

Linda F. Cantor (CA Bar No. 153762)  
Jonathan J. Kim (CA Bar No. 180761)  
PACHULSKI STANG ZIEHL & JONES LLP  
10100 Santa Monica Blvd., 13<sup>th</sup> Floor  
Los Angeles, California 90067  
Telephone: 310-277-6910  
Facsimile: 310-201-0760  
E-mail: lcantor@pszjlaw.com

Counsel for R. Todd Neilson, Chapter 7 Trustee for The  
Tulving Company, Inc.

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

In re:

THE TULVING COMPANY, INC., a  
California corporation,

Debtor.

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

Chapter 7

**NOTICE OF MOTION AND MOTION  
FOR ORDER: (1) SCHEDULING  
AUCTION AND SALE HEARING IN  
CONNECTION WITH SALE OF  
DEBTOR'S CUSTOMER LISTS, PHONE  
NUMBERS, WEB ADDRESS, CERTAIN  
CUSTOMER FILES, AND RELATED  
PERSONAL PROPERTY OF THE  
ESTATE; (2) APPROVING SALE  
PROCEDURES; (3) APPROVING BREAK-  
UP FEE; (4) APPROVING NOTICE OF  
AUCTION AND SALE HEARING; AND  
(5) GRANTING RELATED RELIEF  
INCLUDING APPROVING  
OMBUDSMAN REPORT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATION OF R.  
TODD NEILSON**

**Hearing**

Date: December 4, 2014  
Time: 10:30 a.m.  
Place: Courtroom 5A  
411 West Fourth Street  
Santa Ana, CA 92701

1 **TO THE HONORABLE ERITHE SMITH, UNITED STATES BANKRUPTCY JUDGE, THE**  
2 **OFFICE OF THE UNITED STATES TRUSTEE AND ANY PARTIES THAT HAVE FILED**  
3 **REQUESTS FOR SPECIAL NOTICE, AND OTHER INTERESTED PARTIES:**

4 **PLEASE TAKE NOTICE** that R. Todd Neilson, the duly appointed chapter 7 trustee (the  
5 “Trustee”) for The Tulving Company, Inc. (the “Debtor”), in the above-entitled chapter 7 case (the  
6 “Case”), hereby moves (the “Motion”) the Court for the entry of orders, pursuant to sections 105  
7 and 363 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002, 6004, and  
8 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”):

9 (a) approving the sale and bid procedures (the “Sale Procedures”) set forth in the  
10 proposed form of order approving the Sale Procedures attached hereto as Exhibit A (the “Proposed  
11 Procedures Order”),<sup>1</sup> in connection with the Trustee’s proposed sale (the “Sale”) of certain personal  
12 property of the bankruptcy estate of the Debtor (the “Estate”) consisting of the following: customer  
13 lists, business-related telephone and fax number(s), a domain name, certain customer sales journals,  
14 and other related personal property (as more specifically described in the APA, the “Property”) to  
15 Greatcollections.com LLC d/b/a Great Collections (the “Stalking Horse Bidder”) pursuant to that  
16 certain Asset Purchase Agreement and Addendum thereto (collectively, the “APA”) (substantially  
17 in the form attached hereto as Exhibit B) or, alternatively, to the successful bidder determined in  
18 accordance with the Sale Procedures (the “Successful Bidder”) pursuant to the applicable  
19 agreement with such Successful Bidder, free and clear of all liens, claims, interests and  
20 encumbrances pursuant to sections 363(b) and (f) of the Bankruptcy Code, with any such liens,  
21 claims, interests and encumbrances to attach to the Sale proceeds of the Property with the same  
22 validity (invalidity), priority and perfection as existed immediately prior to such Sale;

23 (b) approving a proposed break-up fee (the “Break-Up Fee”) of \$7,500, to  
24 compensate the Stalking Horse Bidder for the fees and expenses incurred in connection with acting  
25 as the Stalking Horse Bidder, payable by the Estate to the Stalking Horse Bidder solely from the  
26 proceeds of any alternate sale of the Property, in accordance with the APA and Sale Procedures;

27 \_\_\_\_\_  
28 <sup>1</sup> Any capitalized term not defined in this Notice shall have the meaning ascribed to such term in the Motion  
or the Proposed Procedures Order, as applicable.

- 1 (c) approving the form and manner of notice of the Sale;
- 2 (d) setting the date for a hearing (the "Sale Hearing") at which the Court will
- 3 consider whether to authorize and approve the Sale;
- 4 (e) approving the Ombudsman Report (as defined below); and
- 5 (f) granting such other related relief as provided in the Proposed Procedures
- 6 Order.

7 **PLEASE TAKE FURTHER NOTICE** that the Trustee has filed concurrently herewith the

8 *Motion for Order: (1) Approving Asset Purchase Agreement; (2) Approving Sale of Estate's*

9 *Property (Debtor's Customer Lists, Phone Numbers, Web Address, Certain Customer Files, and*

10 *Related Personal Property) Free and Clear of All Liens, Claims, Encumbrances, and Interests; and*

11 *(3) Granting Related Relief Including With Respect to Approval of Ombudsman's Fees and Expenses*

12 *and Distribution of Sale Proceeds on Account of Such Amounts* (the "Sale Approval Motion"),

13 pursuant to which the Trustee seeks the approval of the proposed Sale of the Property, free and clear

14 of all liens, claims and encumbrances. The proposed Sale to the Stalking Horse Bidder shall be

15 subject to overbid at an auction in accordance with the Sale Procedures (the "Auction"). As

16 explained more fully in the attached Memorandum of Points and Authorities, after marketing and

17 discussions with various potential buyers, the Trustee determined in his sound business judgment

18 that the proposed Sale of the Property to the Stalking Horse Bidder, subject to overbid, for \$150,000

19 cash, is in the best interest of the Debtor's estate. Pursuant to LBR 6004-1(b)(2), the following is a

20 summary of the proposed Sale Procedures<sup>2</sup>:

21 (a) upon execution of a confidentiality agreement, any person identified by the

22 Trustee, with the assistance of his advisors, as reasonably likely to be a Qualified Bidder that wishes

23 to conduct due diligence on the Property with respect to a potential overbid may be granted access to

all material information that has been or will be provided to the Stalking Horse Bidder;

24 (b) any Potential Bidder that wishes to participate in the bidding process for the

25 Property must, no later than the Bid Deadline, do all of the following: (1) submit to the Trustee an

26 irrevocable offer in the form of an executed Modified Agreement (together with a blacklined copy)

27 without financing, internal approval or due diligence contingencies, at a price that conforms with the

28 following paragraph and on such other terms that are no less favorable to the Estate than those

contained in the APA; (2) agree, in such Modified Agreement, to a purchase price that provides for

---

<sup>2</sup> The following is a summary only and is subject to the Proposed Procedures Order.

1 payment in cash at closing in an initial minimum amount equal to or exceeding the sum of \$165,000  
2 (\$150,000 plus \$15,000); (3) make a Bid Deposit in an amount equivalent to 10% of its proposed  
3 purchase price; and (4) provide written evidence reasonably satisfactory to the Trustee of, *inter alia*,  
4 the bidder's financial ability to fully and timely perform all obligations under the Modified  
5 Agreement;

6 (c) if the Trustee receives at least one Qualified Bid from a Qualified Bidder  
7 other than the Stalking Horse Bidder prior to the Bid Deadline, then the Trustee shall conduct an  
8 Auction to be held at the Los Angeles office of the Trustee's counsel<sup>3</sup>;

9 (d) at any Auction, subsequent bid increments shall be set at \$10,000;

10 (e) at the Auction (if held), the Trustee shall determine which bid(s) shall be  
11 deemed the Successful Bid and Back-Up Bid (if any); and the Trustee shall request at the Sale  
12 Hearing that the Court authorize the Trustee to consummate the Sale of the Property to the  
13 Successful Bidder and, should the Successful Bidder fail to close, to the Back-Up Bidder<sup>4</sup>;

14 (f) if the Stalking Horse Bidder is not the Successful Bidder, subject to the terms  
15 and conditions in the APA, the Trustee shall, pursuant to the APA and Procedures Order, pay the  
16 Stalking Horse Bidder the Break-Up Fee;

17 (g) if no qualified competing bid is received, the Stalking Horse Bidder's bid  
18 shall be determined to be the Successful Bid for the purchase of the Property; and

19 (h) the Estate shall retain the deposit(s) made by the Successful Bidder and/or the  
20 Back-Up Bidder if either the Successful Bidder and/or the Back-Up Bidder (as applicable) fails to  
21 close the Sale within five (5) business days after entry of a Bankruptcy Court order approving the  
22 Sale of the Property.

23 **PLEASE TAKE FURTHER NOTICE** that, pursuant to LBR 6004-1(c)(3), the Trustee  
24 discloses that (i) the Trustee does not seek authority to pay any commission in connection with this  
25 transaction and (ii) the Trustee is presently unaware of any tax liabilities to the Estate as a result of  
26 the proposed Sale.

27 **PLEASE TAKE FURTHER NOTICE** that the Motion is based on the Memorandum of  
28 Points and Authorities and Declaration of R. Todd Neilson (the "Neilson Declaration") attached  
hereto, the statements, arguments and representations of counsel who appear at the Procedures  
Hearing, the record in this case, any other evidence properly before the Court prior to or at the  
Procedures Hearing and all matters of which this Court may properly take judicial notice.

<sup>3</sup> As set forth in the Motion, the Trustee requests an Auction date of on or about December 16, 2014.

<sup>4</sup> As set forth in the Motion, the Trustee requests a Sale Hearing to be held no later than December 18, 2014.

1           **PLEASE TAKE FURTHER NOTICE** that, pursuant to LBR 6004-1(b)(1) and 9013-1(b),  
2 the hearing (the “Procedures Hearing”) on the Motion with respect to the approval of the Sale  
3 Procedures and other relief set forth in the Proposed Procedures Order (the “Procedures Matters”)  
4 shall be held on December 4, 2014 at 10:30 a.m. (Pacific time) before the Honorable Erithe Smith,  
5 United States Bankruptcy Judge, 411 West Fourth Street, Courtroom 5A, Santa Ana, CA 92701.  
6 The Procedures Hearing may be adjourned from time to time without further notice to creditors or  
7 parties in interest other than by announcement of the adjournment in open court on the date  
8 scheduled for the Procedures Hearing. Pursuant to LBR 9013-1(f), objections, if any, to the Motion  
9 must be in writing and filed with the clerk of the Bankruptcy Court and served upon the Trustee’s  
10 counsel, Linda Cantor, Esq., Pachulski, Stang, Ziehl & Jones LLP, Suite 1300, Los Angeles, CA  
11 90067, fax: 310-201-0760, [lcantor@pszjlaw.com](mailto:lcantor@pszjlaw.com), and the Stalking Horse Bidder’s counsel, Armen  
12 Vartian, 1601 N. Sepulveda Blvd. #581, Manhattan Beach, CA 90266, fax: 866-427-3820,  
13 [armen@vartianlaw.com](mailto:armen@vartianlaw.com), **at least fourteen (14) days prior to the Procedures Hearing.** UNLESS  
14 AN OBJECTION IS TIMELY SERVED AND FILED IN ACCORDANCE WITH THIS NOTICE,  
15 IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT AND THE BANKRUPTCY  
16 COURT MAY GRANT THE RELIEF REQUESTED WITHOUT FURTHER HEARING AND  
17 NOTICE.

18           **WHEREFORE**, the Trustee respectfully requests that the Court enter an order: (a)  
19 approving the Sales Procedures, including provision for the Break-Up Fee; (b) authorizing the  
20 Trustee to hold the Auction and close the sale transaction at the times and place set forth in the  
21 Motion; (c) approving the Ombudsman Report, and (d) granting such other relief as is fair and  
22 equitable.

23 Dated: November 6, 2014

PACHULSKI STANG ZIEHL & JONES LLP

25 By /s/ Linda F. Cantor  
Linda F. Cantor

26 Attorneys for R. Todd Neilson, Chapter 7  
27 Trustee  
28

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**  
**INTRODUCTION**

The Trustee seeks authorization to sell customer lists and other personal property more particularly described below owned by the Estate to the Stalking Horse Bidder or other Successful Bidder for \$150,000 in cash as set forth in the APA or such higher amount that may be bid by the Successful Bidder (the "Sale Proceeds"). Based on his marketing efforts and discussions and negotiations with the Stalking Horse Bidder and other potential bidders, the Trustee believes that the proposed Sale represents a fair and reasonable offer for the Property. Nonetheless, the proposed Sale is subject to overbid in the event another party is willing to provide greater consideration than that offered by the Stalking Horse Bidder.

**II.**  
**JURISDICTION**

The court has jurisdiction over this Motion pursuant to 28 U.S.C. § 157 and 1334. This proceeding is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A) and (D). Venue of this case and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 105, 332 and 363(b), (f) and (m) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 9014.

**III.**  
**BACKGROUND**

**A. The Background of the Debtor's Businesses**

The Debtor is a California corporation. 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. Prior to the filing of the bankruptcy, customer complaints concerning delayed or undelivered orders were increasingly made to the Better Business Bureau against the Debtor and in early March, 2014, a class-action lawsuit was filed against the Debtor and its principal 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 and documents were seized for an ongoing criminal investigation.

1 **B. Procedural Background of Case**

2 The Debtor commenced this case by the filing of a voluntary petition for relief under chapter  
3 11 of the Bankruptcy Code on March 10, 2014. In light of pending criminal investigation and other  
4 ongoing litigation, on March 18, 2014, the United States Trustee filed a *Stipulation Appointing*  
5 *Chapter 11 Trustee* [Docket No. 15] ("Stipulation"), which was signed by both the Debtor and its  
6 attorney. The Stipulation was approved by the Bankruptcy Court on March 18, 2014 [Docket No.  
7 16] and an Order was entered by the Court on March 21, 2014 approving the *U.S. Trustee's*  
8 *Application for the Appointment of a Chapter 11 Trustee*, appointing R. Todd Neilson as Trustee of  
9 the Debtor's estate [Docket No. 22]. Thereafter upon notice and hearing, the case was converted to a  
10 chapter 7 and R. Todd Neilson continues to serve as the chapter 7 Trustee [Docket 108].

11 **C. Prior Motions; Ombudsman Report**

12 Previously, on August 7, 2014, the Trustee filed motions for approval of the sale and certain  
13 sale procedures in respect to the Property (the "Prior Motions").<sup>1</sup> As noted in his notice of  
14 withdrawal [Docket No. 163], the Trustee withdrew without prejudice the Prior Motions. Based on  
15 certain concerns related to potential customer privacy issues subsequently raised in respect to the  
16 proposed sale, the Trustee determined to postpone any sale of the Property, in order to allow time for  
17 the Trustee to further investigate matters related to the voiced concerns. The Trustee learned that,  
18 during at least some periods and at least in some instances prior to the commencement of the Case,  
19 the Debtor had posted on its business website a policy (the "Privacy Policy") that certain private  
20 information ("Customer Information") of the Debtor's prepetition customers ("Customers") would  
21 not be sold to third parties. Code section 363(b)(1) provides that the Trustee may not sell personally  
22 identifiable information if the Debtor, in connection with offering its products or services, has a  
23 policy prohibiting the transfer of such information and if such policy is in effect on the petition date,  
24 unless "such sale is consistent with such policy" or a consumer ombudsman is appointed.

