

Linda F. Cantor (CA Bar No. 153762)  
PACHULSKI STANG ZIEHL & JONES LLP  
10100 Santa Monica Blvd., 13<sup>th</sup> Floor  
Los Angeles, California 90067-4100  
Telephone: 310-277-6910  
Facsimile: 310-201-0760  
Email: lcantor@pszjw.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 (I) AUTHORIZING  
IMPLEMENTATION OF TRUSTEE'S  
PROPOSED PLAN FOR LIQUIDATION  
OF SEIZED ITEMS AND  
DISBURSEMENT OF ASSETS TO  
VICTIM/CREDITORS OF FRAUD IN THE  
BANKRUPTCY CASE IN ACCORDANCE  
WITH COORDINATION AGREEMENT  
WITH UNITED STATES GOVERNMENT,  
AND (II) GRANTING RELATED RELIEF  
PURSUANT TO SECTIONS 105 AND 363  
OF THE BANKRUPTCY CODE;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF;  
DECLARATION OF R. TODD NEILSON**

Hearing:

Date: January 19, 2016  
Time: 10:30 a.m.  
Place: 411 West Fourth Street  
Courtroom 5A  
Santa Ana, CA 92701

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

1 PLEASE TAKE NOTICE that on **January 19, 2016, at 10:30 a.m.**, or as soon thereafter as  
2 counsel may be heard, a hearing will be held (the "Hearing") upon the motion ("Motion") of R.  
3 Todd Neilson, the duly appointed chapter 7 trustee (the "Trustee") for The Tulving Company, Inc.  
4 (the "Debtor"), in the above-entitled chapter 7 case (the "Bankruptcy Case"), for the entry of an  
5 order or orders, pursuant to Sections 105 and 363 of Title 11 of the United States Code, 11 U.S.C.  
6 § 101 et seq. (the "Bankruptcy Code") (I) Authorizing Implementation of Trustee's Proposed Plan  
7 for Liquidation of Seized Items and Disbursement of Assets to Victim/ Creditors of Fraud in the  
8 Bankruptcy Case in Accordance with Coordination Agreement with United States Government, and  
9 (II) Granting Related Relief.

10 The Motion is filed in accordance with the terms of the *Coordination Agreement for*  
11 *Distribution of Seized Items from United States to Bankruptcy Trustee and from Trustee to Victims*  
12 (the "Coordination Agreement") by and among the Trustee, the Debtor, Hannes Tulving, Jr. and the  
13 United States Government (the "Government"). Among other things, the Coordination Agreement  
14 requires that the Trustee make a proposal (the "Proposal") to this Court, the Government and the  
15 United States District Court for the Western District of North Carolina (the "District Court")<sup>1</sup> for  
16 liquidating certain assets of the Debtor that were seized by the Government in March 2014 (the  
17 "Seized Items") and promptly distributing the proceeds thereof to creditors of this estate who are  
18 victims of the Debtor's fraud (the "Victim/Creditors"). Along with the Proposal, the Trustee is  
19 required to file a final list of the Victim/Creditors and their respective losses. If the Proposal is  
20 approved by the Government, the District Court and this Court, the Government will turn over the  
21 Seized Items to the Trustee in an amount sufficient to satisfy the proposed payouts to  
22 Victim/Creditors in the Bankruptcy Case.

23 The Coordination Agreement was approved by Order of this Court dated July 22, 2015  
24 [Docket No. 264] (the "Coordination Order"). The Seized Items consist of 12,539 Presidential  
25 Error-Missing Edge Letter Coins ("Error Coins") and approximately 176,461 other coins ("Non-  
26 Error Coins").

27  
28 <sup>1</sup> Criminal proceedings against the Debtor and Hannes Tulving, Jr. are pending before the District Court, Case Docket  
No. 3:15CR115 (the "Criminal Case").

1 By the Motion, the Trustee is requesting that this Court approve his Proposal for  
2 implementation of the Coordination Agreement. The Proposal, as described more fully in the  
3 attached memorandum, is to transfer the Seized Items from their current location in Wilmington,  
4 Delaware, to Orange County, California or another location to be inventoried. Thereafter, the  
5 Trustee will distribute the Error Coins to Victim/Creditors on a pro rata basis and the  
6 Victim/Creditors' claims will be reduced by the allocated value of the Error Coins distributed to  
7 them.<sup>2</sup> The Non-Error Coins will be sold at auction and the Trustee will distribute the net proceeds  
8 of sale of the Non-Error Coins to Victim/Creditors, on a pro-rata basis, in partial payment of the  
9 remaining amount of their claims.<sup>3</sup>

10 The Proposal addresses only the claims of the Victim/Creditors who are entitled to prompt  
11 payment of restitution from the Seized Items under the Trustee's settlement with the Government,  
12 which was approved by this Court's Coordination Order. After implementation of the Proposal, any  
13 additional recoveries by the estate will be distributed to claimants on account of their outstanding  
14 allowed claims pursuant to the priorities and other provisions of the Bankruptcy Code.

15 **PLEASE TAKE FURTHER NOTICE** that the Motion is based on this Notice and Motion,  
16 the accompanying Memorandum of Points and Authorities, the Declaration of R. Todd Neilson that  
17 is attached to the Motion, and any other admissible evidence properly brought before the Court.

18 **PLEASE TAKE FURTHER NOTICE** that Local Bankruptcy Rule 9013-1(f) requires that  
19 any response to the Motion be filed with the Bankruptcy Court and served upon Trustee's counsel at  
20 the address appearing on the upper-left hand corner of the caption page to this Motion and the Office  
21 of the U.S. Trustee no later than fourteen (14) days prior to the Hearing hereon. The response must  
22 be a complete written statement of all reasons in opposition to or in support of the Motion and  
23 include declarations, documents and any responding memorandum of points and authorities.

24  
25  
26 <sup>2</sup> For example, assuming the total Victim/Creditors' claims amounted to \$15 million and the value allocated to the  
distribution of the Error Coins equaled \$7.5 million, the Victim/Creditors' Claims would be reduced by 50% (\$15  
million / \$7.5 million) prior to additional distributions by the Trustee in the Bankruptcy Case.

27 <sup>3</sup> If a Victim/Creditor chooses not to receive the Error Coins allocated to them, those Error Coins would be auctioned  
28 with the Non-Error Coins and such Victim/Creditors would then receive their allocable percentage return from the  
aggregate Error Coin and Non-Error Coin net sale proceeds as well as other Estate assets based on their claim unadjusted  
by the Error Coin allocation.

Pursuant to Local Bankruptcy Rule 9013-1(h), the failure to timely file and serve written opposition may be deemed by the Court to be consent to the granting of the relief requested in the Motion.

**WHEREFORE**, The Trustee respectfully requests that the Court approve the Proposal and grant such other relief as is just and proper under the circumstances.

Dated: December 1, 2015

PACHULSKI STANG ZIEHL & JONES LLP

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

Counsel for R. Todd Neilson, Chapter 7 Trustee

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**STATEMENT OF FACTS**

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

The Tulving Company, Inc. ("Debtor") is a California corporation. The Debtor was in the business of selling and purchasing gold, silver, coins 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 Hannes Tulving, Jr., the Debtor's sole shareholder and principal ("Hannes Tulving") in the United States District Court, Northern District of California. A criminal investigation of the Debtor and Tulving by the Government was also being pursued, as described below. The Debtor ceased operations on or about March 3, 2014.

**B. Procedural Background of the Bankruptcy Case**

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

**C. The Criminal Case**

On March 8, 2014, Special Agents of the United States Secret Service executed a Search Warrant on the Debtor's offices on probable cause that the Debtor and Hannes Tulving were engaged in fraud. The Search Warrant resulted in the seizure of the Debtor's property including rare

1 coins and other valuable items (the "Seized Items"), which are described as line items seven through  
2 thirty-four and thirty-six through fifty-two of the Search Warrant Return, a copy of which is  
3 appended hereto as **Exhibit B**. Criminal proceedings (the "Criminal Case") against the Debtor and  
4 Hannes Tulving (collectively, "Defendants") ensued before the United States District Court for the  
5 Western District of North Carolina (the "District Court").

