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Honorable Christopher M. Alston
Chapter 11
Hearing Location: Seattle, Rm. 7206
Hearing Date: December 9, 2016
Hearing Time: 9:30 a.m.
Response Date: December 2, 2016

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 SETTLEMENT
WITH EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
PURSUANT TO BANKRUPTCY RULE 9019**

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 the
16 Equal Employment Opportunity Commission (“EEOC”) as memorialized in a Consent Decree to be
17 filed with Judge Ricardo Martinez in the District Court for the Western District of Washington. As
18 described below, the terms of the settlement are in the best interests of the estate and should be
19 approved by this Court.

20 **I. FACTS**

21 1. At the time of its bankruptcy filing, NWTM billed itself as the largest private mint in
22 the United States. As of April 1, 2016 it had approximately 240 employees located at facilities in six
23 states. On April 11, 2016, the Bankruptcy Court entered an order appointing Mark Calvert as
24 chapter 11 Trustee. The Debtor’s business is primarily comprised of (a) the sale of precious metals
25 such as gold, silver, and platinum; and (b) the minting of medallions, coins, and other awards.
26

1 2. Prior to the Petition Date, former NWTM employee Patricia Hoffman filed a charge
2 of discrimination with the EEOC, alleging that NWTM, through the actions of its owner and
3 president Ross Hansen, discriminated against her in violation of Title VII of the Civil Rights Act of
4 1964, as amended, (“Title VII”), 42 U.S.C. § 2000e, *et seq.*, by subjecting her and a class of
5 similarly aggrieved female employees to a hostile and abusive work environment based on their sex
6 (female).

7 3. On July 3, 2015, the EEOC issued a Letter of Determination with a finding of
8 reasonable cause to believe that Defendant violated Title VII regarding Hoffman and a class of
9 similarly aggrieved female employees. On September 30, 2015, the EEOC filed suit against NWTM
10 in the United States District Court for the Western District of Washington, commencing Case No.
11 15-01554 (the “EEOC Lawsuit”). In the EEOC Lawsuit, the EEOC alleged, among other things,
12 that NWTM engaged in unlawful employment practices and that NWTM violated Section 703(a) of
13 Title VII, 42 U.S.C. § 2000e-2(a). The class of aggrieved female employees included five similarly
14 aggrieved females who were employees of NWTM.

15 4. One of the immediate challenges the Trustee faced upon his appointment was
16 addressing the multiple lawsuits that were pending against NWTM. Not only was NWTM a named
17 defendant in the EEOC Lawsuit, it was also a party to ongoing litigation and appeals in Washington
18 state court, and both federal and state court in Nevada. While most of the litigation was subject to
19 the bankruptcy stay of 11 U.S.C. § 362, the Trustee has still been challenged with resolving the
20 claims asserted in litigation in the most cost-effective and beneficial manner from the perspective of
21 NWTM’s bankruptcy estate and its creditors.

22 5. Very shortly after his appointment, the Trustee initiated dialogue with the EEOC in
23 an attempt to resolve the EEOC Lawsuit. The EEOC has taken the position that the EEOC Lawsuit
24 is not subject to the automatic stay pursuant to the “police powers” exception because the EEOC is a
25 “governmental unit” that is enforcing its “regulatory powers” under Title VII. *See* 11 U.S.C. §
26 362(b)(4). Because the Bankruptcy Code provides, pursuant to 11 U.S.C. § 362(b)(4), that the

1 EEOC may not enforce any monetary judgment obtained in the EEOC Lawsuit, the effect of any
2 judgment entered in the EEOC Lawsuit would be to merely liquidate the amount of the allowed
3 monetary claim in these bankruptcy proceedings. Given the magnitude of the claims asserted in this
4 case by other creditors,¹ the Trustee informed the EEOC of his belief that a voluntary stay of the
5 EEOC Lawsuit, so that the parties could negotiate a settlement without incurring litigation costs that
6 would serve only to reduce the return to creditors, would be prudent. The EEOC informed the
7 Trustee that it intended to proceed with the litigation.

8 6. The EEOC's claims against the Debtor were premised on the conduct of Ross
9 Hansen, its owner. The complaint alleges that Ross Hansen sexually harassed female employees by,
10 among other things, making lewd sexual comments, telling obscene jokes, and using extremely
11 offensive and derogatory terms to describe female employees. The conduct described in the EEOC's
12 complaint is particularly egregious and disturbing.

13 7. The Trustee investigated the merits of the EEOC's claims by interviewing existing
14 employees of the Debtor. The Trustee's counsel also sat in on depositions of former and current
15 employees conducted by the EEOC, who testified as to Mr. Hansen's egregious acts. Based on the
16 Trustee's investigation, he concluded that the EEOC's claims have merit and that it would be a
17 waste of estate resources to attempt to defend or dispute the claims brought by the EEOC. The
18 Trustee therefore focused his efforts on reaching a settlement with the EEOC that established an
19 allowed unsecured claim amount in the case and resolved the EEOC Lawsuit.

20 8. While the EEOC would not agree to a voluntary stay of the EEOC Lawsuit, it did
21 enter into negotiations with the Trustee over the course of several weeks in an effort to resolve the
22 EEOC Lawsuit. Ultimately, the Trustee and the EEOC agreed on the form of a Consent Decree (the
23 "Consent Decree"), which would resolve the EEOC Lawsuit, a copy of which is attached to the
24

25 ¹ There have been approximately \$75 million in claims filed in this bankruptcy case. While some of
26 these claims may be duplicative, the Trustee is confident that after further analysis, the valid claims
in this case will be in the tens of millions of dollars.

