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Honorable Christopher M. Alston
Chapter 11
Hearing Location: Seattle, Rm. 7206
Hearing Date: Friday, December 7,
2018
Hearing Time: 9:30 a.m.
Response Date: November 30, 2018

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 FOR ORDER (1) ALLOWING
AND DISALLOWING
ADMINISTRATIVE EXPENSE CLAIMS;
AND (2) APPROVING DISTRIBUTIONS
ON ADMINISTRATIVE EXPENSE
CLAIMS

14 **I. INTRODUCTION**

15 Mark Calvert (the "Trustee"), Chapter 11 trustee in the bankruptcy of Northwest Territorial
16 Mint, LLC ("NWTM" or the "Debtor"), moves the Court for an order (1) allowing certain
17 administrative expense claims as described below; (2) objecting in whole or in part to certain
18 administrative expense claims, and (3) approving distributions on allowed administrative expense
19 claims.

20 **II. BACKGROUND**

21 1. On April 1, 2016, Northwest Territorial Mint, LLC ("NWTM" or the "Debtor") filed
22 a voluntary bankruptcy petition under Chapter 11 of Title 11 of the United States Code.

23 2. The Court appointed Mark Thomas Calvert as Chapter 11 Trustee on April 11, 2016.

24 3. The Trustee has liquidated the majority of the assets of the estate. The Court has
25 previously established a bar date for administrative claims of October 15, 2018. The estate is
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ADMINISTRATIVE EXPENSE CLAIMS - 1
501943572 v8

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1 administratively insolvent, and by this Motion, the Trustee seeks to resolve the only filed claims in
2 the case for which administrative expense priority has been asserted. The Trustee presently estimates
3 that the dividend for allowed administrative expenses will be approximately 35 cents on the dollar.

4 4. On August 8, 2018, the Trustee filed his *Ex Parte* Motion for Order Establishing
5 Deadline for Filing Applications for Payment of Administrative Claims against the Debtor (“Admin
6 Bar Date Motion”). *See* Dkt. No. 1837. The Trustee requested that the Court establish a deadline of
7 October 1, 2018, by which all holders of administrative claims under 11 U.S.C. § 503(b) arising on
8 or before July 31, 2018 must file an application for payment of such administrative claims. The
9 Court declined to enter an order on an ex parte basis and instead required the Trustee to set a hearing
10 on the Admin Bar Date Motion.

11 5. At the hearing on August 24, 2018, the Court ordered that administrative expense
12 claimants file an administrative proof of claim form. The Court instructed the Trustee to bring a
13 motion to propose treatment for each filed administrative claim and allow administrative claimants
14 to object should they disagree with the treatment proposed by the Trustee.

15 6. On August 30, 2018, the Court entered an order granting the motion (the “Order
16 Establishing Admin Claim Bar Date”). Dkt. No. 1866. The Order Establishing Admin Claim Bar
17 Date provides that holders of administrative claims against this bankruptcy estate arising on or
18 before July 31, 2018, “must file such claims so they are actually received by the Bankruptcy Court
19 on or before October 15, 2018.”

20 7. There were only a few administrative expense claims filed in this case. Aside from
21 the administrative claims of the professionals of this estate, the Trustee’s review of the claims filed
22 in the case discloses that only the following claimants have asserted administrative expense priority
23 claims prior to the October 15, 2018 deadline: (1) RETT, LP; (2) American Ribbon Manufacturers,
24 Inc.; (3) Future Case Corp.; (4) Brittany Konkel on behalf of herself and similarly situated former
25 employees; (5) Port City Centre, LLC; (6) Michael White; and (7) Kelsey Jordana.

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1 administrative expense priority claim, must show that the debt (i) arose from a transaction with the
2 debtor in possession; and (ii) directly and substantially benefitted the estate. *In re MetroFulfillment,*
3 *Inc.*, 294 B.R. 306, 309 (9th Cir. BAP 2003) (citing *In re DAK Indus., Inc.*, 66 F.3d 1091, 1094 (9th
4 Cir. 1995)).

