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

In re:  
  
THE TULVING COMPANY, INC.,  
  
Debtor.

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

Chapter 7

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

[No Hearing Required Pursuant To L.B.R. 9013-1]

**TO THE HONORABLE ERITHE SMITH, UNITED STATES BANKRUPTCY  
JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, THE DEBTOR, PARTIES  
IN INTEREST, PARTIES REQUESTING AND CONSENTING TO E-MAIL NOTICE OF  
THE LIMITED NOTICE MATTERS, AND ALL PARTIES ENTITLED TO SPECIAL  
NOTICE:**

1           **PLEASE TAKE NOTICE** that Weneta M. A. Kosmala, the duly appointed and acting  
2 chapter 7 trustee ("Trustee") for The Tulving Company, Inc ("Debtor"), through her proposed  
3 undersigned counsel, hereby files the *Trustee's Motion for an Order (i) Authorizing the Turnover of*  
4 *Certain Books, Records and Files of the Debtor to Greatcollections.Com d/b/a Great Collections,*  
5 *(ii) Authorizing the Disposal of Certain Other Books, Records and Files of the Debtor, as they*  
6 *Become Unnecessary, (iii) Authorizing Payment of Disposal Costs When Incurred, and (iv) Granting*  
7 *Related Relief* (the "Motion").

8           **PLEASE TAKE FURTHER NOTICE** that the Motion is based on this Notice of Motion  
9 and Motion, the attached Memorandum of Points and Authorities ("Memorandum"), the supporting  
10 Declarations of R. Todd Neilson, the former chapter 7 trustee for the Debtor's estate, and Weneta  
11 M.A. Kosmala, the duly appointed and acting chapter 7 trustee for the Debtor's estate, and the record  
12 in this case, of which this Court is requested to take judicial notice.

13           **PLEASE TAKE FURTHER NOTICE** that, as explained in the attached Memorandum, the  
14 Motion seeks authority to deal with the books, records and files of the Debtor consisting of 184  
15 banker boxes that are being stored by the Trustee. The Motion seeks authority to transfer certain  
16 books, records and files of the Debtor to Greatcollections.com LLC d/b/a Great Collections ("Great  
17 Collections"), purchaser of the Debtor's customer lists and related personal property.<sup>1</sup> Great  
18 Collections requires those documents (the "Customer List Documents") to maximize the value of the  
19 property it purchased from the estate. The Motion also seeks authority to dispose of certain other  
20 books, records and files of the Debtor as and when they are no longer needed (the "Unnecessary  
21 Documents") for the preparation of tax returns (the "Tax Documents"), and the estate's pending  
22 litigation against Levon and Armen Gugasian and other claims against third parties (the "Litigation  
23 Documents"). The Trustee proposes to retain the Tax Documents and the Litigation Documents  
24 only for such period of time as those documents are needed for the administration of the estate.  
25 Thereafter, the Tax Documents and the Litigation Documents will become Unnecessary Documents  
26

27 <sup>1</sup> See Order (A) Approving Asset Purchase Agreement (B) Approving Sale Of Estate's Property (Debtor's Customer  
28 Lists, Phone Numbers, Web Address, Certain Customer Files, And Related Personal Property) Free And Clear Of All  
Liens, Claims, Encumbrances And Interests; (C) Approving Ombudsman's Fee Application And Authorizing Payment Of  
His fees/Expenses Out Of Sale Proceeds; And (D) Granting Related Relief [Dkt No. 208] (the "Sale Order")

1 and, as such, will be of inconsequential value, unnecessary for the administration of the estate and  
2 the cost of their continued storage will be burdensome to the estate. Further, in the event the Court  
3 does not authorize the Trustee to turn over the Customer List Documents to Great Collections or  
4 Great Collections no longer wishes to receive the Customer List Documents, the Trustee seeks  
5 authority to dispose of the Customer List Documents as Unnecessary Documents as well.

6 **PLEASE TAKE FURTHER NOTICE** that the cost to dispose of all the Debtor's books,  
7 records and files in the Trustee's possession and control (including, the Customer List Documents) is  
8 estimated to range between \$500 and \$600. The Motion seeks authority to pay up to the amount of  
9 \$600 as needed to dispose of the Unnecessary Documents and, if not turned over to Great  
10 Collections, the Customer List Documents.

11 **PLEASE TAKE FURTHER NOTICE** that Rule 9013-1(o)(1) of the Local Bankruptcy  
12 Rules of the United States Bankruptcy Court for the Central District of California ("Local  
13 Bankruptcy Rules") requires that any response to the Motion and a request for a hearing thereon be  
14 filed with the Bankruptcy Court and served upon Trustee's counsel at the address appearing on the  
15 upper-left hand corner of the caption page to this Motion and the Office of the U.S. Trustee within  
16 fourteen (14) days of the date of service of the Motion. Pursuant to Local Bankruptcy Rule  
17 9013-1(h), the failure to timely file and serve written opposition may be deemed by the Court to be  
18 consent to the granting of the relief requested in the Motion.

19 **WHEREFORE**, the Trustee respectfully requests that this Court enter an order (i) granting  
20 the Motion, (ii) authorizing the Trustee to turnover certain books, records and files of the Debtor to  
21 Great Collections, (iii) authorizing the Trustee to dispose of those books, records and files of the  
22 Debtor that are or become burdensome to the estate, (iv) authorizing the Trustee to pay the cost to  
23 dispose of the documents, as set forth in the Motion, and (v) granting such other and further relief as  
24 is just and proper under the circumstances.

25 Dated: May 6, 2016

PACHULSKI STANG ZIEHL & JONES LLP

27 By /s/ Linda F. Cantor  
28 Linda F. Cantor, Counsel for Weneta M. A. Kosmala,  
Chapter 7 Trustee for The Tulving Company, Inc.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Weneta M. A. Kosmala, the duly appointed and acting chapter 7 trustee for The Tulving  
5 Company, Inc ("Debtor"), hereby moves the Court for an Order, pursuant to sections 363 and 554(a)  
6 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 6007 of the Federal Rules of  
7 Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing the trustee to (a) turnover certain  
8 books, records and files of the Debtor to Greatcollections.Com d/b/a Great Collections ("Great  
9 Collections"), the purchaser of the Debtor's customer lists and related personal property, (ii) dispose  
10 of certain other books, records and files of the Debtor that are or become unnecessary to the  
11 administration of this case, (iii) pay for the disposal costs, estimated to range between \$500 and  
12 \$600, and (iv) grant related relief. In support of this Motion, the trustee respectfully represents as  
13 follows:

14 **II.**

15 **JURISDICTION**

16 This Court has jurisdiction over this Motion under 28 U.S.C. § 1334. This matter is a core  
17 proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper in this District pursuant to  
18 28 U.S.C. §§ 1408 and 1409.