25 Based on discussions between the parties, a stipulation between the Trustee and the U.S.  
26 Trustee was filed with the Court [Docket No. 165], stipulating to the appointment of a consumer

27  
28 <sup>1</sup> Other than the subsequent entry by the Trustee and Stalking Horse Bidder into the Addendum, the terms of  
the Sale of the Property to the Stalking Horse Bidder remain the same as presented in the Prior Motions,  
including the proposed purchase price.

1 privacy ombudsman (“Ombudsman”), which stipulation was approved by the Court [Docket No.  
2 171]. Thereafter, the U.S. Trustee applied for the appointment of Wesley Avery as the Ombudsman  
3 [Docket No. 181], which appointment was approved by the Court [Docket No. 182]. On October 22,  
4 2014, the Ombudsman filed his report (the “Ombudsman Report”) [Docket No. 184] (a copy of  
5 which is attached hereto as Exhibit C), in which, among other things, the Ombudsman concluded,  
6 assuming that the buyer adopts the Privacy Policy, the Sale of the Property (i) is consistent with the  
7 Privacy Policy in compliance with Code section 363(b)(1)(A) and (ii) would not violate applicable  
8 nonbankruptcy law in compliance with section 363(b)(1)(B). As set forth in the Addendum  
9 (attached hereto as Exhibit B), the Stalking Horse Bidder agrees to abide by and adhere to the  
10 Privacy Policy; if an Auction is held, the successful bidder (if not the Stalking Horse Bidder) will be  
11 required by the Trustee to similarly agree to abide by and adhere to the Privacy Policy. Based on the  
12 Ombudsman Report, subject to the Court’s approval of the Sale, the Trustee does not believe that  
13 there is any impediment to the Sale or that any other actions need be taken in respect to the Privacy  
14 Policy and the Customers.

15 **IV.**

16 **THE PROPOSED SALE AND OVERBIDDING/AUCTION PROCEDURES**

17 **A. Debtor’s Property to Be Sold and the Trustee’s Efforts to Obtain Offers**

18 The Debtor’s business is no longer in operation. While the Trustee has previously sold  
19 Debtor’s tangible personal property, certain intellectual property remains in the Estate consisting of  
20 customer lists including over 12,600 customer names, business-related telephone and fax number(s),  
21 a domain name, certain customer sales journals, and other related personal property (collectively, as  
22 more specifically described in the APA, the “Property”). The Property is no longer necessary to the  
23 administration of the estate and must be disposed of with the goal of maximizing any value. The  
24 Trustee has had contact with various potential interested purchasers, and based thereon is informed  
25 and believes that the value of the Property will diminish over time and that the best opportunity to  
26 maximize value is to sell the Property as soon as practicable subject to the overbid/auction  
27 procedures set forth in the Proposed Procedures Order.  
28



As discussed in the Neilson Declaration, prior to the submission of this Motion, the Trustee and his agents engaged in discussions with various potential bidders for the Property. In total, five parties have expressed interest in some or all of the Property. After interested parties executed nondisclosure agreements, the Trustee and his agents entered into discussions regarding potential sales. The Stalking Horse Bidder expressed a more immediate interest in moving forward with a potential transaction, and the Trustee entered into extensive negotiations with the Stalking Horse Bidder, which resulted in the terms of the parties' APA.

**B. Consideration**

The consideration to be paid by the Stalking Horse Bidder (the "Consideration") consists of \$150,000, all cash.

**C. Property to be Sold Free and Clear of Interests**

The Property shall be sold free and clear of all liens, claims, rights, interests and encumbrances whatsoever ("Interests"), in accordance with section 363(b) and (f) of the Bankruptcy Code, with all then-existing Interests, if any, to attach to the net proceeds of the Sale with the same validity, enforceability, and priority, if any, as existed with respect to the Property as of the date of the commencement of the Debtor's case.

**D. Sale Procedures and Opportunity For Overbid<sup>2</sup>**

**1. Opportunity for Due Diligence and Participation in Sale Process**

The Trustee requests that the Court authorize the Trustee to conduct an auction of the Property (the "Auction") at the offices of his counsel, whose address is set forth at the top left-hand corner of the first page of this Motion, on or about December 16, 2014, at 10:00 a.m., with a Sale Hearing held no later than December 18, 2014 (subject to the Court's availability), and that the closing of the Sale occur no later than the end of December. The Trustee's goal is to efficiently and expeditiously administer the Estate's assets for the benefit of the Estate's creditors. To preserve the value of the Estate, minimize the deterioration of the value of the Property, and limit the costs of administering the Property and Case, an expedient conclusion to the Sale process will inure to the

---

<sup>2</sup> The following discussion is a summary only, and is subject to the more specific Sale Procedures set forth in the Proposed Procedures Order attached hereto as Exhibit A.

1 benefit of the Estate and its creditors. Thus, the Trustee believes that closing a Sale as promptly as  
2 practicable (by mid/late September as noted above) is in the best interest of the Estate.

3        Provided that the Sale Procedures are approved by the Court, the Trustee will serve within 3  
4 business days of entry of the Procedures Order a notice of the Auction and Sale Procedures ("Sale  
5 Notice") on among others, all parties whom the Trustee believes may have an interest in purchasing  
6 the Property, including those parties who expressed interest in purchasing the Property during the  
7 marketing process. The Trustee proposes a bid deadline of December 15, 2014. Potential bidders  
8 will be served by the Trustee with a copy of this Motion (with the APA as an exhibit), together with  
9 the Sale Approval Motion, on or shortly after the date hereof, and thus, potential bidders will have,  
10 in practical effect, more than five weeks to prepare a potential bid -- which period is reasonable in  
11 the Trustee's view, given the limited nature of the Property and the circumstances of the Case. The  
12 Trustee will provide parties interested in acquiring the Property ("Potential Purchasers") with  
13 reasonable access to the due diligence information it has previously provided to interested parties.

14        **2.        Submission of Offer**

15        Any person or entity interested in submitting a bid on the Property is urged to deliver an offer  
16 to counsel for the Trustee, so that such bid is actually received no later than 5:00 p.m. (Pacific time)  
17 on December 15, 2014 (each such offer, an "Offer"). An Offer shall, at a minimum, provide that: (i)  
18 the purchase price shall provide at least \$15,000 above the current Consideration to the Estate (*i.e.*,  
19 \$165,000); (ii) the Potential Purchaser offers to purchase all of the Property; (iii) such Offer is not  
20 subject to, or conditioned on, and does not contain, any contingencies to the validity, effectiveness,  
21 and/or binding nature of the Offer, including, without limitation, contingencies for financing, due  
22 diligence, or inspection; (iv) such Potential Purchaser is prepared to abide by these procedures; and  
23 (v) the Purchase Price shall be paid in full in cash or immediately available funds at closing. Any  
24 Potential Purchaser must accompany its offer with a cash deposit equivalent to ten percent (10%) of  
25 its proposed purchase price (the "Bid Deposit") and to provide information, acceptable to the  
26 Trustee, which demonstrates that the Potential Purchaser (a) has sufficient cash on hand or a binding  
27 financial commitment from an established and financially sound financial institution to ensure such  
28

Potential Purchaser's ability to meet its commitments pursuant to its bid and to close the transaction within the time frame established, and (b) has the legal capacity to complete the purchase.

**Notwithstanding the foregoing, the Trustee, in his sole discretion, shall determine whether an Offer has satisfied all the conditions set forth above or if the Trustee believes it is in the best interest of the Estate to waive any or all of the above conditions, including permitting a bidder to bid at the Auction without submitting a prior Offer.** Any bid that the Trustee deems satisfies such conditions, including one first submitted at the Auction, shall be deemed a "Qualified Bid" and the party submitting such bid shall be deemed a "Qualified Bidder." The Stalking Horse Bidder is hereby determined to be a Qualified Bidder and to have submitted a Qualified Bid.

### **3. Selection of the Successful Bid**

If a Qualified Bidder has or is prepared to make a Qualified Bid at or before the Auction, the Auction shall take place as set forth above. All Qualified Bidders must appear in person at the Auction, or through a duly authorized representative. If multiple Qualifying Bids satisfying all Auction requirements are received, each party shall have the right to continue to improve its bid at the Auction. The Auction will be an "open format" such that all participants are contemporaneously to be made aware of the particulars of any Qualified Bids that are submitted. The initial overbid must be at least \$15,000 in excess of the Consideration offered by the Stalking Horse Bidder. Subsequent bid increments shall be set at \$10,000. The Trustee reserves the right to cancel the Auction and seek to move forward with a private sale to the Stalking Horse Bidder.

At the conclusion of the Auction, the successful bid representing the highest and best bid for the Property shall be selected by the Trustee (the "Successful Bid").

Promptly following the conclusion of the Auction, the party submitting the successful bid (the "Successful Bidder") shall complete and sign all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which such bid was made. Bid Deposits of the non-Successful Bidder shall be returned, subject to the terms of the APA in the case of the Stalking Horse Bidder. If the Successful Bidder fails to consummate a sale because of a

1 material breach or failure to perform on the part of such Successful Bidder, the Trustee shall be  
2 entitled to retain the Bid Deposit made in connection therewith.

3 **4. Bid Protections**

4 Recognizing the Stalking Horse Bidder's expenditure of time, energy and resources, and that  
5 the Stalking Horse Bidder has provided a floor for bids with respect to the Property, the Trustee has  
6 agreed to provide certain bid protections to the Stalking Horse Bidder.

- 7 (a) Break-Up Fee. The Trustee has agreed to pay the Stalking Horse Bidder a Break-Up  
8 Fee in the amount of up to \$7,500 in the event that: (i) the Stalking Horse Bidder is  
9 not in default of any of its obligations under the APA, *and* (ii) the Property is  
10 thereafter sold to a Successful Bidder other than the Stalking Horse Bidder at the  
11 Auction for consideration in excess of the Consideration, notwithstanding the  
12 Stalking Horse Bidder's willingness and ability to consummate the purchase of the  
13 Property, which payment shall be made to the Stalking Horse Bidder promptly  
14 following closing of the Sale of the Property to the Successful Bidder, from the  
15 proceeds of such Sale.
- 16 (b) Overbid Protection. Any initial bid submitted by a party or parties other than the  
17 Stalking Horse Bidder (the "Initial Overbid") must be in an amount that is sufficient  
18 to pay the Break-Up Fee and result in additional consideration to the Estate of at least  
19 \$7,500 after payment of the Break-Up Fee. Thus, the Initial Overbid must be in the  
20 amount of at least \$165,000. Each subsequent overbid, whether by the Stalking  
21 Horse Bidder or another bidder, must be in an amount that is sufficient to result in  
22 additional consideration to the Estate (as compared to the immediately preceding bid)  
23 of at least \$10,000. The Stalking Horse Bidder shall not be required to include the  
24 amount of the Break-Up Fee as part of its bid.

18 **V.**

19 **ARGUMENT**

20 **A. The Proposed Sale Procedures, Including Provision of the Break-Up Fee, Are**  
21 **Reasonable and Appropriate and Will Facilitate Maximizing the Value of the Property**  
22 **for Sale**

23 In accordance with Bankruptcy Rule 6004(f)(1), sales of property outside the ordinary course  
24 of business may be by private sale or by auction. The Trustee has obtained a "stalking horse" bid,  
25 and seeks authority to conduct the Auction (if applicable) at which the Stalking Horse Bidder's offer  
26 will be subjected to higher and better offers. The Break-Up Fee and the Sale Procedures are  
27 reasonably calculated to encourage a buyer to submit a final bid within the range of reasonably  
28 anticipated values and to maximize the value of the Property for the Estate's benefit.

The Stalking Horse Bidder will be the stalking horse for competitive bids, potentially leading

1 to further competition and the establishment of a baseline against which higher or otherwise better  
2 offers can be measured. The Trustee, with the assistance of his professionals and agents, will further  
3 solicit proposals for the purchase of the Property prior to the proposed bid deadline, and based on  
4 such efforts, the Estate will have reasonably and sufficiently marketed the Property prior to the Sale  
5 Hearing. The Trustee has proposed Sale Procedures designed to maximize the purchase price that  
6 should be realized from the Sale of the Property. In short, the Trustee submits that good cause exists  
7 to approve such procedures and provisions because they are fair and reasonable under the  
8 circumstances and will encourage competitive bidding and the highest and best price for the  
9 Property. Indeed, courts frequently approve competitive bidding procedures like the proposed Sale  
10 Procedures as a means of ensuring that such sales will maximize value for the estate. *See, e.g.,*  
11 *Doehring v. Crown Corp. (In re Crown Corp.)*, 679 F.2d 774, 775 (9th Cir. 1982) (district court  
12 required specific minimum overbid amounts, deposits, and comparable deal terms to be used by all  
13 overbidders); *In re GGW Brands, LLC*, Case No. 13-15130 (Bankr. C.D. Cal. Feb. 24, 2014) (J.  
14 Klein) (order approving overbidding and sale/auction procedures); *In re Victor Valley Community*  
15 *Hospital*, Case No. 10-39537 (Bankr. C.D. Cal. Oct. 7, 2010) (J. Bauer) (order approving qualified  
16 bidder, overbidding and other sale/auction procedures); *In re Barbecues Galore, Inc.*, Case No. 08-  
17 16036-MT (Bankr. C.D. Cal. Sept. 4, 2008) (J. Tighe) (similar).

18 In particular respect to the Break-Up Fee, to compensate the Stalking Horse Bidder for  
19 serving as the stalking horse whose bid will be subject to higher and better offers, the Trustee seeks  
20 approval of the Break-Up Fee in accordance with the terms of the APA. The Trustee believes that  
21 the Break-Up Fee is justified, given the benefits to the Estate of having a stalking horse bidder by  
22 virtue of a definitive asset purchase agreement and the risk to the Stalking Horse Bidder that a third-  
23 party offer may ultimately be accepted, and that approval of the Break-Up Fee under the terms of the  
24 APA are necessary to preserve and enhance the value of the Estate.

