1 2	Michael J. Gearin, WSBA # 20982 David C. Neu, WSBA #33143 Brian T. Peterson, WSBA #42088	Honorable Christopher M. Alston Chapter 11
	K&L GATES LLP 925 Fourth Avenue, Suite 2900	
3	Seattle, WA 98104-1158	
4	(206) 623-7580	
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6		
7 8	UNITED STATES BAN WESTERN DISTRICT	OF WASHINGTON
9	AT SEA'	TTLE
10	In re:	Case No. 16-11767-CMA
	NORTHWEST TERRITORIAL MINT, LLC	
11	Debtor.	
12		
13	MARK CALVERT, as Chapter 11 Trustee of	
14	NORTHWEST TERRITORIAL MINT, LLC	Adv. Proc. No.
15	Plaintiff,	
16	V.	COMPLAINT TO AVOID AND RECOVER FRAUDULENT
17	DIANE ERDMAN, an individual,	TRANSFERS AND FOR TURNOVER OF ESTATE PROPERTY
18	Defendant.	
19		
20	Mark Calvert, as Chapter 11 Trustee (the "Tr	ustee") of Northwest Territorial Mint LLC
21	("NWTM" or "Debtor") by and through counsel of i	
22		_
23	Diane Erdmann ("Erdmann" or "Defendant") allege	s and avers as follows:
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	COMPLAINT TO AVOID AND RECOVER FRAUDULENT TRANSFERS - 1	K&L GATES LLP 925 FOURTH AVENUE, SUITE 2900 SEATTLE, WASHINGTON 98104-1158
	K:\2070561\00001\20347_DCN\20347P28N9	TELEPHONE: (206) 623-7580 FACSIMILE: (206) 623-7022
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I. NATURE OF THE ADVERSARY PROCEEDING

1. On April 1, 2016, the Debtor commenced this case by filing a voluntary petition under chapter 11 of the United States Bankruptcy Code. On April 5, 2016, the Debtor moved for the appointment of a chief restructuring officer. Dkt. No. 12. The following day, creditors Bradley Cohen and Cohen Asset Management, Inc., responded to the Debtor's motion and requested that the Court order the appointment of a chapter 11 trustee. *See* Dkt. No. 18. The United States Trustee also requested that the Court order the appointment of a chapter 11 trustee. *See* Dkt. No. 24. A hearing was held on April 7, 2016, at which time the Court ruled that it would appoint a chapter 11 trustee over the Debtor. On April 11, 2016, the Court entered an order appointing Mark Calvert as chapter 11 Trustee. *See* Dkt. No. 51.

Plaintiff brings this adversary proceeding pursuant to §§ 105(a), 502(b) and (d), 542, 544(b), 548, 550(a), 551, and 1107 of the Bankruptcy Code; the Uniform Fraudulent Transfer Act, RCW 19.40.011 et seq.; and other applicable laws, to set aside and recover certain fraudulent transfers made to Defendant and preserve said property for the benefit of NWTM.

II. PARTIES

Plaintiff is the Chapter 11 Trustee of NWTM.

4. Diane Erdmann is an individual. Diane Erdmann is a transferee of fraudulent conveyances made by NWTM and/or is an individual for whose benefit such transfers were made.

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III. JURISDICTION AND VENUE

5. 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 Bankruptcy Code and are related to a case pending under the Bankruptcy Code in the Bankruptcy Code in

6. On information and belief, Defendant is subject to the jurisdiction of this Court by virtue of her contacts with the United States.

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7. Core proceedings include proceedings to determine, avoid, or recover fraudulent conveyances and proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims. 28 U.S.C. § 157(b)(2)(H), (O). This adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157 because it arises in or under the Debtor's Chapter 11 case and is a proceeding to determine, avoid, or recover fraudulent conveyances and it affects the liquidation of the assets of the estate. Regardless of whether this is a core proceeding, or if it is one that, although core, may not be adjudicated without consent to final judgment by a bankruptcy court, the Trustee consents to the entry of final orders and judgment by the Bankruptcy Court. Defendant is notified that Rule 7008(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") requires Defendant to plead whether this proceeding is core or non-core and, if non-core, whether consent is given to the entry of final orders and judgment by the Bankruptcy Court. Defendant shall also indicate whether he consents to entry of final orders or judgment by the Bankruptcy Court if this proceeding is one that, although core, may not be adjudicated without consent to final judgment by a bankruptcy court.

 Pursuant to 28 U.S.C. § 1409(a), venue of this adversary proceeding in the Bankruptcy Court in the Western District of Washington is proper because NWTM's bankruptcy case is pending in this district.

