

1 Michael J. Gearin, WSBA # 20982  
2 David C. Neu, WSBA #33143  
3 Brian T. Peterson, WSBA #42088  
4 K&L GATES LLP  
5 925 Fourth Avenue, Suite 2900  
6 Seattle, WA 98104-1158  
7 (206) 623-7580

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,  
16 Plaintiff,

Adv. Proc. No. \_\_\_\_\_

17 v.

**COMPLAINT FOR BREACH OF  
CONTRACT AND ENFORCEMENT  
OF COURT'S SALE ORDER**

18 ARM INDUSTRIES LLC d/b/a AMERICAN  
19 RELIEF MINT INDUSTRIES, LLC and  
20 AMERICAN RELIEF MINT,  
21 Defendant.

22 Mark Calvert, as Chapter 11 Trustee (“Plaintiff” or “Trustee”) of Northwest Territorial Mint,  
23 LLC (“Debtor” or “NWTM”) by and through counsel of record, K&L Gates LLP, for his claims  
24 against ARM INDUSTRIES LLC d/b/a AMERICAN RELIEF MINT INDUSTRIES, LLC and  
25 AMERICAN RELIEF MINT (“ARM” or “Defendant”), alleges and avers as follows:

COMPLAINT FOR BREACH OF CONTRACT AND  
TURNOVER OF PROPERTY OF THE ESTATE - 1  
500498687 v4

K&L GATES LLP  
925 FOURTH AVENUE, SUITE 2900  
SEATTLE, WASHINGTON 98104-1158  
TELEPHONE: (206) 623-7580  
FACSIMILE: (206) 623-7022

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## I. NATURE OF THIS ADVERSARY PROCEEDING

1. On April 1, 2016, the Debtor commenced its bankruptcy proceedings by filing a voluntary petition under chapter 11 of the United States Bankruptcy Code. On April 11, 2016, the Court entered an order appointing Mark Calvert as chapter 11 Trustee. *See* Dkt. No. 51.<sup>1</sup>

2. ARM contracted with the Trustee to purchase certain surplus equipment owned by NWTM. The parties began negotiations in late 2016 and reached agreement in March of 2017 on the terms of purchase and sale of specific surplus equipment for a specific price. ARM delivered a deposit in the amount of \$14,500 in connection with the purchase and sale agreement. The Trustee brought a motion to obtain Court approval of the sale. After the Court approved the sale, the Trustee applied ARM's deposit of \$14,500, but ARM has failed to pay the remainder of the purchase price of \$175,503.00.

3. Plaintiff brings this adversary proceeding pursuant to §§ 105(a), and 542 of the Bankruptcy Code, and other applicable law, to compel payment of, and obtain judgment against ARM for the balance of the purchase price and to request additional related relief.

## II. PARTIES

4. Plaintiff Mark Calvert is the duly appointed chapter 11 trustee of Northwest Territorial Mint, LLC, the Debtor in the above-captioned bankruptcy proceeding.

5. Defendant ARM is a Utah limited liability with a principal address of 585 W Main Street, Santaquin, UT 84655.

## III. JURISDICTION AND VENUE

6. 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

---

<sup>1</sup> All docket references in this Complaint refer to the docket in Northwest Territorial Mint, LLC's main bankruptcy case, Case No. 16-11767.

1 Bankruptcy Code and are related to a case pending under the Bankruptcy Code in the Bankruptcy  
2 Court.

3 7. On information and belief, Defendant is subject to the jurisdiction of this Court by  
4 virtue of its contacts with the United States.

5 8. Core proceedings include matters concerning the administration of the estate, as well  
6 as orders to turn over property of the estate. 28 U.S.C. § 157(b)(2)(A), (E). This adversary  
7 proceeding is a core proceeding pursuant to 28 U.S.C. § 157 because it arises in or under the  
8 Debtor's Chapter 11 case and both affects the administration of the estate and is a proceeding to  
9 compel turnover of property of the estate. Regardless of whether this is a core proceeding, or if it is  
10 one that, although core, may not be adjudicated without consent to final judgment by a bankruptcy  
11 court, the Trustee consents to the entry of final orders and judgment by the Bankruptcy Court.  
12 Defendant is notified that Rule 7008(a) of the Federal Rules of Bankruptcy Procedure (the  
13 "Bankruptcy Rules") requires Defendant to plead whether this proceeding is core or non-core and, if  
14 non-core, whether consent is given to the entry of final orders and judgment by the Bankruptcy  
15 Court. Defendant shall also indicate whether it consents to entry of final orders or judgment by the  
16 Bankruptcy Court if this proceeding is one that, although core, may not be adjudicated without  
17 consent to final judgment by a bankruptcy court.

