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8 Proposed Counsel to Weneta M. A. Kosmala, Chapter 7
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
17 Debtor.

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

Chapter 7

**REPLY AND STATEMENT OF TRUSTEE IN
SUPPORT OF TRUSTEE'S MOTION FOR
ORDER (I) AUTHORIZING THE TURNOVER
OF CERTAIN BOOKS, RECORDS AND
FILES OF THE DEBTOR TO
GREATCOLLECTIONS.COM D/B/A GREAT
COLLECTIONS, (II) AUTHORIZING THE
DISPOSAL OF OTHER BOOKS, RECORDS
AND FILES OF THE DEBTOR AS THEY
BECOME UNNECESSARY, (III)
AUTHORIZING PAYMENT OF DISPOSAL
COSTS WHEN INCURRED, AND (IV)
GRANTING RELATED RELIEF**

Hearing:

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

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24 **TO THE HONORABLE ERITHE A. SMITH, UNITED STATES BANKRUPTCY JUDGE;**
25 **THE OFFICE OF THE UNITED STATES TRUSTEE; THE DEBTOR; OBJECTING**
26 **PARTY KARL KLEIN AND PARTIES WHO HAVE FILED A REQUEST FOR SPECIAL**
27 **NOTICE PURSUANT TO BANKRUPTCY RULE 2002:**
28

1 Weneta M. A. Kosmala, the duly appointed and acting chapter 7 trustee (“Trustee”) for The
2 Tulving Company, Inc. (“Debtor”), hereby files this reply to the objection (“Objection”) filed by
3 Karl Klein on behalf of a customer [Dkt. No. 582] and statement in further support of the *Trustee’s*
4 *Motion for an Order (i) Authorizing the Turnover of Certain Books, Records and Files of the Debtor*
5 *to Greatcollections.Com d/b/a Great Collections, (ii) Authorizing the Disposal of Certain Other*
6 *Books, Records and Files of the Debtor, as they Become Unnecessary, (iii) Authorizing Payment of*
7 *Disposal Costs When Incurred, and (iv) Granting Related Relief* (the “Motion”) [Docket No. 576].¹
8 For and in support of this reply and statement, the Trustee represents as follows.

9 The Objection fails to state any basis for opposing the Motion. However, informal creditor
10 responses to the Motion (conveyed via e-mail) cite confidentiality concerns relating to the turnover
11 of the Customer List Documents to Greatcollections.com d/b/a Great Collections (“Great
12 Collections”). The Trustee believes that such concerns are unfounded under the circumstances.

13 First, as noted in the Motion, the Trustee previously sold its customer lists, phone numbers,
14 web address, certain customer files, and related personal property (the “Customer List Sale”) to
15 Great Collections by Order of the Bankruptcy Court entered January 12, 2015 [Dkt. No. 208]. An
16 Ombudsman, retained to evaluate the sale, concluded that the Customer List Sale is (i) consistent
17 with the Privacy Policy in compliance with Bankruptcy Code section 363(b)(1)(A) and (ii) would
18 not violate applicable non-bankruptcy law in compliance with section 363(b)(1)(B), provided that
19 Great Collections adopts the Debtor’s prepetition privacy policy (the “Privacy Policy”). (*See*
20 *Report of Consumer Privacy Ombudsman* [Dkt. No. 184].) In connection with the Customer List
21 Sale, Great Collections acknowledged and agreed that it would fully abide by and implement the
22 Debtor’s Privacy Policy in respect of any and all personally identifiable information of and relating
23 to Debtor’s customers (the “Privacy Policy Agreement”). (*See Addendum to Asset Purchase*
24 *Agreement* [Dkt. 208 at page 16 of 17].)

25 Second, as also set forth in the Motion, Great Collections was previously granted access to
26 inspect and has already reviewed the Customer List Documents after the close of the Customer List
27 Sale. However, the Customer List Documents were not turned over at that time to Great Collections

28 _____
¹ Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Motion.

1 (and, for that reason not listed as items to be transferred under the Customer List Sale) solely due to
2 the then-pending criminal investigation against the Debtor and its principal by the government. That
3 investigation is now completed, the Debtor and its principal have pled guilty and the Customer List
4 Documents would now appear unnecessary for the prosecution of criminal charges. (Notably, the
5 government has not opposed the relief sought in the Motion.)

