.

8 III. EVIDENCE RELIED UPON

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

11 IV. ARGUMENT

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

24
25 all facts necessary for an intelligent and objective opinion of the probabilities of
26 ultimate success should the claim be litigated. Further, the judge should form an
educated estimate of the complexity, expense, and likely duration of such litigation,
the possible difficulties in collecting on any judgment which might be obtained, and

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all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise.

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

The Trustee has determined, in his reasonable business discretion, that the Settlement Agreement is reasonable and in the best interests of the estate. The Settlement Agreement avoids the costs of litigating the dispute through the evidentiary hearing, including the cost of further legal research, drafting of trial briefs, conducting Mr. Atalla’s deposition in Nevada, defending the Trustee’s deposition, and conducting examination and argument at trial. In addition, there is a risk that Mr. Atalla will prevail on his claims at the evidentiary hearing. If the Trustee does not prevail, the estate could owe a maximum of \$223,509.00, \$165,409 of which could be owed immediately (as opposed to being paid pro rata along with other allowed administrative claims in the case). The estate could further be liable for payment of attorneys’ fees in connection with the evidentiary hearing and Mr. Atalla’s underlying motion, which could be significant. The Settlement Agreement finally resolves Mr. Atalla’s claims and limits the bankruptcy estate’s exposure on such claims. The Trustee therefore asks that the agreement be approved by this Court.

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V. CONCLUSION

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

Dated this 3rd day of August, 2018.

K&L GATES LLP

By /s/David C. Neu
Michael J. Gearin, WSBA #20982
David C. Neu, WSBA #33143
Brian T. Peterson, WSBA #42088
Attorneys for Mark Calvert, Chapter 11 Trustee

CERTIFICATE OF SERVICE

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The undersigned declares as follows:

That she is a paralegal in the law firm of K&L Gates LLP, and on August 3, 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 August 3, 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

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 3rd day of August, 2018 at Seattle, Washington.

/s/ Denise A. Lentz
Denise A. Lentz