

The Honorable Christopher M. Alston
Chapter 11
Hearing Location: Seattle, WA
Hearing Date: April 7, 2016
Hearing Time: 9:30 am
Response Due: At time of hearing

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re

NORTHWEST TERRITORIAL MINT, LLC

Debtor.

No. 16-11767-CMA

EMERGENCY MOTION FOR
AUTHORIZATION TO PAY
PREPETITION WAGES, SALARIES,
EXPENSES AND BENEFITS

COMES NOW Northwest Territorial Mint, LLC, the debtor-in-possession in this Chapter 11 case (“NWTM and/or Debtor”), by and through Counsel, J. Todd Tracy, Steven J. Reilly, and The Tracy Law Group PLLC (“TTLG”), and moves the Court for an order; (a) authorizing the Debtor to pay its employees’ prepetition wages and salaries, expenses, and benefits which were scheduled to be paid on April 2, 2016, pursuant to sections 105, 363, and 507 of the Bankruptcy Code (the “Code”), and (b) authorizing the Debtor’s banks and other financial institutions to process, honor, and pay checks or electronic transfers issued by the Debtor in connection with the foregoing.

As set forth more fully herein, the failure to pay and honor such claims would seriously jeopardize the Debtor’s ongoing operations and payment of such amounts in

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1 accordance with the Debtor's standard policies would be far less costly to the Debtor and its
2 creditors than the consequences of a failure to do so. In further support of this Motion, the
3 Debtor states as follows:
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8 **A. BACKGROUND**
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10 1. On April 1, 2016 (the "Petition Date"), the Debtor filed a voluntary petition
11 in this Court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§
12 101-1330, as amended (the "Bankruptcy Code"). The Debtor continues to manage and
13 operate its businesses as debtor-in possession pursuant to sections 1107 and 1108 of the
14 Bankruptcy Code.
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20 2. No trustee or examiner has been appointed in the Debtor's chapter 11 cases,
21 and no committees have been appointed or designated.
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24 3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and
25 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding
26 pursuant to 28 U.S.C. § 157 (b) (2).
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30 4. As of the Petition Date, a summary of the company's operations is as
31 follows:
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- Website to conduct online sales nationally and internationally.
 - Corporate headquarters, a retail store, and bullion sales operations located in Federal Way, WA.
 - Sales office and east coast logistics headquarters located in Alexandria, VA.
 - Retail store located in the Pentagon.
 - Sales office, die-cutting and sculpting facility located in Green Bay, WI.
 - Corporate offices, mining facility located in Dayton, NV.
 - Corporate offices, mining facility located in Tomball, TX
 - A full service minting facility in Honolulu, Hawaii.

- 1 • NWTM employs more than 170 minting technicians and production experts,
2 seven full-time artists, 13 die-cutters and sculptors, eight full-time sales
3 associates, five customer service representatives, as well as entire departments
4 devoted to NWTM's web sites, creative production, and packaging.
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7 5. As of the Petition Date, the Debtor has accrued in favor of all its employees
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9 various sums for: (a) wages and salaries; (b) reimbursement of employee business expenses
10 of the type heretofore paid by the Debtor in the ordinary course of its business; (c) unused
11 vacation, personal and overtime pay; and (d) employee benefits, including, but not limited to,
12 health, dental, vision, life insurance, and payroll deduction plans.
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18 **B. WAGES AND SALARIES¹**
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20 6. The Debtor's employees are paid bi-weekly, on every other Friday. The
21 Company's pay periods end on Saturday with paydays the following Friday. Generally, the
22 Debtor's controller inputs the hours/ salaries of its employees into ADP on the Monday or
23 Tuesday following the previous pay period. ADP then auto-deposits the funds into the
24 employees' respective bank accounts anytime between the subsequent Wednesday and
25 Friday.
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33 7. The Debtor employs total of 237 employees. 190 employees are hourly, 42
34 are salary, and 5 are commissioned sales people. Prior to the Petition Date, the Debtor's
35 average biweekly payroll obligation, including applicable tax obligations, was approximately
36 \$339,000.00 per pay period. The Debtor's last pay period ended on April 2, 2016, with a
37 payday of April 8, which covers the period of March 21, 2016 through April 2, 2016, and
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46 ¹ The Debtor does not intend by this Motion to assume any executory obligations, and this Motion should
47 not be deemed an assumption or adoption of any agreements or policies providing for such coverage.
 Rather, the Debtor simply intends, in its discretion and in the exercise of its business judgment, to maintain
 its current staff and policies consistent with prior employment and personnel policies pending further
 business decisions.