19 The statutory bases for the relief requested herein are sections 363 and 554(a) of the  
20 Bankruptcy Code and Bankruptcy Rule 6007.

21 **III.**

22 **BACKGROUND**

23 **A. The Background of the Debtor's Business and Criminal Proceedings**

24 The Tulving Company, Inc. ("Debtor") is a California corporation. The Debtor was in the  
25 business of selling and purchasing gold, silver, coins and other precious metals through its internet  
26 website or by phone. Prior to the filing of the bankruptcy, customer complaints concerning delayed  
27 or undelivered orders were increasingly made to the Better Business Bureau against the Debtor. In  
28 early March, 2014, a class-action lawsuit was filed against the Debtor and Hannes Tulving, Jr., the

1 Debtor's sole shareholder and principal ("Mr. Tulving") in the United States District Court, Northern  
2 District of California. A criminal investigation of the Debtor and Mr. Tulving by the United States  
3 Attorney for the Western District of North Carolina (the "Government") was also being pursued.

4 The Debtor ceased operations on or about March 3, 2014. On March 8, 2014, Special Agents  
5 of the United States Secret Service executed a Search Warrant on the Debtor's offices on probable  
6 cause that the Debtor and Mr. Tulving were engaged in fraud. The Search Warrant resulted in the  
7 seizure of the Debtor's property including rare coins and other valuable items (the "Seized Assets").  
8 During this Bankruptcy Case, and with approval of the Bankruptcy Court, the Debtor, through Mr.  
9 Tulving, and Mr. Tulving individually pled guilty to one count of 18 U.S.C. § 1343 wire fraud  
10 charge as set forth in Count One of a Bill of Information in the Criminal Case and, among other  
11 things, agreed to pay restitution to the victims of fraud.

12 **B. Procedural Background of the Debtor's Bankruptcy Case**

13 The Debtor commenced this case (the "Bankruptcy Case") by the filing of a voluntary  
14 petition for relief under chapter 11 of the Bankruptcy Code on March 10, 2014. In light of the  
15 pending criminal investigation and other ongoing litigation against the Debtor, on March 18, 2014,  
16 the United States Trustee ("UST") filed a *Stipulation Appointing Chapter 11 Trustee* [Docket No.  
17 15] (the "Stipulation"), which was signed by both the Debtor and its attorney. The Stipulation was  
18 approved by the Bankruptcy Court on March 18, 2014 [Docket No. 16] and an Order was entered by  
19 the Court on March 21, 2014 approving the UST's Application for the Appointment of a Chapter 11  
20 Trustee, appointing R. Todd Neilson as trustee of the Debtor's estate [Docket No. 22]. Thereafter  
21 upon notice and hearing, the case was converted to a chapter 7 and R. Todd Neilson was appointed  
22 to serve as the chapter 7 Trustee [Docket 108]. On March 22, 2016, Mr. Neilson filed his  
23 Withdrawal of Trustee [Docket 564]. The UST filed its *Notice of Appointment of Trustee and Fixing*  
24 *of Bond; Acceptance of Appointment as Trustee* dated April 1, 2016 [Docket 566], appointing  
25 Weneta M. A. Kosmala as the chapter 7 trustee of the Debtor's estate.

26 **C. Orderly Liquidation of Assets**

27 As discussed in pleadings previously filed with the Court, R. Todd Neilson, as trustee of the  
28 Debtor's estate, worked steadily toward the orderly liquidation of the estate's assets. In this regard,



1 during the chapter 11 case, Mr. Neilson rejected the Debtor's residential and non-residential real  
2 property leases and retained an auctioneer to sell the personal property of the Debtor that remained  
3 in the leased premises. The books, records and files of the Debtor that were not seized by the United  
4 States Secret Service were reviewed and inventoried by the trustee's professionals. To the extent the  
5 files, books and records were not immediately needed for estate administration purposes, they were  
6 placed in storage. Mr. Neilson, as trustee, obtained Bankruptcy Court authority to pay rent for the  
7 storage facility of \$200.00 per month. Rental is paid through July 3, 2016 and is charged on a  
8 month-to-month basis. There are approximately 184 banker's boxes currently located at the storage  
9 facility.

10 Mr. Neilson, as trustee, also sought and obtained authorization to sell the Debtor's customer  
11 lists, phone numbers, web address, certain customer files, and related personal property (the  
12 "Customer List Sale") to Great Collections by Order of the Bankruptcy Court entered January 12,  
13 2015.<sup>2</sup> Prior to the Customer List Sale, on or about September 9, 2014, the trustee entered into a  
14 stipulation with the UST for the appointment of an Ombudsman to consider whether the customer  
15 list sale was consistent with the provisions of Sections 363(b)(1)(A) and 363(b)(1)(B) of the  
16 Bankruptcy Code. The UST's appointment of Wesley Avery as Ombudsman was approved by  
17 Order of the Bankruptcy Court dated September 15, 2014 [Dkt. No. 182]. On October 22, 2014, the  
18 Ombudsman filed his report [Dkt. No. 184] in which he concluded that, assuming Great Collections  
19 adopts the Debtor's prepetition privacy policy (the "Privacy Policy"), the Customer List Sale is  
20 (i) consistent with the Privacy Policy in compliance with Bankruptcy Code section 363(b)(1)(A) and  
21 (ii) would not violate applicable non-bankruptcy law in compliance with section 363(b)(1)(B). As  
22 set forth in the Addendum to Asset Purchase Agreement [Dkt. 208 at page 16 of 17], approved by  
23 the Bankruptcy Court under the Sale Order, Great Collections acknowledged and agreed that it  
24 would fully abide by and implement the Debtor's Privacy Policy in respect of any and all personally  
25 identifiable information of and relating to Debtor's customers.

26  
27 <sup>2</sup> See Order (A) Approving Asset Purchase Agreement (B) Approving Sale Of Estate's Property (Debtor's Customer  
28 Lists, Phone Numbers, Web Address, Certain Customer Files, And Related Personal Property) Free And Clear Of All  
Liens, Claims, Encumbrances And Interests; (C) Approving Ombudsman's Fee Application And Authorizing Payment Of  
His fees/Expenses Out Of Sale Proceeds; And (D) Granting Related Relief [Dkt No. 208] (the "Sale Order").

As noted above, prior to the chapter 11 trustee's appointment, a majority of the Debtor's assets were seized by the United States Secret Service. Since the time of his initial appointment as chapter 11 trustee and through much of the chapter 7 case, Mr. Neilson has been working with the Department of Justice to coordinate the administration and disposition of the Seized Assets between the Department of Justice ("DOJ") and this bankruptcy estate. Those efforts led to a Coordination Agreement, approved by the District Court and the Bankruptcy Court, allowing the bankruptcy estate to administer the Seized Assets. The Coordination Agreement is being implemented in accordance with the Proposal of the trustee to transfer the Seized Assets to Heritage Auctioneers for the sale and other disposition of the coins to creditors who were also victims of the Debtor's criminal actions (the "Victim/Creditors").<sup>3</sup> The Seized Assets have now been transferred from the Government depository in Wilmington, Delaware to the offices of Heritage Auctioneers in Dallas, Texas and the auctioneers are in the process of inventorying the coins prior to conducting an auction currently scheduled for June 10, 2016.

