

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: Seattle, Rm. 7206
SUBJECT TO COURT APPROVAL:
Hearing Date: Thursday, July 28, 2016
Hearing Time: 1:30 p.m.
Response Date: July 26, 2016

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

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

Case No. 16-11767-CMA

**TRUSTEE'S MOTION FOR AUTHORITY
TO ENTER INTO KENT LEASE AND
REJECT FEDERAL WAY LEASE**

12
13
14 **INTRODUCTION**

15 Mark Calvert (the "Trustee"), Chapter 11 Trustee for Northwest Territorial Mint, LLC
16 ("NWTM" or the "Debtor"), hereby files this motion (the "Motion"), pursuant to section 363(b)(1)
17 and 365(a) of title 11 of the United States Code (the "Bankruptcy Code"), for entry of an order
18 authorizing the Trustee to enter into a lease for the Debtor's headquarters. The Trustee wishes to
19 relocate the Debtor's corporate headquarters office space from Federal Way, Washington, to Kent,
20 Washington, in order to generate significant cost savings for the estate. In addition, the Trustee
21 requests that the Court's permit the Trustee to reject the Federal Way notice after he has vacated
22 those premises on seven days' notice to the Federal Way landlord. In support of this Motion, the
23 Trustee respectfully represents as follows.

24 //

25 //

26 //

TRUSTEE'S MOTION FOR AUTHORITY TO ENTER
INTO KENT LEASE AND REJECT FEDERAL WAY
LEASE- 1

K:\2070561\00001\22732_BTP\22732P21Z4

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

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

BACKGROUND

On April 1, 2016, the Debtor commenced this case by filing a voluntary petition under chapter 11 of the United States Bankruptcy Code. On April 11, 2016, the Court appointed Mark Calvert as chapter 11 Trustee. *See* Dkt. No. 51. Upon his appointment, the Trustee took control over the business operations of the Debtor and initiated his investigation of the financial affairs of the bankruptcy estate. The Trustee has been engaged in efforts to stabilize the business in order to restructure the financial affairs of the estate and bring a return to creditors. The Debtor’s business is primarily comprised of (a) the sale of precious metals, such as gold, silver and platinum; and (b) the minting of medallions, coins and other awards.

From the date of his appointment, the Trustee has worked diligently and expeditiously to identify areas of cost savings and efficiencies that can be brought to bear in the conduct of the estate’s business. Among the issues the Trustee has addressed is the evaluation of non-residential Leases held by NWTM. As of the date of this Motion, there are seven (7) Leases related to NWTM’s business operations for premises in Green Bay, WI, Honolulu, HI, Dayton, NV, Alexandria, VA, Tomball, TX, Federal Way, WA, Auburn WA and at the Pentagon. The Leases are identified in Exhibit A to the Declaration of Mark Calvert (Dkt. No. 450) filed in support of the Trustee’s Motion for Extension of Time to Assume or Reject Unexpired Leases of Nonresidential Real Property (Dkt. No. 449).

The Debtor’s principal headquarters office lease with BACM 2004-1 320th Street South, LLC (the “Federal Way Lease”) is for the real property located at 2505 S 320th St in Federal Way, Washington (the “Federal Way Premises”). The Federal Way office houses the management, accounting, legal and human resources staff of the company. It has a vault for storage of precious metals and cash and a showroom with displays of certain products of the Debtor. The Debtor has other storage vaults in facilities in Auburn, Washington and Dayton, Nevada. The Trustee has determined that the estate can operate its headquarters offices from less expensive space than in

TRUSTEE’S MOTION FOR AUTHORITY TO ENTER INTO KENT LEASE AND REJECT FEDERAL WAY LEASE- 2

K:\2070561\00001\22732_BTP\22732P21Z4

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

1 Federal Way and that some of the functions performed presently in Federal Way can be consolidated
2 into the Debtor's other facilities. The base amount of rent owed under the Federal Way Lease is
3 presently \$11,006.71 per month. However, a large portion of the office space at the Federal Way
4 Premises, while leased by the estate, is vacant and not used by the Trustee. The Trustee has located
5 more cost-effective space in Kent, Washington for the operations presently conducted in Federal
6 Way. The common address of the Kent office space is 841 Central Avenue, Suite C-200, Kent, WA
7 98032 ("Kent Premises").

