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Honorable Christopher M. Alston  
Chapter 11

8 UNITED STATES BANKRUPTCY COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT SEATTLE

11 In re:

Case No. 16-11767-CMA

12 NORTHWEST TERRITORIAL MINT, LLC

13 Debtor.

14 MARK CALVERT, as Chapter 11 Trustee of  
15 NORTHWEST TERRITORIAL MINT, LLC

Adv. Proc. No.

16 Plaintiff,

17 v.

COMPLAINT TO AVOID AND  
RECOVER FRAUDULENT  
TRANSFERS AND FOR TURNOVER  
OF ESTATE PROPERTY

18 DIANE ERDMAN, an individual,

19 Defendant.

20 Mark Calvert, as Chapter 11 Trustee (the "Trustee") of Northwest Territorial Mint, LLC  
21 ("NWTM" or "Debtor") by and through counsel of record, K&L Gates LLP, for his claims against  
22 Diane Erdmann ("Erdmann" or "Defendant") alleges and avers as follows:  
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COMPLAINT TO AVOID AND RECOVER FRAUDULENT  
TRANSFERS - 1

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**I. NATURE OF THE ADVERSARY PROCEEDING**

1. On April 1, 2016, the Debtor commenced this case by filing a voluntary petition under chapter 11 of the United States Bankruptcy Code. On April 5, 2016, the Debtor moved for the appointment of a chief restructuring officer. Dkt. No. 12. The following day, creditors Bradley Cohen and Cohen Asset Management, Inc., responded to the Debtor's motion and requested that the Court order the appointment of a chapter 11 trustee. *See* Dkt. No. 18. The United States Trustee also requested that the Court order the appointment of a chapter 11 trustee. *See* Dkt. No. 24. A hearing was held on April 7, 2016, at which time the Court ruled that it would appoint a chapter 11 trustee over the Debtor. On April 11, 2016, the Court entered an order appointing Mark Calvert as chapter 11 Trustee. *See* Dkt. No. 51.

2. Plaintiff brings this adversary proceeding pursuant to §§ 105(a), 502(b) and (d), 542, 544(b), 548, 550(a), 551, and 1107 of the Bankruptcy Code; the Uniform Fraudulent Transfer Act, RCW 19.40.011 et seq.; and other applicable laws, to set aside and recover certain fraudulent transfers made to Defendant and preserve said property for the benefit of NWTM.

**II. PARTIES**

3. Plaintiff is the Chapter 11 Trustee of NWTM.

4. Diane Erdmann is an individual. Diane Erdmann is a transferee of fraudulent conveyances made by NWTM and/or is an individual for whose benefit such transfers were made.

**III. JURISDICTION AND VENUE**

5. This Court has jurisdiction under 28 U.S.C. §§ 157 and 1334(b) over the subject matter of this proceeding because the claims asserted herein arise under Chapter 11 of the Bankruptcy Code and are related to a case pending under the Bankruptcy Code in the Bankruptcy Court.

6. On information and belief, Defendant is subject to the jurisdiction of this Court by virtue of her contacts with the United States.



1 showing different levels of management, every employee effectively reported directly to Ross  
2 Hansen.

3 10. Diane Erdman is the *de facto* wife of Ross B. Hansen (“Hansen”), the sole member of  
4 NWTM. Diane Erdmann and Ross Hansen have lived together since at least 2002.

5 11. Since at least 2007, Diane Erdmann maintained, in her personal name, an American  
6 Express Platinum Card account (the “Amex Account”).

7 12. The Amex Account was used by Diane Erdmann to purchase goods and services for  
8 her personal benefit.

9 13. Between January, 2007, and April, 2016, Diane Erdmann used the Amex Account to  
10 purchase both business and personal items. Total charges on the Amex Account over this period  
11 exceed \$12.4 million, of which over \$1 million were for non-business purposes, including, but not  
12 limited to groceries, eBay purchases, clothing, travel and entertainment, and sporting goods.

13 14. During the period relevant to the claims asserted herein, NWTM paid all of the bills  
14 related to the Amex Account, including the charges arising from the purchase of goods and services  
15 that were for the benefit of Diane Erdmann (the “Erdmann Payment Transfers”). As a result of the  
16 charges on the Amex Account, which NWTM paid for, Dianne Erdmann was awarded millions of  
17 AMEX Membership Reward Points (the “Reward Points”), which can be redeemed for travel and  
18 shopping (the “Rewards Transfers” and together with the Erdmann Payment Transfers, the  
19 “Erdmann Transfers”).

