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Honorable Christopher M. Alston
Chapter 11
Hearing Date: October 6, 2017
Hearing Time: 9:30 a.m.
Response Date: September 29, 2017

6 UNITED STATES BANKRUPTCY COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 In re:) No. 16-11767-CMA
10)
11 NORTHWEST TERRITORIAL MINT, LLC,)
12)
13 Debtor.)
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14 Miller Nash Graham & Dunn, LLP, and Mark D. Northrup, counsel for the Official
15 Unsecured Creditors' Committee (the "Committee") in this case, hereby respond as follows to the
16 Trustee's and the Trustee's professionals' first interim fee applications:
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18 **Introduction.** By letter to Trustee's counsel dated August 29, 2017 (Dkt. #1179), the Court
19 confirmed its prior directive that the Trustee and his professionals (collectively, the "Trustee
20 Professionals") file their fee applications and set them for hearing on October 6, 2017. In
21 compliance with this directive, the Trustee Professionals submitted the following applications:
22 Trustee's Application for Compensation (Dkt. #1201); Application for Compensation of Cascade
23 Capital Group LLC, as Accountants for the Chapter 11 Trustee (Dkt. #1199); K&L Gates LLP
24 Application for Compensation (Dkt. #1203) (collectively, the "Trustee Applications"). The Trustee
25 Applications were supported by the following: Declaration of Mark Calvert in Support of Trustee's
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1 Application for Compensation (Dkt. #1202; the “Trustee Declaration”); Declaration of Mark Calvert
2 in Support of Application for Compensation of Cascade Capital Group LLC, as Accountants for the
3 Chapter 11 Trustee (Dkt. #1200; the “Cascade Declaration”); Declaration of Michael J. Gearin in
4 Support of K&L Gates LLP Application for Compensation (Dkt. #1204; the “Gearin Declaration”).

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6 In response to an August 29 telephonic inquiry of Committee counsel, the Court advised
7 Committee counsel that it would be “optional” if the Committee’s professionals also filed their fee
8 applications and set them for hearing on October 6. The Court further advised Committee counsel
9 that the Committee would be expected to observe the response deadline set forth in the Applications
10 of the Trustee and his professionals. Consistent with the typical Chapter 11 practice of all estate
11 professionals filing fee applications at the same time, Committee counsel prepared and filed its own
12 application (Dkt. #1195).

