

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: June 9, 2017
Hearing Time: 9:30 a.m.
Response Date: June 2, 2017

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

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

Case No. 16-11767-CMA

TRUSTEE'S MOTION FOR AUTHORITY TO
(A) SELL GRACO INVENTORY; (B)
ABANDON TRUCK; (C) DISPOSE OF
EQUIPMENT AT SCRAP VALUE; AND (D)
ABANDON AND DESTROY RECORDS

13
14
15 Mark Calvert (the "Trustee"), Chapter 11 Trustee for Northwest Territorial Mint, LLC
16 ("NWTM" or the "Debtor"), submits this Motion, requesting authority to (a) sell certain inventory
17 associated with NWTM's Graco Awards business; (b) abandon a 1962 Chevrolet C/50 truck; (c) to
18 sell or abandon certain scrap equipment that is of no longer any use to NWTM; and (d) abandon and
19 destroy business records of NWTM from before 2009. The Trustee seeks authority for the relief
20 requested pursuant to 11 U.S.C. §363 and 11 U.S.C. §554. In support of the Motion, the Trustee
21 respectfully states as follows:

22 **I. FACTS**

23 On April 1, 2016, the Debtor commenced this case by filing a voluntary petition under
24 chapter 11 of the United States Bankruptcy Code. On April 11, 2016, the Court appointed Mark
25 Calvert as chapter 11 Trustee. *See* Dkt. No. 51. Upon his appointment, the Trustee took control over
26

TRUSTEE'S MOTION FOR AUTHORITY TO (A) SELL
GRACO INVENTORY; (B) ABANDON TRUCK; (C)
DISPOSE OF EQUIPMENT AT SCRAP VALUE; AND (D)
ABANDON AND DESTROY RECORDS - 1
500396277 v3

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

1 the business operations of the Debtor and initiated his investigation of the financial affairs of the
2 bankruptcy estate. The Trustee has been engaged in efforts to streamline and stabilize the business
3 in order to restructure the financial affairs of the estate and bring a return to creditors. The Trustee
4 has previously liquidated assets in Tomball, Texas and closed facilities in Auburn and Federal Way,
5 Washington and has consolidated the minting operations of the Debtor in Dayton, Nevada.

6 **A. The Remaining Graco Inventory.**

7 In June, 2016, the Trustee sold NWTM's business line commonly referred to as Graco
8 Awards Manufacturing ("Graco Awards") to Ira Green, Inc. ("Ira Green"). Graco Awards business
9 was primarily minting medals and awards for the United States military and law enforcement. Graco
10 operated out of a facility located in Tomball, Texas (the "Tomball Location"). Under the terms of
11 the Asset Purchase Agreement between the Trustee and Ira Green (the "APA")¹, the sold assets
12 included, "inventory of every type and condition (including but not limited to raw materials, partially
13 complete product, finished product, displays, overruns, shelved, boxed, unboxed, in progress)
14 directly related to the Graco business and *located in Tomball, Texas* including the inventory, raw
15 materials, and supply categories set forth [on an attached Schedule]." APA at ¶ 1.1(a) (emphasis
16 added).

17 In addition to the inventory and raw materials sold to Graco, NWTM held certain inventory
18 in its Dayton, Nevada, facility that was related to the Graco Awards business, including ribbon and
19 medals (the "Graco Inventory"). NWTM continued to sell the ribbon and military medals in
20 inventory after the sale of the Graco Awards business, but without continued investment in the line
21 of business in the form of personnel, production capacity, etc., sales have not been robust. The total
22 sales in the last quarter of 2016 totaled only approximately \$21,000, and the projected sales in 2017
23 are \$30,000. Although the Graco Inventory appears to have a high valuation based on Cost of
24 Goods Sold (approximately \$119,000), in reality it has a low value to the estate. Based on the

25 ¹ A copy of the APA is attached to the Declaration of Mark Calvert in Support of Motion for Order
26 Approving the Sale of the Debtor's Tomball, Texas, Assets Free and Clear of All Liens, Claims,
Interests, and Encumbrances, at Docket No. 201.

