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Honorable Christopher M. Alston  
Chapter 11  
Hearing Location: Rm. 7206  
Hearing Date: February 9, 2018  
Hearing Time: 9:30 a.m.  
Response Date: February 2, 2018

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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 AUTHORIZING  
TRUSTEE TO REJECT UNEXPIRED LEASE  
OF NONRESIDENTIAL REAL PROPERTY

13  
14 **I. 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 365(a) of  
17 title 11 of the United States Code (the "Bankruptcy Code"), for entry of an order authorizing the  
18 Trustee to reject the unexpired lease of nonresidential real property for premises located at 841  
19 Central Avenue, Suite C-200, Kent, WA 98032 (the "Kent Lease").

20 The Trustee has worked for more than 20 months to maintain and grow the business of the  
21 Northwest Territorial Mint. Unfortunately, the business has not been profitable since the Spring of  
22 2017 and the Trustee has run out of cash to continue to operate the business. The Trustee closed the  
23 business on December 29, 2017 after working for many months to sell the business as a going  
24 concern. The Trustee is now working on liquidating the assets of the bankruptcy estate which  
25 include the minting equipment, dies and inventory. The Trustee is conserving expenses to the  
26 maximum extent possible. The Trustee has terminated operations in the office space in Kent which is

MOTION FOR ORDER AUTHORIZING TRUSTEE TO  
REJECT KENT LEASE - 1

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1 the subject of this motion and surrendered possession of the premises to the landlord. The Trustee  
2 wishes to reject the Kent Lease *nunc pro tunc* to the date of the filing of this Motion. The Motion is  
3 supported by the Declaration of Mark Calvert filed concurrently herewith. In support of this  
4 Motion, the Trustee respectfully represents as follows:

## 5 II. BACKGROUND

6 1. On April 1, 2016, the Debtor commenced this case by filing a voluntary petition  
7 under chapter 11 of the United States Bankruptcy Code. On April 11, 2016, the Court appointed  
8 Mark Calvert as chapter 11 Trustee. *See* Dkt. No. 51.

9 2. The Trustee sought and obtained approval from the Court, on August 10, 2016, to  
10 reject the Debtor's lease for its headquarters in Federal Way and enter into the Kent Lease. *See*  
11 Dkt. No. 596. The Kent Lease allowed the Trustee to consolidate the Debtor's corporate offices into a  
12 smaller more efficient space than the Federal Way offices that were previously used by the Debtor.  
13 The landlord under the Kent Lease is Kent Business Campus Associates, LLC. The Kent Lease has a  
14 lease term of two years, and provides that the lease "shall terminate at midnight on July 31, 2018."  
15 The base rent under the Kent Lease is presently \$5,500 per month and the landlord holds a security  
16 deposit in the same amount.

17 3. In recent months, the Debtor's business has suffered from inadequate sales growth  
18 due in part from headwinds from the Debtor's bankruptcy. In particular, the company has suffered  
19 marginal profits or net operating losses during each of the last eleven months and has suffered an  
20 operational loss for calendar year 2017. The operating losses have put a significant strain on the cash  
21 resources of the Trustee.

22 4. Concurrently with this decline in sales, the Trustee intensified his efforts to market  
23 and sell the Debtor's business as a going concern. Since May 2017, the Trustee has engaged in  
24 marketing efforts related to a potential sale of the business, including by creating a data room, and  
25 allowing multiple interested buyers to tour the Dayton facility and review financial and operational  
26 information related to the business. The Trustee entertained expressions of interest from multiple

1 parties including offers to purchase the assets of the estate, but no concrete offer materialized on  
2 terms which provided any meaningful return to the estate.

3 5. Due to inadequate cash resources, the Trustee was forced to close the business on  
4 December 29, 2017, after working for many months to sell the business as a going concern. The  
5 Trustee is now working on liquidating the assets of the bankruptcy estate, which include the minting  
6 equipment, dies, and inventory. The Trustee is conserving expenses of the estate to the maximum  
7 extent possible. He has terminated operations in the office space in Kent that is the subject of this  
8 Motion and surrendered possession of the premises to the landlord. He also completed a “walk  
9 through” of the premises in Kent with the landlord on January 9, 2018, and has turned over the keys  
10 to the premises to the landlord.

