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Honorable Christopher M. Alston
Chapter 11
Hearing Location: Seattle, Rm. 7206
Hearing Date: January 20, 2017
Hearing Time: 9:30 a.m.
Response Date: January 13, 2017

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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

**MOTION TO APPROVE EMPLOYMENT
OF CHIEF EXECUTIVE OFFICER**

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13 Mark Calvert, the Chapter 11 Trustee (the “Trustee”) of Northwest Territorial Mint, LLC
14 (“NWTM” or “Debtor”) files this motion seeking approval of the employment by the bankruptcy
15 estate of Bill M. Atalla as Chief Executive Officer.

16 **I. FACTS**

17 1. At the time of its bankruptcy filing, NWTM billed itself as the largest private mint in
18 the United States. As of April 1, 2016 it had approximately 240 employees located at facilities in six
19 states. Since 2010, NWTM’s primary production facility has been located in Dayton, Nevada, where
20 the Debtor’s custom minting operations occur.

21 2. On April 1, 2016, the Debtor commenced this case by filing a voluntary petition
22 under Chapter 11 of the United States Bankruptcy Code. On April 11, 2016, the Court entered an
23 order appointing Mark Calvert as Chapter 11 Trustee. *See* Dkt. No. 51.

24 3. As the Court is aware, the Trustee has been fully engaged in this case in stabilizing
25 the business of the Debtor and returning the business to profitability. The Trustee terminated the
26 bullion sales aspects of the Debtor’s business and downsized the company through the sale of the

1 Debtor's Graco Awards business that was formerly located in Tomball, Texas and through other
2 consolidations. The Debtor's business is gradually returning to profitability and has the ability to
3 grow its revenues significantly with careful and competent management. The Debtor's custom
4 minting operations, which are based out of NWTM's Dayton, Nevada, facility, are the core
5 operations of the Company. The business of the Company will eventually all be consolidated in
6 Dayton. The business is essential to the successful reorganization of the Debtor and maximization of
7 recovery for creditors.

8 4. The Debtor's business needs the expertise of a full time Chief Executive Officer in
9 order to bring the business out of bankruptcy and implement a plan of reorganization. The Trustee
10 has recently identified a candidate, Bill Atalla, for the position of CEO. Mr. Atalla is highly qualified
11 and has significant experience running sophisticated business operations. Mr. Atalla's skills,
12 experience, and sales network make him a valuable addition to the team that will allow the Debtor to
13 emerge from bankruptcy and generate the sales growth that is necessary to maximize the recovery
14 for creditors.

15 5. The Trustee has presented an offer of employment to Mr. Atalla, contingent on court
16 approval. A copy of the employment proposal (the "Employment Offer") is attached to the
17 accompanying Declaration of Mark Calvert as Exhibit A.

18 6. The terms of the Employment Offer provide that Mr. Atalla will receive a base salary
19 of \$300,000 per year, four (4) weeks of paid vacation time, and incentive compensation up to 50% of
20 the amount of his salary upon the achievement of specific sales growth milestones. Half of his
21 maximum incentive compensation (\$75,000 per year) will be paid in the event the company reaches
22 the following milestones: sales growth of \$2 million in fiscal year 2017, sales growth of an
23 additional \$2.25 million in fiscal year 2018, and sales growth of an additional \$2.5 million for fiscal
24 year 2019. In addition, 1/3 of the maximum yearly bonus (\$50,000) will be paid in the event that the
25 company improves gross profit margins to the following amounts: 42% in fiscal year 2017; 44% in
26 fiscal year 2018; and 46% for fiscal year 2019. The remainder of Mr. Atalla's maximum yearly

1 incentive compensation (\$25,000 per year) is based upon the company's reduction of non-direct
2 costs of sales expenses (excluding depreciation, incentive bonuses, annual audit expenses, and
3 bankruptcy expenses). For 2017, this portion of the incentive compensation will be earned if the total
4 non-direct costs of sales of the Company are less than \$5 million. Triggering events for this
5 component of incentive compensation for future years will be mutually agreed upon as part of the
6 annual budget process and will be approved prior to January 1 of each year.

7 7. In addition, the terms of the offer of employment to Mr. Atalla provide him with a
8 profit sharing incentive payment equal to 5% of the net income of NWTM before bonus and
9 excluding depreciation ("Net Distributable Income").¹ The profit sharing incentive payment will
10 be payable from the sale proceeds of the company in connection with any sale of NWTM on or
11 before 2022. Mr. Atalla will be entitled to a profit sharing payment based upon NWTM's
12 generation of Net Distributable Income of at least a total of \$7.5 million for the period calendar
13 year 2017 through 2019. But if Net Distributable Income is less than \$7.5 million in that three year
14 period, the profit sharing percentage can be, but is not required to be reduced by the board of
15 directors to 2.5% of Net Distributable Income. In addition to the profit sharing incentive payment,
16 Mr. Atalla will be entitled to a share of the sales proceeds of the company in connection with any
17 sale of NWTM on or before 2022 in the amount of 5% of the net sales proceeds received by
18 NWTM at closing of such sale.