18 9. Pursuant to 28 U.S.C. § 1409(a), venue of this adversary proceeding in the  
19 Bankruptcy Court in the Western District of Washington is proper because Northwest Territorial  
20 Mint LLC's bankruptcy case is pending in this district and the agreement which is the subject of this  
21 action was made in connection with the bankruptcy case.

#### 22 **IV. FACTUAL ALLEGATIONS**

23 10. On April 11, 2016, Mark Calvert was appointed as chapter 11 Trustee over Northwest  
24 Territorial Mint, LLC. The Trustee negotiated the terms of a sale of certain surplus equipment of the  
25 Debtor (the "Surplus Equipment") to ARM over the course of several months, beginning in late

1 2016. ARM amended the terms of its offer to purchase the Surplus Equipment on more than one  
2 occasion.

3 11. On March 10, 2017, ARM made an amended offer to the Trustee for the Surplus  
4 Equipment, in which ARM revised the purchased price and list of equipment to be acquired from  
5 prior offers. ARM's amended offer was reflected in an email to the Trustee dated March 10, 2017  
6 (the "Amended Offer").

7 12. The Trustee accepted the Amended Offer, creating a binding contract (the  
8 "Agreement") with ARM subject only to approval by this Court. The Trustee informed ARM that  
9 the agreement was subject to court approval and committed to seek such approval from the Court.

10 13. The Trustee moved for approval of the sale to ARM in his Motion for Authority to  
11 Sell Certain Surplus Equipment Free and Clear of Liens, Claims and Encumbrances. *See* Dkt. No.  
12 935 (the "Sale Motion"). ARM was mailed copies of the notice of hearing for the Sale Motion and  
13 the re-noted hearing for the Sale Motion. *See* Dkt. Nos. 942, 944.

14 14. The Court held a hearing on the Sale Motion on April 14, 2017, granting the relief  
15 requested by the Trustee in the Sale Motion and approving the terms of the sale. On the same day,  
16 the Court entered its *Order Granting Trustee's Motion for Authority to Sell Surplus Equipment Free*  
17 *and Clear of Liens, Claims and Encumbrances* (the "Sale Order"). *See* Dkt. No. 981.

18 15. The Sale Order, in addition to approving the terms of the Agreement, specifically  
19 provides, among other things, that (i) the purchase price is \$190,003.00; (ii) ARM "shall fund the  
20 full amount of the purchase price and close the sale within ten (10) days after entry of this Order";  
21 and (iii) ARM "shall remove the Surplus Equipment from the Debtor's facilities solely at its own  
22 expense within thirty (30) days after closing of the sale."

23 16. ARM paid the Trustee a \$14,500 deposit towards the purchase price. However, ARM  
24 failed to timely pay the balance of the purchase price under the Agreement (in the amount of  
25

1 \$175,503.00) and failed to remove the Surplus Equipment from the Debtor's facilities. ARM has  
2 therefore breached the Agreement and violated the express terms of the Sale Order.

3 **V. FIRST CAUSE OF ACTION**  
4 **Breach of Contract**

5 17. The Trustee repeats and realleges each and every allegation contained in paragraphs 1  
6 through 16 as if fully set forth herein at length.

7 18. The Trustee accepted the Amended Offer conveyed by ARM for the sale of the  
8 Surplus Equipment creating a binding contract with ARM contingent only on the Bankruptcy  
9 Court's approval of the Agreement. After the Court approved the Agreement, ARM breached the  
10 Agreement by failing to pay the full amount of the purchase price to the Trustee (less its deposit of  
11 \$14,500).

12 19. The Trustee and the bankruptcy estate have been harmed by ARM's breach of the  
13 Agreement.

14 20. As a result of the foregoing, the Trustee is entitled to judgment against ARM for  
15 breach of contract in the amount of no less than \$175,503.00.

16 **VI. PRAYER FOR RELIEF**

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

19 1. On the First Cause of Action for breach of contract against Defendant ARM, a money  
20 judgment in the amount \$175,503.00 against ARM;

21 2. An order, pursuant to § 105 of the Bankruptcy Code, awarding the Trustee sanctions  
22 on account of ARM's violation of the terms of the Sale Order;

23 3. An order, pursuant to § 105 of the Bankruptcy Code, compelling ARM to pick up and  
24 remove the Surplus Equipment from the Debtor's premises upon payment of \$175,503.00;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

4. Awarding Plaintiff all applicable costs, fees, and disbursements of this action permitted by law; and

5. For such further relief as the Court deems just, proper, and equitable.

DATED this 28th day of July, 2017.

K&L GATES LLP

By: /s/Michael J. Gearin  
Michael J. Gearin, WSBA # 20982  
David C. Neu, WSBA #33143  
Brian T. Peterson, WSBA #42088

Attorneys for Mark Calvert, Chapter 11 Trustee