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Honorable Christopher M. Alston  
Chapter 11  
Hearing Location: Rm 7206  
Hearing Date: Friday, July 6, 2018  
Hearing Time: 9:30 a.m.  
Response Date: July 2, 2018

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

9 In re:

Case No. 16-11767-CMA

10 NORTHWEST TERRITORIAL MINT,  
11 LLC,

TRUSTEE'S RESPONSE TO  
INTERESTED PARTIES' MOTION TO  
ENFORCE A PRIOR COURT ORDER

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13 Mark Calvert, Trustee (the "Trustee") for the Northwest Territorial Mint, LLC ("NWTM")  
14 and Medallion Art Company, LLC, in the above-captioned proceeding, by and through his attorneys,  
15 K&L Gates LLP, responds to Interest Parties' Motion to Enforce a Prior Court Order (the "Motion to  
16 Enforce") as follows:

17 **I. BACKGROUND FACTS**

18 A. The Die Settlement Motion.

19 On March 30, 2018, the Trustee filed his Motion to Approve (I) Deadline to Assert Claims  
20 with Respect to Ownership of NWTM Coining Dies; and (II) Settlement Protocol to Resolve Claims  
21 to Ownership of NWTM Dies (the "Die Settlement Motion"). After several hearings, the Court  
22 approved, on May 21, 2018, an order (the "Die Ownership Order") authorizing the Trustee to settle  
23 disputes over ownership of dies created by NWTM ("NWTM Dies") and approving a form of notice  
24 to NWTM customers (the "Die Settlement Notice"). Both the Die Ownership Order and the Die  
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1 Settlement Notice were the product of extensive negotiations between the Trustee and the Interested  
2 Parties which have filed the Motion to Enforce.

3 At the hearings on the Die Settlement Motion, the Court expressed concern about potential  
4 confusion that might be created by the process proposed by the Trustee, and directed the Trustee to  
5 work with counsel for the Interested Parties to come up with a form of notice. The Court also  
6 proposed modifications of its own which it believed would make the Die Settlement Notice more  
7 effective.

8 Ultimately, the Court approved a Notice, which read, with respect to the issue of ownership,  
9 as follows:

10 PLEASE TAKE FURTHER NOTICE that based upon his investigation of the records of  
11 NWTM and the historical business practices of the business, the Trustee believes that with  
12 limited exceptions, NWTM retained ownership of all NWTM Dies created to produce coins,  
13 medallions, or other products for customers. The Trustee understands that some NWTM  
14 customers may assert ownership of a NWTM Die.

15 The above unambiguous language, regarding ownership, was proposed by the Trustee in the original  
16 form of notice he submitted to the Court for approval. Dkt No. 1561. In the form of Die Settlement  
17 Notice ultimately approved by the Court, additional language was added that made it even more  
18 clear that the ownership of dies was not a resolved matter: "PLEASE TAKE FURTHER NOTICE  
19 that the United States Bankruptcy Court has authorized the Trustee to settle customer claims of an  
20 interest in or ownership of a NWTM Die and to transfer dies, galvanos and associated artwork to  
21 customers in connection with any such settlements." The Trustee did not request, in the Die  
22 Settlement Motion, that the Court make a determination as to ownership of NWTM Dies. In fact,  
23 the very premise of the Die Settlement Motion was that because of the inconsistent documentation  
24 and statements provided by NWTM to customers, there was no economically feasible method to  
25 determine ownership of the NWTM dies, hence the request for authority to settle.  
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1           B.       Mailing and Publication of the Notice.