6 Third, Great Collections has reiterated and acknowledged its agreement to maintain the
7 Debtor's prepetition Privacy Policy with respect to the Customer List Documents. As set forth in its
8 agreement with the Trustee (the "Undertaking Agreement"), Great Collections has also agreed to
9 preserve and prevent the destruction of the Customer List Documents, and to return any business or
10 accounting documents not related to the Customer List Documents inadvertently included with the
11 Customer List Documents. Great Collections initially entered into such an undertaking agreement
12 with R. Todd Neilson, the former chapter 7 trustee, in September 2015. Great Collections has
13 entered into an updated Undertaking Agreement with the newly appointed Trustee. A copy of the
14 Undertaking Agreement signed by Great Collections is appended hereto as **Exhibit "A"**.

15 In sum, the transfer of the Customer List Documents to Great Collections complies with the
16 provisions of sections 363(b)(1)(A) and 363(b)(1)(B) of the Bankruptcy Code, as determined by the
17 Ombudsman in the Ombudsman Report. Any question as to whether the Privacy Policy agreement
18 will equally apply to the Customer List Documents to be transferred to Great Collections pursuant
19 to the Motion is resolved by the Undertaking Agreement appended hereto.

20 Finally, some creditors have questioned the lack of additional consideration for the transfer
21 of the Customer List Documents to Great Collections. The Trustee believes that the price paid by
22 Great Collections in connection with the Customer List Sale is sufficient consideration for the
23 turnover of the Customer List Documents, which would have been included in the Customer List
24 Sale but for the fact that the documents were potentially necessary for the government's criminal
25 investigation. The customer lists, phone numbers, web address, certain customer files, and related
26 personal property sold in the Customer List Sale were extensively marketed by the former chapter 7
27 trustee and the offer presented by Great Collections was the highest and best offer for those assets.
28 Given the substantial overlap between the Customer List Documents and the property included in

1 the Customer List Sale, the Customer List Documents cannot be sold to another third party. As
2 noted in the Motion, the Customer List Documents are burdensome to the estate, and their turnover
3 to Great Collections (the only party with rights to the information contained therein) will relieve the
4 estate of paying for the continued storage or destruction of those documents.

5 WHEREFORE, the Trustee requests that the Court overrule the Objection and, for the
6 reasons set forth above and in the Motion, grant the Motion in its entirety.

7
8 Dated: June 27, 2016

PACHULSKI STANG ZIEHL & JONES LLP

9
10 By: /s/ Linda F. Cantor
Linda F. Cantor

11 Proposed Counsel to Weneta M.A. Kosmala,
12 Chapter 7 Trustee for The Tulving Company, Inc.

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

1 **DECLARATION OF WENETA M.A. KOSMALA**

2 I, Weneta M.A. Kosmala, declare as follows:

3 1. I was appointed to serve as the chapter 7 trustee of the Debtor pursuant to a Notice of
4 Appointment of Trustee and Fixing of Bond; Acceptance of Appointment as Trustee dated April 1,
5 2016 [Dkt. No. 566].

6 2. I make this declaration in support of the *Reply and Statement of Trustee in Support of*
7 *Trustee's Motion For Order (I) Authorizing The Turnover Of Certain Books, Records and Files of*
8 *The Debtor To Greatcollections.Com d/b/a/ Great Collections, (II) Authorizing The Disposal of*
9 *Other Books, Records and Files of The Debtor As They Become Unnecessary, (Iii) Authorizing*
10 *Payment of Disposal Costs When Incurred, And (IV) Granting Related Relief* (the "Reply"). All
11 capitalized terms not otherwise defined herein have the meanings ascribed to them in the Reply.

12 3. Except where otherwise stated, I make this Declaration on facts within my personal
13 knowledge (albeit my own or that gathered by proposed professionals rendering services to me), or
14 as a result of having reviewed the court file in this Case. If called upon, I can and will competently
15 testify to the facts stated herein.

