

1 Michael J. Gearin, WSBA # 20982
David C. Neu, WSBA # 33143
2 Brian T. Peterson, WSBA # 42088
K&L GATES LLP
3 925 Fourth Avenue, Suite 2900
Seattle, WA 98104-1158
4 (206) 623-7580

Honorable Christopher M. Alston
Chapter 11
Hearing Location: Rm. 7206
Hearing Date: May 26, 2016
Hearing Time: 1:30 p.m.
Response Date: May 23, 2016

5
6
7
8 UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

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

Case No. 16-11767-CMA

14 TRUSTEE'S REPLY IN SUPPORT OF
15 MOTION FOR ORDER APPROVING THE
16 SALE OF THE DEBTOR'S TOMBALL,
17 TEXAS ASSETS FREE AND CLEAR OF ALL
LIENS, CLAIMS, INTERESTS, AND
ENCUMBRANCES; APPROVING THE
ASSUMPTION AND ASSIGNMENT OF
CERTAIN OF THE DEBTOR'S EXECUTORY
CONTRACTS; AND GRANTING OTHER
RELATED RELIEF

18
19
20
21
22
23
24
25
26
REPLY IN SUPPORT OF MOTION FOR ORDER
APPROVING SALE OF DEBTOR'S TOMBALL, TEXAS
ASSETS FREE AND CLEAR AND APPROVING
ASSUMPTION AND ASSIGNMENT OF CONTRACTS

K:\2070561\70020\22732_BTP\22732P31V4

K&L GATES LLP
925 FOURTH AVENUE
SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

I. REPLY

Mark Calvert (the “Trustee”), Chapter 11 Trustee for Northwest Territorial Mint, LLC (“NWTM” or the “Debtor”), submits this Reply in support of its Motion for Order Approving the Sale of the Debtor’s Tomball, Texas Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances; Approving the Assumption and Assignment of Certain of the Debtor’s Executory Contracts; and Granting Other Related Relief (the “Sale Motion”) (Dkt. No. 200). In support of this Reply, the Trustee respectfully states as follows:

On May 6, 2016, the Trustee filed the Sale Motion seeking this Court’s approval of the sale of certain assets related to the business enterprise owned by NWTM and commonly referred to as Graco Awards Manufacturing (“Graco”) free and clear of liens to Tom Tucker and Larry Cook or an entity formed by them (“Tucker/Cook” or “Buyer”). The Trustee also seeks the assumption and assignment by the Trustee to Buyer of certain of the Debtor’s executory contracts and leases related to Graco and certain other related relief.

On May 10, 2016, the Court shortened time and established a response deadline to the Sale Motion of May 23, 2016, and a deadline for objection to the assumption and assignment of executory contracts or proposed cure amounts of 5:00 p.m. on May 24, 2016. On May 11, 2016, the Trustee caused to be mailed a notice of contracts to be assumed in connection with the proposed sale to the contract counterparties. *See* Dkt. No. 238. That notice was amended to provide notice of two additional contracts to be assumed. *See* Dkt. No. 242. The counterparties of the additional contracts were the same counterparties to the contracts identified in the first notice. The amended notice was mailed on May 13, 2016. *See* Dkt. No. 243.

While there were a number of parties who objected to the proposed sale, none of the counterparties to the contracts to be assumed objected to the proposed assumption and assignment of their contracts or the proposed zero cure amounts. The majority of the objections to the Sale Motion

REPLY IN SUPPORT OF MOTION FOR ORDER
APPROVING SALE OF DEBTOR’S TOMBALL, TEXAS
ASSETS FREE AND CLEAR AND APPROVING
ASSUMPTION AND ASSIGNMENT OF CONTRACTS - 1

K&L GATES LLP
925 FOURTH AVENUE
SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

1 received by the Trustee were submitted by customer creditors of the Debtor.¹ Aside from the
2 customer creditor objections, the Trustee received objections to the Sale Motion from Medallic Art
3 Company, LLC; Ira Green, Inc.; and Harris County, Texas.

4 **A. Customer Creditor Objections.**

5 As set forth above, the Trustee received, from creditors who claim to have purchased gold or
6 precious metals from the Debtor, both informal objections that were never mailed to the Court, and
7 formal objections that were filed with the Bankruptcy Court (collectively, the “Customer
8 Objections”).² None of the Customer Objections were filed by creditors with a claim secured by the
9 assets that are the subject of the Sale Motion. Nor do any of Customer Objections concern the Graco
10 business owned by the Debtor. The Customer Objections appear to be based on the fact that such
11 customers placed orders for gold or precious metals went unfulfilled. It appears that these customers
12 misunderstand the proposed sale and the fact that it has been proposed by the Trustee is to generate
13 proceeds that may be used to distribute to creditors. The fact that there were many customers whose
14 orders went unfulfilled by the Debtor is not a basis to deny the sale. The Sale is in the best interests
15 of creditors of the estate including customer creditors and the Trustee would not support the sale
16 otherwise.