1 thus includes amounts owed to employees for work performed prior to the Petition Date.
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3 The Debtor estimates that it's gross payroll obligation on April 8, 2016, including applicable
4 tax obligations, will be approximately \$323,000. *See Exhibit A to the Hansen Declaration.* The
5 Debtor seeks authority to pay this amount, plus any additional outstanding amounts owed as
6 of the Petition Date for accrued and unpaid wages and salaries.
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12 8. The majority of the Debtor's employees are hourly employees with wages
13 that generally range from \$7.00 to \$20.00 an hour. A wage disruption will be a significant
14 hardship to employees in this group.
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19 9. The Debtor relies extensively upon its employees to perform vital services
20 for the company. Unless the Debtor is able to pay its employees their prepetition wages, the
21 Debtor believes that operational difficulties and business disruption may result from failure
22 of employees to report to work, or low employee morale.
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28 10. The Debtor does not believe that any prepetition employee wage and salary
29 claim authorized by this Motion shall exceed the statutory cap of \$12,475.00 provided in §
30 507(a)(4).
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34 **D. VACATION AND PAID TIME OFF**

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37 11. The Debtor's employees have accrued vacation and personal time. The
38 Debtor proposes to permit employees to utilize their accrued vacation and personal time
39 balances in the ordinary course of business and for the Debtor to be permitted pay accrued
40 vacation and personal time as utilized by the employees. Subject to some restrictions, unused
41 accrued PTO is generally payable to employees in cash upon the employees' resignation or
42 termination. The Debtors request authorization to continue its PTO policy post-petition and
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1 to honor PTO liabilities to its employees that may have arisen prior to the Petition Date.

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3 The Debtors anticipate that many employees will use accrued PTO in the ordinary course of
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5 business without causing any material cash flow requirements beyond the Debtors' normal
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7 payroll obligations.
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10 **E. EXPENSES**

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12 11. The Debtor has a policy of reimbursing its employees for certain expenses
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14 undertaken on behalf of the Debtor's, including, but not limited to, travel, meals, mileage
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16 and lodging ("Reimbursable Expenses"). Failure to reimburse employees for the
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18 Reimbursable Expenses would impact employee morale and cause them financial hardship.
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20 Employees seeking reimbursement file expense reports at the end of each week detailing
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22 their reimbursable expenses from the prior week. After review and approval, the Debtors
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24 issue reimbursement checks to the employees the following week. The Debtors estimate
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26 that all outstanding Reimbursable Expenses owed to employees have been paid as of the
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28 Petition Date. Nevertheless, in the event that any prepetition Reimbursable Expenses remain
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30 unpaid as of the Petition Date, the Debtors seek authority to pay such Reimbursable
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32 Expenses in the ordinary course of business.
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37 **F. BENEFITS**

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39 12. In accordance with the Debtor's established policy, the Debtor provides
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41 various benefits to certain of its employees, including, but not limited to optional employer
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43 paid health insurance (70-80% depending on the deductible selected) and optional dental,
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45 vision, and life insurance. The amount of such claims is not determinable as of the date
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47 hereof.

1 13. The employees' pre-petition claims for contributions to employee benefit
2 plans arise from services rendered within 180 days before the date of the filing of the
3 petition. For each such plan, the employees will not be paid more than the total number of
4 employees multiplied by \$12,475 less the aggregate amount paid to such employees under
5 Section 507(a)(4) plus the aggregate amount to be paid by the estate on behalf of such
6 employees to any other employee benefit plan.
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14 14. The aforementioned employee wage, salary, benefit, and expense claims
15 requested to be paid herein shall be collectively referred to as the "Prepetition Employee
16 Obligations."
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21 **G. BASIS FOR RELIEF REQUESTED**
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23 15. To maintain the continuity of the Debtor's business operations and to
24 preserve the morale of employees, it is important that the Debtor be permitted to pay the
25 Prepetition Employee Obligations at their discretion in the ordinary course of business. The
26 continued loyalty of a debtor's employees is a necessary component to any successful
27 Chapter 11 case. The filing of a Chapter 11 petition is a stressful and uncertain time for a
28 debtor's employees and such stress and uncertainty often cause poor employee morale at a
29 time when a debtor needs its employees to be most loyal. If employees do not receive
30 payment for work performed prepetition, it is likely that the Debtor will lose a significant
31 number of employees with little or no notice. Moreover, many of the Debtor's employees
32 live paycheck to paycheck and would suffer severe adverse consequences if they failed to
33 receive their full compensation. Likewise, the Debtors would suffer immediate and
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1 irreparable harm as a result of any resulting loss of morale, exodus of employees, and
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3 disruption to its operations.
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5 16. Honoring the Debtor's Prepetition Employee Obligations will minimize the
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7 hardship that employees will certainly endure if payroll is interrupted and will prevent the
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9 wholesale loss of employees that would ensue if the employees lost the reasonable
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11 expectation that they will be paid for their work. Accordingly, the Debtor believes that it is
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13 in the best interest of the estate to honor the Prepetition Employee Obligations as well as
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15 provide for on-going payment of post-petition wages, salaries, and benefits of the employee
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17 of the Debtor in the ordinary course of business.
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21 **H. THE PREPETITION EMPLOYEE OBLIGATIONS ARE PRIORITY**
22 **CLAIMS UNDER §§ 507(a)(4)-(5)**
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25 17. The requested relief is appropriate under §§ 507(a)(4) and (a)(5) of the
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27 Bankruptcy Code, which provide for priority payment up to \$12,475 per individual for
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29 prepetition claims for wages, salaries, vacation and sick leave and claims for contributions to
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31 employee benefit plans. 11 U.S.C. §§ 507(a)(4) and (a)(5). The Debtors have determined that
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33 all of the Prepetition Employee Obligations are entitled to priority under §§ 507(a)(4) and
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35 (a)(5) and no employee is owed more than the priority cap amounts contained in §§ 507(a)(4)
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37 and (a)(5). As a result, the Debtor's payment of the Prepetition Employee Obligations to
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39 employees in the ordinary course of business should neither prejudice general unsecured
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41 creditors nor materially affect the Debtors' estates, because claims under §§ 507(a)(4) and
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43 (a)(5) are already entitled to priority payment under a reorganization plan. 11 U.S.C. §
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45 1129(a)(9)(B).
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I. THE DEBTOR HAS A VALID BUSINESS JUSTIFICATION FOR THE PAYMENT OF THE PREPETITION EMPLOYEE OBLIGATIONS