1 volume of sales, it would take well over a year to sell the more valuable components of the Graco
2 Inventory on a piece-by-piece basis. Accordingly, the Trustee offered the Graco Inventory to Ira
3 Green, which has the need and desire to purchase it in bulk. After negotiation, the Trustee and Ira
4 Green agreed to a purchase price of \$41,732.80. A list of the Graco Inventory is attached to the
5 Declaration of Mark Calvert (the “Calvert Decl.”) as Exhibit A.

6 **B. The Truck.**

7 NWTM owns a 1962 Chevrolet Model C/50 flatbed truck (the “Truck”) a picture of which is
8 attached to the Calvert Decl. as Exhibit B. The Truck was stored at the Debtor’s Auburn,
9 Washington, facility. When the Debtor vacated the facility, in order to avoid any issues with the
10 landlord, the Trustee persuaded the James G. Murphy Company to tow the Truck to its business
11 location and to store it for the Debtor. Although the Kelly Blue Book does not provide valuations
12 for vehicles of the Truck’s vintage, based on prices listed for similar trucks on various internet sites,
13 the Trustee believes it is worth no more than \$200-\$300. In other words, it has no value to the
14 estate, and even the cost of relocating it would likely exceed its value. Accordingly, the Trustee
15 proposes to abandon the Truck to the James G. Murphy Company in exchange for a release of any
16 claim related to storage of the Truck.

17 **C. The Scrap Equipment.**

18 In connection with his investigation of the assets of the Debtor, the Trustee conducted a
19 detailed and comprehensive inventory of all of the Debtor’s equipment. In conducting the inventory,
20 the Trustee obtained input from employees of NWTM with personal knowledge of the time and
21 source of acquisition of the equipment and its quality. The Trustee obtained an appraisal of the
22 equipment by the James G. Murphy Company and consulted with other knowledgeable parties
23 regarding the value of the equipment. The Trustee has identified certain used equipment in Dayton
24 that is unnecessary to NWTM’s business going forward and that has little or no value to third parties.
25 (the “Scrap Equipment”). The Scrap Equipment is comprised of older, unused, and largely obsolete,
26 machinery much of which was allowed to rust in the elements. According to the valuation the

1 Trustee obtained from the James G. Murphy Company, the Scrap Equipment is of insignificant value
2 to market and sell to a third party that may use the equipment in minting operations. The Trustee
3 seeks authority to either sell the Scrap Equipment for scrap value, or abandon the Scrap Equipment,
4 at his discretion. A list of the Scrap Equipment which the Trustee seeks to dispose of by abandoning
5 or selling for scrap value to a third party is attached to the Calvert Decl. as Exhibit C.

6 **D. The Records.**

7 NWTM's primary manufacturing facility is located in Dayton, Nevada. There are many files
8 and boxes of company records that date back as far as the 1990s. The Trustee has determined that
9 these records have no value to NWTM or the bankruptcy estate, and that such records simply take up
10 space in NWTM's facility. The Trustee therefore requests authority to destroy all company records
11 that date back to before the year 2009. The Trustee is unaware of any litigation or other bankruptcy
12 estate matters for which such records could become relevant. The Trustee will maintain more recent
13 records, those from 2009 on, in case such records become relevant to this case.

14 **II. EVIDENCE RELIED UPON**

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

18 **III. ARGUMENT**

19 The Court should approve the Trustee's proposed sale of the Graco Inventory free and clear
20 of liens, claims, interests, and encumbrances. The Court should also permit the Trustee to abandon
21 the Truck and dispose of or abandon the Scrap Equipment pursuant to §§363 and 554 of the
22 Bankruptcy Code. The Court should further allow the Trustee to abandon and destroy NWTM's
23 older business records, as they are no longer of any use to the estate.

24 Section 363(b) of the Bankruptcy Code provides that the Trustee is authorized to sell assets
25 outside the ordinary course of its business. While the text of the Bankruptcy Code does not provide
26 the standard for determining when it is appropriate for a court to authorize the sale of property of the

1 estate, the Trustee may sell property outside of the ordinary course based on the Trustee’s reasonable
2 business judgment. *In re Ernst Home Center, Inc.*, 209 B.R. 974, 979 (Bankr. W.D. Wash. 1997).
3 “Ordinarily, the position of the trustee is afforded deference, particularly where business judgment is
4 entailed in the analysis or where there is no objection.” *Lebbos v. Schuette*, 2008 WL 5103200, *5
5 (E.D. Cal. Dec. 2, 2008). In addition, 11 U.S.C. § 554(a) permits the Trustee, after notice and a
6 hearing, to “abandon any property of the estate that is burdensome to the estate or that is of
7 inconsequential value and benefit to the estate.”

