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Honorable Christopher M. Alston
Chapter 11
Hearing Location: Rm. 7206
Hearing Date: Friday, May 4, 2018
Hearing Time: 9:30 a.m.
Response Date: April 27, 2018

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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

RENEWED MOTION FOR ORDER
APPROVING THE SALE OF CERTAIN OF
THE DEBTOR'S ASSETS FREE AND CLEAR
OF ALL LIENS, CLAIMS, INTERESTS, AND
ENCUMBRANCES TO MEDALCRAFT
MINT, INC.

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16 **I. INTRODUCTION**

17 Mark Calvert (the "Trustee"), Chapter 11 Trustee for Northwest Territorial Mint, LLC
18 ("NWTM" or the "Debtor"), submits this Motion, which requests entry of an order approving the
19 sale of the Medallic tradename, website, customer lists, archives, tools, specific machinery, certain
20 company owned Medallic dies and other property to Medalcraft Mint, Inc. ("Medalcraft") free and
21 clear of all liens, claims, interests, and encumbrances. Approval of the sale to Medalcraft is in the
22 best interests of the estate and should be approved by the Court.

23 **II. BACKGROUND**

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

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1 The Trustee's goal in this case has been to maximize the recovery of creditors. Since
2 May 2017, the Trustee has engaged in marketing efforts related to a potential sale of the business.
3 The Trustee entertained expressions of interest from multiple parties including offers to purchase the
4 assets of the estate on a going concern basis and for substantially all of the assets of the estate, but no
5 concrete offer materialized for such a sale on terms which provided any meaningful return to the
6 estate. Because no concrete offer materialized, and because of the inadequate cash resources
7 available to the Trustee, the Trustee closed the custom minting business on December 29, 2017 and
8 prepared to liquidate the assets of the estate via auction.

9 While the Trustee prepared to sell the Debtor's assets at auction, he engaged in negotiations
10 with multiple buyers for various aspects of the Debtor's assets. Ultimately, the Trustee separately
11 reached agreements with Industrial Assets Corp. ("Industrial Assets") and Medalcraft for the
12 purchase and sale of certain assets of the Debtor.

13 The Trustee entered into an Asset Purchase Agreement dated January 26, 2018 with
14 Medalcraft (the "Initial Medalcraft APA"), and on February 16, 2018, the Trustee filed his Motion
15 for Order Approving Sale of the Debtor's Assets Free and Clear of all Liens, Claims, Interests and
16 Encumbrances to Medalcraft Mint, Inc. (the "Initial Medalcraft Sale Motion"). Following the filing
17 of the Initial Medalcraft Sale Motion, the Trustee received an additional offer for the assets covered
18 by the Initial Medalcraft APA from an individual named Rodger May. At a hearing on March 19,
19 2018, the Court denied entry of the Initial Medalcraft Sale Motion.

20 Immediately subsequent to the March 19, 2018 hearing, the Trustee and Rodger May began
21 engaging in discussions regarding a potential purchase, by Rodger May, of the majority of the
22 estate's remaining assets. To date, the Trustee has not received an offer from Rodger May resulting
23 from these discussions.

24 A large portion of the coining dies which Medalcraft agreed to purchase are related to former
25 Medallic Art Company LLC's ("MACLLC") customers such as colleges and universities which
26 traditionally ordered medallions and medals for graduation ceremonies. As such, the peak business

1 season for MACLLC was traditionally in the spring. The Trustee is growing increasingly concerned
2 that if a deal is not consummated for these dies quickly, their value to Medalcraft will decrease, or
3 that Medalcraft will lose interest in acquiring the dies. As a result, the Trustee has entered into a
4 new Asset Purchase Agreement dated March 28, 2018 with Medalcraft (the "Medalcraft APA").
5 The only substantive difference between the Initial Medalcraft APA and the Medalcraft APA is an
6 increase in the purchase price to \$1,000,000.

