

<p>Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address Linda F. Cantor (CA Bar No. 153762) Pachulski Stang Ziehl & Jones LLP 10100 Santa Monica Boulevard, 13th Floor Los Angeles, CA 90067 Telephone: 310/277-6910 Facsimile: 310/201-0760 Email: lcantor@pszjlaw.com Attorneys for R. Todd Neilson, Chapter 7 Trustee</p> <p><input type="checkbox"/> Movant(s) appearing without an attorney <input checked="" type="checkbox"/> Attorney for Movant(s)</p>	<p>FOR COURT USE ONLY</p>
<p>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION</p>	
<p>In re:</p> <p style="text-align: center;">THE TULVING COMPANY, INC., a California corporation,</p> <p style="text-align: right;">Debtor(s).</p>	<p>CASE NO.: 8:14-bk-11492-ES CHAPTER: 7</p> <p style="text-align: center;">DECLARATION RE: ENTRY OF ORDER WITHOUT HEARING PURSUANT TO LBR 9013-1(o)</p> <p style="text-align: center;">[No Hearing Required]</p>

1. I am the Movant(s) or attorney for Movant(s) or employed by attorney for Movant(s).
2. **On:** June 18, 2015 Movant(s) filed a motion entitled: Motion for Order (I) Approving and Authorizing The Trustee and Debtor to Enter Into The Consent Motion and Proposed Order for Coordination Agreement, et al.
3. A copy of the motion and notice of motion is attached hereto as Exhibit A.
4. **On** June 18, 2015, Movant(s) served a copy of the notice of motion and the motion and notice of motion on required parties using the method(s) identified on the Proof of Service of the notice of motion.
5. **Pursuant to LBR 9013-1(o), the notice of motion provides that the deadline for filing and serving a written response and request for a hearing is 14 days after the date of service of the notice of motion, plus 3 additional days if served by mail, electronically, or pursuant to F.R.Civ.P. 5(b)(2)(D), (E), or (F).**
6. **More than 17** days have passed since Movant(s) served the notice of motion.
7. **I have checked the docket for this bankruptcy case and/or adversary proceeding, and no response and request for hearing has been timely filed.**

8. **No response and request for hearing has been timely served on Movant(s) at the street address, email address, or facsimile number specified in the notice of motion.**
9. Based upon the foregoing, and pursuant to LBR 9013-1(o), a hearing is not required.
10. The *Consent Motion and Proposed Order* is lodged concurrently herewith for signature by the Bankruptcy Judge. The counterpart *Consent Motion and Proposed Order*, a copy of which is appended to the motion, was signed by the United States District Court Judge for the Western District of North Carolina, Charlotte Division, on June 3, 2015. Full execution of the *Consent Motion and Proposed Order*, in counterparts, has been requested by the United States of America through the acting United States Attorney for the Western District of North Carolina, as a condition to the effectiveness of the Coordination Agreement.

WHEREFORE, Movant(s) requests that the motion be granted and that the *Consent Motion and Order* be entered without a hearing on the motion.

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

Date: July 7, 2015

/s/ Linda F. Cantor

Signature

Linda F. Cantor

Attorneys for Chapter 7 Trustee

Printed name

Exhibit A

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 90067-4100
5 Telephone: 310-277-6910
6 Facsimile: 310-201-0760
7 Email: lcantor@pszjw.com
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9 Counsel for R. Todd Neilson, Chapter 7 Trustee for The
10 Tulving Company, Inc.

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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

In re:

THE TULVING COMPANY, INC., a
California corporation,

Debtor.

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

Chapter 7

**NOTICE OF MOTION AND MOTION
FOR ORDER (I) APPROVING AND
AUTHORIZING THE TRUSTEE AND
DEBTOR TO ENTER INTO THE
CONSENT MOTION AND PROPOSED
ORDER FOR COORDINATION
AGREEMENT FOR DISTRIBUTION OF
SEIZED ITEMS FROM THE UNITED
STATES OF AMERICA TO THE
TRUSTEE AND FROM THE TRUSTEE
TO VICTIMS, (B) AUTHORIZING
HANNES TULVING, JR. TO EXECUTE A
PLEA AGREEMENT WITH THE
UNITED STATES OF AMERICA ON
BEHALF OF THE DEBTOR, AND
(C) FOR RELATED RELIEF PURSUANT
TO SECTIONS 105 AND 362 OF THE
BANKRUPTCY CODE AND
BANKRUPTCY RULE 9019;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF;
DECLARATION OF R. TODD NEILSON**

[NO HEARING REQUIRED PURSUANT
TO L.B.R. 9013-1]

1 **TO THE HONORABLE ERITHE SMITH, UNITED STATES BANKRUPTCY JUDGE,**
2 **THE 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,
6 hereby files this motion (the “Motion”) for the entry of an order or orders, pursuant to Sections 105
7 and 362 of Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”) and
8 Federal Rule of Bankruptcy Procedure 9019(a) (“Rule 9019”), (a) approving and authorizing the
9 Trustee and the Debtor to enter into the *Consent Motion and Proposed Order for Coordination*
10 *Agreement for Distribution of Seized Items From the United States of America to the Trustee and*
11 *from the Trustee to Victims* (the “Coordination Agreement”) by and among the Trustee, the United
12 States of America, through the Acting United States Attorney for the Western District of North
13 Carolina (the “Government”), the Debtor and Hannes Tulving, Jr. (“Hannes Tulving”), the Debtor’s
14 sole shareholder (collectively, the “Parties”); (b) authorizing Hannes Tulving, on behalf of the
15 Debtor, to sign a Plea Agreement with the Government in the criminal case pending in the United
16 States District Court for the Western District of North Carolina against the Debtor and Hannes
17 Tulving, Case Docket No. 3:15CR115 (the “Criminal Case”), and (c) for related relief. A copy of
18 the Coordination Agreement is appended hereto as **Exhibit A**.

19 The Coordination Agreement provides a procedure for the liquidation by the Trustee of
20 certain property of the Debtor’s estate (the “Estate”) seized by the Government in March 2014 (the
21 “Seized Items”), and the distribution of sale proceeds by the Trustee to creditors who are victims of
22 the Debtor’s fraud pursuant to a sale and distribution proposal that will be made by the Trustee and
23 submitted to the Government and to the Court for approval, as described more fully in the
24 Memorandum of Points and Authorities. If the proposal is approved by the Government and the
25 Court, the Government will turn over the Seized Items to the Trustee in an amount sufficient to
26 satisfy the proposed payouts to Claimants. The Coordination Agreement also provides for the
27 waiver of certain claims by the Estate relating to the Government’s seizure of the Seized Items.
28 The Coordination Agreement has been approved by the United States District Court for the

1 Western District of North Carolina, Charlotte Division (the "District Court") in the Criminal Case,
2 but it is not effective unless and until approved by this Court.