2           Shortly after the form of the Die Settlement Notice was approved by the Court, the Die  
3 Settlement Notice was mailed to all of the NWTM customers in the NWTM database for whose  
4 orders dies had been created. The total number of customer addresses to which the Die Settlement  
5 Notice was mailed was 5,629. Attached to the Declaration of Denise Lentz (the “Lentz Decl.”) is a  
6 copy of the Die Settlement Notice which was mailed. Shortly thereafter, on June 4th and 5th, 2018,  
7 the Die Settlement Notice together with a cover email detailing an error in the original notice<sup>1</sup>, was  
8 emailed to all of the email addresses in the same customer database. The total number of email  
9 addresses to which the Die Settlement Notice was sent was 8,408.<sup>2</sup> Lentz Decl., Exhibit B. The Die  
10 Settlement Notice was also published in Coin World’s weekly magazine for three consecutive  
11 weeks. Lentz Decl., Exhibit C.

12           In sum, the Die Settlement Notice, which was unambiguous about the fact that ownership of  
13 NWTM dies was not settled, was mailed or emailed to over 13,000 addresses, and likely viewed  
14 thousands of time more by Coin World subscribers. In addition, the Die Settlement Notice, in the  
15 form approved by the Court was posted on NWTM’s websites at <http://existingbullionorders.com>  
16 and <http://www.nwtmint.com>.

17           C.       Processing of Customer Contacts and the Erroneous Email.

18           As the Court is aware, NWTM customers were provided with numerous avenues for  
19 contacting NWTM to assert ownership of a NWTM die. A web site was established through which  
20 customers could submit assertions of ownership and documents, customers were also able to contact  
21 the Trustee in writing through Denise Lentz, a paralegal at K&L Gates LLP. Other customers, who  
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<sup>1</sup> The numbering system for NWTM dies and Medallic dies was incorrectly described.

25 <sup>2</sup> In instances where more than one employee of a customer placed an order at NWTM, NWTM’s  
26 database might have multiple email addresses for the same customer entity.

1 had prior contact with the Trustee's counsel, reached out directly to Ms. Lentz either by telephone or  
2 email.

3 One of the few remaining employees of NWTM, Jenifer Baker, was charged with processing  
4 the information received from customers, a time-consuming exercise which required locating dies,  
5 reviewing paperwork (either provided by the customer or in NWTM's system) to make a  
6 determination of whether there was documentary evidence that indicated a customer owned a die or  
7 that NWTM owned the die, taking payment for settlement or cost of shipping, answering customer  
8 questions, and arranging shipping of NWTM Dies. Because of the amount of labor involved and the  
9 number of customer contacts<sup>3</sup>, Ms. Baker was not able to respond to all customers immediately, and  
10 sent out an email to some of the customers in the form that was attached to Gordon Sletmoe's  
11 declaration. The email contained two significant pieces of misinformation. First, it inaccurately  
12 stated that the Court had determined NWTM owned the NWTM dies, when, in fact, the Court had  
13 made no such determination. Secondly, it erroneously stated that the Court had approved a  
14 settlement of \$300/die, when the Court had merely authorized the Trustee to settle on agreeable  
15 terms.

16 As is explained in Ms. Baker's declaration, the wording of the email was not directed by the  
17 Trustee or any other employee of NWTM, but on her misunderstanding of the facts regarding what  
18 the Court had determined, and the Trustee's opening settlement proposal of \$300/die (a figure that is  
19 subject to negotiation and within the discretion provided by the Court). In total, the erroneous email  
20 was sent out to 74 customers, one of which was Gordon Sletmoe. The Trustee was unaware that an  
21 email with this incorrect information had been sent out and, upon reading the Interested Parties'  
22 motion (of which he was provided no advanced notice), took immediate action to correct the  
23 information that had been provided to these 74 people. On June 20, 2018, Ms. Baker sent the email  
24 attached to her declaration as Exhibit A, at the Trustee's direction, to all of the 74 customers. Of the  
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26 <sup>3</sup> Ms. Baker received 167 inquiries in the first week.

1 74 parties that received the erroneous email, 11 settled with the Trustee prior to receiving the  
2 correction. Concerned that the settlements might have been premised on the misinformation, the  
3 Trustee refunded the settlement payments made by these parties and allowed them to retain the dies  
4 which had been delivered to them under the settlements.