**D. Disposition of Books, Records and Files**

Subsequent to the Customer List Sale, Great Collections requested that the Trustee turn over certain books, records and files that relate to the property it purchased in the Customer List Sale. Those books, records and files are listed on **Exhibit A** hereto (collectively, the "Customer List Documents"). Because of the then-pending criminal investigation of the Debtor and Mr. Tulving and the Government's potential need for the Customer List Documents, the trustee granted Great Collections an opportunity to inspect and review the Customer List Documents but did not turn them over. As set forth in the Declaration of R. Todd Neilson appended to the Motion (the "Neilson Declaration"), Great Collections conducted an initial review of the Customer List Documents and has since reiterated its request for the turnover of the Customer List Documents in order to maximize the value of the property purchased in the Customer List Sale.

By the Motion, the trustee is requesting authority to turn over the Customer List Documents

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<sup>3</sup> See Order for Coordination Agreement for Distribution of Seized Items from United States to Bankruptcy Trustee and from Trustee to Victims [Dkt. No. 264] and Order (I) Authorizing Implementation of Trustee's Proposed Plan for Liquidation of Seized Items and Disbursement of Assets to Victim/Creditors of Fraud in the Bankruptcy Case in Accordance with Coordination Agreement with United States Government, and (ii) Granting Related Relief Pursuant to Sections 105 and 363 of the Bankruptcy Code [Dkt. No. 494].

1 to Great Collections. The Customer List Documents are not necessary for the administration of the  
2 Debtor's estate and their continued storage and related costs are burdensome to the estate. Since  
3 consummation of the Customer List Sale, the Debtor and Mr. Tulving entered into a plea agreement  
4 with the Government, as described above, and the Customer List Documents would now appear  
5 unnecessary for the prosecution of criminal charges against the Debtor and Mr. Tulving.  
6 Furthermore, Great Collections entered into an agreement with Mr. Neilson, as chapter 7 trustee, (the  
7 "Undertaking Agreement") to preserve and prevent the destruction of the Customer List Documents,  
8 and to return any business or accounting documents not related to the Customer Lists inadvertently  
9 included with the Customer List Documents. Great Collections has also reiterated and  
10 acknowledged its agreement to maintain the Debtor's prepetition Privacy Policy with respect to the  
11 Customer List Documents.

12 The Motion seeks authority to dispose of the remaining books, records and files of the Debtor  
13 as and when they are not needed for the preparation of tax returns (the "Tax Documents") or for the  
14 pursuit of third party claims and prosecution of the estate lawsuits against Armen and Levon  
15 Gugasian (the "Litigation Documents"), as those documents will become unnecessary and their  
16 retention will become burdensome to the estate (the "Unnecessary Documents"). The cost to shred  
17 all of the Debtor's books, records and files (including the Customer List Documents, the Tax  
18 Documents, the Litigation Documents and the Unnecessary Documents) is estimated to range  
19 between \$500 and \$600.<sup>4</sup>

20 In the exercise of the trustee's business judgment, based upon the record in this case and the  
21 Neilson Declaration in support of the Motion, the trustee believes that the turnover and/or disposal of  
22 the Debtor's books, records and files as set forth above is in the best interests of the estate. The  
23 estate has no use for the Customer List Documents and the use of those documents by Great  
24 Collections is consistent with its purchase of the Customer Lists. The Customer List Sale documents  
25 as well as the Undertaking Agreement by Great Collections concerning the Customer List  
26 Documents provide safeguards against the inadvertent turnover of information and provide for the  
27

28 <sup>4</sup> Provided that the Court authorizes the turn over to Great Collections, the cost to dispose of the remaining documents will be less.

1 continued maintenance of those documents.

2 In the exercise of the trustee's business judgment, as and when the Debtor's books, records  
3 and filed become unnecessary to the administration of the Debtor's estate, such that they are not  
4 necessary to winding down the Debtor's business, liquidating its assets, or investigating or  
5 prosecuting any litigation or claims, under those circumstances, payment of storage costs will  
6 become unnecessary and wasteful. As they become Unnecessary Documents, such documents  
7 should be disposed of by shredding, and the estate should be authorized to pay the estimated cost  
8 ranging between \$500 and \$600. In addition, in the event the Court does not authorize the turnover  
9 of the Customer List Documents to Great Collections, or Great Collections no longer wishes to  
10 receive the Customer List Documents, the trustee seeks authority to dispose of those documents as  
11 well.

12 IV.

13 **BASIS FOR RELIEF REQUESTED**

14 A. **The Debtor May Abandon Documents That It Determines in Good Faith to Be**  
15 **Burdensome or of Inconsequential Value**

16 The destruction or other disposal or abandonment of the Unnecessary Documents and the  
17 Customer Records is governed by sections 554(a) and 363 of the Bankruptcy Code. Section 554(a)  
18 provides, in pertinent part:

19 After notice and a hearing, the trustee may abandon any property of  
20 the estate that is burdensome to the estate or that is of inconsequential  
21 value and benefit to the estate.

22 11 U.S.C. § 554 (a). Section 363(b)(1) provides, in pertinent part:

23 The trustee, after notice and a hearing, the trustee may use, sell, or  
24 lease, other than in the ordinary course of business, property of the  
estate.

25 11 U.S.C. § 363(b)(1).

26 The destruction or other disposal of the Unnecessary Documents is also governed by  
27 Bankruptcy Rule 6007, which reads, in pertinent part, as follows:

28 Notice of Proposed Abandonment or Disposition; Objections; Hearing.  
Unless otherwise directed by the court, the trustee or debtor in

possession shall give notice of a proposed abandonment or disposition of property to the United States trustee, all creditors, indenture trustee and committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code. A party in interest may file and serve an objection within 15 days of the mailing of the notice, or within the time fixed by the court. If a timely objection is made, the court shall set a hearing on notice to the United States trustee and to the other entities as the court may direct.

Fed.R. Bankr. P. 6007.