3 Hannes Tulving has entered into a plea agreement with the Government in the Criminal
4 Case. In connection with the Coordination Agreement, the Government requires that The Tulving
5 Company, Inc. enter into a separate plea agreement in the Criminal Case (the "Plea Agreement").
6 Under the Plea Agreement, the Debtor admits to guilt for a wire fraud charge and agrees to (i)
7 Government recommendations for sanctions, penalties and sentencing, (ii) further cooperation with
8 the Government and the Trustee, and (iii) prohibitions against the disposition of specified assets,
9 other than as provided in the Coordination Agreement. The Trustee has agreed to seek this Court's
10 authorization for Hannes Tulving to execute the Plea Agreement and the Coordination Agreement
11 on behalf of the Debtor. The Trustee has also agreed to seek allowance against the Estate on a
12 subordinated basis of the Government's monetary judgment against the Debtor after sentencing in
13 the Criminal Case pursuant to the Plea Agreement.

14 The Trustee, in the exercise of his business judgment, requests approval of the Coordination
15 Agreement and the Plea Agreement, and Hannes Tulving's execution of same on behalf of the
16 Debtor, as fair and reasonable and in the best interests of the Estate. It avoids potentially
17 unnecessary, time consuming and costly multi-district disputes among the Trustee, Hannes Tulving
18 and the Government over the procedure for liquidating the Seized Items and the appropriate forum
19 for administering the distribution of proceeds to victims. The claims against the Estate that result
20 from the Plea Agreement will be subordinated to claims of victims and other general unsecured
21 creditors.

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

26 **PLEASE TAKE FURTHER NOTICE** that Local Bankruptcy Rule 9013-1(o)(1) requires
27 that any response to the Motion and a request for a hearing thereon shall be filed with the
28 Bankruptcy Court and served upon Trustee's counsel at the address appearing on the upper-left

1 hand corner of the caption page to this Motion and the Office of the U.S. Trustee within fourteen
2 (14) days of the date of service of the Motion. Pursuant to Local Bankruptcy Rule 9013-1(h), the
3 failure to timely file and serve written opposition may be deemed by the Court to be consent to the
4 granting of the relief requested in the Motion.

5 **WHEREFORE**, the Trustee respectfully requests that the Court (a) approve and authorize
6 the Trustee and Debtor to enter into the Coordination Agreement, including taking all actions
7 necessary to implement same, (b) approve the execution of the Plea Agreement by Hannes Tulving,
8 on behalf of the Debtor, and (c) grant such other and further relief as is just and proper under the
9 circumstances.

10 Dated: June 18, 2015

PACHULSKI STANG ZIEHL & JONES LLP

11
12 By /s/ Linda F. Cantor
Linda F. Cantor

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14 Counsel for R. Todd Neilson, Chapter 7 Trustee
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PACHULSKI STANG ZIEHL & JONES LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

A. The Background of the Debtor's Business

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. Prior to the filing of the bankruptcy, customer complaints concerning delayed or undelivered orders were increasingly made to the Better Business Bureau against the Debtor and in early March, 2014, a class-action lawsuit was filed against the Debtor and Hannes Tulving in the United States District Court, Northern District of California. A criminal investigation of the Debtor and Tulving by the Government was also being pursued, as described below. The Debtor ceased operations on or about March 3, 2014.

B. Procedural Background of the Bankruptcy Case

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

C. The Criminal Case

On March 8, 2014, Special Agents of the United States Secret Service executed a Search Warrant on the Debtor's offices on probable cause that the Debtor and Hannes Tulving were engaged in fraud. The Search Warrant resulted in the seizure of the Debtor's property including rare coins and other valuable items, which are described as line items seven through thirty-four and

1 thirty-six through fifty-two of the Search Warrant Return, a copy of which is appended to the
2 Coordination Agreement attached hereto as **Exhibit A**. Criminal proceedings against the Debtor
3 and Hannes Tulving ensued before the United States District Court for the Western District of
4 North Carolina (the "Criminal Case").

5 Hannes Tulving has now signed a plea agreement with the Government whereby he has
6 agreed to plead guilty to 18 U.S.C. § 1343 wire fraud charge as set forth in Count One of a Bill of
7 Information in the Criminal Case. As the Debtor is Mr. Tulving's co-defendant in the Criminal
8 Case, the Government requires that the Debtor also sign a Plea Agreement, in which it agrees to
9 plead guilty to the same charge set forth in the individual Tulving plea agreement and agrees to (i)
10 Government recommendations for sanctions, penalties and sentencing, (ii) further cooperation with
11 the Government and the Trustee, and (iii) prohibitions against the disposition of specified assets,
12 other than as provided in the Coordination Agreement.

13 **D. The Coordination Agreement**

14 The Trustee has also reached an agreement with the Government on a procedure for the
15 liquidation of the Seized Assets and the distribution of proceeds of sale to the victims of the
16 Debtor's and Hannes Tulving's criminal actions. The claimants in this Bankruptcy Case are
17 primarily the same customers who are victims in the Criminal Case. Specifically, the Trustee
18 received approximately 381 claims filed by claimants who, based on review by the Government,
19 are substantially or wholly identical to the Victims identified for purposes of restitution in the
20 Criminal Case. Given the overlap of Victims and the pendency of the bankruptcy case, the Trustee
21 has asserted that the Seized Assets can be administered more effectively in the bankruptcy
22 proceeding than in the Criminal Case, and also contends that the Estate has a right to recover the
23 Seized Items for that purpose. The Coordination Agreement resolves these issues by providing for,
24 among other things¹:

25 (i) The Trustee shall propose, on or before sixty days after the Coordination
26 Agreement is approved by both the Bankruptcy Court and the District Court, in the form of an

27 _____
28 ¹ The summary contained herein is a summary only, and if and to the extent there is any inconsistency between the
summary and the Coordination Agreement, the terms of the Coordination Agreement govern. Capitalized terms not
otherwise defined herein shall have the meanings ascribed to them in the Coordination Agreement.

