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9 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

**NOTICE OF MOTION AND MOTION FOR
ORDER AUTHORIZING ALLOWANCE OF
CERTAIN LATE FILED CLAIMS PURSUANT
TO SECTION 105 OF THE BANKRUPTCY
CODE AND BANKRUPTCY RULES 3003(C)(3)
AND 9006(B)(1); MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF; DECLARATION OF R. TODD
NEILSON**

[No hearing required unless requested]

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20 **TO THE HONORABLE ERITHE A. SMITH, UNITED STATES BANKRUPTCY JUDGE;**
21 **THE OFFICE OF THE UNITED STATES TRUSTEE; THE DEBTOR; AND PARTIES**
22 **WHO HAVE FILED A REQUEST FOR SPECIAL NOTICE PURSUANT TO**
23 **BANKRUPTCY RULE 2002:**

24 **PLEASE TAKE NOTICE** that R. Todd Neilson, the duly appointed chapter 7 trustee (the
25 “Trustee”) for The Tulving Company, Inc. (the “Debtor”), in the above-entitled chapter 7 case (the
26 “Bankruptcy Case”), hereby moves for the entry of an order, pursuant to section 105 of Title 11 of
27 the United States Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”) and Rules 3003(c)(3) and
28 9006(b)(1) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing the

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1 allowance of certain late filed claims of seven (7) victims of the Debtor's criminal actions (the
2 "Victim/Creditors") who timely submitted claims for restitution to the Government in the criminal
3 proceedings titled *United States v. Hannes Tulving Jr. and The Tulving Company, Inc.*, bearing case
4 number 3:15CR115 in the United States District Court for the Western District of North Carolina
5 (the "Criminal Case") totaling \$172,761.80, but did not timely file those claims (the "Outstanding
6 Claims") in this above-captioned bankruptcy case (the "Bankruptcy Case").

7 The Motion is filed in accordance with the terms of the *Stipulation re: Suspension of*
8 *Distribution of Seized Assets and Sale Proceeds Pending Finalization of List of Victims and Losses*
9 [Dkt. No. 531] (the "Stipulation") by and between the Trustee and Jill W. Rose, United States
10 Attorney for the Western District of North Carolina (the "Government"). Among other things, the
11 Stipulation requires that the Trustee seek approval from the Bankruptcy Court to allow the
12 Outstanding Claims in the Bankruptcy Case.

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

16 **PLEASE TAKE FURTHER NOTICE** that Local Bankruptcy Rule 9013-1(o) requires that
17 any response to the Motion and request for a hearing thereon be filed with the Bankruptcy Court and
18 served upon (i) counsel for the Trustee at the address appearing in the upper-left hand corner of the
19 caption page to this Notice of Motion and Motion and (ii) the Office of the United States Trustee
20 within fourteen days after service of this Notice of Motion and Motion, plus an additional three days
21 unless the notice of motion was served by personal delivery or posting as described in Fed. R. Civ.
22 P. 5(b)(2)(A)-(B).

23 **PLEASE TAKE FURTHER NOTICE** that, pursuant to Local Bankruptcy Rule 9013-1(h),
24 the failure to timely file and serve a written opposition may be deemed by the Court to be consent to
25 the granting of the relief requested in the Motion.

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WHEREFORE, the Trustee respectfully requests that the Court allow the Outstanding Claims and grant such other relief as is just and proper under the circumstances.

Dated: March 14, 2016

PACHULSKI STANG ZIEHL & JONES LLP

By /s/ Linda F. Cantor
Linda F. Cantor

Counsel for R. Todd Neilson, Chapter 7 Trustee

PACHULSKI STANG ZIEHL & JONES LLP
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LOS ANGELES, CALIFORNIA

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

A. The Background of the Debtor's Business

The Tulving Company, Inc. is a California corporation. The Debtor was in the business of selling and purchasing gold, silver, coins 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, Jr., the Debtor's sole shareholder and principal ("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 Bankruptcy 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 "Chapter 11 Trustee Stipulation"), which was signed by both the Debtor and its attorney. The Chapter 11 Trustee 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 (the "Seized Items"). Criminal proceedings against the Debtor and

1 Hannes Tulving (collectively, “Defendants”) ensued before the United States District Court for the
2 Western District of North Carolina (the “District Court”).

