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The Tulving Company, Inc.  
6  
7

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

11 In re:

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

13 Debtor.  
14

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

Chapter 7

**TRUSTEE'S RESPONSE TO MOTION  
OPPOSING CERTAIN ASPECT OF COIN  
DISTRIBUTION AND PROCEDURES OF  
TRUSTEE IN THE MATTER OF  
DISPOSING CERTAIN ASSETS FROM  
THE TULVING CO. TO  
VICTIM/CREDITORS**

Hearing:

Date: July 13, 2017  
Time: 10:30 a.m.  
Place: 411 West Fourth Street  
Courtroom 5A  
Santa Ana, CA 92701

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23 Weneta M.A. Kosmala, the duly appointed chapter 7 trustee (the "Trustee") for The Tulving  
24 Company, Inc. (the "Debtor"), in the above-entitled chapter 7 case, hereby responds to the *Motion*  
25 *Opposing Certain Aspect Of Coin Distribution And Procedures Of Trustee In The Matter Of*  
26 *Disposing Certain Assets From The Tulving Co. To Victim/Creditor* [Dkt. No. 675] (the  
27 "Opposition"), and respectfully represents as follows.  
28

1 The Opposition alleges that the Trustee is seeking to “grossly inflate” the value of the 15,580  
2 Error Coins that are the subject of the *Motion For Order (I) Approving Coin Valuations And*  
3 *Distribution Schedule Of Error Coins To Victim/ Creditors, And (II) Granting Related Relief*  
4 *Pursuant To Sections 105 And 363 Of The Bankruptcy Code* [Dkt. No. 667] (the “Motion”<sup>1</sup>), as if  
5 the Error Coin values were chosen at random by the Trustee. The Opposition completely ignores the  
6 fact that each of the Error Coins was individually graded by Pacific Coin Grading Services  
7 (“PCGS”), a renowned coin valuation firm using a detailed grading process.

8 As described in the Distribution Modification Motion approved by Order of the Court<sup>2</sup>, and  
9 as represented in the PCGS website, at PCGS each coin is separately examined and graded by a  
10 series of coin graders (two, at minimum and in most instances three or more grading experts), who  
11 enter independent grade determinations in a computer database until a consensus is reached and the  
12 final grade assigned. After the coins have been graded, the value of each graded coin is determined  
13 by reference to the PCGS Guide, consisting of the average dealer asking prices for PCGS-graded  
14 coins. The prices are compiled from various sources including dealer ads in trade papers, dealer  
15 fixed price lists and website offerings, significant auctions and activity at major coin shows. Dealer  
16 specialist and expert collectors provide pricing input as well. This is the process that took place  
17 during the several months that PCGS graded the 15,580 Error Coins.

18 The Opposition provides no evidentiary support or legitimate challenge to the PCGS  
19 valuation. Having none, it argues that market saturation would reduce the value of the Error Coins,  
20 as noted by the prior trustee. But, that is very reason that the Trustee determined not to sell all the  
21 Error Coins at once. Victim/Creditors may keep their Error Coins, sell them, or make their own  
22 determinations with respect to the Error Coins based on market conditions or any other criteria they  
23 choose. As noted above, the PCGS Price Guide is based on average dealer asking prices for PCGS-  
24 graded coins, not a forced liquidation.

25 \_\_\_\_\_  
26 <sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

27 <sup>2</sup> See *Notice Of Motion And Motion For Order Authorizing The Trustee To (I) Retain GreatCollections.Com d/b/a Great*  
28 *Collections As Auctioneer, (II) Modify, In Part, Asset Distribution Plan, And (III) Set New Opt-Out Deadline For*  
*Creditors To Determine Whether To Receive Error Coins In Partial Payment Of Their Claims And Sell Coins Not*  
*Distributed To Creditors Free And Clear Of Liens, Claims And Interests; Memorandum Of Points And Authorities In*  
*Support Thereof; Declarations Of Weneta M.A. Kosmala And Ian Russell* [Dkt. No. 623] (the “Distribution Modification  
Motion”) and Order thereon [Dkt. No. 634].

1 The Motion also seeks to treat the distribution of Error Coins as cash distributions, reducing  
2 the outstanding claim amount of each Victim/Creditor by the value of the Error Coins distributed to  
3 each such creditor, ranging from an 18.73% to 18.77% claim reduction. Victim/Creditors will retain  
4 the remainder of their claims (over 81%). However, any Victim/Creditor may “opt-out” and receive  
5 no distribution of Error Coins to the extent they prefer to retain the full nominal amount of their  
6 claims.

7 The Opposition objects to the treatment of the Error Coin distributions as cash distributions.  
8 While it is true that the Error Coin distribution is an “in-kind” distribution rather than a cash  
9 distribution (as previously authorized by this Court), there must be some mechanism to equalize the  
10 treatment of all Victim/Creditor claims. If there were additional funds available for distribution to  
11 Victim/Creditors and no credit given to those who already received Error Coins, the claims of  
12 Victim/Creditors who opted-out of their Error Coin allocated distribution would be unfairly diluted.  
13 Under the circumstances, it is only proper that the Victim/Creditors’ claim amounts be reduced by  
14 the value of the Error Coins received by them.

15 It is noteworthy that of the hundreds of Victim/Creditors to receive Error Coin distributions  
16 through the Motion, very few determined to opt-out and only one Victim/Creditor has opposed the  
17 relief set forth in the Motion. The overwhelming majority of Victim/Creditors clearly supports the  
18 Motion and wish to receive a distribution of Error Coins on account of their claims.

19 Based on the foregoing and for the reasons set forth in the Motion, the Motion should be  
20 granted and the Opposition should be overruled by the Court.

21 Dated: July 6, 2017

PACHULSKI STANG ZIEHL & JONES LLP

22  
23 By /s/ Linda F. Cantor  
Linda F. Cantor

24  
25 Counsel for Weneta M.A. Kosmala, Chapter 7  
Trustee

**PROOF OF SERVICE OF DOCUMENT**

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

**10100 Santa Monica Boulevard, 13<sup>th</sup> Floor, Los Angeles, California 90067**

A true and correct copy of the foregoing document **TRUSTEE'S RESPONSE TO MOTION OPPOSING CERTAIN ASPECT OF COIN distribution AND PROCEDURES OF TRUSTEE IN THE MATTER OF DISPOSING CERTAIN ASSETS FROM THE TULVING CO. TO VICTIM/CREDITORS** 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 **July 6, 2017**, 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 **July 6, 2017**, 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 **July 6, 2017**, 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.

July 6, 2017

Janice G. Washington

/s/Janice G. Washington

Date

Printed Name

Signature

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

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

2 **8:14-bk-11492-ES Notice will be electronically mailed to:**

3 Wesley H Avery on behalf of Consumer Privacy Ombudsman Wesley H Avery  
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1 **2. SERVED BY UNITED STATES MAIL**

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