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6 Chapter 7 Trustee for The Tulving Company, Inc.

7
8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SANTA ANA DIVISION**

11 In re:
12 THE TULVING COMPANY, INC., a
California corporation,

13
14 Debtor.

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

Chapter 7

**CHAPTER 7 TRUSTEE'S NOTICE OF
MOTION AND MOTION FOR ORDER
DIRECTING FEDERAL RULE OF
BANKRUPTCY PROCEDURE 2004 ORAL
EXAMINATION OF MARC ONE
NUMISMATICS, INC.; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
THEREOF; AND DECLARATIONS OF
WENETA M.A. KOSMALA AND LINDA F.
CANTOR IN SUPPORT THEREOF**

[No Hearing Required per LBR 2004-1(d) and
LBR 9013-1(p)(3)]

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21 **TO THE HONORABLE ERITHE A. SMITH, UNITED STATES BANKRUPTCY
22 JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, THE DEBTOR, MARC ONE
23 NUMISMATICS, INC., AND PARTIES WHO HAVE FILED A REQUEST FOR SPECIAL
24 NOTICE PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 2002:**

25 **PLEASE TAKE NOTICE THAT** Weneta M.A. Kosmala, in her capacity as the duly
26 appointed, authorized and acting chapter 7 trustee of the above captioned Debtor's estate (the
27 "Trustee"), hereby moves the Court (the "Motion"), pursuant to Rule 2004 of the Federal Rules of
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1 Bankruptcy Procedure (“Rule 2004”) and Local Bankruptcy Rule 2004-1 (“LBR 2004-1”), for an
2 Order requiring that Marc One Numismatics, Inc. (“Marc One”), through its principal Marc Crane,
3 appear for an oral examination pursuant to Rule 2004 with regard to the topics listed on **Exhibit A**
4 attached hereto.

5 The oral examination is necessary because the Trustee has incomplete information
6 concerning certain valuable rare coin transactions between the Debtor and Marc One. The Debtor
7 did not file its own Schedules of Assets and Liabilities, or a Statement of Financial Affairs, and the
8 records of the Debtor available to the Trustee are limited in detail and scope. Pursuant to informal
9 agreement, Marc One has provided documentation to the Trustee concerning its rare coin
10 transactions with the Debtor. However, the Trustee requires additional information concerning these
11 transactions and requires an oral examination of Marc One to determine whether the estate holds any
12 claims for relief against Marc One with regard to the coin transactions. The matters for which
13 testimony will be required is set forth on **Exhibit A** to the Motion.

14 **PLEASE TAKE FURTHER NOTICE** that the Motion is based on this Notice of Motion
15 and Motion, the Memorandum of Points and Authorities, the attached *Declaration of Weneta M.A.*
16 *Kosmala* (the “Kosmala Declaration”) and *Declaration of Linda F. Cantor* (the “Cantor
17 Declaration”), the pleadings and records on file in the above-captioned bankruptcy case, and on such
18 other matters and further evidence as may be presented to the Court on any hearing relating to this
19 Motion.

20 **PLEASE TAKE FURTHER NOTICE** that if you do not object to the Motion, you need
21 take no further action. However, if you object to the Motion, any motions for protective orders must
22 be filed and served in accordance with LBR 2004-1 and set for hearing. Any such motion for a
23 protective order must be filed with the Clerk of the United States Bankruptcy Court, and must be
24 served upon counsel for the Trustee at the mailing address indicated in the upper left-hand corner of
25 the first page of this Motion, and upon the Office of the United States Trustee. Failure to timely file
26 and serve any motion for protective order may result in any such opposition to the oral examination
27 and production of documents and things being waived.
28

1 **PLEASE TAKE FURTHER NOTICE** that, as set forth in the Motion and the Cantor
2 Declaration, pursuant to LBR 2004-1(a) and (b), counsel for the Trustee certifies that good faith
3 efforts were used to meet and confer with Marc One counsel and to arrange for an agreeable date,
4 time, place and scope of examination.

5 **WHEREFORE**, the Trustee respectfully requests that the Court grant the Motion and enter
6 an Order thereon, which is lodged with the Court under separate cover and concurrently herewith in
7 compliance with Local Bankruptcy Rules.

