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Honorable Christopher M. Alston  
Chapter 11  
Hearing Location: Seattle, Rm. 7206  
Hearing Date: Friday, October 6, 2017  
Hearing Time: 9:30 a.m.  
Response Date: September 29, 2017

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

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

Case No. 16-11767-CMA  
REPLY IN SUPPORT OF FIRST  
INTERIM FEE APPLICATIONS OF  
TRUSTEE AND TRUSTEE'S  
PROFESSIONALS

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14 **I. REPLY**

15 The Chapter 11 Trustee for Northwest Territorial Mint, LLC (the "Trustee"); Cascade  
16 Capital Group, LLC ("Cascade") accountants for the Trustee; and K&L Gates LLP ("K&L Gates"),  
17 counsel for the Trustee, hereby submit this combined Reply in support of their respective first  
18 interim fee applications (the "Trustee Professionals' Applications"). In support thereof, the Trustee,  
19 Cascade, and K&L Gates (collectively, the "Trustee Professionals") respectfully state as follows:

20 The only substantive response filed to the Trustee Professionals' Applications was the  
21 Response of the Official Unsecured Creditors' Committee to First Interim Fee Applications of  
22 Trustee and Trustee's Professionals ("Committee Response") (Dkt. No. 1224).<sup>1</sup> Notably, the

23  
24 <sup>1</sup> Mr. Jeffrey Mark McMeel filed an "Objection to Fee Application, Bankruptcy Fraud and U.S. Title  
25 31 Distress." This Court, on May 27, 2016, prohibited Mr. McMeel from filing pleadings in this case  
26 (with limited exceptions) until he pays this Court \$5,000 in sanctions. The Trustee understands that  
Mr. McMeel has failed to satisfy his sanctions obligation. Regardless, the McMeel objection makes  
no intelligible objection supported by law, and therefore will not be addressed herein.

1 Committee joins in the request of the Trustee Professionals to defer ruling on the Trustee  
2 Professionals' Applications until such time as the direction of this case can be discerned. The  
3 Committee shares the belief of the Trustee and his professionals that because the Trustee's efforts to  
4 preserve the enterprise value of the Debtor are ongoing, it is premature to evaluate the  
5 reasonableness, necessity, and benefit to the estate of the fees incurred by the Trustee Professionals  
6 to date. The Trustee Professionals reiterate their request that this Court defer ruling on the Trustee  
7 Applications.

8 The Committee articulates certain "areas of concern" with respect to certain categories of  
9 fees and costs described in the Trustee Professionals' Applications. The Trustee Professionals  
10 respond to the Committee's concerns below.

11 **A. Plan of Reorganization & Disclosure Statement**

12 The Committee expresses concerns that the Trustee Professionals have allocated time to the  
13 preparation of a plan and disclosure statement since the outset of the case despite the fact that no  
14 plan and disclosure statement have been filed with the Court. The Committee does not request that  
15 the allowance of such fees be denied; rather, the Committee indicates that the time allocated to the  
16 plan and disclosure statement highlights the "difficulty of assessing the Trustee Applications at this  
17 stage of the case" and the Committee notes that if "a Plan is confirmed these fees may be  
18 warranted."

19 The plan and disclosure statement were developed with the intention of filing them with the  
20 Court immediately upon the resolution of the Trustee's litigation against Medallic Art Company  
21 LLC. While the Trustee successfully resolved the Medallic litigation, unanticipated setbacks with  
22 respect to business sales in April 2017 forced the Trustee to table the plan and disclosure statement  
23 for the present time. Efforts to develop the plan of reorganization prior to resolution of the Medallic  
24 litigation were undertaken with the knowledge of, and *urging by*, the Committee. The draft plan was  
25 shared by the Trustee with the Committee in November of 2016.

