

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: Seattle, Rm. 7206  
Hearing Date: September 30, 2016  
Hearing Time: 9:30 a.m.  
Response Date: September 28 , 2016

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

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

Case No. 16-11767-CMA

**MOTION TO APPROVE TERMS OF  
EMPLOYMENT FOR PRODUCTION  
MANAGER**

13 Mark Calvert, the Chapter 11 Trustee (the “Trustee”) of Northwest Territorial Mint, LLC  
14 (“NWTM” or “Debtor”) files this motion seeking approval of the terms of employment of Mike  
15 White as Production Manager.

16 **I. FACTS**

17 1. At the time of its bankruptcy filing, NWTM billed itself as the largest private mint in  
18 the United States. As of April 1, 2016 it had approximately 240 employees located at facilities in six  
19 states. Since 2010, NWTM’s primary production facility has been located in Dayton, Nevada, where  
20 the Debtor’s custom minting operations occur.

21 2. On April 1, 2016, the Debtor commenced this case by filing a voluntary petition  
22 under Chapter 11 of the United States Bankruptcy Code. On April 5, 2016, the Debtor moved for  
23 the appointment of a chief restructuring officer. *See* Dkt. No. 12. The following day, creditors  
24 Bradley Cohen and Cohen Asset Management, Inc. responded to the Debtor’s motion and requested  
25 that the Court order the appointment of a chapter 11 trustee. *See* Dkt. No. 18. The United States  
26 Trustee also requested that the Court order the appointment of a chapter 11 trustee. *See* Dkt. No. 25.

MOTION TO APPROVE TERMS  
OF EMPLOYMENT - 1

K:\2070561\00001\20347\_DCN\20347P28OC

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

1 A hearing was held on April 7, 2016, at which time the Court ruled that it would appoint a chapter  
2 11 trustee over the Debtor. On April 11, 2016, the Court entered an order appointing Mark Calvert  
3 as Chapter 11 Trustee. *See* Dkt. No. 51.

4 3. The Trustee has downsized operations since his appointment, and terminated certain  
5 lines of business such as bullion sales. The Trustee has continued NWTM's custom minting  
6 operations, which the Trustee believes are essential to a successful reorganization of NWTM.  
7 NWTM's custom minting operations require a qualified and skilled production manager, who has  
8 the responsibility of overseeing all aspects of the physical production and minting process that  
9 occurs at the Dayton facility.

10 4. The Trustee has recently identified a candidate, Mike White, for the position of  
11 Production Manager. The Trustee believes that Mr. White is exceptionally well-qualified for the  
12 job. He was formerly the Production Manager for NWTM, and he possesses extensive knowledge  
13 regarding NWTM's minting operations. The Trustee believes that Mr. White is one of a handful of  
14 people in the United States with the requisite knowledge and experience to run NWTM's specialized  
15 operations, and that he can step into the job without "getting up to speed." The Trustee has made a  
16 job offer to Mr. White, contingent upon court approval. A copy of the proposal (the "Employment  
17 Offer") is attached to the accompanying Declaration of Mark Calvert as Exhibit A.

18 5. Because the Employment Offer requires that Mr. White relocate himself and his  
19 family from Hayden, Idaho, to Dayton, Nevada, the Employment Offer contains certain terms that  
20 arguably require court approval. Specifically, the Employment Offer provides that Mr. White will  
21 be paid a \$50,000 severance payment (the "Severance Payment") if NWTM terminates his  
22 employment within a five (5) year period as a result of NWTM's financial position. It further  
23 provides that Mr. White will participate in NWTM's incentive program, which could result in him  
24 receiving a \$20,000 incentive payment (the "Incentive Payment") based upon performance. Finally,  
25 in order to obtain Mr. White's services, NWTM has agreed to pay reasonable relocation costs not to  
26 exceed \$25,000 (the "Relocation Payment").

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

**II. ISSUE**

Should the Court approve the employment of Mike White on the terms and conditions set forth in the Employment Offer?

**III. EVIDENCE RELIED UPON**

This Motion relies on the Declaration of Mark Calvert.

**IV. ARGUMENT<sup>1</sup>**

Because the Severance Payment, Incentive Payment, and Relocation Payment are arguably outside of the ordinary course of business, the Trustee seeks approval of the terms of the Employment Offer under 11 U.S.C. §503(c)(3).<sup>2</sup> §503(c)(3) provides in relevant part that transfers or obligations to managers, hired post-petition, that are outside the ordinary course of business, must be justified by the facts and circumstances of the case.

Here, the Trustee believes, in his sound business judgment, that the terms of Mr. White’s employment, specifically the Severance Payment, Incentive Payment, and Relocation Payment, are in the best interest of the estate and creditors and are amply justified by the facts. As an initial matter, Mr. White is uniquely qualified for the position given his prior experience working at NWTM, and his specialized knowledge of NWTM’s processes. The Production Manager position is one of great importance to the operation of the Debtor’s custom minting operations. Accordingly, it is essential that NWTM retain the most qualified person it can to fill the position.

The Trustee is confident in the soundness of NWTM and its business prospects going forward. Under his guidance, he has been able to stabilize operations and the profitability of the enterprise and he believes the company is on sound footing. All of that said, it cannot be ignored that NWTM is a company operating under Chapter 11 of the Bankruptcy Code, and with that comes the

---

<sup>1</sup> Mr. White will be an employee of NWTM, and is not a professional. Accordingly, his employment is not governed by 11 U.S.C. §327, and the Trustee does not believe it necessary to seek his employment under such provision.

<sup>2</sup> Because Mr. White will not be an insider under 11 U.S.C. §101(31), the requirements of 11 U.S.C. §503(c)(2), which govern allowance of severance payments to insiders, are inapplicable.

1 perception that employment by a company in such a position entails much more risk than  
2 employment by a non-bankrupt entity. NWTM's current status makes the process of hiring qualified  
3 employees much more difficult. In order to induce a candidate to move to a remote location like  
4 Dayton, Nevada, and to work for a company operating as a debtor in a Chapter 11 proceeding, the  
5 Trustee believes it is necessary to offer a backstop in the event reorganization is not successful, as  
6 well as to pay for relocation costs that Mr. White will incur. Moreover, the Trustee believes that it is  
7 unlikely that any qualified candidate will accept such a position without a similar provision. In  
8 simple terms, given NWTM's current status, the Severance Payment, Incentive Payment, and  
9 Relocation Payment are essential terms of the offer to Mr. White and are justified by the facts and  
10 circumstances of the case.

11 **V. CONCLUSION**

12 Based on the above, the Trustee respectfully requests that the Court approve the terms of the  
13 employment of Mike White.

14 Dated this 19th day of September, 2016.

15  
16 K&L GATES LLP

17 By /s/ David C. Neu

18 Michael J. Gearin, WSBA #20982

19 David C. Neu, WSBA #33143

20 Brian T. Peterson, WSBA #42088

21 Attorneys for Mark Calvert, Chapter 11 Trustee

**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 September 19, 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.

Also on September 19, 2016, she caused the foregoing document to be mailed to the Debtor at the address 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 19th day of September, 2016 at Seattle, Washington.

/s/ Denise A. Evans  
Denise A. Evans