8
9 Dated: March 6, 2017

PACHULSKI STANG ZIEHL & JONES LLP

10
11 By /s/ Linda F. Cantor
Linda F. Cantor
James Hunter

12
13 Counsel for Weneta M.A. Kosmala,
14 Chapter 7 Trustee for the Tulving
Company, Inc.
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

By the Motion, Weneta M.A. Kosmala, solely in her capacity as Chapter 7 Trustee for The Tulving Company, Inc. (the "Trustee"), seeks an order authorizing her to issue a subpoena duces tecum on Marc One Numismatics, Inc. ("Marc One"), through its principal Marc Crane, pursuant to Federal Rule of Bankruptcy Procedure 2004 ("Rule 2004") for an oral examination. The oral examination is necessary to determine whether the estate may have claims relating to transactions between the Debtor and Marc One for the purchase and sale of valuable rare coins (the "Coins"). The oral examination is anticipated to span between two and three hours.

The proposed date, time, and location of the oral examination are as follows, subject to Court approval of the Motion:

Examination	Date and Time of Examination	Location of Oral Examination
Marc One Numismatics, Inc.	March 30, 2017 at 10:00 a.m. (Pacific Time) See Exhibit A	The law office of Armen R. Vartian, Counsel for Marc One, 1601 N. Sepulveda Blvd, #581, Manhattan Beach, CA 90266

The oral examination will be recorded stenographically and by use of interactive Real Time (via the Live Notes software program). The oral examinations may also be videotaped.

II.

STATEMENT OF FACTS

A. Jurisdiction and Venue

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The Background of the Debtor's Business

The Debtor, The Tulving Company, Inc. (the "Debtor"), is a California corporation. The Debtor was in the business of selling and purchasing gold, silver, coins, bullion, and other precious

1 metals through its internet website or by phone. Prior to the filing of this bankruptcy case, customer
2 complaints concerning delayed or undelivered orders were increasingly made to the Better Business
3 Bureau against the Debtor. In early March 2014, a class action lawsuit was filed against the Debtor
4 and its principal in the United States District Court for the Northern District of California. The
5 Debtor ceased operations on or about March 3, 2014. Shortly before the commencement of its
6 bankruptcy proceedings, the Secret Service and the Department of Justice raided the Debtor's
7 business offices, and seized the Debtor's computers, documents and inventory as part of an ongoing
8 criminal investigation.

9 **C. Procedural Background of Case**

10 The Debtor commenced this case by the filing of a voluntary petition for relief under chapter
11 11 of the Bankruptcy Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code") on March 10, 2014. In
12 light of the pending criminal investigation and other ongoing litigation, on March 18, 2014, the
13 United States Trustee (the "UST") filed a Stipulation Appointing Chapter 11 Trustee [Docket No.
14 15] ("Stipulation"), which both the Debtor and its attorney signed. The Court approved the
15 Stipulation on March 18, 2014 [Docket No. 16]. On March 21, 2014, the Court entered an Order
16 approving the UST's Application for the Appointment of a Chapter 11 Trustee, appointing R. Todd
17 Neilson as Trustee of the Debtor's estate [Docket No. 22]. Thereafter, upon notice and hearing, the
18 case was converted to a case under chapter 7 of the Bankruptcy Code. On March 22, 2016, Mr.
19 Neilson filed his Withdrawal of Trustee [Docket 564]. The UST filed its Notice of Appointment of
20 Trustee and Fixing of Bond; Acceptance of Appointment as Trustee dated April 1, 2016 [Docket
21 566], appointing Weneta M. A. Kosmala as the chapter 7 trustee of the Debtor's estate

22 **II.**

23 **THE COURT SHOULD GRANT THE MOTION**

24 **UNDER THE BROAD REACH OF RULE 2004**

25 Federal Rule of Bankruptcy Procedure Rule 2004(a) provides that, "[o]n motion of any party
26 in interest, the court may order the examination of any entity." Fed. R. Bank. P. 2004(a); *see also*
27 Local Bankruptcy Rule 2004-1(b). The scope of such an examination is extremely broad and
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1 includes “acts, conduct, or property or to the liabilities and financial condition of the debtor, or to
2 any matter which may affect the administration of the debtor’s estate.” Fed. R. Bank. P. 2004(b).
3 The Trustee’s request for an oral examination of Marc One is proper and appropriate under this
4 standard.