Generally, where a trustee seeks to use, sell or lease assets of the estate pursuant to section 363 of the Bankruptcy Code, the trustee's good faith business judgment regarding the proposed transaction should not be disturbed absent a showing that the transaction constitutes an abuse of discretion or is contrary to the interests of the creditors. *See Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 149-50 (3d Cir. 1986). The same standard applies to a request to abandon property pursuant to section 554 of the Bankruptcy Code. *See In re Cult Awareness Network, Inc.*, 205 B.R. 575, 579 (Bankr. N.D. Ill. 1997) (court must examine trustee's decision to abandon property to ensure it reflects business judgment made in good faith). Section 554(a) of the Bankruptcy Code "serves the purpose of expeditious and equitable distribution by permitting the trustee to abandon property that consumes the resources and drains the income of the estate." *In re Pilz Compact Disc, Inc.*, 229 B.R. 630, 635 (Bankr. E.D. PA 1999) (citation omitted).

Under this case, the trustee is entitled to abandon the Customer List Documents to Great Collections and to destroy the Unnecessary Documents as and when they become unnecessary. In the trustee's business judgment, spending funds to store the Debtor's books, records and files is not justified once these documents have no value to the estate. Accordingly, the Motion should be granted.

**B. Section 554 Preempts Regulations Requiring Document Retention**

"State laws that require the trustee to maintain [proposed abandoned] property may be preempted." *Borden, Inc. v. Wells-Fargo Business Credit (In re Smith-Douglass, Inc.)*, 856 F.2d 12, 16 (4<sup>th</sup> Cir. 1988). *See also National Collection Agency, Inc. v. Trahan*, 624 F.2d 906, 907 (9<sup>th</sup> Cir. 1980) ("A state law that is contrary to federal bankruptcy law must yield.").<sup>5</sup>

<sup>5</sup> *Cf. In re Catamount Dyers, Inc.*, 50 B.R. 790, 794 (Bankr. D. Vt. 1986) (the mandate of 28 U.S.C. § 959(b) to "manage and operate" the debtor's property in accordance with state law is inapplicable to abandonment because abandonment is

1 In *Adelphi Hospital Corp. v. Sarf* (*In re Adelphi Hospital Corp.*), 579 F.2d 726, 728 (2<sup>nd</sup> Cir.  
2 1978), the Second Circuit allowed a bankruptcy trustee to abandon patients' medical records,  
3 contrary to state regulations requiring record retention. *Id.* at 727. In so holding, the Second Circuit  
4 emphasized that "[i]t is beyond peradventure that federal law prevails over inconsistent state laws . .  
5 . [a]nd under federal law, abandonment in this case is clearly permissible." *Id.* at 729 (citations  
6 omitted).<sup>6</sup>

7 In fact, the "only restriction on the trustee's explicit statutory authority to abandon  
8 burdensome property of the estate is the public health and safety exception created" by the Supreme  
9 Court in *Midlantic National Bank v. New Jersey Dep't of Environmental Protection*, 474 U.S. 494,  
10 507 (1986). *In re Vel Rey Properties, Inc.*, 174 B.R. 859, 867 (Bankr. D. D.C. 1994). However, as  
11 the Supreme Court made clear:

12 This exception to the abandonment power vested in the trustee by  
13 § 554 **is a narrow one**. It does not encompass a speculative or  
14 indeterminate future violation of such laws that may stem from  
15 abandonment. The abandonment power is not to be fettered by laws or  
16 regulations **not reasonably calculated to protect the public health or  
safety from imminent and identifiable harm**. For abandonment  
power to be fettered by other laws, there must be **an imminent and  
identifiable harm** as there was in this case.<sup>7</sup>

17 *Midlantic* at 474 U.S. at 505, n. 9 (emphasis added). *See also In re Allen Care Centers, Inc.*, 96 F.3d  
18 1328 (9<sup>th</sup> Cir. 1996) (rationale of *Midlantic* exception is that bankruptcy trustee has statutory and  
19 common-law duty not to abrogate state laws relating to public health and safety).

20 To the extent the Debtor's books, records and files are subject to state laws and regulations  
21 regarding their retention, those laws and regulations are inapplicable. Based on the foregoing, the  
22 trustee should be granted the authority to turn over the Great Collection Documents and destroy or  
23

24 not managing the debtor). *Accord, In re St. Lawrence Corp.*, 239 B.R. 720, 727 (Bankr. D. N.J. 1999), *affirmed* 248  
B.R. 734, 740, n. 7 (Bankr. D. N.J. 1999).

25 <sup>6</sup> *Adelphi* was decided before the 1978 codification of the Bankruptcy Code and the adoption of section 554 in its  
26 current form. The right to abandon burdensome, onerous or unprofitable property has been a recognized principle of  
27 bankruptcy law for more than a century. *See, e.g., American File Co. v. Garrett*, 110 U.S. 288, 295 (1884). Section 554  
codifies this long standing right of abandonment. *Midlantic*, 474 U.S. at 763. Since *Adelphi*, Congress has set forth  
certain procedures to protect patients' privacy when a debtor exercises its right to abandon and dispose of patient  
records. *See Collier on Bankruptcy*, 15<sup>th</sup> Ed. Revised, ¶ 351.LH at 351-12.

28 <sup>7</sup> In *Midlantic*, the Supreme Court held that the bankruptcy trustee not abandon flammable lagoons filled with toxic  
waste because abandonment would have exacerbated an already significant threat to the public's health and safety. *Id.*,  
474 U.S. 501 (1986).

1 otherwise dispose of the Unnecessary Documents as set forth in the Motion. In the event that the  
2 Court does not authorize the turnover of the Customer List Documents, or Great Collections no  
3 longer wishes to receive the Customer Documents, the Motion seeks authority to destroy or  
4 otherwise dispose of the Customer List Documents as well.

5 **V.**

6 **NOTICE**

7 Notice of this Motion has been given to the following parties or, in lieu thereof, to their  
8 counsel, if known, (i) the U.S. Trustee, (ii) parties that have filed with the Court requests for notice  
9 of all matters in accordance with Bankruptcy Rule 2002(i), (c) the Debtor's agent for service, (d) any  
10 party with a direct pecuniary interest in the subject matter of the Motion, or its counsel, and (e) any  
11 party requesting and consenting to e-mail notice of the Limited Notice Matters. The Debtor submits  
12 that, in light of the nature of the relief requested and prior order of the Court, no other or further  
13 notice need be given.<sup>8</sup>

14 No prior request for the relief sought in this Motion has been made to this Court or any other  
15 court.

16 **VI.**

17 **CONCLUSION**

18 **WHEREFORE**, for all the foregoing reasons, the trustee respectfully requests entry of an  
19 Order:

- 20 1. Granting this Motion in its entirety;
- 21 2. Authorizing but not directing the trustee to turn over to Great Collections the Great  
22 Collection Documents;
- 23 3. Authorizing the trustee to dispose of the Unnecessary Documents as and when they  
24 become unnecessary;
- 25 4. Authorizing the trustee to make the payments necessary to shred the Unnecessary  
26

27 <sup>8</sup> Pursuant to this *Court's Order Limiting Scope of Notice* [Dkt. No. 157] entered August 6, 2014, the Court authorized  
28 the trustee to limit the scope of notice as to certain matters, and accordingly, the trustee is required to serve motions to  
abandon property and motions under Section 363 of the Bankruptcy Code (as well as other types of pleadings) only on a  
limited service list.

