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Honorable Christopher M. Alston
Chapter 11
Hearing Location: Rm. 7206
Hearing Date: July 22, 2016
Hearing Time: 9:30 a.m.
Response Date: July 15, 2016

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

10 In re:

11 NORTHWEST TERRITORIAL MINT, LLC,
12 Debtor.

Case No. 16-11767-CMA

TRUSTEE'S MOTION PURSUANT TO 11
U.S.C. § 365(d)(4) FOR AN EXTENSION OF
TIME TO ASSUME OR REJECT UNEXPIRED
LEASES OF NONRESIDENTIAL REAL
PROPERTY

15 Mark Calvert (the "Trustee"), Chapter 11 Trustee for Northwest Territorial Mint, LLC
16 ("NWTM" or the "Debtor"), hereby file this motion (the "Motion"), pursuant to section 365(d)(4) of
17 title 11 of the United States Code (the "Bankruptcy Code"), for entry of an order extending the
18 period within which the Trustee may assume or reject the leases of nonresidential real property (the
19 "Leases") by ninety (90) days through and including Friday, October 28, 2016. In addition, the
20 Trustee requests that the Court's order permit the Trustee to reject, effective July 31, 2016, the lease
21 for its Tomball, Texas facility located at 723 South Cherry Street, Tomball, Texas 77375. In support
22 of this Motion, the Trustee respectfully represents as follows:

23 **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, an order was entered
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MOTION FOR EXTENSION OF TIME TO ASSUME OR
REJECT UNEXPIRED LEASES OF NONRESIDENTIAL
REAL PROPERTY - 1

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1 appointing Mark Calvert as chapter 11 Trustee. *See* Dkt. No. 51. Upon his appointment, the Trustee
2 took control over the business operations of the Debtor and initiated his investigation of the financial
3 affairs of the bankruptcy estate. The Trustee has been engaged in efforts to stabilize the business in
4 order to preserve an ability to restructure the financial affairs of the estate and bring a return to
5 creditors. The Debtor's business is primarily comprised of (a) the sale of precious metals, such as
6 gold, silver and platinum; and (b) the minting of medallions, coins and other awards.

7 From the date of his appointment, the Trustee has worked diligently and expeditiously to
8 bring focus to and resolution of many issues presented in this case. Among the issues the Trustee has
9 addressed is the evaluation of the non-residential Leases held by NWTM and used in connection with
10 its business operations. As of the date of this Motion, there are seven (7) Leases related to NWTM's
11 business operations in Green Bay, WI, Honolulu, HI, Dayton, NV, Alexandria, VA, Tomball, TX,
12 Federal Way, WA, Auburn WA and at the Pentagon. The Leases are identified in Exhibit A attached
13 to the Declaration of Mark Calvert filed in support of this Motion. The Trustee continues to pay
14 postpetition rent on the Leases and has otherwise fulfilled all of the postpetition obligations under the
15 Leases.

16 This case is complex. At the time the of the Trustee's appointment, the Debtor had 244
17 employees with manufacturing operations in multiple locations. In the first week of the case, the
18 Trustee was forced to lay off 44 employees due to the severe cash shortfall facing the Debtor. Last
19 month, with the Court's approval, the Trustee sold the Debtor's assets in Tomball, Texas and laid off
20 34 employees. Under the terms of the purchase and sale agreement for the Tomball facility, the
21 Trustee is required to make the Tomball premises available to the purchaser until July 31, 2016 to
22 allow the purchaser to move the purchased assets out of the facility. The Trustee intends to reject the
23 Tomball lease as soon as the purchaser has concluded its removal of assets. The Trustee has taken
24 steps to move certain aspects of the Debtor's business into less costly space and intends to seek
25 permission to enter into new leases and reject other leases as the case proceeds.

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MOTION FOR EXTENSION OF TIME TO ASSUME OR
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REAL PROPERTY - 2

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1 In consultation with the creditors' committee, the Trustee will formulate a plan to either
2 restructure the Debtor's operations or liquidate the Debtor's assets as a going concern. By this
3 Motion, the Trustee respectfully requests the entry of an order pursuant to Bankruptcy Code section
4 365(d)(4) extending the 120-day deadline to assume or reject the Leases (the "Deadline") by ninety
5 (90) days through and including Friday, October 28, 2016 for a total of two hundred ten (210) days.
6 The Trustee needs additional time to evaluate whether it is in the best interests of the estate to
7 assume or reject the leases and believes that a ninety-day extension is a reasonable amount of time to
8 allow him to do so.

9 EVIDENCE RELIED UPON

10 This Motion relies upon the arguments set forth herein, the Declaration of Mark Calvert filed
11 in support, the pleadings and records on file in this case, and the arguments of counsel, if any.

12 ARGUMENT

13 Pursuant to Bankruptcy Code § 365(d)(4), the Trustee has 120 days to assume or reject an
14 unexpired real property lease. The Court may extend the 120-period for 90 days upon the motion of
15 the Trustee for cause. The Third Circuit Court of Appeals has stated that "nothing prevents a
16 bankruptcy court from granting an extension because a particular debtor needs additional time
17 to determine whether the assumption or rejection of particular leases is called for by the plan
18 of reorganization that it is attempting to develop." *Channel Home Ctrs Inc.*, 989 F.2d 682, 689
19 (3d Cir. 1993).