6 Hannes Tulving entered into a Plea Agreement with the United States of America, by and  
7 through the Acting United States Attorney for the Western District of North Carolina (the  
8 "Government") in the Criminal Case. Pursuant to order of this Court entered July 22, 2015 [Docket  
9 No. 264] (the "Coordination Order"), Hannes Tulving was authorized to sign the Plea Agreement on  
10 behalf of the Debtor in the Criminal Case. Under the Plea Agreement, the Defendants each plead  
11 guilty to 18 U.S.C. § 1343 wire fraud charge as set forth in Count One of a Bill of Information in the  
12 Criminal Case and, among other things, agreed to pay restitution to the victims of fraud. The  
13 Coordination Order also authorized Hannes Tulving to sign on behalf of the Debtor a "*Coordination*  
14 *Agreement for Disbursement of Seized Items from United States to Bankruptcy Trustee and from*  
15 *Trustee to Victims*" (the "Coordination Agreement").

16 **D. The Coordination Agreement**

17 The claimants in the Bankruptcy Case are primarily the same customers who are victims in  
18 the Criminal Case (the "Victims"). Specifically, the Trustee received approximately 381 claims  
19 filed by claimants who, based on review by the Government, are substantially or wholly identical to  
20 the Victims identified for purposes of restitution in the Criminal Case. Given the overlap of Victims  
21 and the pendency of the Bankruptcy Case, the Trustee proposed to the Government that the Seized  
22 Items can be administered more effectively in the Bankruptcy Case than in the Criminal Case. The  
23 Coordination Agreement by and among the Debtor, the Trustee, Hannes Tulving and the  
24 Government (collectively, the "Parties") incorporates that proposal and provides a procedure for the  
25 liquidation by the Trustee of the Seized Items and for distribution of proceeds of sale to the creditors  
26 of this Estate who are also Victims of the Defendants' criminal actions (the "Victim/Creditors") in  
27 the Bankruptcy Case.

Pursuant to the Coordination Order, the Trustee is required to (a) file a final list of the Victim/Creditors and their respective losses, (b) make a proposal for the sale of the Seized Items and the distribution of proceeds to the Victim/Creditors (the "Proposal") in the Bankruptcy Case, and (c) submit the Proposal to the Government, the District Court and the Bankruptcy Court for approval. If the Proposal is approved by the Government, the District Court and this Court, the Government will turn over the Seized Items to the Trustee in an amount sufficient to satisfy the proposed payouts to Claimants. The relevant provisions of the Coordination Order are set forth at paragraph 4 on page 5, which states as follows:

"4. The Parties and the Trustee agree that prompt payment to such Victims can best be achieved by (1) the Trustee proposing, on or before sixty days<sup>1</sup> after the Coordination Agreement is signed by both the Bankruptcy Court and the District Court, in the form of an omnibus motion or other filed pleading sufficient for filing in court, a final list of Victims and losses to the Parties, to the Bankruptcy Court, and to the District Court and proposing a plan for liquidation of the Seized Items to the Bankruptcy Court and the District Court, including a plan for all disbursements of costs and expenses and all disbursements of Victims and (2) the Government, if it is in agreement with the Victim list and plan for liquidation, and if the Bankruptcy Court approves the plan for liquidation, turning over Seized Items to the Trustee in an amount sufficient, based on best estimates of appraised value of the Seized Items, to satisfy the payouts proposed by the Trustee as set forth herein. The Trustee agrees that he shall make every effort to prioritize payments to Victims over all other payments, except for reasonable costs and expenses of liquidation approved by the Bankruptcy Court to which the Parties do not object in writing. The Government reserves the right to decline to turn over Seized Items to the Trustee in the event that, in the Government's sole discretion, any part of the plan set forth by the Trustee or any pending or anticipated litigation in the Bankruptcy Case is not, in light of all of the circumstances of the Bankruptcy Case and the Criminal Case, beneficial to prompt recovery for Victims."

In accordance with the terms of the Coordination Order, the Trustee has proposed (the "Proposal") that the Government authorize the transfer of the Seized Items, which consist of approximately 189,000 coins on 22 pallets, separated into 12,539 Presidential Error-Missing Edge Letter Coins ("Error Coins") and approximately 176,461 other coins ("Non-Error Coins"), from the

<sup>1</sup> The Parties entered into Stipulations extending the date by which the Trustee must file the final list of Victims and losses and proposed plan for liquidation of the Seized Items until December 1, 2015. Those Stipulations were approved by Orders of the Bankruptcy Court dated September 25, 2015 [Dkt. No. 279] and November 20, 2015 [Dkt. No. 285].

1 Delaware Depository in Wilmington, Delaware, to Orange County, California or another location at  
2 which the Non-Error Coins will be sold at auction under the administration of the Bankruptcy  
3 Court.<sup>2</sup> The Trustee will seek authority to retain an auctioneer to conduct an auction of the Non-  
4 Error Coins over a three to six month period. The Trustee is not seeking to auction the Error Coins  
5 because he is informed and believes that an immediate or short-term sale of the Error Coins would  
6 significantly diminish their value, as it may take years for that magnitude of Error Coins to be  
7 absorbed into the marketplace.

8 After the Seized Items have been moved, the Trustee will distribute the Error Coins to  
9 Victim/Creditors on a pro rata basis and the Victim/Creditors' claims will be reduced by the  
10 allocated value of the Error Coins distributed to them.<sup>3</sup> The Non-Error Coins will be sold at auction  
11 and the Trustee will distribute the net proceeds of sale of the Non-Error Coins to Victim/Creditors,  
12 on a pro-rata basis, in partial payment of the remaining amount of their claims.<sup>4</sup> After all Seized  
13 Items and/or their net proceeds have been distributed to the Victim/Creditors, any additional  
14 recoveries by the estate will be distributed on a pro rata basis to all creditors on account of their  
15 outstanding allowed claims pursuant to the priorities and other provisions of the Bankruptcy Code.

16 The list of the Victim/Creditors and their respective losses (representing the proposed  
17 allowed amount of each Victim/Creditor's claim), is set forth on **Exhibit A** hereto.<sup>5</sup>

18 The Proposal addresses only the claims of the Victim/Creditors who are entitled to prompt  
19 payment of restitution from the Seized Items under the Trustee's settlement with the Government,  
20 which was approved by this Court's Coordination Order. After implementation of the Proposal, any  
21 additional recoveries by the estate will be distributed to all claimants on account of their outstanding  
22 allowed claims pursuant to the priorities and other provisions of the Bankruptcy Code.

23 <sup>2</sup> The Seized Items were placed in the Delaware Depository after their seizure by the Government. Because of the  
24 existing security and structural conditions at the Delaware Depository, the Trustee has determined that such location  
cannot be used to conduct an auction.

25 <sup>3</sup> For example, assuming the total Victim/Creditors' claims amounted to \$15 million and the value allocated to the  
distribution of the Error Coins equaled \$7.5 million, the Victim/Creditors' Claims would be reduced by 50% (\$15  
26 million / \$7.5 million) prior to additional distributions by the Trustee in the Bankruptcy Case.

27 <sup>4</sup> However, if a Victim/Creditor chooses not to receive the Error Coins allocated to them, those Error Coins would be  
auctioned with the Non-Error Coins and such Victim/Creditors would then receive their allocable percentage return from  
the aggregate Error Coin and Non-Error Coin net sale proceeds as well as other Estate assets based on their claim  
unadjusted by the Error Coin allocation.

28 <sup>5</sup> Any additional amounts asserted by creditors will be subject to objections to be made prior to the hearing on this  
Motion, provided that the Trustee will create appropriate reserves on account of any unresolved claim objections.

II.

**THE TRUSTEE'S PROPOSAL COMPORTS WITH THE REQUIREMENTS OF THE  
BANKRUPTCY CODE, IS IN THE BEST INTERESTS OF THE ESTATE AND SHOULD  
BE APPROVED BY THE COURT.**

**A. The Transfer of the Seized Assets and Sale of the Non Error Coins is an Appropriate  
Exercise of the Trustee's Business Judgment.**

The first step of the Proposal is to move the Seized Assets from their current location in Wilmington, Delaware, to Orange County or another location to be determined by the Trustee. The Trustee has, by separate motion, requested authority to make cash disbursements to pay for the cost of transporting the Seized Items.<sup>6</sup> Once moved, the Proposal is to auction the Non-Error Coins and to distribute the Error Coins and proceeds of the Non-Error Coins, less allowed costs of administration, to Victim/Creditors.

