



A handwritten signature of Christopher M. Alston in black ink, written over a horizontal line.

**Christopher M. Alston**  
**U.S. Bankruptcy Judge**

(Dated as of Entered on Docket date above)

Christopher M. Alston  
Bankruptcy Judge  
United States Courthouse  
700 Stewart Street, Suite 6301  
Seattle, WA 98101  
206-370-5330

IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re

Northwest Territorial Mint LLC,

Debtor.

Chapter 11

Case No. 16-11767

ORDER ON MOTION FOR ORDER  
AUTHORIZING FINAL RESOLUTION OF CASE

This matter came before the Court on the Motion for Order Authorizing Final Resolution of Case and Granting Related Relief (the "Motion") [ECF No. 2328] filed by the Chapter 11 Trustee, Mark Calvert (the "Trustee"). The Court considered the Motion and the objections filed by Alexander Kohler, Gregory Agrest, Monica Koss, and Stephen Gritman. The Court then held a hearing on the Motion on September 24, 2021. For the following reasons, the Court grants the Motion.

1 Section 1112(b)(1)<sup>1</sup> of the Bankruptcy Code provides that in a chapter 11 case the Court  
2 shall dismiss or convert it to chapter 7, whichever is in the best interests of creditors, for  
3 cause. There is an exception to this mandatory language: the Court cannot convert or dismiss a  
4 case if the Court identifies unusual circumstances establishing conversion and dismissal are not  
5 in creditors' best interests or there is a reasonable likelihood of confirmation of a plan within a  
6 reasonable time and the basis for conversion or dismissal has a reasonable justification and will  
be cured within a reasonable time. 11 U.S.C. § 1112(b)(2).

7 Under section 1112(b)(4)(A), “cause” includes “substantial or continuing loss to or  
8 diminution of the estate and the absence of a reasonable likelihood of rehabilitation.” The Court  
9 determines if there is cause on a case-by-case basis. *In re Albany Partners Ltd.*, 749 F.2d 670,  
10 674 (11th Cir. 1984). The Court has wide discretion to employ its equitable powers to dismiss a  
11 bankruptcy case. *In re Preferred Door Co.*, 990 F.2d 547, 549 (10th Cir. 1993); *In re Sullivan*  
12 *Center Plaza I Ltd.*, 935 F. 2d 723, 728 (5th Cir. 1991) (whether cause exists “rests in the sound  
discretion of the bankruptcy court”).

13 The Debtor ceased operations almost four years ago, on December 29, 2017. In the  
14 intervening time, the Trustee has liquidated all assets of the estate, with the few exceptions listed  
15 in the Motion and described by Counsel for the Trustee at the hearing. The objecting creditors  
16 have not identified any new or previously unidentified assets, proceeds, or sources of income for  
17 the Debtor to pay their claims. Leaving the case open will only cause the Debtor to incur bank  
18 fees, United States Trustee fees, and other expenses. There is no chance of rehabilitating the  
19 estate, and there has not been for quite some time. The Court finds and concludes there is cause  
20 to convert or dismiss the case, there are no unusual circumstances that should preclude  
21 conversion or dismissal, and there is no chance of a plan being confirmed. Thus, the Court shall  
22 convert or dismiss this case.

23 After determining that there is cause to convert or dismiss, the Court must “apply a  
24 ‘balancing test’ to choose between conversion or dismissal based upon the ‘best interests of the  
25 creditors and the estate.’” *In re AVI, Inc.*, 389 B.R. 721, 729 (B.A.P. 9th Cir. 2008), citing *In re*  
26 *Nelson*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006); see also *In re Owens*, 552 F.3d 958, 960-61  
27 (9th Cir. 2009) (court must consider interests of all creditors). The best interests of creditors are

28 <sup>1</sup> Unless otherwise indicated, all chapter, section, and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101–  
1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037.

1 served by dismissal, not conversion. There are no remaining assets for a chapter 7 trustee to  
2 liquidate for the benefit of creditors. Conversion would merely delay the conclusion of this case  
3 while the estate would likely incur additional administrative expenses.

4 Section 349 of the Bankruptcy Code governs the effect of dismissal on the bankruptcy  
5 case. Subsection (b)(2) provides that, unless the Court orders otherwise, dismissal vacates any  
6 order, judgment, or transfer ordered under certain Bankruptcy Code sections. The Court finds  
7 and concludes there is cause to order otherwise that all orders entered in this case shall remain in  
8 place to “protect rights acquired in reliance on the bankruptcy case.” *Cyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 984 (2017).

9 The Trustee also requests authority to abandon records and documents. Bankruptcy Code  
10 section 554(a) allows the Trustee to abandon property that is burdensome to the estate or of  
11 inconsequential value and benefit. The movant has the burden of showing that the Court should  
12 compel abandonment. *In re Viet Vu*, 245 BR 644 (9th Cir. BAP 2000). There is no further  
13 benefit to the estate in having the Trustee maintain these records, and the estate is incurring  
14 expenses to retain these records. The records are therefore a burdensome asset with no value or  
15 benefit. Further, none of the responding creditors have objected to the Trustee's request to  
16 destroy records, and Bankruptcy Code section 105(a) authorizes the Court to “issue any order,  
17 process, or judgment that is necessary or appropriate to carry out the provisions of [the  
18 Bankruptcy Code].” The Court will grant the Trustee’s request.

