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Honorable Christopher M. Alston
Chapter 11
Ex Parte

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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

**STIPULATION RE: PRIVILEGED
INFORMATION DISCLOSURE &
NON-WAIVER ORDER**

13 **I. STIPULATION**

14 **WHEREAS**, the parties desire to establish a mechanism to govern the disclosure of
15 information subject to attorney-client privilege or work product protection (collectively “Privileged
16 Information”);

17 **WHEREAS**, the parties to this Stipulation hereby stipulate to the entry of a Stipulated
18 Privileged Information Disclosure & Non-Waiver Order (“Order”) in form attached hereto which
19 will permit representatives of the United States Attorneys Office and the Washington State
20 Department of Financial Institutions to obtain copies of and review certain records held by
21 Northwest Territorial Mint, LLC (the “Mint”) and to interview certain counsel who provided legal
22 services to the Mint and to otherwise have access to information and communications which may be
23 subject to the attorney client privilege subject to the express written agreement of the Trustee to
24 disclose such information or communications;
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STIPULATION RE: PRIVILEGED INFORMATION
DISCLOSURE & NON-WAIVER ORDER-1

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1 **WHEREAS**, Mark Calvert as the duly appointed chapter 11 trustee for the Mint (the
2 “Trustee”) is the authorized representative of the Mint and holds the attorney client privilege of the
3 Mint;

4 **WHEREAS**; The offices of the United States Attorneys Office and the Washington State
5 Department of Financial Institutions have requested that the Trustee disclose certain records which
6 are or may be subject to the attorney client privilege and make available for interview certain
7 witnesses whose communications are or may be privileged;

8 **IT IS HEREBY AGREED**, by and between the Parties, through their undersigned counsel
9 of record or representative, that the Order shall govern the disclosure of and any production or
10 disclosure of Privileged Information.
11

12 **DEFINITIONS**

13 1. “Action” means the above-referenced bankruptcy case.
14

15 2. “Counsel” means an employed or retained attorney for a Party and includes an
16 attorney’s support staff.

17 3. “Documents,” as used herein, is intended to be comprehensive and includes any and
18 all hard copy or electronically stored information (“ESI”), in the broadest sense contemplated by
19 applicable rules of civil procedure.

20 4. “Party” or “Parties” means the Trustee, the United States Attorney’s Office or the
21 Department of Financial Institutions.

22 5. “Privileged Information” means any information in any form that is subject to the
23 attorney-client privilege or work product doctrine.
24

1 required by law. The Privileged Information may not be used by the United States Attorney's Office
2 and the Washington State Department of Financial Institutions or any other party for the purpose of
3 asserting any claim against the Trustee or the bankruptcy estate of the Northwest Territorial Mint.

4 However, the United States Attorney's Office and the Washington State Department of Financial
5 Institutions are not precluded from making such claims and, in connection with any such claim, they
6 may make derivative use and pursue investigative leads suggested by any Privileged Information.
7

8 3. **Trustee's Disclosure of Privileged Information.** The Trustee is entitled to disclose
9 such Privileged Information as he may deem appropriate to the United States Attorney and
10 Washington State Department of Financial Institutions. The Trustee's disclosure of such Privileged
11 Information shall waive the privilege only with respect to a Party. The Trustee's disclosure shall not
12 constitute a waiver of any privilege with respect to any non Party and shall not be deemed a waiver
13 of any privilege with respect to any otherwise Privileged Information that is not expressly disclosed
14 to the United States Attorney and Washington State Department of Financial Institutions by the
15 Trustee.
16

17 4. **Inadvertent Production of Privileged Information**

18 Inadvertent production of Privileged Information otherwise than as expressly agreed to by
19 the Trustee shall not constitute a waiver by the Trustee of any claim that the Documents are
20 privileged or protected, either in this action or in any other matter involving any party or non-party.
21 Upon being notified in writing of any inadvertent production of Privileged Information, the
22 receiving Party, Parties or third-parties will promptly return all copies of the Documents containing
23 Privileged Information at issue.
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1 5. **No Waiver of Judicial Protection** Nothing herein shall prevent either Party from
2 applying to the Court for judicial protection of Documents and ESI.

3 6. **Additional or Alternative Persons Under The Order** The addition or substitution
4 of persons who shall be permitted access to Privileged Information in accordance with the Order
5 shall be by written agreement between the Parties to this action, or by further Order of the Court.
6

7 7. **The Order Binding When Signed** The Order shall be binding on the parties when
8 signed.

9 8. **Exception for Public Information** Nothing in the Order shall be deemed in any way
10 to restrict the use of Documents or information which are lawfully obtained or publicly available to a
11 Party independently of the production of such information or Documents by the Trustee in this
12 Action, whether or not such Documents or information, have been designated Privileged
13 Information. However, in the event of a dispute regarding such independent acquisition, a person or
14 entity who wishes to use any independently acquired Documents, material, duplicates, copies,
15 information or knowledge shall bear the burden of proof to establish such independent acquisition.
16

17 9. Nothing in the Order shall restrict the Trustee from disclosing any Privileged
18 Information to any person.

19 10. Nothing in the Order shall be construed to control the use, dissemination or
20 publication by a person of Documents or information obtained at any time by that person.
21

22 11. **Termination of Action and Survival of Terms**

23 (a) The restrictions provided for herein shall not terminate upon the conclusion of
24 this Action, but shall continue until further Order of this Court; provided, however, that the Order
25 shall not be construed to: (i) prevent any Party or its attorneys from making use of information
26

1 which was lawfully in its possession prior to its disclosure by the producing Party; (ii) apply to
2 information which has appeared in public records or printed publications, or becomes publicly
3 known other than as a result of disclosure by the non-producing Party, or (iii) apply to information
4 that any Party or its counsel have, after disclosure by the producing Party, lawfully obtained from a
5 Third Party having the right to disclose such information.

6
7 (b) The Court shall have jurisdiction to enforce the terms of the Order following the
8 final termination of this action.

9 (c) Neither the termination of this action nor the termination of employment of any
10 person who had access to any Privileged Information shall relieve any person from the obligation of
11 maintaining both the confidentiality and the restrictions on use of anything disclosed pursuant to the
12 Order.

13
14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

15 DATED: January 12, 2017

/s/ Michael J. Gearin
Michael J. Gearin, WSBA #20982
David C. Neu, WSBA #33143
Brian T. Peterson, WSBA #42088

16
17
18 Attorneys for Mark Calvert,
Chapter 11 Trustee

19 DATED: January 12, 2017

/s/ Brian Werner
Brian Werner
Assistant United States Attorney

20
21 United States Attorney's Office

22
23 DATED: January 12, 2017

/s/ Huong Lam
Huong Lam, WSBA #39727
Financial Legal Examiner

24
25 WA Department of Financial Institutions

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STIPULATION RE: PRIVILEGED INFORMATION
DISCLOSURE & NON-WAIVER ORDER-6

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