1 Documents including, without limitation, the Tax Documents and the Litigation Documents, as and  
2 when they become Unnecessary Documents, and if the turnover to Great Collections is denied, or  
3 Great Collections no longer wishes to receive the Great Collection Documents, to also shred the  
4 Customer List Documents at an aggregate estimated cost of \$500 - \$600, and to take all reasonable  
5 and necessary actions to effectuate the destruction or other disposition or abandonment of said  
6 documents; and

7 5. Granting such other and further relief as is deemed equitable and just.

8  
9 Dated: May 6, 2016

PACHULSKI STANG ZIEHL & JONES LLP

10 By /s/ Linda F. Cantor  
11 Linda F. Cantor  
12 Proposed Attorneys for chapter 7 trustee  
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PACHULSKI STANG ZIEHL & JONES LLP  
ATTORNEYS AT LAW  
LOS ANGELES, CALIFORNIA



# **Exhibit A**

The Tulving Company, Inc.  
Document Inventory Related to Sales / Purchases

Box No.	Start Date	End Date	Description of Boxes
TC-018	12/01/12	01/31/13	Gold - Invoices - 12/2012 - 01/2013
TC-019	05/01/13	10/31/13	Gold - Invoices 05-10 2013
TC-020	02/01/13	03/31/13	Sales Invoices - Gold
TC-021	04/01/13	05/31/13	Sales Invoices - Gold
TC-022	11/01/13	12/31/13	Gold - Invoices - 11-12 2013
TC-024	12/01/11	02/15/12	Sales Invoices - Gold
TC-024	02/01/12	04/30/12	Gold - Invoices - 02-04 2012
TC-025	05/01/12	08/31/12	Sales Invoices - Gold
TC-026	04/01/12	05/31/12	Sales Invoices - Gold
TC-027	08/01/12	10/31/12	Sales Invoices - Gold
TC-028	02/01/11	4/31/11	Sales Invoices - Gold
TC-029	10/01/12	12/31/12	Sales Invoices - Gold
TC-030	12/01/12	01/02/11	Gold - Invoices 12 2012, 01-02 2011
TC-031	04/01/12	06/30/11	Gold - Invoices 04-06 2011
TC-032	08/01/11	09/30/13	Sales Invoices - Gold
TC-033	08/01/11	10/31/11	Sales Invoices - Gold
TC-034	10/01/11	12/31/11	Sales Invoices - Gold
TC-035	11/01/11	12/31/11	Sales Invoices - Gold
TC-035	01/01/13	01/31/13	Sales Invoices - Silver
TC-036	01/01/13	02/28/13	Sales Invoices - Silver
TC-037	2014		Purchase Orders
TC-037	08/31/12		Purchase Order - Items never received - 1 PO
TC-037	Various		Sales Invoices - Cancelled
TC-038	03/01/13	04/30/13	Sales Invoices - Silver
TC-039	04/01/13	05/31/13	Sales Invoices - Silver
TC-041	06/01/11	07/31/11	Gold - Invoices 06-07 2011
TC-042	Various		Tulving Invoices - PAID
TC-042			Miscellaneous Shipping Supplies
TC-044	03/01/11	03/31/11	Sales Invoices - Silver
TC-047	03/01/11	04/30/11	Sales Invoices - Silver
TC-050	05/01/13	08/31/13	Sales Invoices - Silver
TC-051	01/01/12	01/31/12	Sales Invoices - Silver
TC-051	06/01/13	12/31/13	Sales Invoices - Silver
TC-052	01/01/12	03/31/12	Sales Invoices - Silver
TC-053	04/01/11	05/31/11	Sales Invoices - Silver
TC-054	04/01/11	05/31/11	Sales Invoices - Silver
TC-055	06/01/11	08/31/11	Sales Invoices - Silver
TC-056	07/01/11	08/31/11	Sales Invoices - Silver
TC-057	08/01/11	09/30/11	Sales Invoices - Silver
TC-058	09/11/11	10/31/11	Sales Invoices - Silver
TC-059	10/01/11	11/30/11	Sales Invoices - Silver
TC-060	11/01/11	12/31/11	Sales Invoices - Silver
TC-061	03/01/12	05/31/12	Sales Invoices - Silver
TC-062	06/01/12	08/31/12	Sales Invoices - Silver
TC-063	05/01/12	09/01/12	Sales Invoices - Silver
TC-064	10/01/12	12/01/12	Sales Invoices - Silver
TC-065	01/01/11	02/01/11	Sales Invoices - Silver
TC-066	09/01/12	12/31/12	Sales Invoices - Silver
TC-067	01/01/11	01/31/11	Sales Invoices - Silver
TC-076	01/01/12	03/31/12	Purchase Orders for Coins and payment stubs
TC-077	04/01/12	06/30/12	Purchase Orders for Coins and payment stubs
TC-079	07/01/12	09/30/12	Purchase Orders for Coins and payment stubs
TC-082	10/01/12	12/31/12	Purchase Orders for Coins and payment stubs
TC-083	1/1/113	05/31/13	Purchase Orders for Coins and payment stubs