5 The Trustee is informed and believes that the Debtor and Marc One were involved in various
6 transactions concerning the purchase and sale of valuable rare coins (the “Coin Transactions”). The
7 Debtor’s books and records have only limited information concerning these transactions. By
8 agreement of the parties, Marc One has provided the Trustee with documentation concerning the
9 Coin Transactions and has supplemented such documentation from time to time. The Trustee has
10 additional questions concerning the Coin Transactions and documents provided by Marc One in
11 order to determine whether the estate has any claims against Marc One relating to the Coin
12 Transactions. The subject matter of the oral examination is listed on **Exhibit A** hereto.

13 The Trustee has a duty to investigate the financial affairs of the Debtor. *See* 11 U.S.C. § 704.
14 Therefore, the oral examination of Marc One through its principal Marc Crane is necessary for the
15 Trustee to satisfy his duty to investigate the Debtor’s financial affairs and to determine whether the
16 estate holds any claims for relief relating to the Coin Transactions.

17 III.

18 COMPLIANCE WITH LOCAL RULE 2004-1

19 As set forth in the *Declaration of Linda Cantor* (the “Cantor Decl.”), attached hereto, the
20 Trustee’s counsel initially contacted Marc One with regard to the Coin Transactions in May 2015.
21 Pursuant to subsequent communications with its counsel, Marc One produced documents concerning
22 the Coin Transactions which it supplemented from time to time at the request of the Trustee’s
23 counsel. The Trustee’s professionals, having reviewed the documents provided by Marc One, have
24 additional questions concerning the Coin Transactions and the documents provided by Marc One
25 relating thereto. Therefore, in January 2017, by voicemail message, counsel for the Trustee
26 contacted counsel for Marc One to advise him that the Trustee requested an oral examination of
27 Marc One’s principal, Marc Crane, and that the examination would span between two and three
28 hours. Subsequently, on February 15, 2017 and February 27, 2017, Trustee’s counsel again

1 contacted counsel for Marc One to advise him that the Trustee would seek an order of the Court
2 requiring an oral examination of Marc One, through its principal Marc Crane, if they would not
3 agree to schedule an oral examination. Marc One has not agreed to an oral examination date as
4 requested by the Trustee's counsel. *See* Cantor Decl. ¶ 3.

5 The proposed oral examination of Marc One cannot proceed under Federal Rules of
6 Bankruptcy Procedure 7030 or 9014 because there is no pending adversary proceeding or contested
7 matter in this bankruptcy case relating to Marc One.

8 **IV.**

9 **CONCLUSION**

10 For the reasons stated herein, the Trustee respectfully requests that the Court grant the
11 Motion. A form of Order is attached hereto as **Exhibit B** (and lodged separately and concurrently
12 with the filing of this Motion).

13 Dated: March 6, 2017

PACHULSKI STANG ZIEHL & JONES LLP

14 By: /s/ Linda F. Cantor

15 Linda F. Cantor (CA Bar No. 153762)

16 James Hunter (CA Bar No. 73369)

17 Counsel for Weneta M.A. Kosmala, Chapter 7
18 Trustee of the Tulving Company, Inc.

EXHIBIT A

Matters Regarding Which Testimony Will Be Required:

The various transactions concerning the purchase and sale of valuable rare coins involving the Debtor and Marc One (the "Coin Transactions"), Marc One's books and records concerning the Coin Transactions and the documentation previously provided by Marc One to the Trustee concerning the Coin Transactions.

In addition, all facts and documents supporting the attached Schedule A-1, the prices paid and source(s) from which Marc One purchased the coins it sold to the Debtor listed on Schedule A-1 and how to interpret the documents provided to the Trustee concerning the price of the coins purchased by Marc One and sold to the Debtor in order to establish a per coin price for the items listed under category 1 of the attached Schedule A1.