The Seized Items are being held at the Delaware Depository in Wilmington, Delaware. After inquiry and discussions with the Depository representative, the Trustee has determined that an inventory or auction of the Seized Items is not possible under the existing security and other structural conditions at the Depository. Therefore, the Seized Items must be transferred to another location if any are to be sold and distributed. Moreover, the Trustee believes that the administration of the Seized Items inside the Bankruptcy Case in accordance with the Proposal is in the best interests of the Victim/Creditors. The Bankruptcy Case provides a far more efficient forum than the Criminal Case for the prompt liquidation of the Non-Error Coins and the administration of claims including, without limitation, the distribution of net sale proceeds and distribution of Error Coins to the Victim/Creditors. In fact, it is the duty of the Trustee in chapter 7 to liquidate the assets of the Estate in an efficient manner. *See* 11 U.S.C. § 704(a).

The Proposal comports with Section 363(b)(1) of the Bankruptcy Code, which provides that “the trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” Courts require that the proposed sale be made in good faith and in

---

<sup>6</sup> *See Notice of Motion and Motion Under LBR 2016-2 for Approval of Cash Disbursements by the Trustee* [Dkt. No. 282] filed 11/18/2016.

1 the trustee's business judgment. *See In re 240 North Brand Partners, Ltd.*, 200 B.R. 653, 659  
2 (B.A.P. 9th Cir. 1996) ("debtors who wish to utilize § 363(b) to dispose of property of the estate  
3 must demonstrate that such disposition has a valid business justification."), *In re Moore*, 110 B.R.  
4 924, 928 (Bankr. C.D. Cal. 1990) (recognizing that business judgment rule applies to trustee's  
5 disposition of estate property). Bankruptcy courts frequently approve competitive bidding  
6 procedures as a means of ensuring that such sales will generate the highest and best returns to the  
7 estate. *In re Lahijani*, 325 B.R. 282 (B.A.P. 9th Cir. 2005); *In re Two "S" Corp.*, 875 F.2d 240, 243-  
8 44 (9th Cir. 1989).

9 In the exercise of his business judgment, the Trustee believes that an auction over a three to  
10 six month period is the best method by which to maximize the value of the Non-Error Coins. By this  
11 method, the Non-Error Coins will be exposed to the greatest number of buyers and bids will be  
12 subject to overbids, so any and all parties wishing to purchase the Non-Error Coins for a higher price  
13 may do so. Conversely, the Trustee, in the exercise of his business judgment, has determined that an  
14 immediate or short-term sale of the Error Coins will diminish their value, and therefore seeks to  
15 distribute those coins directly to Victim/Creditors, as discussed below.

16 **B. The Trustee Should be Authorized to Distribute the Error Coins to Victim/Creditors.**

17 The Trustee has consulted with specialists and experts in the coin industry regarding a sale of  
18 the Error Coins. Although the Trustee has obtained a valuation of \$7,367,235 for the 12,539 Error  
19 Coins, the Trustee is informed and believes that the mass infusion of 12,539 Error Coins into the  
20 market would represent a significant increase in the availability of Error Coins which would  
21 substantially reduce the overall value of all Error Coins. To maximize their value, the Error Coins  
22 would likely require a number of years to be fully absorbed into the marketplace; that would then  
23 require the Bankruptcy Case to remain open with all of the attendant costs of compliance, tax returns  
24 and distributions. Therefore, the Trustee proposes to return the Error Coins directly to the  
25 Victim/Creditors in a ratable fashion based upon the valuation of \$7,367,235 and the percentage of  
26 each such creditor's allowed claim vis-à-vis all allowed Victim/Creditors' claims.

27 The distribution of Error Coins directly to Victim/Creditors would allow a prompt  
28 distribution of value to these creditors, consistent with the terms of the Coordination Agreement and

1 the restitution judgment against the Defendants. The Victim/Creditors may determine to hold their  
2 Error Coins for possible long-term appreciation or liquidate them in the open market at a time of  
3 their own choosing and at a minimal cost and without fees directly allocable to the return of these  
4 coins. However, if a Victim/Creditor chooses not to receive the Error Coins allocated to them, those  
5 Error Coins would be auctioned with the Non-Error Coins and such Victim/Creditors would then  
6 receive their allocable percentage return from the aggregate Error Coin and Non-Error Coin net sale  
7 proceeds as well as other Estate assets based on their claim unadjusted by the Error Coin allocation.  
8 In the exercise of his business judgement, the Trustee believes that the direct distribution of Error  
9 Coins, on a ratable basis, to Victim/Creditors is in the best interest of the Estate as it will maximize  
10 the return to such creditors from those assets.

11 A Chapter 7 trustee is not prohibited from making a non-cash distribution to creditors. The  
12 Handbook for Chapter 7 Trustees promulgated by the Department of Justice contemplates that if  
13 certain assets cannot be liquidated, they may be assigned to creditors:

14  
15 If the discounted payments cannot be liquidated, or the asset cannot  
16 otherwise be assigned for the benefit of creditors, the trustee should  
17 consider interim distributions to creditors as funds become available,  
provided that claims are resolved and sufficient funds are reserved to  
administer the estate.

18 Handbook for Chapter 7 Trustees, available at: <http://www.justice.gov/ust/handbook-chapter-7->  
19 trustees, §8.L (emphasis added). Bankruptcy cases have acknowledged the propriety of trustees  
20 making non-cash distributions to creditors. *See, e.g., In re Radical Bunny, LLC*, 459.B.R. 434  
21 (Bankr. D. Ariz. 2011) (trustee distributed membership interests in limited liability companies and  
22 beneficial interests in a trust); *In re Toole*, 294 F. 975 (D.C.N.Y.1920) (administrator of an estate did  
23 not distribute cash but instead distributed securities). The issue in these cases was not the authority  
24 for a trustee to make a non-cash distribution, but rather, whether the trustee may be compensated  
25 under section 326(a) for making such non-cash or “constructive disbursements”. Here, the Trustee is  
26 waiving any fee from the distribution of the Error Coins to Victim/Creditors.<sup>7</sup>

27 <sup>7</sup> Under section 326 of the Bankruptcy Code, a Trustee's fee is based on a given percentage "upon all moneys disbursed  
28 or turned over in the case by the trustee to parties in interest." While one could argue that the distribution of the Error  
Coins is a monetary distribution, the argument is irrelevant as the Trustee has waived any fee as against the Error Coin  
disbursements.

**C. The Coordination Order Entered by this Court Provides for Prompt Distributions to be Made to Victim/Creditors from the Seized Assets.**

The Coordination Agreement settled competing claims by the Government and the Trustee for the Seized Items. The Trustee asserted that the Seized Items are property of the Estate and that they should be turned over to the Trustee. The Government has possession of the Seized Items under its Search Warrant and may assert the right to control the sale of the Seized Items and restitution payments to Victims under federal forfeiture statutes. The Coordination Agreement resolved what could have been a costly dispute by providing the Trustee with an opportunity to achieve his objective by making the Proposal for liquidating the Seized Items and making distributions to Victim/Creditors. Consistent with the restitution ordered in the Plea Agreement, the Coordination Agreement requires that the Trustee's proposal provide for the "prompt payment" to Victim/Creditors from the Seized Items. The Proposal does that.

The distributions to Victim/Creditors will be made directly from the Government's return of the Seized Assets to the Estate, assets solely earmarked for such creditors that would not have been available but for the Coordination Agreement. The interim distributions to Victim/Creditors will not in any way diminish current assets of the Estate. In furtherance of the Coordination Agreement and the Coordination Order approved by this Court, the Trustee requests that the Court approve the interim distributions to Victim/Creditors in accordance with the terms of the Proposal.

Chapter 7 interim distributions are often allowed by Courts. *See, e.g., In re B & B Autotransfusion Servs., Inc.*, 443 B.R. 543, 546 (Bankr. D. Idaho 2011) (Chapter 7 trustee's request for interim distribution to all creditors had previously been granted); *In re Scimeca Found., Inc.*, 497 B.R. 753, 784 (Bankr. E.D. Pa. 2013) (provision in settlement authorizing the trustee to make some interim distribution to specific creditor was reasonable); *In re Funderburgh*, 526 B.R. 361, 375 (B.A.P. 10th Cir. 2015) (dismissing appeal of bankruptcy court's decision authorizing Chapter 7 trustee to make interim distribution for lack of standing); *In re Bank of New England Corp.*, 404 B.R. 17, 39 (Bankr. D. Mass. 2009) *aff'd*, 426 B.R. 1 (D. Mass. 2010) *aff'd*, 646 F.3d 90 (1st Cir. 2011) (authorizing Chapter 7 trustee to make fourth interim distribution); *In re Peregrine Fin. Grp., Inc.*, No. BR 12-27488, 2012 WL 4369958, at \*2 (Bankr. N.D. Ill. Sept. 20, 2012) (authorizing

Chapter 7 trustee to make interim distributions). Further, as set forth above, the Handbook for Chapter 7 Trustees explicitly states that, in certain circumstances, a Chapter 7 trustee “should consider interim distributions to creditors as funds become available, provided that claims are resolved and sufficient funds are reserved to administer the estate.” Handbook for Chapter 7 Trustees, available at: <http://www.justice.gov/ust/handbook-chapter-7-trustees>, §8.L.

