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Honorable Christopher M. Alston
Chapter 11

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8 UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 In re:

Case No. 16-11767-CMA

10 NORTHWEST TERRITORIAL MINT, LLC,

**TRUSTEE'S MOTION TO CONTINUE
DIANE ERDMANN'S MOTION TO
COMPEL RELEASE AND DISBURSAL
OF FUNDS HELD BY CHAPTER 11
TRUSTEE**

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14 **I. INTRODUCTION**

15 Mark Calvert, the Chapter 11 Trustee (the "Trustee"), moves the Court for an order
16 continuing the hearing date on the Motion to Compel Release and Disbursal of Funds Held by
17 Chapter 11 Trustee (the "Motion to Compel"). The Trustee is presently out of the country returning
18 on August 27, 2017. The Trustee requests that the Motion to Compel be continued so that the
19 Motion to Compel may be heard concurrently with the Trustee's to-be-filed motion for a preliminary
20 writ of attachment.

21 **II. BACKGROUND**

22 The Trustee is presently holding the \$125,857.50, which was originally held by the Tracy
23 Law Group, PLLC ("TTLG") as an advance fee deposit made in connection with its representation
24 of the Debtor. Such funds were the subject of a dispute before this Court and between the Trustee
25 and Dianne Erdmann, in which Ms. Erdmann claimed that she was the owner of such funds. After a
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MOTION TO CONTINUE MOTION TO COMPEL
RELEASE AND DISBURSAL OF FUNDS HELD BY
CHAPTER 11 TRUSTEE-1
500547105 v3

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1 trial on the issue of, among others, ownership of the funds held by the Trustee, this Court determined
2 that the funds were owned by Ms. Erdmann. *See* Memorandum Opinion and Further Order on
3 Motion for Authority to Withdraw as Attorney for Debtor, Dkt. No. 580. On August 18, 2016, the
4 Trustee appealed the Court's decision to the District Court. *See* Dkt. No. 628. The District Court,
5 pursuant to its order dated June 1, 2017, declined to overturn this Court's ruling. *See* Order on
6 Appeal, Dkt. No. 1051.

7 On September 9, 2016, before the District Court had ruled on the Trustee's appeal, the
8 Trustee filed suit against Ms. Erdmann, commencing Adversary Proceeding No. 16-01217-CMA
9 (the "Erdmann Lawsuit"). In the Erdmann Lawsuit, the Trustee has asserted causes of action for
10 fraudulent transfer, turnover of property of the estate, unjust enrichment, and imposition of
11 constructive trust. As described in the Trustee's Second Amended Complaint to Avoid and Recover
12 Fraudulent Transfers and For Turnover of Estate Property (the "Complaint") (Adv. Pro. Dkt. No.
13 23), the Debtor paid all of the bills related to Ms. Erdmann's AMEX credit card, without regard for
14 whether the charges listed on the account statements were personal in nature. The Trustee has
15 identified hundreds of thousands of dollars worth of charges that appear to have been made for
16 personal purchases. Adv. Pro. Dkt. No. 23-2. The Trustee seeks entry of a judgment in the amount of
17 no less than all of the personal charges paid by the Debtor, together with interest on such amounts.

18 Ms. Erdmann filed her Motion to Compel on August 10, 2017, and set the hearing on the
19 Motion to Compel for September 1, 2017. The Motion to Compel requests that the Court enter an
20 order directing the Trustee to immediately disburse \$87,903.93¹ to Ms. Erdmann. Before filing this
21 Motion, counsel for the Trustee requested that Ms. Erdmann agree to continue the Motion to Compel
22 to a mutually agreeable date. Ms. Erdmann would not agree to continue the Motion to Compel.

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26 ¹ The Trustee holds \$125,857.50, of which \$37,954.57 is subject to the order allowing fees and costs to the Tracy Law Group, PLLC.

1 **III. EVIDENCE RELIED UPON**

2 This Motion is supported by the Declaration of David C. Neu.

3 **IV. ARGUMENT**

4 The Trustee requests that the Court enter an order continuing the hearing on the Motion to
5 Compel so that it may be heard after a hearing on the Trustee's to-be-filed motion for a writ of
6 attachment in the Erdmann Lawsuit and so that the Trustee's counsel, Mr. Neu, may present for the
7 hearing on both motions.

8 According to Ms. Erdmann's prior testimony, she has little or no assets and therefore the
9 \$87,903.93 could be the only source of recovery for the Trustee on his claims in the Erdmann
10 Lawsuit. Should the Court direct immediate disbursement of the \$87,903.93, Ms. Erdmann will in all
11 likelihood dissipate such funds before the Trustee is able to obtain judgment and perhaps even
12 before a hearing on the Trustee's motion for writ of attachment. The Trustee is therefore in the midst
13 of preparing a motion requesting that the Court enter an order granting the Trustee a preliminary writ
14 of attachment on the \$87,903.93. If the Court grants the Motion to Compel, such an order will have
15 the likely effect of (a) mooted the Trustee's motion for a writ of attachment; and (b) rendering any
16 judgment the Trustee obtains in the Erdmann Lawsuit uncollectible. The Trustee's motion for a writ
17 of attachment has been delayed because the Trustee has been out of the country since early August,
18 2017 and will not return until August 27, 2017.

19 A continuance of the motion is warranted so that the Trustee may file the motion for a writ of
20 attachment and have it heard before Ms. Erdmann's Motion to Compel. A continuance of the Motion
21 is further justified by the fact that the Trustee's counsel handling the Erdmann Lawsuit, Mr. David
22 Neu, will be out of town on the date presently scheduled for the hearing on the Motion to Compel.

23 The Trustee therefore requests that the Court continue the hearing on Ms. Erdmann's Motion
24 to Compel to the Court's October 6, 2017 chapter 11 calendar. The requested continuance will allow
25 the Trustee to file his motion for a writ of attachment and set it for hearing on the Court's September
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1 28, 2017 adversary proceeding calendar so that it may be heard in advance of the Motion to Compel.

2 **V. CONCLUSION**

3 Based on the foregoing, the Trustee respectfully requests that this Court enter the Trustee's
4 proposed order continuing the hearing on the Motion to Compel.

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6 DATED this 15th day of August, 2017.

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8 K&L GATES LLP

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

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1 CERTIFICATE OF SERVICE

2 The undersigned declares as follows:

3 That she is a practice assistant in the law firm of K&L Gates LLP, and on August 15, 2017,
4 she caused the foregoing document to be filed electronically through the CM/ECF system which
5 caused Registered Participants to be served by electronic means, as fully reflected on the Notice of
6 Electronic Filing.

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

9 Executed on the 15th day of August, 2017 at Seattle, Washington.

10 /s/ Benita G. Gould
11 Benita G. Gould

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MOTION TO CONTINUE MOTION TO COMPEL
RELEASE AND DISBURSAL OF FUNDS HELD BY
CHAPTER 11 TRUSTEE-5

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