25 Bidding incentives encourage a potential purchaser to invest the requisite time, money and  
26 effort to negotiate with the estate and perform the necessary due diligence attendant to the  
27 acquisition of the estate's assets, despite the inherent risks and uncertainties of the bankruptcy  
28 process. Historically, bankruptcy courts have approved bidding incentives similar to the Break-Up

1 Fee under the “business judgment rule,” which proscribes judicial second-guessing of the actions of  
2 a corporation’s board of directors taken in good faith and in the exercise of honest judgment. *See*,  
3 *e.g.*, *In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (bidding incentives  
4 may “be legitimately necessary to convince a white knight to enter the bidding by providing some  
5 form of compensation for the risks it is undertaking”) (internal quotation marks and citation  
6 omitted). The APA and the Estate’s agreement to pay the Break-Up Fee are the product of good  
7 faith, arm’s length negotiations between the Trustee and Stalking Horse Bidder. The Break-Up Fee  
8 is fair and reasonable in amount, and is reasonably intended to compensate for the risk to the  
9 Stalking Horse Bidder of being used as a stalking horse. The Break-Up Fee has already encouraged  
10 competitive bidding in that the Stalking Horse Bidder would not have entered into the APA without  
11 these provisions, and it will likely promote more competitive bidding and enhance the ultimate  
12 purchase price.

13 Furthermore, the Break-Up Fee, which is 5% of the purchase price under the APA, is within  
14 the spectrum of reasonable break-up fees approved by bankruptcy courts. *See, e.g., In re GGW*  
15 *Brands, LLC*, Case No. 13-15130 (Bankr. C.D. Cal. Feb. 24, 2014) (J. Klein) (order approving  
16 approximately 4.94% break-up); *In re Global Motorsport Group, Inc., et al.*, Case No. 08-10192  
17 (KJC) (Bankr. D. Del. Feb. 14, 2008) (approving approximately 4% break-up fee); *In re O’Brien*  
18 *Env’tl. Energy, Inc.*, 181 F.3d 527, 536 (3d Cir. 1999) (approximately 4% break-up fee was  
19 reasonable); Kelly K. Frazier, *A Comparison Shopping Guide for 363 Sales*, p. 139 (break-up and  
20 topping fees range from 1.5 to 5 percent); *see also Official Committee of Subordinated Bondholders*  
21 *v. Integrated Resources, Inc. (In re Integrated Resources, Inc.)*, 147 B.R. 650, 657-58 (S.D.N.Y.  
22 1992) (establishing three basic factors for determining whether to permit break-up fees in  
23 bankruptcy: whether “the relationship of the parties who negotiated the break-up fee [is] tainted by  
24 self-dealing or manipulation,” whether the “fee hamper[s], rather than encourage[s], bidding,” and  
25 whether “the amount of the fee [is] unreasonable relative to purchase price”), *appeal dismissed*, 3  
26 F.3d 49 (2d Cir. 1993).

27 For the reasons set forth above, the Trustee respectfully requests approval of: (a) the  
28 proposed overbid protections including the Break-Up Fee; (b) the Sale Procedures for the conduct of

1 overbidding, the Auction and selection of the Successful Bidder; (c) the scheduling of the Sale  
2 Hearing and other matters for which scheduling is requested; and (d) the related relief sought hereby  
3 as set forth in the Proposed Procedures Order.

4 **B. Approval of the Ombudsman Report**

5 As discussed above, the Ombudsman filed the Ombudsman Report, in which, among other  
6 things, the Ombudsman concluded, assuming that the buyer adopts the Privacy Policy (which shall  
7 be the case as explained above), the Sale of the Property is consistent with the Privacy Policy in  
8 compliance with Code section 363(b)(1)(A) and would not violate applicable nonbankruptcy law in  
9 compliance with section 363(b)(1)(B). For the reasons stated in the Ombudsman Report, the Trustee  
10 supports the Ombudsman's conclusions. The Trustee requests that the Court approve the  
11 Ombudsman Report. *See, e.g., In re Michael Anthony Mgt., Inc.*, 2010 Bankr. LEXIS 6185 (Bankr.  
12 N.D. Cal. Oct. 4, 2010) (order approving report of consumer privacy ombudsman under section  
13 332(b), filed by Wesley Avery, ombudsman appointed in that case).

14 **C. Request for Waiver of Rule 6004(h) Stay**

15 In order to contact potential bidders as soon as practicable and allow such parties time to  
16 commence due diligence prior to the Auction, the Trustee respectfully requests that the order on this  
17 Motion be effective immediately, notwithstanding the 14-day stay imposed by Bankruptcy Rule  
18 6004(h). As expressed above, the Trustee's goal is to efficiently and expeditiously administer the  
19 Estate's assets for the benefit of the Estate's creditors. To preserve the value of the Estate and limit  
20 the costs of administering the Property and Case, an expedient conclusion to the Sale process will  
21 inure to the benefit of the Estate and its creditors. Waiver of any stay will permit the Auction and  
22 proposed Sale to take place as early as possible under the circumstances.

23 **VI.**  
24 **CONCLUSION**

25 For all the foregoing reasons, the Trustee respectfully requests that the Court enter an order  
26 (a) approving the Sale Procedures and other relief set forth in the Proposed Procedures Order; (b)  
27 authorizing the Trustee to hold the Auction and close the Sale at the times and place set forth above,  
28 (c) approving the Ombudsman Report, and (d) granting such other relief as is fair and equitable.

1 Dated: November 6, 2014

PACHULSKI STANG ZIEHL & JONES LLP

2  
3 By: /s/ Linda F. Cantor  
Linda F. Cantor

4  
5 Attorneys for R. Todd Neilson, Chapter 7  
Trustee



**DECLARATION OF R. TODD NEILSON**

I, R. Todd Neilson, declare as follows:

1. I am the duly appointed chapter 7 trustee (the "Trustee") in the above-captioned bankruptcy case (the "Case"). I make this Declaration on facts within my personal knowledge (albeit my own or that gathered by professionals rendering services to me), or as a result of having reviewed the court file in this Case. If called upon, I can and will competently testify to the facts stated herein.

2. I make this Declaration in support of the *Motion for Order: (1) Scheduling Auction and Sale Hearing in Connection With Sale of Debtor's Customer Lists, Phone Numbers, Web Address, Certain Customer Files, and Related Personal Property of the Estate; (2) Approving Sale Procedures; (3) Approving Break-Up Fee; (4) Approving Notice of Auction and Sale Hearing; and (5) Granting Related Relief Including Approving Ombudsman Report* (the "Motion"). Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

3. The Debtor is a California corporation. 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.

4. 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 certain 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 me as Trustee of the Debtor's estate (the "Estate") [Docket No. 22]. Thereafter upon notice and hearing, the case was converted to a chapter 7 proceeding and I continue to serve as the chapter 7 Trustee [Docket 108].

5. The Debtor's business is no longer in operation and certain personal property remains in the Estate. While I previously sold Debtor's tangible personal property, certain intellectual

1 property remains in the Estate consisting of customer lists including over 12,600 customer names,  
2 business-related telephone and fax number(s), a domain name, certain customer sales journals, and  
3 other related personal property (as more specifically described in the APA, the "Property"). The  
4 Property is no longer necessary to the administration of the Estate and must be disposed of with the  
5 goal of maximizing any value.

6 6. Shortly after my appointment as Trustee, I and my agents started to receive inquiries  
7 from third parties about possibly acquiring some or all of the Property. I immediately set up a  
8 procedure which would segregate and administer all inquiries from any interested parties. Given the  
9 typical early posture of a bankruptcy trustee engagement and the need for me to get up to speed on  
10 and promptly address case issues, I decided that keeping a separate file and doubling back with  
11 potential interested parties after more pressing case matters have been addressed would be the best  
12 course of action. I have acted as a bankruptcy trustee in various cases for over 30 years, during  
13 which period I have sold a large and diverse amount of assets including assets like the Property.  
14 Accordingly, I am familiar and experienced with the universe of potential, qualified buyers of assets  
15 like the Property, which is relatively small. In total, five parties expressed interest in some or all of  
16 the Property. After interested parties executed nondisclosure agreements, I and my agents engaged  
17 in discussions regarding potential sales. The Stalking Horse Bidder expressed a more immediate  
18 interest in moving forward with a potential transaction, and I entered into extensive discussions with  
19 the Stalking Horse Bidder, which resulted in the terms of the parties' APA. Based on my extensive  
20 prior experience, as well as discussions with potential interested parties, I believe that the value of  
21 the Property will diminish over time and that the best opportunity to maximize value for the Estate is  
22 to sell the Property as soon as practicable subject to the overbid procedures requested in the Motion.  
23 As chapter 7 trustee, my goal is to maximize value from the disposition of the Debtor's remaining  
24 assets and to investigate and, if appropriate, pursue causes of action. A sale of the remaining  
25 property of the Debtor in the Trustee's control and possession, including the Property, will serve that  
26 goal and benefit the Estate.

1           7. Through my marketing/solicitation efforts described above, and based on my chapter  
2 7 trustee experience, I believe that the \$150,000 offer and other terms set forth in the APA  
3 (including provision for the Break-Up Fee) comprise a fair and reasonable offer for the Property, and  
4 approval of the APA and Sale is in the best interest of the Estate and its creditors. The proposed  
5 Sale was negotiated in good faith, at arms' length and, to the best of my knowledge, without  
6 collusion or fraud of any kind. The proposed Sale to the Stalking Horse Bidder will be subject to  
7 overbid, as described in the Motion, to further ensure that the proposed Sale terms are reasonable. I  
8 further believe that the overbid protections and Sale Procedures proposed by the Motion (including  
9 the Break-Up Fee) are reasonable and appropriate and will maximize the recovery for the Estate.

10           8. I am not aware of any lien against the Property that is the subject of the Motion.  
11 However, if a holder of a lien or claim receives notice of the Sale and fails to object, the Property  
12 will be sold free and clear of that lien or claim under section 363(f)(2) of the Bankruptcy Code.

13           9. In connection with the proposed Sale, I learned that, during at least some periods and  
14 at least in some instances prior to the commencement of the Case, the Debtor had posted on its  
15 business website a policy (the "Privacy Policy") that certain private information ("Customer  
16 Information") of the Debtor's prepetition customers ("Customers") would not be sold to third  
17 parties. Based on the Privacy Policy, I stipulated with the U.S. Trustee to the appointment of a  
18 consumer privacy ombudsman ("Ombudsman"). Wesley Avery was appointed as the Ombudsman  
19 and on October 22, 2014, the Ombudsman filed his report (the "Ombudsman Report") [Docket No.  
20 184], in which, among other things, the Ombudsman concluded, assuming that the buyer adopts the  
21 Privacy Policy, the Sale of the Property (i) is consistent with the Privacy Policy in compliance with  
22 Code section 363(b)(1)(A) and (ii) would not violate applicable nonbankruptcy law in compliance  
23 with section 363(b)(1)(B). As set forth in the Addendum (attached hereto as Exhibit B), the Stalking  
24 Horse Bidder agrees to abide by and adhere to the Privacy Policy; if an Auction is held, the  
25 successful bidder (if not the Stalking Horse Bidder) will be required to similarly agree to abide by  
26 and adhere to the Privacy Policy. Based on the Ombudsman Report, subject to the Court's approval  
27  
28

1 of the Sale, I do not believe that there is any impediment to the Sale or that any other actions need be  
2 taken in respect to the Privacy Policy and the Customers.

3 10. In sum, it is my opinion that the proposed Sale of the Property is in the best interests  
4 of creditors because the Estate is liquidating and has no use for the Property. Further, it is the duty  
5 of a chapter 7 trustee to liquidate the assets of the bankruptcy estate in an efficient manner.

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

8 Executed on this 6<sup>th</sup> day of November, 2014 at Los Angeles, California.

9  
10 /s/ R. Todd Neilson  
11 R. TODD NEILSON  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Attorney or Party Name, Address, Telephone & FAX Numbers, and California State Bar Number Linda F. Cantor (Bar No. 153762) Pachulski Stang Ziehl & Jones LLP 10100 Santa Monica Blvd., Suite 1300 Los Angeles, CA 90067 Tel: 310-277-6910 Fax: 310-201-0760 <input type="checkbox"/> Attorney for: R. Todd Neilson, Chapter 7 Trustee	FOR COURT USE ONLY
<b>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA</b>	
In re: The Tulving Company, Inc.  <div style="text-align: right;">Debtor(s).</div>	CASE NO.: 8:14-bk-11492-ES CHAPTER: 7 ADV. NO.:

**ELECTRONIC FILING DECLARATION  
(INDIVIDUAL)**

- ☐ Petition, statement of affairs, schedules or lists  
☐ Amendments to the petition, statement of affairs, schedules or lists  
☒ Other: Notice of Motion and Motion for Order: (1) Scheduling Auction and Sale Hearing in Connection With Sale of Debtor's Customer Lists, Phone Numbers, Web Address, Certain Customer Files, And Related Personal Property of the Estate (2) Approving Sale Procedures; (3) Approving Break-Up Fee; (4) Approving Notice of Auction and Sale Hearing; And (5) Granting Related Relief Including Approving Ombudsman Report; Memorandum of Points and Authorities; Declaration of R. Todd Neilson
- Date Filed: \_\_\_\_\_  
 Date Filed: \_\_\_\_\_  
 Date Filed: November 6, 2014

**PART I - DECLARATION OF DEBTOR(S) OR OTHER PARTY**

I (We), the undersigned Debtor(s) or other party on whose behalf the above-referenced document is being filed (Signing Party), hereby declare under penalty of perjury that: (1) I have read and understand the above-referenced document being filed electronically (Filed Document); (2) the information provided in the Filed Document is true, correct and complete; (3) the "/s/," followed by my name, on the signature line(s) for the Signing Party in the Filed Document serves as my signature and denotes the making of such declarations, requests, statements, verifications and certifications to the same extent and effect as my actual signature on such signature line(s); (4) I have actually signed a true and correct hard copy of the Filed Document in such places and provided the executed hard copy of the Filed Document to my attorney; and (5) I have authorized my attorney to file the electronic version of the Filed Document and this Declaration with the United States Bankruptcy Court for the Central District of California. If the Filed Document is a petition, I further declare under penalty of perjury that I have completed and signed a *Statement of Social Security Number(s)* (Form B21) and provided the executed original to my attorney.

  
 Signature of Signing Party

November 6, 2014

Date

R. Todd Neilson

Printed Name of Signing Party

Signature of Joint Debtor (if applicable)

Date

Printed Name of Joint Debtor (if applicable)

**PART II - DECLARATION OF ATTORNEY FOR SIGNING PARTY**

I, the undersigned Attorney for the Signing Party, hereby declare under penalty of perjury that: (1) the "/s/," followed by my name, on the signature lines for the Attorney for the Signing Party in the Filed Document serves as my signature and denotes the making of such declarations, requests, statements, verifications and certifications to the same extent and effect as my actual signature on such signature lines; (2) the Signing Party signed the *Declaration of Debtor(s) or Other Party* before I electronically submitted the Filed Document for filing with the United States Bankruptcy Court for the Central District of California; (3) I have actually signed a true and correct hard copy of the Filed Document in the locations that are indicated by "/s/," followed by my name, and have obtained the signature(s) of the Signing Party in the locations that are indicated by "/s/," followed by the Signing Party's name, on the true and correct hard copy of the Filed Document; (4) I shall maintain the executed originals of this Declaration, the *Declaration of Debtor(s) or Other Party*, and the Filed Document for a period of five years after the closing of the case in which they are filed; and (5) I shall make the executed originals of this Declaration, the *Declaration of Debtor(s) or Other Party*, and the Filed Document available for review upon request of the Court or other parties. If the Filed Document is a petition, I further declare under penalty of perjury that: (1) the Signing Party completed and signed the *Statement of Social Security Number(s)* (Form B21) before I electronically submitted the Filed Document for filing with the United States Bankruptcy Court for the Central District of California; (2) I shall maintain the executed original of the *Statement of Social Security Number(s)* (Form B21) for a period of five years after the closing of the case in which they are filed; and (3) I shall make the executed original of the *Statement of Social Security Number(s)* (Form B21) available for review upon request of the Court.