11 6. Because the Trustee has terminated operations in Kent and surrendered possession of  
12 the premises to the landlord, the Kent Lease has no further value to the estate. The Trustee wishes to  
13 reject to the Kent Lease and limit the estate’s potential liability with respect thereto.

14 **III. RELIEF REQUESTED**

15 By this Motion, the Trustee respectfully requests the entry of an order authorizing the  
16 Trustee’s rejection of the Kent Lease *nunc pro tunc* to the date of the filing of this Motion.

17 **IV. EVIDENCE RELIED UPON**

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

21 **V. ARGUMENT**

22 The Trustee’s rejection of the Kent Lease is in the best interests of the estate. The Trustee has  
23 determined that the Kent Lease is no longer necessary for the estate given that the Trustee has  
24 terminated operations in those premises. Section 365(a) of the Bankruptcy Code provides that a  
25 debtor or trustee “subject to the court’s approval, may assume or reject any executory contract or  
26 unexpired lease of the debtor.” 11 U.S.C. § 365(a). The decision to assume or reject an executory

1 contract “is left to the business judgment of the trustee or debtor in possession.” *Official Creditors’*  
2 *Committee v. X10 Wireless Tech., Inc. (In re X10 Wireless Tech., Inc.)*, 2005 WL 6960205, \*3 (9th  
3 Cir. BAP April 5, 2005). *See also Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303,  
4 1311 (5th Cir. 1985) (to place “more exacting scrutiny” on a debtor’s decision to assume or reject an  
5 executory contract “would slow the administration of the debtor’s estate and increase its cost,  
6 interfere with the Bankruptcy Code’s provision for private control of administration of the estate,  
7 and threaten the court’s ability to control a case impartially”).

8 The “business judgment” standard is not a strict standard; the trustee or debtor in possession  
9 must simply show that assumption will benefit the bankruptcy estate. *In re Crystalin, LLC*, 293 B.R.  
10 455, 464 (8th Cir. BAP 2003). “As long as assumption of a lease appears to enhance a debtor’s  
11 estate, a bankruptcy court should normally grant its approval, unless the debtor in possession’s  
12 judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code  
13 . . . .” *In re X10 Wireless Tech., Inc.*, 2005 WL at \*3 (internal quotations omitted) (quoting  
14 *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d at 1309). Similarly the Ninth Circuit Court  
15 of Appeals has stated that the Court need only engage in a “cursory review” of a trustee’s decision to  
16 reject an executory contract. *In re Pomona Valley Medical Group, Inc.*, 476 F.3d 665, 670 (9th Cir.  
17 2007) (quoting *In re G.I. Indus. Inc.*, 204 F.3d 1276, 1282 (9th Cir. 2000)).

18 Here, there are valid and sufficient business justifications for the Trustee to reject the Kent  
19 Lease in order to limit the estate’s liability given that the Debtor’s business operations in Kent have  
20 ceased. To limit the estate’s potential liability, the Trustee requests that the order granting the  
21 Motion be effective *nunc pro tunc* as of the date of this Motion.

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MOTION FOR ORDER AUTHORIZING TRUSTEE TO  
REJECT KENT LEASE - 4

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**VI. CONCLUSION**

Based on the foregoing, the Trustee respectfully requests an Order authorizing the Trustee to reject the Kent Lease, effective *nunc pro tunc* to the date of this Motion.

DATED this 11th day of January, 2018.

K&L GATES LLP

By 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 January 11, 2018, 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 January 11, 2018, she caused the foregoing document to be mailed to the Parties at the addresses listed below:

Northwest Territorial Mint LLC  
c/o Ross Hansen, Member  
P.O. Box 2148  
Auburn, WA 98071-2148

Kent Business Campus Associates LLC  
c/o Rosen Properties  
PO Box 5003  
Bellevue, WA 98009-5003

Kent Business Campus Associates LLC  
c/o Rosen Properties  
841 Central Avenue, Suite C-200  
Kent, WA 98032

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 11th day of January, 2018 at Seattle, Washington.

/s/ Denise A. Lentz  
Denise A. Lentz