16 4. The Objection itself fails to state any basis for opposing the Motion. However,
17 informal creditor responses to the Motion (conveyed to me via e-mail) cite confidentiality concerns
18 relating to the turnover of the Customer List Documents to Great Collections. I believe that such
19 concerns are unfounded under the circumstances based on the record in this case including, without
20 limitation, the findings of the Consumer Privacy Ombudsman (as discussed in the Reply) and the
21 agreement of Great Collections to adopt and abide by the Debtor's prepetition privacy policy in
22 respect of any and all personally identifiable information of and relating to Debtor's customers.
23 *(See Report of Consumer Privacy Ombudsman [Dkt. No. 184] and Addendum to Asset Purchase*
24 *Agreement [Dkt. 208 at page 16 of 17]).*

25 5. Moreover, Great Collections has reiterated and acknowledged its agreement to
26 maintain the Debtor's prepetition Privacy Policy with respect to the Customer List Documents as
27 set forth in its Undertaking Agreement, a true and correct copy of which is appended hereto as
28 **Exhibit A.** Great Collections has also agreed to preserve and prevent the destruction of the

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

1 Customer List Documents, and to return any business or accounting documents not related to the
2 Customer List Documents inadvertently included with the Customer List Documents.

3 6. Finally, some creditors have informally (via e-mail correspondence to me) questioned
4 the lack of additional consideration for the transfer of the Customer List Documents to Great
5 Collections. Based upon the record in this case including the representations of the former chapter
6 7 trustee appointed in this case, I am informed and believe that the Debtor's customer lists, phone
7 numbers, web address, certain customer files, and related personal property sold in the Customer
8 List Sale were extensively marketed by the former chapter 7 trustee and that the offer presented by
9 Great Collections was the highest and best offer for those assets. Based upon the record in this case
10 including the representations of the former chapter 7 trustee, I am informed and believe that the
11 price paid by Great Collections in connection with the Customer List Sale is sufficient
12 consideration for the turnover of the Customer List Documents, which upon information and belief,
13 would have been included in the Customer List Sale but for the fact that the documents were
14 potentially necessary for the government's criminal investigation.

15 7. I am further informed and believe that there is substantial overlap between the
16 Customer List Documents and the property included in the Customer List Sale, and for that reason
17 the Customer List Documents cannot be sold to another third party. As noted in the Motion, the
18 Customer List Documents are burdensome to the estate, and their turnover to Great Collections (the
19 only party with rights to the information contained therein) will relieve the estate of paying for the
20 continued storage or destruction of those documents.

21
22 I declare under penalty of perjury that the foregoing is true and correct.

23 Executed this 27th day of June, 2016 in Santa Ana, California.

24
25 
26 _____
27 Wenefa M.A. Kosmala
28

Exhibit A

Undertaking of Greatcollections.com d/b/a Great Collections

Greatcollections.com d/b/a Great Collections (“GC”) desires to obtain the original sales and purchase documents (the “Customer List Documents”) for customers of the Tulving Co. (“TTC”). GC agrees to the following undertakings with regard to the Customer List Documents.

First, GC agrees to preserve all of the Customer List Documents that are provided to it by Weneta M. A. Kosmala, solely in her capacity as the duly appointed chapter 7 trustee of the TTC (“Bankruptcy Trustee”) relating to TTC. The Customer List Documents will be preserved unless and until the Bankruptcy Trustee relieves GC of this undertaking.

Second, GC acknowledges that the Customer List Documents to be provided to GC relate only to the sales and purchases of TTC. GC further acknowledges that it will not be provided other business or accounting records unless the Bankruptcy Trustee expressly agrees to provide additional records. In the event that GC inadvertently receives other business or accounting records among the Customer List Documents, GC agrees to remove and return any such records to the Bankruptcy Trustee, and GC shall not retain a copy of said business or accounting records.

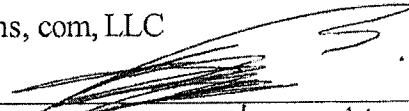
Third, GC agrees to take reasonably prudent procedures to prevent the negligent or intentional destruction of any of the Customer List Documents being provided to them.

Fourth, GC has adopted the TTC’s prepetition privacy policy and GC will

maintain the confidentiality of the information set forth in the Customer List Documents
provided to them in accordance with the TTC's prepetition privacy policy.