1 omnibus motion or other filed pleadings sufficient for filing in the Bankruptcy Court and the
2 District Court a final list of Victims and losses and a proposal for liquidating the Seized Items,
3 including a plan for all disbursement of costs and expenses and all disbursements to Victims. If the
4 Government accepts the Victim list and liquidation proposal, and if approved by the Bankruptcy
5 Court, the Government will turn over Seized Items to the Trustee in an amount sufficient, based on
6 best estimates of appraised value of the Seized Items, to satisfy the payouts proposed by the Trustee
7 therein. The Trustee agrees to seek to prioritize payments to Victims over all other payments,
8 except for reasonable costs and expenses of liquidation approved by the Bankruptcy Court to which
9 the Parties do not object in writing. The Government reserves the right to decline to turn over
10 Seized Items to the Trustee in the event that, in the Government's sole discretion, any part of the
11 plan set forth by the Trustee or any pending or anticipated litigation in the Bankruptcy Case is not,
12 in light of all of the circumstances of the Bankruptcy Case and the Criminal Case, beneficial to a
13 prompt recovery for Victims.

14 (ii) The Parties agree that any Seized Items not otherwise turned over to the
15 Trustee to pay Victims may be, subject to further administrative proceedings and/or further order/s
16 of the District Court, forfeited and/or subject to garnishment, as more fully specified in the Plea
17 Agreement signed by Tulving on behalf of itself and The Tulving Company. The Parties agree
18 that, once all Victims have been paid as proposed by the Trustee and approved by the Bankruptcy
19 Court, the Trustee waives any right to claim any of the Seized Items.

20 (iii) The Coordination Agreement shall not constitute a waiver of the Department
21 of Justice's or United States Secret Service's rights to bring criminal, civil, and/or administrative
22 forfeiture proceedings, the Government's right to bring garnishment proceedings or other
23 proceedings under the restitution and debt collection laws, or the Government's right to file claims
24 to assets other than the Seized Items in the Bankruptcy Case, nor shall it constitute a waiver by the
25 Trustee of any rights that the Trustee may have to pursue assets, other than the Seized Items, in the
26 Bankruptcy Case.

27 (iv) The Parties are barred from asserting, or assisting others in asserting, any
28 claim against the United States and any and all agents and employees of the United States

1 (including but not limited to the Department of Justice (“DOJ”), the United States Attorney’s
2 Office, Western District of North Carolina (“USAO-WDNC”), the United States Secret Service
3 (“USSS”), the United States Department of Treasury, Treasury Executive Office for Asset
4 Forfeiture (“TEOAF”), and any agents and employees of the United States, DOJ, USAO-WDNC,
5 USSS, and TEOAF), in connection with or arising out of the seizure, restraint, and/or constructive
6 possession of the Seized Items, including, but not limited to, any claim that there was no probable
7 cause to seize the Seized Items, that the Trustee is a prevailing party, or that the Trustee is entitled
8 to attorney’s fees or any award of interest.

9 (v) The Parties shall bear their own costs and attorney’s fees, except as
10 otherwise provided in the Coordination Agreement on costs and expenses approved by the
11 Bankruptcy Court.

12 (vi) The Bankruptcy Court and District Court shall have exclusive jurisdiction
13 over the interpretation and enforcement of the Coordination Agreement under the applicable law in
14 each of their respective cases.

15 (vii) The Parties waive all rights to appeal or to otherwise challenge or contest the
16 validity of the Coordination Agreement.

17 (viii) Notwithstanding any applicable Bankruptcy Rule to the contrary and subject
18 to the provisions of the Coordination Agreement, the terms and conditions of the Order on the
19 Coordination Agreement shall be immediately effective and enforceable upon its entry.

20 As discussed herein, the Trustee believes that the compromise reached in the Coordination
21 Agreement is fair, reasonable and in the best interest of the Estate.

22 **E. The Plea Agreement**

23 The Government requires that the Debtor sign the Plea Agreement on substantially the same
24 terms as the plea agreement signed by Hannes Tulving. After arms-length negotiations, the Trustee
25 and the Government have reached agreement concerning the Plea Agreement. The Trustee has
26 agreed that Hannes Tulving may sign the Plea Agreement on behalf of the Debtor, subject to an
27 order of the Bankruptcy Court authorizing him to do so and, to the extent necessary, granting relief
28

1 from the automatic stay with respect to the imposition of fines, sanctions and other monetary
2 awards on a subordinated basis against the Debtor as set forth in the Plea Agreement.²

3 Pursuant to the Plea Agreement, the Debtor agrees to plead guilty to 18 U.S.C. § 1343 wire
4 fraud charge as set forth in Count One of a Bill of Information in the Criminal Case. Among other
5 things, the Debtor agrees that the parties will jointly recommend certain findings and conclusions to
6 the District Court relevant to the Sentencing Guidelines, including that the advisory fine range is
7 \$16.6 million to \$35.2 million, agrees to a judgment for restitution, agrees that the Coordination
8 Agreement shall control the disposition of the Seized Items in the Bankruptcy Court to pay
9 restitution to Victims, agrees to make full disclosure of current and projected assets, agrees not to
10 alienate assets other than as provided in the Coordination Agreement, consents to forfeiture with
11 respect to all assets in the Bill of Information (subject to the Coordination Agreement), consents to
12 the entry of judgment by the Magistrate Judge, waives objections to forfeiture and withdraws any
13 administrative claim related thereto.

14 II.

15 THE COORDINATION AGREEMENT AND PLEA AGREEMENT

16 SHOULD BE APPROVED AS BEING IN THE BEST INTERESTS OF THE ESTATE

17 A. Standard for Approval of Settlements

18 “The law favors compromise and not litigation for its own sake. . . .” *Martin v. Kane (In re*
19 *A & C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986); *see also Marandas v. Bishop (In re*
20 *Sassalos)*, 160 B.R. 646, 653 (D. Or. 1993) (noting that compromises are favored in bankruptcy).
21 Rule 9019(a) of the Bankruptcy Rules (“Rule 9019(a)”) provides in relevant part that “[o]n motion
22 by the trustee and after notice and hearing, the court may approve a compromise or settlement.”
23 Rule 9019(a) commits the approval or denial of a settlement to the sound discretion of the
24 bankruptcy court. *See In re Stein*, 236 B.R. 34, 37 (D. Or. 1999). The bankruptcy court, however,
25 should not substitute its own judgment for the judgment of a trustee or a debtor. *See In re Carla*
26 *Leather, Inc.*, 44 B.R. 457, 465 (Bankr. S.D.N.Y. 1984), *aff’d*, 50 B.R. 764 (S.D.N.Y. 1985).

27
28 ² The Trustee has agreed to seek allowance against the Estate, on a subordinated basis, of the Government’s monetary judgment after sentencing in the Criminal Case under the Plea Agreement.