8 The Trustee located the Kent Premises after searching for approximately four weeks. The
9 Trustee consulted with a commercial real estate broker, and reviewed approximately a dozen
10 listings. The Kent Premises requires minimal tenant improvements, has the space the estate needs,
11 and is available immediately. Moreover, the Kent Lease includes an allowance that covers up to
12 \$20,000 in tenant improvements to the Kent Premises. The Trustee wishes to add additional walls to
13 space in the Kent Premises in order to create three offices and a conference room. The Trustee has
14 obtained bids for tenant improvements to divide the space into segregated offices and to make the
15 space suitable for the needs of the Debtor. The total estimated cost of tenant improvements is
16 twenty-five thousand dollars (\$25,000), twenty thousand dollars (\$20,000) of which will be
17 reimbursed by the landlord.

18 Subject to court approval, the Trustee has reached an agreement regarding the terms of a
19 lease for the Kent Premises with the landlord, Kent Business Campus Associates, LLC, a
20 Washington limited liability company. A true and correct copy of the lease agreement for the Kent
21 Premises (the "Kent Lease") is attached as Exhibit A to the declaration of Mark Calvert filed in
22 support of this Motion. The Kent Lease term commences after the Trustee provides notice that the
23 estate is ready to occupy the Kent Premises. The Kent Lease has a two-year term. For the first year
24 of the term, the base rent amount is \$5,000, less than half the base amount of rent under the Federal
25 Way Lease. For the second year of the lease term, the base rent increases to \$5,500. The estate is
26 also obligated to pay its share of operating expenses pursuant to the Kent Lease. The Trustee

TRUSTEE'S MOTION FOR AUTHORITY TO ENTER
INTO KENT LEASE AND REJECT FEDERAL WAY
LEASE- 3

K:\2070561\00001\22732_BTP\22732P21Z4

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

1 believes that the Kent Lease results in a net savings of approximately 60% over the Federal Way
2 Lease.

3 The Trustee wishes to obtain court approval of the Kent Lease as quickly as possible. Court
4 approval will allow the Trustee to complete the tenant improvements expeditiously and allow the
5 Trustee to move operations in to the Kent Premises immediately thereafter. Once the move is
6 complete, the Trustee wishes to reject the existing Federal Way Lease.

7 **EVIDENCE RELIED UPON**

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

10 **ARGUMENT**

11 Pursuant to Bankruptcy Code § 363(c)(1), the Trustee may “enter into transactions, including
12 the sale or lease of property of the estate, in the ordinary course of business, without notice or a
13 hearing . . .” The Trustee believes that the execution of a new lease by the Trustee for the Debtor’s
14 operations may be an ordinary course transaction under the “horizontal dimension test” and “vertical
15 dimension test” applied by the Ninth Circuit Court of Appeals in *In re Dant & Russell*, 853 F.2d 700
16 (9th Cir. 1988). Execution of a lease is a transaction of the type that other similar businesses would
17 engage in, and the transaction at issue does not subject a hypothetical creditor “to economic risks of
18 a nature different from those he accepted when he decided to extend credit.” *Id.* at 705 (quoting *In re*
19 *Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986)). Nevertheless, out of an
20 abundance of caution, the Trustee files this Motion to seek court authority pursuant to 11 U.S.C. §
21 363(b)(1), which requires court approval for transactions “other than in the ordinary course of
22 business.”

23 The Trustee’s decision to execute the Kent Lease must be based on the Trustee’s reasonable
24 business judgment and may be approved by the Court so long as the Trustee has “established some
25
26

TRUSTEE’S MOTION FOR AUTHORITY TO ENTER
INTO KENT LEASE AND REJECT FEDERAL WAY
LEASE- 4

K:\2070561\00001\22732_BTP\22732P21Z4

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

1 articulated business justification for the transaction.” *In re Ernst Home Center, Inc.*, 209 B.R. 974, 979
2 (Bankr. W.D. Wa. 1997) (citing *In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Walter*,
3 83 B.R. 14 (9th Cir. BAP 1988)). Here, the Trustee’s decision to move the Debtor’s business
4 offices in Federal Way is based upon his reasonable business judgment.

5 As more particularly described in the declaration of Mark Calvert filed in support of
6 this Motion, the Kent Lease will result in significant cost savings to the estate. The base rent
7 amount for the Federal Way Lease is \$11,006.71 for the period of July 1, 2016 through June
8 30, 2017, while the base rent amount for the Kent Lease is \$5,000 the first year of the Lease,
9 from Aug. 1, 2016 through June 30, 2017.¹ Furthermore, the terms of the Kent Lease include
10 a reimbursement provision whereby the landlord will pay for up to \$20,000 in tenant
11 improvements made to the Kent Premises by the Trustee. The execution of the Kent Lease
12 and rejection of the Federal Way Lease will therefore benefit the estate.

13 Furthermore, the Trustee negotiated the Kent Lease at arms-length and after
14 thoroughly investigating the local commercial real estate market and other available listings,
15 and consulting with a commercial real estate broker. The Trustee believes that the terms of
16 the Kent Lease are reasonable, and that it is in the best interests of the estate to authorize the
17 Trustee to enter into the Kent Lease.