The Trustee intends to make distributions to Victim/Creditors based upon the losses set forth on the final list appended hereto as **Exhibit A**. The Trustee will be filing certain omnibus claim objections to amounts in excess of the losses set forth on the final list. The Trustee anticipates that those claim objections will have been determined by such time as the interim distributions are made. However, to the extent there are any unresolved claim objections at the time of making interim distributions, the Trustee will establish appropriate reserves for amounts in excess of the losses set forth on **Exhibit A**.

### III.

#### CONCLUSION

**WHEREFORE**, The Trustee respectfully requests that the Court approve and authorize the Trustee to implement the Proposal for the sale of the Seized Items and disbursement of cash and Error Coins to Victim/Creditors as described herein, and grant such other relief as is just and proper under the circumstances.

Dated: December 1, 2015

PACHULSKI STANG ZIEHL & JONES LLP

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

Counsel 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") for the estate of The Tulving Company, Inc., debtor in the above-captioned case (the "Debtor"). I make this declaration ("Declaration") in support of the *Notice Of Motion And Motion For Order (I) Authorizing Implementation of Trustee's Proposed Plan for Liquidation of Seized Items and Disbursement of Assets to Victim/Creditors of Fraud in the Bankruptcy Case in Accordance with Coordination Agreement with United States Government, and (II) Granting Related Relief Pursuant to Sections 105 and 363 of the Bankruptcy Code; Memorandum of Points and Authorities in Support Thereof* (the "Motion"). All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Motion.

2. Except as otherwise indicated, all facts set forth in this Declaration are based on my personal knowledge (albeit my own or that gathered by professionals rendering services to me), or my opinion based on experience, knowledge, and information concerning the estate. If called upon, I can and will competently testify to the facts stated herein.

3. The Debtor is a California corporation. The Debtor was in the business of selling and purchasing gold, silver, coins 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 Hannes Tulving in the United States District Court, Northern District of California. A criminal investigation of the Debtor and Hannes Tulving by the Government was also being pursued, as described below. The Debtor ceased operations on or about March 3, 2014.

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 the pending criminal investigation and other ongoing litigation against the Debtor, on March 18, 2014, the United States Trustee filed a Stipulation Appointing Chapter 11 signed by both the Debtor and its attorney. The Stipulation was approved by the Bankruptcy Court on March 18, 2014 and an Order was entered by

1 the Court on March 21, 2014 approving the U.S. Trustee's Application for the Appointment of a  
2 Chapter 11 Trustee, appointing me to serve as Trustee of the Debtor's estate. Thereafter upon notice  
3 and hearing, the case was converted to a chapter 7 and I was appointed and continue to serve as the  
4 chapter 7 Trustee.

5 5. On March 8, 2014, Special Agents of the United States Secret Service executed a  
6 Search Warrant on the Debtor's offices on probable cause that the Debtor and Hannes Tulving were  
7 engaged in fraud. The Search Warrant resulted in the seizure of the Debtor's property including rare  
8 coins and other valuable items, which are described as line items seven through thirty-four and  
9 thirty-six through fifty-two of the Search Warrant Return, a copy of which is appended hereto as  
10 **Exhibit B**. Criminal proceedings against the Debtor and Hannes Tulving ensued before the United  
11 States District Court for the Western District of North Carolina.

12 6. Hannes Tulving entered into a Plea Agreement with the Government in the Criminal  
13 Case. Pursuant to the Coordination Order, Hannes Tulving was authorized to sign the Plea  
14 Agreement on behalf of the Debtor in the Criminal Case. Under the Plea Agreement, the Defendants  
15 each plead guilty to 18 U.S.C. § 1343 wire fraud charge as set forth in Count One of a Bill of  
16 Information in the Criminal Case and, among other things, agreed to pay restitution to the victims of  
17 fraud. The Coordination Order also authorized Hannes Tulving to sign the Coordination Agreement  
18 on behalf of the Debtor.

19 7. The claimants in the Bankruptcy Case are primarily the same customers who are  
20 Victims in the Criminal Case. Approximately 381 claims were filed in the Bankruptcy Case by  
21 claimants who, based on review by the Government, are substantially or wholly identical to the  
22 Victims identified for purposes of restitution in the Criminal Case. Given the overlap of Victims and  
23 the pendency of the Bankruptcy Case, I proposed to the Government that the Seized Items be  
24 administered in the Bankruptcy Case, a forum which would allow a more efficient distribution of  
25 assets than the Criminal Case. The Coordination Agreement by and among the Debtor, myself,  
26 Hannes Tulving and the Government incorporates that proposal and provides a procedure for the  
27 distribution of the Seized Items and their proceeds to the creditors of this Estate who are also  
28 Victims of the Defendants' criminal actions in the Bankruptcy Case.

1           8. Pursuant to the Coordination Order, I am required to (a) file a final list of the  
2 Victim/Creditors and their respective losses, (b) make a proposal for the sale of the Seized Items and  
3 the distribution of proceeds to the Victim/Creditors in the Bankruptcy Case, and (c) submit the  
4 Proposal to the Government, the District Court and the Bankruptcy Court for approval. If the  
5 Proposal is approved by the Government and this Court, the Government will turn over the Seized  
6 Items to me on behalf of the estate in an amount sufficient to satisfy the proposed payouts to  
7 Victim/Creditors.

8           9. In accordance with the Coordination Order, I have submitted a Proposal that the  
9 Government authorize the transfer of the Seized Items, which consist of approximately 189,000  
10 coins on 22 pallets, separated into 12,539 Presidential Error-Missing Edge Letter Coins and  
11 approximately 176,461 other coins, from the Delaware Depository in Wilmington, Delaware, to  
12 Orange County, California or another location at which the Non-Error Coins will be sold at auction  
13 under the administration of the Bankruptcy Court. By separate application I will be seeking  
14 authority to retain an auctioneer to conduct an auction of the Non-Error over a three to six month  
15 period.

16           10. The first step of the Proposal is to move the Seized Items from their current location  
17 in Wilmington, Delaware, to Orange County or another location to be determined. I have, by  
18 separate motion, requested authorization to make cash disbursements to pay for the cost of  
19 transporting the Seized Items.<sup>11</sup> The movement of the Seized Items is absolutely necessary for those  
20 assets to be administered. The Seized Assets are currently located at the Delaware Depository in  
21 Wilmington, Delaware. After inquiry and discussions with the Depository representative, I  
22 determined that an inventory or auction of the Seized Items is not possible under the existing  
23 security and other structural conditions at the Depository. Therefore, the Seized Items must be  
24 transferred to another location if they are to be sold and/or distributed.

25           11. Once moved, my Proposal is to auction the Non-Error Coins by an auctioneer to be  
26 retained by the estate, subject to approval by this Court, and to distribute the Error Coins directly to  
27

28           <sup>11</sup> See Notice of Motion and Motion Under LBR 2016-2 for Approval of Cash Disbursements by the Trustee [Dkt. No. 282] filed 11/18/2016.

1 Victim/Creditors. My decision not to auction the Error Coins is based upon consultations with a  
2 number of specialists and experts in the coin industry throughout the nation including Miles  
3 Standish, one of the country's premier experts in valuing Error Coins. Although I have obtained a  
4 valuation of \$7,367,235 for the 12,539 Error Coins, based upon my consultations with the foregoing  
5 experts, I am informed and believe that the mass infusion of 12,539 Error Coins into the market over  
6 a short period of time would represent a significant increase in the availability of Error Coins which  
7 would therefore substantially reduce the overall value of all Error Coins. I am further informed and  
8 believe that the Error Coins would likely require a number of years to fully be absorbed into the  
9 marketplace which would require that the Bankruptcy Case remain open with all of the attendant  
10 costs of compliance, including tax returns and distributions.