1 When deciding whether to approve a settlement, the bankruptcy court must determine if the
2 settlement is reasonable under the circumstances of the case, fair and equitable, and in the best
3 interest of the estate. *See A & C Props.*, 784 F.2d at 1381. The court is neither required to conduct
4 a mini-trial on the merits of the settlement, *Port O'Call Invest. Co. v. Blair (In re Blair)*, 538 F.2d
5 849, 851 (9th Cir. 1976), nor to determine that the settlement amount is the amount that would have
6 been paid had the matter been litigated. The court need only "canvass the issues and see whether
7 the settlement 'fall[s] below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In*
8 *re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983) (quoting *Newman v. Stein*, 464 F.2d 689, 693
9 (2d Cir. 1972)); *In re Pacific Gas and Elec. Co.*, 304 B.R. 395, 417 (Bankr. N. D. Cal. 2004); *In re*
10 *Planned Protective Servs., Inc.*, 130 B.R. 94, 99 n.7 (Bankr. C.D. Cal. 1991).

11 The bankruptcy court need not conduct an exhaustive investigation
12 into the validity of the asserted claim. It is sufficient that, after
13 appraising itself of all facts necessary for an intelligent and objective
14 opinion concerning the claim's, validity, the court determines that
either (1) the claim has "substantial foundation" and is not "clearly
invalid as a matter of law," or (2) the outcome of the claim's
litigation is "doubtful."

15 *United States v. Alaska National Bank (In re Walsh Construction, Inc.)*, 669 F.2d 1325, 1328 (9th
16 Cir. 1982) (citations omitted).

17 **B. The Coordination Agreement and Plea Agreement are in the Best Interests of the**
18 **Estate**

19 The rationale for approval of the Coordination Agreement and the Plea Agreement is
20 straight-forward and compelling. The Trustee asserts that the Seized Items are property of the
21 Estate and that they should be turned over, and that the Bankruptcy Case is in any event the best
22 forum both for liquidating such assets, administering the claims of the Victims and making
23 distributions thereon. The Government, however, already has possession of the Seized Items under
24 its Search Warrant and may assert the right to control the sale of Seized Items and restitution
25 payments to Victims under federal forfeiture statutes. The Coordination Agreement resolves what
26 could be a costly dispute by providing the Trustee with an opportunity to achieve his objective
27 without further dispute by proposing a plan for liquidating Seized Items and making distributions in
28 the Bankruptcy Case, with the Government to turn over sufficient Seized Items for that purpose,

1 subject to the plan's approval by the Government and by the Bankruptcy Court.

2 The Plea Agreement is a required component of the Coordination Agreement. It contains
3 provisions that the Trustee believes should be unobjectionable to creditors of the Estate,
4 particularly since the Trustee will be seeking allowance of the monetary judgment on a
5 subordinated basis, and thus it will not prejudice general unsecured creditors. A critical additional
6 consideration is that the Plea Agreement does not impose any more obligations on the Estate than it
7 might incur in any event through a judgment after trial, a process that the Trustee believes is
8 unnecessary from the perspective of the Estate and its creditors. Accordingly, the Trustee believes
9 that the Coordination Agreement and Plea Agreement are fair and reasonable and in the best
10 interests of the Estate, and requests that they be approved and that Hannes Tulving, Jr., be
11 authorized to execute them on behalf of the Debtor.

12 **III.**

13 **THE COURT SHOULD GRANT RELIEF FROM THE AUTOMATIC STAY TO THE**
14 **EXTENT NECESSARY TO IMPLEMENT THE TERMS OF THE PLEA AGREEMENT**
15 **AND THE COORDINATION AGREEMENT**

16 Section 362 of the Bankruptcy Code provides that a petition "operates as a stay, applicable
17 to all entities, of--

18 (1) the commencement or continuation, including the issuance or
19 employment of process, of a judicial, administrative, or other action
20 or proceeding against the debtor that was or could have been
21 commenced before the commencement of the case under this title, or
to recover a claim against the debtor that arose before the
commencement of the case under this title;

22 (3) any act to obtain possession of property of the estate or of
23 property from the estate or to exercise control over property of the
estate; [and]

24 (6) any act to collect, assess, or recover a claim against the debtor that
25 arose before the commencement of the case under this title. . . .

26 11 U.S.C. § 362(a)(1), (3) and (6). While section 362(b) of the Bankruptcy Code provides that the
27 stay imposed by subsection (a) does not apply to "the commencement or continuation of a criminal
28 action or proceeding against the debtor," the provisions of the Coordination Agreement and Plea

1 Agreement relating to the imposition of a monetary judgment against the Debtor in connection with
2 the Criminal Case may run afoul of section 362(a). Accordingly, the Trustee requests that the stay
3 under Section 362(a) of the Bankruptcy Code be lifted to the extent needed to permit the imposition
4 of claims under the Plea Agreement.

5 **IV.**

6 **THE CONSENT MOTION AND ORDER SHOULD BE EFFECTIVE IMMEDIATELY**

7 Bankruptcy Rule 4001(a)(3) provides: "An order granting a motion for relief from an
8 automatic stay made in accordance with Rule 4001(a)(1) is stayed until the expiration of 14 days
9 after the entry of the order, unless the court orders otherwise." Paragraph 13 of the Coordination
10 Agreement provides: "Notwithstanding the possible applicability of the Bankruptcy Rules and
11 subject to the provisions above, the terms and conditions of this Order shall be immediately
12 effective and enforceable upon its entry." Given the benefit to the Estate of the Coordination
13 Agreement, and the limited scope and ancillary role of the stay relief requested herein, the Trustee
14 requests that the order approving the motion be deemed effective when entered.

15 **V.**

16 **CONCLUSION**

17 **WHEREFORE**, the Trustee respectfully requests that the Court (a) approve the
18 Coordination Agreement including authorizing the Trustee to take all actions necessary to
19 implement same, (b) authorize Hannes Tulving to execute the Plea Agreement and the
20 Coordination Agreement on behalf of the Debtor, (c) grant relief from the automatic stay to the
21 extent necessary for the imposition of claims under the Plea Agreement, (d) waive the 14-day
22 waiting period under Bankruptcy Rule 4001(a)(3), and (e) grant such other and further relief as is
23 just and proper under the circumstances.