IV. FACTUAL ALLEGATIONS

9. At the time of its bankruptcy filing, NWTM billed itself as the largest private mint in the United States. As of April 1, 2016 it had approximately 240 employees located at facilities in six states. NWTM's business operations included custom minting of medals and commemorative coins as well as on-line and walk-in sales of precious metals and coins. Despite its size, and the breadth of its business, all facets of its operations were exclusively controlled by Ross Hansen, its 100% owner. Ross Hansen oversaw every aspect of NWTM's operations, and notwithstanding organization charts

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 showing different levels of management, every employee effectively reported directly to Ross Hansen.

10. Diane Erdman is the *de facto* wife of Ross B. Hansen ("Hansen"), the sole member of NWTM. Diane Erdmann and Ross Hansen have lived together since at least 2002.

11. Since at least 2007, Diane Erdmann maintained, in her personal name, an American Express Platinum Card account (the "Amex Account").

12. The Amex Account was used by Diane Erdmann to purchase goods and services for her personal benefit.

13. Between January, 2007, and April, 2016, Diane Erdmann used the Amex Account to purchase both business and personal items. Total charges on the Amex Account over this period exceed \$12.4 million, of which over \$1 million were for non-business purposes, including, but not limited to groceries, eBay purchases, clothing, travel and entertainment, and sporting goods.

14. During the period relevant to the claims asserted herein, NWTM paid all of the bills related to the Amex Account, including the charges arising from the purchase of goods and services that were for the benefit of Diane Erdmann (the "Erdmann Payment Transfers"). As a result of the charges on the Amex Account, which NWTM paid for, Dianne Erdmann was awarded millions of AMEX Membership Reward Points (the "Reward Points"), which can be redeemed for travel and shopping (the "Rewards Transfers" and together with the Erdmann Payment Transfers, the "Erdmann Transfers").

V. FIRST CAUSE OF ACTION Action to Avoid Intentionally Fraudulent Transfers of Money and Other Property and Preserve Same for the Benefit of the Estate Pursuant to RCW 19.40.041(a)(1) and 19.40.071, and Bankruptcy Code §§ 544(b), 548, 550(a), and 551

15. The Trustee repeats and realleges each and every allegation contained in paragraphs 1 through 14 as if fully set forth herein at length.

COMPLAINT TO AVOID AND RECOVER FRAUDULENT TRANSFERS - 4 K:\2070561\00001\20347_DCN\20347P28N9 K&L GATES LLP 925 FOURTH AVENUE, SUITE 2900 SEATTLE, WASHINGTON 98104-1158 TELEPHONE: (206) 623-7580 FACSIMILE: (206) 623-7502