The Tulving Company, Inc.  
Document Inventory Related to Sales / Purchases

Box No.	Start Date	End Date	Description of Boxes
TC-084	6/31/13	12/31/13	Purchase Orders for Coins and payment stubs
TC-088	2010	2011	Sales Invoice Folders by Name
TC-090	08/01/08	09/30/08	Silver - Sales Invoices
TC-091	2011		Silver - Sales Invoices
TC-093	2008	2011	Silver - Sales Invoices
TC-095	Various		Sales Invoices
TC-106	2006		Tulving Sales Orders
TC-107	2006		Tulving Sales Orders
TC-108	03/01/10	04/30/10	Gold Invoice - 03/2010 - 04/2010
TC-110	2008		Tulving Purchase Orders
TC-111	2006		Tulving Sales Orders
TC-112	2007		Tulving Purchase Orders
TC-114	2009		Tulving Purchase Orders
TC-115	10/01/10	11/30/10	Gold Invoices - 10/2010-11/2010
TC-116	07/01/10	08/30/10	Gold Invoices - 07/2010-08/2010
TC-117	01/01/10	02/28/10	Gold Invoice - 01/2010 - 02/2010
TC-118	10/01/10	11/30/10	Gold Invoice - 10/2010 - 11/2010
TC-119	05/01/10	05/31/10	Gold Invoice - 05/2010
TC-120	07/01/10	07/31/10	Gold Invoice - 07/2010
TC-121	03/01/10	04/30/10	Silver Invoices - 03/2010-04/2010
TC-122	12/01/10	12/31/10	Silver Invoice - 12/2010
TC-123	02/01/10	02/28/10	Silver Invoices 02/2010
TC-124	06/01/10	06/30/10	Silver Invoices 06/2010
TC-125	11/01/10	11/30/10	Silver Invoices - 11/2010
TC-126	11/01/10	12/31/10	Silver Invoices - 11/2010-12/2010
TC-127	05/01/10	05/31/10	Silver Invoices 05/2010
TC-128	10/01/10	10/31/10	Silver Invoices 10/2010
TC-129	07/01/10	07/31/10	Silver Invoices 07/2010
TC-130	08/01/10	08/31/10	Silver Invoices - 08/2010
TC-134	09/01/10	09/30/10	Silver Invoices - 09/2010
TC-135	2008		Gold Invoices - 2008
TC-136	01/01/08	12/31/08	Gold Invoices - 2008
TC-137	01/01/09	12/31/09	Gold Invoices - 2009
TC-138	01/01/08	12/31/08	Gold Invoices - 2008
TC-139	01/01/09	12/31/09	Gold Invoices - 2009
TC-140	01/01/09	12/31/09	Gold Invoices - 2009
TC-141	01/01/09	12/31/09	Gold Invoices - 2009
TC-142	01/01/09	12/31/09	Gold Invoices - 2009
TC-143	01/01/09	12/31/09	Gold invoices - 2009
TC-144	01/01/09	12/31/09	Silver Invoices - 2009
TC-145	01/01/09	12/31/09	Silver Invoices - 2009
TC-146	01/01/07	12/31/07	Gold Invoices - 2007
TC-147	01/01/08	05/31/08	Silver Invoices - 01/2008 - 05/2008
TC-148	01/01/07	12/31/07	Gold Invoices - 2007
TC-149	01/01/07	12/31/07	Gold Invoices - 2007
TC-150	01/01/09	12/31/09	Silver Invoices - 2009
TC-151	01/01/09	12/31/09	Silver invoices - 2009
TC-152	01/01/08	12/31/08	Gold invoices - 2008
TC-153	01/01/09	12/31/09	Silver Invoices - 2009
TC-154	01/01/07	12/31/07	Gold Invoices - 2007
TC-155	01/01/05	05/31/05	Sales Invoices 01/2005-05/2005
TC-157	06/01/05	12/31/05	Sales Invoices 06/2005 - 12/2005
TC-159	2006	2009	Sales Invoices - David Lawrens 2007-2009 & Heritage Auctions 2006-2008
TC-161	01/01/11	12/31/11	Purchase Orders - 2011

The Tulving Company, Inc.  
Document Inventory Related to Sales / Purchases

Box No.	Start Date	End Date	Description of Boxes
TC-165	Various		Mystic Purchase Invoices
TC-168	Various		Sales Invoices
TC-169	01/01/06	12/31/06	Silver Invoices - 2006
TC-171	10/31/04	12/31/04	Invoices - 10/2004 - 12/2004
TC-172	08/01/04	12/31/04	Sales Invoices - 08/2004-12/2004
TC-174	01/01/04	12/31/04	Silver Invoices - 2004
TC-175	12/01/04	04/30/05	Silver Invoices - 12/2004 - 04/2005
TC-176	01/01/04	12/31/04	Gold Invoices - 2004
TC-177	01/01/04	12/31/05	Sales Invoices - 2004-2005
TC-178	01/01/09	12/31/09	2009 Sales Invoices
TC-183	01/01/14	12/31/14	Tulving 2014 Invoices
TC-183	Various		Tulving Sales Invoices
TC-183	01/01/14	02/28/14	Purchase Orders for Coins and payment stubs
TC-183	Various		Tulving Purchase Orders - Miscellaneous
TC-183	Various		Tulving Purchase Orders - Cancelled
TC-183	Various		Purchase Orders for Coins and payment stubs
TC-183	Various		Purchase Orders for Coins and payment stubs
TC-183	03/01/12	06/30/12	Silver - Invoices 03/2012 - 06/2012
TC-184	01/01/11	12/31/11	2011 Sales
TC-184	Various		Invoices
TC-184	Various		Tulving Invoices
TC-185	Various		Sales Invoices
TC-186	01/01/07	12/31/07	Sales Invoices - 2007

Note: Total number of boxes related to sales/purchases, excluding duplicates, is 116 boxes.

**DECLARATION OF R. TODD NEILSON**

I, R. Todd Neilson, declare as follows:

1. Pursuant to a *Notice of Appointment of Trustee and Fixing of Bond; Acceptance of Appointment as Trustee* dated June 6, 2014 [Dkt. No. 126], I was appointed to serve as the chapter 7 Trustee of the Debtor, and I continued to serve as the chapter 7 trustee through and including March 31, 2016. 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 *Notice Of Motion And Trustee's Motion For Order (I) Authorizing The Turnover Of Certain Books, Records And Files Of The Debtor To Greatcollections.Com D/B/A Great Collections, (II) Authorizing The Disposal Of Other Books, Records And Files Of The Debtor As They Become Unnecessary, (III) Authorizing Payment Of Disposal Costs When Incurred, And (IV) Granting Related Relief* (the "Motion"). All capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

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. 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 Mr. Tulving by the United States Attorney for the Western District of North Carolina was also being pursued.

4. The Debtor ceased operations on or about March 3, 2014. 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 Mr. Tulving were engaged in fraud. The Search Warrant resulted in the seizure of the Debtor's property including rare coins and other valuable items. During this Bankruptcy Case, and with approval of the Bankruptcy Court, the Debtor, through Mr. Tulving, and Mr. Tulving individually pled guilty to one count of 18 U.S.C. § 1343 wire fraud charge as set forth

1 in Count One of a Bill of Information in the Criminal Case and, among other things, agreed to pay  
2 restitution to the victims of fraud.

3 5. The Debtor commenced this case by the filing of a voluntary petition for relief under  
4 chapter 11 of the Bankruptcy Code on March 10, 2014. In light of the pending criminal  
5 investigation and other ongoing litigation against the Debtor, on March 18, 2014, the United States  
6 Trustee filed a *Stipulation Appointing Chapter 11 Trustee* [Docket No. 15], which was signed by  
7 both the Debtor and its attorney. The Stipulation was approved by the Bankruptcy Court on  
8 March 18, 2014 [Docket No. 16] and an Order was entered by the Court on March 21, 2014  
9 approving the UST's Application for the Appointment of a Chapter 11 Trustee, appointing me as  
10 Trustee of the Debtor's estate [Docket No. 22]. Thereafter upon notice and hearing, the case was  
11 converted to a chapter 7 and I was appointed to serve as the chapter 7 Trustee [Docket 108]. On  
12 March 22, 2016, I filed a Withdrawal of Trustee [Docket 564]. The UST filed its *Notice of*  
13 *Appointment of Trustee and Fixing of Bond; Acceptance of Appointment as Trustee* dated April 1,  
14 2016 [Docket 566], appointing Weneta M. A. Kosmala as the Chapter 7 trustee of the Debtor's  
15 estate.

