

1 Linda F. Cantor (CA Bar No. 153762)
2 Pachulski Stang Ziehl & Jones LLP
3 10100 Santa Monica Blvd., 13th Floor
4 Los Angeles, California 90067
5 Telephone: 310-277-6910
6 Facsimile: 310-201-0760

7 E-mail: lcantor@pszjlaw.com

8 Proposed Counsel for R. Todd Neilson, Chapter 11
9 Trustee for The Tulving Company, Inc.

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

13 In re:

14 THE TULVING COMPANY, INC., a
15 California corporation,

16 Debtor.

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

Chapter 11

**NOTICE OF EXPEDITED MOTION AND
EXPEDITED MOTION OF CHAPTER 11
TRUSTEE FOR ORDER: (1) APPROVING
THE EMPLOYMENT OF VAN HORN
AUCTIONS APPRAISAL GROUP, LLC AS
AUCTIONEER FOR THE ESTATE
PURSUANT TO 11 U.S.C. §§ 327 AND
328(A); (2) AUTHORIZING THE SALE OF
ESTATE PROPERTY AT PUBLIC
AUCTION OUTSIDE THE ORDINARY
COURSE OF BUSINESS PURSUANT TO 11
U.S.C. §363(B); (3) AUTHORIZING
PAYMENT OF COSTS AND ALLOWING
COMPENSATION; AND (4) WAIVING 14-
DAY STAY PERIOD; DECLARATION OF
SCOTT VANHORN; DECLARATION OF R.
TODD NEILSON**

**[Application for Order Shortening Time Filed
Herewith]**

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

1 **TO THE HONORABLE ERITHE A. SMITH, UNITED STATES BANKRUPTCY JUDGE,**
2 **THE OFFICE OF THE UNITED STATES TRUSTEE, AND PARTIES WHO HAVE**
3 **REQUESTED SPECIAL NOTICE:**

4 **PLEASE TAKE NOTICE** that R. Todd Neilson, duly appointed chapter 11 trustee
5 (“Trustee”) in the above-captioned bankruptcy case (the “Case”), hereby moves the Court (the
6 “Motion”) for an order: (1) authorizing him to sell the personal property (the “Property”) listed on
7 Exhibit “1” to the accompanying declaration of Scott Van Horn (the “Van Horn Declaration”) at a
8 public auction to be conducted on May 13, 2014 pursuant to 11 U.S.C. § 363(b); (2) ordering that the
9 sale of the Property shall be free and clear of liens, claims, and interests, pursuant to 11 U.S.C. §
10 363(f); (3) approving the employment of Van Horn Auctions & Appraisal Group, LLC (“VHA”) to
11 conduct the sale, pursuant to 11 U.S.C. § 327; (4) authorizing the payment of costs from the sale
12 proceeds and allowing VHA to receive compensation in the form of a “buyer’s premium,” without
13 further order of the Court, pursuant to 11 U.S.C. § 328; and (5) waiving the 14-day stay period set
14 forth in Federal Rule of Bankruptcy Procedure 6004(h).

15 **PLEASE TAKE FURTHER NOTICE** that the Property consists of: office furniture,
16 fixtures and warehouse equipment, to include, but not limited to, a 2010 Ford E350 Econoline
17 Superduty van, 2008 Ford E450 14’ box truck, Clark electric stand up forklift, coin counters, pallet
18 racking and dexion shelving, computer monitors, printers, art and decor, furniture, fixtures and
19 equipment located at 150 West 17th Street, Suite A, Costa Mesa, California (the “Premises”). The
20 Property is no longer necessary to the administration of the estate and must be disposed of with the
21 goal of maximizing any value. Also, the Property is situated on Premises at a rental cost of \$30,000
22 per month. It is imperative that the Property be sold immediately so that the Trustee can limit
23 administrative claims and reject the lease as soon as the Premises are vacant.

24 **PLEASE TAKE FURTHER NOTICE** that the Trustee seeks authority to retain Van Horn
25 Auctions & Appraisal Group, LLC (“VHA”) to conduct the sale on the terms set forth in the Auction
26 Agreement attached as Exhibit “1” to the Van Horn Declaration. The Trustee proposes to
27 compensate VHA under 11 U.S.C. § 328 by permitting VHA to charge and retain a 13% “buyer’s
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1 premium” charged to each purchaser on all Property sold by VHA. The Trustee also seeks authority
2 to reimburse VHA for its expenses from the gross sale proceeds, not to exceed \$4,750.00, without
3 further order of the Court.


4 **PLEASE TAKE FURTHER NOTICE** that the Trustee is filing concurrently a motion
5 seeking an order shortening the notice period for hearing on the Motion, requesting that the hearing
6 be set for the earliest time as is convenient to the Court. When the Court enters an order setting a
7 hearing date for this Motion, the Trustee will serve separate notice of the hearing date and the
8 objection deadline.

9 **WHEREFORE** the Trustee respectfully requests that the Court enter an order (1) granting
10 the Motion; (2) authorizing the employment and compensation of Van Horn Auctions & Appraisal
11 Group, LLC, on the terms and conditions set forth above and in the Auction Agreement; (3)
12 authorizing the sale of the Property, free and clear of liens, claims and interests, pursuant to the
13 terms of the Auction Agreement at a public auction without further order of the Court; (4) waiving
14 the stay imposed by Federal Rule of Bankruptcy Procedure 6004(h); and (5) granting such other and
15 further relief as this Court deems just and proper under the circumstances.

16 Dated: April 17, 2014

PACHULSKI STANG ZIEHL & JONES LLP

17
18 By


Linda F. Cantor

19 Proposed Attorneys for R. Todd Neilson,
20 Chapter 11 Trustee
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **JURISDICTION AND VENUE**

4 This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This
5 matter relates to the administration of the Estate and the sale of property of the Estate and is
6 accordingly a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M) and (O). Venue of this
7 Case is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the
8 relief requested herein are sections 327, 328, and 363 of the Bankruptcy Code and Federal Rule of
9 Bankruptcy Procedures 6004(h) (“Bankruptcy Rule 6004(h”).

10 **II.**

11 **BACKGROUND**

12 **A. The Background of the Debtor’s Businesses**

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

23 **B. Procedural Background of Case**

24 The Debtor commenced this case by the filing of a voluntary petition for relief under chapter
25 11 of the Bankruptcy Code on March 10, 2014. In light of the pending criminal investigation and
26 other ongoing litigation, on March 18, 2014, the United States Trustee filed a *Stipulation Appointing*
27 *Chapter 11 Trustee* [Docket No. 15] (“Stipulation”), which was signed by both the Debtor and its
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1 attorney. The Stipulation was approved by the Bankruptcy Court on March 18, 2014 [Docket No.
2 16] and an Order was entered by the Court on March 21, 2014 approving the *U.S. Trustee's*
3 *Application for the Appointment of a Chapter 11 Trustee*, appointing R. Todd Neilson as Trustee of
4 the Debtor's estate [Docket No. 22].

5 **C. The Debtor's Property to Be Sold**

6 The Debtor maintains leased premises located at 750 West 17th Street, Suite A, Costa Mesa,
7 California (the "Premises"), at a cost of \$30,000 per month. The Property located at the Premises
8 consists of: office furniture, fixtures and warehouse equipment, to include, but not limited to, a 2010
9 Ford E350 Econoline Superduty van, 2008 Ford E450 14' box truck, Clark electric stand up forklift,
10 coin counters, pallet racking and dexion shelving, computer monitors, printers, art and decor,
11 furniture, fixtures and equipment. The Debtor's business is no longer in operation. Consequently,
12 the Property is no longer necessary to the administration of the estate and must be disposed of with
13 the goal of maximizing any value. It is imperative that the Property be sold immediately so that the
14 Trustee can limit administrative claims and reject the lease as soon as the Premises are vacant.

15 **D. Sale Marketing**

16 VHA will be responsible for the marketing of the Property. For the sale of the Property, ads
17 will be placed in the Los Angeles Times classified advertisements section regarding auctions and
18 postcards will be mailed to certain offices in the region.

19 **E. VHA's Qualifications, Disclosures and Bonds**

20 VHA is well qualified to conduct the Public Auction described herein. VHA is an industrial
21 auction company specializing in all aspects of appraisals, liquidations and public auction sales,
22 bonded with the State of California and U.S. Bankruptcy Court, and member of the National
23 Auctioneers Association, California State Auctioneers Association, and Southern California
24 Auctioneers Association. Scott Van Horn, the founder of VHA, and lead on this engagement, has
25 over twenty-four years' experience managing and implementing asset disposition solutions. VHA is
26 dedicated to the marketing aspect of the auction business and employs innovative promotional
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1 strategies and the most appropriate sale systems and technologies to extract the highest and best
2 value for the seller.

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

10 The conclusion that VHA is disinterested is based upon the fact that to the best of the
11 Trustee's knowledge, based upon the Van Horn Declaration, the Auctioneer:

12 (1) is not a creditor, an equity security holder or, an insider of the Debtor;

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

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

18 VHA has complied with all applicable bonding requirements. VHA's blanket bond, in favor
19 of the United States Trustee, Central District of California, in the amount of \$50,000.00 is on file
20 with the Clerk of the Bankruptcy Court for the Central District of California.

21 After consideration of the types of assets involved, the qualifications of VHA, the terms of
22 the Auction Agreement and the need to proceed with all due haste, the Trustee has determined that it
23 is in the best interests of the Estate to seek the Court's approval, pursuant to the terms of the Auction
24 Agreement attached as Exhibit 1 to the appended Van Horn Declaration, of the retention of VHA as
25 the auctioneer, and to conduct the sale of the Property.

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3 **II.**
4 **ARGUMENT**

5 **A. The Court Should Authorize the Sale of the Property**

6 Section 363(b)(1) of the Bankruptcy Code provides that “the trustee, after notice and a
7 hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.”
8 Courts require that the proposed sale be made in good faith and in the trustee’s business judgment.
9 *See In re 240 North Brand Partners, Ltd.*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996) (“debtors who
10 wish to utilize § 363(b) to dispose of property of the estate must demonstrate that such disposition
11 has a valid business justification.”), *In re Moore*, 110 B.R. 924, 928 (Bankr. C.D. Cal. 1990)
12 (recognizing that business judgment rule applies to trustee’s disposition of estate property). A
13 trustee’s application of his or her sound business judgment in the use, sale, or lease of property is
14 subject to great judicial deference. *See, e.g., In re Moore*, 110 B.R. 924 (Bankr. C.D. Cal. 1990); *In*
15 *re Canyon P’ship*, 55 B.R. 520 (Bankr. S.D. Cal. 1985); *see also Walter v. Sunwest Bank (In re*
16 *Walter)*, 83 B.R. 14, 19-20 (B.A.P. 9th Cir. 1988) (“[T]here must be some articulated business
17 justification for using, selling, or leasing the property outside the ordinary course of business . . .
18 whether the proffered business justification is sufficient depends on the facts of the case. As the
19 Second Circuit held in *Lionel*, the bankruptcy judge should consider all salient factors pertaining to
20 the proceeding and, accordingly, act to further the diverse interests of the debtor, creditors and equity
21 holders, alike.”). Courts also consider whether the sale is in the best interest of creditors. *See, e.g.,*
22 *In re Huntington, Ltd.*, 654 F.2d 578, 589 (9th Cir. 1981); *In re Equity Funding Corp.*, 492 F.2d 793,
23 794 (9th Cir. 1974); *In re Canyon Partnership*, 55 B.R. 520, 525 (Bankr. S.D. Cal. 1985). In
24 connection with sales of assets outside of the ordinary course of business, bankruptcy courts
25 frequently approve competitive bidding procedures as a means of ensuring that such sales will
26 generate the highest and best returns to the estate. *In re Lahijani*, 325 B.R. 282 (B.A.P. 9th Cir.
27 2005); *In re Two "S" Corp.*, 875 F.2d 240, 243-44 (9th Cir. 1989).

28 The proposed sale of the Property is in the best interest of the creditors because the Estate has
no use for the Property and it is the Trustee’s duty to liquidate the assets of the Estate in an efficient
manner. *See* 11 U.S.C. § 704(a).

1 The Trustee also believes that an auction is the best method by which to maximize the value
2 of the Estate's interest in the Property. By this method, the Property will be exposed to the greatest
3 number of buyers and bids will be subject to overbids, so any and all parties wishing to purchase the
4 Property for a higher price may do so. Further, selling the Property immediately will prevent the
5 further accrual of potential administrative claims relating to the Premises and result in a higher net
6 recovery to the Estate. As a result, the Trustee believes in his business judgment, that the proposed
7 sale will maximize the return to the Estate and is in the best interests of the Estate and its creditors.

8 **B. The Sale Should Be Free and Clear of Liens**

9 The Trustee is providing notice of the sale to all creditors and other parties in this bankruptcy
10 case. The Trustee is not aware of any lien against the Property that is the subject of this Notice.
11 However, if a holder of a lien or claim receives notice of the sale and fails to object, the Property
12 may be sold free and clear of that lien or claim under section 363(f)(2) of the Bankruptcy Code. *See*
13 *In re Blixseth*, 2011 Bankr. LEXIS 1451 (Bankr. D. Mont. Apr. 20, 2011) ("This Court deems the
14 lack of objection by holders of liens and interests, after notice, as their implied consent to the sale
15 free and clear of liens."); *In re Borders Group, Inc.*, 2011 Bankr. LEXIS 1773 (Bankr. S.D.N.Y.
16 May 12, 2011) ("Under section 363(f)(2), a lienholder who receives notice of a sale but does not
17 object within the prescribed time period is deemed to consent to the proposed sale, and assets
18 thereafter may be sold free and clear of liens."); *FutureSource LLC v. Reuters Ltd.*, 312 F.3d 281
19 (7th Cir. 2002), cert. denied, 538 U.S. 962, 123 S. Ct. 1769, 155 L. Ed. 2d 513 (2003) (failure to
20 object may constitute consent, if there was adequate notice); *In re Tabone, Inc.*, 175 B.R. 855
21 (Bankr. D.N.J. 1994) (failure to object to notice of sale or attend hearing deemed consent to sale for
22 purposes of section 363); *In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same); *In re Gabel*, 61 B.R.
23 661, 667 (Bankr. W.D. La. 1985) (same). If a lien or claim is asserted, the Property may still be sold
24 free and clear under sections 363(f)(1) and/or 363(f)(3) of the Bankruptcy Code, with the lien
25 attaching to the sale proceeds to the same extent and with the same validity and priority as the lien
26 attached to the Property. Accordingly, the Court should order that the sale of the Property will be
27 free and clear of all liens, claims, and interests.
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1 **C. The Employment and Compensation of VHA is Proper Under Sections 327(a)**
2 **and 328(a) of the Bankruptcy Code**

3 Section 327(a) of the Bankruptcy Code expressly provides that the Trustee may employ an
4 auctioneer to assist the Trustee in carrying out his duties. The single requirement is that the
5 proposed professional asserts no interest adverse to the estate. Here VHA disclosed to the Trustee
6 that it does not hold or represent an interest adverse to the Estate and that it is a “disinterested
7 person” as contemplated by the Bankruptcy Code. Accordingly, the Trustee submits that VHA, in
8 accordance with section 327(a) of the Bankruptcy Code, is eligible for employment as the Estate’s
9 auctioneer.

10 Further, section 328(a) of the Bankruptcy Code permits employment of a professional “on
11 any reasonable terms and conditions of employment, including...on a fixed or percentage fee
12 basis...” The Trustee submits that the compensation scheme described above and in the Auction
13 Agreement, which is a 13% buyers’ premium plus actual and necessary expenses, not to exceed
14 \$4,750.00 is reasonable under the circumstances. The Trustee believes that employing VHA on
15 these terms will yield the maximum return to the estate from the Property. Accordingly, the Court
16 should approve such compensation and payment of costs without further order of the Court.

17 **D. The 14-Day Stay on the Effectiveness of the Sale Order Should Be Waived**

18 The Court should waive the stay period imposed by Rule 6004(h) of the Federal Rules of
19 Bankruptcy Procedure to minimize the potential administrative claim incurred by the Estate and to
20 ensure the Auctioneer can proceed immediately to conduct sales that are without controversy.
21 Federal Rule of Bankruptcy Procedure 6004(h) provides that “[a]n order authorizing the use, sale, or
22 lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the
23 order, unless the court orders otherwise.” The rule therefore contemplates that the Court may order
24 that the stay period is waived. The Trustee believes that it is appropriate for the Court to waive the
25 stay in the present case to permit the sale to occur in a timely fashion and minimize the charges
26 incurred for the continued lease of the Premises.

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III.

CONCLUSION

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

Dated: April 17, 2014

PACHULSKI STANG ZIEHL & JONES LLP

By



Linda F. Cantor

Proposed Attorneys for R. Todd Neilson,
Chapter 11 Trustee

DECLARATION OF SCOTT VAN HORN

I, Scott Van Horn, hereby declare as follows:

1. I am the owner of Van Horn Auctions & Appraisal Group, LLC (“VHA”). I am over the age of eighteen years and I make this declaration of my personal knowledge based upon inquiries made by myself and on my behalf in support of the *Expedited Motion for Order: (1) Approving the Employment of Van Horn Auctions & Appraisal Group, LLC as Auctioneer for the Estate Pursuant to 11 U.S.C. §§ 327 and 328(a); (2) Authorizing the Sale of Estate Property at Public Auction Outside the Ordinary Course of Business Pursuant to 11 U.S.C. §363(b); (3) Authorizing Payment of Costs and Allowing Compensation; and (4) Waiving 14-Day Stay Period* (the “Motion”) filed by R. Todd Neilson, the duly appointed chapter 11 trustee (the “Trustee”) in the above-captioned case (the “Case”). If called upon as a witness, I could and would competently testify on personal knowledge, and on information and belief where indicated, as to all of the matters stated herein. Capitalized terms not otherwise defined shall have the meaning ascribed to them in the Motion.

2. VHA has provided a proposal (the “Auction Agreement”) to the Trustee regarding the sale of the Property, maintained at the leases premises of 750 West 17th Street, Suite A, Costa Mesa, California (the “Premises), at public auction. A list of the Property is referenced in the Auction Agreement, a copy of which is attached hereto as **Exhibit 1**.

3. VHA understands the terms of the Auction Agreement and is willing and able to conduct the Public Auction pursuant to the terms of the Auction Agreement. VHA further understands that its retention and compensation, as set forth in the Auction Agreement, is subject to approval of the Bankruptcy Court.

4. VHA is well qualified to conduct the Public Auction described in the Auction Agreement. VHA has facilitated the disposition through auction of over \$300,000.00 of equipment and wholesale inventories for large and small business and in bankruptcy cases. VHA is dedicated to the marketing aspect of the auction business and employs innovative promotional strategies and the most appropriate sale systems and technologies to extract the highest and best value for the seller.

1 5. I will serve as the lead on this engagement. I have over twenty-four years' experience
2 managing and implementing asset disposition solutions. In my opinion, a public auction is the most
3 advantageous method to use to sell the Property. In my opinion a public auction will maximize the
4 value the Estate will receive from the sale of the Property.

5 6. VHA has a current blanket bond in favor of the United States of America in the
6 amount of \$50,000.00, which has been filed with the Clerk of the Bankruptcy Court. A copy of the
7 bond is attached hereto as **Exhibit 2**.

8 7. VHA is not a creditor, an equity security holder or, an insider of the Debtor, is not
9 and was not, within 2 years before the date of the filing of the petition, a director, officer, or
10 employee of the Debtor, and does not have an interest materially adverse to the interest of the Debtor
11 or the Estate or any class of creditors or equity holders, by reason of any direct or indirect
12 relationship to, connection with, or in, the Debtor or the Estate or for any reason.

13 8. To the best of my knowledge, VHA is a disinterested person and does not hold or
14 represent any interest adverse to the Estate.

15 9. To the best of my knowledge, VHA does not have any connections with the Debtor,
16 its creditors, any other party in interest, their respective attorneys and accountants, the United States
17 Trustee, any person employed in the office of the United States Trustee, or the bankruptcy judge
18 presiding over this case, except as follows: VHA has conducted sales for trustees appointed by the
19 United States Trustee in unrelated bankruptcy cases.

20 I declare under penalty of perjury that the foregoing is true and correct.

21 Executed on April 17, 2014, at Aliso Viejo, California.

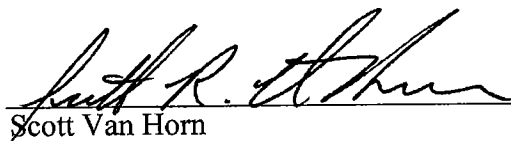
22
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24 Scott Van Horn
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Exhibit 1

VanHorn  *Auctions*
APPRAISAL GROUP, LLC

26895 Aliso Creek Road • Suite B, # 569 • Aliso Viejo, California 92656-5301
Email: vanhornauctions@cox.net • Website: www.vanhornauctions.com
Tel: (949) 206-2525 • Fax: (949) 831-1975

AUCTION AGREEMENT

Date: April 17, 2014

R. Todd Neilson, ("Client") acting solely in his capacity as Chapter 11 Trustee, and in possession as to that certain business and/or property, located at 750 West 17th Street, Suite A, City of Costa Mesa, State of California, known as Tulving Company, does hereby authorize and retain **VAN HORN AUCTION GROUP, LLC** ("VHA"), Auctioneers, to act as Agents to sell at Public Auction all of said property now on said premises, beginning the ~~13th 6th~~ 13th day of May, at 10:00 o'clock (A.M.)(Pacific Standard Time), on the following terms and conditions:

1. ~~Client agrees to warrant title to be unencumbered at the time of the sale.~~
2. Client agrees to furnish VHA without charge, the use of the premises for the purpose of preparing and tagging items, conducting the sale, and checking out to buyers.
3. No items may be sold prior to the auction, except upon the written consent of both parties, and the proceeds shall be considered as part of the auction sale.
4. VHA shall receive as compensation 0 % of the gross sales, and in addition shall be reimbursed for actual expenses incurred by VHA for the purpose of preparing for and conducting the auction. Expenses may include the following: legal fees, all wages for preparing and mailing circulars, preparing merchandise for sale and checking out to buyers, bookkeepers and all other help at the auction sale, advertising, logo, lunches (if served), printing circulars postage, insurance, Social Security and State Unemployment taxes, license, etc. Typical workday, 8:30 a.m. - 3:00 p.m. or as the job requires, not including drive time.
5. VHA reserves the right to charge auction purchasers a 13 % buyers' premium on each item sold under the conditions of this agreement.
6. *Items to be sold, in part the following:*
 - a. 2008 Ford E450 Box Truck
 - b. Clark Electric Forklift
 - c. Coin Counters
 - d. Warehouse Equipment, Tools
 - e. Dexion And Pallet Racking
 - f. Office Furniture, Fixtures & Equipment
 - g. Computers & Phone System

7. Following is a list of expenses to be incurred for the auction sale:

2 Los Angeles Times Display Advertisements:	\$ 1,400.00
2 Columns x 1 Inch @ \$350.00 Per Column Inch (Sundays)	
1000 Postcard, 2 Color Auction Brochures:	\$ 850.00
Typesetting, Printing, Postage & Handling	
1 Single Auction Performance Bond:	\$ 300.00
7 Days Labor:	\$ 2,200.00
Asset Preparation, Cleaning & Arranging, Inventory	
Tagging & Computer Entry, Sale Day, Check Out	
& Removal Personnel	

EXPENSES NOT TO EXCEED: \$ 4,750.00

8. If sale is canceled or postponed for any reason, Client agrees to reimburse VHA for any actual expenses incurred up to the halt of the sale. If gross proceeds do not exceed actual expenses incurred and/or there are "No Sales," Client agrees to reimburse VHA for total expenses due. All "buy backs" will be subject to a ten percent buyers' premium.
9. Client hereby authorizes VHA to publish and record, if needed, a "Notice of Intention to Sell at Public Auction" in compliance with the laws of the State of California.
10. VHA shall endeavor to secure the highest prices possible for the property sold.
11. Client agrees to hold harmless VHA from any and all liability, with the exception of VHA's own negligence, arising from participation in the auction sale.
12. VHA will not remove any hazardous waste and/or liquids unsold, nor will be responsible for cleaning the building unless otherwise stipulated in this agreement.
13. This agreement may be modified only upon written consent of both parties.

It is so agreed:

BERKELY RESEARCH GROUP, LLC.

By: 

Name/Title: CHARLES R. TODD NEILSON

Address: 9049 CENTURY PARK EAST

Phone: 310 499 4934

VAN HORN AUCTION GROUP, LLC

By: 

Name/Title: SCOTT R. VAN HORN, MEMBER

Exhibit 2

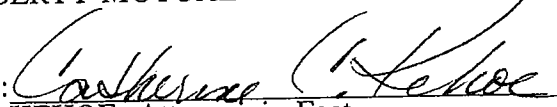
VERIFICATION CERTIFICATE

THIS IS TO CERTIFY that Bond No. 016032112 issued by
LIBERTY MUTUAL INSURANCE COMPANY
dated the 2ND day of SEPTEMBER, 2013,
in the amount of FIFTY THOUSAND and No/100-----(\$50,000.00),
on behalf of VAN HORN AUCTIONS & APPRAISAL GROUP
(as Principal),
and in favor of United States of America, CENTRAL DISTRICT OF CALIFORNIA (as Obligee),
covers a term which began on the 2ND day of SEPTEMBER, 2013, and
ends only with the cancellation of said bond or other legal termination thereof; and that the
said bond remains in effect, subject to all its agreements, conditions and limitations.

*Signed, sealed and dated
07/30/13

*Use current or renewal date.

LIBERTY MUTUAL INSURANCE COMPANY

By: 
C. KEHOE, Attorney-in-Fact

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 6016663

American Fire and Casualty Company
The Ohio Casualty Insurance Company

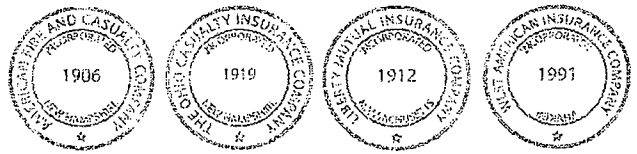
Liberty Mutual Insurance Company
West American Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, CANDICE T. GROS; CATHERINE C. KEHOE; CLARK P. FITZ-HUGH; CONWAY C. MARSHALL; DARLENE A. BORNT; ELIZABETH C. DUKES; ELIZABETH K. WRIGHT; EMILY G. LAPEYRE; KRISTINE DONOVAN; LINDA C. SHEFFIELD; R. TUCKER FITZ-HUGH; SARA S. DEJARNETTE; STEPHEN BEAHM

all of the city of NEW ORLEANS, state of LA each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 1st day of March, 2013.



American Fire and Casualty Company
The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: Gregory W. Davenport, Assistant Secretary

STATE OF WASHINGTON ss
COUNTY OF KING

On this 1st day of March, 2013, before me personally appeared Gregory W. Davenport, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Seattle, Washington, on the day and year first above written.



By: KD Riley, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS - Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts - SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes Gregory W. Davenport, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, David M. Carey, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 30 day of July 2013



By: David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, bank deposit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

DECLARATION OF R. TODD NEILSON

I, R. Todd Neilson, declare as follows:

1. I am the duly appointed chapter 11 trustee (the "Trustee") in the above-captioned bankruptcy case (the "Case"). I make this Declaration on facts within my personal knowledge (albeit my own or that gathered by professionals rendering services to me), or as a result of having reviewed the court file in this Case. If called upon, I can and will competently testify to the facts stated herein.

2. I make this Declaration in support of the *Expedited Motion of Chapter 11 Trustee for Order: (1) Approving the Employment of Van Horn Auctions & Appraisal Group, LLC for the Estate Pursuant to 11 U.S.C. §§ 327 and 328(a); (2) Authorizing the Sale of Estate Property at Public Auction Outside the Ordinary Course of Business Pursuant to 11 U.S.C. §363(b); (3) Authorizing Payment of Costs and Allowing Compensation; and (4) Waiving 14-Day Stay Period* (the "Motion"). Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

3. The Debtor is a California corporation. Hannes Tulving, Jr. is the President and sole equity holder of the Debtor. The Debtor was in the business of selling and purchasing gold, silver, coins, bullion, and other precious metals through its internet website or by phone. Over the past year, customer complaints 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. in the United States District Court, Northern District of California. The Debtor ceased operations on or about March 3, 2014. Shortly before the initiation of these proceedings, a raid was conducted at the business offices of the Debtor by the Secret Service and the Department of Justice and the Debtor's computers and documents were seized for an ongoing criminal investigation.

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, on March 18, 2014, the United States Trustee filed a *Stipulation Appointing Chapter 11 Trustee* [Docket No. 15] ("Stipulation"), which was signed by

1 both the Debtor and its attorney. The Stipulation was approved by the Bankruptcy Court on March
2 18, 2014 [Docket No. 16] and an Order was entered by the Court on March 21, 2014 approving the
3 *U.S. Trustee's Application for the Appointment of a Chapter 11 Trustee*, appointing R. Todd Neilson
4 as Trustee of the Debtor's estate [Docket No. 22].

5 5. The Debtor maintains leased premises located at 150 West 17th Street, Suite A, Costa
6 Mesa, California (the "Premises), at a cost of \$30,000 per month. The Property located at the
7 Premises consists of: office furniture, fixtures and equipment, to include, but not limited to, a 2010
8 Ford E350 Econoline Superduty van, 2008 Ford E450 14' box truck, Clark electric stand up forklift,
9 coin counters, pallet racking and dexion shelving, computer monitors, printers, art and decor,
10 furniture, fixtures and equipment. The Debtor's business is no longer in operation. The Property is
11 no longer necessary to the administration of the estate and must be disposed of with the goal of
12 maximizing any value. It is imperative that the Property be sold immediately so that the Trustee can
13 limit administrative claims and reject the lease as soon as the Premises are vacant.

14 6. After consideration of the types of assets involved, the qualifications of VHA, the
15 terms of the Auction Agreement and the need to proceed with all due haste, I believe that it is in the
16 best interests of the Estate to seek the Court's approval, pursuant to the terms of the Auction
17 Agreement, of the retention of VHA as the auctioneer to conduct the Public Auction, pursuant to the
18 term of the Auction Agreement, to sell the Property.

19 7. As Trustee, I require the employment of VHA to facilitate the proposed auction of the
20 Property. I believe that VHA possesses the experience necessary to fulfill its duties to the Estate and
21 maximize the value to be obtained from the Property. The terms of VHA's engagement have been
22 negotiated at arm's length. I submit that the compensation scheme described in the Auction
23 Agreement, which is a 13% buyers' premium plus actual and necessary expenses, not to exceed
24 \$4,750.00 is reasonable under the circumstances. I think, in my business judgment, that employing
25 VHA on these terms will yield the maximum return to the Estate from the Property.
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1 8. It is my opinion that the proposed sale of the Property is in the best interests of
2 creditors because the Estate is liquidating and has no use for the Property. Further, it is the duty of a
3 chapter 11 trustee to liquidate the assets of the estate in an efficient manner.


4 9. The Auctioneer's sale plan will expose the Property to the greatest number of
5 potential bidders and will be subject to overbids, so any and all parties wishing to purchase the
6 Property for a higher price may do so. Further, selling the Property immediately will prevent the
7 further accrual of potential administrative claims relating to the Premises and result in a higher net
8 recovery to the Estate.

9 10. Pursuant to section 3 of the Revised Supervisory Instruction # 10 of the Office of the
10 United States Trustee, Region 16, I hereby verify (a) that VHA has filed its Blanket Bond with the
11 Clerk of the Bankruptcy Court (Santa Ana Division) and (b) that a copy of the Blanket Bond was
12 sent to the United States Trustee. An appraised value for the items to be sold has been established
13 by VHA, which is an experienced auctioneer of property of this type and has extensive experience in
14 appraisal of such property. Based on that valuation, I am informed and believe that the value of the
15 Property does not exceed the minimum amount of \$25,000 nor does it exceed VHA's Blanket Bond
16 amount of \$50,000.00, therefore, Individual Bonds would not be required.

17 11. The Court should waive the stay period imposed by Rule 6004(h) of the Federal
18 Rules of Bankruptcy Procedure to minimize the storage charges incurred by the Estate and to ensure
19 the Auctioneer can proceed immediately to conduct a sale that is without controversy.

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 this 16th day of April, 2014, at Los Angeles, California.

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24 R. Todd Neilson
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PROOF OF SERVICE OF DOCUMENT

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

A true and correct copy of the foregoing document NOTICE OF EXPEDITED MOTION AND EXPEDITED MOTION OF CHAPTER 11 TRUSTEE FOR ORDER: (1) APPROVING THE EMPLOYMENT OF VAN HORN AUCTIONS APPRAISAL GROUP, LLC AS AUCTIONEER FOR THE ESTATE PURSUANT TO 11 U.S.C. §§ 327 AND 328(A); (2) AUTHORIZING THE SALE OF ESTATE PROPERTY AT PUBLIC AUCTION OUTSIDE THE ORDINARY COURSE OF BUSINESS PURSUANT TO 11 U.S.C. §363(B) (3); AUTHORIZING PAYMENT OF COSTS AND ALLOWING COMPENSATION; AND (4) WAIVING 14-DAY STAY PERIOD; DECLARATION OF SCOTT VANHORN; 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 April 17, 2014, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On April 17, 2014, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE

TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on April 17, 2014, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Via Federal Express

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

Service information continued on attached page

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

April 17, 2014
Date

Janice G. Washington
Printed Name

/s/ Janice G. Washington
Signature

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

4 **8:14-bk-11492-ES Notice will be**
5 **electronically mailed to:**

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

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

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

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

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

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

25 Matthew B Learned on behalf of Interested
26 Party Courtesy NEF
27 bknotice@mccarthyholthus.com

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

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

Gary A Pemberton on behalf of Interested
Party Courtesy NEF
gpemberton@shbllp.com, tlenz@shbllp.com

Robert J Pfister on behalf of Interested Party
Courtesy NEF
rpfister@ktbslaw.com

Michael B Reynolds on behalf of Interested
Party Courtesy NEF

mreynolds@swlaw.com,
kcollins@swlaw.com

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

2. SERVED BY UNITED STATES MAIL

Debtor
The Tulving Company Inc
P.O. Box 6200
Newport Beach, CA 92658

Counsel for Debtor
Andrew S Bisom
The Bisom Law Group
8001 Irvine Center Drive, Ste. 1170
Irvine, CA 92618

Trustee
R. Todd Neilson (TR)
BRG, LLP
2049 Century Park East
Suite 2525
Los Angeles, CA 90067

U.S. Trustee
United States Trustee (SA)
411 W Fourth St., Suite 9041
Santa Ana, CA 92701-4593

Counsel for U.S. Trustee
Nancy S Goldenberg
411 W Fourth St Ste 9041
Santa Ana, CA 92701-8000

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

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

William C Berry
PO Box 686
Carlsborg, WA 98324

Gary A. Pemberton
Shulman Hodges & Bastian LLP
8105 Irvine Center Drive, #600
Irvine, CA 92618

1 Leonard M. Schulman, Esq.
2 Shulman Hodges & Bastian LLP
3 8105 Irvine Center Drive
4 Suite 600
5 Irvine, CA 92618

Jade McGaff
PO Box 422
Kamuela, HI 96743

6 ***Counsel for Scott Stuart, as Trustee of the***
7 ***James Stuart Revocable Trust, now***
8 ***Irrevocable***

Jeff Roth
O'Neil LLP
19900 MacArthur Blvd., Suite 1050
Irvine, CA 92612

9 Melissa Robbins Coutts, Esq.
10 Matthew B. Learned, Esq.
11 **McCarthy & Holthus, LLP**
12 1770 Fourth Avenue
13 San Diego, CA 92101

Jerry Barrett
8373 SE 176th Lawson Loop
The Villages, FL 32162

14 ***Creditors***

15 Amy Lepard
16 1748 St. Andrews
17 Moraga, CA 94556

Kaela Perrotti or Nicole Perrotti
Kaela Perrotti
522 Monet Drive
Rockville, MD 20850

18 Anne Dezelski
19 c/o Bethany C. Warner
20 107 Cass Street, Suite G
21 Traverse City, MI 49684

Kelly Conner
5818 Vendome Lane
Houston, TX 77092

22 Benjamin J. Grunwald
23 2531 S. Evening Fog Circle
24 Palmer, AK 99645

Kendra Pearsall
6595 Odell Pl
Ste Mezanine S
Boulder, CO 80301-3316

25 Betty M. Harris
26 377 Nottingham Drive
27 Gordonville, TX 76245

Kieu Luu
13301 Prince James Dr
Chesterfield, VA 23832

28 C. Scott Daudert
1115 NW Connell Avenue
Hillsboro, OR 97124

Kim J. Moller
1955 Stoakley Rd.
Prince Frederick, MO 20678

Cherri Elaine Trahan
16012 Braesgate Drive
Austin, TX 78717

Lawrence J. Hilton, Esq.
O'Neil LLP
19900 MacArthur Blvd
Ste 1050
Irvine, CA 92612

Danny M. Shook
PO Box 900
Kilauea, HI 96754

Michael Manant
64-667 Puu Puhu Pl
Kamuela, HI 96743

David E Duke
15555 Meadowbrook Circle Lane
Chesterfield, MO 63017-7529

Paul J Waters
204 Palmetto Rd
Belleair, FL 33756

Hannes Tulving, Jr.
P.O. Box 6200
Newport Beach, CA 92658

Redoven Rusimovic
3709 South 298th Street
Auburn, WA 98001

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101-7346

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Rick A Leffel
PO Box 971
1212 Maple Ave
Panhandle, TX 79068

Robert and Barbera Bone Trust
Robert W Bone and Barbera B Bone
145 Blue View Ln
Kimberling City, MO 65686

Robert Cafarelli
872 Doyle Davis Rd
Greeneville, TN 33743

Robert J Espinosa
1280 Heresa Ave
Campbell, CA 95008

Robert J Chevako
2787 Kiley Rd
PO Box 290
New Woodstock, NY 95008

Thoa Hoang
335 St. James Ave
Woodbridge, NJ 07095

***Creditors Holding 20 Largest Unsecured
Claims***

Leo Gushgarian
11 Ridgeline
Newport Beach, CA 92660

Kenneth W. Stach
c/o The Clinebell Law Firm
P.O. Box 3808
San Clemente, CA 92674

Alfred J. Olsen
c/o Burch & Cracchiolo, P.A.
702 East Osborn Road
Phoenix, AZ 85014

Kristian and Jennifer Assaley
c/o Candice Bryner, Esq.
900 Roosevelt
Irvine, CA 92620

Willis G. Eshbaugh, Jr.
c/o Candice Bryner, Esq.
900 Rossevelt
Irvine, CA 92620

Victor Hannan
c/o Kronenberger Rosenfeld, LLP
150 Post St., Ste. 520
San Francisco, CA 94108

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