5 **B. Trustee Proposes that Claim of American Ribbon Manufacturers Inc. (Claim No. 3115)**
6 **Should Be Disallowed.**

7 The Trustee has analyzed the claim asserted by American Ribbon Manufacturers Inc., in the
8 amount of \$750.00. The evidence provided in such claim demonstrates that such claim is for goods
9 sold to Northwest Territorial Mint, LLC prior to the commencement of the bankruptcy case. The
10 claim of American Ribbon Manufacturers, Inc. is based on an order placed by Northwest Territorial
11 Mint, LLC on February 15, 2016 that was shipped by American Ribbon Manufacturers on February
12 25, 2016. The claimant has failed to establish its burden of proof in showing that its claim is (a)
13 based on a transaction with the bankruptcy estate; and (b) directly and substantially benefitted the
14 estate. As such, the Trustee asks that the Court disallow Claim No. 3115.

15 The Trustee acknowledges that 11 U.S.C. § 503(b)(9) entitles claims to administrative
16 priority for the “value of any good received by the debtor within 20 days before the date of
17 commencement of a case under this title in which the goods have been sold to the debtor in the
18 ordinary course of such debtor’s business.” No evidence provided by claimant demonstrates that the
19 goods it sold were received by the Debtor between March 11, 2016 and April 1, 2016. Therefore,
20 American Ribbon Manufacturers Inc. is not entitled to administrative priority treatment pursuant to
21 Section 503(b)(9) of the Bankruptcy Code and its claim should be denied.

22 **C. Trustee Proposes that Claim of Future Case Corp. (Claim No. 3116) be Disallowed.**

23 The Trustee has analyzed the claim asserted by Future Case Corp., in the amount of
24 \$13,975.00. The evidence provided in such claim demonstrates that such claims are for goods sold to
25 Northwest Territorial Mint, LLC prior to the commencement of the bankruptcy case. The claim of
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1 Future Case Corp. shows that it invoiced the Debtor on March 1, 2016, exactly 1 month before the
2 commencement of this case.

3 The claimant has failed to establish its burden of proof in showing that its claim is (a) based
4 on a transaction with the bankruptcy estate; and (b) directly and substantially benefitted the estate.
5 Nor is Future Case Corp. entitled to administrative priority treatment under Section 503(b)(9) of the
6 Bankruptcy Code. No evidence provided in connection with the claim demonstrates that such goods
7 were received by the Debtor between March 11, 2016 and April 1, 2016. Counsel for the Trustee
8 spoke with a representative of Future Case Cop. who indicated that goods were always delivered
9 within 7 days of shipment, meaning that delivery took place no later than March 8, 2016.

10 Accordingly, the Trustee asks that the Court disallow Claim No. 3116 asserted by Future Case Corp.

11 **D. Trustee Proposes to Allowed Section 503(b)(9) Claim of Kelsey Jordana (Claim No. 3120).**

12 Kelsey Jordana submitted a claim in the amount of \$575.00. The proof of claim indicates that
13 it is based on Ms. Jordana's sale of silver to the Debtor on or about March 14, 2016. In addition, Ms.
14 Jordana has submitted, in connection with her claim, tracking information for her shipment of silver
15 to the Debtor showing that delivery was made on March 16, 2016. The Trustee believes that Ms.
16 Jordana has established by a preponderance of the evidence, that she is entitled to priority treatment
17 under Section 503(b)(9) because she delivered goods to the Debtor in the 20 day period prior to the
18 commencement of the Bankruptcy Case. The Trustee therefore proposes to allow Ms. Jordana's
19 claim in full, and fix her distribution amount at 40 cents on the dollar, such that she will receive
20 \$230.00 upon entry of an order approving this Motion. As set forth below, the Trustee has proposed
21 a 40% distribution amount on allowed claims in order to avoid uncertainty of what the distribution
22 amount will be for such claimants, and to permit immediate distribution upon entry of an order
23 approving this Motion.
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1 **E. Trustee Proposes to Allow Port City Centre LLC Claim (Claim No. 3118).**

2 Port City Centre, LLC is the landlord for the real property located at 1718 Velp Avenue,
3 Suite 1E located in Green Bay, Wisconsin (the “Green Bay Office”). The Debtor operated at the
4 Green Bay Office on a Prepetition Basis. On a postpetition basis, the Trustee entered into a new
5 lease with Port City Centre, LLC dated December 1, 2016 for a smaller amount of space in the same
6 building. The new lease entered into between the Trustee and Port City Centre, LLC had a three year
7 term. The rent amount in year one of the lease was \$950 per month, in year two it was \$975 per
8 month, and in year three it was \$1000. In addition, the estate owes its share of Common Area
9 Maintenance & Management Expenses.

