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6 Trustee for The Tulving Company, Inc.

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8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SANTA ANA DIVISION**

11 In re:
12 THE TULVING COMPANY, INC., a California
13 corporation,

14 Debtor.

Case No.: 8:14-bk-11492-ES

Chapter 7

**NOTICE OF MOTION AND MOTION OF
CHAPTER 7 TRUSTEE FOR AN ORDER
EXTENDING TIME TO COMPLETE
SCHEDULES OF ASSETS AND
LIABILITIES AND STATEMENT OF
FINANCIAL AFFAIRS; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

[Declaration of R. Todd Neilson filed
concurrently herewith]

[No Hearing Requested Per Local Bankruptcy
Rule 9013-1(O)(1)]

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21 **TO THE HONORABLE ERITHE A. SMITH, UNITED STATES BANKRUPTCY
22 JUDGE, ALL ALLEGED SECURED CREDITORS; THE UNITED STATES
23 DEPARTMENT OF JUSTICE AND THE CALIFORNIA DEPARTMENT OF JUSTICE,
PARTIES REQUESTING SPECIAL NOTICE, KNOWN CREDITORS AND THE
OFFICE OF THE UNITED STATES TRUSTEE:**

24 **PLEASE TAKE NOTICE** that R. Todd Neilson, the duly appointed chapter 7 trustee
25 (“Trustee”) in the above-captioned case of The Tulving Company Inc. (the “Debtor”), hereby files
26 this motion for entry of an order under Rule 1007(c) of the Federal Rules of Bankruptcy Procedure
27 for an extension of time of ninety (90) days from the current deadline of June 12, 2014, to September
28 10, 2014, or in the alternative, no sooner than August 27, 2014, to file the Debtor’s Schedules of

1 Assets and Liabilities and Statement of Financial Affairs for the Debtor (collectively, the
2 “Schedules”).

3 **PLEASE TAKE FURTHER NOTICE** that the Motion is based on this Notice and Motion,
4 the attached *Memorandum of Points and Authorities*, the Declaration of R. Todd Neilson filed in
5 support hereof, the arguments of counsel, and other admissible evidence properly brought before the
6 United States Bankruptcy Court for the Central District of California, Santa Ana Division (the
7 “Court”). In addition, the Trustee requests that the Court take judicial notice of all documents filed
8 with the Court in this Case.

9 **PLEASE TAKE FURTHER NOTICE** that, pursuant to Bankruptcy Local Rule 9013-
10 1(o)(1), any objection to or request for hearing on the Motion must be filed and served upon the
11 Trustee within fourteen (14) days of the mailing of this Notice. Any objection or request for hearing
12 must be accompanied by any declarations or memoranda of law that the objecting or requesting
13 party wishes to present in support of its position. If there is no timely objection or request for
14 hearing, the Court may grant the relief requested in the Motion by default. If an objection or request
15 for hearing is timely made, the Trustee will set the matter for hearing and will provide at least
16 fourteen (14) days’ written notice of the hearing to the objecting or requesting party.

17 **WHEREFORE**, the Trustee requests that the Court enter an Order providing the Trustee a
18 requested ninety (90) day extension to September 10, 2014 to file the Schedules.

19 Dated: June 12, 2014

Pachulski Stang Ziehl & Jones LLP

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21 By /s/Linda F. Cantor
Linda F. Cantor

22 [Proposed] Counsel for R. Todd Neilson,
23 Chapter 7 Trustee for The Tulving
24 Company, Inc.
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

A. Jurisdiction and Venue

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The Background of the Debtor's Business

The Debtor is a California corporation. Hannes Tulving, Jr. is the President and sole equity holder of the Debtor. The Debtor was in the business of selling and purchasing gold, silver, coins, bullion, and other precious metals through its internet website or by phone. Over the past year, customer complaints against the Debtor concerning delayed or undelivered orders were increasingly made to the Better Business Bureau as well as various law enforcement agencies. In early March, 2014, a class-action lawsuit was filed against the Debtor and Hannes Tulving, Jr. in the United States District Court, Northern District of California. The Debtor ceased operations on or about March 3, 2014. Shortly before the initiation of these proceedings, a raid was conducted at the business offices of the Debtor by the Secret Service and the Department of Justice and the Debtor's computers, documents and inventory were seized for an ongoing criminal investigation.

C. Procedural Background of Case

The Debtor commenced this case by the filing of a voluntary petition for relief under chapter 11 of the Bankruptcy Code on March 10, 2014. In light of the pending criminal investigation and other ongoing litigation, on March 18, 2014, the United States Trustee filed a *Stipulation Appointing Chapter 11 Trustee* [Docket No. 15] ("Stipulation"), which was signed by both the Debtor and its attorney. The Stipulation was approved by the Bankruptcy Court on March 18, 2014 [Docket No. 16] and an Order was entered by the Court on March 21, 2014 approving the *U.S. Trustee's Application for the Appointment of a Chapter 11 Trustee*, appointing R. Todd Neilson as trustee of the Debtor's estate [Docket No. 22]. On April 30, 2014, the Trustee filed a motion to convert the case to chapter 7 [Docket No. 74] which motion was granted at a hearing on May 22, 2014. On May

1 29, 2014 the Court entered an order converting this case to chapter 7 [Docket No. 108]. A *Notice of*
2 *Appointment of Trustee and Fixing of Bond; Acceptance of Appointment as Interim Trustee* was filed
3 on June 10, 2014 [Docket No. 126], appointing R. Todd Neilson as Trustee.