7 The Medalcraft APA was the result of arms-length negotiations between the Trustee and
8 Medalcraft. A copy of the Medalcraft APA is attached as Exhibit A to the Declaration of Mark
9 Calvert filed in support of this Motion. The Medalcraft APA provides that Medalcraft will purchase,
10 among other things, the Medallic Art name and website; marketing materials; Medallic archives;
11 customer list; sales history; vendor list; certain company owned dies associated with any customer
12 for which there has been a sale in the last 20 years; tools; and woodworking equipment (the
13 "Medalcraft Assets"). The Medalcraft APA also provides that Medalcraft will purchase three pieces
14 of specifically identified equipment. The Medalcraft APA provides for a purchase price of
15 \$1,000,000. Medalcraft will provide a nonrefundable earnest money deposit in the amount of
16 \$100,000 in connection with the sale.

17 The Trustee believes that the Medalcraft Assets offer is on reasonable terms. If the Trustee
18 does not sell the Medalcraft Assets to Medalcraft, there is the potential that there will be no sale of
19 the Medalcraft Assets or that he will be forced to attempt to sell such assets at auction. The proposed
20 sale to Medalcraft guarantees a certain return for the estate. Since the Medalcraft sale will close
21 immediately upon Court approval, the assets will be expeditiously moved from the Dayton facility,
22 which aids the Trustee's efforts to conclude the use of that facility.

23 The Trustee has communicated with multiple interested purchasers regarding the sale of the
24 assets of the Debtor over the course of more than six months. Based on his experience in marketing
25 the assets which are the subject of the Medalcraft sale, the Trustee believes that the price offered for
26

1 the assets is reasonable. The Trustee believes that it is in the best interests of the estate to
2 consummate the sale to Medalcraft.

3 The Trustee seeks to sell the Medalcraft Assets free and clear of liens and encumbrances.
4 Two creditors have asserted liens against certain of the assets of the estate, the validity of which
5 liens are disputed by the Trustee. On February 13, 2018, the Court ordered that if Connie Hoff,
6 Robert Hoff, Medallic Art Company, Ltd., Ross Hansen, Medallic Art Limited Partnership
7 (“MALP”), or any of their affiliates (each an “Interested Party”) intend to object to a proposed sale
8 of estate property on the basis that assets sought to be sold by the Trustee are not property of the
9 estate, they must commence an adversary proceeding by filing a verified complaint no later than
10 5:00 p.m. on February 22, 2018. “Any Interested Party who does not timely commence suit waives
11 any and all rights to assert in this case that the Medallic Assets are not property of the estate.” Dkt.
12 No. 1449. As of the date of this Motion, no such verified complaint has been filed. The Trustee
13 submits that there is no legitimate basis for an assertion that the assets which are the subject of the
14 Medalcraft sale are the property of MALP or are otherwise not property of the bankruptcy estate.

15 The Hoff's allege that they hold a pre-petition security interest in certain personal property
16 relating to a the Debtor's lease for its Dayton facility. A copy of the Hoff Security Agreement is
17 attached to the Declaration of Connie Hoff at Dkt. No. 1330, Ex. D. The Trustee disputes that the
18 Hoff's hold a perfected security interest in the assets identified in the Security Agreement. MALP
19 executed the Security Agreement on July 10, 2009 and it was perfected on the same day. The initial
20 financing statement expired after five years, *i.e.*, July 10, 2014. The Hoff's did not file a continuation
21 statement prior to the expiration of the initial UCC-1, causing their security interest to lapse.

22 Following the filing of this bankruptcy case, the Hoff's realized their security interest had
23 become unperfected and attempted to perfect it with a new financing statement. The Hoff's
24 attempted to file a new UCC-1 financing statement on April 21, 2016. The Hoff's further filed an
25 amendment to their April 21, 2016 financing statement on May 17, 2017, which purported to add
26 MACLLC as a debtor. MACLLC is the successor in interest to the defunct MALP, and it was

1 substantively consolidated with the Debtor *nunc pro tunc* as of April 1, 2016. Thus, the Hoffs’
2 May 17, 2017 financing statement amendment was filed post-petition as to MACLLC.