10 Port City Centre, LLC has filed an administrative claim in the amount of \$14,925.00 for
11 unpaid rent owing under the remaining term of lease entered into by the Trustee. Port City Centre
12 has filed a declaration indicating that it has made efforts to re-let the premises and that such efforts
13 have been unsuccessful. The Trustee proposes to resolve this claim by allowing it and distributing
14 Port City Centre 40% of its filed claim amount. Port City Centre has agreed to such treatment.

15 **F. Michael White (Claim No. 3119).**

16 Michael White filed a proof of Claim No. 3119. Mr. White later amended his claim on
17 November 8, 2018. Mr. White was hired by the Trustee to act in the role of Production Manager.
18 The terms of his employment provided that he would be entitled to a \$50,000 severance payment in
19 the event that his employment was terminated within five years. NWTM also agreed to pay
20 reasonable relocation costs not to exceed \$25,000, and housing expenses for up to 90 days while Mr.
21 White and his family made the transition from Idaho to Dayton. The terms of his employment were
22 approved by this Court on September 30, 2016. *See* Dkt. No. 759.

23 Mr. White timely filed a proof of claim asserting an administrative claim in the amount of
24 \$77,500, consisting of the \$50,000 severance payment (the “Severance Payment”), a statutory
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1 penalty of \$7,500 under Nev. Rev. Stat 608.040² for non-payment of severance (the “Penalty”), and
2 \$20,000 for an incentive payment (the “Incentive Payment”) that was contingent the successful
3 transition of the Die-Shop from Green Bay, Wisconsin to Dayton, Nevada (which did not occur). On
4 November 8, 2018, over three weeks past the claims bar date, Mr. White amended his claim to assert
5 new claims for \$9,374 in unreimbursed moving expenses that he had never previously sought
6 reimbursement for, and which consisted of \$734 for the registration of his car and boat (the “Vehicle
7 Registration Costs”) and \$8,640 for closing costs³ (the “Closing Costs”) on a house he purchased
8 (mortgage insurance and various fees).

9 The Trustee proposes that only a portion of Mr. White’s claim be allowed. The Trustee
10 agrees that Mr. White is entitled to \$50,000 in unpaid severance owing under his employment
11 agreement as approved by this Court. The Trustee disputes the remaining amounts claimed by Mr.
12 White for the following reasons:

13 1. The Penalty

14 Mr. White claims a statutory penalty under Nev. Rev. Stat 608.040 under the theory that the
15 Trustee did not pay the severance when due. On its face Nev. Rev. Stat 608.040 does not provide a
16 penalty for failure to pay severance when due; rather, it applies to non-payment of “wages or
17 compensation.” The remedy that it provides is that the “wages or compensation” continue at the
18 same rate until the earlier of payment or 30 days, a remedy which is nonsensical in the case of
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20 ² Nev. Rev. Stat 608.040 provides for a penalty as follows:

- 21 1. If an employer fails to pay:
22 (a) Within 3 days after the wages or compensation of a discharged employee becomes
23 due; or
24 (b) On the day the wages or compensation is due to an employee who resigns or quits,
the wages or compensation of the employee continues at the same rate from the day the
employee resigned, quit or was discharged until paid or for 30 days, whichever is less.

25 ³ Per the closing statement, the total closing costs were \$9,836.11, an amount which would have put him over
26 the \$25,000 relocation cost cap, accordingly, he only claimed \$8,640 which brought him to the cap number.

1 severance, which unlike wages do not accrue over time. Second, the agreement under which Mr.
2 White was employed, approved by this Court, attached to the declaration at Dkt. No. 712, does not
3 dictate a time for payment of the severance obligation. Simply put, Nev. Rev. Stat 608.040 is
4 inapplicable unless a wage or other compensation is not paid “when due.”

5 2. The Incentive Payment

6 Mr. White’s employment agreement states: “In addition to your base salary, you will
7 participate in the performance based incentive program. Your first year’s incentive will be based on
8 the successful transition of the Die-Shop from Green Bay, Wisconsin to Dayton, Nevada. This first
9 year’s incentive will be \$20,000 and the pay-out details will be negotiated based upon the
10 completion of the Die-Shop transition.” For business reasons, the Trustee ultimately made the
11 decision not to transition the Die Shop to Dayton. The contingency on which Mr. White success fee
12 was premised did not occur, and it is not a legitimate component of his claim.