17
18
19 ¹ Some of the customer creditor objections were filed with the Court, and other objections were informal
20 objections that appear never to have been filed with the Court. Dewey Greer, James McIntosh, Dwayne Skow,
21 David Cole, Roger Bailey, Mark McGarry, George McDowell and Rayburn Pollard submitted objections to
22 the Sale Motion that were filed with the Court. *See* Dkt. Nos. 250, 281, 291, 293, 295, 296, 297, 298. The
23 following customer creditors sent informal objections to the Trustee that apparently were never filed with the
Court: Anthony D’Andrea and Glen Spencer. In addition, the following individual submitted an objection to
the Sale Motion to the Trustee that contained some indication that it would also be mailed to the Court:
Ronald Wojciechowski. As of the date of this Reply, the objection in this last category does not appear to
have been docketed in the case.

24 ² The objections that were never mailed to the Court fail to comply with Local Bankruptcy Rule 9013-1,
25 which provides that responses to a motion must be filed and served. Regardless of the fact that such
26 objections do not comply with the local rules, for the reasons set forth herein they lack substantive merit and
do not form the basis for denying the Sale Motion.

REPLY IN SUPPORT OF MOTION FOR ORDER
APPROVING SALE OF DEBTOR’S TOMBALL, TEXAS
ASSETS FREE AND CLEAR AND APPROVING
ASSUMPTION AND ASSIGNMENT OF CONTRACTS - 2

K&L GATES LLP
925 FOURTH AVENUE
SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

1 **B. Limited Objection of Ira Green, Inc.**

2 Ira Green, Inc. (“IGI”) filed an objection to preserve its rights to submit a higher and better
3 offer. Late in the day yesterday, May 24, 2016, the Trustee received an offer from IGI. The Trustee
4 is evaluating that offer and has engaged in discussions with the Tucker/Cook group regarding
5 whether its offer can be enhanced. Should the Trustee determinethat IGI or any other party has
6 submitted a materially better offer, the Trustee will move for approval of a sale to that party at
7 tomorrow’s hearing. The Trustee reserves the right to determine which offer is in the best interests of
8 the estate.

9 **C. Objection of Harris County, Texas.**

10 Harris County, Texas asserts that it is a fully secured *ad valorem* tax creditor of the Debtor,
11 holding prior perfected liens against the personal property that is the subject of the Sale Motion.
12 Harris County asserts that its lien securing 2016 taxes arose on January 1, 2016. Harris County takes
13 no issue with the Purchased Assets being sold free and clear of 2015 taxes (and any valid liens
14 attaching to the proceeds of the sale). However, 2016 taxes have not yet become due and Harris
15 County wishes to preserve its ability to collect 2016 taxes against any buyer of the Purchased Assets.

16 Based on Harris County’s objection, and the existence of additional tax claims asserted by
17 Texas taxing authorities, the Trustee has modified the proposed order approving the sale (“Sale
18 Order”). A revised form of the Sale Order is being filed concurrently with this Reply. The Sale
19 Order, as modified, provides that sufficient funds will be reserved and set aside from the sale
20 proceeds to satisfy any valid tax claims secured by the Purchased Assets. In addition, the revised
21 Sale Order preserves Harris County’s lien, to the extent that its asserted lien is valid, for the prorated
22 portion of 2016 taxes owed by the Buyer of the Purchased Assets on account of the Buyer’s
23 ownership of the Purchased Assets post-closing of the sale. The Sale Order, however, preserves the
24 right of the Trustee to challenge the amount, validity, and priority of the claims of any taxing
25 authorities, including Harris County.

26 REPLY IN SUPPORT OF MOTION FOR ORDER
APPROVING SALE OF DEBTOR’S TOMBALL, TEXAS
ASSETS FREE AND CLEAR AND APPROVING
ASSUMPTION AND ASSIGNMENT OF CONTRACTS - 3

K&L GATES LLP
925 FOURTH AVENUE
SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

D. Objection By Medallic Art Company, LLC.

Medallic Art Company, LLC (“Medallic LLC”) has filed an objection to the Sale Motion, in which it asserts that the Purchased Assets may not include property owned by Medallic LLC. Medallic LLC’s objection should be overruled because the assets that are the subject of the Sale Motion are assets owned by the Debtor, almost all of which were acquired by the Debtor in 2011 from an entity then controlled by Tom Tucker. Medallic LLC’s objection is a desperate attempt by Mr. Hansen to disrupt the sale process. Mr. Hansen has indicated his intention to pursue control over the assets of the Debtor in order to resume business under the Medallic name. Medallic LLC should not be able to scuttle the Trustee’s proposed sale based on the vague and unsupported allegations of ownership.