18 If the Court does not permit the Trustee to execute the Kent Lease, the estate will be
19 forced to assume the existing Federal Way Lease before October 28, 2016 in order to
20 maintain office space for its headquarters.² The Kent Lease is a more cost-effective
21 alternative to the Federal Way Lease. Because the Kent Lease will reduce the administrative
22 expenses of the estate, the Trustee’s decision to enter into the Kent Lease is based on a
23 reasonable business decision and should be approved by this Court.

24 ¹ Base rent under the Federal Way Lease increases on July 1, 2017 to \$11,341.24, while base rent under the Kent Lease
25 increases to \$5,500 on July 1, 2017.

26 ² Pursuant to this Court’s order entered on July 21, 2016 (Dkt. No. 530), the Trustee has until October 28, 2016
to assume or reject any unexpired lease of nonresidential real property.

TRUSTEE’S MOTION FOR AUTHORITY TO ENTER
INTO KENT LEASE AND REJECT FEDERAL WAY
LEASE- 5

K:\2070561\00001\22732_BTP\22732P21Z4

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

1 If the Court approves the Trustee's execution of the Kent Lease, the Trustee further
2 requests that the Court enter an order authorizing the rejection of the Debtor's Federal Way
3 Lease upon seven days' notice, by the Trustee to the landlord of the Federal Way Lease, of
4 the effective date of such rejection. The Bankruptcy Code authorizes the Debtor to assume or
5 reject executory contracts, stating that "[e]xcept as provided in sections 765 and 766 of this title and
6 in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may
7 assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a).

8 Courts apply a "business judgment" test in reviewing a debtor's decision to assume or reject
9 an executory contract. *See e.g., Orion Pictures Corp. v. Showtime Networks, Inc.(In re Orion*
10 *Pictures Corp.)*, 4 F.3d 1095, 1098-99 (2d Cir. 1993); *see also In re Pomona Valley Medical Group,*
11 *Inc.*, 476 F.3d 665, 670 (9th Cir. 2007). In deciding a motion to assume or reject an executory
12 contract, the bankruptcy court places itself in the position of the trustee or debtor-in-possession and
13 determines whether assuming or rejecting the subject contract would be a good business decision or
14 a bad one (*i.e.*, will assuming the subject contract be beneficial or burdensome to the debtor's
15 bankruptcy estate). *Orion Pictures*, 4 F.3d at 1099. The bankruptcy court need only engage in a
16 "cursory review" of the decision to reject the contract. *In re Pomona Valley Medical Group, Inc.*,
17 476 F.3d at 670.

18 Here, there is a sound business reason for the Trustee to reject the Federal Way Lease.
19 The Trustee intends to maintain the Federal Way Lease for a period of time to allow him
20 sufficient time to perform tenant improvements to the Kent Premises and move operations
21 from Federal Way to Kent. Once the move is complete, there will be no further need for the
22 Federal Way Lease. The Trustee anticipates rejecting the Federal Way Lease between
23 September 15, 2016 and September 30, 2016.
24
25
26

TRUSTEE'S MOTION FOR AUTHORITY TO ENTER
INTO KENT LEASE AND REJECT FEDERAL WAY
LEASE- 6

K:\2070561\00001\22732_BTP\22732P21Z4

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

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

CONCLUSION

Based on the foregoing, the Debtor respectfully requests that the Court enter an order pursuant to Bankruptcy Code section 363 and 365, authorizing the Trustee to enter into the Kent Lease and reject the Federal Way Lease upon seven days' notice by the Trustee, to the landlord of the Federal Way Lease, of the effective date of such rejection.

DATED this 22nd day of July, 2016.

K&L GATES LLP

By /s/ Michael J. Gearin
Michael J. Gearin, WSBA #20982
David C. Neu, WSBA #33143
Brian T. Peterson, WSBA #42088
Attorneys for Mark Calvert, Chapter 11 Trustee

TRUSTEE'S MOTION FOR AUTHORITY TO ENTER
INTO KENT LEASE AND REJECT FEDERAL WAY
LEASE- 7

K:\2070561\00001\22732_BTP\22732P21Z4

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 practice assistant in the law firm of K&L Gates LLP, and on July 22, 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 22nd day of July, 2016 at Seattle, Washington.

/s/ Denise A. Evans
Denise A. Evans

TRUSTEE'S MOTION FOR AUTHORITY TO ENTER
INTO KENT LEASE AND REJECT FEDERAL WAY
LEASE- 8

K:\2070561\00001\22732_BTP\22732P21Z4

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