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Honorable Christopher M. Alston
Chapter 11
Hearing Date: May 6, 2016
Hearing Time: 9:30 a.m.
Response Date: May 2, 2106

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8 UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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

Case No. 16-11767-CMA
TRUSTEE'S SUPPLEMENTAL
RESPONSE TO MOTION FOR
AUTHORITY TO WITHDRAW AS
ATTORNEY FOR DEBTOR

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14 Mark Calvert, the Chapter 11 Trustee (the "Trustee"), supplements his previously-filed
15 response (the "Trustee's Response") to the Motion of the Tracy Law Group PLLC ("TTLG") for
16 Authority to Withdraw as Attorney for Debtor (the "Motion").

17 As is set forth in the Trustee's Response, the Trustee does not object to TTLG's withdrawal
18 as counsel for the Debtor. The issue raised by the Trustee with respect to TTLG's withdrawal
19 related to disposition of the retainer held by TTLG. After reviewing the response to the Motion filed
20 by the Official Committee of Unsecured Creditors (the "Committee," (the "Committee Response"),
21 the Trustee wishes to supplement the Trustee Response to address the issues raised by the
22 Committee.

23 The Committee raises a concern that if TTLG is permitted to withdraw as counsel for the
24 Debtor with substitution of replacement counsel, this case may be subject to dismissal. The Trustee
25 has reviewed the Committee Response and authority cited by the Committee and does not agree that
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TRUSTEE'S SUPPLEMENTAL RESPONSE TO MOTION
FOR AUTHORITY TO WITHDRAW AS ATTORNEY
FOR DEBTOR - 1

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1 this case is subject to dismissal if Debtor’s counsel were to withdraw and the Debtor were forced to
2 proceed *pro se*. The Trustee submits that upon the appointment of the Trustee, the Trustee and not
3 Debtor becomes the relevant party for purposes of who may sue and be sued as a representative of
4 the bankruptcy estate. Whether the Debtor remains represented is irrelevant to the Trustee’s
5 standing and capacity to direct the administration of the bankruptcy case. The Trustee requests that
6 the Court expressly find that the Debtor’s unrepresented status does not constitute grounds for
7 dismissal of this case.

8 In raising its concerns regarding a possible dismissal, the Committee relies primarily on the
9 language of Local Rule 83.2(b)(3), W.D. Wash. which is incorporated by LBR 9029-2 and provides:

10 A business entity, except a sole proprietorship, must be represented by
11 counsel. If the attorney for a business entity, except a sole proprietorship, is
12 seeking to withdraw, the attorney shall certify to the court that he or she has
13 advised the business entity that it is required by law to be represented by an
14 attorney admitted to practice before this court and that failure to obtain a
15 replacement attorney by the date the withdrawal is effective
may result in the dismissal of the business entity’s claims for failure to
prosecute and/or entry of default against the business entity as to any claims
of other parties.

16 The Trustee does not disagree that this rule, as well the various cases cited by the Committee,
17 requires that a business entity be represented by counsel to appear in and prosecute litigation or be
18 the debtor-in-possession in a Chapter 11 proceeding. However, this rule is inapposite to
19 circumstances in which a Chapter 11 trustee has been appointed.

20 In a case in which a Chapter 11 trustee has been appointed, the debtor ceases to be a “debtor
21 in possession.” 11 U.S.C. §1101(1). Upon the appointment of the Chapter 11 trustee, the trustee
22 becomes the representative of the estate. 11 U.S.C. §323(a). As explained by one court, “[u]nder
23 the Code, the debtor remains the debtor in possession unless and until a trustee is appointed by court
24 order under Section 1104. . . . [w]hen a trustee is appointed, the debtor is no longer a debtor ‘in
25 possession’—the trustee succeeds to all the rights and properties of the debtor, which is thereby
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TRUSTEE’S SUPPLEMENTAL RESPONSE TO MOTION
FOR AUTHORITY TO WITHDRAW AS ATTORNEY
FOR DEBTOR - 2

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1 displaced from its property interests. . . . [t]he appointment of a trustee effects a statutory transfer or
2 assignment of the debtor's property, including its contractual relationships, from the debtor to the
3 trustee.” *In re Footstar, Inc.*, 323 B.R. 566, 571 (Bankr. S.D.N.Y, 2005). *See, also, In re Meehan*,
4 2014 WL 4801328 at *4 (9th Cir. BAP, 2014) (“[u]nder § 323, the trustee, and not the debtor, is the
5 representative of the bankruptcy estate with the capacity to sue and be sued”).

6 It is not uncommon for chapter 11 debtors in trustee cases, or chapter 7 debtors, to be
7 unrepresented by counsel. Notwithstanding that fact, the Trustee’s counsel was unable to locate a
8 single case in which a Chapter 11 proceeding, in which a trustee had been appointed, was dismissed
9 as a consequence of the lack of representation of the Debtor. The reason for a lack of authority
10 logically lies in the fact that when a trustee is appointed, the estate vests in the trustee - whether the
11 debtor, which has no control over the assets, ability to administer the estate or standing to assert
12 claims on behalf of the estate, is represented is immaterial.

13 Simply put, the Trustee is unaware of any authority holding that a debtor’s *pro se* status in a
14 Chapter 11 proceeding, in which a trustee has been appointed, constitutes grounds for dismissal.
15 The Trustee is sensitive to the Committee’s concerns, and does not take any risk of dismissal lightly.
16 Accordingly, the Trustee requests that the Court, in permitting TTLG’s withdrawal as counsel, find
17 that the Debtor’s unrepresented status does not constitute grounds for dismissal of the bankruptcy
18 case. If the Court declines to make such a finding, the Trustee requests that TTLG’s dismissal be
19 conditioned upon the Debtor obtaining alternative counsel.

20 DATED this 2nd day of May, 2016.

21 K&L GATES LLP

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24 By /s/ David C. Neu
25 Michael J. Gearin, WSBA #20982
26 David C. Neu, WSBA #33143
Brian T. Peterson, WSBA #42088
Attorneys for Mark Calvert, Chapter 11 Trustee

TRUSTEE’S SUPPLEMENTAL RESPONSE TO MOTION
FOR AUTHORITY TO WITHDRAW AS ATTORNEY
FOR DEBTOR - 3

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CERTIFICATE OF SERVICE

The undersigned declares as follows:

That she is a paralegal in the law firm of K&L Gates LLP, and on May 2, 2016, 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.

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 2nd day of May, 2016 at Seattle, Washington.

/s/ Denise A. Evans
Denise A. Evans