13 3. The Vehicle Registration Costs and Closing Costs.

14 Bankruptcy Courts within the Ninth Circuit have used the “same generic origin” test for
15 determining whether an amended proof of claim is asserting a new claim or merely amending a
16 timely filed claim. *See, e.g., In re Thurmer*, 1995 WL 128498 at *1 (Bankr. D. Idaho 1995); *In re*
17 *Bajac Const. Co.*, 100 B.R. 524, 525 (Bankr. E.D. Cal. 1989) (citing *Menick v. Hoffman*, 205 F.2d
18 365, 368 (9th Cir.1953)). The amended claim filed by Mr. White does not amend his prior-filed
19 claim, it merely adds entirely new claims for allegedly unreimbursed moving expenses, which he
20 had never sought reimbursement for or referenced in his proof of claim. Mr. White’s claims for the
21 Vehicle Registration Costs and Closing Costs are not timely and should be disallowed on that basis.
22 In addition, Mr. White is stretching the definition of relocation costs. The employment letter
23 referenced reasonable relocation costs and reasonable housing expenses for 90 days. In other words,
24 the letter contemplates the cost of packing and moving personal property and renting a house or
25 apartment for 90 days. It does not contemplate paying for a portion of Mr. White’s house purchase
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1 costs or registering vehicles including a boat. The Internal Revenue Service agrees that “car tags”
2 and “expenses of buying or selling a home (including closing costs, mortgage fees, and points)”
3 cannot be claimed as moving expenses, at least for the purposes of tax deductions. *See* Publication
4 521 (2017), Moving Expenses available at <https://www.irs.gov/publications/p521>.

5 Simply put, the Vehicle Registration Costs and Closing Costs are untimely filed claims, and
6 even if the Court were to deem them timely, they are not claims for legitimate relocation costs. The
7 Trustee therefore proposes to resolve Mr. White’s claim by paying him 40% on an allowed claim
8 amount of \$50,000.

9 **G. RETT, LP (Claim No. 2818).**

10 RETT, LP is the Debtor’s former landlord for the business premises located at 723 South
11 Cherry Street, Tomball, Texas 77375. The Debtor leased the premises through July of 2016 pursuant
12 to a prepetition lease agreement. On July 20, 2016, this Court entered an order rejecting the Tomball
13 lease agreement effective July 31, 2016. RETT filed a proof of claim on August 25, 2016, in the
14 amount of \$134,268.67 for “[o]bligations arising under the lease agreement.” Of that amount, RETT
15 alleges that \$120,306.67 is entitled to administrative expense priority.⁴

16 Since the amounts alleged to be entitled to administrative expense priority are not itemized,
17 and since no supporting documentation other than a copy of the lease is attached to the claim, it is
18 difficult for the Trustee to determine whether any portion of the \$120,306.67 is valid and entitled to
19 administrative expense priority. The Trustee believes that at least a portion of the claim relates to an
20 allegation that the Trustee failed to return the premises in a satisfactory condition. Such claims are
21 not entitled to administrative priority status. *See In re TreeSource Indus.*, 363 F.3d 994 (9th Cir.
22 2004) (claims for the debtor’s failure to comply with its maintenance obligation and obligation to
23

24 _____
25 ⁴ This motion only addresses the administrative priority component of any claims of RETT, LP. RETT’s
26 claims for general unsecured rejection damages or other general unsecured claims are unaffected by this
Motion.

1 remove a concrete slab and restore the premises gave the lessor a prepetition, general, unsecured
2 claim for rejection damages).

3 The Trustee believes that a portion of the claimed amount relates to expenses set forth in
4 RETT's Motion for Relief from Stay and Application for Allowance and Payment of Administrative
5 Expense and/or Adequate Protection, which was filed in June of 2016. In that motion, RETT sought
6 allowance of an administrative expense award for 2016 real estate taxes in the amount of
7 \$10,203.67, \$3,900 in rent; \$2,600 in late fees; and \$14,723.10 in insurance charges, for a total of
8 \$31,426.77. The Trustee objected, on various grounds, to the entirety of the \$31,426.77 request. The
9 Court set an evidentiary with respect to the issue of whether the landlord was entitled to late fees,
10 insurance charges, and taxes. That evidentiary hearing was stricken when the parties reached a
11 global settlement that was ultimately not approved by this Court.