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

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EXHIBIT A-1

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

Presidents		Unk. Type	JQ Adams	Buchanan	Filmore	Harrison	Jackson	Madison	Pierce	Polk	Taylor	Tyler	Van Buren	09 Sec	01 Sec	08 MEL MS	Extension
1)	Coins from Marc One to Tulving:																
	rfl #62046 10/14/10	Qty:	225				175	600									
	rfl #59598 10/20/10	Qty:		200					200								
	rfl #62077 11/3/10	Qty:	2000														
	rfl #62109 11/4/10	Qty:	50	400	400	400	25	625	400	400	400	400	400				
	rfl #62113 11/8/10	Qty:	600	550	3000	1375			1000	1400	3000	850	825	300	300		
2)	Coins split with Tulving from Contursi 1/11/11	Qty:															
3)	540K split w/Tulving (2/9/11 loan from Gugassian paid Contursi) (Using same \$85 rate/coin for approx. qty.)	Approx. Qty:	8300								2000						
	Tulving Approx. Had. =		10350	1225	950	5600	1975	200	1225	1600	2000	5600	1450	2300	300		

4)	Coins returned to Marc One by Tulving:	Qty:	0	-625	-3000	-1375	0	0	-995	-1405	-3000	-850	-825	-300	0	-13200
5)	Difference between the known Types. What Tulving had vs returned to Marc One:	Qty:	0	600	425	2600	600	0	605	595	2600	600	800	2000	0	0
6)	Coins sold to Lipton 11/5/2014 by Marc One:	Qty:	1200	650	600	6225	1925	0	25	1125	7225	1625	2825	4947	1600	31248

7)	Bought from Byers and ultimately sold to KLRC + Tulving Returns of 13,200	Approx. Qty:	4150
	Invoice Dated 11/17/2010 \$95,000 pd. Ck #41233	Approx. Qty:	5250
	Invoice Dated 11/17/2010 \$120,000 Pd. Ck #41234	Approx. Qty:	4375
	Invoice Dated 11/17/2010 \$100,000 pd. Ck #41235	Approx. Qty:	5700
	Invoice Dated 11/17/2010 \$131,200 Pd. Ck #41236	Approx. Total =	19475
	Plus Tulving Returns =		13,200
	How you get KLRC =		32675

DECLARATION OF WENETA M.A. KOSMALA

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

1. I am the duly appointed chapter 7 trustee of the above-captioned bankruptcy case (the "Trustee").

2. I am making this Declaration in support of the *Motion For Order Directing Federal Rule Of Bankruptcy Procedure 2004 Oral Examination Of Marc One Numismatics, Inc.* (the "Motion"). All terms defined in the Motion shall have the same meanings when used herein.

3. Except as otherwise indicated, all facts set forth in this Declaration are based on: my personal knowledge, information supplied by my professionals or agents under my supervision, the record in this bankruptcy case or my opinion based on experience, knowledge, and information concerning the estate. If I were called to testify as a witness in this matter, I could and would competently testify to each of the facts set forth herein.

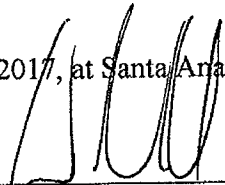
4. The Debtor's books and records indicate that the Debtor and Marc One were involved in various transactions concerning the purchase and sale of valuable rare coins. However, the Debtor did not file its own Schedules of Assets and Liabilities, or a Statement of Financial Affairs, and the records of the Debtor available to me and my professionals are limited in detail and scope. Pursuant to informal agreement between my counsel and counsel for Marc One, Marc One has provided documentation concerning its rare coin transactions with the Debtor and has supplemented that documentation from time to time. However, my professionals and I require additional information concerning these transactions and an oral examination of Marc One is necessary to determine whether the estate holds any claims for relief against Marc One with regard to the coin transactions. The matters for which testimony will be required is set forth on **Exhibit A** to the Motion.

5. As Trustee, I have a duty to investigate the financial affairs of the Debtor. See 11 U.S.C. § 704. Therefore, the oral examination of Marc One through its principal Marc Crane is necessary in order that I may satisfy my duty to investigate the Debtor's financial affairs and to determine whether the estate holds any claims for relief relating to the Coins and the transactions.

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

Executed on this 3rd day of March, 2017, at Santa Ana, California.



Weneta M.A. Kosmaia

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

DECLARATION OF LINDA F. CANTOR

I, Linda F. Cantor, declare as follows:

1. I am an attorney at law duly licensed to practice in all courts in the State of California and in the United States District Court for the Central District of California. I am a partner in the law firm of Pachulski Stang Ziehl & Jones LLP, counsel of record for Weneta M.A., the duly appointed chapter 7 trustee of the above-captioned bankruptcy case (the "Trustee").

