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Honorable Christopher M. Alston Chapter 11 Hearing Location: Rm. 7206 Hearing Date: July 22, 2016

Hearing Date: July 22, 2016 Hearing Time: 9:30 a.m. Response Date: July 15, 2016

UNITED STATES BANKRUPTCY COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:

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NORTHWEST TERRITORIAL MINT, LLC,

Debtor.

Case No. 16-11767-CMA

MOTION FOR ORDER APPROVING REJECTION OF CERTAIN IRA PURCHASE ORDERS

Mark Calvert (the "<u>Trustee</u>"), Chapter 11 Trustee for Northwest Territorial Mint, LLC ("<u>NWTM</u>" or the "<u>Debtor</u>"), submits this Motion to the Court, which requests entry of an order rejecting certain customer orders purchased as an IRA account investment. In support of the Motion, the Trustee respectfully states as follows:

BACKGROUND

1. On April 1, 2016, the Debtor commenced this case by filing a voluntary petition under chapter 11 of the United States Bankruptcy Code. On April 11, 2016, an order was entered appointing Mark Calvert as chapter 11 Trustee. *See* Dkt. No. 51. Upon his appointment, the Trustee took control over the business operations of the Debtor and initiated his investigation of the financial affairs of the bankruptcy estate. The Debtor's business is primarily comprised of (a) the sale of precious metals, such as gold, silver and platinum; and (b) the minting of medallions, coins and other awards.

MOTION FOR ORDER REJECTING IRA ORDERS - 1 K\2070561\00001\22732 BTP\22732P3\WV

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- After his appointment, the Trustee learned of a number of unfulfilled purchase orders 2. for gold and silver bullion that were submitted by one or more administrators of Individual Retirement Accounts ("IRA Purchase Orders"). The IRA Purchase Orders are more particularly described on the attached Exhibit A. The customers who submitted the IRA Purchase Orders allocated funds in their IRA accounts to pay for the precious metals they ordered but have held those funds in suspense pending delivery of the precious metals they ordered. Counsel for the IRA custodian over certain accounts for which customers have placed IRA Purchase Orders has contacted counsel for the Trustee and indicated he believes that, absent entry of a court order, it would be an automatic stay violation for the custodian or customers to move the monies held in suspense.
- The Trustee has reviewed the IRA Purchase Orders and has determined that the 3. performance of these purchase orders would not benefit the estate in light of the fact that the price of gold and silver bullion has increased since the purchase orders were submitted. That is, it would be more beneficial to the estate for the Trustee to sell the gold and silver at current market rates. This will allow the IRA Purchase Order Customers to use the funds that they have allocated for the purchase of gold and silver bullion for any purpose without the fear that they have violated the automatic stay. Therefore, pursuant to 11 U.S.C. § 365, the Trustee asks the Court to approve the rejection of the IRA Purchase Orders described in Exhibit A to this Motion.

EVIDENCE RELIED UPON

This Motion relies on the arguments set forth herein, the Declaration of Mark Calvert filed in support of the Motion, the pleadings and records on file in this case, and the arguments of counsel, if any.

ARGUMENT

The Bankruptcy Code authorizes the Debtor to assume or reject executory contracts, stating that "[e]xcept as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a).

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Courts apply a "business judgment" test in reviewing a debtor's decision to assume or reject an executory contract. See e.g., Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1098-99 (2d Cir. 1993); see also In re Pomona Valley Medical Group, Inc., 476 F.3d 665, 670 (9th Cir. 2007). In deciding a motion to assume or reject an executory contract, the bankruptcy court places itself in the position of the trustee or debtor-in-possession and determines whether assuming or rejecting the subject contract would be a good business decision or a bad one (i.e., will assuming the subject contract be beneficial or burdensome to the debtor's bankruptcy estate). Orion Pictures, 4 F.3d at 1099. The bankruptcy court need only engage in a "cursory review" of the decision to reject the contract. In re Pomona Valley Medical Group, Inc., 476 F.3d at 670.

The Trustee in this case has a sound business justification for rejecting the IRA Orders. The price of gold and silver bullion has increased since the IRA Purchase Orders were placed. If the IRA Purchase Orders are performed by the Trustee, they will result in a net loss to the estate. Fulfillment of the IRA Purchase Orders will therefore harm creditors of the estate. It is preferable for the Trustee to instead reject the IRA Purchase Orders and liquidate the existing gold and silver bullion inventory at the present market rate.

CONCLUSION

For the foregoing reasons, the Trustee respectfully requests that the Court enter an order approving the Trustee's rejection of the IRA Purchase Orders identified on the attached Exhibit A.

DATED this 28th day of June, 2016.

K&L GATES LLP

By /s/ Michael J. Gearin
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MOTION FOR ORDER REJECTING IRA ORDERS - 3

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CERTIFICATE OF SERVICE

The undersigned declares as follows:

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 28th day of June, 2016 at Seattley Washington.

That she is a practice assistant in the law firm of K&L Gates LLP, and on June 28, 2016, she

Benita G. Gould

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MOTION FOR ORDER REJECTING IRA, ORDERS - 4 K:\2070561\00001\22732_BTP\22732P31WV

EXHIBIT A

IRA PURCHASE ORDERS

Customer Name	Purchase Order Amount
Eva Rosman	\$429,370.88
Stephen Straub	\$14,919.08
Paul Striegel	\$2,002.08
Paul Striegel	\$4,996.08
Paul Striegel	\$3,323.10
Paul Striegel	\$3,303.00
Paul Striegel	\$16,594.88
Clifford Bradshaw	\$30,535.26
Michael W Campbell	\$23,828.68
Larry Holland	\$23,780.71
Lien Huynh	\$5,783.65
Taylor Thompson	\$115,776.92
George Long	\$54,160.25
Colby Schwindt	\$4,569.00
Mary L Moore	\$24,779.10
Diane Statham	\$50,823.57
David Lane	\$49,798.80
Robert Ervolina	\$2,930.00
John Hollis	\$43,768.80
Damien Sanchez	\$44,407.18
Madeline Alpert	\$25,985.60
Theodore Allen	\$30,658.05