

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

Honorable Christopher M. Alston
Chapter 11
Hearing Location: Seattle, Rm. 7206
Hearing Date: Friday, February 1, 2019
Hearing Time: 11:00 a.m.
Response Date: January 25, 2019

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

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

Case No. 16-11767-CMA
CONSOLIDATED SUPPLEMENTAL
REPLY IN SUPPORT OF FEE
APPLICATIONS OF TRUSTEE AND
TRUSTEE'S PROFESSIONALS

14 **I. REPLY**

15 The Chapter 11 Trustee for Northwest Territorial Mint, LLC (the "Trustee"); Cascade
16 Capital Group, LLC ("Cascade") accountants for the Trustee; and K&L Gates LLP ("K&L Gates"),
17 counsel for the Trustee, hereby submit this combined Supplemental Reply in support of their
18 respective applications for compensation (the "Trustee Professionals' Applications") in advance of
19 the continued hearing on the Trustee Professionals' Applications. This supplemental reply addresses
20 responses filed after the initial hearing. In support thereof, the Trustee, Cascade, and K&L Gates
21 (collectively, the "Trustee Professionals") respectfully state as follows:

22 **A. Generic Creditor Submissions.**

23 There are approximately twenty-three generic objections and responses filed by creditors in
24 connection with the Trustee Professionals' Applications.¹ The theme of these objections is that the

25 ¹ The Trustee's counsel has also received a few emails and letters from creditors which express these
26 same generic objections but which do not appear to have been filed.

1 creditors have suffered losses and that the professionals should not be paid unless unsecured
2 creditors and “victims” are paid first. Creditors express frustration and anger that they will not
3 receive a dividend in this case.

4 The Trustee and the professionals share the frustration of creditors that there will be no return
5 to unsecured creditors in this case. But, the Trustee and his professionals made every effort to
6 preserve and protect the business assets of the estate, reorganize the debtor’s business and generate a
7 return to unsecured creditors. The Trustee operated the debtor’s business for twenty-one months,
8 paid all postpetition operating expenses, and resolved and paid virtually all the secured and
9 administrative claims in the case.² The Trustee liquidated the assets of the estate through a difficult
10 and labor intensive process including multiple court approved sales of significant asset packages of
11 the estate. Absent the efforts of the Trustee and the professionals, there would be no proceeds in the
12 estate and there would have been no resources to satisfy all the claims of secured and administrative
13 priority creditors who have already been paid.

14 Many of the generic objections appear to have been filed due to the solicitation of creditor
15 responses by Joshua Gibbons, a blogger who has made a habit of spreading false and unsupported
16 speculation about this case online. The false accusations and speculation spread by Mr. Gibbons
17 stoke unwarranted creditor fear and outrage with regard to the efforts of the professionals in this
18 case. Mr. Gibbons has previously filed materials with the Court including a letter in advance of the
19 initial fee application hearing. Mr. Gibbons is not a creditor or party in interest of the estate, and
20 lacks standing as he has no pecuniary interest in the case. At the initial hearing on the Trustee
21 Professionals’ Applications, the Court found that Mr. Gibbons lacked standing and ruled that it

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24 ² The Trustee has administered the payment of more than \$30 million in ordinary business expenses
25 and payments to creditors during the case. The Trustee has fully paid all secured creditors and has
26 paid all allowed administrative claims other than two claims which have been paid a forty percent
dividend and have an unpaid balance totaling less than \$10,000.

1 would not consider Mr. Gibbons submissions. Subsequently, Mr. Gibbons has solicited creditors to
2 file objections to the fee applications. *See* Declaration of Mark Calvert in support of this
3 Supplemental Reply (“Supplemental Calvert Declaration”). In his solicitations to creditors, Gibbons
4 alleges, based upon his sheer speculation, that there has been fraudulent diversion of assets from the
5 bankruptcy estate, and asks individuals to “**please take action.**” Numerous generic creditor letters
6 submitted to this Court appear to be the result of Mr. Gibbons peddling his unfounded conspiracy
7 theories. His untruthful speculations have made an already difficult case even more difficult for the
8 creditors.

9 The Trustee and the professionals are not receiving a windfall. The services of the Trustee
10 and his Professionals were necessary and beneficial to the estate because, at the time they were
11 rendered, they were “reasonably likely to benefit the estate.” *In re Kohl*, 421 B.R. 115, 125 (Bankr.
12 S.D.N.Y. 2009). The generic responses of creditors articulate no legal basis for the disallowance of
13 any portion of the Trustee Professionals’ requested fees, and they do not controvert the evidence that
14 the Trustee Professionals provide in support of their applications. Instead, the creditors seek to have
15 the Court apply a “results achieved” standard, arguing that fees should be disallowed because there
16 will be no return to unsecured creditors.

17 **B. Bill Atalla Objection.**

18 Bill Atalla is no longer a creditor in this case, and does not have standing to interpose any
19 objection to the Trustee Professionals’ Applications. The Court will recall that Mr. Atalla filed a
20 motion to compel the payment of his severance and other compensation claims in the case, and the
21 Court approved a settlement fully resolving all of Atalla’s claims. He has been fully paid and has no
22 claims against the estate. On that basis alone, his submission should be stricken.