16 6. As discussed in pleadings previously filed with the Court, I have been working  
17 steadily toward the orderly liquidation of the estate assets. In this regard, during the chapter 11 case  
18 I rejected the Debtor's residential and non-residential real property leases and retained an auctioneer  
19 to sell the personal property of the Debtor that remained in the leased premises. The books, records  
20 and files of the Debtor that were not seized by the United States Secret Service were reviewed and  
21 inventoried by my professionals, Berkeley Research Group, LLC. To the extent the Debtor's files,  
22 books and records were not immediately needed for estate administration purposes, they were placed  
23 in storage. I obtained Bankruptcy Court authority to pay rent for the storage facility of \$200.00 per  
24 month. Rental is paid through July 3, 2016 and is charged on a month-to-month basis. There are  
25 approximately 184 banker's boxes currently located at the storage facility.

26 7. I also sought and obtained authorization to sell the Debtor's customer lists, phone  
27 numbers, web address, certain customer files, and related personal property to Great Collections by  
28 Order of the Bankruptcy Court entered January 12, 2015. Prior to the Customer List Sale, on or

1 about September 9, 2014, I entered into a stipulation with the Office of the United States Trustee for  
2 the appointment of an Ombudsman to consider whether the proposed customer list sale was  
3 consistent with the provisions of Sections 363(b)(1)(A) and 363(b)(1)(B) of the Bankruptcy Code.  
4 The UST's appointment of Wesley Avery as Ombudsman was approved by Order of the Bankruptcy  
5 Court dated September 15, 2014 [Dkt. No. 182]. On October 22, 2014, the Ombudsman filed his  
6 report [Dkt. No. 184] in which he concluded that, assuming Great Collections adopts the Debtor's  
7 prepetition privacy policy, the Customer List Sale is (i) consistent with the Privacy Policy in  
8 compliance with Bankruptcy Code section 363(b)(1)(A) and (ii) would not violate applicable non-  
9 bankruptcy law in compliance with section 363(b)(1)(B). As set forth in the Addendum to Asset  
10 Purchase Agreement [Dkt. 208 at page 16 of 17], approved by the Bankruptcy Court under the Sale  
11 Order, Great Collections acknowledged and agreed that it would fully abide by and implement the  
12 Debtor's Privacy Policy in respect of any and all personally identifiable information of and relating  
13 to Debtor's customers.

14 8. As noted above, prior to my appointment as chapter 11 trustee, a majority of the  
15 Debtor's assets were seized by the United States Secret Service. Since the time of my initial  
16 appointment as chapter 11 trustee and through much of the chapter 7 case, I have been working with  
17 the Department of Justice to coordinate the administration and disposition of the Seized Assets  
18 between the DOJ and this bankruptcy estate. Those efforts led to a Coordination Agreement,  
19 approved by the District Court and the Bankruptcy Court, allowing the bankruptcy estate to  
20 administer the Seized Assets. The Coordination Agreement is being implemented in accordance  
21 with my Proposal to transfer the Seized Assets to Heritage Auctioneers for the sale and other  
22 disposition of the coins to creditors who were also victims of the Debtor's criminal actions. The  
23 Seized Assets have now been transferred from the Government depository in Wilmington, Delaware  
24 to the offices of Heritage Auctioneers in Dallas, Texas and the auctioneers are in the process of  
25 inventorying the coins prior to conducting an auction, which is currently scheduled for June 10,  
26 2016.

27 9. Subsequent to the Customer List Sale, Great Collections requested that I turn over  
28 certain books, records and files that relate to the property it purchased in the Customer List Sale.

1 Those books, records and files are listed on **Exhibit A** hereto. Because of the then-pending criminal  
2 investigation of the Debtor and Mr. Tulving and the Government's potential need for the Customer  
3 List Documents, I granted Great Collections an opportunity to inspect and review the Customer List  
4 Documents but did not turn them over. Great Collections conducted an initial review of the  
5 Customer List Documents and has since reiterated its request for the turnover of the Customer List  
6 Documents in order to maximize the value of the property it purchased in the Customer List Sale.

7 10. The Motion seeks authority to turn over the Customer List Documents to Great  
8 Collections. It is my belief that the Customer List Documents are not necessary for the  
9 administration of the Debtor's estate and that their continued storage and related costs are  
10 burdensome to the estate. Since consummation of the Customer List Sale, the Debtor and Mr.  
11 Tulving entered into the plea agreement with the Government, as described in the Motion, and the  
12 Customer List Documents would now appear unnecessary for the prosecution of criminal charges  
13 against the Debtor and Mr. Tulving. Furthermore, Great Collections entered into an Undertaking  
14 Agreement with me to preserve and prevent the destruction of the Customer List Documents, and to  
15 return any business or accounting documents not related to the Customer Lists inadvertently  
16 included with the Customer List Documents. In the Undertaking Agreement, Great Collections has  
17 also reiterated and acknowledged its agreement to maintain the Debtor's prepetition Privacy Policy  
18 with respect to the Customer List Documents. I believe that the agreement of Great Collections to  
19 abide by the Debtor's Privacy Policy in connection with the sale of the Customer Lists as well as its  
20 entry into the Undertaking Agreement concerning the Customer List Documents safeguard against  
21 inadvertent turnover or loss of information.

22 11. The Motion seeks authority to immediately dispose of the remaining books, records  
23 and files of the Debtor as and to the extent they are not needed for the preparation of tax returns or  
24 for the pursuit of third party claims and prosecution of the estate lawsuits against Armen and Levon  
25 Gugasian. I am informed and believe that the cost to shred all of the Debtor's books, records and  
26 files is estimated to range between \$500 and \$600.

27 12. Having administered the Debtor's estate for over two years, it is my business  
28 judgment that the turnover and/or disposal of the Debtor's books, records and files as set forth in the



1 Motion is in the best interests of the estate. The estate has no use for the Customer List Documents  
2 and the use of those documents by Great Collections is consistent with its purchase of the Customer  
3 Lists. It is also my business judgment that the as the Debtor's books, records and files become  
4 unnecessary for (i) the administration of the Debtor's estate, (ii) winding down the Debtor's business,  
5 (iii) liquidating its assets, or (iv) the investigation of or prosecuting any litigation or claims, they will  
6 have no value. Under those circumstances, I believe that payment of storage costs will be  
7 unnecessary and wasteful and I have so advised the newly appointed chapter 7 trustee.