8 **A. The Proposed Sale of the Graco Inventory and Scrap Equipment Meets the**
9 **Requirements for a Sale Under 11 U.S.C. §363(b).**

10 Here, there are sound business reasons for the sale of the Graco Inventory and Scrap
11 Equipment. The objective of the proposed sale of the Graco Inventory is to enhance the value of the
12 estate by quickly selling assets that require resources to maintain and may be difficult or impossible
13 to liquidate within any reasonable timeframe. With respect to the Scrap Equipment, to the extent
14 possible, the objective is to realize some value for the estate, while eliminating the need for
15 continued storage. In both instances, the objectives meet the requirements of §363(b). *See, e.g.,*
16 *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564-65 (8th
17 Cir. 1997) (stating that in bankruptcy sales, “a primary objective of the Code [is] to enhance the
18 value of the estate at hand”); *In re Integrated Res, Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (“It is a
19 well-established principle of bankruptcy law that the objective of bankruptcy rules and the
20 [Debtor’s] duty with respect to such sales is to obtain the highest price or greatest overall benefit
21 possible for the estate.”) (alteration in original) (quoting *In re Atlanta Packaging Products, Inc.*, 99
22 B.R. 124, 130 (Bankr. N.D. Ga. 1988)). The Trustee’s liquidation of the Surplus Equipment will
23 bring immediate cash into the estate for the benefit of interested parties.

24 The sale of assets outside of the ordinary course of business may be conducted by a private
25 sale as opposed to an auction under appropriate circumstances. *See In re Bakalis*, 220 B.R. 525, 531
26 (Bankr. E.D.N.Y. 1998) (“Unlike judicial sales under the former Bankruptcy Act, the sale of estate

1 property under the Bankruptcy Code is conducted by a trustee, who has ample discretion . . . to
2 conduct public or private sales of estate property.”) (internal quotations and citation omitted). The
3 Trustee believes that a private sale of the Graco Inventory is in the best interests of the estate. Ira
4 Green is the logical party to purchase that Graco Inventory on a bulk basis given its earlier purchase
5 of Graco Awards. Should an interested purchaser come forward, before this sale is approved, with a
6 materially higher offer than the offer, the Trustee will conduct an auction for the assets.

7 **B. Ira Green is a Good Faith Purchaser of the Graco Inventory.**

8 For purposes of 11 U.S.C. § 363(m), a “good faith purchaser” is one who buys “in good
9 faith” and “for value.” *Ewell v. Diebert (In re Ewell)*, 958 F.2d 276, 281 (9th Cir. 1992). “The
10 requirement that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course
11 of the sale proceedings.” *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 147 (3d Cir.
12 1992) (quotations omitted). The “lack of good faith is shown by ‘fraud, collusion between the
13 purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other
14 bidders.’” *In re Ewell*, 958 F.2d at 281 (quoting *Community Thrift & Loan v. Suchy (In re Suchy)*,
15 786 F.2d 900, 902 (9th Cir. 1985)); *see also In re Abbotts Dairies*, 788 F.2d at 147. Here, the
16 purchase agreement is the result of arm’s length negotiations between the Trustee and ARM. It is
17 not the result of any fraud or collusion between the Trustee and the Buyer or between the Debtor and
18 the Buyer. The Buyer is therefore a good-faith purchaser within the meaning of 11 U.S.C. § 363(m).

19 **C. Good Cause Exists to Waive the Stay Under Fed. R. Bankr. P. 6004(h).**

20 Pursuant to Fed. R. Bankr. P. 6004(h), any order authorizing the use, sale, or lease of
21 property other than cash collateral is stayed for 14 days, unless the court orders otherwise. The
22 estate has need for immediate cash to fund its ongoing business operations. Accordingly, cause
23 exists to waive the stay and permit the Trustee to quickly consummate the proposed sale of the
24 Graco Inventory.