3 Hannes Tulving entered into a Plea Agreement with the United States of America, by and
4 through the Acting United States Attorney for the Western District of North Carolina (the
5 “Government”) in the Criminal Case. Pursuant to order of this Court entered July 22, 2015 [Docket
6 No. 264] (the “Coordination Order”), Hannes Tulving was authorized to sign the Plea Agreement on
7 behalf of the Debtor in the Criminal Case. Under the Plea Agreement, the Defendants each plead
8 guilty to 18 U.S.C. § 1343 wire fraud charge as set forth in Count One of a Bill of Information in the
9 Criminal Case and, among other things, agreed to pay restitution to the victims of fraud. The
10 Coordination Order also authorized Hannes Tulving to sign on behalf of the Debtor a “*Coordination*
11 *Agreement for Disbursement of Seized Items from United States to Bankruptcy Trustee and from*
12 *Trustee to Victims*” (the “Coordination Agreement”).

13 **D. The Coordination Order**

14 The claimants in the Bankruptcy Case are primarily the same customers who are victims in
15 the Criminal Case. Specifically, the Trustee received approximately 381 claims filed by claimants
16 who, based on review by the Government, are substantially identical to the victims identified for
17 purposes of restitution in the Criminal Case. Given the overlap of victims and the pendency of the
18 Bankruptcy Case, the Trustee proposed to the Government that the Seized Items could be
19 administered more effectively in the Bankruptcy Case than in the Criminal Case.

20 The Coordination Order sets forth a framework under which the Government would turn-
21 over to the Trustee certain estate assets seized by the Government (the “Seized Assets”) for
22 liquidation and distribution to those creditors who are also victims of the Debtor’s criminal actions
23 provided that the Trustee propose a plan for doing so (the “Proposal”) acceptable to the Government
24 and file a final list of Victim/Creditors approved by the Government.

1 **E. The Proposal**

2 Pursuant to the Coordination Order, on December 1, 2015 the Trustee filed and sought
3 Bankruptcy Court approval of his Proposal¹ and filed a proposed final list of Victim/Creditors (the
4 "Proposed Victim/Creditor List").

5 In furtherance of the Proposal, on December 28, 2016, the Trustee filed the *Motion For*
6 *Order Authorizing The Trustee to (A) Employ Heritage Numismatic Auctions, Inc., D/B/A Heritage*
7 *Auctions as Auctioneer, and (B) Sell Certain Estate Property at Public Auction Outside the*
8 *Ordinary Course of Business, Pursuant to 11 U.S.C. §§ 363(B), 327 and 328* [Dkt. No. 391] (the
9 "Retention/ Sale Motion"). On January 25, 2016, the Court entered its Order approving the
10 Retention/ Sale Motion² ("Retention/Sale Order").

11 On January 28, 2016, the Court entered its *Order Authorizing Implementation of Trustee's*
12 *Proposed Plan for Liquidation of Seized Items and Disbursement of Assets to Victim/Creditors of*
13 *Fraud in the Bankruptcy Case in Accordance with Coordination Agreement with United States*
14 *Government, and (II) Granting Related Relief Pursuant to Sections 105 and 363 of the Bankruptcy*
15 *Code* [Dkt. No. 494], pursuant to which the Trustee will file a final list of Victim/Creditors and
16 their respective losses (the "Final Victim/Creditor List") after all such claims have been resolved.

17 **F. The Outstanding Claims**

18 Seven (7) of the Victim/Creditors, identified on "**Exhibit A**" hereto, timely submitted claims
19 for restitution to the Government in the Criminal Case totaling \$172,761.80, but did not file those
20 claims in the Bankruptcy Case. The Government has requested that the Outstanding Claims be
21 included in the Final Victim/Creditor List as they are a component of the restitution claims against
22 the Debtor in the Criminal Case addressed by the Coordination Order.

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25 ¹ See *Motion For Order (I) Authorizing Implementation Of Trustee's Proposed Plan For Liquidation Of Seized Items*
26 *And Disbursement Of Assets To Victim/Creditors Of Fraud In The Bankruptcy Case In Accordance With Coordination*
27 *Agreement With United States Government, And (II) Granting Related Relief Pursuant To Sections 105 And 363 Of The*
28 *Bankruptcy Code* [Dkt. No.289].

² See *Order Authorizing The Trustee To (A) Employ Heritage Numismatic Auctions, Inc., D/B/A Heritage Auctions As*
Auctioneer, And (B) Sell Certain Estate Property At Public Auction Outside The Ordinary Course Of Business, Pursuant
To 11 U.S.C. §§ 363(B), 327 And 328 [Dkt. No. 450]

II.

THE OUTSTANDING CLAIMS SHOULD BE ALLOWED.