11 12. Based upon the foregoing, I propose to return the Error Coins directly to the  
12 Victim/Creditors in a ratable fashion based upon the valuation of \$7,367,235 and the percentage  
13 amount of each such creditor's allowed claim vis-à-vis all allowed Victim/Creditors' claims. The  
14 claims of the Victim/Creditors' will be reduced by the allocated value of the Error Coins distributed  
15 to them.<sup>12</sup> I will waive any fee from the distribution of the Error Coins to Victim/Creditors  
16 otherwise compensable under Section 326(a) of the Bankruptcy Code.

17 13. The distribution of Error Coins directly to Victim/Creditors will allow a prompt  
18 distribution of value to these creditors, consistent with the terms of the Coordination Agreement and  
19 restitution judgment against the Defendants. The Victim/Creditors may determine to hold their Error  
20 Coins for possible long-term appreciation or liquidate them in the open market at a time of their own  
21 choosing and at a minimal cost and without fees directly allocable to the return of these coins.  
22 However, if a Victim/Creditor chooses not to receive the Error Coins allocated to them, those Error  
23 Coins would be auctioned with the Non-Error Coins and such Victim/Creditor would then receive its  
24 allocable percentage of return from all Error Coins and the Non-Error Coins net proceeds as well as  
25 other Estate assets based on its claim unadjusted by the Error Coin allocation.

26  
27  
28 <sup>12</sup> For example, assuming the total Victim/Creditors' claims amounted to \$15 million and the value allocated to the  
distribution of the Error Coins equaled \$7.5 million, the Victim/Creditors' Claims would be reduced by 50% (\$15  
million / \$7.5 million) prior to additional distributions by the Trustee in the Bankruptcy Case.

1           14.     The list of Victim/Creditors and their respective losses is set forth on **Exhibit A** to the  
2 Motion.

3           15.     I believe that the administration of the Seized Items in the Bankruptcy Case is in the  
4 best interest of the Victim/Creditors. The Bankruptcy Case provides a far more efficient forum than  
5 the Criminal Case for the prompt liquidation of the Non-Error Coins and the administration of  
6 claims including, without limitation, the distribution of net sale proceeds and the Error Coins to the  
7 Victim/Creditors.

8           16.     The Coordination Agreement settled competing claims by me, as Trustee, and the  
9 Government for the Seized Items. I asserted that the Seized Items are property of the Estate and that  
10 they should be turned over to me on behalf of the estate. The Government has possession of the  
11 Seized Items under its Search Warrant and may assert the right to control the sale of the Seized Items  
12 and restitution payments to Victims under federal forfeiture statutes. The Coordination Agreement  
13 resolved what could have been a costly dispute by providing me with an opportunity to achieve my  
14 objective by making the Proposal for liquidating the Seized Items and making distributions to  
15 Victim/Creditors. Consistent with the restitution ordered in the Plea Agreement, the Coordination  
16 Agreement requires that my proposal provide for the "prompt payment" to Victim/Creditors from  
17 the Seized Items. The Proposal does that.

18           17.     In typical bankruptcy cases, the trustee undertakes an often laborious and time  
19 consuming process of liquidating the assets of the estate and years later provides an often non-  
20 substantial payment to the creditors with the notice of the case being closed. Under the proposal  
21 outlined herein, the Victim/Creditors receive the transfer of the most valuable assets of the estate in a  
22 prompt manner which they can either retain for their personal coin collection or sell in the market  
23 and directly reap the proceeds from the sale.

24           18.     The distributions to Victim/Creditors will be made directly from the Government's  
25 return of the Seized Assets to the Estate, assets solely earmarked for such creditors that would not  
26 have been available but for the Coordination Agreement. Consequently, the interim distributions to  
27 Victim/Creditors will not in any way diminish current assets of the Estate.

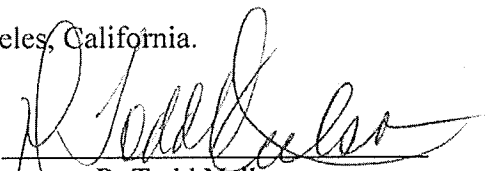
1 19. By the Proposal, I intend to make distributions to Victim/Creditors based upon the  
2 losses set forth on the final list appended hereto as **Exhibit A**. I am in the process of finalizing  
3 claim objections to Victim/Creditors' claims whose claim amounts exceed the losses set forth on  
4 the final list. I anticipate that those claim objections will have been determined by such time as the  
5 interim distributions are made. However, to the extent there are any unresolved claim objections at  
6 the time of making interim distributions to Victim/Creditors, I will establish appropriate reserves to  
7 cover the outstanding unresolved claim amounts.

8 20. The Proposal addresses only the claims of the Victim/Creditors who are entitled to  
9 prompt payment of restitution from the Seized Items under the Trustee's settlement with the  
10 Government, which was approved by this Court's Coordination Order. After implementation of the  
11 Proposal, any additional recoveries by the estate will be distributed to all claimants on account of  
12 their outstanding allowed claims pursuant to the priorities and other provisions of the Bankruptcy  
13 Code.

14 21. As Trustee, it is my belief that an auction is the best method by which to maximize  
15 the value of the Non-Error Coins. By this method, the Non-Error Coins will be exposed to the  
16 greatest number of buyers and bids will be subject to overbids, so any and all parties wishing to  
17 purchase the Non-Error Coins for a higher price may do so. Consequently, it is my business  
18 judgment that the proposed transfer of the Seized Assets and sale of the Non-Error Coins under the  
19 jurisdiction of the Bankruptcy Court will maximize the return to the Victim/Creditors and is in the  
20 best interests of the Estate. Conversely, in the exercise of my business judgment as Trustee, I have  
21 determined that an immediate or short-term sale of the Error Coins will diminish their value, and  
22 therefore believe that the direct distribution of Error Coins, on a ratable basis, to Victim/Creditors  
23 is in the best interest of the Estate as it will maximize the return to such creditors from those assets.

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

26 Executed this 1<sup>st</sup> day of December 2015, at Los Angeles, California.

27   
28 R. Todd Neilson

# Exhibit A

The Tulving Company, Inc.  
List of Victims and Losses

POC #	Name	Amount *
250	Acharya, Swetha	\$50,366.00
253	Allen, Jay V.	77,253.00
324	Alluise, Steven	12,086.00
37	Amlie, Tom	36,845.40
279	Amy, Deborah	10,680.00
304	Anderson, Jeff L	65,210.00
355	Anderson, Pamela	11,880.00
240	Anderson, Rick	21,530.00
129	Anderson, Roger	53,738.00
116	Andreas, Thomas	25,050.00
184	Azzolini, Michael	10,815.00
335	Badgester, LLC	69,649.00
148	Bahl, Amarjit	25,739.00
234	Bailey (Jr.), Joe S	89,672.50
320	Bakhsh, Jeanette	19,032.15
145	Barnes, Don M	12,195.00
260	Barnes, Nellie A	42,217.00
183	Barnett, Brian	18,663.00
6	Barrett, Jerry	30,572.72
291	Bass, Jim	15,272.40
48	Bates, Jeffrey	27,169.00
372	Batterson, Benn	74,820.00
135	Beckerle, James D	230,840.00
157	Bell (Jr.), William E.	50,815.00
41	Bellinger, John	15,965.00
112	Bengen, William	25,905.00
103	Berner, Doug	25,169.00
20	Berry, William C	103,860.00
290	Blagg, Jeffrey C	15,400.40
13	Bone, Robert	24,680.00
180	Bowersox, Robert H.	24,871.00
52	Boyle, Jim T.	11,600.00
283	Bozovic, Snezana	26,054.00
212	Brennan, Cynthia	77,578.00
54	Brister, Stephen P.	12,125.00
79	Buege, Stephen J	14,250.00
329	Burghard, Clement	12,520.00
193	Busick, Louis	26,510.50
25	Cafarelli, Robert	53,348.00
78	Caldwell, Edna	50,846.00
174	Campbell, Leslie Adrian	27,445.00
383	Carey, Brian	26,673.00

\* These amounts represent the total losses per Victim that are substantiated by the books and records of The Tulving Company, Inc. The Trustee is filing claim objections to all amounts in excess of these losses. However, the final allowed amount of each Victim's claim in the Bankruptcy case will be determined by orders of the Bankruptcy Court.