24 Dated: June 18, 2015

PACHULSKI STANG ZIEHL & JONES LLP

25
26 By /s/ Linda F. Cantor
Linda F. Cantor

27
28 Counsel for R. Todd Neilson, Chapter 7 Trustee

DECLARATION OF R. TODD NEILSON

I, R. Todd Neilson, declare as follows:

1. I am the duly appointed chapter 7 trustee (the "Trustee") 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 *Motion for Order (I) Approving and Authorizing the Trustee and Debtor to Enter into the Consent Motion and Proposed Order for Coordination Agreement for Distribution of Seized Items From the United States of America to the Trustee and From the Trustee to Victims, (B) Authorizing Hannes Tulving, Jr. to Execute a Plea Agreement on Behalf of the Debtor, and (C) for Related Relief Pursuant to Sections 105 and 362 of the Bankruptcy Code and Bankruptcy Rule 9019* (the "Motion"). Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

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. Prior to the filing of the bankruptcy, customer complaints concerning delayed or undelivered orders were increasingly made to the Better Business Bureau against the Debtor and in early March, 2014, a class-action lawsuit was filed against the Debtor and Hannes Tulving in the United States District Court, Northern District of California. A criminal investigation of the Debtor and Tulving by the Government was also being pursued, as described below. The Debtor ceased operations on or about March 3, 2014.

4. The Debtor commenced this case by the filing of a voluntary petition for relief under chapter 11 of the Bankruptcy Code on March 10, 2014. A *Stipulation Appointing Chapter 11 Trustee* [Docket No. 15] (the "Stipulation") was signed by the Debtor and its attorney and approved by the Bankruptcy Court on March 18, 2014 [Docket No. 16] and an Order was entered by the Court on March 21, 2014 approving the *U.S. Trustee's Application for the Appointment of a Chapter 11 Trustee, appointing R. Todd Neilson as Trustee of the Debtor's estate* [Docket No. 22].

1 Thereafter upon notice and hearing, the case was converted to a chapter 7 and I was appointed and
2 continue to serve as the chapter 7 Trustee [Docket 108].

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

11 6. I understand that Hannes Tulving has now signed a plea agreement with the
12 Government whereby he has agreed to plead guilty to 18 U.S.C. § 1343 wire fraud charge as set
13 forth in Count One of a Bill of Information in the Criminal Case. As the Debtor is Mr. Tulving's
14 co-defendant in the Criminal Case, the Government requires that the Debtor also sign a Plea
15 Agreement, in which it agrees to plead guilty to the same charge set forth in the individual Tulving
16 plea agreement and agrees to (i) Government recommendations for sanctions, penalties and
17 sentencing, (ii) further cooperation with the Government and the Trustee, and (iii) prohibitions
18 against the disposition of specified assets, other than as provided in the Coordination Agreement.

19 7. I have reached an agreement with the Government on a procedure for the liquidation
20 of the Seized Assets and the distribution of proceeds of sale to the victims of the Debtor's and
21 Hannes Tulving's criminal actions. The claimants in this Bankruptcy Case are primarily the same
22 customers who are victims in the Criminal Case. Specifically, approximately 381 claims have been
23 filed in this Case by claimants who, based on review by the Government, are substantially or
24 wholly identical to the Victims identified for purposes of restitution in the Criminal Case. Given
25 the overlap of Victims and the pendency of the bankruptcy case, I believe and have contended that
26 the Seized Assets can be administered more effectively in the bankruptcy proceeding than in the
27 Criminal Case, and that the Estate has a right to recover the Seized Items for that purpose. The
28 Coordination Agreement resolves these issues by providing for, among other things :

1 (i) The Trustee shall propose, on or before sixty days after the Coordination Agreement
2 is approved by both the Bankruptcy Court and the District Court, in the form of an omnibus
3 motion or other filed pleadings sufficient for filing in the Bankruptcy Court and the District
4 Court a final list of Victims and losses and a proposal for liquidating the Seized Items,
5 including a plan for all disbursement of costs and expenses and all disbursements to
6 Victims. If the Government accepts the Victim list and liquidation proposal, and if
7 approved by the Bankruptcy Court, the Government will turn over Seized Items to the
8 Trustee in an amount sufficient, based on best estimates of appraised value of the Seized
9 Items, to satisfy the payouts proposed by the Trustee therein. The Trustee agrees to seek to
10 prioritize payments to Victims over all other payments, except for reasonable costs and
11 expenses of liquidation approved by the Bankruptcy Court to which the Parties do not
12 object in writing. The Government reserves the right to decline to turn over Seized Items to
13 the Trustee in the event that, in the Government's sole discretion, any part of the plan set
14 forth by the Trustee or any pending or anticipated litigation in the Bankruptcy Case is not,
15 in light of all of the circumstances of the Bankruptcy Case and the Criminal Case, beneficial
16 to a prompt recovery for Victims.

17 (ii) The Parties agree that any Seized Items not otherwise turned over to the Trustee to
18 pay Victims may be, subject to further administrative proceedings and/or further order/s of
19 the District Court, forfeited and/or subject to garnishment, as more fully specified in the
20 Plea Agreement signed by Tulving on behalf of itself and The Tulving Company. The
21 Parties agree that, once all Victims have been paid as proposed by the Trustee and approved
22 by the Bankruptcy Court, the Trustee waives any right to claim any of the Seized Items.

23 (iii) The Coordination Agreement shall not constitute a waiver of the Department of
24 Justice's or United States Secret Service's rights to bring criminal, civil, and/or
25 administrative forfeiture proceedings, the Government's right to bring garnishment
26 proceedings or other proceedings under the restitution and debt collection laws, or the
27 Government's right to file claims to assets other than the Seized Items in the Bankruptcy
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Case, nor shall it constitute a waiver by the Trustee of any rights that the Trustee may have to pursue assets, other than the Seized Items, in the Bankruptcy Case.

(iv) The Parties are barred from asserting, or assisting others in asserting, any claim against the United States and any and all agents and employees of the United States (including but not limited to the Department of Justice (“DOJ”), the United States Attorney’s Office, Western District of North Carolina (“USAO-WDNC”), the United States Secret Service (“USSS”), the United States Department of Treasury, Treasury Executive Office for Asset Forfeiture (“TEOAF”), and any agents and employees of the United States, DOJ, USAO-WDNC, USSS, and TEOAF), in connection with or arising out of the seizure, restraint, and/or constructive possession of the Seized Items, including, but not limited to, any claim that there was no probable cause to seize the Seized Items, that the Trustee is a prevailing party, or that the Trustee is entitled to attorney’s fees or any award of interest.

(v) The Parties shall bear their own costs and attorney’s fees, except as otherwise provided in the Coordination Agreement on costs and expenses approved by the Bankruptcy Court.

(vi) The Bankruptcy Court and District Court shall have exclusive jurisdiction over the interpretation and enforcement of the Coordination Agreement under the applicable law in each of their respective cases.

(vii) The Parties waive all rights to appeal or to otherwise challenge or contest the validity of the Coordination Agreement.

(viii) Notwithstanding any applicable Bankruptcy Rule to the contrary and subject to the provisions of the Coordination Agreement, the terms and conditions of the Order on the Coordination Agreement shall be immediately effective and enforceable upon its entry.