Agreed to this, the ^{24th} day of June, 2016.

GreatCollections, com, LLC

By: 

Its: Members, Ian Russell

Weneta M.A. Kosmala
Chapter 7 Bankruptcy Trustee for The Tulving Company

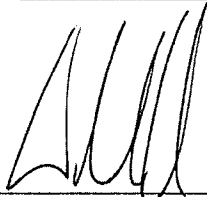
maintain the confidentiality of the information set forth in the Customer List Documents
provided to them in accordance with the TTC's prepetition privacy policy.

Agreed to this, the _ day of June, 2016.

GreatCollections, com, LLC

By: _____

Its: _____



Weneta M.A. Kosmala
Chapter 7 Bankruptcy Trustee for The Tulving Company

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 Blvd., 13th Floor, Los Angeles, CA 90067**

A TRUE AND CORRECT COPY OF THE FOREGOING DOCUMENT ENTITLED REPLY AND STATEMENT OF TRUSTEE IN SUPPORT OF TRUSTEE'S MOTION FOR ORDER (I) AUTHORIZING THE TURNOVER OF CERTAIN BOOKS, RECORDS AND FILES OF THE DEBTOR TO GREATCOLLECTIONS.COM D/B/A GREAT COLLECTIONS, (II) AUTHORIZING THE DISPOSAL OF OTHER BOOKS, RECORDS AND FILES OF THE DEBTOR AS THEY BECOME UNNECESSARY, (III) AUTHORIZING PAYMENT OF DISPOSAL COSTS WHEN INCURRED, AND (IV) GRANTING RELATED RELIEF 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 **June 27, 2016**, 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 **June 27, 2016**, 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 **June 27, 2016**, 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

By Email:

Karl Klein - Karl@KleinFirm.com

Debtor's Customers

Customer information redacted pursuant to Order Authorizing Trustee to File Customer Lists Under Seal, entered on September 12, 2014 [Dkt. No. 169]

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.

June 27, 2016
Date

Janice G. Washington
Printed Name

/s/Janice G. Washington
Signature

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

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

Michael R Adele on behalf of Defendant
Armen Haig Gugasian
techlitcenter@yahoo.com, kadele@wgllp.com

david.gibbs@gibbslaw.com,
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Michael R Adele on behalf of Defendant
Levon Gugasian
techlitcenter@yahoo.com, kadele@wgllp.com

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

Wesley H Avery on behalf of Consumer
Privacy Ombudsman Wesley H Avery
wamiracle6@yahoo.com,
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Lawrence J Hilton on behalf of Creditor
Jeffrey Roth
lhilton@onellp.com,
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James KT Hunter on behalf of Plaintiff R.
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Candice Bryner on behalf of Interested Party
Candice Bryner
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James KT Hunter on behalf of Plaintiff R.
Todd Neilson
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Philip Burkhardt on behalf of Other
Professional Karen Duddleston
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stacey@burkhardtandlarson.com

John H Kim on behalf of Creditor Ford Motor
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Stephen L Burton on behalf of Attorney
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Weneta M Kosmala (TR)
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United States Trustee (SA)
frank.cadigan@usdoj.gov

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

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

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

David L Gibbs on behalf of Creditor Kenneth
W Stach

United States Trustee (SA)
ustpregion16.sa.ecf@usdoj.gov

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

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

2
3 Chapter 7 Trustee

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6 Santa Ana, CA 92707

7 Attorneys for Debtor

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9 Wyatt & Blake, LLP
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12 Laurence P Nokes on behalf of Interested

13 Party John Frankel
14 Nokes & Quinn
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16 Laguna Beach, CA 92651

17 Brent Murdoch
18 Murdoch & Morris, LLP
19 114 Pacifica, Ste. 320
20 Irvine, CA 92618

21 Interested Party

22 Frye & Hsieh
23 Douglas J Frye Esquire
24 24955 Pacific Coast Highway # A201
25 Malibu, CA 90265

26 Counsel for Creditor Levon Gugasian

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28 Ringstad & Sanders LLP
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Benjamin Bain-Creed
Assistant United States Attorney
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Charlotte, North Carolina 28202

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