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14 **Request for Deferral of Hearing.** Although the Trustee Professionals have complied with
15 the Court’s directive that their Applications be filed and set for hearing on October 6, the Trustee
16 Professionals do not seek approval of their fees and costs at this time. Instead, as stated in their
17 proposed Orders on Application, each of the Trustee Professionals requests that the Court “defer
18 ruling” on the Applications for some indefinite period “until such time as [the Trustee Professionals]
19 seek approval of their fees and expenses.” Dkt. #1199-1; Dkt.1201-1; Dkt. #1203-1. As a practical
20 matter, the reasons for the Trustee Professionals’ request are plain. First and foremost, the outcome
21 of the case is currently unknown. Will the business operations of the estate survive in a way that
22 makes a reorganization, including payment of administrative claims, feasible? It is too early to tell.
23 Second, the estate currently lacks sufficient cash assets to pay any fee awards, even if approved; and
24 it is unclear when and whether such funds will ever become available.
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1 Under these circumstances, the Committee supports the Trustee Professionals' request that
2 the Court not rule on allowance of any of the Trustee Applications at this time. The Committee
3 agrees that it is simply premature to attempt to evaluate the Trustee Applications now, without
4 knowing how the case turns out. Moreover, attempting to evaluate the Trustee Applications at this
5 time will place a substantial—and, depending on how the case turns out, conceivably pointless—
6 administrative burden on the Court, the Committee, and any other parties in interest who may
7 respond to the Applications. The time entries submitted with the Gearin Declaration alone extend to
8 some 630 pages; the Cascade Declaration contains 46 pages of time entries; and the Trustee
9 Declaration adds another 26 pages of entries. More important, current lack of information on the
10 outcome of the case makes it very difficult to evaluate professional services rendered in accordance
11 with the requisite statutory standards. Without knowing how the case turns out, is it possible at this
12 time to for anyone to make a fair assessment of “reasonableness,” “necessity,” and “benefit to the
13 estate,” as Bankruptcy Code §330 requires? The Committee believes that such assessments should
14 be deferred until some future date and time, when the outcome of the case has become much clearer
15 than it is today.
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18 **Areas of Concern.** As the Local Bankruptcy Rules require, the Trustee Declaration and the
19 Cascade Declaration, both submitted by Mark Calvert in his two separate capacities as Trustee, on
20 the one hand, and principal of Cascade, on the other, identify professional services performed in a
21 number of task categories. The Gearin Declaration presents its time entries similarly sorted into
22 specific work categories. Deferred ruling or not, the Committee and its counsel have examined in
23 detail the Trustee Applications and supporting Declarations and register, without limitation, the
24 following concerns with the Court:
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1 **Plan of Reorganization & Disclosure Statement.** The Trustee Declaration (p. 27;
2 \$90,480) and the Cascade Declaration (p. 47; \$84,072) identify a total of \$174,552 in services
3 performed in the category of “Plan of Reorganization & Disclosure Statement.” In addition, the
4 Gearin Declaration (p. 16) identifies \$41,571 for services performed in the category of “Plan and
5 Disclosure Statement.” To date, neither a Disclosure Statement nor a Plan of Reorganization has
6 been filed with the Court.
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8 In its own fee application, Committee counsel noted that the success of any reorganization in
9 this case depends, at a minimum, on the occurrence of three events: 1) the Trustee’s successful
10 consolidation of the Medallie Arts Company LLC’s assets with the assets of the Mint; 2) the
11 successful assumption of the Debtor’s Dayton, Nevada, real property lease; and 3) the successful
12 rehabilitation of the estate’s operating business. The first two of these objectives have now been
13 resolved in favor of the Trustee; the third objective thus far remains unattained. Moreover, despite
14 the fact that the first two of these threshold objectives were not resolved until May and August of
15 2017, the Trustee Professionals have been allocating time to the preparation of a “Disclosure
16 Statement and Plan” since the outset of the case in April 2016. In the absence of a clear basis to
17 proceed with the formal Plan process, have the Trustee Professionals’ efforts provided a
18 compensable \$216,123 “benefit to the estate” that was evident as such at the time the identified
19 services were rendered? If a Plan is confirmed, these fees may be warranted. In the meantime,
20 however, this specific identification of a requested fee award for “Plan and Disclosure Statement”
21 services, when no such Disclosure Statement or Plan now exists, exemplifies the difficulty of
22 assessing the Trustee Applications at this stage of the case.
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25 **Trustee Compensation.** In his Trustee Declaration (p. 27), the Trustee identifies \$602,160
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of compensable personal fee services. In his Declaration (p. 2), the Trustee also asserts that

1 expenditures and disbursements from the bankruptcy estate from April 2016 through July 2017
2 totaled approximately \$20.8 million. Based on this disbursement total and the statutory formula for
3 calculating trustee compensation set forth in Bankruptcy Code §326, the Trustee's compensation
4 should not exceed \$647,250. The Cascade Application and the Cascade Declaration, however,
5 reveal a total of \$215,596 in additional services performed by the Trustee, not as Trustee but in his
6 personal capacity as a principal of Cascade Capital Group, LLC. This total of \$817,756 in services
7 performed personally by the Trustee substantially exceeds the §326 compensation cap and raises the
8 threshold questions of: what services personally performed by the Trustee are properly allocable to
9 the Trustee Application as opposed to the Cascade Application; and what services, if any, performed
10 by Cascade personnel should be deemed traditional "trustee duties" as opposed to professional
11 accounting services and so be limited by the §326 cap. *See, e.g., In re Berglund Construction Co.,*
12 *Inc.*, 142 B.R. 947, 949 (Bankr. E.D. Wash. 1992) ("Neither professionals nor paraprofessionals may
13 be separately compensated for performing trustee duties beyond the limits of §326."). From the
14 outset, the Committee has harbored concerns about the need to scrutinize the services performed by
15 Cascade Capital Group, LLC, the services performed by the Trustee, and the interplay between
16 Bankruptcy Code §§326 and 330.

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20 **Investigation-Fraud.** The Trustee Declaration (p. 27; \$12,280) and the Cascade
21 Declaration (p. 47; \$119,904) identify a total of \$132,184 in services performed in the category of
22 "Investigation-Fraud." The Committee is concerned that such services may have provided a
23 substantial benefit to the FBI, which has been investigating Mr. Hansen and Ms. Erdmann for many
24 months, but has provided no economic benefit to the bankruptcy estate or its creditors. Should it
25 come to pass, the criminal conviction of Mr. Hansen and/or Ms. Erdmann is not likely to provide
26 any tangible return or benefit to creditors.