A. Implementation of the Coordination Order Effectively Requires Allowance of the Outstanding Claims.

The Government will not provide the Trustee with its consent to distribute the Seized Assets to Victim/Creditors absent inclusion of the Outstanding Claims, and, pursuant to the Coordination Agreement, the Trustee will not be able to make distributions without such consent.³

The relevant provision of the Coordination Order is set forth at paragraph 4 on page 5, which states as follows:

“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 days⁴ after the 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 of 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.”

Accordingly, the Outstanding Claims should be allowed in order to allow the Trustee to fulfill its obligations under the Coordination Agreement.

³ For this reason, the Trustee and the Government entered into the *Stipulation re: Suspension of Distribution of Seized Assets and Sale Proceeds Pending Finalization of List of Victims and Losses* [Dkt. No. 531], which was approved by Order of the Court dated February 16, 2016 [Dkt. No. 535].

⁴ The Parties entered into Stipulations extending the date by which the Trustee must file the final list of Victims and losses and proposed plan for liquidation of the Seized Items until December 1, 2015. Those Stipulations were approved by Orders of the Bankruptcy Court dated September 25, 2015 [Dkt. No. 279] and November 20, 2015 [Dkt. No. 285].

1 **B. The Bankruptcy Rules Support Allowance of the Outstanding Claims.**

2 Under Bankruptcy Rules 3003(c)(3) and 9006(b)(1), a court may “permit a late filing if the
3 movant’s failure to comply with an earlier deadline was the result of excusable neglect.” *Pioneer*
4 *Investment Services Co. v. Brunswick Associates L.P.*, 507 U.S. 380, 382 (1993). Under *Pioneer*,
5 courts consider four factors in determining whether a claimant has met its burden in establishing
6 excusable neglect: “the danger of prejudice to the debtor, the length of the delay and its potential
7 impact on judicial proceedings, the reason for the delay, including whether it was within the
8 reasonable control of the movant, and whether the movant acted in good faith.” *Hefst v. Official*
9 *Comm. of Unsecured Creditors (In re American Classic Voyages Co.)*, 405 F.3d 127, 133 (3d Cir.
10 2005), *citing George Harms Constr. Co. v. Chao*, 371 F.3d 156, 164 (3d Cir. 2004).

11 Courts disfavor allowing late-filed claims when doing so would cause prejudice to the Debtor
12 or its creditors. *See In re American Classic Voyages Co.*, 405 F.3d 127 (3d Cir. 2005) (denying
13 motion to allow late filed claim because, among other reasons, the debtors would “be prejudiced by
14 exposure to a late claim,” among other reasons). In this case, the Victim/Creditors would be far
15 more prejudiced if the Outstanding Claims were not allowed, as the Trustee would be unable to
16 distribute the Seized Assets and the Government would, at a greater administrative cost, distribute
17 them, including to the holders of the Outstanding Claims. The amount of the Outstanding Claims,
18 which total \$172,761.80, is a mere fraction of the \$16-17 million in claims in the case

19 Further, the impact on judicial proceedings if the Outstanding Claims are disallowed would
20 be substantial, as the Seized Assets would not be administered through the Bankruptcy Court, but
21 would need to be administered in the Criminal Case.

22 Finally, each of the holders of the Outstanding Claims filed timely claims in the Criminal
23 Case. It is undoubtedly confusing for the Victim/Creditors, who are individuals unfamiliar with
24 claims administration, to have understood the necessity to refile their claims in the Bankruptcy Case.
25 Certainly, such error was not in bad faith.

26 All of the Victim/Creditors except seven (in an amount totaling \$172,761.80) filed claims in
27 the Bankruptcy Case. However, the Government has a duty to pay restitution to all victims who
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1 filed claims in the Criminal Case, and since the 7 Victim/Creditors properly filed claims with the
2 Criminal Court but not the Bankruptcy Court, they should nonetheless share in the restitution.
3 Accordingly, the Bankruptcy Rules, in addition to equitable principles, support allowance of the
4 Outstanding Claims.

5 **III.**

6 **CONCLUSION**

7 **WHEREFORE**, the Trustee respectfully requests that the Court allow the Outstanding
8 Claims and grant such other relief as is just and proper under the circumstances.