5 D. Settlement and Return of Dies.

6 Contrary to assertions that the Trustee is attempting to profit from dies owned by customers,  
7 the Die Settlement Motion was prompted by a desire to identify and segregate the NWTM dies from  
8 the customer-owned dies, and settle disputes as to any dies to which there was contested ownership.  
9 The results of the effort illustrate that the Trustee has not attempted to profit from this exercise. To  
10 date, other than the 11 parties detailed above, the Trustee has settled disputed ownership of 29 dies  
11 with 13 customers, inclusive of the 11 whose settlement payment was refunded. The Trustee has,  
12 based on the evidence provided to him, agreed with 67 customers who have asserted ownership, and  
13 shipped 203 dies for no charge other than \$45 for shipping to those customers. The Trustee provided  
14 53 dies to 10 customers for no charge, using the customer's shipping account. There are an  
15 additional 31 customers for whom the Trustee has agreed to return 141 dies, but whose dies have not  
16 yet been pulled and shipped. Several customers requested that dies be transferred to Medalcraft  
17 Mint so that they could place new orders and the Trustee has complied with these requests. One  
18 customer has made a counter-offer which the Trustee is considering. Some customers who  
19 originally made contact have indicated they are no longer interested in the dies. In total, as of June  
20 29, 2018, Ms. Baker has responded to 370 contacts. As detailed above, the claims of 137 customers  
21 have been resolved. There are 11 emails to which Ms. Baker still needs to respond.

22 In sum, as of June 29, 2018, of the claims of ownership that have been resolved, the Trustee  
23 has agreed with 79% of the customers that they own the dies, and only charged cost of shipping or  
24 returned dies using the customer's shipping account. In other words, the process of settling  
25 ownership of dies has not been, and is not, a profit-generating exercise. It is a process of identifying  
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1 and resolving which dies belong to customers, and which belong to the estate, which can either than  
2 be sold or scrapped - something which the Trustee could not accomplish without going through this  
3 exercise.

## 4 **II. EVIDENCE RELIED UPON**

5 This Response relies on the declarations of Denise Lentz, Jenifer Baker, and Mark Calvert,  
6 and the accompanying exhibits.

## 7 **III. ARGUMENT**

8 The Trustee is cognizant of the optics of the erroneous email, and the concern it presumably  
9 caused the Interested Parties. That said, the email was the product of an unfortunate, albeit  
10 avoidable, error, not an effort by the Trustee or any NWTM employees to mislead customers.  
11 Simply put, it was a mistake. Once the error was discovered, it was immediately corrected, and the  
12 Trustee took every step to mitigate any impact, including sending a corrective email and refunding  
13 the settlement payments made by customers whose settlement might have been predicated on  
14 misinformation.

15 The implication raised by the Interested Parties that the Trustee was seeking to mislead  
16 customers is belied by the fact that clear, unambiguous, notice that ownership issues were not  
17 resolved was mailed to customers, emailed to customers, published, and posted on NWTM's  
18 websites. Each of the recipients of the erroneous email had previously received accurate information  
19 in the form of the Die Settlement Notice, meaning that there would have been no reason or incentive  
20 for the Trustee to intentionally provide them with contradictory information.

21 The Interested Parties ask the Court to compel the Trustee to correct the erroneous email, a  
22 step which the Trustee has already taken, and to take other unspecified actions including requiring  
23 the Trustee to forfeit "any profit" from the erroneous email. As detailed above, the email was sent to  
24 11 creditors that settled, and concerned that the email might have factored into the settlement, the  
25 Trustee refunded their settlement payments. There is no action that the Court needs to compel the  
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1 Trustee to take, in that the error was inadvertent, corrected, and any potential impact was mitigated.  
2 At this point, there is no further action that the Trustee could take that has not already been taken.