1 The Committee notes that the Trustee and Cascade time records reflect a total of \$174,552 in  
2 time under the category of Plan and Disclosure Statement. The Trustee has reviewed the time  
3 entries in the Plan and Disclosure Statement category and finds that a great deal of this time should  
4 be re-categorized. Much of the time in this category would be more accurately captured in the  
5 Cascade billing statements as financial analysis in support of business operations, and much of the  
6 time in the Plan category for the Trustee should likewise be re-categorized as relating to business  
7 operations. The Trustee estimates that roughly \$47,500 of the Trustee's time and \$35,000 of Cascade  
8 time has been devoted to the analysis and formulation of a plan of reorganization.

9 **B. Trustee Compensation and Statutory Cap**

10 The Trustee acknowledges the statutory cap on his fees under section 326 of the Bankruptcy  
11 Code. The Committee expresses concern that time of Mark Calvert billed under the Cascade  
12 application may be more in the nature of Trustee functions than analyses conducted by the Trustee's  
13 financial consultants. Mark Calvert does provide financial consulting services to the estate as a  
14 principal of Cascade Capital. He makes every effort to contemporaneously and appropriately bill  
15 only time that he expends conducting financial consulting services in the Cascade invoice. The  
16 Trustee has reviewed the Cascade invoice and believes that a few thousand dollars of Calvert time  
17 reflected in the Cascade invoice may be viewed as Trustee function work. The Trustee is willing to  
18 move such time to the Trustee Application, but this re-categorization will not result in the Trustee's  
19 fees exceeding the statutory cap.

20 **C. Investigation-Fraud**

21 The Committee expresses concern that the Trustee has taken too much time responding to  
22 information requests of the FBI, and questions whether such time provides benefit to the estate. The  
23 Trustee and Cascade have expended time in responding to at least eleven subpoenas from the FBI,  
24 many of which were two or three pages in length.<sup>2</sup> The Trustee submits that he has a legal obligation  
25

26 <sup>2</sup> The Trustee Professionals' responses to such subpoenas were not a simple exercise. It is worth

1 to comply with the subpoenas he received from the FBI and that these services are therefore  
2 necessary and beneficial to the estate. The Trustee's time for responses to the FBI discovery requests  
3 are contained in the categories "Fraud Investigation." Many of the services provided in this category  
4 did not relate to compliance with the FBI's discovery requests, but instead related to the analyses of  
5 missing customer inventory, investigation of disposition of assets, hedging account activity  
6 investigation, analyses of millions of dollars of transfers to American Express, and the investigation  
7 of other sources of recovery. Based upon his review of the invoices, the Trustee believes that total  
8 Trustee time incurred in responding to FBI information requests is less than \$50,000 and total  
9 Cascade time incurred in such responses is less than \$7,000.

10 **D. Litigation Against Ross Hansen/ Diane Erdmann**

11 The Committee generally expresses concerns regarding costs of the Trustee's litigation  
12 against Ross Hansen and Diane Erdmann. The Trustee acknowledges that he has expended  
13 considerable time and expense in conflict with Hansen and Erdmann including litigation with both of  
14 them. But the Trustee remains convinced that litigation with Erdmann and Hansen was necessary to  
15 the Trustee's efforts to preserve the value of the business of the estate. The Trustee's motion to hold  
16 Hansen in contempt for violation of the automatic stay was a necessary response to the actions of  
17 Hansen which were designed to destroy the estate's business. Hansen, after surrendering control  
18 over the business, attempted to destroy the Debtor's business by communicating with employees  
19 (discussing with one employee whether she would be willing to, among other things, destroy  
20 valuable machinery and software), and seeking to persuade them to terminate their employment.  
21 The Trustee consulted with the Committee about his intentions to seek a Court order holding Mr.  
22 Hansen in contempt. Although the Court ruled that Hansen had not technically violated the  
23 automatic stay by his actions, the Court cautioned Hansen regarding his obstructive actions. After  
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26 noting that (a) the applicable time period for the subpoenas covered many years, and (b) the FBI  
sought information not only from the Trustee, but Cascade as well.

1 the Court hearing on the Trustee's stay motion, Mr. Hansen's communications with employees were  
2 curtailed and his overtly obstructive tactics diminished.

3 With respect to the American Express fraudulent transfer litigation, the Trustee Professionals  
4 believe that the Committee's cost-benefit analysis fails to appreciate the importance of the following  
5 points: first, although Ms. Erdmann testified in June 2016 that she had virtually no assets, the  
6 Trustee has learned that since the date of her testimony, Ms. Erdmann has liquidated approximately  
7 \$695,000 in precious metals. In addition to these substantial amounts of metal that were liquidated  
8 in 2016 and early 2017, Erdmann has expressed her ownership of another approximately \$305,000  
9 of precious metal and cash (approximately \$155,000 of which was seized by the King County  
10 Sheriff and the remainder of which funded the Todd Tracy retainer).<sup>3</sup> Given the magnitude of assets  
11 held by Erdmann notwithstanding her testimony that she is impecunious, it is far from certain that  
12 Ms. Erdmann has no additional assets that could satisfy a judgment against her. The Committee's  
13 cost-benefit analysis also fails to recognize that should the Trustee obtain a judgment against Ms.  
14 Erdmann, the Trustee may have sources of recovery based on avoidance action rights as a creditor of  
15 Erdmann.

#### 16 **E. Cascade Expenses**

17 The Committee expresses concern regarding two categories of expenses: local travel time  
18 billed by Cascade and outsourced labor. Cascade agrees with the Committee's concerns regarding  
19 local travel billings. Cascade will voluntarily reduce its application by the amounts of any entries  
20 for local travel by Cascade employees, which Cascade believes is \$16,788.

21 The Committee is correct that the outsourced labor charges include the work outsourced to  
22 India to create the bank database as well as a domestic service provider in connection with the same  
23 database project. The bank data base is a comprehensive, searchable record of the Debtor's financial  
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26 <sup>3</sup> Based upon the amounts of metals liquidated and the other assets Ms. Erdmann alleges she owns,  
Erdmann's net worth would have been in excess of \$1 million as of April 2016.

1 transactions involving bank accounts. As described in the Trustee and Cascade applications, the  
2 database is a tool used to explore, analyze and identify the flow of funds, and has been beneficial to  
3 the Trustee in many aspects of this case. The database helped allow the Trustee to, among other  
4 things, confirm amounts paid by storage customers, facilitate the return of certain storage inventory,  
5 and confirm the amount of missing cash and inventory as compared with the amount of money lost  
6 by the Debtor in its business. The database will also assist the Trustee in his completion of the  
7 Debtor's tax returns.

## 8 II. CONCLUSION

9 The Trustee Professionals reiterate their request that the Court defer ruling on the Trustee  
10 Applications to a future date when the results of the Trustee's efforts to preserve the enterprise value  
11 of the Debtor becomes evident.

12 DATED this 3<sup>rd</sup> day of October, 2017.

13 K&L GATES LLP

14 By /s/ Michael J. Gearin

15 Michael J. Gearin, WSBA #20982

16 David C. Neu, WSBA #33143

17 Brian T. Peterson, WSBA #42088

18 Attorneys for Mark Calvert, Chapter 11 Trustee

1 **CERTIFICATE OF SERVICE**

2 The undersigned declares as follows:

3 That she is a Sr. Practice Assistant in the law firm of K&L Gates LLP, and on October 3,  
4 2017, she caused the foregoing document to be filed electronically through the CM/ECF system  
5 which caused Registered Participants to be served by electronic means, as fully reflected on the  
6 Notice of Electronic Filing.

7 Also on October 3, 2017, she caused the foregoing document to be placed in the mail to the  
8 Parties at the addresses listed below:

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

13 I declare under penalty of perjury under the laws of the State of Washington and the United  
14 States that the foregoing is true and correct.

15 Executed on the 3rd day of October, 2017 at Seattle, Washington.

16 */s/ Benita G. Gould*  
17 \_\_\_\_\_  
18 Benita G. Gould