19 8. Mr. Atalla will work from the Debtor's Dayton, Nevada location. The Trustee has
20 agreed to pay reasonable relocation expenses not to exceed \$50,000 in connection with Mr. Atalla's
21 move to Dayton, Nevada.

22 9. Mr. Atalla will be an at-will employee, meaning that the Trustee may terminate
23 Mr. Atalla's employment at any time with or without notice. In the event that the Trustee terminates

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25 ¹ Net Distributable Income is intended to be an approximation of revenues available for distribution to
26 creditors and shall be calculated based upon NWTM's total income less total expenses without depreciation.
Bonuses to Mr. Atalla and to other employees which may be approved by the Board or otherwise granted by
NWTM shall not be included in total expenses for purposes of calculating Net Distributable Income.

1 Mr. Atalla's employment prior to December 31, 2019, the company will pay Mr. Atalla severance in
2 the total amount of \$100,000.

3 10. Mr. Atalla has agreed to commence employment with the Debtor starting January 2,
4 2017 with payment as an ordinary course line employee until such time as his employment
5 agreement as CEO is approved by the Court. The Trustee seeks approval of the terms of Mr. Atalla's
6 compensation *nunc pro tunc* effective as of January 2, 2017, such that his compensation would be
7 retroactively adjusted for the period January 2, 2017 to the date of approval of his employment as
8 CEO.

9 II. ISSUE

10 Whether the Court should approve the employment of Bill M. Atalla as CEO on the terms and
11 conditions set forth in the Employment Offer.

12 III. EVIDENCE RELIED UPON

13 This Motion relies on the Declaration of Mark Calvert filed in support of the Motion.

14 IV. ARGUMENT

15 Mr. Atalla will be an employee of NWTM, and is not a professional. Accordingly, his
16 employment is not governed by 11 U.S.C. § 327, and the Trustee does not believe it necessary to
17 seek his employment under such provision. However, his retention as CEO of the company, and the
18 terms of his compensation are arguably outside the ordinary course of business. The Trustee
19 therefore seeks approval of the terms of the Employment Offer because payment of his
20 compensation and or severance, if made, it may require approval under 11 U.S.C. §§ 363(b)(1),
21 503(c)(3).² Section 503(c)(3) provides in relevant part that transfers or obligations to managers,
22 hired post-petition, that are outside the ordinary course of business, must be justified by the facts and
23 circumstances of the case.

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25 ² Because Mr. Atalla is not presently an insider of the Debtor under 11 U.S.C. § 101(31), the
26 requirements of 11 U.S.C. § 503(c)(2), which govern allowance and payment of severance payments
to insiders, are inapplicable.

1 Here, the Trustee believes, in his sound business judgment, that the terms of Mr. Atalla's
2 employment are in the best interest of the estate and creditors and are amply justified by the facts.
3 First, Mr. Atalla has substantial experience operating sophisticated businesses, and has over 35 years
4 of experience in starting, building, and leading companies across multiple industries. It goes without
5 saying that the CEO position is one of significant importance to the operation of the Debtor's
6 business. Accordingly, it is essential that NWTM retain the most qualified person it can to fill the
7 position. Second, it cannot be ignored that NWTM is a company operating under Chapter 11 of the
8 Bankruptcy Code. Needless to say, employment by a company in such a position entails much more
9 risk that employment by a non-bankrupt entity. NWTM's current status makes the process of hiring
10 qualified employees much more difficult. In order to induce a candidate to move Dayton, Nevada,
11 and to work for a company operating as a debtor in a Chapter 11 proceeding, the Trustee believes it
12 is necessary to offer a severance package, significant salary, and incentive compensation. The
13 Trustee believes that the incentive compensation will motivate the CEO to increase profits of the
14 business and return more money to creditors of the bankruptcy estate. Moreover, the Trustee
15 believes that it is unlikely that any qualified candidate will accept such a position without a similar
16 provision. In simple terms, given NWTM's current status, the compensation package, including
17 severance payment is a necessary component of the offer to Mr. Atalla and is justified by the facts
18 and circumstances of the case.

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MOTION TO APPROVE EMPLOYMENT OF CHIEF
EXECUTIVE OFFICER - 5

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V. CONCLUSION

Based on the above, the Trustee respectfully requests that the Court authorize the employment of Mr. Atalla as Chief Executive Officer of the company and approve the terms of employment as described more fully in the Employment Offer.

Dated this 30th day of December, 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

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 December 30, 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.

Also on December 30, 2016, she caused the foregoing document to be mailed to the Debtor 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 December, 2016 at Seattle, Washington.

/s/ Denise A. Evans
Denise A. Evans