1 Declaration of Mark Calvert filed in support of this Motion. The Consent Decree resolves all claims
2 and issues between the EEOC and the bankruptcy estate of NWTM related to the EEOC Lawsuit.

3 9. On September 27, 2016, the EEOC filed a Proof of Claim in the amount of
4 \$1,001,776.00 (contingent, unliquidated) reflecting the damages sought in the EEOC Litigation.
5 Pursuant to the terms of the Consent Decree, the claimants in the EEOC Lawsuit will be allowed
6 general unsecured pre-petition claims in this case in the total amount of \$725,000. This amount is
7 the lowest claim amount that the EEOC would accept. In addition, according to the agreement, the
8 Trustee will consent to the entry of a Consent Decree in the EEOC Litigation. The Consent Decree
9 provides that the EEOC's claim is comprised of five separate damages claims in the amount of
10 \$144,644.80, for each aggrieved female employee. In addition, the terms of the Consent Decree
11 provides that an additional \$1,776 claim for back pay shall be allocable to Patricia Hoffman.

12 10. The Consent Decree also provides for certain injunctive and other non-monetary
13 relief. In particular, the Debtor is required to institute certain policies and practices at all of its
14 facilities that employ more than fifteen individuals, and must carry-out anti-discrimination policies,
15 procedures, and training for all management personnel, supervisors, and employees. The Debtor
16 must also, among other things, conduct reporting to the EEOC during the duration effective period
17 of the Consent Decree, which is four years, or six years in the event Ross Hansen maintains some
18 level of ownership or involvement in the company.

19 II. ISSUE

20 Whether the Court should approve the settlement reached by the Trustee and the EEOC as
21 memorialized in the Consent Decree to resolve the EEOC Lawsuit.

22 III. EVIDENCE RELIED UPON

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

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IV. ARGUMENT

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

all facts necessary for an intelligent and objective opinion of the probabilities of 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 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 terms of the Consent Decree are reasonable and in the best interests of the estate. After conducting an

1 investigation of the EEOC's claims, the Trustee believes that the EEOC Lawsuit has merit and he is
2 unaware of any basis to legitimately defend or rebut the claims brought by the EEOC. In other
3 words, the EEOC's likelihood of success in the litigation is nearly a 100% certainty. Furthermore,
4 the EEOC's position that its claims are not stayed by the automatic stay is supported by law. *See See*
5 *EEOC v. Hall's Motor Transit Co. et al*, 789 F.2d 1011, 1014 (3d. 1986); *EEOC v. McLean*
6 *Trucking Co.*, 834 F.2d 398 (4th Cir. 1987); *EEOC v. Rath Packing, Co.*, 787 F.2d 318, 325-26 (8th
7 Cir. 1986), cert. denied, 479 U.S. 910 (1986); *EEOC v. Guerdon Indus.*, 76 B.R. 102 (Bankr. W.D.
8 KY 1987) (EEOC's action against debtor for violations of Title VII of the Civil Rights Act excepted
9 from automatic stay). Absent the Trustee reaching a settlement with the EEOC, the EEOC would
10 continue to pursue its claims in the EEOC Lawsuit. Thus, further litigation would be of great
11 expense and inconvenience to the Trustee and the bankruptcy case. Even if the Trustee were aware
12 of legitimate defenses to the EEOC's claims, the time and administrative expense required to defend
13 the EEOC Lawsuit would not benefit the estate in light of the large number of other unsecured
14 claims in this case. Thus, the Trustee negotiated the lowest possible unsecured claim amount that
15 the EEOC would accept to resolve the EEOC Lawsuit. For all of these reasons, the Trustee believes
16 that the terms of the Consent Decree are in the best interests of this bankruptcy estate and its
17 creditors, and that it should be approved by this Court.

18 V. CONCLUSION

19 Based on the above, the Trustee respectfully requests that the Court approve the terms of the
20 Consent Decree and permit the Trustee to take all necessary actions to carry out the estate's
21 obligations under that agreement.

22 Dated this 7th day of November, 2016.

23 K&L GATES LLP

24 By /s/ David C. Neu

25 Michael J. Gearin, WSBA #20982

26 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 November 8, 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 November 8, 2016, she caused the foregoing document to be mailed 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 8th day of November, 2016 at Seattle, Washington.

/s/ Denise A. Evans
Denise A. Evans

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re:

NORTHWEST TERRITORIAL MINT, LLC,

Debtor.

Case No. 16-11767-CMA

**ORDER GRANTING MOTION TO
APPROVE SETTLEMENT WITH EQUAL
EMPLOYMENT OPPORTUNITY
COMMISSION PURSUANT TO
BANKRUPTCY RULE 9019**

This matter having come on for hearing on the motion (the “Motion”) of Mark Calvert, the Chapter 11 Trustee (the “Trustee”) to Approve Settlement (the “Settlement”) With Equal Employment Opportunity Commission Pursuant to FRBP 9019, and the Court having considered the Motion, any responsive and reply materials, argument of counsel, and the pleadings and papers herein, finds good cause for granting the requested relief because the settlement is fair and equitable and reasonable given the particular circumstances of this case, and that notice of the motion was adequate under the circumstances and that no further notice is required for entry of this order; it is therefore ORDERED as follows:

ORDER GRANTING MOTION TO APPROVE
SETTLEMENT - 1

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1 1. The terms of the settlement as set forth in the Consent Decree, as that term is defined
2 in the Motion, are approved; and

3 2. The parties are authorized to undertake such actions as are necessary and appropriate
4 to perform under the Consent Decree.

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///END OF ORDER///

Presented by:

K&L GATES LLP

/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