4 **II.**

5 **BASIS FOR RELIEF REQUESTED**

6 The Trustee has limited information concerning the scope of creditors in this case. The
7 Debtor did not file Schedules of Assets and Liabilities or a Statement of Financial Affairs. Various
8 creditors have identified themselves to the Trustee through the filing of proofs of claim or otherwise.
9 However, the Trustee is in the process of reviewing the Debtor's books and records, as well as
10 customer lists and other operating information, to determine those parties that had business dealings
11 with the Debtor and may hold claims against the Debtor. Therefore, the Trustee is unable to
12 complete the Schedules by the current deadline of June 12, 2014. Given the above exigent
13 circumstances, the Trustee believes an extension of time is necessary and proper in order to allow
14 the Trustee to more fully identify creditors and prepare the Debtor's Schedules.

15 **III.**

16 **RELIEF REQUESTED**

17 The Trustee requests that this Court extend the time within which he must file the Debtor's
18 Schedules up to and including September 10, 2014, or in the alternative, no sooner than August 27,
19 2014. The proposed extended deadline represents an extension of the initial fourteen (14) day filing
20 period established under Bankruptcy Rule 1019(1)(A), as made applicable by Rule 1007(c), by an
21 additional ninety (90) days. The Trustee anticipates that he can file complete and accurate Schedules
22 by then, although he reserves the right to request additional time if he subsequently discovers that a
23 further extension is warranted. Notwithstanding any prior order from this Court, any applicable
24 provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules for the
25 Central District of California (the "Local Rules"), any applicable guidelines (the "Guidelines")
26 established by the United States Trustee for the Central District of California, or any other applicable
27 procedures and orders of the Court, the Trustee is requesting entry of an order directing that the
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1 deadline to file the Schedules is extended to and including September 10, 2014, or in the alternative,
2 no sooner than August 27, 2014.

3 No creditors' committee had been appointed in the Chapter 11 case. This Motion is therefore
4 being served upon, among others, the Office of the United States Trustee, all alleged secured
5 creditors of the Debtor, the United States Department of Justice and the California Department of
6 Justice, known creditors and parties having filed requests for special notice pursuant to Bankruptcy
7 Rule 2002. The Trustee submits that this notice is appropriate under the circumstances and that no
8 other notice need be provided.

9 **IV.**

10 **ARGUMENT**

11 Bankruptcy Rule 1019(1)(A), as made applicable by Rule 1007 (c) would ordinarily require
12 that the Debtor or a Trustee file the Schedules within fourteen (14) days after the order directing that
13 the case continue under chapter 7 (the "Conversion Date"). However, Bankruptcy Rule 1007(c)
14 provides that an extension of time may be granted to file Schedules "only on motion for cause shown
15 and on notice to the United States Trustee and to any [official] committee . . . , trustee, examiner or
16 other party as the court may direct." Fed. R. Bankr. P. 1007(c). Because the requested extension of
17 time will allow the Trustee to file more accurate Schedules and will not prejudice creditors by the
18 extension of time, the Trustee believes that cause has been shown for the requested ninety (90) day
19 extension from the current June 12, 2014 deadline to September 10, 2014, but in any event, no
20 sooner than August 27, 2014. It will take many weeks for the Trustee to analyze and compile the
21 information needed to identify additional creditors and complete the Schedules. Under the
22 circumstances of this case, the requested ninety (90) day extension is appropriate and reasonable.

23 **V.**

24 **CONCLUSION**

25 For the reasons and the authorities cited above, the Trustee requests that the Court enter an
26 Order providing that the Trustee is granted a ninety (90) day extension of time to September 10,
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1 2014, but in any event, no sooner than August 27, 2014, to file the Schedules, subject to the
2 Trustee's right to seek an additional extension, or extensions, of time.

3 Dated: June 12, 2014

Pachulski Stang Ziehl & Jones LLP

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5 By /s/Linda F. Cantor
Linda F. Cantor

6 [Proposed] Counsel for R. Todd Neilson,
7 Chapter 7 Trustee for The Tulving
Company, Inc.
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 10100 Santa Monica Boulevard, 13th Floor, Los Angeles, California 90067

A true and correct copy of the foregoing document **NOTICE OF MOTION AND MOTION OF CHAPTER 7 TRUSTEE FOR AN ORDER EXTENDING TIME TO COMPLETE SCHEDULES OF ASSETS AND LIABILITIES AND STATEMENT OF FINANCIAL AFFAIRS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On June 12, 2014, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On June 12, 2014, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE

TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on June 12, 2014, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Via Federal Express

The Honorable Erithe A. Smith
United States Bankruptcy Court
Central District of California
Ronald Reagan Federal Building and Courthouse
411 West Fourth Street, Suite 5040 / Courtroom 5A
Santa Ana, CA 92701-4593

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

June 12, 2014 Janice G. Washington /s/ Janice G. Washington
Date Printed Name Signature

PACHULSKI STANG ZIEHL & JONES LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA