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Tulving Company, Inc.
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8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SANTA ANA DIVISION**

11 In re:

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

14 Debtor.
15 0

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

Chapter 7

**NOTICE OF MOTION AND MOTION
FOR ORDER AUTHORIZING THE
TRUSTEE TO (A) EMPLOY HERITAGE
NUMISMATIC AUCTIONS, INC., D/B/A
HERITAGE AUCTIONS AS
AUCTIONEER, AND (B) SELL CERTAIN
ESTATE PROPERTY AT PUBLIC
AUCTION OUTSIDE THE ORDINARY
COURSE OF BUSINESS, PURSUANT TO
11 U.S.C. §§ 363(b), 327 AND 328;
DECLARATIONS OF GREGORY J.
ROHAN AND R. TODD NEILSON IN
SUPPORT THEREOF**

Hearing:

Date: January 19, 2016

Time: 10:30 a.m.

Place: Courtroom 5A

411 West Fourth Street
Santa Ana, CA 92701

Judge: Hon. Erithe A. Smith

1 **TO THE HONORABLE ERITHE SMITH, UNITED STATES BANKRUPTCY JUDGE, THE**
2 **OFFICE OF THE UNITED STATES TRUSTEE, 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 entry of an order authorizing the Trustee to (A)
7 employ Heritage Numismatic Auctions, Inc., d/b/a Heritage Auctions (“Heritage” or “Auctioneer”);
8 and (B) sell certain property of the Estate at public auction outside the ordinary course of business
9 pursuant to Sections 327, 328 and 363(b) of Title 11 of the United States Code, 11 U.S.C. §§ 327,
10 328 and 363(b) (the “Bankruptcy Code”). The Court has jurisdiction over the Motion pursuant to
11 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

12 The Motion is brought in furtherance of the *Coordination Agreement for Disbursement of*
13 *Seized Items from United States to Bankruptcy Trustee and From Trustee to Victims*, approved by
14 Court Order entered July 22, 2015 [Dkt. No. 264] (“Coordination Agreement”). As required by the
15 Coordination Agreement, the Trustee has made a proposal for the government to turnover valuable
16 coins it seized from the Debtor in March 2014 (the “Seized Coins”), and to allow the Trustee to sell
17 and distribute the proceeds of certain of the Seized Coins (the “Non-Error Coins”) to creditors who
18 are victims (“Victim/Creditors”) of the Debtor’s fraud (the “Proposal”). The Trustee’s Proposal is
19 the subject of a separate motion set for hearing concurrently with this Motion.¹ Provided the
20 government and this Court approve the Proposal, by this Motion the Trustee seeks authority to
21 retain Heritage to auction the Non-Error Coins over a six month period, and to distribute to
22 Victim/Creditors the other Seized Coins (the “Error-Coins”), all in accordance with the Proposal.²

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26 ¹ Trustee’s *Motion for Order (1) Authorizing Implementation of Trustee’s Proposed Plan for Liquidation of Seized Items*
27 *and Disbursement of Assets to Victim/Creditors of Fraud in the Bankruptcy Case in Accordance With Coordination*
Agreement With United States Government was filed December 1, 2015 [Dkt. No. 289] (the “Proposal Motion”).

28 ² The Error Coins and the Non-Error Coins are described in the Proposal Motion.

1 The terms of Heritage's retention to auction the Non-Error Coins are set forth in the Auction
2 Consignment Agreement (the "Auction Agreement"), a copy of which is attached hereto as **Exhibit**
3 "**A**". The Auction Agreement includes the following salient terms:

4 a. The Non-Error Coins will be consigned to Heritage for public auction(s) to take
5 place over a six (6) month period, with the final auction taking place by June 30, 2016;

6 b. Auctioneer will not charge the Debtor's estate (the "Estate") a commission or
7 separate charge for photography or insurance. The Estate will receive 100% of the amount the
8 Non-Error Coins sell for at auction (the "Hammer Price"). Auctioneer's compensation and costs
9 are paid by the buyer in the form of a per lot buyer's premium, which is added to the buyer's
10 invoice (the "Lot Buyer's Premium"). The Trustee has agreed that the Lot Buyer's Premium for the
11 sale of the Non-Error Coins will be 19.5%, which will cover costs of photography, insurance and
12 the transfer of the Seized Coins from their current location at the Delaware Depository in
13 Wilmington, Delaware to Dallas, Texas;

14 c. The Trustee may not withdraw the Non-Error Coins from auction. Any disputes
15 arising under the Auction Agreement between the Trustee and Auctioneer are to be resolved by
16 confidential binding arbitration to be held in Dallas, Texas;

17 d. The Non-Error Coins will be sold "as is", "where is" and without any representations
18 or warranties, express or implied;

19 e. All purchases shall be paid in full and must be received by the Auctioneer no later
20 than thirty (30) days of the Public Auction (the "Settlement Date"), and the Trustee's right to
21 receive payment of the Hammer Price matures on the Settlement Date.

22 The Trustee believes that the terms of the Auctioneer's retention for the auction of the Non-
23 Error Coins are reasonable, customary and have been negotiated at arm's-length. *See* Declaration
24 of R. Todd Neilson (the "Neilson Declaration"), attached hereto, at para. 13.

25 In addition to the auction of the Non-Error Coins, the Trustee has also reached agreement
26 with Heritage for the distribution of the Error Coins directly to Victim/Creditors in accordance with
27 the terms of the Proposal.
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1 The Motion is based upon this Notice of Motion and Motion, the attached Memorandum of
2 Points and Authorities, the Declarations of Gregory J. Rohan and R. Todd Neilson submitted in
3 support hereof, the files and pleadings in the Debtor's case including, without limitation, the Order
4 approving the Coordination Agreement and the Proposal Motion, and all judicially noticeable facts.

5 **WHEREFORE**, the Trustee respectfully requests that the Court enter an order:

- 6 (1) granting the Motion;
- 7 (2) authorizing the employment of Heritage Numismatic Auctions, Inc., d/b/a Heritage
8 Auctions, on the terms and conditions set forth above and in the Auction Agreement;
- 9 (3) authorizing the sale of the Non-Error Coins outside the ordinary court of business at
10 Public Auction; and
- 11 (4) granting such other and further relief as this Court deems just and proper under the
12 circumstances.

13 Dated: December 28, 2015

PACHULSKI STANG ZIEHL & JONES LLP

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15 By /s/ Linda S. Cantor
16 Linda F. Cantor

17 Attorneys for R. Todd Neilson, Chapter 7
18 Trustee
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **STATEMENT OF FACTS**

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

5 The Tulving Company, Inc. ("Debtor") is a California corporation. The Debtor was in the
6 business of selling and purchasing gold, silver, coins and other precious metals through its internet
7 website or by phone. Prior to the filing of the bankruptcy, customer complaints concerning delayed
8 or undelivered orders were increasingly made to the Better Business Bureau against the Debtor. In
9 early March, 2014, a class-action lawsuit was filed against the Debtor and Hannes Tulving, Jr., the
10 Debtor's sole shareholder and principal ("Hannes Tulving") in the United States District Court,
11 Northern District of California. A criminal investigation of the Debtor and Hannes Tulving by the
12 Government was also being pursued, as described below. The Debtor ceased operations on or about
13 March 3, 2014.

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

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

25 **C. The Criminal Proceedings and Seizure of Debtor's Coins**

26 On March 8, 2014, Special Agents of the United States Secret Service executed a Search
27 Warrant on the Debtor's offices on probable cause that the Debtor and Hannes Tulving were
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1 engaged in fraud. The Search Warrant resulted in the seizure of the Debtor's property including
2 valuable coins (the "Seized Coins"), which were placed in the Delaware Depository in Wilmington,
3 Delaware. As discussed in the Proposal Motion, criminal proceedings (the "Criminal Case") against
4 the Debtor and Hannes Tulving ensued before the United States District Court for the Western
5 District of North Carolina (the "District Court") resulting in Hannes Tulving and the Debtor entering
6 into a Plea Agreement with the United States of America, by and through counsel for the United
7 States Attorney for the Western District of North Carolina (the "Government").

8 Pursuant to order of this Court approving the "*Coordination Agreement for Disbursement of*
9 *Seized Items from United States to Bankruptcy Trustee and from Trustee to Victims*" (the
10 "Coordination Agreement") entered July 22, 2015 [Docket No. 264] (the "Coordination Order"),
11 Hannes Tulving was authorized to sign the Plea Agreement on behalf of the Debtor in the Criminal
12 Case. The Coordination Agreement also provided that the Trustee make a proposal ("Proposal") for
13 the turnover of the Seized Coins from the Government to pay those creditors of this Estate who are
14 also the victims of the Debtor's criminal action ("Victim/Creditors"). The Trustee's Proposal is the
15 subject of a separate motion set for hearing concurrently with this Motion.³

16 In summary, the Proposal described in the Proposal Motion is that the Government authorize
17 the transfer of the Seized Coins, which consist of approximately 189,000 coins on 22 pallets,
18 separated into 12,539 Presidential Error-Missing Edge Letter Coins ("Error Coins") and
19 approximately 176,461 other coins ("Non-Error Coins"), from the Delaware Depository in
20 Wilmington, Delaware, to another location where they will be sold at auction under the
21 administration of the Bankruptcy Court. The Trustee will seek authority to retain an auctioneer to
22 conduct a public auction of the Non-Error Coins over a three to six month period. The Trustee will
23 distribute the Error Coins to Victim/Creditors on a pro rata basis and the Victim/Creditors' claims
24 will be reduced by the allocated value of the Error Coins distributed to them. The net proceeds of the
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27 ³ Trustee's Motion for Order (1) Authorizing Implementation of Trustee's Proposed Plan for Liquidation of Seized Items
28 and Disbursement of Assets to Victim/Creditors of Fraud in the Bankruptcy Case in Accordance With Coordination
Agreement With United States Government was filed December 1, 2015 [Dkt. No. 289] (the "Proposal Motion")

1 in a customer catalogue and an auction brochure announcing the sale, (5) advertise the Non-Error
2 Coins for sale in various print and online media, (6) ready the Non-Error Coins for sale, (7) interface
3 with potential buyers and respond to inquiries, (8) arrange for viewing and storage at a secure
4 location under Heritage's control, (9) conduct the Public Auction, and (10) prepare a post-Auction
5 report for the Trustee.

6 The Trustee proposes to employ Heritage to pursue the Public Auction of the Non-Error
7 Coins in accordance with the following terms and conditions:

8 a. The Non-Error Coins will be consigned to Heritage for public auction(s) to take
9 place over a six (6) month period, with the final auction taking place by June 30, 2016;

10 b. Auctioneer will not charge the Debtor's estate (the "Estate") a commission or
11 separate charge for photography or insurance. The Estate will receive 100% of the amount the
12 Non-Error Coins sell for at auction (the "Hammer Price"). Auctioneer's compensation and costs
13 are paid by the buyer in the form of a per lot buyer's premium, which is added to the buyer's
14 invoice (the "Lot Buyer's Premium"). The Trustee has agreed that the Lot Buyer's Premium for the
15 sale of the Non-Error Coins will be 19.5%, which will cover costs of photography, insurance and
16 the transfer of the Seized Coins from their current location at the Delaware Depository in
17 Wilmington, Delaware to Dallas, Texas;

18 c. The Trustee may not withdraw the Non-Error Coins from auction. Any disputes
19 arising under the Auction Agreement between the Trustee and Auctioneer are to be resolved by
20 confidential binding arbitration to be held in Dallas, Texas;

21 d. The Non-Error Coins will be sold "as is", "where is" and without any representations
22 or warranties, express or implied;

23 f. All purchases shall be paid in full and must be received by the Auctioneer no later
24 than thirty (30) days of the Public Auction (the "Settlement Date"), and the Trustee's right to
25 receive payment of the Hammer Price matures on the Settlement Date.

26 g. No later than 21 days after the auction, Auctioneer must submit to the Trustee a
27 Report of Auctioneer, which must include, at a minimum: the date of the sale, the sale price, the
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1 gross proceeds of sale, and a statement that the gross proceeds (less Lot Buyer's Premium) have
2 been or will be turned over to the Trustee.

3 Heritage has complied with all applicable bonding requirements. Heritage's blanket bond, in
4 favor of the United States Trustee, Central District of California, and in the amount of \$600,000.00,
5 and an additional bond in the amount of \$600,000.00 for this specific series of auctions and these
6 specific assets, will be filed with the Clerk of the Bankruptcy Court for the Central District of
7 California, Rohan Declaration, ¶9, attached hereto. In addition, Heritage has over \$200 million of
8 insurance, and will add the Trustee as a Loss Payee to its Certificate of Insurance at the appropriate
9 time. *See Id.*; Rohan Declaration, ¶9.

10 The Trustee believes that the employment of Heritage in accordance with the above terms is
11 in the best interests of the Estate. Neilson Declaration, ¶13. Heritage estimates that the sale of the
12 Non-Error Coins will yield gross revenues of approximately \$400,000- \$600,000. .

13 **B. The Auctioneer Does Not Hold Or Represent An Interest Adverse To The Estate And Is**
14 **A Disinterested Person**

15 Rohan has read and understands the provisions of sections 327, 328, 330 and 331 of the
16 Bankruptcy Code, which require, among other things, Bankruptcy Court approval of Heritage's
17 employment and court authorization of all fees and costs that Heritage may be entitled to receive
18 from the Estate.

19 The Trustee is informed and believes, and based thereon alleges, that other than as disclosed
20 herein, Heritage, including any of its associates or employees, has no connection with the Trustee,
21 the Debtor, the Estate's creditors, the United States Trustee or any employees of the United States
22 Trustee, the Bankruptcy Judge or any other party in interest, and hence, that they neither represent
23 nor hold an interest adverse to the estate, and are disinterested persons in accordance with § 101(14)
24 of the United States Bankruptcy Code. Neilson Declaration, ¶11. Based upon the Rohan
25 Declaration, it appears that Rohan holds no pre-petition claims against the Estate.

26 The conclusion that Heritage is disinterested is based upon the fact that to the best of the
27 Trustee's knowledge, based upon the Rohan Declaration, the Auctioneer:
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1 (1) is not a creditor, an equity security holder or, an insider of the Debtor;

2 (2) is not and was not, within 2 years before the date of the filing of the petition, a director,
3 officer, or employee of the Debtor; and

4 (3) does not have an interest materially adverse to the interest of the Debtor or the Estate or
5 any class of creditors or equity holders, by reason of any direct or indirect relationship to, connection
6 with, or in, the Debtor or the Estate or for any reason.

7 Rohan Declaration, ¶7.

8 Consequently, the Trustee asks the Court to find that Heritage is “disinterested” under
9 §101(14) of the Bankruptcy Code.

10 **C. The Employment and Compensation of Heritage is Proper Under 11 U.S.C. §§327(a)**
11 **328(a)**

12 As noted, the Trustee seeks to employ Heritage to sell the Non-Error Coins. In this regard,
13 11 U.S.C. § 327(a) expressly provides that the Trustee may employ an auctioneer to assist the
14 Trustee in carrying out his duties. The one caveat is that the proposed professional hold no interest
15 adverse to the estate. Heritage does not hold or represent an interest adverse to the Estate and that it
16 is a disinterested person. Rohan Declaration, ¶¶5,6 and 7. Accordingly, the Trustee submits that
17 Heritage, in accordance with § 327(a) of the Bankruptcy Code, is eligible for employment as the
18 Estate’s auctioneer. Further, § 328(a) of the Bankruptcy Code permits employment of a professional
19 “on any reasonable terms and conditions of employment, including...on a fixed or percentage fee
20 basis....” The Trustee submits that the compensation scheme described above is reasonable under
21 the circumstances and should be approved.

22 **III.**
23 **THE PROPOSED SALE OF THE NON-ERROR COINS AND DISTRIBUTION BY**
24 **HERITAGE OF THE ERROR COINS SHOULD BE APPROVED**
25 **UNDER SECTION 363(B) OF THE BANKRUPTCY CODE**

26 A trustee, after notice and a hearing, may use, sell, or lease property, other than in the
27 ordinary course of business. 11 U.S.C. § 363(b)(1). A trustee’s application of his or her sound
28 business judgment in the use, sale, or lease of property is subject to great judicial deference. *See,*
e.g., In re Moore, 110 B.R. 924 (Bankr. C.D. Cal. 1990); *In re Canyon P’ship*, 55 B.R. 520 (Bankr.

1 S.D. Cal. 1985); *see also* *Walter v. Sunwest Bank (In re Walter)*, 83 B.R. 14, 19-20 (B.A.P. 9th Cir.
2 1988) (“[T]here must be some articulated business justification for using, selling, or leasing the
3 property outside the ordinary course of business . . . whether the proffered business justification is
4 sufficient depends on the facts of the case. As the Second Circuit held in *Lionel*, the bankruptcy
5 judge should consider all salient factors pertaining to the proceeding and, accordingly, act to further
6 the diverse interests of the debtor, creditors and equity holders, alike.”).

7 But for the Coordination Agreement and the acceptance of the Proposal, the Seized Items
8 may have been withheld by the Government pursuant to Federal statutes. By approving the
9 Proposal, the Trustee may implement the expedient return of value to Victim/Creditors in
10 accordance with the Debtor’s and Hannes Tulving’s restitution obligations under the Plea
11 Agreement. The most efficient way to sell the Non-Error Coins and maximize their value for
12 Victim/Creditors is through the Public Auction conducted by the Auctioneer. In addition, sale of the
13 Non-Error Coins by Auctioneer will eliminate any cost to the Estate of storing them. Accordingly, it
14 is the Trustee’s business judgment that the proposed sale at Public Auction and the employment of
15 the Auctioneer as described above is in the best interest of the Estate.

16 **IV.**
17 **CONCLUSION**

18 Based on the foregoing, the Trustee respectfully requests that the Motion be granted in all
19 respects, and for such other and further relief as the Court deems just and proper.

20 Dated: December 28, 2015

PACHULSKI STANG ZIEHL & JONES LLP

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23 By: /s/ Linda F. Cantor

Linda F. Cantor
Attorneys for R. Todd Neilson, Chapter 7
Trustee

DECLARATION OF R. TODD NEILSON

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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”) in the above-captioned bankruptcy case (the “Case”). I make this Declaration in support of the *Motion of Chapter 11 Trustee for Order Authorizing Employment of Heritage Numismatic Auctions, Inc., d/b/a Heritage Auctions as Auctioneer Pursuant to 11 U.S.C. § § 327 and 328(a) and to Sell Estate Property at Public Auction Outside the Ordinary Course of Business Pursuant to 11 U.S.C. 363(b)* (the “Motion”). Capitalized terms not otherwise defined herein 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, bullion, and other precious metals through its internet website or by phone.

4. 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], 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 [Docket No. 22]. Thereafter upon notice and hearing, the case was converted to a chapter 7 and I continue to serve as the chapter 7 Trustee [Docket 108].

5. I am informed and believe that 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

1 and Hannes Tulving were engaged in fraud. The Search Warrant resulted in the seizure of the
2 Debtor's property including valuable coins, which were placed in the Delaware Depository in
3 Wilmington, Delaware. I am informed and believe that criminal proceedings against the Debtor and
4 Hannes Tulving ensued before the United States District Court for the Western District of North
5 Carolina resulting in Hannes Tulving and the Debtor entering into a Plea Agreement with the United
6 States of America, by and through counsel for the United States Attorney for the Western District of
7 North Carolina.

8 6. Pursuant to an order of this Court approving the "*Coordination Agreement for*
9 *Disbursement of Seized Items from United States to Bankruptcy Trustee and from Trustee to*
10 *Victims*" entered July 22, 2015 [Docket No. 264], Hannes Tulving was authorized to sign the Plea
11 Agreement on behalf of the Debtor in the Criminal Case. The Coordination Agreement also
12 provided that as Trustee, I make a Proposal for the turnover of the Seized Coins from the
13 Government to pay those creditors of this Estate who are also the victims of the Debtor's criminal
14 action.

15 7. The Proposal, which is set forth in the Proposal Motion set for hearing concurrently
16 herewith, is that the Government authorize the transfer of the Seized Coins, which consist of
17 approximately 189,000 coins on 22 pallets, separated into 12,539 Presidential Error-Missing Edge
18 Letter Coins and approximately 176,461 other coins, from the Delaware Depository in Wilmington,
19 Delaware, to another location where they will be sold at auction under the administration of the
20 Bankruptcy Court.

21 8. The Proposal also provides for the retention of an auctioneer to conduct an auction of
22 the Non-Error Coins over a six month period. As Trustee, I will cause the Error Coins to be
23 distributed to Victim/Creditors on a pro rata basis and the Victim/Creditors' claims will be reduced
24 by the allocated value of the Error Coins distributed to them. The net proceeds of the sale of the
25 Non-Error Coins, after deduction for administrative costs, will also be ratably distributed to
26 Victim/Creditors.

1 9. I have negotiated the following terms with Heritage for it to conduct a Public Auction
2 of the Non-Error Coins:

3 a. The Non-Error Coins will be consigned to Heritage for public auction(s) to
4 take place over a six (6) month period, with the final auction taking place by June 30, 2016.

5 b. Heritage will not charge the Debtor's estate a commission or a separate charge
6 for photography or insurance. The Estate will receive 100% of the amount the Non-Error Coins
7 Hammer for at auction. Heritage's compensation and costs are paid by the buyer in the form of a per
8 lot buyer's premium, which is added to the buyer's invoice. As Trustee, I have agreed that the Lot
9 Buyer's Premium for the sale of the Non-Error Coins will be 19.5%, which will cover costs of
10 photography, insurance and the transfer of the Seized Coins from their current location at the
11 Delaware Depository in Wilmington, Delaware to Dallas, Texas;

12 c. As Trustee, I may not withdraw the Non-Error Coins from auction. Any
13 disputes arising under the Auction Agreement between the Trustee and Auctioneer are to be resolved
14 by confidential binding arbitration to be held in Dallas, Texas;

15 d. The Non-Error Coins will be sold "as is", "where is" and without any
16 representations or warranties, express or implied;

17 f. All purchases shall be paid in full and must be received by Heritage no later
18 than thirty (30) days of the Public Auction, and the Trustee's right to receive payment of the
19 Hammer Price matures on the Settlement Date.

20 g. No later than 21 days after the auction, Heritage must submit to the Trustee a
21 "Report of Auctioneer," which must include, at a minimum: the date of the sale, the sale price, the
22 gross proceeds of sale, and a statement that the gross proceeds (less Lot Buyer's Premium) have
23 been or will be turned over to the Trustee.

24 10. I am informed and believe that Heritage has complied with all applicable bonding
25 requirements. Heritage's blanket bond, in favor of the United States Trustee, Central District of
26 California, and in the amount of \$600,000.00 and an additional bond in the amount of \$600,000.00
27 for this specific auction and these specific assets, will be filed with the Clerk of the Bankruptcy
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1 Court for the Central District of California. In addition, Heritage has over \$200 million of insurance,
2 and will add the Trustee as a Loss Payee to its Certificate of Insurance at the appropriate time.

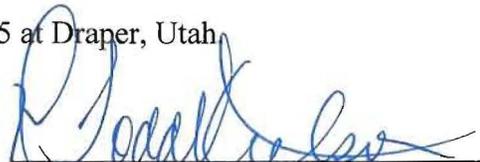
3 11. I am informed and believe that other than as disclosed herein, Heritage, including any
4 of its associates or employees, has no connection with the Trustee, the Debtor, the Estate's creditors,
5 the United States Trustee or any employees of the United States Trustee, the Bankruptcy Judge or
6 any other party in interest, and hence, that they neither represent nor hold an interest adverse to the
7 estate, and are disinterested persons in accordance with § 101(14) of the United States Bankruptcy
8 Code. Based upon the Rohan Declaration, it appears that Rohan holds no pre-petition claims against
9 the Estate.

10 12. I believe the most efficient way to sell the Non-Error Coins and maximize their value
11 for Victim/Creditors is through a Public Auction conducted by the Heritage, under the jurisdiction of
12 the Bankruptcy Court. In addition, the sale of the Non-Error Coins by an Auctioneer will eliminate
13 any cost to the Estate of storing them. I also believe that based upon its extensive experience,
14 Heritage is well-qualified to act as Auctioneer to conduct the Public Auction.

15 13. I believe that the terms of the Auctioneer's retention for the auction of the Non-Error
16 Coins are reasonable, customary and have been negotiated at arm's-length. Accordingly, as Trustee,
17 it is in my business judgment that the proposed sale of the Non-Error Coins at Public Auction under
18 the jurisdiction of the Bankruptcy Court (rather than the District Court in the Criminal Case) and the
19 employment of Heritage are in the best interest of the Estate.

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

22 Executed on this 28th day of December, 2015 at Draper, Utah

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25 R. TODD NEILSON
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DECLARATION OF GREGORY J. ROHAN

I Gregory J. Rohan, declare as follows:

1. I am an individual over the age of eighteen and am President of Heritage Numismatic Auctions, Inc., d/b/a Heritage Auctions (“Heritage”). I make this declaration of my personal knowledge based upon inquiries made by myself and on my behalf in support of the *Motion of Chapter 11 Trustee for Order Authorizing Employment of Heritage Numismatic Auctions, Inc., d/b/a Heritage Auctions as Auctioneer Pursuant to 11 U.S.C. § § 327 and 328(A) and to Sell Estate Property at Public Auction Outside the Ordinary Course of Business Pursuant to 11 U.S.C. 363(b)*.

2. I will oversee all aspects of the Public Auction and the process leading up to it.

3. Heritage, will *inter alia*, (1) pay for the transfer of the Seized Coins from their current location to its offices in Dallas, Texas, (2) pay to insure the Seized Coins throughout the transfer process and their storage at the offices of Heritage until ready for the Public Auction, (3) professionally photograph, as appropriate, samples of the Non-Error Coins for marketing to potential buyers, (4) include the Non-Error Coins in a customer catalogue and an auction brochure announcing the sale, (5) advertise the Non-Error Coins for sale in various print and online media, (6) ready the Non-Error Coins for sale, (7) interface with potential buyers and respond to inquiries, (8) arrange for viewing and storage at a secure location under Heritage’s control, (9) conduct the Public Auction, and (10) prepare a post-Auction report for the Trustee.

4. Heritage has extensive experience and background in conducting auctions and specializes solely in the sale of these types of coins. As such, Heritage is well-qualified to conduct the sale and auction for the Trustee. Attached hereto as **Exhibit “B”** is a copy of Heritage’s resume outlining its extensive background and experience.

5. To the best of my knowledge, information and belief, and based on reasonable inquiry, neither I, nor any of Heritage’s associates or employees, has any connection with the Trustee, the Debtor, the Estate’s creditors, the United States Trustee or any employees of the United

1 States Trustee, the Bankruptcy Judge or any other party in interest. To the best of my knowledge,
2 information and belief, Heritage holds no interest adverse to the estate.

3 6. To the best of my knowledge, Heritage is “disinterested persons” under § 101(14) of
4 the Bankruptcy Code as that term has been explained to me.

5 7. The conclusion that Heritage is disinterested is based upon the fact that to the best of
6 my knowledge, Heritage:

7 a. is not a creditor, an equity security holder or, an insider of the Debtor;

8 b. is not and was not, within 2 years before the date of the filing of the petition, a
9 director, officer, or employee of the Debtor; and

10 c. does not have an interest materially adverse to the interest of the Debtor or the
11 Estate or any class of creditors or equity holders, by reason of any direct or
12 indirect relationship to, connection with, or in, the Debtor or the Estate or for any
13 reason.

14 8. I have read and understand the provisions of sections 327, 328, 330 and 331 of the
15 Bankruptcy Code, which require, among other things, Bankruptcy Court approval of Heritage’s
16 employment and court authorization of all fees and costs that Heritage may be entitled to receive
17 from the Estate.

18 9. Heritage has complied with all applicable bonding requirements. Heritage’s blanket
19 bond, in favor of the United States Trustee, Central District of California, and in the amount of
20 \$600,000.00, and an additional bond in the amount of \$600,000.00 for this specific auction and these
21 specific assets, will be filed with the Clerk of the Bankruptcy Court for the Central District of
22 California. In addition, Heritage has over \$200 million of insurance, and will add the Trustee as a
23 Loss Payee to its Certificate of Insurance at the appropriate time.

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

26 Executed this 28th day of December, 2015, at Dallas, Texas.

27 _____
28 GREGORY J. ROHAN

EXHIBIT A

Client #:	Primary Auction:	Email: TNeilson@brgexpert.com	
Name: R. Todd Neilson, Chapter 7 Trustee of Tulving Co.		Primary Phone: 310-499-4934	
Company:		Night:	
Address: 2049 Century Park East, Suite 2525		Cell:	
Address (2 nd):		Fax:	
City: Los Angeles	State: CA	Zip/Postal Code: 90067	Country:

AUCTION CONSIGNMENT AGREEMENT: COINS

Heritage Numismatic Auctions, Inc., d/b/a Heritage Auctions ("Auctioneer"), agrees to act as your Agent for the sale of the rare coin(s), currency, or other numismatic properties listed in the attached Schedule 1 or other inventory, together with any certificates, documents, and photographs establishing authenticity or provenance (the "Properties"), subject to the following:

The Properties are consigned to our Auctions which will take place during the first 6 months of 2016, with the final auction taking place by June 30, 2016. For our services, we will not charge you any commission and we will pay you 100% of the aggregate of all Hammer Prices realized from the sale of your Properties. Hammer Price does not include the premium paid by buyer (minimum \$14 per Lot Buyer's Premium), as set forth in the Auction catalog and on the Auctioneer's website, which is retained by Auctioneer as its exclusive property. You will not be responsible for any related third-party expenses, unless otherwise agreed upon in writing herein.

You warrant that, subject to approval of the bankruptcy court in chapter 7 case no. 14-11492 pending in the Central District of California, Santa Ana Division (the "Bankruptcy Court") you have the legal authority to consign the Properties, that you have not encumbered the Properties in any way (by pledging the Properties as collateral for a loan or in some other way), that you have the absolute right to consign the Properties to auction, and that good title will pass to the purchaser. While in our possession, your Properties are required to be fully insured. So that we may state the value of your Properties for our insurance policy, you estimate their value to be \$ 600,000.00 (the "Insured Value"). Please see the reverse side of this Agreement for important information regarding the Insured Value of your Properties.

THIS CONSIGNMENT IS WITHOUT RESERVE, AND YOU AGREE NOT TO PLACE RESERVES.
IMPORTANT NOTICE: This Agreement is subject to a dispute resolution provision which appears on the reverse side, along with further important terms and conditions. By signing below, you acknowledge having read and understood the General Consignment Terms and Conditions appearing below and on the reverse side of this Agreement.

Consignor	Heritage Numismatic Auctions, Inc., d/b/a/ Heritage Auctions		
Signature:	By: <i>Paul R. Linchall</i> By: Greg Rohan, President		
Title:	Date:	Title: COO, TX Auc #16591	Date:

If the consignor is an entity, the authorized representative signing on behalf of the entity accepts the Terms of this Agreement, subject to Bankruptcy Court approval.

GENERAL CONSIGNMENT TERMS AND CONDITIONS

- Consignor specifically agrees that the Auction shall be conducted in accord with the published Terms and Conditions of Auction as printed in our catalogs and posted on our website and that this Agreement is subject to a dispute resolution provision. If you would like a preview copy of the Terms and Conditions of Auction, one will be sent to you upon receipt of your written request.
- You may not take any action to artificially enhance the marketing or bidding on your properties.
- Auctioneer cannot be responsible for failures either in a bidder's transmission or Auctioneer's receipt of any bid by Internet, telephone, fax, mail or other means and thus Consignor expressly waives Auctioneer's liability for failing to execute or to receive any bids. Additionally, Auctioneer may miss or decline floor bids, book bids, and bids through third party bidding services. Consignor waives Auctioneer's liability for execution of these bids. Auctioneer permits absentee bidding and may place bids for third parties.
- The consignment of Properties made under this Agreement may not be withdrawn by you for any reason**, but we reserve the right to withdraw the Properties, or any part of the Properties, from the Auction at any time prior to a call for bids. We further reserve the right after execution of the Agreement to determine that all or parts of the Properties are not suitable for inclusion in any Auction venue and to return such Properties to you without any liability. If, at any time, we receive evidence that the Properties are or may not be genuine or have title defect, we reserve the right to void the sale. We reserve the right to catalog, describe, and group the Properties in the manner we see fit. You agree that we may photograph and advertise the items, and such images shall be our sole property and copyright. Auctioneer reserves the right to place starting bids and/or estimates on any Lot as determined in its sole discretion. We will not be responsible for losses to you caused by errors in cataloging or describing the Properties. Auction catalog will be sent to prospective buyers as determined by Auctioneer; certain Auctions are posted only on the Internet. You agree that we may exclude from the Auction any participants that we deem are commercially inappropriate.
- Auctioneer does not guaranty the payment of any bid until the Properties have been delivered to the bidder. If any bidder awarded a lot fails to pay for the lot when requested to do so by Auctioneer, the Auctioneer may offer and sell the lot to an underbidder or other buyer without notice to you, provided that such amount is equal to or in excess of your Reserve. Or, if payment in full is not received from a bidder for any Properties by the Settlement Date (hereby defined as **forty-five (45)** days after the Auction's final session, or the following Tuesday if the Settlement Date falls on a weekend or a holiday (for settlement purposes the final session will be considered the last session of the associated Signature Auction)), or if the invoice is voided, or if for any reason the sale of any Properties is not completed by those dates, you authorize us to do any of the following at our option: (a) pay you the amount of the Hammer Price less Seller's Commission and less all amounts due us under this Agreement. or (b) consign any Properties returned by a bidder to a subsequent Auction at Auctioneer's sole discretion under the same terms as the Properties were originally consigned, or (c) sell the Properties to an underbidder or other buyer so long as you receive an amount equal to what the Hammer Price was at the auction, less applicable Seller's Commissions.
- Your right to the Proceeds from the sale of your Properties matures on the Settlement Date. **Notices:** A) Auctioneer reserves the right to accept a return of any Properties, prior to Settlement, for valid reason in our sole opinion as to attribution, authenticity, condition, title or other just cause. C) Pending Settlement, Proceeds shall be cleared in Auctioneer's non-interest bearing facility account.
- You estimated "Insured Value" on the front of this Agreement. You agree and understand that: 1) the Insured Value you have claimed is for insurance purposes only; 2) **we have not in any way verified the Insured Value and do not guarantee that the amount the Properties may realize at the Auction will approach, be equal to, or greater than the Insured Value;** and 3) that the applicable insurance is not "Stated Value" and that our insurance carrier is obligated to pay only "fair market value" which may be less than your valuation. In the event of loss or damage, the insurance carriers shall be directed to pay you the insurance proceeds less an amount to be paid to us equal to the sum of the Seller's Commission and Buyer's Premiums based on the total amount of the insurance proceeds, and this payment to you by the insurance carriers shall completely satisfy our obligations regarding the Properties under this Agreement.
- This Agreement, and Schedule 1 (Inventory Listing which you have already provided) is the entire agreement between you and us concerning the consignment of your Properties, and it supersedes any prior agreement or representation. This Agreement can only be changed in writing (including email) agreed and acknowledged by both you and us, If any part of this

Agreement is held to be unenforceable, all other parts of this Agreement shall continue to be in full force and effect; any part that is found to be unenforceable shall only be limited so that it shall be enforced to the fullest extent permitted by law.

9. **Exclusive Dispute Resolution Process:** All claims, disputes, or controversies in connection with, relating to, and/or arising out of this Agreement, any amendment thereof, any advance hereunder, any consigned Properties or damage to consigned Properties, any interpretation of this Agreement, any alleged verbal modification and/or any purported settlement, whether asserted in contract, tort, under Federal or State statute or regulation, or any claim made by the buyer of your Properties or a Participant in the auction involving your Properties (which claim you consent to be made a party) (collectively, "Claim") shall be **exclusively heard by**, and the claimant (or respondent as the case may be) and Heritage each consent to the Claim being presented in a **confidential binding arbitration** before a single arbitrator administrated by and conducted under the rules of, the American Arbitration Association. The locale for all such arbitrations shall be **Dallas, Texas**. The arbitrator's award may be enforced in any court of competent jurisdiction. If a Claim involves a consumer, exclusive subject matter jurisdiction for the Claim is in the State District Courts of Dallas County, Texas, and the consumer consents to subject matter and in personam jurisdiction; further CONSUMER EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY. A consumer may elect arbitration as specified above. Any claim involving the purchase or sale of numismatic or related items may be submitted through binding PNG arbitration. Any Claim must be brought within two (2) years of the alleged breach, default or misrepresentation or the Claim is waived. Exemplary or punitive damages are not permitted and are waived. A Claim is not subject to class certification. This Agreement and any Claim shall be determined and construed under **Texas law**. The prevailing party (a party that is awarded substantial and material relief on its damage claim based on damages sought vs. awarded or the successful defense of a Claim based on damages sought vs. awarded) may be awarded its reasonable attorneys' fees and costs.