The Tulving Company, Inc.  
List of Victims and Losses

POC #	Name	Amount *
82	Carl, Andrew	26,207.00
65	Carlson, John C	23,455.00
232	Casey, Robert	11,580.00
134	Cendrowski, Ron	25,525.00
77	Certain, Lee	39,179.04
152	Chan, Samantha	11,945.00
245	Chang, Leng K.	10,885.00
257	Chang, Nelson	25,571.00
209	Chappell Investment Strategies, LLC	12,165.00
220	Chen, Celia	24,773.00
301	Chen, Eugene	80,175.00
22	Chevako, Robert	103,279.60
186	Chinn, Anthony	23,180.00
191	Christensen, Donald	44,490.25
68	Christman, Kenneth D.	21,230.00
107	Cicia, William (Bill)	11,225.00
165	Clark, Charles R.	22,190.00
31	Cole, Frederick	12,170.00
3	Conner, Kelly	27,076.00
190	Cosby, William J.	23,180.00
199	Crosland, Shawn	11,100.00
162	Crowley, David	40,728.00
196	Cutler, Mark	68,842.16
18	Daudert, Scott	49,186.00
332	Davidson, Rick and Vickie	12,792.00
242	Davis, Steven	62,362.06
340	Dawson, Paula S.	27,190.00
43	De Witt, Bracken J	33,033.00
71	Debro, Stan	83,602.86
55	D'Elia, Jack J	24,926.00
210	Deroche, Oren	22,300.00
143	Deslattes, Melvin J.	26,130.00
259	Devens (Jr.), Charles	28,147.00
10	Dezelski, Anne	22,845.00
358	Dicross, Ken	11,310.00
231	Duddleston, Karen	54,026.00
7	Duke, David E.	26,468.00
53	Dycus, Fred M	68,407.50
345	Egge, Harvey S	38,291.00
249	Emdee, Mark	19,478.90
160	Engstrom, Barbara	31,393.75
331	Erxleben, Brian	9,761.60

\* These amounts represent the total losses per Victim that are substantiated by the books and records of The Tulving Company, Inc. The Trustee is filing claim objections to all amounts in excess of these losses. However, the final allowed amount of each Victim's claim in the Bankruptcy case will be determined by orders of the Bankruptcy Court.

The Tulving Company, Inc.  
List of Victims and Losses

POC #	Name	Amount *
84	Eshbaugh (Jr.), Willis G	53,041.00
23	Espinosa, Robert	25,952.00
113	Espiritu, Nelson	166,726.00
305	Fairclough, Douglas	74,904.00
328	Fascomp, Inc	26,504.00
47	Ferg, Thomas Eugene	80,562.00
277	Fields, Jim	115,972.50
267	Fletcher, James H.	51,102.00
318	Flowers, Kirk	216,188.50
87	Forsman, Ernest	63,000.00
275	Foster, Scott	33,547.80
265	Fox, Bruce	11,435.00
215	Frankel, John	156,138.00
243	Friedman, Adam	24,788.00
111	Fuss, Eugene	24,889.00
252	Garner, Steve	37,770.00
378	Gibson, Sarri	24,931.00
238	Gill, Randolph C.	37,591.15
141	Glenn, Arnold	46,783.00
44	Glovak, Dan W.	49,854.00
255	Gordon, Ian	27,626.00
200	Graef, William	12,310.00
337	Graham, Doug A	14,834.50
247	Graves, Linda	36,690.00
375	Greenfield, Paul	10,745.00
92	Grinsted, Jonathan	20,470.00
313	Griswold, Linda	26,632.00
16	Grunwald, Ben	12,380.00
125	Gubbels, Jeffrey	78,561.00
384	Hadaegh, Behrouz	25,377.00
362	Haindel, Chris	115,816.46
213	Hale, Jason H.	15,805.50
352	Hall, Jim R.	41,540.00
173	Haller, John	37,854.00
254	Halstead, Nathan & Corrina	21,260.00
166	Hammond, Keith	10,650.00
251	Hanay, Joseph J	11,470.00
360	Hancock, James W.	37,290.00
155	Hannan, Victor	46,500.00
237	Hanson, David L.	15,358.20
246	Harbaugh, Leanne K.	25,205.00
63	Harpster, Jerry	121,985.60

\* These amounts represent the total losses per Victim that are substantiated by the books and records of The Tulving Company, Inc. The Trustee is filing claim objections to all amounts in excess of these losses. However, the final allowed amount of each Victim's claim in the Bankruptcy case will be determined by orders of the Bankruptcy Court.

The Tulving Company, Inc.  
List of Victims and Losses

POC #	Name	Amount *
15	Harris, Betty	11,590.00
130	Hebert, Richie	12,515.00
97	Helfrich, Andrew	50,926.00
319	Hereau, Mark	12,390.00
276	Herman, Wes	35,965.00
85	Hertel, Geoff	420,285.00
131	Hetz, Stephen	25,779.00
89	Hickman, James	72,906.00
262	Higgins Property	249,888.00
377	Hirshberg, James	67,080.00
17	Hoang, Thoa	28,261.00
216	Hobbs, Charles Matthew	12,430.00
60	Hollenkamp, Gerald	10,040.00
61	Hopp, Gerald L	74,617.50
168	Horelick, Jeremy	11,405.00
132	Hughes, Eamonn	52,928.00
347	Huntsinger, Earl	12,920.00
170	Huskinson, Don	10,505.00
121	Ilse, Friedhelm	54,614.00
29	Ivey, Michael D	11,325.00
33	Jacquot, William & Madeline	39,583.50
214	James Stuart IRV Trust	73,232.50
294	Jaworski, Walter C.	26,191.00
195	Jeffrey D. Newburg Living Trust	127,800.00
106	Johnson, Derek	24,370.00
288	Jones Jr, Edward L	74,886.75
39	Jones, Jarrod & Jerald	12,411.00
361	Jones, Kendall M.	11,100.00
299	Kaneldis, James	12,280.00
289	Karpay, Richard	10,535.00
146	Keller, Eric	113,206.50
239	Keller, Timothy	11,720.00
233	Kempf, Severin	15,272.40
285	Kennedy, James	13,160.00
269	King, Cliff R.	15,482.00
124	Kinnamon, Terry E	24,812.00
154	Kirby, Richard & Sharon	207,000.00
348	Kirkland, Sue	10,990.00
94	Kodesch, Fred	52,775.00
189	Kopecky (Jr.), Raymond H.	43,583.86
81	Kotsonis, Frank N.	27,423.00
363	Kunimoto, Gladys	13,100.00

\* These amounts represent the total losses per Victim that are substantiated by the books and records of The Tulving Company, Inc. The Trustee is filing claim objections to all amounts in excess of these losses. However, the final allowed amount of each Victim's claim in the Bankruptcy case will be determined by orders of the Bankruptcy Court.

The Tulving Company, Inc.  
List of Victims and Losses

POC #	Name	Amount *
230	Kunst, Evelyn	26,001.00
325	Langness, Micah A	11,060.00
171	Larsen, Max	24,726.20
179	Latal, Allan	11,955.00
208	LeCompte, Bob	72,510.00
5	Leffel, Rick	11,100.00
226	Lenz, Gary	87,203.00
26	Lepard, Amy	26,338.00
202	Liang, Jeffrey	22,515.00
207	Liao, Jin Ling	21,590.00
138	Limberg, Allen	48,855.00
225	Lindseth, Scott	13,130.00
356	Logan, Andrew	42,860.00
98	Lowe, Jack E	112,693.00
258	Luginbuhl, Lee	30,600.00
11	Luu, Kieu	27,362.00
127	Lyles, James C	10,365.00
280	Maassen, David	33,748.76
164	MacGregor, Doug	122,379.00
91	Mages, John & Violet	33,891.25
380	Mainz, Carol	98,772.00
381	Mainz, Peter	40,440.00
382	Mainz, Peter T6 Holdings, LLC	53,920.00
194	Malone, Joe	123,100.00
4	Manant, Michael	25,283.00
86	Maurer, David L.	10,860.00
271	McCandless, Peter H	26,013.00
373	McCormick, Justin K	25,878.00
219	McDuff, Milton W.	10,920.00
27	McGaff, Jade P	24,480.00
349	McKinniss, Richard	41,017.35
354	Mcnamee, Randy	10,020.00
302	McNutt, Preston	20,760.00
292	McPadden, Kevin	15,272.40
317	Mehta, Amit	11,930.00
151	Mencarow, William	24,685.60
30	Michalak, David P.	32,340.00
293	Miller, Hans	26,371.00
312	Miller, Jack	52,460.00
159	Minasian, Tom	50,918.00
147	Minuti, Giuseppe	126,057.00
133	Misja, John	11,265.00

\* These amounts represent the total losses per Victim that are substantiated by the books and records of The Tulving Company, Inc. The Trustee is filing claim objections to all amounts in excess of these losses. However, the final allowed amount of each Victim's claim in the Bankruptcy case will be determined by orders of the Bankruptcy Court.