3 The Hoffs’ alleged pre-petition security interest in the estate’s assets is subject to a bona fide
4 dispute. Even assuming that the security interest was valid, its perfection after lapse was barred by
5 the automatic stay rendering the security interest avoidable.

6 On February 14, 2018, the Court entered its Order Granting in Part and Denying in Part
7 Motion for Relief from the Automatic Stay (Dkt. No. 1450). By that order, the Court granted a post-
8 petition lien on all assets of the bankruptcy estate to secure any administrative claim they may be
9 allowed under Section 507(a)(2) that arises from the Trustee’s use of the Dayton Premises prior to
10 the time the Trustee vacates the Dayton Premises.

11 Pan American Silver Corporation (“Pan American”) asserts that it holds a security interest in
12 one item of equipment that the Trustee intends to sell to Medalcraft.¹ The Trustee and Pan American
13 have entered into a settlement agreement which allows Pan American a secured claim in the amount
14 of \$20,000 to be paid from the sale of its collateral. The Trustee has noted a motion to approve the
15 settlement for April 6, 2018.

16 The Debtor owns and possesses thousands of dies used by the Debtor to produce custom-
17 made products (the “Coining Dies”). Prior to the hearing on the Initial Medalcraft Sale Motion,
18 various customers of the Debtor objected to the sale of certain of the Debtor’s Coining Dies,
19 asserting an ownership interest in the dies. The Medalcraft APA intends to sell Medallic company
20 owned Coining Dies, trim tools, and racks associated with any customer for which there has been a
21 sale within the past twenty years. A very limited number of objecting parties assert an interest in the
22 Coining Dies being sold to Medalcraft under the Medalcraft APA. The Trustee has concluded that,

23 ¹ The original Pan American security agreement dated back to April, 4, 2005 and described ten items
24 of equipment. Only seven of those items of equipment remained in the possession of the Debtor at
25 the time the bankruptcy case was filed. Those items are: Columbia coining press 360 ton #6080-
26 242, Clean Aire melt furnace, #M1225T-03, HME-K360 coining press #15413, Augenstein
reduction machine type 505, #5034, Janvier reduction machine #2, Janvier reduction machine #4,
and HME-K600 coining press #16371. Only the HME-K360 coining press #15413 is included in the
assets in the Medalcraft sale.

1 with some limited exceptions, it was the Debtor's written policy that it owned the Medallic Coining
2 Dies. While the Debtor charged customers a fee to create the dies, the Debtor retained ownership in
3 the Coining Dies. The Debtor's written policy is maintained on its website, and was communicated
4 in other documents. Employees of the Debtor, including the Debtor's former Director of Sales on the
5 Medallic side, have confirmed this policy. The Debtor stored, preserved, and maintained most of its
6 Coining Dies in its facilities at its own cost, and did not charge customers for die storage and
7 maintenance. Medalcraft has acknowledged that there may be exceptions to the general rule of
8 company ownership of the dies and has agreed to address such issues with individual customers post
9 closing. Medalcraft has also confirmed that it will honor its longstanding policy that the dies which
10 contain customer owned copyright or tradenames will not be used absent express permission from
11 the customer. *See* Declaration of Jerry Moran. [Dkt No. 1460].

12 III. EVIDENCE RELIED UPON

13 This Motion relies on the arguments set forth herein; the Declarations of Trustee Mark
14 Calvert filed in support of this Motion; the Declarations of Jerry Moran, Susan Skaggs, and Paul
15 Wagner filed in support of the Initial Medalcraft Sale Motion (Dkt. Nos. 1458, 1459, and 1460); the
16 pleadings and records on file in this case; and the arguments of counsel, if any.