1 **D. The Proposed Sales of the Graco Inventory and Scrap Equipment Satisfy the**
2 **Requirements of 11 U.S.C. § 363(f).**

3 Pursuant to 11 U.S.C. §363(f), a Trustee may sell property of the estate under 11 U.S.C. §
4 363(b) free and clear of any interest in such property of any entity other than the estate only if (1)
5 applicable non-bankruptcy law permits sale of such property free and clear of such interest; (2) such
6 entity consents; (3) such interest is a lien and the price at which the property is to be sold is greater
7 than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; *or* (5)
8 such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of
9 such interest. 11 U.S.C. § 363(f).

10 Here, the Trustee is aware of no asserted lien interests in the Graco Inventory or Scrap
11 Equipment. The Trustee will provide notice of this motion to the Special Notice List as authorized
12 in the Case Management Order, so that if any entity claims a lien on the assets being sold, it will
13 have an opportunity to object. If no such creditor objects, the sale free and clear will be permitted
14 under 11 U.S.C. § 363(f)(2). Moreover, even if secured creditors object to the sale, the sale free and
15 clear is permissible under 11 U.S.C. § 363(f)(5) because such liens will likely be in dispute and
16 because there are legal and equitable proceedings in which a lienholder could be compelled to accept
17 a money satisfaction of such lien, including the disposition of collateral under the default remedies
18 provided in Washington's Uniform Commercial Code (Chapter 62A.9A RCW) or in a receivership
19 proceeding pursuant to RCW 7.60.260. Furthermore, any lienholder also will be adequately
20 protected by having its liens, if any, attach to the proceeds of the sale in the same order of priority,
21 with the same validity, force, and effect that such creditor had prior to such sale, subject to any
22 claims and defenses that the Trustee and the Debtor's bankruptcy estate may possess with respect
23 thereto. For these reasons, the proposed sales free and clear of liens should be approved.

24 **E. The Abandonment of the Truck and Scrap Equipment is Proper Pursuant to 11**
25 **U.S.C. §554(a).**

26 Under 11 U.S.C. §554(a), a trustee may abandon any property of the estate that is
 burdensome to the estate or that is of inconsequential value and benefit to the estate. The Truck and

1 Scrap Equipment are of inconsequential value and benefit to the estate. As is set forth above, the
2 Truck's value is *de minimis*. Its value of, at most, a few hundred dollars, means that the estate
3 cannot economically even direct any efforts and marketing or sale. Accordingly, the Trustee should
4 be authorized to abandon the Truck to the James G. Murphy Company, which has been storing it for
5 the estate in exchange for any claim related to storage fees. With respect to the Scrap Equipment, in
6 the event the Trustee determines that sale is not feasible or economical, he should be authorized to
7 abandon it as well. In its current state, the Scrap Equipment does nothing more than take up space.

8 **F. The Trustee Should be Permitted to Abandon Business Records Dated Earlier
9 than 2009.**

10 The business records housed in the Debtor's Dayton facility have no value to the estate and
11 are simply taking up office space. Thus, the standard pursuant to section 554 is easily met. The
12 records are not used in the Debtor's business and are not relevant to any ongoing legal proceedings.
13 The Trustee will keep any records beginning with records from 2009 and on, in the event that the
14 more recent records become relevant to future proceeding in this case.

15 **IV. CONCLUSION**

16 For the foregoing reasons, the Trustee respectfully requests that the Court (a) authorize the
17 sale of the Graco Inventory free and clear of liens, claims and encumbrances pursuant to 11 U.S.C. §
18 363(b)(1); (b) abandonment of the Truck; (c) sale or abandonment of the Scrap Equipment; and (d)
19 further authorize the abandonment and destruction of business records dated earlier than 2009.

20 DATED this 19th day of May, 2017.

21 K&L GATES LLP

22
23
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

TRUSTEE'S MOTION FOR AUTHORITY TO (A) SELL
GRACO INVENTORY; (B) ABANDON TRUCK; (C)
DISPOSE OF EQUIPMENT AT SCRAP VALUE; AND (D)
ABANDON AND DESTROY RECORDS - 8
500396277 v3

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 19, 2017, 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 May 19, 2017, she caused the foregoing document to be placed in the mail 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 19th day of May, 2017 at Seattle, Washington.

/s/ Denise A. Lentz
Denise A. Lentz