9 Dated: March 14, 2016

PACHULSKI STANG ZIEHL & JONES LLP

10
11 By /s/ Linda S. Cantor
12 Linda F. Cantor

13 Attorneys for R. Todd Neilson, Chapter 7
14 Trustee
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Exhibit A

PACHULSKI STANG ZIEHL & JONES LLP
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LOS ANGELES, CALIFORNIA

EXHIBIT A

**SCHEDULE OF CREDITOR/VICTIM RESTITUTION CLAIMS FILED IN THE
CRIMINAL CASE**

Creditor Name	Claim Amount
Kevin Dillon	\$24,889.00
John Eddy	\$10,265.00
St. Claire Ripley	\$20,163.70
Wiley Dan Hubard	\$49,189.10
Jeffrey Longenbach	\$44,685.00
James Schammerhorn	\$11,340.00
Brian Roquemore	\$12,230.00
Total	\$ 172,761.80

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DECLARATION OF R. TODD NEILSON

I, R. Todd Neilson, declare as follows:

1. I am the duly appointed chapter 7 trustee (the “Trustee”) for the estate of the Tulving Company, Inc., debtor (the “Debtor”) in the above-captioned bankruptcy case (the “Case”). I make this Declaration in support of the *Motion for Order Authorizing Allowance of Certain Late Filed Claims Pursuant to Section 105 of the Bankruptcy Code and Bankruptcy Rules 3003(c)(3) and 9006(b)(1)* (the “Motion”). Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

2. Except as otherwise indicated, all facts set forth in this Declaration are based on my personal knowledge (albeit my own or that gathered by professionals rendering services to me), or my opinion based on experience, knowledge, and information concerning the estate. If called upon, I can and will competently testify to the facts stated herein.

3. The Tulving Company, Inc. is a California corporation. The Debtor was in the business of selling and purchasing gold, silver, coins 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, Jr., the Debtor’s sole shareholder and principal 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 Bankruptcy Case by the filing of a voluntary petition for relief under chapter 11 of the Bankruptcy Code on March 10, 2014. Following a stipulation between the Debtor and the Office of the United States Trustee, 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*. Thereafter upon notice and hearing, the case was converted to a chapter 7 and I was appointed and continue to serve as the chapter 7 trustee.

1 5. On March 8, 2014, Special Agents of the United States Secret Service executed a
2 Search Warrant on the Debtor's offices on probable cause that the Debtor and Hannes Tulving were
3 engaged in fraud. The Search Warrant resulted in the seizure of the Debtor's property including rare
4 coins and other valuable items. Criminal proceedings against the Debtor and Hannes Tulving
5 ensued before the United States District Court for the Western District of North Carolina.

6 6. Hannes Tulving entered into a Plea Agreement with the United States of America, by
7 and through the Acting United States Attorney for the Western District of North Carolina in the
8 Criminal Case. Pursuant to order of this Court entered July 22, 2015, Hannes Tulving was
9 authorized to sign the Plea Agreement on behalf of the Debtor in the Criminal Case. Under the Plea
10 Agreement, the Defendants each plead guilty to 18 U.S.C. § 1343 wire fraud charge as set forth in
11 Count One of a Bill of Information in the Criminal Case and, among other things, agreed to pay
12 restitution to the victims of fraud.

13 7. The claimants in the Bankruptcy Case are primarily the same customers who are
14 victims in the Criminal Case. Specifically, approximately 381 claims were filed in the Bankruptcy
15 Case by claimants who, based on review by the Government, are substantially identical to the
16 victims identified for purposes of restitution in the Criminal Case. Given the overlap of victims and
17 the pendency of the Bankruptcy Case, I proposed to the Government that the Seized Items could be
18 administered more effectively in the Bankruptcy Case than in the Criminal Case.

19 8. The Coordination Order entered by the District Court and the Bankruptcy Court sets
20 forth a framework under which the Government would turn-over to the estate certain assets seized
21 by the Government for liquidation and distribution to those creditors who are also victims of the
22 Debtor's criminal actions provided that I propose a plan for doing so acceptable to the Government
23 and file a final list of Victim/Creditors approved by the Government.

24 9. Pursuant to the Coordination Order, on December 1, 2015, I filed and sought
25 Bankruptcy Court approval of my Proposal and filed a proposed final list of Victim/Creditors.

26 10. In furtherance of the Proposal, on December 28, 2016, I filed the *Motion For Order*
27 *Authorizing The Trustee to (A) Employ Heritage Numismatic Auctions, Inc., D/B/A Heritage*
28 *Auctions as Auctioneer, and (B) Sell Certain Estate Property at Public Auction Outside the Ordinary*

1 *Course of Business, Pursuant to 11 U.S.C. §§ 363(B), 327 and 328, which was approved by the*
2 *Bankruptcy Court on January 25, 2016.*

3 11. On January 28, 2016, the Court entered its *Order Authorizing Implementation of*
4 *Trustee's Proposed Plan for Liquidation of Seized Items and Disbursement of Assets to*
5 *Victim/Creditors of Fraud in the Bankruptcy Case in Accordance with Coordination Agreement with*
6 *United States Government, and (II) Granting Related Relief Pursuant to Sections 105 and 363 of the*
7 *Bankruptcy Code, pursuant to which I will file a final list of Victim/Creditors and their respective*
8 *losses after all such claims have been resolved.*

9 12. Seven (7) of the Victim/Creditors, identified on "**Exhibit A**" to the Motion, timely
10 submitted claims for restitution to the Government in the Criminal Case totaling \$172,761.80, but
11 did not file those claims in the Bankruptcy Case. The Government has requested that the
12 Outstanding Claims be included in the Final Victim/Creditor List as they are a component of the
13 restitution claims against the Debtor in the Criminal Case addressed by the Coordination Order.

