

The Honorable Christopher M. Alston

Chapter 11

Hearing Date: 1 September 2017

Hearing Location: Courtroom 7206

Hearing Time: 9:30 a.m.

Response Date: 25 August 2017

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re:

NORTHWEST TERRITORIAL MINT, LLC,

Debtor.

No. 16-11767-CMA

**RESPONSE OF DIANE AND RANDY
WONG TO THE TRUSTEE'S
SECOND MOTION FOR ORDER
GRANTING AUTHORITY TO
RETURN STORED INVENTORY TO
CUSTOMERS**

Creditors Diane and Randy Wong, by and through their attorneys, HACKER & WILLIG, INC., P.S., respectfully submit this Response to the Second Motion for Order Granting Authority to Return Stored Inventory to Customers filed by Mark Calvert, the Trustee for Northwest Territorial Mint, LLC (the "Debtor" or "NWTM").

The Wongs simply ask that their property be returned to them; the Trustee's Motion does not make clear exactly what the Trustee proposes be returned to the Wongs. The Wongs have specifically identified, by serial number and identification of storage boxes, gold and silver

**RESPONSE OF DIANE & RANDY WONG TO
MOTION TO RETURN STORED INVENTORY - 1**

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1 bullion that they had stored with NWTM. The specific items are identified in the Declaration of
2 Diane Wong and the exhibits thereto (“Wong Decl.”), filed concurrently herewith. The Wongs
3 respectfully request that their property be returned to them without further delay.

4 **BACKGROUND & RESPONSE**

5 Diane and Randy Wong are creditors in this bankruptcy case, and their Proof of Claim is
6 filed with the Court as Claim #3081. The basis of their contractual relationship with the Debtor
7 was established by a Bullion Storage Agreement (the “Agreement”) dated October 15, 2012. A
8 true and correct copy of the Agreement is attached as **Exhibit A** to the Wong Decl.

9 Pursuant to the terms of the Agreement, on November 15, 2012 (hereinafter, the
10 “November 15th Delivery”), Randy and Diane delivered for storage to the Debtor, at its Federal
11 Way, Washington office, sixty (60) bars of silver, each measured as one-hundred (100) troy
12 ounces. The Wongs, along with Derrin Tallman, a NWTM sales representative, together
13 recorded by hand the serial numbers of each bar. A true and correct copy of the list of serial
14 numbers of the silver bars that comprised the November 15th Delivery is attached as **Exhibit B**
15 to the Wong. Decl.

16 On November 19, 2012, Randy and Diane made another delivery of silver and gold to
17 the Debtor at its Federal Way, Washington office (hereinafter, the “November 19th Delivery”).
18 The Wongs delivered 4,850 troy ounces of silver and fourteen (14) troy ounces of gold. On
19 November 19th, the delivery of **silver** consisted of the following: 145 Pan American Bars, each
20 measuring ten (10) troy ounces; 128 Pan American Bars, each measuring five (5) troy ounces;
21 760 Pan American Rounds, each measuring as one (1) troy ounce; ten (10) Pan American Bars,
22 each measuring as one-hundred (100) troy ounces; and two (2) Monster Boxes containing 1,000
23 Silver American Eagles, each measuring as one (1) troy ounce. On November 19th, the delivery
24 of **gold** consisted of 14 American Eagles, each measuring as one (1) troy ounce. A true and
25 correct copy of the serial number list of the ten (10) 100-troy ounce Pan American Bars in the
26 November 19th Delivery is attached to the Wong Decl. as **Exhibit C**. A true and correct copy

RESPONSE OF DIANE & RANDY WONG TO MOTION TO RETURN STORED INVENTORY - 2

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1 of our Metal Storage Statement dated December 31, 2012, showing the November 15th and
2 November 19th Deliveries is attached to the Wong Decl. as **Exhibit D**.

3 On August 28, 2013, Diane and Randy made a subsequent smaller delivery of 1,180 troy
4 ounces of silver to the Debtor. The delivery of silver consisted of 70 Pan American Bars, each
5 measuring ten (10) troy ounces; and 480 American Eagles, each measuring one (1) troy ounce.
6 Wong Decl., ¶ 7. On January 29, 2016, the Wongs sold 3,000 troy ounces of silver to NWTM.
7 Wong Decl., ¶ 8.

8 On or about December 13, 2016, the Trustee shipped 30 Pan American Silver Bars, each
9 measured at 100 troy ounces, and 980 Silver American Eagles, each measured at one (1) troy
10 ounce, to the Wongs. Wong Decl., ¶ 9.

11 As of August 21, 2017, Randy and Diane are still missing 5,050 troy ounces of silver and
12 14 troy ounces of gold from NWTM. The Wongs believe that the remaining metals are still in
13 the possession of NWTM, especially in light of the Declaration of Erin Shear [Dkt. #1148] in
14 which she describes a Monster Box bearing the name “Wong.” This box should absolutely be
15 returned to the Wongs immediately. Wong Decl., ¶ 10.

16 As a general note, the only precious metals that the Wongs delivered to the Debtor that
17 bear a serial number are the 100-ounce silver bars; no other metals were identifiable with serial
18 numbers. However, Diane hand-wrote their last name on the two monster boxes of silver that
19 they delivered to the Debtor. So, those were/are clearly identifiable with their name written on
20 the box. Diane has kept detailed notes, statements, and lists of the gold and silver bullion that
21 they had on deposit with the Debtor. It appears from the Trustee’s filings that their five-ounce
22 and 10-ounce silver Pan American Bars are unique. Because these are not identifiable by serial
23 number, to the extent the Trustee is holding any such silver bars, then they belong to the Wongs
24 and should be returned to them immediately. Wong Decl., ¶ 12.

25 The Trustee has previously refused to return any property to the Wongs that was not “on
26 their shelf.” This is no longer a defensible position for the Trustee to take because clearly the

1 Wongs' bullion has been moved around the Debtor's facility. Upon information and belief, the
2 Monster Box bearing the name "Wong" was not found on the Wongs' shelf, but was recovered
3 somewhere else in the building. In sum, the Trustee should return all property belonging to the
4 Wongs, wherever located, immediately.

5 **RELIEF REQUESTED**

6 The Wongs respectfully request that the Court and all parties involved ensure that any
7 metals, contained and labeled as, or giving any other indication to the name, "Wong," be
8 promptly catalogued and delivered to them, along with the metals identified by the serial
9 numbers attached as exhibits to the Wong Decl.

10 DATED this 25th day of August, 2017.

11 Respectfully submitted,

12 HACKER & WILLIG, INC., P.S.

13 */s/ Charles L. Butler, III*

14 Arnold M. Willig, WSBA #20104

15 Elizabeth H. Shea, WSBA #27189

16 Charles L. Butler, III, WSBA #36893

17 Attorneys for Diane and Randy Wong

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on August 25, 2017, I caused the foregoing document to be
3 electronically filed with the Clerk of the Court using the CM/ECF system which will send
4 notification of the filing to all counsel of record.

5 DATED this 25th day of August, 2017.

6 Respectfully submitted,
7 HACKER & WILLIG, INC., P.S.

8 */s/ Charles L. Butler, III*
9 Charles L. Butler, III, WSBA #36893