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Honorable Christopher M. Alston
Chapter 11
Hearing Date: April 28, 2016
Hearing Time: 1:30 p.m.

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

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

Case No. 16-11767-CMA
TRUSTEE'S RESPONSE TO ORDER
TO SHOW CAUSE

13 **I. RESPONSE**

14 Mark Calvert, the Chapter 11 Trustee (the "Trustee"), files this response to the Court's Order
15 to Show Cause (the "Show Cause Order") [Dkt. No. 96]. The Show Cause Order states that the
16 Court has been provided information regarding the Trustee's website communications to creditors
17 regarding the filing of proofs of claims and directs the Trustee to appear before the Court to address
18 those issues. In advance of the hearing on the Order to Show Cause, the Trustee wishes to provide
19 certain information to the Court. The Trustee respectfully submits as follows:

20 On April 11, 2016, the Trustee was appointed as a chapter 11 Trustee over Northwest
21 Territorial Mint LLC (the "Debtor" or "NWTM"). Immediately upon his appointment, the Trustee
22 took control over the business operations of the Debtor and initiated his investigation of the financial
23 affairs of the bankruptcy estate. The Trustee learned that the Debtor's financial records are wholly
24 missing or in a state of disarray. The Trustee was immediately faced with significant operational
25 issues and forced to address employee layoffs, imminent plans to move certain operations from
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TRUSTEE'S RESPONSE TO ORDER
TO SHOW CAUSE - 1

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1 Texas to Nevada, and an urgent need to manage cash resources in order to stabilize the Debtor's
2 business operations. During the weekend of May 15, 2016, the Houston Texas area experienced
3 storms that resulted in flooding in the Debtor's Texas facility. During the week of May 11 through
4 May 15, 2016, the Trustee conducted a detailed inventory of precious metals, coins, gold and silver
5 bullion and other inventory of the Debtor. The Trustee and his staff fielded hundreds of calls from
6 anxious customers whose metals orders awaited fulfillment or who claimed that they had stored
7 precious metals with the Debtor. The Trustee continues to investigate whether there has been
8 diversion of assets or fraud. The Trustee is focused on determining whether the business can be
9 reorganized or sold as a going concern.

10 In the course of responding to calls from creditors, the Trustee has learned that many of the
11 creditors of NWTM lack information regarding the bankruptcy process. Based on his interaction
12 with creditors, the Trustee believes that many of the customers of NWTM lack internet access and/or
13 the technological wherewithal to submit a proof of claim form to the Court electronically.

14 In the early stages of this case, hundreds of customers and creditors of the Debtor reached out the
15 Trustee directly, and to the company, with calls regarding their unfulfilled purchase orders. In order
16 to facilitate notice of the case to the masses of customers and creditors of NWTM, the Trustee
17 modified a NWTM webpage related to bullion sales so that its visitors are redirected to a webpage
18 the Trustee established for this case. The Trustee's webpage was posted on April 13, 2016. The
19 purpose of the Trustee's website posting was to notify customers and creditors that NWTM had filed
20 for bankruptcy, and to alert them that if they are a creditor of the Debtor, they should file a proof of
21 claim. The Trustee also requested that creditors provide documentation of the basis for their claims
22 including copies of documents evidencing proof of payment. The Trustee had multiple reasons for
23 requesting evidence of proof of payment including confirming the validity of claims against the
24 estate, but more imminently, in conjunction with his analysis of potential recovery of assets for the
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TRUSTEE'S RESPONSE TO ORDER
TO SHOW CAUSE - 2

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1 estate in particular to determine whether funds paid by customers were actually deposited into the
2 accounts of the Debtor.

3 Unfortunately, as originally drafted, the webpage, as of April 13, 2016, suggested that
4 creditors file a hard copy proof of claim and included a link to an outdated proof of claim form to be
5 mailed to the Court. The original posting did instruct creditors to file only one claim form. A copy
6 of the April 13 web posting is attached hereto as Exhibit A. On April 15, 2016, the deputy clerk of
7 the court contacted the Trustee's counsel and informed the Trustee that the clerk would prefer to
8 have creditors file their proofs of claim electronically. On April 15, 2016, the Trustee modified the
9 website to provide only a link to the Court's website regarding the electronic filing of claims and a
10 link to the Court's proof of claim form. Prior instructions as to hard copy filing of claims were
11 deleted. A copy of the website posting as corrected on April 15, 2016 is attached as Exhibit B.

12 On April 19, 2016, the Trustee further modified the website to include a request to include
13 evidence of proof of payment in the form of cancelled checks with an instruction to protect private
14 and personal information and a reference to BR 9037. A copy of the website posting as updated on
15 April 19, 2016 is attached as Exhibit C.

16 The Trustee's counsel has been in contact with the office of the Clerk of the Bankruptcy
17 Court and the office for the United States Trustee regarding claims processing in this case. The
18 Clerk of the Court has expressed concern as to the Court's ability to process large numbers of paper
19 claims. Counsel for the Trustee, the United States Trustee and the Clerk are all concerned that
20 creditors have and may continue to file supporting documentation that contains personally
21 identifiable information. The Trustee believes that the present version of the NWMT website
22 addresses these concerns. The website as presently constructed instructs creditors to file
23 electronically, provides a reference to the court's claims filing link and notifies creditors to protect
24 their personal and private information.

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TRUSTEE'S RESPONSE TO ORDER
TO SHOW CAUSE - 3

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1 The Trustee remains concerned that creditors will continue to file in paper form and may
2 continue to provide records that contain personal and private information. The Trustee will continue
3 to work with the Court Clerk and the United States Trustee's office to facilitate the filing of claims
4 and to protect the personal and private information of creditors.

5 **CONCLUSION**

6 The Trustee recently filed a motion requesting the establishment of a claims bar date. In
7 connection with that motion, the Trustee sought approval of a form of claims notice. The Trustee
8 intends to file an amended proposed form of claims bar date notice to encourage creditors to redact
9 their personally identifiable information, to provide clear examples of personally identifiable
10 information that should be redacted and to express a preference for electronic filing of claims.

11 RESPECTFULLY SUBMITTED this 27th day of April, 2016.

12
13 K&L GATES LLP

14
15 By /s/ Michael J. Gearin
16 Michael J. Gearin, WSBA #20982
17 David C. Neu, WSBA #33143
18 Brian T. Peterson, WSBA #42088
19 Attorneys for Mark Calvert, Chapter 11 Trustee
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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 April 27, 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 27th day of April, 2016 at Seattle, Washington.

/s/ Denise A. Evans
Denise A. Evans