12 The Trustee proposes that the following amounts be paid (at the rate of 40 cents on the
13 dollar): \$2,600 for RETT's late fee claim, \$3,401.22 for the prorated portion of RETT's claim for
14 real estate taxes; and \$8,413.00 for the prorated portion of postpetition insurance coverage that Mr.
15 Tucker stated he was forced to obtain on behalf of RETT (*see* Dkt. No. 497-1).

16 The Trustee believes that the remaining balance of RETT's claim relates to estimated future
17 environmental clean-up costs asserted by RETT, which as of the summer of 2016 had not yet been
18 documented. The Trustee believes that any such estimated costs would have been incurred by RETT
19 since more than 2 years have transpired since the date on which RETT filed its proof of claim and
20 RETT should be able to document those costs actually incurred. The Trustee has requested that
21 RETT provide such documentation, but as of the filing of this Motion, has not received it. As such,
22 the Trustee believes that the remainder of RETT's claim should be disallowed. In the event that
23 RETT brings forward evidence substantiating environmental clean-up costs that were actually paid
24 and relate to the post-petition operations of the estate, the Trustee will propose a treatment of such
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1 claims. As it stands, RETT has not met its burden in establishing that the entirety of its \$120,306.67
2 claim is entitled to administrative priority.

3 **V. CONCLUSION**

4 The Trustee proposes that the claims describe herein be disallowed or allowed as set forth
5 above. The Trustee further requests that the Court permit the Trustee to distribute, to the holders of
6 claims that the Trustee proposes to allow, 40% of their proposed allowed claim amounts in full and
7 final satisfaction of their administrative claims in the case.

8 DATED this 16th day of November, 2018.

9
10 K&L GATES LLP

11
12 By /s/ Michael J. Gearin
13 Michael J. Gearin, WSBA #20982
14 David C. Neu, WSBA #33143
15 Brian T. Peterson, WSBA #42088
16 Attorneys for Mark Calvert, Chapter 11 Trustee
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1 **CERTIFICATE OF SERVICE**

2 The undersigned declares as follows:

3 That she is a paralegal in the law firm of K&L Gates LLP, and on November 16, 2018, she
4 caused the foregoing document to be filed electronically through the CM/ECF system which caused
5 Registered Participants to be served by electronic means, as fully reflected on the Notice of
6 Electronic Filing.

7 Also on November 16, 2018, she caused the foregoing document to be mailed to the Parties
8 at the addresses listed below:

9 Northwest Territorial Mint LLC
10 325 E Washington St #226
11 Sequim, WA 98382

12 I declare under penalty of perjury under the laws of the State of Washington and the United
13 States that the foregoing is true and correct.

14 Executed on the 16th day of November, 2018 at Seattle, Washington.

15 /s/ Denise A. Lentz
16 Denise A. Lentz

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:

NORTHWEST TERRITORIAL MINT, LLC,

Case No. 16-11767-CMA

ORDER GRANTING TRUSTEE'S
MOTION FOR ORDER (1) ALLOWING
AND DISALLOWING
ADMINISTRATIVE EXPENSE
CLAIMS; AND (2) APPROVING
DISTRIBUTIONS ON
ADMINISTRATIVE EXPENSE
CLAIMS

This matter came before the Court on the Chapter 11 Trustee's Motion for Order (1) Allowing and Disallowing Administrative Expense Claims; and (2) Approving Distributions on Administrative Expense Claims (the "Motion"). Having considered the Motion, the Declaration of Mark Calvert filed in support of the Motion, any responses to the Motion and replies thereto, and the pleadings and papers herein, it is **HEREBY ORDERED AS FOLLOWS:**

1. The Motion is GRANTED.
2. Claims Numbered 3115 and 3116 filed by American Ribbon Manufacturers Inc. and Future Case Corp. are not entitled administrative expense priority pursuant to 11 U.S.C. § 503 and

ORDER GRANTING TRUSTEE'S MOTION FOR ORDER
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ADMINISTRATIVE EXPENSE CLAIMS; AND (2)
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