2. This Declaration is made in support of the *Motion For Order Directing Federal Rule Of Bankruptcy Procedure 2004 Oral Examination Of Marc One Numismatics, Inc.* (the "Motion"). All terms defined in the Motion shall have the same meanings when used herein. I have personal knowledge of the facts set forth herein and if called as a witness, I could and would competently testify thereto.

3. I initially contacted Marc One with regard to its transactions with the Debtor for the purchase and sale of valuable rare coins in or about May, 2015. Pursuant to subsequent communications with its counsel, Marc One produced documents concerning the Coin Transactions which it supplemented from time to time upon my request. The Trustee's professionals, having reviewed the documents provided by Marc One, have additional questions concerning the Coin Transactions. Therefore, in January 2017, by voicemail message I contacted counsel for Marc One to advise him that the Trustee requested an oral examination of Marc One's principal, Marc Crane, and that the examination would span between two and three hours. Subsequently, on February 15, 2017 and February 27, 2017, I again contacted counsel for Marc One to advise him that the Trustee would seek an order of the Court requiring an oral examination of Marc One, through its principal Marc Crane, if it would not agree to schedule an oral examination. Marc One has not agreed to an oral examination date as requested by counsel.

4. The proposed oral examinations of Marc One cannot proceed under Federal Rules of Bankruptcy Procedure 7030 or 9014 because there is no pending adversary proceeding or contested matter in this bankruptcy case relating to Marc One.

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

Executed on this 6th day of March, 2017, at Los Angeles, California.

/s/ Linda F. Cantor
Linda F. Cantor

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

EXHIBIT B
FORM OF ORDER

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PACHULSKI STANG ZIEHL & JONES LLP
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James Hunter (CA Bar No. 73369)
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5 Counsel for Weneta M.A. Kosmala, Chapter 7 Trustee
6 for The Tulving Company, Inc..

7
8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SANTA ANA DIVISION**

11 In re:
12
13 THE TULVING COMPANY, INC., a California
corporation,

14
15 Debtor.

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

Chapter 7

**[PROPOSED] ORDER GRANTING
CHAPTER 7 TRUSTEE'S NOTICE OF
MOTION AND MOTION FOR ORDER
DIRECTING FEDERAL RULE OF
BANKRUPTCY PROCEDURE FOR 2004
ORAL EXAMINATION OF MARC ONE
NUMISMATICS, INC.**

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20 Upon consideration of the *Chapter 7 Trustee's Motion for Order Directing Federal Rule of*
21 *Bankruptcy Procedure 2004 Oral Examination of Marc One Numismatics, Inc* (the "Motion"); *the*
22 *Memorandum of Points and Authorities in Support Thereof; and the Declarations of Weneta M.A.*
23 *Kosmala and Linda F. Cantor in Support Thereof* filed by the Chapter 7 Trustee (the "Trustee"); and
24 good cause appearing therefore:

25 **IT IS HEREBY ORDERED** that:

- 26 1. The Motion is granted.
27 2. The Trustee shall issue a subpoena to Marc One Numismatics, Inc., requiring it to
28 submit to oral examination under oath on the date set forth in the Motion.

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3. The Court shall maintain jurisdiction of this matter.

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PACHULSKI STANG ZIEHL & JONES LLP
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1 **1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):**

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

25 June 2012

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Richard C Spencer on behalf of Interested Party Courtesy NEF
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United States Trustee (SA)
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1 **2. SERVED BY UNITED STATES MAIL:**

2 **Chapter 7 Trustee**

3 Weneta M.A. Kosmala
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5 Santa Ana, CA 92707

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8 & Blake, LLP
9 435 East Morehead Street
10 Charlotte, NC 28202

11 Marc J. Crane

12 Marc One Numismatics, Inc.
13 P.O. Box 8048
14 Newport Beach, CA 92658-8048

15 Marc One Numismatics, Inc.
16 c/o The law office of Armen R. Vartian
17 Counsel for Marc One
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20 Laurence P Nokes on behalf of Interested Party

21 John Frankel
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& Rare Coins**

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