17 IV. ARGUMENT

18 The Court should approve the Trustee's proposed sale of the Medalcraft Assets, free and
19 clear of liens, claims, interests, and encumbrances, pursuant to the terms of the Medalcraft APA.
20 Section 363(b) of the Bankruptcy Code provides that the Trustee is authorized to sell assets outside
21 the ordinary course of its business. While the text of the Bankruptcy Code does not provide the
22 standard for determining when it is appropriate for a court to authorize the sale of property of the
23 estate, courts often approve a proposed sale if such sale is based upon the sound business judgment
24 of the debtor. *See, e.g., Meyers v. Martin (In re Martin)*, 9 F.3d 389, 395 (3d Cir. 1996); *In re Lionel*
25 *Corp.*, 722 F.2d 1063 (2d Cir. 1983).

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A. The Proposed Sale Meets the Requirements for a Sale Under 363(b).

Here, a sound business reason exists for the proposed sale to Medalcraft. Namely, the objective of the Trustee’s proposed sale is to maximize the proceeds of such sale for the benefit of the bankruptcy estate. *See, e.g., Four B. Corp. v. Food Barn Stores, Inc.*(*In re Food Barn Stores, Inc.*), 107 F.3d 558, 564-65 (8th Cir. 1997) (stating that in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand”); *In re Integrated Res, Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (“It is a well-established principle of bankruptcy law that the objective of bankruptcy rules and the [Debtor’s] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.”) (alteration in original) (quoting *In re Atlanta Packaging Products, Inc.*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988)). The Trustee has closed the Debtor’s operations and proposes the sale to Medalcraft with an aim to maximize the recovery for the benefit of the estate.

The sale of assets outside of the ordinary course of business may be conducted by a public sale, or a private sale under appropriate circumstances. *See In re Bakalis*, 220 B.R. 525, 531 (Bankr. E.D.N.Y. 1998) (“Unlike judicial sales under the former Bankruptcy Act, the sale of estate property under the Bankruptcy Code is conducted by a trustee, who has ample discretion . . . to conduct public or private sales of estate property.”) (internal quotations and citation omitted). The proposed sale to Medalcraft is the highest and best concrete offer that the Trustee has received to date and the Trustee does not believe he could obtain a higher and better offer within a reasonable period of time.

For purposes of 11 U.S.C. § 363(m), a “good faith purchaser” is one who buys “in good faith” and “for value.” *Ewell v. Diebert (In re Ewell)*, 958 F.2d 276, 281 (9th Cir. 1992). “The requirement that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings.” *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 147 (3d Cir. 1992) (quotations omitted). The “lack of good faith is shown by ‘fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other

1 bidders.” *In re Ewell*, 958 F.2d at 281 (quoting *Community Thrift & Loan v. Suchy (In re Suchy)*,
2 786 F.2d 900, 902 (9th Cir. 1985)); *see also In re Abbotts Dairies*, 788 F.2d at 147.

3 Here, the Medalcraft APA is the result of arm’s length negotiations between the Trustee and
4 Medalcraft. It is not the result of any fraud or collusion between the Trustee and Medalcraft or
5 between the Debtor and Medalcraft. Medalcraft is therefore a good-faith buyer within the meaning
6 of 11 U.S.C. § 363(m).

7 The proposed purchase price of \$1,000,000, is fair and reasonable, and represents the highest
8 and best concrete offer that the Trustee has received for the Medalcraft Assets.

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

10 Pursuant to Fed. R. Bankr. P. 6004(h), any order authorizing the use, sale, or lease of
11 property other than cash collateral is stayed for 14 days, unless the court orders otherwise. As noted
12 herein, given the liquidity concerns facing the Debtor’s estate, and the necessity that this sale close
13 quickly, cause exists to waive the stay and permit the Trustee to quickly consummate the proposed
14 sale to Medalcraft Assets.

15 **C. The Proposed Sale Satisfies the Requirements of 11 U.S.C. § 363(f).**

16 Pursuant to 11 U.S.C. § 363(f), a Trustee may sell property of the estate under 11 U.S.C. §
17 363(b) free and clear of any interest in such property of any entity other than the estate only if (1)
18 applicable non-bankruptcy law permits sale of such property free and clear of such interest; (2) such
19 entity consents; (3) such interest is a lien and the price at which the property is to be sold is greater
20 than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; *or* (5)
21 such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of
22 such interest. 11 U.S.C. § 363(f) (emphasis added). Here, there are multiple bases upon which the
23 Court should authorize the Trustee sale of the Medalcraft Assets “free and clear.”