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1	1 16. At all relevant times there were one or more credit	ors of NWTM who held and now	
2	² hold unsecured claims against the NWTM that were and are allow	vable under Bankruptcy Code § 502	
3	or that were and are not allowable only under Bankruptcy Code § 502(e).		
4	4 17. The Erdmann Transfers were made with the actual	intent to hinder, delay, or defraud	
5	⁵ creditors of NWTM.		
6	18. As a result of the foregoing, pursuant to RCW 19.4	40.041(a)(1) and 19.40.071 and	
7	Bankruptcy Code \S 544(b), 548, 550(a), and 551, the Trustee is	entitled to a judgment: (a) avoiding	
8	⁸ and preserving the Erdmann Transfers, (b) directing that the Erdn	nann Transfers be set aside, and (c)	
9	9 recovering the Erdmann Transfers from Defendant for the benefi	t of the Meridian Investors Trust.	
10	VI. SECOND CAUSE OF AC		
11	11 Action to Avoid Constructively Fraudulent Transfers of M Same for the Benefit of the Estate Pursuant to RCW 19.40.		
12	12 RCW 19.40.071, and Bankruptcy Code §§ 544,	548, 550(a), and 551	
13	1319.The Trustee repeats and realleges each and every a	llegation contained in paragraphs 1	
14	14 through 18 above as if fully set forth herein at length.		
15	15 20. At all relevant times there were one or more credit	ors of NWTM who held and now	
16	16 hold unsecured claims against NWTM that were and are allowabl	e under Bankruptcy Code § 502 or	
17	17 that were and are not allowable only under Bankruptcy Code § 50)2(e).	
18	18 21. NWTM did not receive value in exchange for the l	Erdmann Transfers.	
19	19 22. NWTM was insolvent at the time it made the Erdn	nann Transfers or, in the	
20	alternative, NWTM became insolvent as a result of the Erdmann	Transfers.	
21	21 23. At the time NWTM made the Erdmann Transfers,	NWTM was engaged in or was	
22	about to engage in a business or transaction for which the propert	y remaining in its hands after the	
23	23 Erdmann Transfers was an unreasonably small capital.		
24	24		
25	25		
	COMPLAINT TO AVOID AND RECOVER FRAUDULENT TRANSFERS - 5	K&L GATES LLP 925 FOURTH AVENUE, SUITE 2900 SEATTLE, WASHINGTON 98104-1158	
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1	24. At the time NWTM made the Erdmann Transfers, NWTM had incurred, was
2	intending to incur, or believed that it would incur debts beyond its ability to pay as the debts
3	matured.
4	25. As a result of the foregoing, pursuant to RCW 19.40.041(a)(2), RCW 19.40.051(a),
5	and RCW 19.40.071 and Bankruptcy Code §§ 544(b), 548, 550 and 551, the Trustee is entitled to a
6	judgment: (a) avoiding and preserving the portion of the Erdmann Transfers, (b) directing that the
7	Erdmann Transfers be set aside, and (c) recovering the Erdmann Transfers from Defendant for the
8	benefit of NWTM.
9	VII. THIRD CAUSE OF ACTION
10 11	Action to Recover the Erdmann Transfers under Principles of Unjust Enrichment and Restitution
11	26. The Trustee repeats and realleges each and every allegation contained in paragraphs 1
12	through 25 above as if fully set forth herein at length.
13	27. At the time NWTM made the Erdmann Transfers, NWTM was engaged or was about
15	to engage in a business or transaction for which the property remaining in its hands after each of the
16	Erdmann Transfers was an unreasonably small capital.
10	28. Under such circumstances, retention of the Erdmann Transfers would constitute
18	unjust enrichment and NWTM is entitled to restitution of the full amount of the Erdmann Transfers
19	to the Defendant, plus interest.
20	VIII. FOURTH CAUSE OF ACTION
20	Imposition of constructive trust
21	29. The Trustee repeats and realleges each and every allegation contained in paragraphs 1
22	through 28 above as if fully set forth herein at length.
23	30. The Court should establish a constructive trust over the Reward Points for the benefit
25	of the bankruptcy estate of NWTM.
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	COMPLAINT TO AVOID AND RECOVER FRAUDULENT TRANSFERS - 6 Kearage (200) 623-7580 FELEPHONE: (200) 623-7580 FELEPHONE: (200) 623-7580 FELEPHONE: (200) 623-7580
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1	IX. FIFTH CAUSE OF ACTION	
2	Turnover	
3	31. The Trustee repeats and realleges each and every allegation contained in paragraphs 1	
4	through 30 above as if fully set forth herein at length.	
5	32. The Reward Points are property of the bankruptcy estate pursuant to 11 U.S.C. §541.	
6	33. Pursuant to 11 U.S.C. §542, any person in possession, custody, or control of property	
7	of the estate must turnover such property to the Trustee.	
8	X. PRAYER FOR RELIEF	
9	WHEREFORE, the Trustee respectfully requests that this Court enter an order and	
10	judgment in favor of the Trustee and against the Defendant as follows:	
11	1. On the First Cause of Action, pursuant to RCW 19.40.041(a)(1) and 19.40.071, and	
12	Bankruptcy Code §§ 544(b), 548, 550(a), and 551, (a) avoiding and preserving the Erdmann	
13	Transfers, (b) directing that the Erdmann Transfers be set aside, and (c) recovering the Erdmann	
14	Transfers, or the value thereof, from Defendant for the benefit of NWTM;	
15	2. On the Second Cause of Action, pursuant to RCW 19.40.041(a)(2), RCW	
16	19.40.051(a), and 19.40.071, and Bankruptcy Code §§ 544(b), 548, 550, and 551, (a) avoiding and	
17	preserving the Erdmann Transfers, (b) directing that the Erdmann Transfers be set aside, and (c)	
18	recovering the Erdmann Transfers, or the value thereof, from Defendant for the benefit of NWTM;	
19	3. On the Third Cause of Action, recovery of the Erdmann Transfers, or the value	
20	thereof, from Defendant for the benefit of NWTM;	
21	4. On the Fourth Cause of Action, imposition of a constructive trust, for the benefit of	
22	the estate, over the Reward Points.	
23	5. On the Fifth Cause of Action, an order directing Defendant to immediately turnover	
24	the Reward Points to the Trustee.	
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	COMPLAINT TO AVOID AND RECOVER FRAUDULENTK&L GATES LLPTRANSFERS - 7925 FOURTH AVENUE, SUITE 2900K:\2070561\000001\20347_DCN\20347P28N9SEATTLE, WASHINGTON 98104-1158 TELEPHONE: (2006) 623-7580 FACSIMILE: (206) 623-7022	

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1	5. On all Causes of Action, awarding Plaintiff prejudgment interest from the date on		
2	which the Erdmann Transfers were made at the statutory rate of 12 percent per annum;		
3	6. Awarding Plaintiff all applicable costs, fees, and disbursements of this action		
4	permitted by law; and		
5	7. For such further relief as the Court deems just, proper, and equitable.		
6	DATED this 9th day of September, 2016.		
7			
8	K&L GATES LLP		
9	By: /s/ David C. Neu		
10	Michael J. Gearin, WSBA # 20982 David C. Neu, WSBA #33143		
11	Brian T. Peterson, wsBA #42088 Attorneys for Mark Calvert, Chapter 11 Trustee		
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