Signature of Attorney for Signing Party

Date

Printed Name of Attorney for Signing Party

This form is mandatory by Order of the United States Bankruptcy Court for the Central District of California.

**EXHIBIT A**

**(Proposed Procedures Order)**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Linda F. Cantor (CA Bar No. 153762)  
Jason S. Pomerantz (CA Bar No. 157216)  
PACHULSKI STANG ZIEHL & JONES LLP  
10100 Santa Monica Blvd., 13<sup>th</sup> Floor  
Los Angeles, California 90067  
Telephone: 310-277-6910  
Facsimile: 310-201-0760  
E-mail: lcantor@pszjlaw.com

Counsel for R. Todd Neilson, Chapter 7 Trustee for The  
Tulving Company, Inc.

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

In re:

THE TULVING COMPANY, INC., a  
California corporation,

Debtor.

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

Chapter 7

**ORDER: (1) SCHEDULING AUCTION  
AND SALE HEARING IN CONNECTION  
WITH SALE OF DEBTOR'S CUSTOMER  
LISTS, PHONE NUMBERS, WEB  
ADDRESS, CERTAIN CUSTOMER  
FILES, AND RELATED PERSONAL  
PROPERTY OF THE ESTATE, FREE  
AND CLEAR OF LIENS, CLAIMS AND  
ENCUMBRANCES; (2) APPROVING  
SALE PROCEDURES; (3) APPROVING  
BREAK-UP FEE; (4) APPROVING  
NOTICE OF AUCTION AND SALE  
HEARING; AND (5) GRANTING  
RELATED RELIEF**

**Procedures Hearing**

Date:

Time:

Place: Courtroom 5A  
411 West Fourth Street  
Santa Ana, CA 92701

On \_\_\_\_\_, 2014, this Court held a hearing on the proposed sale, bidding and auction procedures and related matters provided for in this Order (the “Procedures Matters”) as set forth in the *Motion for Order: (1) Scheduling Auction and Sale Hearing in Connection With Sale of Debtor’s Customer Lists, Phone Numbers, Web Address, Certain Customer Files, and Related Personal Property of the Estate; (2) Approving Sale Procedures; (3) Approving Break-Up Fee; (4) Approving Notice of Auction and Sale Hearing; and (5) Granting Related Relief Including Approving Ombudsman Report* [Docket No. \_\_\_\_] (the “Motion”)¹ filed by R. Todd Neilson, the duly appointed chapter 7 trustee (the “Trustee”) for The Tulving Company, Inc. (the “Debtor”), in the above-entitled chapter 7 case (the “Case”). Appearances at the hearing on the Procedures Matters (the “Procedures Hearing”) are set forth on the record. This Court has considered the Motion and the Procedures Matters, any responsive pleadings filed in connection with the Motion, the record in the Case, and the representations of counsel at the Procedures Hearing; and the Court having determined that notice of the Motion in respect to the Procedures Matters was adequate and sufficient; and after due deliberation and sufficient cause appearing therefor;

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. The Court has jurisdiction over this matter and over the property of the Debtor and Estate pursuant to 28 U.S.C. §§ 157(a) and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), (N), and (O). The statutory predicates for the relief sought herein are 11 U.S.C. §§ 105 and 363 and Fed. R. Bankr. P. 2002, 6004, and 9014. Venue of the Case and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The relief granted herein is in the best interests of the Estate, its creditors, and other parties in interest.

C. The notice of the Motion, the Procedures Matters, and the Procedures Hearing given by the Trustee constitutes due and sufficient notice thereof.

---

¹ Capitalized terms not defined herein have the meaning ascribed to such term in the Motion.



1 D. Any and all objections to the relief requested in the Motion relating to the Procedures  
2 Matters that have not been withdrawn, waived or settled as announced to the Court at the Procedures  
3 Hearing, or by stipulation filed with the Court, are overruled.

4 E. The Trustee has articulated good and sufficient reasons for the Court to (i) approve  
5 the Sale Procedures, (ii) approve the Break-Up Fee as provided in that certain Asset Purchase  
6 Agreement and Addendum thereto (collectively, the “APA”) attached hereto as **Exhibit 1**, (iii)  
7 approve the form and manner of notice of the Motion, the Auction, the Sale Hearing, and (iv) set the  
8 date of the Auction (if any) and the Sale Hearing.

9 F. The Break-Up Fee, to the extent payable under the APA, (i) shall be deemed an actual  
10 and necessary cost and expense of preserving the Estate, (ii) is of substantial benefit to the Estate,  
11 (iii) is reasonable and appropriate, including in light of the size and nature of the Sale and the efforts  
12 that have been and will be expended by the Stalking Horse Bidder, (iv) has been negotiated by the  
13 parties and their respective advisors at arm’s length and in good faith, and (v) is necessary to ensure  
14 that the Stalking Horse Bidder will continue to pursue the proposed Sale. The Break-Up Fee is a  
15 material inducement for, and condition of, the Stalking Horse Bidder’s entry into the APA. The  
16 Stalking Horse Bidder is unwilling to commit to purchase the Property under the terms of the APA  
17 unless the Stalking Horse Bidder is assured of receiving the Break-Up Fee, if the Break-Up Fee  
18 becomes due and owing under the APA.

19 G. The Sale Notice (as defined below) is calculated to provide adequate notice  
20 concerning the proposed Sale of the Property, and will provide due and adequate notice of the relief  
21 sought in the Motion, and is hereby approved.

22 H. The Sale Procedures are reasonable and appropriate and represent a fair and  
23 appropriate method for maximizing the realizable value of the Property.

24 I. The Court has reviewed the report (the “Ombudsman Report”) filed as Docket No.  
25 184, by the consumer privacy ombudsman, Wesley Avery (the “Ombudsman”). The Ombudsman  
26 Report concludes, and the Court finds, that the Sale will be and is consistent with the Privacy Policy  
27 in compliance with Code section 363(b)(1)(A), and giving due consideration to the facts,  
28

1 circumstances, and conditions of such Sale, no showing was made that such Sale would violate  
2 applicable nonbankruptcy law, in compliance with Code section 363(b)(1)(B).

3 **NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

4 1. The Motion is GRANTED.

5 2. Any objections filed in response to the Motion and the relief granted herein, to the  
6 extent not resolved as set forth herein or at the Procedures Hearing, are hereby OVERRULED.

7 3. The Sale contemplated by the APA is designated as the "Stalking Horse Bid."

8 4. Upon execution of a confidentiality agreement, any person identified by the Trustee,  
9 with the assistance of his advisors, as reasonably likely to be a Qualified Bidder (as defined below)  
10 that wishes to conduct due diligence on the Property with respect to a potential overbid may be  
11 granted access to all material information that has been or will be provided to the Stalking Horse  
12 Bidder. If the Trustee, in his discretion, determines that a Potential Bidder does not constitute a  
13 Qualified Bidder (as defined below), then such Potential Bidder's ability to receive due diligence  
14 access or additional non-public information shall terminate.

15 5. Any prospective bidder (each a "Potential Bidder") that wishes to participate in the  
16 bidding process for the Property must, no later than [December 15], 2014 at 5:00 p.m. (Pacific Time)  
17 (the "Bid Deadline") do all of the following:

18 a. Submit to the Trustee, through his counsel, an irrevocable offer in the form of  
19 an executed APA (the "Modified Agreement") without financing, internal approval or due diligence  
20 contingencies, at a price that conforms with the following Paragraph 5.b, and on such other terms  
21 that are no less favorable to the Estate than those contained in the APA. The Potential Bidder shall  
22 also submit a "blacklined" or otherwise marked copy of the Modified Agreement reflecting the  
23 differences between the Modified Agreement and the APA executed by the Stalking Horse Bidder.

24 b. Agree, in such Modified Agreement, to a purchase price that provides for the  
25 following (the "Purchase Price"): payment in cash at closing in an initial minimum amount equal to  
26 or exceeding the sum of \$165,000 (\$150,000 plus \$15,000).

1 c. Make a good faith cash deposit in the form of a cashier's check or wire  
2 transfer, in an amount equivalent to 10% of the proposed Purchase Price (the "Bid Deposit"), into a  
3 segregated account maintained by the Trustee (the "Segregated Account"). The Bid Deposit shall  
4 immediately become non-refundable (subject to the next sentence) and credited toward the Purchase  
5 Price, if and when the transaction with the Potential Bidder making such Bid Deposit is deemed the  
6 Successful Bid or Back-Up Bid at the Auction and approved by the Court at the Sale Hearing. If a  
7 Potential Bidder's bid is not designated as a Qualified Bid (as defined below), or such bid is not  
8 approved as the Successful Bid or the Back-Up Bid at the Sale Hearing, the Bid Deposit of such  
9 bidder will be returned to such bidder within three (3) business days after the Sale Hearing.

10 d. Provide written evidence reasonably satisfactory to the Trustee of (i) the  
11 identification of the Potential Bidder, its principals, and the representatives thereof who are  
12 authorized to appear and act on its behalf for all purposes regarding the contemplated transaction, (ii)  
13 the Potential Bidder's corporate or other authority to enter into the contemplated transaction, (iii)  
14 identification of all individuals of the Potential Bidder and its advisors that will attend the Auction,  
15 and (iv) its financial ability to fully and timely perform all obligations under the Modified  
16 Agreement if it is declared to be the Successful Bidder.

17 e. Disclose any connections or agreements with the Debtor, the Trustee, the  
18 Stalking Horse Bidder, and any other known Potential Bidder or Qualified Bidder.

19 6. If a Potential Bidder delivers all of the materials described in paragraph 5, above,  
20 (including the Bid Deposit) by the Bid Deadline, the Trustee will determine whether the Potential  
21 Bidder (i) has demonstrated the financial ability to consummate the purchase of the Property, is  
22 reasonably likely to be able to and willing to consummate the contemplated transactions and (iii) has  
23 otherwise satisfied all of the requirements described in paragraph 5, above. If the Potential Bidder  
24 has satisfied the requirements of this paragraph 6, the Trustee shall designate the Potential Bidder as  
25 a "Qualified Bidder" and such bid as a "Qualified Bid." The Stalking Horse Bidder shall be deemed  
26 to be a Qualified Bidder and the APA shall be deemed a Qualified Bid.

1           7.       If the Trustee receives at least one (1) Qualified Bid from a Qualified Bidder other  
2 than the Stalking Horse Bidder prior to the Bid Deadline, then the Trustee shall notify the Stalking  
3 Horse Bidder and each other Qualified Bidder that the Trustee intends to conduct an auction (the  
4 “Auction”) to consider all Qualified Bids, subject to reasonable rules as may be established by the  
5 Trustee. The Auction to determine the Successful Bidder for the Purchased Assets shall be held on  
6 [December 16], 2015 at 10:00 a.m. (Pacific Time) at the offices of Pachulski, Stang, Ziehl & Jones  
7 LLP, 10100 Santa Monica Blvd., Suite 1300, Los Angeles, California 90067. Each bidder  
8 participating at the Auction will be required to confirm that it has not engaged in any collusion with  
9 respect to the bidding or the Sale.

10           8.       Subject to paragraph 15 below, only the Stalking Horse Bidder and other Qualified  
11 Bidders may bid at the Auction. Copies of all Qualified Bids shall be provided to the Stalking Horse  
12 Bidder and each other Qualified Bidder prior to the Auction. At the commencement of the Auction,  
13 the Trustee shall identify the bid that he has determined to be the highest and best offer and shall  
14 permit the Stalking Horse Bidder and other Qualified Bidders to submit higher and better bids. Each  
15 subsequent bid must exceed the amount of the preceding bid by not less than \$10,000 and shall not  
16 be modified in a manner that causes it no longer to be a Qualified Bid. The Auction will be an “open  
17 format” such that all participants are contemporaneously to be made aware of the particulars of any  
18 Qualified Bids that are submitted. At the conclusion of the Auction, the Trustee shall determine  
19 which bid(s) shall be deemed the Successful Bid and Back-Up Bid (if any). The Trustee shall file a  
20 notice announcing the results of the Auction and the identity of the Successful Bidder and the Back-  
21 Up Bidder on the Court’s docket as soon as practicable after conclusion of the Auction. The Trustee  
22 shall request at the Sale Hearing that the Court authorize the Trustee to consummate the Sale of the  
23 Property to the Successful Bidder and, should the Successful Bidder fail to close, to the Back-Up  
24 Bidder. The Trustee reserves the right to cancel the Auction and seek to move forward with a  
25 private sale to the Stalking Horse Bidder. Promptly following the conclusion of the Auction, the  
26 Successful Bidder shall complete and sign all agreements, contracts, instruments or other documents  
27 evidencing and containing the terms and conditions upon which such bid was made. Bid Deposits of  
28

1 the bidders other than the Successful Bidder and Back-Up Bidder shall be returned, subject to the  
2 terms of the APA in the case of the Stalking Horse Bidder.

3 9. If bids have been submitted by more than one Qualified Bidder, the Qualified Bidder  
4 that makes the next-highest and best bid to that of the Successful Bidder shall become the back-up  
5 bidder (the "Back-Up Bidder") and such Back-Up Bidder's final and highest and best bid (the  
6 "Back-Up Bid") shall remain open pending the closing of the Successful Bid (the "Closing Date").  
7 If a bid of the Stalking Horse Bidder is the next-highest and best bid to that of the Successful Bidder,  
8 then such bid of the Stalking Horse Bidder shall be the Back-Up Bid, subject to the terms and  
9 conditions of the APA relating thereto.

10 10. The Estate shall retain the Bid Deposit(s) made by the Successful Bidder and/or the  
11 Back-Up Bidder if either the Successful Bidder and/or the Back-Up Bidder (as applicable) fails to  
12 close the Sale within five (5) business days after entry of a Bankruptcy Court order approving the  
13 Sale of the Property.

14 10. If the Trustee does not receive at least one Qualified Bid from a Qualified Bidder  
15 other than the Stalking Horse Bidder, then no Auction shall be scheduled or conducted, and the  
16 Court at the Sale Hearing shall proceed to consider the approval of the Sale of the Property to the  
17 Stalking Horse Bidder as set forth in the APA.