The Tulving Company, Inc.  
List of Victims and Losses

POC #	Name	Amount *
203	Mokhtarzada, Zeki	28,427.30
21	Moller, Kim	11,895.00
244	Moritzen, David	147,050.00
229	Mortenson, Darrel	12,360.00
270	Mortz, Reginald L	40,229.00
326	Moseley, Charles	30,973.10
224	Musser, Robert	12,420.00
90	Nagem, Edmund	25,887.00
58	Nagengast, Judith E.	40,684.50
227	Neace, Jordan	22,975.00
266	Nicarry, Ray L	11,250.00
108	Nichols, John	25,768.00
175	O'Brien, Jeff	50,830.00
59	Okita, Craig	14,514.50
67	Olivier, Curtis	20,460.00
73	Orenstein, Edward	129,370.00
316	Oxler, Steve	14,511.00
211	Padovan, Michael	12,615.00
62	Paidi, Ramachandra	103,600.00
284	Palko, Michael	10,575.00
343	Palm, Scott R.	102,085.00
341	Pappas, Mike	57,262.00
136	Pasquale, James J	32,028.75
353	Pavlovsky, Igor	39,579.87
167	Payne, Milton	25,357.96
235	PDM Holdings LLC	33,840.00
2	Pearsall, Kendra	130,140.00
19	Perrotti, Kaela	16,069.25
181	Persky, Stephen L	26,064.00
72	Personal Liberty LLC	24,437.00
139	Peters, Chris P	11,645.00
122	Petersen, Gary Lee	104,066.00
367	Petree (Jr.), Harry W	22,225.00
192	Piantes, Jon	15,744.30
374	Polley, John W.	40,705.11
102	Ponto, Robert A	28,806.00
70	Porad, Kenneth D.	10,595.00
104	Preuit, Terry	10,555.00
128	Proctor, Harold	47,485.00
221	Puterman, Howard	25,004.00
144	Quigley, William J.	50,802.00
74	Quinn, Jack	12,129.00

\* These amounts represent the total losses per Victim that are substantiated by the books and records of The Tulving Company, Inc. The Trustee is filing claim objections to all amounts in excess of these losses. However, the final allowed amount of each Victim's claim in the Bankruptcy case will be determined by orders of the Bankruptcy Court.

The Tulving Company, Inc.  
List of Victims and Losses

POC #	Name	Amount *
188	Raia, Raymond	11,005.00
376	Ramsey, Matt	22,050.00
281	Redmann, Gary	10,540.00
169	Reedy, Jennifer	10,215.00
118	Reilly, Michael M.	67,502.50
264	Remeika, Michael	303,794.00
297	Remiger, Jason	12,595.00
261	Resnansky, Dasha	92,139.50
110	Reynolds, Albert Gordon	26,101.00
346	Rice, Rob	97,279.00
156	Riegel, Carl D.	28,263.00
295	Rieker, Scott	12,685.00
315	Rifkin, Joyce	105,284.00
105	Robert & Barbara Bone Trust	24,680.00
178	Roberts, Michael P	26,661.00
323	Rosen, Michael	25,703.00
278	Roth, Ed	11,900.00
24	Roth, Jeff	56,550.50
201	Rubrecht, Roger	24,675.00
32	Rusimovic, Radovan	175,158.00
177	Rusty Penny, LLC	22,160.00
109	Ryan, Mark	51,485.00
268	Salm, Martin	76,091.00
336	Sanderson, John	23,945.00
205	Sayles, Rick	38,566.50
35	Schaffenacker, Dale	83,415.00
115	Schein, Alan	25,479.00
137	Schilling, Brent	25,827.00
366	Schmidt, Scott	13,485.00
364	Schmidt, Stella	52,874.00
342	Schnack, Peter G.	60,066.00
338	Schultz, Roger	10,035.00
370	Schwartz (Jr.), John T.	41,005.50
204	Scott, Claude H.	56,175.00
95	Scott, Stephen S.	78,610.00
217	Seely, John	26,215.96
149	Seward, Keith A	27,583.00
300	Shank, Ernest F.	194,240.00
273	Shaw, Taylor D.	36,300.00
8	Shook, Danny	58,125.00
40	Shultz, Gale E.	10,805.00
256	Shumaker, Tim	25,501.00

\* These amounts represent the total losses per Victim that are substantiated by the books and records of The Tulving Company, Inc. The Trustee is filing claim objections to all amounts in excess of these losses. However, the final allowed amount of each Victim's claim in the Bankruptcy case will be determined by orders of the Bankruptcy Court.

The Tulving Company, Inc.  
List of Victims and Losses

POC #	Name	Amount *
176	Shute, Tom	23,970.39
248	Sih, Gil	107,068.00
42	Silver, Linda Marie	40,320.00
357	Simonson, Eric	25,144.50
120	Sipes, Ken	10,715.00
379	Skaer, William	11,635.00
344	Sleefe, Andrew	63,834.50
307	Smith, David	12,600.00
66	Smith, Homer L.	51,010.00
241	Smith, Jesse E	27,031.00
83	Speena, Anthony	10,275.00
311	Spounias, Samuel	40,398.00
142-2	Stach, Kenneth W.	318,932.00
371	Stary, Russell	11,330.00
369	Stern, Israel	33,572.18
88	Stetson, Peter	67,985.96
126	Stewart, Andrew D.	18,750.00
119	Stocking, Paul	53,118.80
333	Stolz, Anthony J.	51,235.00
274	Strahm, Chuck	133,905.28
150	Stutzman (Sr.), David J.	11,240.00
69	Sullivan, John G	11,630.00
34	Sullivan, Redgy	12,270.00
334	Sun, Kathy	17,900.00
158	Swigert, William	21,060.00
56	Szabo, Laszlo	54,865.85
359	Szmajda, Ryan Z.	13,605.00
163	Taubenslag, Donna	25,758.00
222-2	Taylor, Catherine J.	42,685.50
80	Taylor, Eric P.	10,660.00
46	Taylor, Jerry L.	12,265.00
161	Teal, Fred T.	11,890.00
321	The Estate of David Erwin Kuykendall	82,896.00
303	Thompson (Jr.), Jack H.	13,903.00
272	Thompson, Kevin	10,485.00
306	Thompson, Susan	11,345.00
287	Throgmorton, Thomas J.	25,671.00
140	Tieman, Dennis & Johnathan	30,144.00
296	Timoshenko, Yevgeniy	41,344.50
236	Tomberlin, Frank	22,720.00
368	Toth, Edward	58,344.00
9	Trahan, Cherri	23,150.00

\* These amounts represent the total losses per Victim that are substantiated by the books and records of The Tulving Company, Inc. The Trustee is filing claim objections to all amounts in excess of these losses. However, the final allowed amount of each Victim's claim in the Bankruptcy case will be determined by orders of the Bankruptcy Court.

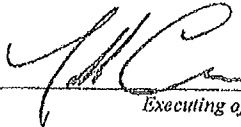
The Tulving Company, Inc.  
List of Victims and Losses

POC #	Name	Amount *
96	Truchelut, Ryan	25,211.00
45	Trueblood, Don R	26,809.00
206	VanDokkenburg, Paul	25,315.00
123	Veselik, Susan	11,355.00
38	Walchli, Richard M.	26,844.00
14	Waters, Paul	21,252.00
101	Weeber, Winton L.	25,877.00
218	Weidler, Ralph	12,170.00
223	Weidler, Ralph A.	27,311.00
187	Weingart, Heidi	26,075.00
339	Wellman, Charles W.	28,335.00
351	Wertenberger, George	12,180.00
117	Wheeler, Tracey	11,435.00
327	Whitnell, Audrey L NDIRA, Inc	111,400.75
322	Williams, Ernie	11,705.00
153	Williams, William	23,735.00
286	Willit, Garry	25,706.00
57	Wilson, Charles	44,520.00
99	Wilson, David D MD	22,305.00
100	Winter, Norman	12,310.00
75	Wires, John	10,795.00
172	Workman, Linda	118,606.50
263	Wright, Ronnie P	11,680.00
197	Wysochanski, Peter	15,093.65
198	Wysochanski, Peter	23,743.80
93	Zhao, Jun	36,713.00
28	Ziemke, Scott	36,765.00
282	Zirbel, Nancy	10,640.00
50	Zofchak, John	73,675.00
228	Zorthian, Richard	27,403.00
		<u>\$15,341,096.83</u>

\* These amounts represent the total losses per Victim that are substantiated by the books and records of The Tulving Company, Inc. The Trustee is filing claim objections to all amounts in excess of these losses. However, the final allowed amount of each Victim's claim in the Bankruptcy case will be determined by orders of the Bankruptcy Court.