## 20 **V. FIRST CAUSE OF ACTION**

### 21 **Action to Avoid Intentionally Fraudulent Transfers of Money and Other Property and** 22 **Preserve Same for the Benefit of the Estate Pursuant to RCW 19.40.041(a)(1) and 19.40.071,** 23 **and Bankruptcy Code §§ 544(b), 548, 550(a), and 551**

24 15. The Trustee repeats and realleges each and every allegation contained in paragraphs 1  
25 through 14 as if fully set forth herein at length.



1           24.     At the time NWTM made the Erdmann Transfers, NWTM had incurred, was  
2 intending to incur, or believed that it would incur debts beyond its ability to pay as the debts  
3 matured.

4           25.     As a result of the foregoing, pursuant to RCW 19.40.041(a)(2), RCW 19.40.051(a),  
5 and RCW 19.40.071 and Bankruptcy Code §§ 544(b), 548, 550 and 551, the Trustee is entitled to a  
6 judgment: (a) avoiding and preserving the portion of the Erdmann Transfers, (b) directing that the  
7 Erdmann Transfers be set aside, and (c) recovering the Erdmann Transfers from Defendant for the  
8 benefit of NWTM.

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10                                   **VII.    THIRD CAUSE OF ACTION**  
11                   **Action to Recover the Erdmann Transfers under Principles of Unjust Enrichment and**  
12                                   **Restitution**

13           26.     The Trustee repeats and realleges each and every allegation contained in paragraphs 1  
14 through 25 above as if fully set forth herein at length.

15           27.     At the time NWTM made the Erdmann Transfers, NWTM was engaged or was about  
16 to engage in a business or transaction for which the property remaining in its hands after each of the  
17 Erdmann Transfers was an unreasonably small capital.

18           28.     Under such circumstances, retention of the Erdmann Transfers would constitute  
19 unjust enrichment and NWTM is entitled to restitution of the full amount of the Erdmann Transfers  
20 to the Defendant, plus interest.

21                                   **VIII.   FOURTH CAUSE OF ACTION**  
22                                   **Imposition of constructive trust**

23           29.     The Trustee repeats and realleges each and every allegation contained in paragraphs 1  
24 through 28 above as if fully set forth herein at length.

25           30.     The Court should establish a constructive trust over the Reward Points for the benefit  
of the bankruptcy estate of NWTM.

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**IX. FIFTH CAUSE OF ACTION**  
**Turnover**

31. The Trustee repeats and realleges each and every allegation contained in paragraphs 1 through 30 above as if fully set forth herein at length.

32. The Reward Points are property of the bankruptcy estate pursuant to 11 U.S.C. §541.

33. Pursuant to 11 U.S.C. §542, any person in possession, custody, or control of property of the estate must turnover such property to the Trustee.

**X. PRAYER FOR RELIEF**

**WHEREFORE**, the Trustee respectfully requests that this Court enter an order and judgment in favor of the Trustee and against the Defendant as follows:

1. On the First Cause of Action, pursuant to RCW 19.40.041(a)(1) and 19.40.071, and Bankruptcy Code §§ 544(b), 548, 550(a), and 551, (a) avoiding and preserving the Erdmann Transfers, (b) directing that the Erdmann Transfers be set aside, and (c) recovering the Erdmann Transfers, or the value thereof, from Defendant for the benefit of NWTM;

2. On the Second Cause of Action, pursuant to RCW 19.40.041(a)(2), RCW 19.40.051(a), and 19.40.071, and Bankruptcy Code §§ 544(b), 548, 550, and 551, (a) avoiding and preserving the Erdmann Transfers, (b) directing that the Erdmann Transfers be set aside, and (c) recovering the Erdmann Transfers, or the value thereof, from Defendant for the benefit of NWTM;

3. On the Third Cause of Action, recovery of the Erdmann Transfers, or the value thereof, from Defendant for the benefit of NWTM;

4. On the Fourth Cause of Action, imposition of a constructive trust, for the benefit of the estate, over the Reward Points.

5. On the Fifth Cause of Action, an order directing Defendant to immediately turnover the Reward Points to the Trustee.