8 13. It is my business judgment and I have recommended to the newly appointed chapter 7  
9 trustee that the Unnecessary Documents should be disposed of by shredding. In addition, in the  
10 event the Court does not authorize the turnover of the Customer List Documents to Great Collections  
11 or Great Collections no longer wishes to receive the Customer List Documents, I have recommended  
12 to the newly appointed trustee that those documents also be disposed of by shredding and the Motion  
13 seeks authority to pay up to the total cost, estimated to be approximately \$500-\$600, as and when  
14 incurred.

15  
16 I declare under penalty of perjury that the foregoing is true and correct.

17 Executed this 5<sup>th</sup> day of May, 2016, in Draper, Utah.

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20 R. TODD NEILSON  
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**DECLARATION OF WENETA M.A. KOSMALA**

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

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

2. I make this declaration in support of the *Trustee's Motion For Order (I) Authorizing The Turnover Of Certain Books,, Records And Files Of The Debtor To Greatcollections.Com D/B/A Great Collections, (II) Authorizing The Disposal Of Other Books, Records And Files Of The Debtor As They Become Unnecessary, (III) Authorizing Payment Of Disposal Costs When Incurred, And (IV) Granting Related Relief* (the "Motion"). All capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

3. Except where otherwise stated, I make this Declaration on facts within my personal knowledge (albeit my own or that gathered by proposed professionals rendering services to me), or as a result of having reviewed the court file in this Case and having conferred with R. Todd Neilson and having reviewed his declaration (the "Neilson Declaration") appended to the Motion. If called upon, I can and will competently testify to the facts stated herein.

4. In the exercise of my business judgment, and based on the record in this case and the recommendation of Mr. Neilson, I am informed and believe that (a) the turnover and/or disposal of the Debtor's books, records and files as set forth in the Motion is in the best interests of the estate, (b) the estate has no use for the Customer List Documents, and (c) the use of those documents by Great Collections is consistent with its purchase of the Customer Lists. I am also informed and believe, based upon the court record in this case, that Great Collections agreed to maintain the Debtor's Privacy Policy in connection with the sale of the Customer Lists.

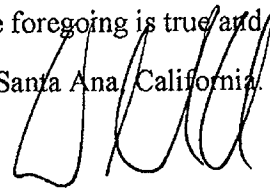
5. In the exercise of my business judgment, and based upon the record in this case, the Neilson Declaration and having conferred with Mr. Neilson, I am informed and believe that once the Debtor's books, records and files become unnecessary for the administration of the Debtor's estate, such that they are not necessary for winding down the Debtor's business, liquidating its assets, or

1 investigating or prosecuting any litigation or claims, payment of storage costs will become  
2 unnecessary and wasteful.

3 6. I concur with the recommendation of R. Todd Neilson that as the Debtor's books,  
4 records and files become Unnecessary Documents, they should be disposed of by shredding, and that  
5 the estate should be authorized to pay the estimated cost ranging between \$500 and \$600, as and  
6 when incurred. In addition, in the event the Court does not authorize the turnover of the Customer  
7 List Documents to Great Collections or Great Collections no longer wishes to receive the Customer  
8 List Documents, I seek authority to dispose of those documents by shredding as well.

9  
10 I declare under penalty of perjury that the foregoing is true and correct.

11 Executed this 5<sup>th</sup> day of May, 2016 in Santa Ana, California.



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13 Weneta M.A. Kosmala  
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## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: **10100 Santa Monica Blvd., 13<sup>th</sup> Floor, Los Angeles, CA 90067**

A true and correct copy of the foregoing document entitled **NOTICE OF MOTION AND TRUSTEE'S MOTION FOR ORDER (I) AUTHORIZING THE TURNOVER OF CERTAIN BOOKS, RECORDS AND FILES OF THE DEBTOR TO GREATCOLLECTIONS.COM D/B/A GREAT COLLECTIONS, (II) AUTHORIZING THE DISPOSAL OF OTHER BOOKS, RECORDS AND FILES OF THE DEBTOR AS THEY BECOME UNNECESSARY, (III) AUTHORIZING PAYMENT OF DISPOSAL COSTS WHEN INCURRED, AND (IV) GRANTING RELATED RELIEF; DECLARATIONS OF R. TODD NEILSON AND WENETA M.A. KOSMALA IN SUPPORT THEREOF** 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 May 6, 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 May 6, 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 May 6, 2016, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

***Via Federal Express***

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

☐ 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.

May 6, 2016

Date

Janice G. Washington

Printed Name

/s/Janice G. Washington

Signature

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

June 2012

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**F 9013-3.1.PROOF.SERVICE**

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

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

david.gibbs@gibbslaw.com,  
ecf@gibbslaw.com

Michael R Adele on behalf of Defendant  
Levon Gugasian  
techlitcenter@yahoo.com, kadele@wglp.com

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

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

Lawrence J Hilton on behalf of Creditor  
Jeffrey Roth  
lhilton@onellp.com,  
lthomas@onellp.com;info@onellp.com;jander  
son@onellp.com;crodriguez@onellp.com;lit  
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Candice Bryner on behalf of Creditor  
Giuseppe Minuti  
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James KT Hunter on behalf of Plaintiff R.  
TODD NEILSON  
jhunter@pszjlaw.com

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

James KT Hunter on behalf of Plaintiff R.  
Todd Neilson  
jhunter@pszjlaw.com

Philip Burkhardt on behalf of Other  
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stacey@burkhardtandlarson.com

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

Stephen L Burton on behalf of Attorney  
Stephen L. Burton  
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ellie.burtonlaw@gmail.com

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Frank Cadigan on behalf of U.S. Trustee  
United States Trustee (SA)  
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Nanette D Sanders on behalf of Creditor  
Levon Gugasian  
becky@ringstadlaw.com

Linda F Cantor, ESQ on behalf of Other  
Professional Pachulski Stang Ziehl & Jones  
LLP  
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Richard C Spencer on behalf of Interested  
Party Courtesy NEF  
rspencer@rspencerlaw.com

David L Gibbs on behalf of Creditor Kenneth  
W Stach

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

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

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

Chapter 7 Trustee

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Charlotte, NC 28202

Kevin Zolot  
Assistant U.S. Attorney  
Department of Justice

Laurence P Nokes on behalf of Interested

Party John Frankel  
Nokes & Quinn  
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Interested Party

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Douglas J Frye Esquire  
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Malibu, CA 90265

Great Collections  
2030 Main Street, Suite 620  
Attn: Ian Russell  
Irvine, CA 92614

Armen R. Vartian  
1601 N. Sepulveda Blvd. #581  
Manhattan Beach, CA 90266

Counsel for Creditor Levon Gugasian

Nanette D. Sanders, Esq.  
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Irvine, CA 92614

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June 2012

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**F 9013-3.1.PROOF.SERVICE**