

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: July 22, 2016
Hearing Time: 9:30 a.m.
Response Date: July 15, 2016

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
MOTION FOR ORDER APPROVING
REJECTION OF CERTAIN IRA PURCHASE
ORDERS

13
14 Mark Calvert (the "Trustee"), Chapter 11 Trustee for Northwest Territorial Mint, LLC
15 ("NWTM" or the "Debtor"), submits this Motion to the Court, which requests entry of an order
16 rejecting certain customer orders purchased as an IRA account investment. In support of the Motion,
17 the Trustee respectfully states as follows:

18 **BACKGROUND**

19 1. On April 1, 2016, the Debtor commenced this case by filing a voluntary petition
20 under chapter 11 of the United States Bankruptcy Code. On April 11, 2016, an order was entered
21 appointing Mark Calvert as chapter 11 Trustee. *See* Dkt. No. 51. Upon his appointment, the Trustee
22 took control over the business operations of the Debtor and initiated his investigation of the financial
23 affairs of the bankruptcy estate. The Debtor's business is primarily comprised of (a) the sale of
24 precious metals, such as gold, silver and platinum; and (b) the minting of medallions, coins and
25 other awards.
26

MOTION FOR ORDER REJECTING IRA ORDERS - 1

K:\2070561\100001\22732_BTP\22732P31WV

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

1 Courts apply a “business judgment” test in reviewing a debtor’s decision to assume or reject
2 an executory contract. *See e.g., Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion*
3 *Pictures Corp.)*, 4 F.3d 1095, 1098-99 (2d Cir. 1993); *see also In re Pomona Valley Medical Group,*
4 *Inc.*, 476 F.3d 665, 670 (9th Cir. 2007). In deciding a motion to assume or reject an executory
5 contract, the bankruptcy court places itself in the position of the trustee or debtor-in-possession and
6 determines whether assuming or rejecting the subject contract would be a good business decision or
7 a bad one (*i.e.*, will assuming the subject contract be beneficial or burdensome to the debtor’s
8 bankruptcy estate). *Orion Pictures*, 4 F.3d at 1099. The bankruptcy court need only engage in a
9 “cursory review” of the decision to reject the contract. *In re Pomona Valley Medical Group, Inc.*,
10 476 F.3d at 670.

11 The Trustee in this case has a sound business justification for rejecting the IRA Orders. The
12 price of gold and silver bullion has increased since the IRA Purchase Orders were placed. If the IRA
13 Purchase Orders are performed by the Trustee, they will result in a net loss to the estate. Fulfillment
14 of the IRA Purchase Orders will therefore harm creditors of the estate. It is preferable for the Trustee
15 to instead reject the IRA Purchase Orders and liquidate the existing gold and silver bullion inventory
16 at the present market rate.

17 CONCLUSION

18 For the foregoing reasons, the Trustee respectfully requests that the Court enter an order
19 approving the Trustee’s rejection of the IRA Purchase Orders identified on the attached Exhibit A.

20 DATED this 28th day of June, 2016.

21 K&L GATES LLP

22
23 By /s/ Michael J. Gearin

24 Michael J. Gearin, WSBA #20982

25 David C. Neu, WSBA #33143

26 Brian T. Peterson, WSBA #42088

Attorneys for Mark Calvert, Chapter 11 Trustee

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 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.

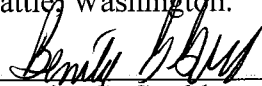

Benita G. Gould

EXHIBIT A

IRA PURCHASE ORDERS

Customer Name	Purchase Order Amount
Eva Rosman	\$429,370.88
Stephen Straub	\$14,919.08
Paul Striegel	\$2,002.08
Paul Striegel	\$4,996.08
Paul Striegel	\$3,323.10
Paul Striegel	\$3,303.00
Paul Striegel	\$16,594.88
Clifford Bradshaw	\$30,535.26
Michael W Campbell	\$23,828.68
Larry Holland	\$23,780.71
Lien Huynh	\$5,783.65
Taylor Thompson	\$115,776.92
George Long	\$54,160.25
Colby Schwindt	\$4,569.00
Mary L Moore	\$24,779.10
Diane Statham	\$50,823.57
David Lane	\$49,798.80
Robert Ervolina	\$2,930.00
John Hollis	\$43,768.80
Damien Sanchez	\$44,407.18
Madeline Alpert	\$25,985.60
Theodore Allen	\$30,658.05