# Exhibit B

AO 93 (Rev. 12/09) Search and Seizure Warrant (Page 2)

Return		
Case No.: SA 14-0015M	Date and time warrant executed: 03/08/2014 APPROX: 1600	Copy of warrant and inventory left with: TULVING CO. 750 W. 17th St, CM, CA <sup>Suit A</sup>
Inventory made in the presence of: Special Agent T. Corum/United States Secret Service/OC		
Inventory of the property taken and name of any person(s) seized: [Please provide a description that would be sufficient to demonstrate that the items seized fall within the items authorized to be seized pursuant to the warrant (e.g., type of documents, as opposed to "miscellaneous documents") as well as the approximate volume of any documents seized (e.g., number of boxes). If reference is made to an attached description of property, specify the number of pages to the attachment and any case number appearing thereon.]		
<ol style="list-style-type: none"><li>1. Seventeen (17) Desktop Computer Towers</li><li>2. Fourteen (14) small cardboard boxes containing financial and operational documents regarding the unfulfilled unshipped orders and business operations of the Tulving Company.</li><li>3. One (1) Virtual Private Network (VPN) Firewall</li><li>4. One (1) Computer Network Server</li><li>5. One (1) Locked Metal Safe</li><li>6. One (1) External Hard Drive</li><li>7. 8832 "Penny" coins in plastic sleeves</li><li>8. 23,607 "Nickel" coins in plastic sleeves</li><li>9. 34,908 "Dime" coins in plastic sleeves</li><li>10. 64,586 "Quarter" coins in plastic sleeves</li><li>11. 5,518 "Half Dollar" coins in plastic sleeves</li><li>12. 51,459 "Dollar" coins in plastic sleeves</li><li>13. One (1) Emerald colored gemstone</li><li>14. Eighty (80) Copper colored coins</li><li>15. One (1) "cuban" coins</li><li>16. Five (5) "cut" coins</li><li>17. One (1) coin mold</li><li>18. One (1) Misc certificates</li><li>19. Two (2) plastic cased coin set</li><li>20. One (1) plastic cased English coin set</li><li>21. Two (2) incomplete plastic cased coin set - (INVENTORY CONTINUED ON ATTACHMENT A)</li></ol>		
Certification (by officer present during the execution of the warrant)		
I declare under penalty of perjury that I am an officer who executed this warrant and that this inventory is correct and was returned along with the original warrant to the designated judge through a filing with the Clerk's Office.		
Date: 03/27/14	 Executing officer's signature Todd Corum /Special Agent/US Secret Service Printed name and title	

AUSA: A. Liskamm

CASE NO: SA 14-0015M

ATTACHMENT A  
INVENTORY OF PROPERTY TAKEN (CONTINUED)

- 22.1 Canadian paper money
- 23. One (1) "Robert E. Lee" silver colored coin
- 24. Two (2) "Madame Bolanger" gold colored coin
- 25. One (1) "Franklin Collectors Society" coin in plastic
- 26. One (1) "Vote for Mike Ellis" gold colored coin
- 27. One (1) "gg mining" silver colored coin in plastic
- 28. One (1) "George Washington" copper colored coin
- 29. 34 Netherland coins silver in color
- 30. 13 Argentine coins gold in color
- 31. 110 American Eagle gold coin boxes
- 32. One (1) White bucket containing 25.48 kilograms of silver colored metal
- 33. 631 "Dollar" coins gold in color
- 34. Three (3) "Quarters" silver in color
- 35. One (1) Invoice labeled with number "83881"
- 36. Two (2) Ten \$10.00 coins labelled "Platinum"
- 37. One (1) Twenty five \$25.00 coin labelled "Platinum"
- 38. One (1) One Hundred dollar coin \$100.00 labelled "Platinum"
- 39. One (1) One Dollar coin \$1.00 labeled "missing edge lettering"
- 40. Fifty (50) Fifty Dollar coin labeled "fine gold"
- 41. Three (3) One Hundred Dollar coins labeled "gold"
- 42. One (1) Five Dollar coin gold in color
- 43. Six (6) gold colored French coins
- 44. Twelve (12) gold colored bars labeled "10G"
- 45. 53 gold colored bars labeled "1G"
- 46. Five (5) gold colored bars labeled "5G"
- 47. One (1) gold colored bar labeled "2.5G"
- 48. One (1) gold colored bar labeled "perth mint"
- 49. Eight (8) gold colored coins from foreign nations
- 50. Two (2) gold colored bars labeled "SMI 1G"
- 51. One (1) gold colored bars labeled "SMI 10G"
- 52. One (1) bag of four "returned coins"

**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 (I) AUTHORIZING IMPLEMENTATION OF TRUSTEE'S PROPOSED PLAN FOR LIQUIDATION OF SEIZED ITEMS AND DISBURSEMENT OF ASSETS TO VICTIM/CREDITORS OF FRAUD IN THE BANKRUPTCY CASE IN ACCORDANCE WITH COORDINATION AGREEMENT WITH UNITED STATES GOVERNMENT, AND (II) GRANTING RELATED RELIEF PURSUANT TO SECTIONS 105 AND 363 OF THE BANKRUPTCY CODE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; 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 December 1, 2015, 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 December 1, 2015, 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 December 1, 2015, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

***Via Federal Express***

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

☐ Service information continued on attached page

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

December 1, 2015

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:**

Wesley H Avery on behalf of Consumer Privacy Ombudsman Wesley H Avery  
wamiracle6@yahoo.com, wavery@rpmlaw.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

Frank Cadigan on behalf of U.S. Trustee United States Trustee (SA)  
frank.cadigan@usdoj.gov

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

R. Todd Neilson (TR)  
tneilson@brg-expert.com, sgreenan@brg-expert.com; tneilson@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

Richard C Spencer on behalf of Interested Party Courtesy NEF  
rspencer@rspencerlaw.com

United States Trustee (SA)gov

**2. SERVED BY UNITED STATES MAIL**

Debtor

The Tulving Company Inc  
2049 Century Park East, Suite 2525  
Los Angeles, CA 90067-3225

Counsel for Debtor

Andrew S Bisom  
The Bisom Law Group  
8001 Irvine Center Drive, Suite 1170  
Irvine, CA 92618

James F. Wyatt, III  
Wyatt & Blake, LLP  
435 East Morehead Street  
Charlotte, NC 28202

Laurence P Nokes on behalf of Interested  
Party John Frankel  
Nokes & Quinn  
410 Broadway St Ste 200  
Laguna Beach, CA 92651

Kevin Zolot  
Assistant U.S. Attorney  
United States Attorney's Office  
Western District North Carolina  
227 West Trade Street  
Charlotte, NC 28202

Benjamin Bain-Creed  
Assistant United States Attorney  
Florida Bar #0021436  
Suite 1650, Carillon Building  
227 West Trade Street  
Charlotte, North Carolina 28202

Accountants for Landlord

Brent Murdoch  
Murdoch & Morris, LLP  
114 Pacifica, Ste. 320  
Irvine, CA 92618

Interested Party

Frye & Hsieh  
Douglas J Frye Esquire  
24955 Pacific Coast Highway # A201  
Malibu, CA 90265

Counsel for Creditor Levon Gugasian

Nanette D. Sanders, Esq.  
Ringstad & Sanders LLP  
2030 Main Street  
Suite 1600  
Irvine, CA 92614

Harlene Miller, Esq.  
Harlene Miller Law  
17910 Sky Park Circle, Suite 105  
Irvine, CA 92614

On the Rocks Jewelry & Rare Coins  
Attn: David Halpin and Desirea Sloan  
207 N. El Camino Real  
San Clemente, CA 92672