8. As discussed herein, the Trustee believes that the compromise reached in the Coordination Agreement is fair, reasonable and in the best interest of the Estate.

9. The Government requires that the Debtor sign the Plea Agreement on substantially the same terms as the plea agreement signed by Hannes Tulving. After arms-length negotiations, I reached agreement with the Government concerning the Plea Agreement. I agreed that Hannes

1 Tulving may sign the Plea Agreement on behalf of the Debtor, subject to an order of the
2 Bankruptcy Court authorizing him to do so and, to the extent necessary, granting relief from the
3 automatic stay with respect to the imposition of fines, sanctions and other monetary awards on a
4 subordinated basis against the Debtor as set forth in the Plea Agreement.

5 10. Pursuant to the Plea Agreement, the Debtor agrees to plead guilty to 18 U.S.C.
6 § 1343 wire fraud charge as set forth in Count One of a Bill of Information in the Criminal Case.
7 Among other things, the Debtor agrees that the parties will jointly recommend certain findings and
8 conclusions to the District Court relevant to the Sentencing Guidelines, including that the advisory
9 fine range is \$16.6 million to \$35.2 million, agrees to a judgment for restitution, agrees that the
10 Coordination Agreement shall control the disposition of the Seized Items in the Bankruptcy Court
11 to pay restitution to Victims, agrees to make full disclosure of current and projected assets, agrees
12 not to alienate assets other than as provided in the Coordination Agreement, consents to forfeiture
13 with respect to all assets in the Bill of Information (subject to the Coordination Agreement),
14 consents to the entry of judgment by the Magistrate Judge, waives objections to forfeiture and
15 withdraws any administrative claim related thereto.

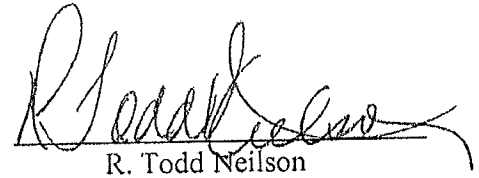
16 11. The rationale for approval of the Coordination Agreement and the Plea Agreement is
17 straight-forward and compelling. I contend that the Seized Items are property of the Estate and that
18 they should be turned over, and that the Bankruptcy Case is in any event the best forum both for
19 liquidating such assets, administering the claims of the Victims and making distributions thereon.
20 The Government, however, already has possession of the Seized Items under its Search Warrant
21 and may assert the right to control the sale of the Seized Items and restitution payments to Victims
22 under federal forfeiture statutes. The Coordination Agreement resolves what could be a costly
23 dispute by providing me with an opportunity to achieve my objective on behalf of the Estate
24 without further dispute by proposing a plan for liquidating Seized Items and making distributions in
25 the Bankruptcy Case, with the Government to turn over sufficient Seized Items for that purpose,
26 subject to the plan's approval by the Government and by the Bankruptcy Court.

27 12. The Plea Agreement is a required component of the Coordination Agreement. It
28 contains provisions that I believe should be unobjectionable to creditors of the Estate, particularly

1 since I will seek allowance of the monetary judgment on a subordinated basis, and thus it will not
2 prejudice general unsecured creditors. A critical additional consideration is that the Plea
3 Agreement does not impose any more obligations on the Estate than it might incur in any event
4 through a judgment after trial, a process that I believe is unnecessary from the perspective of the
5 Estate and its creditors. Accordingly, I have concluded in the exercise of my business judgment
6 that the Coordination Agreement and Plea Agreement are fair and reasonable and in the best
7 interests of the Estate, and request that they be approved, that the automatic stay be lifted to permit
8 the imposition of a monetary judgment, and that Hannes Tulving, Jr., be authorized to execute them
9 on behalf of the Debtor.

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

12 Executed this 8th day of June 2015, at Los Angeles, California.

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16 R. Todd Neilson
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PACHULSKI STANG ZIEHL & JONES LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

EXHIBIT A

FILED
ASHEVILLE, N.C.
JUN - 3 2015
U.S. DISTRICT COURT
W. DIST. OF N.C.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA)
) DOCKET NO. 3:15CR 115
 v.)
)
(1) HANNES TULVING, JR., and)
(2) THE TULVING COMPANY, INC.)
_____)

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

In re: The Tulving Company, Inc.)
 Debtor.) DOCKET NO. 8:14-bk-11492-ES
_____)

**CONSENT MOTION AND PROPOSED ORDER FOR COORDINATION AGREEMENT
FOR DISTRIBUTION OF SEIZED ITEMS FROM UNITED STATES TO BANKRUPTCY
TRUSTEE AND FROM TRUSTEE TO VICTIMS**

NOW COME the United States of America, by and through Jill W. Rose, Acting United States Attorney for the Western District of North Carolina (“the Government” or “the United States”); Hannes Tulving, Jr. (“Tulving”); the Tulving Company, Inc. (“Tulving Company”); and R. Todd Neilson as Chapter 7 Trustee for Tulving Company (“the Trustee”) (collectively, “the Parties”) and request that the District Court for the Western District of North Carolina, Charlotte Division (“the District Court”) and the Bankruptcy Court for the Central District of California, Santa Ana Division (“the Bankruptcy Court”) enter this Proposed Coordination Agreement.

As explained more fully below, under the unique circumstances of these cases the Parties submit this Proposed Coordination Agreement (“Coordination Agreement”) to the District Court and Bankruptcy Court for the purpose of achieving prompt liquidation of seized unique and rare

assets and distribution of funds for the benefit of victims. The Parties submit herein a proposed framework for:

- (1) expediting the finalization of a proposed list of victims of the crimes of Tulving and Tulving Company, particularly in light of the fact that the Trustee has already formulated a draft list pending before the Bankruptcy Court;
- (2) expediting liquidation by the Trustee of unique and rare assets—including but not limited to unusual, rare, and valuable, but illiquid, coins seized by the Government pursuant to the criminal investigation of Tulving and Tulving Company—that could be more promptly liquidated by the Trustee and/or any expert/s that he may employ in the already pending bankruptcy case than in the criminal case;
- (3) expediting distribution of proceeds of the sale of such assets to victims by routing the sale proceeds through the already-pending and actively-litigated bankruptcy case, as opposed to the newly filed criminal case; and
- (4) avoiding potentially unnecessary, time-consuming, and costly multi-district disputes among the Parties over assets, particularly since such disputes could impede the prompt delivery of funds to victims.

More specifically, in support of the Coordination Agreement, the parties submit the following background, findings, and conclusions for consideration and approval by the District Court and Bankruptcy Court.