24 The Trustee has provided notice of this Motion to the creditors and parties in interest as
25 required by the Court, so that if any entity claims a lien on the assets being sold, they will have an
26 opportunity to object. If no such creditor objects, the sale free and clear will be permitted under

1 11 U.S.C. § 363(f)(2). Moreover, even if alleged secured creditors object to the sale, the sale free
2 and clear is permissible under 11 U.S.C. § 363(f)(5) because there are legal and equitable
3 proceedings in which a lienholder could be compelled to accept a money satisfaction of such lien,
4 including the disposition of collateral under the default remedies provided in Washington’s Uniform
5 Commercial Code (Chapter 62A.9A RCW) or in a receivership proceeding pursuant to
6 RCW 7.60.260.

7 In addition, the Motion satisfies the requirements of 11 U.S.C. § 363(f). With respect to Pan
8 American, Pan American has consented to the sale of its purported collateral with their interest
9 attaching to the proceeds. With respect to the Hoffs, the Hoffs’ alleged security interest is subject to
10 a bona fide dispute because it is subject to avoidance. The Trustee disputes that the Hoffs hold a
11 perfected security interest in the assets listed on Exhibit “B” to the Security Agreement. MALP
12 executed the Security Agreement on July 10, 2009. On July 10, 2009, the Hoffs’ attorney filed a
13 UCC-1 financing statement with the State of Nevada. The initial financing statement expired after
14 five years, *i.e.*, July 10, 2014. The Hoffs did not file a continuation statement prior to the expiration
15 of the initial UCC-1, causing their security interest to lapse and become unperfected.

16 Following the filing of this bankruptcy case, the Hoffs realized their security interest had
17 become unperfected and attempted to perfect it with a new financing statement. The Hoffs
18 attempted to file a new UCC-1 financing statement on April 21, 2016. The Hoffs further filed an
19 amendment to their April 21, 2016 financing statement on May 17, 2017, which purported to add
20 MACLLC as a debtor. MACLLC is the successor in interest to the defunct MALP, and it was
21 substantively consolidated with the Debtor *nunc pro tunc* as of April 1, 2016. Thus, the Hoffs’
22 May 17, 2017 financing statement amendment was filed post-petition as to MACLLC. The
23 hypothetical lien creditor referenced in section 544 of the Bankruptcy Code is one holding a lien as
24 of the date of the commencement of the case. Thus, any lien of the Hoffs is subject to avoidance
25 under 11 U.S.C. § 544, and therefore is subject to a bona fide dispute. With respect to the Hoffs’
26 post-petition lien, the Trustee believes that the Hoffs are adequately protected by having the lien

1 attach to the proceeds. The Trustee further believes that the Hoffs will consent to the sale, and that
2 the value of any claim it holds is less than the purchase price of the Medalcraft Assets.

3 Furthermore, Section 363(f) of the Bankruptcy Code is satisfied because any lienholder also
4 will be adequately protected by having its liens, if any, attach to the proceeds of the sale in the same
5 order of priority, with the same validity, force, and effect that such creditor had prior to such sale,
6 subject to any claims and defenses that the Trustee and the Debtor's bankruptcy estate may possess
7 with respect thereto. For all of these reasons, the proposed sale free and clear of liens should be
8 approved.

9 **V. CONCLUSION**

10 For the foregoing reasons, the Trustee respectfully requests that the Court enter an order in
11 the form proposed by the Trustee, granting the Motion, authorizing his proposed sale to Medalcraft,
12 and for such other relief as the Court deems appropriate under the circumstances.

13 DATED this 30th day of March, 2018.

14
15 K&L GATES LLP

16
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
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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 March 30, 2018, 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 March 30, 2018, 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 30th day of March, 2018 at Seattle, Washington.

/s/ Denise A. Lentz
Denise A. Lentz