10. **State Notices:**

Notice as to an Auction in California: Auctioneer has in compliance with Title 2.95 of the California Civil Code as amended October 11, 1993, Sec. 1812.600, posted with the California Secretary of State its bonds for it and its employees, and the auction is being conducted in compliance with Sec. 2338 of the Commercial Code and Sec. 535 of the Penal Code.

Notice as to an Auction in New York City: These Terms and Conditions are designed to conform to the applicable sections of the New York City Department of Consumer Affairs Rules and Regulations as Amended. This is a Public Auction Sale conducted by Auctioneer. The New York City licensed Auctioneers are Robert Korver, No. 1096338 and Samuel W. Foose, No.0952360, who will conduct the Auction on behalf of Heritage Auctions ("Auctioneer"). All lots are subject to: the consignor's right to bid thereon in accord with these Terms and Conditions of Auction, consignor's option to receive advances on their consignments, and Auctioneer, in its sole discretion, may offer limited extended financing to registered bidders, in accord with Auctioneer's internal credit standards. A registered bidder may inquire whether a lot is subject to an advance or reserve. Auctioneer has made advances to various consignors in this sale.

Notice as to an Auction in Texas: In compliance with TDLR rule 67.100(c)(1), notice is hereby provided that this auction is covered by a Recovery Fund administered by the Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711 (512) 463-2906. Any complaints may be directed to the same address.

EXHIBIT B

Heritage Auctions offers is the largest bidding audience gathered by any auctioneer. We now have more than 950,000 registered online bidder-members in 186 countries, on our HA.com website, and the number is growing daily. We bring multiples more bidders to our auctions than every competitor.

Heritage, with a worldwide staff numbering more than 500, has the largest staff of professional numismatists ever assembled. Our seasoned experts have the market knowledge you need to ensure that your consignment will be presented to the buying public with the utmost care, efficiency, and professionalism.

Heritage is by far the largest numismatic auctioneer in the world.

The HA.com/Coins website stands apart from the crowd as the most popular commercial numismatic address on the Internet. Heritage has won the prestigious Numismatic Literary Guild award for the Best Numismatic Website many times over the last decade. It is also the only numismatic website to be awarded the Best-of-the-Web designation by Forbes, and we have won that award twice!

Heritage has faithfully served more than 45,000 consignors since 1976, each and every one paid in full and right on schedule. You have our assurance, backed by audited financial with decades of clean opinions from our auditors at KPMG, that you will be paid exactly as promised.

PROOF OF SERVICE OF DOCUMENT

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

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF MOTION AND MOTION FOR ORDER AUTHORIZING THE TRUSTEE TO (A) EMPLOY HERITAGE NUMISMATIC AUCTIONS, INC., D/B/A HERITAGE AUCTIONS AS AUCTIONEER, AND (B) SELL CERTAIN ESTATE PROPERTY AT PUBLIC AUCTION OUTSIDE THE ORDINARY COURSE OF BUSINESS, PURSUANT TO 11 U.S.C. §§ 363(B), 327 AND 328; DECLARATIONS OF GREGORY J. ROHAN AND R. TODD NEILSON IN SUPPORT THEREOF** will be served or was served (**a**) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (**b**) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document on **December 28, 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 (*date*) **December 28, 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 (*date*) **December 28, 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
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 28, 2015
Date

MYRA KULICK
Printed Name

/s/ Myra Kulick
Signature

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

- Wesley H Avery wamiracle6@yahoo.com, wavery@rpmlaw.com
- 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
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- 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) rneilson@brg-expert.com, sgreenan@brg-expert.com; rneilson@ecf.epiqsystems.com; ntroszak@brg-expert.com
- Jason S Pomerantz jspomerantz@pszjlaw.com, jspomerantz@pszjlaw.com
- Nanette D Sanders becky@ringstadlaw.com
- Richard C Spencer rspencer@rspencerlaw.com
- United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov

2. SERVED BY UNITED STATES MAIL:

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
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Irvine, CA 92618

Attorneys for Defendants Hannes Tulving, Jr.

and The Tulving Company
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Charlotte, NC 28202

Laurence P Nokes on behalf of Interested Party

John Frankel
Nokes & Quinn
410 Broadway St Ste 200
Laguna Beach, CA 92651

Brent Murdoch

Murdoch & Morris, LLP
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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

On the Rocks Jewelry & Rare Coins

Attn: David Halpin and Desirea Sloan
207 N. El Camino Real
San Clemente, CA 92672

Gregory J. Rohan

Heritage Auctions
3500 Maple Ave., 17th Floor
Dallas, TX 75219-3941