

1 PETER C. ANDERSON

United States Trustee

2 FRANK M. CADIGAN (State Bar No. 095666)

Assistant U.S. Trustee

3 411 W. 4<sup>th</sup> Street, Ste. 9041

Santa Ana, CA 92701

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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.

13 Debtor

CASE NUMBER: 8:14-bk-11492-ES

CHAPTER 11

14 APPLICATION FOR ORDER APPROVING THE  
15 APPOINTMENT OF A CONSUMER PRIVACY  
16 OMBUDSMAN

DATE: NO HEARING REQUIRED

TIME:

CTRM: 5A

17 The United States Trustee for Region 16, Peter C. Anderson, hereby applies pursuant to 11 U.S.C.  
18 § 332 for an order approving the appointment of Wesley H. Avery as a consumer privacy ombudsman n  
19 the above-captioned case. In support of this application, the United States Trustee respectfully states:

20 1. On September 15, 2014, the Court entered an Order approving the Stipulation Regarding  
21 Appointment of a Consumer Privacy Ombudsman, entered into between the United States Trustee and the  
22 Chapter 7 Trustee, R. Todd Neilson, [Docket #165].

24 2. The United States Trustee has appointed Wesley H. Avery, a disinterested person, as  
25 consumer privacy ombudsman. Mr. Avery is a member of the California Bar, and is a Certified  
26 Information Privacy Professional through the International Association of Privacy Professionals.

27 3. To the best of the United States Trustee's knowledge, Mr. Avery's connections with the  
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1 debtor, creditors, and any other parties in interest, their respective attorneys and accountants, the Unites  
2 States Trustee, and persons employed in the Office of the United States Trustee are limited to the  
3 connections set forth in the attached Ombudsman Acceptance and Declaration.

4 4. The United States Trustee, after consultation with counsel for the Chapter 7 Trustee, Linda  
5 Cantor of Puchulski Stang Ziehi & Jones, proposed that the Ombudsman's fees be capped at \$15,000, with  
6 the understanding that if the Ombudsman's fees were to exceed \$15,000, the Ombudsman would be  
7 required to file a noticed motion and obtain a hearing, setting forth in the motion the justification for any  
8 additional fees exceeding the cap.  
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10 WHEREFORE, the United States Trustee requests that the Court enter an Order approving the  
11 appointment of Wesley H. Avery as a consumer privacy ombudsman in this case.  
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13  
14 Dated: October 8, 2014

PETER C. ANDERSON  
UNITED STATES TRUSTEE

15  
16 /s/ Frank M. Cadigan  
17 Frank M. Cadigan  
Assistant United States Trustee  
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1 Wesley H. Avery, Esq. CLS-B (CA SBN 155724)  
2 6055 East Washington Blvd., Suite 500  
3 Los Angeles, CA 90040  
4 Telephone No. (661) 618-7376  
5 FAX No. (661) 430-5467  
6 [wavery@rpmlaw.com](mailto:wavery@rpmlaw.com)

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**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

9 In re  
10 THE TULVING COMPANY INC, a  
11 California corporation,  
12 Debtor.

13 TID # 33-0441602

Case No. 8:14-bk-11492-ES  
Chapter 7

**CONSUMER PRIVACY OMBUDSMAN  
ACCEPTANCE AND DECLARATION**

Date: [No hearing necessary]  
Time: [No hearing necessary]  
Place: Courtroom 5A  
U.S. Courthouse  
411 W. Fourth St.  
Santa Ana CA 92701

16 I hereby accept appointment as consumer privacy ombudsman in the above-captioned case.  
17 As the ombudsman, I agree to undertake the duties and responsibilities of the appointment as set  
18 forth in 11 U.S.C. § 332. A copy of my curriculum vitae is attached. To the best of my knowledge,  
19 I am a disinterested person within the meaning of 11 U.S.C. § 101(14), and am eligible and  
20 competent to perform the duties of consumer privacy ombudsman. I have no connections with the  
21 debtor, creditors, any other parties in interest, their respective attorneys and accountants, the United  
22 States Trustee, and persons employed in the Office of the United States Trustee, except as follows:  
23 none.

24 I declare under penalty of perjury under the laws of the United States of America that the  
25 foregoing is true and correct. Executed September 3, 2014, at Los Angeles, California.

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Wesley H. Avery

WESLEY H. AVERY

6055 E. Washington Blvd., # 500

Los Angeles, CA 90040

[wavery@rpmllaw.com](mailto:wavery@rpmllaw.com)

(661) 618-7376

Wesley H. Avery, Esq., a Certified Information Privacy Professional, is legally qualified to act as a Consumer Privacy Ombudsman in the sale or lease of personally identifiable information through the Bankruptcy Court. Mr. Avery holds U.S. Corporate Privacy Certification # 883191 (otherwise known as a CIPP) issued by the International Association of Privacy Professionals or IAPP.