18 11. If the Stalking Horse Bidder is not the Successful Bidder, subject to the terms and  
19 conditions in the APA, the Trustee shall, pursuant to the APA, pay the Stalking Horse Bidder the  
20 Break-Up Fee. The Break-Up Fee, to the extent payable under the APA, shall (i) be paid out of and  
21 from the proceeds of the Sale of the Property to the Successful Bidder (or if applicable, the Back-Up  
22 Bidder), constitute an administrative expense against the Estate under Bankruptcy Code section  
23 503(b), and constitute liquidated damages, without regard to the Stalking Horse Bidder's ultimate  
24 damages, and the Stalking Horse Bidder shall not retain any other rights, remedies, claims,  
25 counterclaims, and defenses against the Estate in relation to the Sale. For the avoidance of doubt,  
26 the Break-Up Fee shall be payable to the Stalking Horse Bidder in the event that: (i) the Stalking  
27 Horse Bidder is not in default of any of its obligations under the APA, *and* (ii) the Property is  
28

1 thereafter sold to a Successful Bidder other than the Stalking Horse Bidder at the Auction for  
2 consideration in excess of the Consideration, notwithstanding the Stalking Horse Bidder's  
3 willingness and ability to consummate the purchase of the Property, which payment shall be made to  
4 the Stalking Horse Bidder promptly following closing of the Sale of the Property to the Successful  
5 Bidder, from the proceeds of such Sale.

6 12. The Court shall hold a hearing on [December 18], 2014 at \_\_:\_\_\_\_.m. (Pacific  
7 Time) (the "Sale Hearing") to consider the approval of the Sale as set forth in the Motion and the  
8 *Motion for Order: (1) Approving Asset Purchase Agreement; (2) Approving Sale of Estate's*  
9 *Property (Debtor's Customer Lists, Phone Numbers, Web Address, Certain Customer Files, and*  
10 *Related Personal Property) Free and Clear of All Liens, Claims, Encumbrances, and Interests; and*  
11 *(3) Granting Related Relief Including With Respect to Approval of Ombudsman's Fees and Expenses*  
12 *and Distribution of Sale Proceeds on Account of Such Amounts* (the "Sale Approval Motion")  
13 approve the Successful Bidder and Back-Up Bidder, if necessary, and confirm the results of the  
14 Auction, if applicable.

15 13. If the Sale transaction with the Successful Bidder does not close, the Back-Up Bid  
16 shall, upon notice by the Trustee to the Back-Up Bidder, be deemed the Successful Bid without  
17 further order of the Court, and the Back-Up Bidder shall be required to consummate the Sale  
18 transaction in accordance with the applicable asset purchase agreement, and the Back-Up Bidder  
19 shall be subject to the terms of this Order as if it were the initial Successful Bidder. If the Stalking  
20 Horse Bidder is not the Successful Bidder or Back-Up Bidder, the Stalking Horse Bidder shall have  
21 the right, but not the obligation, to keep its bid open pending the closing of a transaction with a  
22 Successful Bidder.

23 14. Upon approval by the Court of the Successful Bidder and subject to the terms and  
24 conditions of the applicable asset purchase agreement, the Successful Bidder's Bid Deposit shall  
25 become non-refundable and deemed forfeited to the Estate if the asset purchase agreement is  
26 thereafter terminated as a result of a breach by the Successful Bidder or failure by the Successful  
27 Bidder to close the proposed transaction as specified in this Order and/or the applicable asset  
28

1 purchase agreement. The Bid Deposit of the Back-Up Bidder shall remain on deposit in the  
2 Segregated Account pending the Closing Date (as defined below), and such deposit shall become  
3 non-refundable and deemed forfeited to the Estate if the Back-Up Bidder is declared the Successful  
4 Bidder and if the applicable asset purchase agreement is thereafter terminated as a result of a breach  
5 by the Back-Up Bidder or failure by the Back-Up Bidder to close the proposed transaction as  
6 specified in this Order and/or the applicable asset purchase agreement.

7 15. Notwithstanding any other provision herein, the Trustee, in his sole discretion, shall  
8 determine whether any bid for the purchase of the Property has satisfied all the conditions set forth  
9 above or if the Trustee believes it is in the best interest of the Estate to waive any or all of the above  
10 conditions, including permitting a bidder to bid at the Auction without submitting a prior Qualified  
11 Bid.

12 16. The Trustee may modify the Sale Procedures set forth in this Order at any time prior  
13 to or during the Auction if the Trustee determines, following consultation with the Stalking Horse  
14 Bidder, in his reasonable judgment, that such modifications are reasonable and will better promote  
15 the goals of the Auction process and are in the best interest of the Estate and the creditors thereof.

16 17. Any objections to the Sale and Sale Approval Motion shall be in writing and shall be  
17 filed with the Court and served on (i) the Trustee's counsel, Linda Cantor, Esq., Pachulski, Stang,  
18 Ziehl & Jones, LLP, 10100 Santa Monica Blvd., Suite 1300, Los Angeles, CA 90067, fax: 310-201-  
19 0760, [lcantor@pszjlaw.com](mailto:lcantor@pszjlaw.com), (ii) the Stalking Horse's counsel, Armen Vartian, 1601 N. Sepulveda  
20 Blvd. #581, Manhattan Beach, CA 90266, fax: 866-427-3820, [armen@vartianlaw.com](mailto:armen@vartianlaw.com), and (iii) the  
21 Office of the United States Trustee (the "Objection Recipients"), on or before **[December 4], 2014**  
22 **at 5:00 p.m. (Pacific Time)**, provided, however, in the event that the Successful Bidder at the  
23 Auction is a person or entity other than the Stalking Horse Bidder, any supplemental or further  
24 objections (a "Supplemental Objection") to the Sale of the Property to the Successful Bidder shall be  
25 filed and served by no later than **[December 17, 2014] at 12:00 p.m. noon (Pacific Time)** (the  
26 "Objection Deadlines"). The Supplemental Objection shall be limited only to issues arising from the  
27 Successful Bidder being a person or entity other than the Stalking Horse Bidder. The Trustee's reply  
28

1 and any other response to the objections shall be filed and served on the applicable objecting parties  
2 no later than [December 11], 2014; provided that the Trustee (1) shall file with the Court a notice  
3 disclosing the Successful Bidder as soon as reasonably practicable after the Auction and (2) may  
4 reply to the issues raised in a Supplemental Objection at the Sale Hearing.

5 18. Notice of (a) the Motion, (b) the Sale Procedures, (c) the Auction, (d) the Objection  
6 Deadlines, and (e) the Sale Hearing shall be provided within three (3) business days after entry of  
7 this Order, by the Trustee via ECF notification, U.S. mail, facsimile and/or email, upon the Service  
8 Parties (defined below), substantially in the form attached hereto as **Exhibit 2** (the "Sale Notice"),  
9 and such notice shall be good and sufficient, and no other or further notice shall be required, under  
10 the circumstances. Subject to any applicable provisions of the Court's August 6, 2014 Order  
11 Limiting Scope of Notice [Docket No. 157], the "Service Parties" are (i) any parties known by the  
12 Trustee to have expressed an interest to him in a transaction with respect to the Property; (ii) any  
13 other parties that the Trustee and his advisors believe may potentially have an interest in acquiring  
14 the Property; (iii) any entities known by the Trustee to have asserted any lien or interest in the  
15 Property; (iv) the United States Trustee; and (vii) all parties who have requested special notice in the  
16 Case.

17 19. The Ombudsman Report is hereby approved under Code sections 332 and 363(b)(1).

18 20. Notwithstanding any applicability of Bankruptcy Rule 6004(h) and/or any other  
19 Bankruptcy Rule, the terms and conditions of this Order shall be immediately effective and  
20 enforceable upon entry hereof.

21 21. This Court shall retain jurisdiction to enforce and interpret the provisions of this  
22 Order.

23  
24 Dated: \_\_\_\_\_

\_\_\_\_\_  
U.S. BANKRUPTCY JUDGE



EXHIBIT 1

(Asset Purchase Agreement with Stalking Horse Bidder)

[document attached as Exhibit B to Motion]

Exhibit 2

(Sale Notice)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Linda F. Cantor (CA Bar No. 153762)  
Jason S. Pomerantz (CA Bar No. 157216)  
PACHULSKI STANG ZIEHL & JONES LLP  
10100 Santa Monica Blvd., 13<sup>th</sup> Floor  
Los Angeles, California 90067  
Telephone: 310-277-6910  
Facsimile: 310-201-0760  
E-mail: lcantor@pszjlaw.com

Counsel for R. Todd Neilson, Chapter 7 Trustee for The  
Tulving Company, Inc.

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

In re:

THE TULVING COMPANY, INC., a  
California corporation,

Debtor.

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

Chapter 7

**NOTICE OF AUCTION AND SALE  
HEARING IN CONNECTION WITH  
SALE OF DEBTOR'S CUSTOMER LISTS,  
PHONE NUMBERS, WEB ADDRESS,  
CERTAIN CUSTOMER FILES, AND  
RELATED PERSONAL PROPERTY OF  
THE ESTATE FREE AND CLEAR OF  
ALL LIENS, CLAIMS, ENCUMBRANCES  
AND INTERESTS**

**Auction (if held):**

Date: \_\_\_\_\_, 2014

Time: 10:00 a.m.

Place: Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd. 13<sup>th</sup> Floor  
Los Angeles, California 90067

**Bid Deadline:**

\_\_\_\_\_, 2014 at 5:00 p.m. (Pacific)

**Sale Approval Hearing:**

Date: \_\_\_\_\_, 2014

Time: \_\_\_\_:\_\_\_\_.m.

Place: Courtroom 5A  
411 West Fourth Street  
Santa Ana, CA 92701

1       **PLEASE TAKE NOTICE** that on \_\_\_\_\_, 2014, R. Todd Neilson, Chapter 7 Trustee  
2 (the "Trustee") for The Tulving Company, Inc. (the "Debtor"), filed the *Motion for Order: (1)*  
3 *Scheduling Auction and Sale Hearing in Connection With Sale of Debtor's Customer Lists, Phone*  
4 *Numbers, Web Address, Certain Customer Files, and Related Personal Property of the Estate; (2)*  
5 *Approving Sale Procedures; (3) Approving Break-Up Fee; (4) Approving Notice of Auction and*  
6 *Sale Hearing; and (5) Granting Related Relief Including Approving Ombudsman Report* [Docket  
7 No. \_\_\_\_] (the "Procedures Motion"), and the *Motion for Order: (1) Approving Asset Purchase*  
8 *Agreement; (2) Approving Sale of Estate's Property (Debtor's Customer Lists, Phone Numbers,*  
9 *Web Address, Certain Customer Files, and Related Personal Property) Free and Clear of All*  
10 *Liens, Claims, Encumbrances, and Interests; and (3) Granting Related Relief Including With*  
11 *Respect to Approval of Ombudsman's Fees and Expenses and Distribution of Sale Proceeds on*  
12 *Account of Such Amounts* (the "Sale Approval Motion").<sup>1</sup> After a hearing, on \_\_\_\_\_, 2014,  
the United States Bankruptcy Court for the Central District of California, Santa Ana Division (the  
"Bankruptcy Court") entered the *Order: (1) Scheduling Auction and Sale Hearing in Connection*  
*With Sale of Debtor's Customer Lists, Phone Numbers, Web Address, Certain Customer Files, and*  
*Related Personal Property of the Estate, Free and Clear of Liens, Claims and Encumbrances; (2)*  
*Approving Sale Procedures; (3) Approving Break-Up Fee; (4) Approving Notice of Auction and*  
*Sale Hearing; and (5) Granting Related Relief* [Docket No. \_\_\_\_] (the "Procedures Order"),  
which order approved certain procedures related matters as set forth in the Procedures Motion. A  
copy of the Procedures Order is attached hereto.

13       **PLEASE TAKE FURTHER NOTICE** that, as set forth in the Procedures Order, the offer  
14 of Greatcollections.com LLC d/b/a Great Collections (the "Stalking Horse Bidder"), in the amount  
15 of \$150,000 cash, has been selected by the Trustee as the "Stalking Horse Bid" for the purchase of  
16 certain intellectual property consisting of customer lists including over 12,600 customer names,  
17 customer lists, business-related telephone and fax number(s), a domain name, certain customer  
18 sales journals, and other related personal property (as more specifically described in the APA, the  
19 "Property"). In order to solicit the highest and best offer for the Property, the Trustee has served or  
will serve a copy of the Procedures Motion and Sale Approval Motion on potential bidders for the  
Property, and will conduct an Auction (if applicable) in accordance with the Sale Procedures and  
the Procedures Order. If the Trustee receives at least one Qualified Bid from a Qualified Bidder  
other than the Stalking Horse Bidder prior to the Bid Deadline, then the Trustee shall conduct an  
auction (the "Auction") to consider all Qualified Bids.

20       **PLEASE TAKE FURTHER NOTICE** that any person or entity interested in submitting a  
21 Qualified Bid on the Property, other than the Stalking Horse Bid, must deliver a bid, in accordance  
22 with the Procedures Order, to Trustee's counsel, Pachulski Stang Ziehl & Jones LLP, 10100 Santa  
23 Monica Blvd., Suite 1300, Los Angeles, CA 90067-1225, Attn: Linda F. Cantor, Esq., fax (310)  
24 201-0760, e-mail: [lcantor@pszjlaw.com](mailto:lcantor@pszjlaw.com), such that the bid is actually received no later than  
\_\_\_\_\_, 2014, at 5:00 p.m. (Pacific time). Any party desiring additional, relevant  
information should contact the Trustee's counsel.

25       **PLEASE TAKE FURTHER NOTICE** that the Trustee will conduct an Auction (if  
26 applicable) of the Property at 10:00 a.m. (Pacific Time) on \_\_\_\_\_, 2014, at the offices of  
\_\_\_\_\_  
\_\_\_\_\_

27       <sup>1</sup> Capitalized terms not defined herein have the meaning ascribed to such term in the Procedures Motion, the  
28 Procedures Order or the Sale Approval Motion, as applicable.

1 Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13<sup>th</sup> Floor, Los Angeles,  
2 California 90067, or at such other location and date/time as may be later announced by the Trustee.  
3 Only parties that have timely submitted Qualified Bids (and who have been informed by the  
4 Trustee of such status) will be permitted to participate in and/or make any statements on the record  
at the Auction. All Qualified Bidders must appear in person at the Auction, or through a duly  
authorized representative.