18. To the extent payment of the Prepetition Employee Obligations is deemed to be outside the ordinary course of the Debtor’s business, the requested relief is also appropriate under section 363(b), which empowers the Court to authorize the Debtor to expend funds outside of the ordinary course of business. *11 U.S.C. § 363(b)*. In order to obtain approval for the use of estate assets outside the ordinary course of business, a debtor must demonstrate a valid business justification for the use of the assets. Here, because payment of the Prepetition Employee Obligations is essential to protect the Debtors’ business during the prospective reorganization or liquidation, the Court should authorize the payment under Section 363(b).

J. PAYMENT OF THE PREPETITION OBLIGATIONS IS PERMISSIBLE UNDER THE DOCTRINE OF NECESSITY

19. The relief requested herein is also authorized under section 105 of the Bankruptcy Code, which authorizes the Court “to issue any order . . . necessary or appropriate to carry out the provisions” of the Bankruptcy Code. *11 U.S.C. § 105(a)*. The Debtors submit that payment of the Prepetition Employee Obligations is critical to the Debtors’ ability retain its employees, continue to operate, and preserve the going concern value of the Debtors’ business. Accordingly, the Court should grant the requested relief under section 105(a).

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K. WAIVER OF BANKRUPTCY RULES 6003 AND 6004

20. As set forth above, payment of the Prepetition Employee Obligations is necessary to the Debtor's ongoing operations and to avoid immediate and irreparable harm to the Debtor's business and estate. Accordingly, the Debtor has satisfied the requirements of Rule 6003(b) and the relief sought in this Motion can be granted within 21 days of the Petition Date.

21. In order to implement the relief sought herein, the Debtor requests a waiver of the notice requirements of Rule 6004(a) and the stay imposed by Rule 6004(h) to the extent such provisions are applicable.

L. NOTICE

22. As provided in Debtor's Motion to Shorten Time and Limit Notice, filed concurrently herewith, Debtor will provide notice of this Motion to: (i) the United States Attorney's Office; (ii) the State of Washington, Bankruptcy and Collections Unit; (iii) the Office of the U.S. Trustee; (iv) the top 20 unsecured creditors (v) parties affirmatively indicating a desire to receive such notice by the filing of a request for Special Notice; (vi) parties against whom relief is being sought in a particular proceeding; (vii) secured creditors; and (viii) Debtor and Debtor's counsel (collectively, the "Notice Parties").

23. The Debtors submit that, in light of the nature of the relief requested and the urgency of the circumstances surrounding this Motion, no other or further notice need be given.

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M. TAXES

24. The Debtor shall timely pay all federal payroll tax obligations, including federal income tax withholding, FICA withholding and Medicare withholding to the Internal Revenue Service with respect to the wages and salaries set forth on Exhibit A to the Declaration of Ross B. Hansen filed in Support of Debtor's First Day Motions. The Debtor shall also timely report and make all federal payroll deposits to the Internal Revenue Service with respect to the wages and salaries set forth on Exhibit A to the Declaration of Ross B. Hansen filed in Support of Debtor's First Day Motions.

N. AUTHORIZATION OF BANKS

To ensure that the Employees receive the payments to which they are entitled pursuant to any order approving this motion, the Debtor also seeks authorization to allow its banks and other financial institutions (collectively, "Banks") to process, honor, and pay checks or electronic transfers issued by the Debtor to honor pre-petition transfers made by the Debtor in connection with the Pre-Petition Employee Obligations.

N. CONCLUSION

WHEREFORE, the Debtor respectfully requests that this Court enter an Order:(i) authorizing it to pay the Pre-Petition Employee Obligations; and (2) authorizing the Banks to process, honor, and pay checks or electronic transfers issued by the Debtor in connection with the foregoing.

DATED THIS 5th day of April, 2016.

Respectfully submitted:

THE TRACY LAW GROUP PLLC

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