

Below is the Order of the Court.



Christopher M. Alston
U.S. Bankruptcy Judge

(Dated as of Entered on Docket date above)

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

In re

NORTHWEST TERRITORIAL MINT,
LLC

Debtor.

Bankruptcy No. 16-11767-CMA

**STIPULATED PROTECTIVE
ORDER**

1. PURPOSE AND LIMITATIONS

Discovery is being conducted by the undersigned parties in preparation for the evidentiary hearing set for June 22, 2016 in the above-entitled action (the "Hearing").

Discovery for the Hearing is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

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1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged: all personal financial records and information of Diane
4 Erdmann, including but not limited to bank account statements, credit card statements, and
5 safety deposit box records.

6 3. SCOPE

7 The protections conferred by this agreement cover not only confidential material (as
8 defined above), but also (1) any information copied or extracted from confidential material; (2)
9 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
10 conversations, or presentations by parties or their counsel that might reveal confidential
11 material. However, the protections conferred by this agreement do not cover information that is
12 in the public domain or becomes part of the public domain through trial or otherwise.

13 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

14 4.1 Basic Principles. A receiving party may use confidential material that is
15 disclosed or produced by another party or by a non-party in connection with the above-
16 captioned bankruptcy proceeding of Northwest Territorial Mint, including any Adversary
17 Proceedings, or actions in other forums related to the business activities of Northwest
18 Territorial Mint. Confidential material may be disclosed only to the categories of persons and
19 under the conditions described in this agreement. Confidential material must be stored and
20 maintained by a receiving party at a location and in a secure manner that ensures that access is
21 limited to the persons authorized under this agreement.

22 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
23 ordered by the court or permitted in writing by the designating party, a receiving party may
24 disclose any confidential material only to:
25
26

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1 (a) the receiving party's counsel of record in this action, as well as employees of
2 counsel to whom it is reasonably necessary to disclose the information for the permitted
3 uses set forth herein;

4 (b) the officers, directors, and employees (including in house counsel) of the
5 receiving party to whom disclosure is reasonably necessary for the permitted uses set forth
6 herein, unless the parties agree that a particular document or material produced is for
7 Attorney's Eyes Only and is so designated;

8 (c) experts and consultants to whom disclosure is reasonably necessary for the
9 permitted uses set forth herein and who have signed the "Acknowledgment and Agreement
10 to Be Bound" (Exhibit A);

11 (d) the Official Unsecured Creditors Committee appointed in the above-captioned
12 proceeding, together with its counsel of record in this action, provided that they have signed
13 the "Acknowledgment and Agreement to Be Bound" (Exhibit A)

14 (e) the court, court personnel, and court reporters and their staff;

15 (f) representatives of the United States Government, including the Office of the
16 United States Trustee and Federal Bureau of Investigations;

17 (g) copy or imaging services retained by counsel to assist in the duplication of
18 confidential material, provided that counsel for the party retaining the copy or imaging
19 service instructs the service not to disclose any confidential material to third parties and to
20 immediately return all originals and copies of any confidential material;

21 (h) during their depositions, witnesses to whom disclosure is reasonably necessary
22 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A),
23 unless otherwise agreed by the designating party or ordered by the court. Pages of
24 transcribed deposition testimony or exhibits to depositions that reveal confidential material
25 must be separately bound by the court reporter and may not be disclosed to anyone except
26 as permitted under this agreement;

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1 (i) the author or recipient of a document containing the information or a custodian or
2 other person who otherwise possessed or knew the information.

3 4.3 Filing Confidential Material. Before filing confidential material or discussing or
4 referencing such material in court filings, the filing party shall confer with the designating party
5 to determine whether the designating party will remove the confidential designation, whether
6 the document can be redacted, or whether a motion to seal or stipulation and proposed order is
7 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
8 standards that will be applied when a party seeks permission from the court to file material
9 under seal.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
12 party or non-party that designates information or items for protection under this agreement
13 must take care to limit any such designation to specific material that qualifies under the
14 appropriate standards. The designating party must designate for protection only those parts of
15 material, documents, items, or oral or written communications that qualify, so that other
16 portions of the material, documents, items, or communications for which protection is not
17 warranted are not swept unjustifiably within the ambit of this agreement.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
19 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
20 unnecessarily encumber or delay the case development process or to impose unnecessary
21 expenses and burdens on other parties) expose the designating party to sanctions.

22 If it comes to a designating party's attention that information or items that it designated
23 for protection do not qualify for protection, the designating party must promptly notify all other
24 parties that it is withdrawing the mistaken designation.

25 5.2 Manner and Timing of Designations. Except as otherwise provided in this
26 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or

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1 ordered, disclosure or discovery material that qualifies for protection under this agreement must
2 be clearly so designated before or when the material is disclosed or produced.