23 To the extent the Court is inclined to consider the Atalla declaration, Atalla’s allegations that
24 the Trustee did not respond to his purchase offers are not true. Mr. Atalla may not have liked the
25 Trustee’s responses, but the Trustee did provide responses to his inquiries in writing through
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1 counsel. *See* Supplemental Calvert Declaration. There is no existing agreement between the Trustee
2 and Mr. Wagner to sell store inventory of the Debtor on a consignment basis. The Trustee explored
3 the possibility of entering into an agreement with Mr. Wagner but he never finalized such
4 agreement. On January 24, 2019, Mr. Wagner sent the Trustee a letter withdrawing his interest in
5 selling such assets on a consignment basis, in part, because of false allegations being propounded by
6 the Pehls, Atalla, and Joshua Gibbons. That letter is attached to the Supplemental Calvert
7 Declaration.

8 The Trustee continues to investigate avenues for the liquidation of the remaining assets of the
9 estate including the store inventory. The Trustee has no interest in consigning assets with Mr.
10 Atalla. The estate has already contracted for services with Mr. Atalla once in this case and Mr. Atalla
11 spectacularly failed to perform under that agreement. Mr. Atalla has no current business and no
12 ability to perform on a contract to liquidate store inventory. Mr. Atalla is free to make an all cash
13 offer to purchase the store inventory. The Trustee continues to explore alternatives to maximize the
14 remaining value in the estate including the store inventory.

15 Mr. Atalla also speculates that Sierra Mint has been profiting from NWTM assets because
16 the customer service number for the NWTM Amazon seller account is a Sierra Mint number. Based
17 on this fact, Atalla concludes that revenues from the Amazon account are being diverted to Sierra
18 Mint's accounts. This is patently false. Atalla asserts that the Amazon revenues are not recorded in
19 the Trustee's operating reports. But the Amazon revenues are so reflected. *See, e.g.*, MOR of
20 October, 2018 UST-14 Statement of Cash Receipts Detail Exhibit 3.1 reflecting receipt of "Amazon
21 Collections" on October 9, 2018 and October 22, 2019. Mr. Wagner has not received any of the
22 revenues from Amazon sales. Revenues from the Amazon seller account are deposited directly into
23 NWTM bank accounts. Mr. Wagner, who operates Sierra Mint, handled customer inquiries on that
24 account while he was an employee of the Mint. He continued to do so, without compensation, when
25 he left NWTM and began operating Sierra Mint. As there are no NWTM employees left to respond
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1 to customer questions the Sierra Mint phone number is reflected on the Amazon account. *See*
2 Supplemental Calvert Declaration.

3 **C. Paula Pehl’s Objection.**

4 Ms. Pehl has filed a “Response to the motions for payment of professional fees.” The Pehl
5 response is a renewal of prior letters submitted to the Court which the Trustee addressed in his
6 supplemental submissions filed on January 18, 2019. The Pehls do repeat the wild and unsupported
7 conspiracy theory that the Trustee spun off a profitable China die operation from the estate and
8 vested Mr. Wagner with control over that business in order to divert the profits from that business
9 from the estate. These allegations are patently false. Pehl bases her conclusion on an exhibit she
10 procured from materials the Trustee presented to the Committee in confidence. That exhibit, which
11 is entitled “Snap Shot of March Accomplishments and April Priorities”, was prepared by Mr. Atalla,
12 and contains the following sentence: “Separated the stock business as a micro business, a customer
13 of the Mint.” Based on that sentence, which was prepared by Mr. Atalla and presented to the
14 Committee, Ms. Pehl draws the conclusion that the Trustee is engaged in a conspiracy to divert
15 assets of the estate. This is the evidence that the Trustee “spun-off” the store business in an effort to
16 defraud creditors? This sentence in the Atalla materials refers to the Trustee’s efforts to evaluate the
17 profitability of certain aspects of the Debtor’s business on an accounting basis. The Trustee never
18 “spun off” the stock sales aspects of the business and never diverted any business lines of NWTM to
19 Paul Wagner or Sierra Mint. The Pehls’ prior false allegations regarding the “China business” were
20 addressed in the materials filed with the Court in November, 2018 in response to the Court’s letter
21 dated November 6, 2018.

22 The Pehls also revisit discussions regarding Trustee’s counsel’s communications with
23 members of the Committee and state that they never consented to having Mr. Northrup grant
24 permission to speak with committee members. But as is fully detailed in the Declaration of Michael
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1 Gearin in Support of the Fee Applications (Dkt. 1980), Mr. Northrup did grant permission for such
2 communications with committee members.

3 **D. Bill Hanson’s Additional Response.**

4 Bill Hanson files an additional response in which he asserts that the letter he presented to Mr.
5 Northrup in March, 2017 demanding that the Trustee be replaced was not drafted by Ross Hansen.
6 He equivocates by stating that the original letter he filed with the Court was a draft that contained
7 “contributions” from Ross Hansen. In fact Bill Hanson produced copies of his emails with Ross
8 Hansen to the Trustee’s counsel. Those emails confirm that on February 16, 2017 Ross Hansen sent
9 Bill Hanson an email:

10 “Bill, May I suggest a letter like this?”

11 To which Bill Hanson replied as follows:

12 “I tried to do a little editing and could not.”

13 A copy of this email is attached to the Gearin Declaration in support of this reply. On March 13,
14 2017, Bill Hanson emailed Mark Northrup a letter that was in substance the same as the letter Bill
15 Hanson admits was the Ross Hansen draft.

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II. CONCLUSION

The additional objections and responses filed since the initial hearing on the fee applications do not raise any legitimate basis for reduction or disallowance of the applications. The Trustee and his professionals have borne a heavy burden of the administration of this extraordinary complicated and difficult case. The professionals deserve to be fairly compensated for those services in accordance with the provisions of the Bankruptcy Code.

DATED this 29th day of January, 2019.

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

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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 January 29, 2019, 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 January, 2019 at Seattle, Washington.

/s/ Denise A. Lentz
Denise A. Lentz