WHEREAS, on or about March 8, 2014, on probable cause that Tulving and the Tulving Company were engaged in fraud, Special Agents of the United States Secret Service executed a Search Warrant (Central District of California Case SA14-00115M) on the offices of Tulving

Company, resulting in seizure of the gemstones, coins, and currency (hereafter, "the Seized Items") described as line items seven through thirty-four and thirty-six through fifty-two of a Search Warrant Return attached hereto as Attachment A;

WHEREAS, on or about March 21, 2014, in the case of *In re The Tulving Company, Inc.* (Case 8:14-bk-11492-ES; "the Bankruptcy Case"), the Bankruptcy Court, Honorable Bankruptcy Judge Erithe Smith presiding, issued an Order Approving the U.S. Trustee's Application for the Appointment of the Trustee;

WHEREAS, Tulving has signed a Plea Agreement whereby he has agreed to plead guilty to 18 U.S.C. § 1343 wire fraud charges set forth in a Bill of Information in the Western District of North Carolina and Tulving Company has signed a Plea Agreement whereby Tulving Company has agreed to plead guilty to the same charges set forth in the same Bill of Information (criminal case referred to herein as "the Criminal Case");

WHEREAS, the Plea Agreement signed by Tulving and the Plea Agreement signed by Tulving Company contain agreements about restitution to victims and forfeiture;

WHEREAS, the Parties have entered into this Coordination Agreement and propose this Coordination Agreement to the Bankruptcy Court and District Court in order *to set forth and obtain approval of a framework for liquidation and distribution of the Seized Items*;

WHEREAS, the Mandatory Victims Restitution Act, codified at 18 U.S.C. §§ 3663A, 3663, and 3664, and the Crime Victims' Rights Act, codified at 18 U.S.C. § 3771, provide for mandatory restitution to victims of the offenses in the Criminal Case and afford victims certain rights, including but not limited to rights to proceedings free from unreasonable delay;

WHEREAS, because of the nature of the fraud, the Bankruptcy Case claimants are primarily Tulving Company customers—the same customers who are victims in the Criminal Case. Furthermore, the Bankruptcy Trustee has undertaken significant efforts to determine the losses incurred by those customers. These efforts have included, among other things, a review and comparison of the Tulving Company bank records with Tulving Company business records, as well as review of complaints filed by customers with the State of California. During and after reviewing the records and complaints, the Trustee made direct contact with all known and identified Tulving Company customers and provided notice of the Bankruptcy to the general public. After the notice period, the Trustee received approximately 381 claims by victim creditors. Based on the United States Secret Service's review of the same records, the list of victim creditors is substantially similar to the list of victims in the Criminal Case.

WHEREAS, the Parties believe that the 381 Tulving Company customers identified in the Bankruptcy Case will be substantively similar, if not identical, to victims identified for purposes of restitution under 18 U.S.C. §§ 3663A and 3664 in the Criminal Case;

WHEREAS, in order to resolve any potential claims by the Trustee to the Seized Items if they were to be forfeited in the Criminal Case, and to expedite liquidation of the Seized Items and distribution of funds obtained from liquidation to victims, the Parties enter into the following stipulations and propose and request that the Bankruptcy Court sign and enter this Coordination Agreement in the Bankruptcy Case and the District Court sign and enter this Coordination Agreement in the Criminal Case. The Parties and the Bankruptcy Trustee agree that, if either the Bankruptcy Court or the District Court does not enter this Coordination Agreement, the terms of

this Coordination Agreement shall not be effective, although the Government, Tulving, and Tulving Company shall still be bound by the terms of the Plea Agreements in the Criminal Case;

NOW, THEREFORE, IT IS HEREBY STIPULATED, ORDERED AND AGREED that:

1. The Parties agree that the Seized Items constitute or are derived from fraud proceeds or otherwise could be ordered forfeited as substitute property in the Criminal Case;

2. The Government agrees that the Trustee is in a more advantageous position than the Government to efficiently and promptly liquidate the Seized Items and distribute funds derived from liquidation to Tulving Company customers;

3. The Government agrees that Tulving Company customers, with total losses by 381 customers who have filed claims with the Trustee calculated to-date by the Trustee as \$17,878,022.83, are substantively similar to victims that the Government would contend are entitled to restitution in the Criminal Case and shall be considered "Victims" for purposes of this Coordination Agreement;

4. The Parties and the Trustee agree that prompt payment to such Victims can best be achieved by (1) the Trustee proposing, on or before sixty days after this Coordination Agreement is signed by both the Bankruptcy Court and the District Court, in the form of an omnibus motion or other filed pleading sufficient for filing in court, a final list of Victims and losses to the Parties, to the Bankruptcy Court, and to the District Court and proposing a plan for liquidation of the Seized Items to the Bankruptcy Court and the District Court, including a plan for all disbursements of costs and expenses and all

disbursements to Victims and (2) the Government, if it is in agreement with the Victim list and plan for liquidation, and if the Bankruptcy Court approves the plan for liquidation, turning over Seized Items to the Trustee in an amount sufficient, based on best estimates of appraised value of the Seized Items, to satisfy the payouts proposed by the Trustee as set forth herein. The Trustee agrees that he shall make every effort to prioritize payments to Victims over all other payments, except for reasonable costs and expenses of liquidation approved by the Bankruptcy Court to which the Parties do not object in writing. The Government reserves the right to decline to turn over Seized Items to the Trustee in the event that, in the Government's sole discretion, any part of the plan set forth by the Trustee or any pending or anticipated litigation in the Bankruptcy Case is not, in light of all of the circumstances of the Bankruptcy Case and the Criminal Case, beneficial to prompt recovery for Victims.

5. The Parties and the Trustee agree that any Seized Items not otherwise turned over to the Trustee to pay Victims may be, subject to further administrative proceedings and/or further order/s of the District Court, forfeited and/or subject to garnishment, as more fully specified in the Plea Agreement signed by Tulving and the Plea Agreement signed by Tulving Company. The Parties agree that, once all Victims have been paid as proposed by the Trustee and approved by the Bankruptcy Court, the Trustee waives any right to claim any of the Seized Items.

6. This Coordination Agreement shall not constitute a waiver of the Department of Justice's or United States Secret Service's rights to bring criminal, civil, and/or administrative forfeiture proceedings, the Government's right to bring garnishment

proceedings or other proceedings under the restitution and debt collection laws, or the Government's right to file claims to assets other than the Seized Items in the Bankruptcy Case, nor shall it constitute a waiver by the Trustee of any rights that the Trustee may have to pursue assets, other than the Seized Items, in the Bankruptcy Case.