14 13. The Government will not provide me with its consent to distribute the Seized Assets
15 to Victim/Creditors absent inclusion of the Outstanding Claims, and, pursuant to the Coordination
16 Agreement, I will not be able to make distributions without such consent. For this reason, I entered
17 into the *Stipulation re: Suspension of Distribution of Seized Assets and Sale Proceeds Pending*
18 *Finalization of List of Victims and Losses* with the Government. The Stipulation was approved by
19 Order of the Court dated February 16, 2016.

20 14. The relevant provision of the Coordination Order is set forth at paragraph 4 on page
21 5, which states as follows:

22 "4. The Parties and the Trustee agree that prompt payment to such
23 Victims can best be achieved by (1) the Trustee proposing, on or
24 before sixty days⁵ after the Coordination Agreement is signed by both
25 the Bankruptcy Court and the District Court, in the form of an
26 omnibus motion or other filed pleading sufficient for filing in court, a
27 final list of Victims and losses to the Parties, to the Bankruptcy Court,
28 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 of Victims and (2) the Government, if it is in agreement
with the Victim list and plan for liquidation, and if the Bankruptcy

1 Court approves the plan for liquidation, turning over Seized Items to
2 the Trustee in an amount sufficient, based on best estimates of
3 appraised value of the Seized Items, to satisfy the payouts proposed by
4 the Trustee as set forth herein. The Trustee agrees that he shall make
5 every effort to prioritize payments to Victims over all other payments,
6 except for reasonable costs and expenses of liquidation approved by
7 the Bankruptcy Court to which the Parties do not object in writing.
8 The Government reserves the right to decline to turn over Seized Items
9 to the Trustee in the event that, in the Government's sole discretion,
10 any part of the plan set forth by the Trustee or any pending or
11 anticipated litigation in the Bankruptcy Case is not, in light of all of
12 the circumstances of the Bankruptcy Case and the Criminal Case,
13 beneficial to prompt recovery for Victims."

8 Accordingly, the Outstanding Claims should be allowed in order to allow the estate to fulfill its
9 obligations under the Coordination Agreement.

10 15. In this case, the Victim/Creditors would be far more prejudiced if the Outstanding
11 Claims were not allowed, as the estate would be unable to distribute the Seized Assets and the
12 Government would, at a greater administrative cost, distribute them, including to the holders of the
13 Outstanding Claims. The amount of the Outstanding Claims, which total \$172,761.80, is a mere
14 fraction of the \$16-17 million in claims in the case.

15 16. Further, the impact on judicial proceedings if the Outstanding Claims are disallowed
16 would be substantial, as the Seized Assets would not be administered through the Bankruptcy Court,
17 but would need to be administered in the Criminal Case.

18 17. Finally, each of the holders of the Outstanding Claims filed timely claims in the
19 Criminal Case. It is undoubtedly confusing for the Victim/Creditors, who are individuals unfamiliar
20 with claims administration, to have understood the necessity to refile their claims in the Bankruptcy
21 Case. Certainly, such error was not in bad faith.

22 18. All of the Victim/Creditors except seven (in an amount totaling \$172,761.80) filed
23 claims in the Bankruptcy Case. However, the Government has a duty to pay restitution to all victims
24 who filed claims in the Criminal Case, and since the 7 Victim/Creditors properly filed claims with
25 the Criminal Court but not the Bankruptcy Court, they should nonetheless share in the restitution.
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19. Accordingly, in addition to the legal authorities cited in the Motion, equitable principles support allowance of the Outstanding Claims.

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

Executed on this 12th day of March, 2016 at Draper, Utah.



R. TODD NEILSON

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

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 **NOTICE OF MOTION AND MOTION FOR ORDER AUTHORIZING ALLOWANCE OF CERTAIN LATE FILED CLAIMS PURSUANT TO SECTION 105 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 3003(C)(3) AND 9006(B)(1); 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 **March 14, 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 **March 14, 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 **March 14, 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
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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.

March 14, 2016 Janice G. Washington /s/Janice G. Washington
Date Printed Name Signature

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

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