3 (a) Information in documentary form: (e.g., paper or electronic documents and
4 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
5 proceedings), the designating party must affix the word “CONFIDENTIAL” to each page
6 that contains confidential material. If only a portion or portions of the material on a page
7 qualifies for protection, the producing party also must clearly identify the protected
8 portion(s) (e.g., by making appropriate markings in the margins).

9 (b) Testimony given in deposition or in other pretrial or trial proceedings: the parties
10 must identify on the record, during the deposition, hearing, or other proceeding, all
11 protected testimony, without prejudice to their right to so designate other testimony after
12 reviewing the transcript. Any party or non-party may, within fifteen days after receiving a
13 deposition transcript, designate portions of the transcript, or exhibits thereto, as
14 confidential.

15 (c) Other tangible items: the producing party must affix in a prominent place on the
16 exterior of the container or containers in which the information or item is stored the word
17 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant
18 protection, the producing party, to the extent practicable, shall identify the protected
19 portion(s).

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
21 designate qualified information or items does not, standing alone, waive the designating party’s
22 right to secure protection under this agreement for such material. Upon timely correction of a
23 designation, the receiving party must make reasonable efforts to ensure that the material is
24 treated in accordance with the provisions of this agreement.

25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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1 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
2 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
3 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
4 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
5 challenge a confidentiality designation by electing not to mount a challenge promptly after the
6 original designation is disclosed.

7 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
8 regarding confidential designations without court involvement. Any motion regarding
9 confidential designations or for a protective order must include a certification, in the motion or
10 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
11 conference with other affected parties in an effort to resolve the dispute without court action.
12 The certification must list the date, manner, and participants to the conference. A good faith
13 effort to confer requires a face-to-face meeting or a telephone conference.

14 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
15 intervention, the designating party may file and serve a motion to retain confidentiality under
16 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
17 persuasion in any such motion shall be on the designating party. Frivolous challenges, and
18 those made for an improper purpose (e.g., to harass or impose unnecessary expenses and
19 burdens on other parties) may expose the challenging party to sanctions. All parties shall
20 continue to maintain the material in question as confidential until the court rules on the
21 challenge.

22 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
23 LITIGATION

24 If a party is served with a subpoena or a court order issued in other litigation that
25 compels disclosure of any information or items designated in this action as
26 “CONFIDENTIAL,” that party must:

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1 (a) promptly notify the designating party in writing and include a copy of the
2 subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to issue in
4 the other litigation that some or all of the material covered by the subpoena or order is
5 subject to this agreement. Such notification shall include a copy of this agreement; and

6 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
7 designating party whose confidential material may be affected.

8 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

9 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
10 confidential material to any person or in any circumstance not authorized under this agreement,
11 the receiving party must immediately (a) notify in writing the designating party of the
12 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
13 protected material, (c) inform the person or persons to whom unauthorized disclosures were
14 made of all the terms of this agreement, and (d) request that such person or persons execute the
15 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

16 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
17 MATERIAL

18 When a producing party gives notice to receiving parties that certain inadvertently
19 produced material is subject to a claim of privilege or other protection, the obligations of the
20 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
21 provision is not intended to modify whatever procedure may be established in an e-discovery
22 order or agreement that provides for production without prior privilege review. Parties shall
23 confer on an appropriate non-waiver order under Fed. R. Evid. 502.

24 10. NON TERMINATION AND RETURN OF DOCUMENTS

25 Within 60 days after the closing of the above-captioned bankruptcy proceeding or the
26 termination of a liquidating trust or similar entity established for the purposes of pursuing

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1 claims currently held by Northwest Territorial Mint's bankruptcy estate, whichever is later,
2 each receiving party must return all confidential material to the producing party, including all
3 copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate
4 methods of destruction.

5 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
6 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
7 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
8 work product, even if such materials contain confidential material.

9 The confidentiality obligations imposed by this agreement shall remain in effect until a
10 designating party agrees otherwise in writing or a court orders otherwise.

11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

12 ///END OF ORDER///

13 Presented by:

14 DBS LAW

15 By /s/ Daniel J. Bugbee
16 Daniel J. Bugbee, WSBA No. 42412
17 Dominique R. Scalia, WSBA No. 47313
Attorneys for Diane Erdmann

18 K&L GATES LLP

19 By /s/ David C. Neu
20 Michael J. Gearin, WSBA No. 20982
21 David C. Neu, WSBA No. 33143
22 Brian T. Peterson, WSBA No. 42088
Attorneys for Mark Calvert, Chapter 11 Trustee

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
 [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States Bankruptcy Court for the Western District of Washington on _____[date] in the case of *In re Northwest Territorial Mint LLC*, Case No. 16-11767. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States Bankruptcy Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____