3 There is also no reason for the Court to award “as a sanction” legal fees to the counsel for the  
4 Interested Parties. When the email to Gordon Sletmoe was brought to their attention, counsel for the  
5 Interested Parties knew there were two possible explanations for the email - either it was a mistake  
6 or the Trustee was intentionally trying to defraud customers. The Trustee has worked for months  
7 hand-in-hand with the Interested Parties and their counsel to try and address their concerns with the  
8 settlement process and notices. Importantly, Mr. Sletmoe and the other Interested Parties could not  
9 possibly have been deceived by the erroneous email as they were part of the extensive negotiations  
10 regarding the settlement process and notice, had received the correct notices regarding the die  
11 settlement protocol and are represented by counsel who is fully aware that die ownership has not  
12 been adjudicated and that no settlement amount was approved by the Court. Despite these facts, and  
13 without either contacting the Trustee or his counsel to ask for an explanation for what was clearly a  
14 mistake, the Interested Parties took it upon themselves to file the Motion to Enforce and ask  
15 questions later.

16 The Court’s authority to impose sanctions under 11 U.S.C. §105(a) is discretionary. *In re*  
17 *Nash*, 464 B.R. 874, 878 (9th Cir. BAP 2012). A court may impose civil contempt sanctions to (1)  
18 compel or coerce obedience to a court order, and/or (2) compensate the contemnor's adversary for  
19 injuries resulting from the contemnor's noncompliance. *Ahearn ex rel. N.L.R.B. v. International*  
20 *Longshore and Warehouse Union, Locals 21 and 4*, 721 F.3d 1122, 1125 (9th Cir., 2013). Here, the  
21 Court does not need to impose sanctions. As an initial matter, the Trustee has corrected the  
22 unfortunate error and taken steps to insure that there is no misunderstanding regarding the fact that  
23 there has been no determination of ownership and that the Court did not approve a settlement  
24 amount. Accordingly there is no need for sanctions to compel obedience to a court order.

25 Second, the Interested Parties were not injured by the Trustee’s actions. There is literally no  
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1 chance that any of the Interested Parties were misled, in that they were active participants in  
2 negotiating the language of the Die Settlement Notice and the Die Order. They knew, for a fact, that  
3 the email was inaccurate and that the Court had not made a determination of ownership. They also  
4 knew, for a fact, that the Court had not approved a settlement amount, but merely gave the Trustee  
5 the authority to settle. Moreover, the erroneous email was only sent to one of the Interested Parties -  
6 Gordon Sletmoe, who had not settled with the Trustee. In fact, none of the Interested Parties have  
7 settled, although the Trustee had already returned dies, for cost of shipping only, to one of the  
8 Interested Parties, Grove Mint, acknowledging its ownership interest in the dies. The Interested  
9 Parties knew or should have known the email was an unintentional mistake, yet filed the Motion to  
10 Enforce without making any effort to contact the Trustee or his counsel first. Had they done so, the  
11 issue would have been resolved without the need for a motion.

## 12 V. CONCLUSION

13 It goes without saying that the Trustee regrets that the erroneous email was sent. As  
14 evidenced by the extensive dissemination of the Die Settlement Notice, and the Trustee's agreement  
15 to return the majority of dies subject to customer inquiries for cost of shipping, it was never the  
16 Trustee's intention to mislead customers or defraud them for the purposes of profit. The email was  
17 an unfortunate error, but the Trustee took steps to ensure the error was corrected, and that any  
18 settlement funds that potentially were derived from the miscommunication were returned. Under the  
19 circumstances, there is no reason for the Court to take further action, nor to award sanctions to the  
20 Interested Parties.

21 DATED this 29th day of June, 2018.

22 K&L GATES LLP

23 By /s/ David C. Neu

24 Michael J. Gearin, WSBA #20982

25 David C. Neu, WSBA #33143

26 Brian T. Peterson, WSBA #42088

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 June 29, 2018, 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 29th day of June, 2018 at Seattle, Washington.

/s/ Denise A. Lentz  
Denise A. Lentz