7. The Parties are hereby barred from asserting, or assisting others in asserting, any claim against the United States and any and all agents and employees of the United States (including but not limited to the Department of Justice ("DOJ"), the United States Attorney's Office, Western District of North Carolina ("USAO-WDNC"), the United States Secret Service ("USSS"), the United States Department of Treasury, Treasury Executive Office for Asset Forfeiture ("TEOAF"), and any agents and employees of the United States, DOJ, USAO-WDNC, USSS, and TEOAF), in connection with or arising out of the seizure, restraint, and/or constructive possession of the Seized Items, including, but not limited to, any claim that there was no probable cause to seize the Seized Items, that the Trustee is a prevailing party, or that the Trustee is entitled to attorney's fees or any award of interest.

8. The Parties shall bear their own costs and attorney's fees, except as otherwise provided herein on costs and expenses approved by the Bankruptcy Court.

9. This Coordination Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed the complete Coordination Agreement. Fax or PDF copies shall be treated as originals.

10. The Parties hereby waive all rights to appeal or to otherwise challenge or contest the validity of this Coordination Agreement.

11. The Bankruptcy Court and District Court shall have exclusive jurisdiction over the interpretation and enforcement of this Coordination Agreement under the applicable law in each of their respective cases.

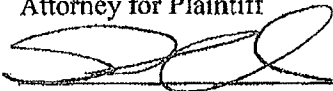
12. Except as otherwise noted in the Plea Agreement signed by Tulving and the Plca Agreement signed by Tulving Company, this Coordination Agreement constitutes the complete agreement amongst the Parties in this matter and may not be amended except by written consent thereof.

13. Notwithstanding the possible applicability of the Bankruptcy Rules and subject to the provisions above, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

AGREED AND CONSENTED TO:

JILL WESTMORLAND ROSE
Acting United States Attorney for the Western District of North Carolina
Attorney for Plaintiff

By:

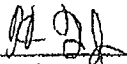

Benjamin Bain-Creed
Assistant United States Attorney
Florida Bar # 0021436
Suite 1650, Carillon Building
227 West Trade Street
Charlotte, North Carolina 28202
Telephone: (704) 344-6222
Fax: (704) 344-6629
E-mail: benjamin.bain-creed@usdoj.gov

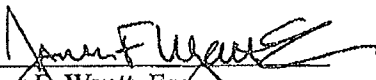
May 8, 2015
Date

R. TODD NEILSON
Solely in his capacity as
Chapter 7 Trustee for The Tulving Co., Inc.

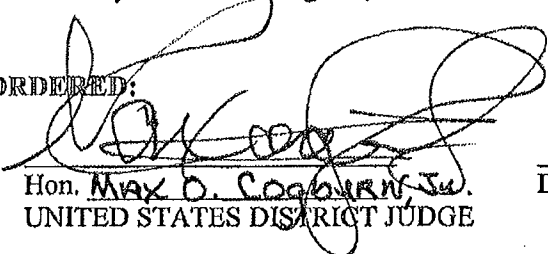
By: _____ Date _____
R. Todd Neilson
Director, Berkeley Research Group, LLC
2049 Century Park East, Suite 2525
Los Angeles, CA 90067
Tel: (310) 499-4750
Fax: (310) 557-8982
Email: tneilson@thinkbrg.com

DEFENDANTS HANNES TULVING, JR. AND TULVING CO., INC.

By:  _____ Date 4-29-15
Hannes Tulving, Jr.
in his individual capacity and as an
authorized signatory for The Tulving Co., Inc.

 _____ Date 5/4/15
James F. Wyatt, Esq.
Attorney for Hannes Tulving Jr.
Attorney for The Tulving Co., Inc.

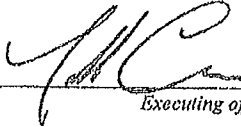
SO ORDERED:

 _____ Date 6-3-15
Hon. Max O. Cogburn, Jr.
UNITED STATES DISTRICT JUDGE

SO ORDERED:

Hon. Erithe A. Smith
UNITED STATES BANKRUPTCY JUDGE Date _____

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

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

CASE NO: SA 14-0015M

ATTACHMENT A
INVENTORY OF PROPERTY TAKEN (CONTINUED)

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

PROOF OF SERVICE OF DOCUMENT

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

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF MOTION AND MOTION FOR ORDER (I) APPROVING AND AUTHORIZING THE TRUSTEE AND DEBTOR TO ENTER INTO THE CONSENT MOTION AND PROPOSED ORDER FOR COORDINATION AGREEMENT FOR DISTRIBUTION OF SEIZED ITEMS FROM THE UNITED STATES OF AMERICA TO THE TRUSTEE AND FROM THE TRUSTEE TO VICTIMS, (B) AUTHORIZING HANNES TULVING, JR. TO EXECUTE A PLEA AGREEMENT WITH THE UNITED STATES OF AMERICA ON BEHALF OF THE DEBTOR, AND (C) FOR RELATED RELIEF PURSUANT TO SECTIONS 105 AND 362 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF R. TODD NEILSON** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document on **June 18, 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*) **June 18, 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*) **June 18, 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.

June 18, 2015
Date

Nancy H. Brown
Printed Name

/s/ Nancy H. Brown
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):

- 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
- David L Gibbs david.gibbs@gibbslaw.com, ecf@gibbslaw.com
- 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
8001 Irvine Center Drive, Suite 1170
Irvine, CA 92618

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

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

Accountants for Landlord

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

Interested Party

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

Counsel for Creditor Levon Gugasian

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

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

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

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, CA 90067

A true and correct copy of the foregoing document entitled: **DECLARATION RE: ENTRY OF ORDER WITHOUT HEARING PURSUANT TO LBR 9013-1(o)** 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 *(date)* **July 7, 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 **July 7, 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)* **July 7, 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

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.

July 7, 2015
Date

Janice G. Washington
Printed Name

/s/ Janice G. Washington
Signature

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

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

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

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

Philip Burkhardt on behalf of Other Professional Karen Duddlesten
phil@burkhardtandlarson.com, stacey@burkhardtandlarson.com

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

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

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

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

David L Gibbs on behalf of Creditor Kenneth W Stach
david.gibbs@gibbslaw.com, ecf@gibbslaw.com

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

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

John H Kim on behalf of Creditor Ford Motor Credit Company LLC
jkim@cookseylaw.com

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

Jason S Pomerantz on behalf of Trustee R. Todd Neilson (TR)
jspomerantz@pszjlaw.com, jspomerantz@pszjlaw.com

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

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

United States Trustee (SA)
ustregion16.sa.ecf@usdoj.gov

2. SERVED BY UNITED STATES MAIL:

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2030 Main Street
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