20 Because "cause" is not defined, courts generally look, for guidance, to a number of non-
21 exclusive factors bearing on whether the Trustee has had a reasonable amount of time to decide
22 whether to assume or reject. Such factors include whether the trustee "has had time to intelligently
23 appraise the financial situation and the potential value of the assets in terms of the formulation of a
24 plan;" "whether the lessor continues to receive the rent required in the lease;" "whether the lessor
25 will be damaged beyond the compensation available under the Code due to the continued
26 occupation;" "whether the case is exceptionally complex and involves a large number of leases;" and

MOTION FOR EXTENSION OF TIME TO ASSUME OR
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REAL PROPERTY - 3

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1 whether the Trustee has “failed or is unable to formulate a plan when it has had more than enough
2 time to do so.” *In re Ernst Home Center, Inc.*, 221 B.R. 243, 253 (9th Cir. BAP 1998); *see also In re*
3 *Victoria Station, Inc.*, 88 B.R. 231, 236 n.7 (9th Cir. BAP 1988), *aff’d*, 875 F.2d 1380 (9th Cir. 1989).
4 “[A] great deal of discretion is left to the court to weigh all relevant factors related to the requested
5 extension.” *In re Ernst Home Center, Inc.*, 221 B.R. at 253.

6 Based on the above factors, it is appropriate in this case to extend the time under § 365(d)(4)
7 to assume or reject leases. This case is complex and involves a large number of leases. An extension
8 will allow the Court to properly determine the value to the estate of its Leases and whether it is
9 in the best interests of the estate to assume, assume and assign, or reject them. In the interim, the
10 Trustee will continue to pay the postpetition rent and satisfy obligations under the Leases. A
11 reasonable extension of 90 days puts the Trustee in a much better position to make sound business
12 decisions that maximize the value of the estate for all creditors.

13 In addition, the Trustee requests that the Court enter an order authorizing the rejection
14 of the Debtor’s lease for the Tomball, Texas facility located at 723 South Cherry Street,
15 Tomball, Texas 77375. The Bankruptcy Code authorizes the Debtor to assume or reject executory
16 contracts, stating that “[e]xcept as provided in sections 765 and 766 of this title and in subsections
17 (b), (c), and (d) of this section, the trustee, subject to the court’s approval, may assume or reject any
18 executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a).

19 Courts apply a “business judgment” test in reviewing a debtor’s decision to assume or reject
20 an executory contract. *See e.g., Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion*
21 *Pictures Corp.)*, 4 F.3d 1095, 1098-99 (2d Cir. 1993); *see also In re Pomona Valley Medical Group,*
22 *Inc.*, 476 F.3d 665, 670 (9th Cir. 2007). In deciding a motion to assume or reject an executory
23 contract, the bankruptcy court places itself in the position of the trustee or debtor-in-possession and
24 determines whether assuming or rejecting the subject contract would be a good business decision or
25 a bad one (*i.e.*, will assuming the subject contract be beneficial or burdensome to the debtor’s
26 bankruptcy estate). *Orion Pictures*, 4 F.3d at 1099. The bankruptcy court need only engage in a

MOTION FOR EXTENSION OF TIME TO ASSUME OR
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REAL PROPERTY - 4

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1 “cursory review” of the decision to reject the contract. *In re Pomona Valley Medical Group, Inc.*,
2 476 F.3d at 670.

3 Now that the Trustee has sold the assets in the Tomball, Texas facility, he no longer
4 needs the facility for business operations. Thus, there is a sound business reasons for the
5 Trustee’s rejection of the lease. Because the Trustee is required to provide the purchaser of
6 the Tomball assets access to the facility until July 31, 2016, the Trustee requests that the
7 order provide that rejection is effective as of July 31, 2016.

8 CONCLUSION

9 Based on the foregoing, the Debtor respectfully requests that the Court enter an order
10 pursuant to Bankruptcy Code section 365, extending the deadline for it to assume or reject its
11 unexpired leases of non- residential real property for 90 days from July 30, 2016 until October 28,
12 2016.

13 DATED this 28th day of June, 2016.

14 K&L GATES LLP

15
16 By /s/ Michael J. Gearin
17 Michael J. Gearin, WSBA #20982
18 David C. Neu, WSBA #33143
19 Brian T. Peterson, WSBA #42088
20 Attorneys for Mark Calvert, Chapter 11 Trustee
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MOTION FOR EXTENSION OF TIME TO ASSUME OR
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REAL PROPERTY - 5

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CERTIFICATE OF SERVICE

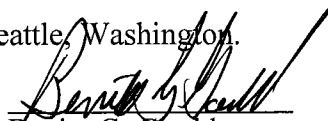
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The undersigned declares as follows:

That she is a practice assistant in the law firm of K&L Gates LLP, and on June 28, 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.

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 28th day of June, 2016 at Seattle, Washington.


Benita G. Gould