Mr. Avery has represented buyers and sellers in many sales of real and personal property through the bankruptcy court since becoming an attorney in 1991. Mr. Avery is certified as a specialist in Bankruptcy Law by the State Bar of California, and by the American Board of Certification which is recognized by the American Bar Association and the American Bankruptcy Institute. The focus of his practice is the reorganization of insolvent businesses or the liquidation of their assets. He is a panel Chapter 7 Bankruptcy Trustee and the Chapter 12 Trustee for the Central District of California. Admitted to the United States Supreme Court and the California Supreme Court. *Member*, ABA Subcommittee on Legal Specialization. *Chairman* of the Board of Legal Specialization, State Bar of California 2010-2011. *Chairman* of the Bankruptcy Law Advisory Commission 2004-2005. *Master of the Bench*, Southern California Bankruptcy Inn of Court. *Featured Speaker* on Bankruptcy Law at the California Bankruptcy Forum, California State Bar Conventions and the Valley Economic Summit. *Author* of articles that have been featured in more than 25 legal publications, including Trial Lawyer and California Lawyer. *Co-author* of past editions of the Collier Handbook for Trustees and Debtors in Possession and the Collier Handbook for Creditors' Committees. Awarded AV rating by Martindale-Hubbell and a *Superlawyer* since 2006. Reported cases: *In re DeGour*, 478 B.R. 1; *In re JMC Telecom LLC*, 416 B.R. 738; *In re Lahijani*, 325 B.R. 282; *In re Plitt Amusement Co.*, 233 B.R. 837; *DRG v. Chopstix Dim Sum Cafe*, 30 Cal.App.4th 54.

### Education

UCLA SCHOOL OF LAW, Los Angeles, California

1988-1991

Earned *Juris Doctor* degree, 1991. Emphasis on commercial law and bankruptcy.

HARVARD BUSINESS SCHOOL, Boston, Massachusetts

1982-1984

Awarded *Master of Business Administration* degree, 1984. Concentration in competitive decision-making. Member, Harvard University Intercollegiate Chess Team.

UNIVERSITY OF CALIFORNIA, Davis, California

1976-1980

Received *Bachelor of Arts* degree in 1980 with highest honors in Economics. Phi Beta Kappa, Phi Kappa Phi. Elected to University Student Senate. *President* of Theta Chi Fraternity, Z= Chapter.

### Personal

*Veteran*. Active Duty 1996-1997 as a *Major* in the U.S. Army; *Honor Graduate* of Army Command and General Staff Course. *Judge pro tem*, Los Angeles Superior Court, 1998-2003. *President*, Valencia NorthPark Homeowner's Association 1998-2002. *Member*, American Bankruptcy Institute, American Bar Association, the California Club, CDCBAA and the Harvard Club of Southern California. *Adjunct Professor*, California State University at Northridge, since 2004. Licensed Real Estate Broker.

## 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:

OFFICE OF THE U.S. TRUSTEE, 411 W. 4<sup>th</sup> St., #9041, Santa Ana, CA 92701

A true and correct copy of the foregoing document entitled (*specify*): **APPLICATION FOR ORDER APPROVING THE APPOINTMENT OF A CONSUMER PRIVACY OMBUDSMAN; DECLARATION OF WES AVERY** 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 **October 8, 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:

- Candice Bryner candice@brynerlaw.com
- Philip Burkhardt phil@burkhardtandlarson.com, stacey@burkhardtandlarson.com
- Stephen L Burton steveburtonlaw@aol.com
- Frank Cadigan frank.cadigan@usdoj.gov
- Linda F Cantor lcantor@pszjlaw.com, lcantor@pszjlaw.com
- David L Gibbs david.gibbs@gibbslaw.com, ecf@gibbslaw.com
- Nancy S Goldenberg nancy.goldenberg@usdoj.gov
- Lawrence J Hilton lhilton@oneil-llp.com, ssimmons@oneil-llp.com;kdonahue@oneil-llp.com
- John H Kim jkim@cookseylaw.com
- R. Todd Neilson (TR) tneilson@brg-expert.com, sgreenan@brg-expert.com;tneilson@ecf.epiqsystems.com;ntroszak@brg-expert.com
- Jason S Pomerantz jspomerantz@pszjlaw.com, jspomerantz@pszjlaw.com
- Nanette D Sanders becky@ringstadlaw.com
- Richard C Spencer rspencer@rspencerlaw.com
- United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov

**2. SERVED BY UNITED STATES MAIL:** On **October 8, 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.

The Tulving Company Inc, P.O. Box 6200, Newport Beach, CA 92658  
Wesley H. Avery, 6055 E. Washington Blvd., #500, Los Angeles, CA 90040

**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 **October 8, 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.

Honorable Erithe Smith--bin outside rm. 5097

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

10/8/14	Tari King	/s/ Tari King
Date	Printed Name	Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.