19 The Court has carefully reviewed the objections filed by the above individuals. All four  
20 inform the Court that they are owed money or never received products ordered. Unfortunately,  
21 there is nothing that the Court can do. The Supreme Court has held that any distributions  
22 provided for in an order dismissing a bankruptcy case must follow ordinary priority rules absent  
23 the affected creditors' consent. *Jevic*, 137 S. Ct. at 983. *Jevic* prohibits this Court from  
24 approving payments to the general unsecured class without the consent of all creditors required  
25 by the Bankruptcy Code to be paid before that class. In this case there are administrative  
26 creditors who, pursuant to the Bankruptcy Code, have priority to remaining funds. While the  
27 Trustee could recover some additional funds from litigation against Diane Erdmann, Counsel for  
28 the Trustee stated at the hearing that the estate expects to receive less than \$25,000 from the  
settlement. Those monies, along with the approximate \$30,000 the Trustee will receive from the  
U.S. District Court, must be first paid to the outstanding costs of administering this case, which

1 exceed \$400,000.

2 In short, except for these two relatively small amounts, there are no other assets for the  
3 Trustee to administer. Keeping the case open would unnecessarily require filing monthly reports  
4 and paying United States Trustee quarterly fees. When these additional monies come in they can  
5 be distributed pro rata to the holders of allowed administrative expense claims without the need  
6 for the involvement of this Court.

7 Accordingly, it is hereby ORDERED as follows:

8 A. The relief requested in the Dismissal Motion shall be, and hereby is, GRANTED as  
9 provided in this Order (hereafter "Order of Dismissal"), and the case is DISMISSED.

10 B. To the extent not resolved or withdrawn, any and all objections to the Dismissal  
11 Motion shall be, and hereby are, overruled and denied.

12 C. Notwithstanding Section 349 of the Bankruptcy Code, all orders and stipulations  
13 entered in this chapter 11 case and all agreements entered and transactions implemented by the  
14 Trustee during the pendency of this chapter 11 case from the Petition Date through the date of  
15 dismissal of this case, shall survive, remain effective and in full force after the dismissal of this  
16 chapter 11 case and the Court shall retain exclusive jurisdiction to interpret, implement, enforce  
17 and support such orders, stipulations and agreements.

18 D. All fees payable pursuant to Chapter 123 of Title 23, United States Code, as  
19 determined by the Bankruptcy Court on the dismissal date, including, but not limited to,  
20 quarterly fees owed to the Office of the United States Trustee, shall be paid by the Trustee within  
21 seven (7) days of the Trustee's receipt of the refund of funds delivered to the government  
22 lockbox and intended to satisfy United States Trustee fees which were misapplied to the account  
23 of the Department of Housing and Urban Development.

24 E. The Trustee shall distribute, on a pro rata basis, any remaining cash in the estate (after  
25 payment of United States Trustee fees) to the following administrative priority creditors with  
26 outstanding allowed administrative priority claims: K&L Gates LLP, the Trustee, and Cascade  
27 Capital LLC ("Administrative Priority Creditors").

28 F. The Trustee shall, after entry of this Dismissal Order, retain authority to collect any  
amounts owed to the Trustee or this bankruptcy estate from the Office of the Administrator of  
the United States Courts on account of expense reimbursements whether or not such amounts are  
received before or after entry of this Dismissal Order and is authorized to distribute those

proceeds to Administrative Creditors.

The Trustee shall, after entry of this Dismissal Order, retain authority to collect any amounts owed to the Trustee or this bankruptcy estate from the Erdmann Bankruptcy Estate<sup>2</sup> whether or not the distribution of such amounts are made by the Erdmann Trustee before or after entry of this Dismissal Order. For the avoidance of doubt, the Trustee's right of recovery in the Erdmann Bankruptcy Estate shall not be abandoned upon entry of this Dismissal Order, and shall not revert in Northwest Territorial Mint, LLC. The Trustee shall distribute any funds he collects from the Erdmann Bankruptcy Estate on a pro rata basis to the Administrative Priority Creditors until the allowed amounts of such claims are paid in full. To the extent the amounts received from the Erdmann Bankruptcy Estate exceed the allowed amounts of the Administrative Priority Creditors, the Trustee shall file a motion to reopen the case to obtain an order directing the distribution of such excess funds.

G. Pursuant to Sections 105(a), 305(a), 363, and 554 of the Bankruptcy Code and Bankruptcy Rules 1017 and 6007, this Case shall be deemed "fully administered" within the meaning of Section 350 of the Bankruptcy Code, and shall, without further hearing, be dismissed.

H. The Unsecured Creditors Committee shall be dissolved and disbanded and its members released and discharged from all liabilities and duties arising from, or related to, this Case and the retention of its counsel shall terminate.

I. The Trustee is authorized to abandon and/or destroy, or cause to be abandoned and/or destroyed, any and all of the Debtor's books and records that remain in his possession or control.

J. Upon entry of this Dismissal Order, and except with respect to the rights and obligations expressly set forth in this Dismissal Order, the Trustee is released and discharged from all duties and obligations created by his appointment as Chapter 11 Trustee in this Case pursuant to Section 1104 of the Bankruptcy Code. The Trustee's Bond is hereby exonerated and the surety under such bond is released from any further liability thereunder.

K. The Trustee is authorized to take all necessary steps, perform such actions, execute such documents, and expend such funds as may be necessary to carry out or otherwise effectuate the terms and conditions of this Dismissal Order.

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<sup>2</sup> Capitalized terms not defined in this Dismissal Order shall have the meanings given to them in the Dismissal Motion.

1 L. To the extent applicable, the 14-day stay of this Dismissal Order under Rule 6004(h)  
2 of the Federal Rules of Bankruptcy Procedure is waived, sufficient cause having been shown,  
3 and this Dismissal Order shall be effective and enforceable immediately upon entry.

4 ///END OF ORDER///  
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