5 **PLEASE TAKE FURTHER NOTICE** that the hearing to consider approval of the Sale of  
6 the Property to the Stalking Horse Bidder or other Successful Bidder at the Auction, as applicable,  
7 free and clear of all liens, claims, and encumbrances pursuant to Bankruptcy Code section 363, will  
8 be held before the Honorable Erithe Smith, United States Bankruptcy Judge, 411 West Fourth Street,  
9 Courtroom 5A, Santa Ana, CA 92701, on \_\_\_\_\_, **2014 at \_\_:\_\_\_\_.m. (Pacific**  
10 **time)**, or at such other time thereafter as counsel may be heard. The Sale Hearing may be adjourned  
11 from time to time without further notice to creditors or parties in interest other than by  
12 announcement of the adjournment in open court on the date scheduled for the Sale Hearing.  
13 Objections, if any, to the Sale and the Sale Approval Motion, must: (a) be in writing; (b) comply  
14 with the Bankruptcy Rules and Local Rules; and (c) be filed with the clerk of the Bankruptcy Court  
15 and served upon (i) the Trustee's counsel, Linda Cantor, Esq., Pachulski, Stang, Ziehl & Jones LLP,  
16 Suite 1300, Los Angeles, CA 90067, fax: 310-201-0760, [lcantor@pszjlaw.com](mailto:lcantor@pszjlaw.com), (ii) the Stalking  
17 Horse Bidder's counsel, Armen Vartian, 1601 N. Sepulveda Blvd. #581, Manhattan Beach, CA  
90266, fax: 866-427-3820, [armen@vartianlaw.com](mailto:armen@vartianlaw.com), and (iii) the Office of the United States Trustee,  
so as to be received no later than \_\_\_\_\_, **2014 at 5:00 p.m. (Pacific time)**; provided, however,  
that to the extent the Successful Bidder at the Auction is an entity other than the Stalking Horse  
Bidder, any supplemental or further objections to the sale to the Successful Bidder shall be filed and  
served so as to be received no later than \_\_\_\_\_, **2014 at \_\_:\_\_\_\_.m. (Pacific time)**.  
UNLESS AN OBJECTION IS TIMELY SERVED AND FILED IN ACCORDANCE WITH THIS  
NOTICE, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT AND THE  
BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED WITHOUT FURTHER  
HEARING AND NOTICE.

18 **PLEASE TAKE FURTHER NOTICE** that this Notice is subject to the full terms and  
19 conditions of the Procedures Motion, the Procedures Order and the Sale Procedures which shall  
20 control in the event of any conflict, and the Trustee strongly encourages parties in interest to review  
such documents in their entirety, which are available upon written request from undersigned counsel.

21 Dated: \_\_\_\_\_, 2014

PACHULSKI STANG ZIEHL & JONES LLP

22 By: /s/ Linda F. Cantor  
23 Linda F. Cantor (SBN 153872)

24 Attorneys for R. Todd Neilson, Chapter 7 Trustee  
25  
26  
27  
28

**EXHIBIT B**

**(Asset Purchase Agreement with Stalking Horse Bidder)**

ASSET PURCHASE AGREEMENT

*August.*  
*1st* This Asset Purchase Agreement (the "**Agreement**") is made and entered into as of this day of ~~July~~, 2014 by and between R. Todd Neilson, solely in his capacity as chapter 7 trustee ("**Trustee**") for the estate of The Tulving Company, Inc., a California corporation ("**Debtor**") and Greatcollections.com LLC, a California limited liability company, d/b/a Great Collections ("**Purchaser**").

Seller confirms and acknowledges that:

A. On March 10, 2014, Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "**Bankruptcy Code**"), in the United States Bankruptcy Court for the Central District of California, Santa Ana Division (the "**Bankruptcy Court**") bearing case number 14-11492 (the "**Case**"); and

B. On March 21, 2014, the Trustee was appointed as chapter 11 trustee of the Debtor's estate (the "**Estate**"), and on May 29, 2014, an order was entered by the Bankruptcy Court converting the Case to a chapter 7, and Notice of Appointment of the Trustee as the chapter 7 Trustee was filed on June 10, 2014; and

C. The Trustee, as representative of the Debtor's Estate (hereinafter, "**Seller**") desires to sell, transfer and assign to Buyer, and Buyer desires to acquire from Seller, pursuant to Section 363 of the Bankruptcy Code, the Property (as defined below in Section 1).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree that:

1. Sale of Property. Seller hereby sells, transfers, assigns, conveys and delivers to Buyer, all of Seller's right, title and interest in and to (i) the Debtor's customer lists that are in the Trustee's possession and more specifically described on Exhibit "A" hereto (the "**Customer Lists**"), (ii) certain customer sales journals in electronic format (QuickBooks) that are in the Trustee's possession and more specifically described on Exhibit "A" hereto (the "**Electronic Customer Files**"), (iii) the domain name more specifically identified on Exhibit "A" hereto (the "**Domain Name**") and any goodwill that may be symbolized thereby and any rights to sue for past infringement and to receive recoveries therefor, (iv) the business-related phone numbers more specifically identified on Exhibit "A" hereto (the "**Business Numbers**"), and (v) any rights relating to the foregoing items (i) through (iv) (together with preceding items (i) through (iv), the "**Property**"). The Customer Lists and Electronic Customer Files are in electronic format and shall be transferred to Buyer in such format.

2. Purchase Price. In consideration of the transfer of the Property to Buyer, Buyer has delivered a deposit ("**Buyer's Deposit**") to the Seller in the amount of Fifteen Thousand Dollars (\$15,000) to be applied against the purchase price of One Hundred Fifty Thousand Dollars (\$150,000) ("**Purchase Price**"), and upon close of sale, Buyer shall pay to Seller the remaining sum of One Hundred Thirty Five Thousand Dollars (\$135,000) in cash (the "**Cash Payment**").

3. Overbid. The sale of the Property to Buyer shall be subject to overbid at an auction, for which Seller shall seek an approval order from the Bankruptcy Court ("**Bid Procedures Order**") providing for the allowance of bid procedures, a break-up fee (payable by Seller solely from the proceeds of the sale of the Property to a Successful Bidder other than the Buyer), initial and subsequent minimum overbids, the selection of a winning bid ("**Successful Bid**") and a back-up bid, and providing that if no qualified competing bid is received, Buyer's bid shall be determined to be the Successful Bid for the purchase of the Property.

4. Bid Procedures Order. Seller shall request that the Bid Procedures Order include the following provisions: (a) the initial overbid for the Property must be at least \$15,000 in excess of the Purchase Price, (b) subsequent bid increments shall be set at \$10,000, (c) the return of Buyer's Deposit and payment of a break-up fee to Buyer in the amount of \$7,500 in the event that (i) Buyer is not in default under this Agreement, and (ii) the Property is thereafter sold to an alternate purchaser submitting the Successful Bid ("**Successful Bidder**") at the auction ("**Auction**") notwithstanding Buyer's willingness and ability to consummate the purchase of the Property, (d) the Estate shall retain the deposit(s) made by the Successful Bidder and/or the back-up bidder if either the Successful Bidder and/or the back-up bidder fails to close the sale within five (5) business days after entry of a Bankruptcy Court order approving the sale of the Property.

5. Back-Up Bidder Status. If an alternate sale transaction with a Successful Bidder other than Buyer is selected by Seller and approved by the Bankruptcy Court, this Agreement shall not automatically terminate, or if Buyer submitted another higher or otherwise better bid at the Auction that is accepted by Seller as the highest or otherwise best bid but is not ultimately the Successful Bid ("**Superseding Agreement**"), such Superseding Agreement between Seller and Buyer shall not terminate, and this Agreement or the Superseding Agreement, as the case may be, shall constitute a "back-up bid" which shall remain open for acceptance by Seller up to and including the earliest of: (i) the fourteenth (14<sup>th</sup>) day after the entry of the order of the Bankruptcy Court approving the alternate sale transaction, (ii) the date of the closing of the alternate sale transaction, or (iii) the date of the termination of the Agreement (or Superseding Agreement, if applicable) pursuant to Section 8 (the period in preceding clauses (i), (ii), or (iii), as applicable, the "**Back-Up Period**"). Buyer's designation as "back-up bidder" shall not modify any terms of this Agreement or the Superseding Agreement, as the case may be, subject to this Section 5. Upon the lapse of the Back-Up Period, if Seller does not elect to proceed with closing the transaction pursuant to this Agreement or the Superseding Agreement (as applicable), the Buyer's Deposit shall be promptly returned to Buyer.

6. Competing Transaction. This Agreement is subject to approval by the Bankruptcy Court and the consideration by Seller of higher and better competing bids (each a "**Competing Bid**"). From the date hereon and until the completion of the auction or as otherwise directed by the Bankruptcy Court, Seller is permitted to cause his representatives to initiate contact with, solicit or encourage the submission of any inquiries, proposals or offers by any person, in addition to Buyer, in connection with any sale or other disposition of the Property, provided that such person enters into a non-disclosure agreement in favor of Seller and perform any other acts which are required under the Bankruptcy Code, including supplying information relating to the Property to prospective buyers.

7. Representations and Warranties.





(i) Seller. Seller represents and warrants to Buyer that: (a) to Seller's knowledge, the Estate has good and marketable title to the Property, free and clear of any and all covenants, conditions, restrictions, liens, charges, encumbrances, options and adverse claims or rights whatsoever; (b) Subject to the approval of the Bankruptcy Court, Seller has the full right, power and authority to enter into this Agreement and to transfer, convey and sell the Property to Buyer; (c) to Seller's knowledge, the Customer Lists, Electronic Customer Files, Domain Name and Business Numbers comprise the complete customer lists, electronic customer sales journals, domain names and business numbers, respectively, that were possessed by the Debtor and, in respect to the Customer Lists and Electronic Customer Files, that were seized by the Secret Service and the Department of Justice and turned over to the Trustee; and (d) Seller is not a party to any contract, agreement or commitment to sell, convey, assign, transfer or otherwise dispose of any portion or portions of the Property (other than this Agreement). Notwithstanding anything contained in this Agreement to the contrary, Buyer acknowledges and agrees that Seller is not making any representations or warranties whatsoever, express or implied, beyond those expressly given by Seller in this Section 7 hereof. Buyer acknowledges and agrees that, except for the representations and warranties contained herein, the Property is being transferred, as to condition, on an "AS IS" basis and "WITH ALL FAULTS." Without in any way limiting the foregoing, Seller hereby disclaim any warranty (express or implied) of merchantability or fitness for any particular purpose as to any portion of the Property.

(ii) Buyer. Buyer represents and warrants to Seller that: (a) Buyer has all requisite corporate power and authority to enter into the Agreement and to carry out its obligations hereunder; (b) On the date of this Agreement and the date of closing of the transactions contemplated under this Agreement, Buyer has and will have sufficient funds available to consummate such transactions; (c) there are no legal or other proceedings pending or, to the Buyer's knowledge, threatened in writing against Buyer, which, if adversely determined, would reasonably be expected to prohibit the consummation of the transactions contemplated by this Agreement or materially delay or impair the ability of Buyer to perform its obligations under this Agreement; and (d) Buyer has conducted its own independent review and analysis of the Property, and in entering into this Agreement, Buyer has relied solely upon such investigation and analysis, and Buyer acknowledges that neither Seller, the Trustee, the Debtor nor any of their respective agents make or have made any representation or warranty, either express or implied, relating to the Property, except for the representations and warranties contained in this Agreement (which are subject to the limitations and restrictions contained herein).

5. Termination. This Agreement may be terminated at any time before closing (i) by mutual written consent of Seller and Buyer; (ii) automatically and without any action or notice by Seller or Buyer, immediately upon Seller's bankruptcy case being dismissed or consummation of an alternate sale of the Property to a party other than Buyer; (iii) by Seller, if Seller is not in material breach of the Agreement and there has been a material violation or breach by Buyer of any representation, warranty, or covenant contained in the Agreement that has not been waived by Seller, and Buyer has failed to cure such violation or breach within ten (10) calendar days following receipt of notification thereof by Seller; and (iv) by Buyer, if Buyer is not in material breach of the Agreement and there has been a material violation or breach by Seller of any representation, warranty, or covenant contained in the Agreement that has not been waived by Buyer, and Seller has failed to cure such violation or breach within ten (10) calendar days following receipt of notification thereof by Buyer.

6. Counterparts. This Agreement may be executed in any number of counterparts, and by the parties hereto on separate counterparts, but shall not be effective until each party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument. Each counterpart may be delivered by facsimile transmission or portable data format (PDF), which transmission shall be deemed delivery of an originally executed document.

7. Successors and Assigns. This Agreement will be binding on, and will inure to the benefit of, the successors and permitted assigns of the Seller and Buyer.

8. Assignment. Neither this Agreement nor any rights and obligations hereunder may be transferred or assigned without the other party's prior written consent.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts made and performed in California, and, to the extent applicable, the Bankruptcy Code.

10. No Survival of Representations and Warranties. Seller and Buyer hereto agree that the covenants contained in this Agreement to be performed at or after the consummation of a sale shall survive, and Seller and Buyer shall be liable to the other after the date hereof for any breach thereof, but that no other representations and warranties shall survive.

11. Preservation of Records. Seller (or any subsequently appointed bankruptcy estate representative) and Buyer agree that each of them shall preserve and keep the records held by it or their respective affiliates relating to the Property prior to the date hereof until the earlier of (i) one (1) year from the date hereof or (ii) the date of entry of an order of the Bankruptcy Court closing or dismissing the Case, and shall make such records and personnel available to the other as may be reasonably required by such party in connection with, among other things, any estate claims or causes of action, any insurance claims by, legal proceedings or tax audits against or governmental investigations of Seller or Buyer or any of their affiliates or in order to enable Seller or Buyer to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby. In the event Seller, on the one hand, or Buyer, on the other hand, wish to destroy such records after that time, such party shall first give ninety (90) days' prior written notice to the other and such other party shall have the right at its option and expense, upon prior written notice given to such party within that ninety (90) day period, to take possession of the records within one hundred and eighty (180) days after the date of such notice.

12. Bankruptcy Court Approval. Notwithstanding payment of the Buyer's Deposit or any other cash payment by Buyer, the sale, transfer, assignment, conveyance and delivery of the Property by Seller to Buyer and the Seller's obligations hereunder are subject to the approval of the Bankruptcy Court. In the event that the Bankruptcy Court does not approve this Agreement, Seller will return the Buyer's Deposit and any cash payment to Buyer.

13. Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed given (i) when delivered personally by hand (with written confirmation of receipt), (ii) when sent by facsimile (with written confirmation of transmission)

or electronic mail (and no notice of failure of delivery was received within a reasonable time after such message was sent) or (iii) one business day following the day sent by overnight courier (with written confirmation of receipt), in each case at the following addresses, facsimile numbers and e-mail addresses (or to such other address, facsimile number or e-mail address as a party hereto may have specified by notice given to the other party hereto pursuant to this provision):

If to Seller, to:

R. Todd Neilson, chapter 7 Trustee  
c/o Berkeley Research Group, LLC  
2049 Century Park East, Suite 2525  
Los Angeles, California 90067  
Telecopier: (310) 299-4750  
E-mail: TNeilson@brg-expert.com

With a copy (which shall not constitute notice) to:

Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Boulevard, 11th Floor  
Loa Angeles, CA 90067-4100  
Attention: Linda F. Cantor  
Telecopier: (310) 201-0760  
E-mail: lcantor@pszjlw.com

If to Buyer, to:

Great Collections  
2030 Main Street, Suite 620  
Irvine, CA 92614  
Attn: Ian Russell  
E-mail: [ian@greatcollections.com](mailto:ian@greatcollections.com)

With a copy (which shall not constitute notice) to:

Armen R. Vartian  
1601 N.Sepulveda Blvd. #581  
Manhattan Beach, CA 90266  
Telecopier: (866) 427-3820  
E-mail: armen@vartianlaw.com

***[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]***

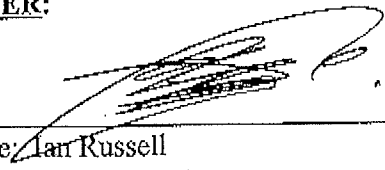
**IN WITNESS WHEREOF**, Seller and Buyer have executed this Assignment as  
of the date first written above.