1 **Litigation Against Ross Hansen/Diane Erdmann.** The Trustee Applications identify
2 substantial amounts of legal services performed in litigation against Ross Hansen and Diane
3 Erdmann. The Trustee Declaration (p. 27) identifies \$60,840 spent on “court hearings,” some of
4 which include hearings on Hansen/Erdmann matters; and the Gearin Application includes a number
5 of task categories describing this litigation:
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7 **Litigation (70100).** The Gearin Application (p. 10) identifies \$109,932 of legal
8 services performed on general litigation matters, including action taken by the Trustee to address
9 “efforts by Ross Hansen to interfere with the administration of the estate.” The Trustee addressed
10 these “efforts” through a Motion for Order Holding Ross Hansen in Contempt for Violation of the
11 Automatic Stay (Dkt. #460). The Court denied the Trustee’s Motion and the Trustee elected not to
12 pursue the Motion further.
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14 **Trustee v. Diane Erdmann (70102).** The Gearin Application (pp. 13-14) identifies
15 \$163,223 worth of legal services performed in litigation against Diane Erdmann. The litigation
16 described in this task category focused chiefly on Erdmann’s entitlement (or not) to funds paid as an
17 advance fee deposit to the Tracy Law Group and related issues. The Trustee’s efforts to recover the
18 balance of the Tracy advance fee deposit were unsuccessful, as was the Trustee’s appeal of this
19 Court’s ruling on Erdmann’s entitlement to the funds.
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21 **American Express Fraudulent Transfer Action (70107).** The Gearin Application
22 (p. 15) identifies \$139,855 worth of legal services performed in litigation against Diane Erdmann
23 (Adv. Pro. 16-01217). The litigation described sought to recover in excess of \$1,000,000 from Ms.
24 Erdmann on the theory that Ms. Erdmann used the Debtor’s assets to pay credit card charges that
25 benefitted Erdmann personally, not the Debtor. This litigation is unresolved and remains pending.
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1 Throughout this case, however, Ms. Erdmann has testified (whether truthfully or not) that she has
2 few, if any, assets.

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4 As a general principle, the Committee's concerns about these litigation matters are based on
5 a common sense cost-benefit analysis; and various members of the Committee have been frankly
6 opposed to the Trustee's election to pursue such litigation based on that analysis. The amount of
7 fees potentially recoverable in the Tracy advance fee deposit dispute are/were less than the amount
8 of legal fees and costs it took to pursue (unsuccessfully) their recovery; and the Committee has been
9 concerned from the outset that Diane Erdmann is "judgment proof" and that the Trustee's litigation
10 against her will similarly consume far more estate assets than the Trustee will ever recover. These
11 cost-benefit analyses may also be applicable to elements of the "**Electronic Discovery Fees and**
12 **Costs (77100)**" task code that appears at p. 18 of the Gearin Application, which indicates that a
13 portion of the \$269,954 in identified fees and costs are attributable to "significant electronic
14 discovery services provided in connection with the Erdmann American Express litigation." A cost-
15 benefit analysis may also be applicable to elements of the "**Costs (99999)**" task code that appears at
16 p. 18 of the Gearin Application, which identifies "online research costs, and the costs of conducting
17 depositions and obtaining transcripts of depositions and court hearings."
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20 **Cascade Expenses.** In the Cascade Declaration (p. 47), the Trustee identifies \$20,477 in
21 travel expenses, not in the "Expenses" summary but in the "Professional Fees by Category"
22 summary. The time entries attributed to "travel," however, appear to consist in large part of local
23 travel by Cascade employees "to/from NWTM" or "to/from office." As a general rule, local travel
24 by court-appointed professionals is not compensable from a bankruptcy estate and should instead be
25 included in the professional's general business overhead.
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1 With respect to the Cascade “Expenses” summary, the Committee understands that certain
2 data accumulation and reconstruction work was not performed by Cascade personnel but was
3 performed by a company in India and that this work is reflected in the \$22,775 expense charge
4 for “outsourced labor.” The Cascade Declaration does not address this expenditure or clarify the
5 value of that work to the estate.
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7 **Special Setting at an Appropriate Future Date.** As filed, the total amount at issue in the
8 Applications before the Court (including the Application of Committee counsel) exceeds \$4.1
9 million. In light of this amount, the uncertain status of the case, the desirability of administering this
10 case efficiently, and the concerns it has expressed in this Response, the Committee believes that it is
11 in the best interest of all parties: a) that the Court defer a hearing on the Applications to some future
12 date, which the professionals may determine by agreement or the Court may impose; and b)
13 that all parties be permitted to respond fully to the professionals’ final applications at that time.
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15 DATED this 29th day of September, 2017.

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