Medallic LLC fails to specifically identify any property it loaned to Graco, the date upon which such property loaned, and the terms upon which such property was loaned. Mr. Hansen states that the assets that were allegedly loaned to Graco is “based on [his] memory.” Ross Hansen’s vague assertions are insufficient to establish Medallic’s alleged ownership of any of the assets which are the subject of the Sale. Given the dearth of specificity to Mr. Hansen’s allegations, the Court should afford them no evidentiary value.

The Debtor’s Dayton, Nevada operating assets were originally owned by an entity known as Medallic Art Company, Ltd (“Medallic LTD”), a South Dakota corporation controlled by Robert and Connie Hoff. The Trustee’s is aware of a July 2, 2009 asset purchase agreement transferring substantially all of the assets owned by Medallic LTD, with the exception of the real property, to Ross Hansen.

Medallic LLC’s vague allegations that it loaned equipment to the Graco division of the Debtor in Texas are without merit. The vast majority of the property that is the subject of the Sale Motion has always been located in Tomball, Texas and was sold by Graco Awards Enterprises, LP to the Debtor in 2011. The Trustee has filed, in connection with this Reply, a declaration from Tom

REPLY IN SUPPORT OF MOTION FOR ORDER
APPROVING SALE OF DEBTOR’S TOMBALL, TEXAS
ASSETS FREE AND CLEAR AND APPROVING
ASSUMPTION AND ASSIGNMENT OF CONTRACTS - 4

K&L GATES LLP
925 FOURTH AVENUE
SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

1 Tucker (the "Tucker Declaration"). As explained by Mr. Tucker, the Graco business enterprise was
2 formerly operated by Graco Awards Enterprises, LP ("Graco Awards"), an entity of which he was a
3 principal. Graco Awards sold its business as a going concern to the Debtor, not Medallic LLC. In
4 addition, Graco Awards served as the Debtor's landlord at the Tomball facility after the closing of
5 the sale. The sale included substantially all of Graco Awards' tangible and intangible assets. As
6 demonstrated by Mr. Tucker's declaration, almost all of the fixed assets that are the subject of the
7 Sale Motion were sold to the Debtor by Graco Awards in 2011.³ Two of the items that Mr. Tucker
8 has identified as not having been sold to the Debtor by Graco Awards were, as described in the
9 Declaration of Paul Roderick filed concurrently herewith, purchased by the Debtor. The only
10 remaining item that was not sold by Graco Awards to the Debtor came to the facility in 2014 from
11 Nevada. None of the three items that were not acquired from Graco were included in the list of
12 acquired assets attached to the 2009 purchase and sale agreement with Medallic Art Company Ltd.

13 The Tucker Declaration and the Roderick Declaration unambiguously confirm that the the
14 assets being sold are property of the bankruptcy estate. Medallic LLC has failed to submit sufficient
15 evidence to establish so much as a colorable claim to the assets and its objection does not form the
16 basis to deny the Trustee's sale of the assets of the Graco enterprise.

17 II. CONCLUSION

18 The bankruptcy estate has an urgent need to conclude the sale of its assets and operations in
19 Texas. The estate is in dire need of the cash that will be generated by the sale and is incapable of
20 continuing to carry the costs of operations in Texas. The Trustee requests that the Court approve the
21 sale for the benefit of the estate and its creditors.

22
23
24 ³ There are three pieces of equipment at the facility, of which Mr. Tucker is aware, that were not sold to the
25 Debtor by Graco Awards in May of 2011. Those pieces of equipment are an air compressor system and a
26 sanding machine and a Roto-Finisher. None of these assets are identified as assets sold to Mr. Hansen under
the Medallic Arts Ltd. asset sale agreement.

REPLY IN SUPPORT OF MOTION FOR ORDER
APPROVING SALE OF DEBTOR'S TOMBALL, TEXAS
ASSETS FREE AND CLEAR AND APPROVING
ASSUMPTION AND ASSIGNMENT OF CONTRACTS - 5

K&L GATES LLP
925 FOURTH AVENUE
SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DATED this 25th day of May, 2016.

K&L GATES LLP

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

REPLY IN SUPPORT OF MOTION FOR ORDER
APPROVING SALE OF DEBTOR'S TOMBALL, TEXAS
ASSETS FREE AND CLEAR AND APPROVING
ASSUMPTION AND ASSIGNMENT OF CONTRACTS - 6

K&L GATES LLP
925 FOURTH AVENUE
SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

CERTIFICATE OF SERVICE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

The undersigned declares as follows:

That she is a paralegal in the law firm of K&L Gates LLP, and on May 25, 2016, 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.

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 25th day of May, 2016 at Seattle, Washington.

/s/ Denise A. Evans
Denise A. Evans

REPLY IN SUPPORT OF MOTION FOR ORDER
APPROVING SALE OF DEBTOR'S TOMBALL, TEXAS
ASSETS FREE AND CLEAR AND APPROVING
ASSUMPTION AND ASSIGNMENT OF CONTRACTS - 7

K&L GATES LLP
925 FOURTH AVENUE
SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022