**SELLER:**

**R. Todd Neilson, solely in his capacity as  
chapter 7 Trustee of the Estate of The  
Tulving Company, Inc.**

By: \_\_\_\_\_  
Name: R. Todd Neilson, chapter 7 Trustee

**BUYER:**

By:  \_\_\_\_\_  
Name: Ian Russell  
Its: Managing Member

# **Exhibit A to APA**

Exhibit A

A. Customer List - January 2011 through Petition Date

Containing the following (Approx. 12,600 - Names, real property addresses, telephone numbers and email addresses)

B. Customer Files - January 2011 through Petition Date

Containing the following (Name, Product and Quantity sold/purchased, amount paid/received and date)

C. Domain Name

[www.Tulving.com](http://www.Tulving.com)

D. Business Telephone Numbers

800-995-1708

949-722-0112

949-722-0114

949-722-0290

949-722-0291

949-722-0292

949-722-0293

949-722-0294

949-722-0295

949-722-0296 (Fax)

# **Addendum to APA**

### ADDENDUM TO ASSET PURCHASE AGREEMENT

This Addendum to Asset Purchase Agreement (this "*Addendum*") is made and entered into as of this 26 day of October, 2014 by and between R. Todd Neilson, solely in his capacity as chapter 7 trustee ("*Trustee*") for the estate of The Tulving Company, Inc., a California corporation ("*Debtor*") and Greatcollections.com LLC, a California limited liability company, d/b/a Great Collections ("*Purchaser*" and together with the Trustee, the "*Parties*"). This Addendum modifies and supplements that certain Asset Purchase Agreement dated as of August 1, 2014 (the "*Original Agreement*") and as modified and supplemented by the Addendum, the "*Agreement*") by and between the Trustee and Purchaser. Capitalized terms used, but not specifically defined, in this Addendum are intended to have the meanings given to such terms in the Original Agreement.

The Parties acknowledge and agree that:

1. Customer Privacy Policy: The Trustee is informed that, during at least some periods and at least in some instances prior to the commencement of the Case pending before the Bankruptcy Court, the Debtor had posted on its business website a policy (the "*Privacy Policy*") that certain private information ("*Customer Information*") of the Debtor's prepetition customers ("*Customers*") would not be sold to third parties.

2. Purchaser's Customer Privacy Policy: Purchaser acknowledges and agrees that, in respect to any and all personally identifiable information (as defined in 11 U.S.C. § 101(41A)) of and relating to Customers that may be sold and transferred to Purchaser under the Agreement (subject to approval by the Bankruptcy Court), the Purchaser shall fully abide by and implement the Privacy Policy, as if the Purchaser were in the Debtor's capacity, solely in respect to the Customer Information. For the avoidance of doubt, subject to the Bankruptcy Court's approval of the Agreement, the Purchaser is not a third party for purposes of the Privacy Policy.

3. Effect of Addendum: To the extent of any inconsistency between the terms of this Addendum and those of the Original Agreement, the terms of this Addendum shall govern and control. Except to that extent, the Original Agreement and its terms shall be unchanged hereby and shall govern and control.

4. Counterparts: This Addendum may be executed in any number of counterparts, and by the parties hereto on separate counterparts, but shall not be effective until each party has executed at least one counterpart. Each counterpart shall constitute an original of this Addendum, but all the counterparts shall together constitute but one and the same instrument. Each counterpart may be delivered by facsimile transmission or portable data format (PDF), which transmission shall be deemed delivery of an originally executed document.

5. Bankruptcy Court Approval: This Addendum and the sale and transactions contemplated hereunder and under the Agreement are subject to the approval of the Bankruptcy Court.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]*

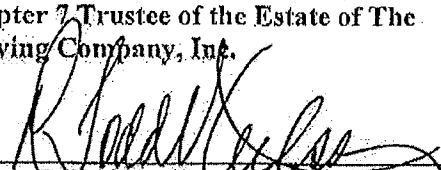
Handwritten signature and initials, possibly "LJ" and "RM", in the bottom right corner of the page.



IN WITNESS WHEREOF, Seller and Buyer have executed this Addendum as  
of the date first written above.

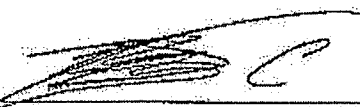
**SELLER:**

R. Todd Neilson, solely in his capacity as  
chapter 7 Trustee of the Estate of The  
Tulving Company, Inc.

By:   
Name: R. Todd Neilson, chapter 7 Trustee

**BUYER:**

Greatcollections.com LLC, a California  
limited liability company, d/b/a Great  
Collections

By:   
Name: Ian Russell  
Its: Managing Member

**EXHIBIT C**

**(copy of Ombudsman Report)**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

7  
8 **UNITED STATES BANKRUPTCY COURT**  
9  
10 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

11 In re

12 THE TULVING COMPANY, INC., a  
13 California corporation,

14 Debtor.

15 TID # 33-0441602

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

**REPORT OF CONSUMER PRIVACY  
OMBUDSMAN [11 U.S.C. § 332(b)]**

16 **TO THE HONORABLE ERITHE A. SMITH, UNITED STATES BANKRUPTCY JUDGE**  
17 **AND ALL PARTIES IN INTEREST:**

18 **T**his report (the "CPO Report") is being submitted to assist the Court in its consideration  
19 of the facts, circumstances, and conditions of the proposed Sale of possible personally identifiable  
20 information of the Debtor<sup>1</sup> under 11 U.S.C. § ("Section") 363 by the Trustee to  
21 Greatcollections.com LLC, a California limited liability company, d/b/a Great Collections (the  
22 "Purchaser" or "GC"). Section 332(b) provides that such information may include the presentation  
23

24 <sup>1</sup> All initially capitalized terms not otherwise defined herein shall use those definitions stated in  
25 the "NOTICE OF MOTION AND MOTION FOR ORDER: (1) APPROVING ASSET  
26 PURCHASE AGREEMENT; (2) APPROVING SALE OF ESTATE'S PROPERTY (DEBTOR'S  
27 CUSTOMER LISTS, PHONE NUMBERS, WEB ADDRESS, CERTAIN CUSTOMER FILES,  
28 AND RELATED PERSONAL PROPERTY) FREE AND CLEAR OF ALL LIENS, CLAIMS,  
ENCUMBRANCES, AND INTERESTS; AND (3) GRANTING RELATED RELIEF" filed in the  
above-captioned chapter 7 Case on August 7, 2014 as Document # 158.

1 by the Consumer Privacy Ombudsman (the "CPO")<sup>2</sup> of (1) the Debtor's privacy policy; (2) the  
2 potential losses or gains of privacy to consumers if such sale or such lease is approved by the  
3 Court; (3) the potential costs or benefits to consumers if such sale is approved by the Court; and (4)  
4 the potential alternatives that would mitigate potential privacy losses or potential costs to  
5 consumers.

6 I.

7 **THE DEBTOR'S POSSIBLE PRIVACY POLICY**

8 "The Debtor was in the business of selling and purchasing gold, silver, coins, bullion, and  
9 other precious metals through its internet website or by phone."<sup>3</sup> Purchased assets under the  
10 Agreement include

11 (i) the Debtor's customer lists that are in the Trustee's possession and more  
12 specifically described on Exhibit "A" hereto (the "Customer Lists "), (ii) certain  
13 customer sales journals in electronic format (QuickBooks) that are in the Trustee's  
14 possession and more specifically described on Exhibit "A" hereto (the "Electronic  
Customer Files")...

15 See Motion at 17 (Paragraph C.1).

16 The Customer Lists and Electronic Customer Files constitute possible personally  
17 identifiable information (the "Possible PII") under Section 101(41A)(A)(iii) of Title 11 of the  
18 United States Code (the "Bankruptcy Code"). It is not certain whether the Debtor had a privacy  
19 policy. See correspondence from the Trustee's counsel to the CPO, a true and correct copy of  
20 which is attached hereto and incorporated herein as **Exhibit 1**. A possible privacy policy of the  
Debtor (the "Privacy Policy") reads as follows:

21 We do not need to collect personal private information that may be required with  
22 credit card transactions. We do not have an online shopping cart that requires your  
23 Credit Card number and may require personal information to identify you. We have  
24 no commissioned salesmen looking at your records. We have no telemarketers. We  
do not sell your private personal information to 3rd parties. We only use the  
personal information that is provided to us to serve our customers and to complete  
our business transactions.

26 <sup>2</sup> Wesley H. Avery was appointed as the CPO pursuant to Section 332 of the Bankruptcy Code  
pursuant to an order of the Court filed on October 14, 2014.

27 <sup>3</sup> See Motion at 5:23-24.

1 Id. citing <http://tulving.com/for-sale-gold-bullion-sell-gold-coins.htm> (the "Webpage")

2 According to the Trustee's counsel and a review of the Webpage itself by the CPO,  
3 customers of the Debtor did not pay by cash or credit card, but instead paid the Debtor by check,  
4 money order or wire transfer. Id. Customers could contact the Debtor by fax, telephone, mail or  
5 email. Id. The Possible PII collected by the Debtor therefore did not include credit card  
6 information, but did include customers' names and might include mailing addresses, email  
7 addresses and telephone numbers.

8 **The CPO assumes that the order of the Court approving the Sale of the Possible PII**  
9 **to the Purchaser and/or the Successful Bidder will adopt the Privacy Policy of the Debtor.**

10 See Addendum to Asset Purchase Agreement a true and correct copy of which is attached hereto  
11 and incorporated herein as Exhibit 2. As such, the CPO concludes that: (a) the Sale is consistent  
12 with the Privacy Policy in compliance with section 363(b)(1)(A), and (b) giving due consideration  
13 to the facts, circumstances, and conditions of the Sale, the Sale would not violate applicable non-  
14 bankruptcy law in compliance with section 363(b)(1)(B).

15 **II.**

16 **ANALYSIS**

17 A. **The Data Collected by the Debtor Is Probably Not Personally Identifiable**  
18 **Information Under the Bankruptcy Code.**

19 What constitutes "personally identifiable information" ("PII") is defined in part under the  
20 Bankruptcy Code as information "provided by an individual to the debtor in connection with  
21 obtaining a product or a service from the debtor primarily for personal, family, or household  
22 purposes". See 11 U.S.C. § 101(41A). Because PII provided by an individual to the Debtor in  
23 connection with "selling and purchasing gold, silver, coins, bullion, and other precious metals" for  
24 investment and eventual resale is not "a product or a service . . . primarily for personal, family, or  
25 household purposes", the data collected by the Debtor is probably not personally identifiable  
26 information under the Bankruptcy Code. See, e.g. Searle v. Exley Express, 278 Or 535, 564 P.2d  
27 1054 (1977). In Searle, the Oregon Supreme Court articulated a two-part test to determine what  
28 constitutes a "personal, family or household purpose": Objectively, is the good or service at issue

1 customarily purchased for personal, family or household use? And subjectively, was the item at  
2 issue purchased by the plaintiff for personal, family or household use rather than for commercial  
3 use or resale? See 564 P.2d at 1056. Here, the Debtor's sale of precious metals for investment  
4 and eventual resale does not fall with PII as defined under Section 101(41A). See also Black's  
5 Law Dictionary (6<sup>th</sup> Edition) definition of "consumer": "A buyer (other than for purposes of  
6 resale)...".

7  
8 **B. The Sale Does Not Violate the Privacy Policy of the Debtor, if any, and is therefore**  
9 **Permissible.**

10 The Sale is permissible under the Bankruptcy Code if the Court finds that the sale of  
11 personally identifiable information governed by a debtor's privacy policy "is consistent with such  
12 policy". 11 U.S.C. § 363(b)(1)(A). The privacy of consumers' personally identifiable information  
13 in the retail sales context is primarily regulated by the Federal Trade Commission ("FTC") under  
14 the FTC Act. Section 5 of the FTC Act declares unfair or deceptive practices in commerce as  
15 unlawful.<sup>4</sup> To determine whether Section 5 of the FTC Act's prohibition against deception has  
16 been violated, the FTC will first identify what "express claims," and "implied claims," have been  
17 made by a company.<sup>5</sup> An "express claim" refers to a factual assertion made in an advertisement or  
18 promotion or other publicly available statement such as a corporate policy. An "implied claim"  
19 refers to the net impression conveyed by all elements of a company's policies or statements  
20 "including an evaluation of such factors as the entire document, the juxtaposition of various  
21 phrases in the document, the nature of the claim, and the nature of the transactions."<sup>6</sup> Section 5 is  
22 violated when an express or implied claim is "likely to affect a consumer's choice of or conduct  
23 regarding a product" and is "likely to mislead reasonable consumers under the circumstances."<sup>7</sup> In

24  
25 <sup>4</sup> 15 U.S.C. § 45(a).

26 <sup>5</sup> FTC Policy Statement on Deception, *appended to Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174  
(1984) available at <http://www.ftc.gov/bcp/policystmt/ad-decept.htm>.

27 <sup>6</sup> *Id.*

28

1 addition, an act or practice may be considered “unfair” if it causes, or is likely to cause, substantial  
2 injury to consumers that is not outweighed by countervailing benefits to consumers or competition  
3 and is not reasonably avoidable by consumers.<sup>8</sup>

4 The FTC has explicitly applied section 5’s prohibitions against deceptive acts and practices  
5 to corporate privacy statements made on the Internet and elsewhere in more than a dozen consent  
6 orders. The order issued in the seminal Toysmart.com case is instructive.

7 Toysmart.com (“Toysmart”) was engaged in the advertising, promotion, and sale of toys  
8 on the Internet.<sup>9</sup> In the course of doing business, Toysmart collected information from its  
9 customers, including, among other things, its customers’ names, addresses, billing information,  
10 and shopping preferences.<sup>10</sup> Like the possible privacy policy of the Debtor, Toysmart’s website  
11 included a privacy policy which assured customers that

12 Personal information voluntarily submitted by visitors to our site . . . is never  
13 shared with a third party. All information obtained by toysmart.com is used only to  
personalize your experience online.<sup>11</sup>

14 On May 22, 2000, Toysmart announced that it had ceased operations, and on June 9, 2000,  
15 Toysmart’s creditors filed an involuntary petition in bankruptcy.<sup>12</sup> One of the assets offered for  
16 sale during the bankruptcy case was the personal information Toysmart had collected about its  
17 customers.

18 The FTC filed a complaint in the United States District Court for the District of  
19 Massachusetts alleging that any sale of Toysmart’s customer information would constitute a

20

21 <sup>7</sup> Id.

22 <sup>8</sup> See generally FTC Policy Statement on Unfairness, appended to *International Harvester Co.*,  
104 F.T.C. 949, 1070 (1984) available at <http://www.ftc.gov/bcp/policystmt/ad-unfair.htm> (last  
23 viewed October 3, 2006).

24 <sup>9</sup> See First Amended Complaint, Civil Action No. 00-11341 at ¶ 6 (D. Mass. 2000) available at  
<http://www.ftc.gov/os/2000/07/toysmartcomplaint.htm> (last viewed October 3, 2006).

25 <sup>10</sup> Id. at ¶ 9.

26 <sup>11</sup> Id. at ¶ 7.

27 <sup>12</sup> Id. at ¶¶ 12, 13.

28

1 deceptive act or practice in violation of section 5 of the FTC Act.<sup>13</sup> On July 20, 2000, Toysmart  
2 and the FTC entered a stipulation establishing conditions on the sale of Toysmart's customer  
3 information.<sup>14</sup> The stipulation provided that Toysmart could *only* sell its customer information to  
4 a "Qualified Purchaser" – that is, a company that concentrates its business in the same industry as  
5 a debtor, intends to purchase a debtor's goodwill, agrees to become a debtor's  
6 successor-in-interest as to the customer information, and agrees to abide by the terms of a debtor's  
7 privacy policy.

8 GC, appears to be in the same industry as the Debtor,<sup>15</sup> appears to be purchasing the  
9 Debtor's business goodwill,<sup>16</sup> and as assumed by the CPO above presumably will adopt the  
10 Debtor's Privacy Policy as will be stated in the order of the Court approving the Sale. Thus, the  
11 CPO believes that GC is a "Qualified Purchaser" in the Bankruptcy Case, and this Sale would  
12 satisfy section 5 of the FTC Act.

13 1. **Losses or Gains of Privacy.**

14 Since the personally identifiable information of the Debtor's customers is being transferred  
15 to an unaffiliated entity, there is a clear loss of privacy to consumers. However, this loss should  
16 be mitigated by GC's adoption of the Privacy Policy.

17 2. **Costs or Benefits to Consumers.**

18 The potential costs or benefits to consumers if the subject sale is approved will obviously  
19 depend on GC's planned use of the data. It is reasonable to believe that the foregoing actions have  
20 value and are beneficial to the Debtor's customers.

21 3. **Potential Alternatives.**

22 None were identified. As a "Qualified Purchaser", GC's adoption of the Privacy Policy

23  
24 <sup>13</sup> Id.

25 <sup>14</sup> See Stipulation and [Proposed] Order Establishing Conditions on Sale of Customer Information,  
26 Civil Action No. 00-13995 (Bankr. D. Mass. 2000) (attached as Exhibit E); Stipulated Consent  
Agreement and Final Order, Civil Action No. 0011341 (D. Mass. 2000) available at  
<http://www.ftc.gov/os/2000/07/toysmartconsent.htm> (last viewed October 3, 2006).

27 <sup>15</sup> See, e.g. <http://www.greatcollections.com/>

28 <sup>16</sup> See Motion at 17, Paragraph C(1)(iii).



1 should satisfy the concerns of the Court.

2 No personally identifiable information was disclosed by the CPO as part of this Report.

3 Dated this 16<sup>th</sup> day of October, 2014, at Valencia, California.

4 Respectfully submitted,

5   
6 \_\_\_\_\_  
7 Wesley H. Avery, CIPP

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Exhibit 1

## Wesley H. Avery

---

**From:** Jonathan Kim <jkim@pszjlaw.com>  
**Sent:** Thursday, October 09, 2014 3:59 PM  
**To:** Wesley H. Avery  
**Cc:** Linda Cantor  
**Subject:** Tulving; Privacy Policy  
**Attachments:** www.tulving as of 2-8-14.pdf; www.tulving as of 5-19-13.pdf

While based on information available to the Trustee's agents, the Debtor's prepetition www.tulving.com website does not appear to have had listed any privacy policy, it appears that a privacy policy appeared on some pages at <http://tulving.about.ag/>

For example, the link below has the privacy policy:

<http://tulving.about.ag/2013-american-gold-eagle-for-sale-us-coins.htm>

The link below does not have the privacy policy:

[http://tulving.about.ag/bullion/stillwater\\_1\\_oz\\_palladium\\_bar.htm](http://tulving.about.ag/bullion/stillwater_1_oz_palladium_bar.htm)

Further, below is an email from our law library director (and her two pdf attachments) regarding what privacy policy info. the Debtor's website appeared to have before the petition date. As you may know, the Department of Justice had seized the Debtor's records prepetition, and so the Trustee has no records concerning any privacy policy.

Jonathan

Jonathan Kim  
Pachulski Stang Ziehl & Jones LLP

---

**From:** Leslie Ann Forrester  
**Sent:** Tuesday, August 12, 2014 12:48 PM  
**To:** Linda Cantor  
**Cc:** Jonathan Kim  
**Subject:** RE: Consumer Privacy Ombudsman

I found it on one page, hard to figure out how many other ones also said it.

As of 4/3/13: <http://tulving.com/for-sale-gold-bullion-sell-gold-coins.htm> looked like the attached, and included:

## For Sale Gold Bullion Privacy Policy

We do not accept Credit Cards. We do not need to collect personal private information that may be required with credit card transactions. We do not have an online shopping cart that requires your Credit Card number and may require personal information to identify you. We have no commissioned salesmen looking at your records. We have no telemarketers. We do not sell your private personal information to 3rd parties. We only use the personal information that is provided to us to serve our customers and to complete our business transactions. We have no third party paid advertisers on our site. The Tulving Company does not control 3rd party sites and is not responsible for their content and their policies. Links to third party sites are only offered as a convenience to our visitors. We do cooperate with law enforcement investigations, the FBI, and with court orders. If you have any questions regarding our policies and practice's you can call us at 800-995-1708 Or E-Mail [hannes@tulving.com](mailto:hannes@tulving.com) or write us at  
The Tulving Company (Since 1990)

P.O. Box 6200, Newport Beach, CA 92658

And that same page looked virtually the same on 2/8/14 (see attached).

FYI, what I use for this is called Wayback Machine, something that Internet Archive produces: <https://archive.org/web/>.

Les

Case 8:14-bk-11492-ES Doc 187 Filed 11/06/14 Entered 11/06/14 16:17:23 Desc  
Main Document Page 61 of 68  
Case 8:14-bk-11492-ES Doc 184 Filed 10/22/14 Entered 10/22/14 11:04:08 Desc  
Main Document Page 11 of 15

Exhibit 2

### **ADDENDUM TO ASSET PURCHASE AGREEMENT**

This Addendum to Asset Purchase Agreement (this “*Addendum*”) is made and entered into as of this \_\_\_\_ day of October, 2014 by and between R. Todd Neilson, solely in his capacity as chapter 7 trustee (“*Trustee*”) for the estate of The Tulving Company, Inc., a California corporation (“*Debtor*”) and Greatcollections.com LLC, a California limited liability company, d/b/a Great Collections (“*Purchaser*” and together with the Trustee, the “*Parties*”). This Addendum modifies and supplements that certain Asset Purchase Agreement dated as of August 1, 2014 (the “*Original Agreement*” and as modified and supplemented by the Addendum, the “*Agreement*”) by and between the Trustee and Purchaser. Capitalized terms used, but not specifically defined, in this Addendum are intended to have the meanings given to such terms in the Original Agreement.

The Parties acknowledge and agree that:

1. Customer Privacy Policy: The Trustee is informed that, during at least some periods and at least in some instances prior to the commencement of the Case pending before the Bankruptcy Court, the Debtor had posted on its business website a policy (the “*Privacy Policy*”) that certain private information (“*Customer Information*”) of the Debtor’s prepetition customers (“*Customers*”) would not be sold to third parties.

2. Purchaser’s Customer Privacy Policy: Purchaser acknowledges and agrees that, in respect to any and all personally identifiable information (as defined in 11 U.S.C. § 101(41A)) of and relating to Customers that may be sold and transferred to Purchaser under the Agreement (subject to approval by the Bankruptcy Court), the Purchaser shall fully abide by and implement the Privacy Policy, as if the Purchaser were in the Debtor’s capacity, solely in respect to the Customer Information. For the avoidance of doubt, subject to the Bankruptcy Court’s approval of the Agreement, the Purchaser is not a third party for purposes of the Privacy Policy.

3. Effect of Addendum: To the extent of any inconsistency between the terms of this Addendum and those of the Original Agreement, the terms of this Addendum shall govern and control. Except to that extent, the Original Agreement and its terms shall be unchanged hereby and shall govern and control.

4. Counterparts: This Addendum may be executed in any number of counterparts, and by the parties hereto on separate counterparts, but shall not be effective until each party has executed at least one counterpart. Each counterpart shall constitute an original of this Addendum, but all the counterparts shall together constitute but one and the same instrument. Each counterpart may be delivered by facsimile transmission or portable data format (PDF), which transmission shall be deemed delivery of an originally executed document.

5. Bankruptcy Court Approval: This Addendum and the sale and transactions contemplated hereunder and under the Agreement are subject to the approval of the Bankruptcy Court.

***[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]***

**IN WITNESS WHEREOF**, Seller and Buyer have executed this Addendum as  
of the date first written above.

**SELLER:**

**R. Todd Neilson, solely in his capacity as  
chapter 7 Trustee of the Estate of The  
Tulving Company, Inc.**

By: \_\_\_\_\_  
Name: R. Todd Neilson, chapter 7 Trustee

**BUYER:**

**Greatcollections.com LLC, a California  
limited liability company, d/b/a Great  
Collections**

By: \_\_\_\_\_  
Name: Ian Russell  
Its: Managing Member

## 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:  
6055 E. Washington Blvd., # 500, Los Angeles CA 90040

A true and correct copy of the foregoing document entitled (*specify*): REPORT OF CONSUMER PRIVACY OMBUDSMAN [11 U.S.C. § 332(b)]

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 (date) 22 Oct 14, 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 (date) 22 Oct 14, 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

☐ 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 (date) \_\_\_\_\_, 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.

☐ 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.

10/22/14  
Date  
Wesley H. Avery  
Printed Name

[Signature]  
Signature

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



ECF Service

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) ustpregion16.sa.ecf@usdoj.gov

**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, 13<sup>th</sup> Floor, Los Angeles, California 90067

A true and correct copy of the foregoing document **NOTICE OF MOTION AND MOTION FOR ORDER: (1) SCHEDULING AUCTION AND SALE HEARING IN CONNECTION WITH SALE OF DEBTOR'S CUSTOMER LISTS, PHONE NUMBERS, WEB ADDRESS, CERTAIN CUSTOMER FILES, AND RELATED PERSONAL PROPERTY OF THE ESTATE; (2) APPROVING SALE PROCEDURES; (3) APPROVING BREAK-UP FEE; (4) APPROVING NOTICE OF AUCTION AND SALE HEARING; AND (5) GRANTING RELATED RELIEF INCLUDING APPROVING OMBUDSMAN REPORT; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF R. TODD NEILSON** 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 November 6, 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 November 6, 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 \_\_\_\_\_, 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.

**Potential bidders served by email as described in the Motion**

***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.

November 6, 2014

Janice G. Washington

/s/ Janice G. Washington

*Date*

*Printed Name*

*Signature*

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

**8:14-bk-11492-ES Notice will be electronically mailed to:**

Andrew S Bisom on behalf of Debtor The Tulving Company Inc  
abisom@bisomlaw.com

Candice Bryner on behalf of Interested Party Candice Bryner  
candice@brynerlaw.com

Philip Burkhardt on behalf of Other Professional Karen Duddleston  
phil@burkhardtandlarson.com, stacey@burkhardtandlarson.com

Stephen L Burton on behalf of Attorney Stephen L. Burton  
steveburtonlaw@aol.com

Linda F Cantor, ESQ on behalf of Other Professional Pachulski Stang Ziehl & Jones LLP  
lcantor@pszjlaw.com, lcantor@pszjlaw.com

Linda F Cantor, ESQ on behalf of Trustee R. Todd Neilson (TR)  
lcantor@pszjlaw.com, lcantor@pszjlaw.com

David L Gibbs on behalf of Creditor Kenneth W Stach  
david.gibbs@gibbslaw.com, ecf@gibbslaw.com

Nancy S Goldenberg on behalf of U.S. Trustee United States Trustee (SA)  
nancy.goldenberg@usdoj.gov

Lawrence J Hilton on behalf of Creditor Jeffrey Roth  
lhilton@oneil-llp.com, ssimmons@oneil-llp.com; kdonahue@oneil-llp.com

John H Kim on behalf of Creditor Ford Motor Credit Company LLC  
jkim@cookseylaw.com

Elizabeth A Lossing on behalf of U.S. Trustee United States Trustee (SA)  
elizabeth.lossing@usdoj.gov

R. Todd Neilson (TR)  
rneilson@brg-expert.com, sgreenan@brg-expert.com; rneilson@ecf.epiqsystems.com; ntroszak@brg-expert.com

Jason S Pomerantz on behalf of Trustee R. Todd Neilson (TR)  
jspomerantz@pszjlaw.com, jspomerantz@pszjlaw.com

Nanette D Sanders on behalf of Creditor Levon Gugasian  
becky@ringstadlaw.com

United States Trustee (SA)  
ustpreion16.sa.ecf@usdoj.gov

1  
2  
3 **2. SERVED BY UNITED STATES MAIL**

4 ***Counsel for Buyer***

5 Armen R. Vartian  
6 1601 N. Sepuleda Boulevard, #581  
7 Manhattan Beach, CA 90266

8 ***Laurence P Nokes on behalf of Interested Party John Frankel***

9 Nokes & Quinn  
10 410 Broadway St Ste 200  
11 Laguna Beach, CA 92651

12 ***Accountants for Landlord***

13 Brent Murdoch  
14 Murdoch & Morris, LLP  
15 114 Pacifica, Ste. 320  
16 Irvine, CA 92618

17 ***Interested Party***

18 Frye & Hsieh  
19 Douglas J. Frye, Esq.  
20 24955 Pacific Coast Highway, #A201  
21 Malibu, CA 90265

22 ***Counsel for Creditor Levon Gugasian***

23 Nanette D. Sanders, Esq.  
24 Ringstad & Sanders LLP  
25 2030 Main Street  
26 Suite 1600  
27 Irvine, CA 92614  
28

PACHULSKI STANG ZIEHL & JONES LLP  
ATTORNEYS AT LAW