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5
6 Proposed Counsel for R. Todd Neilson, Chapter 11
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
13 corporation,

14 Debtor.

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

Chapter 11

**DECLARATION OF LINDA F. CANTOR
RE: NON-OPPOSITION OR REQUEST FOR
HEARING ON THE MOTION OF THE
CHAPTER 11 TRUSTEE FOR ORDER
AUTHORIZING (1) REJECTION OF NON-
RESIDENTIAL REAL PROPERTY LEASE
LOCATED IN COSTA MESA,
CALIFORNIA, AND (2) ABANDONMENT
OF REMAINING PERSONAL PROPERTY
PURSUANT TO 11 U.S.C. §§ 365 AND 554,
PURSUANT TO LOCAL BANKRUPTCY
RULE 9013-1(O)(3)**

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20 I, Linda F. Cantor, declare and state as follows:

21 1. I am an attorney at law, duly licensed and entitled to practice before all courts in the
22 State of California and before this Court. I am a partner with the law firm of Pachulski Stang Ziehl
23 & Jones LLP (“PSZJ”), proposed counsel to R. Todd Neilson, Chapter 11 Trustee for The Tulving
24 Company, Inc. (the “Trustee”).

25 2. I have personal knowledge of the facts set forth herein and if called as a witness, I
26 could and would competently testify thereto.

27 3. On May 6, 2014, on behalf of the Trustee my office filed and served the motion
28 entitled *Motion Of The Chapter 11 Trustee For Order Authorizing (1) Rejection Of Non-Residential*

1 *Real Property Lease Located In Costa Mesa, California, And (2) Abandonment Of Remaining*
2 *Personal Property Pursuant To 11 U.S.C. §§ 365 And 554; Memorandum Of Points And*
3 *Authorities; Declaration Of R. Todd Neilson In Support Thereof* [Docket No. 89] (the “Motion”)
4 seeking to have said non-residential real property lease located in Costa Mesa, California rejected,
5 and the abandonment of any remaining personal property. A copy of the Motion, the Notice of
6 Motion and proof of service of same are appended hereto as **Exhibit A**.

7 4. The Notice specifically stated that any response or objection to the Motion and
8 request for hearing must be filed with the Court and served on proposed counsel to the Trustee
9 within fourteen (14) days of service of the Notice in accordance with Local Bankruptcy Rule 9013-
10 1(o)(1).

11 5. Fourteen days have passed since the filing and service of the Notice and the Motion
12 and, as of the date of this Declaration, to the best of my knowledge after due diligence, PSZJ has not
13 received any response and request for a hearing on the Motion, and there is no such response and
14 request for a hearing on the Motion reflected on the Court’s docket.

15 6. Based on the foregoing, the Trustee respectfully requests that this Court enter an
16 order approving the Motion, rejecting the real property lease located in Costa Mesa, California, and
17 ordering the abandonment of any remaining personal property pursuant to the Motion.

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

20 Executed this 23rd day of May, 2014, at Los Angeles, California

21
22 /s/ Linda F. Cantor
23 Linda F. Cantor
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Exhibit A

MOTION

1 Linda F. Cantor (CA Bar No. 153762)
PACHULSKI STANG ZIEHL & JONES LLP
2 10100 Santa Monica Blvd., 13th Floor
Los Angeles, California 90067
3 Telephone: 310-277-6910
Facsimile: 310-201-0760
4 E-mail: lcantor@pszjlaw.com

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6 Proposed Counsel for R. Todd Neilson, Chapter 11
Trustee for The Tulving Company, Inc.

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

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

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

Chapter 11

**NOTICE OF MOTION AND MOTION OF
THE CHAPTER 11 TRUSTEE FOR ORDER
AUTHORIZING (1) REJECTION OF NON-
RESIDENTIAL REAL PROPERTY LEASE
LOCATED IN COSTA MESA,
CALIFORNIA, AND (2) ABANDONMENT
OF REMAINING PERSONAL PROPERTY
PURSUANT TO 11 U.S.C. §§ 365 AND 554;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF R.
TODD NEILSON IN SUPPORT THEREOF**

[No Hearing Required Per L.B.R. 9013-1(O)]

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21 **TO: THE HONORABLE ERITHE A. SMITH, UNITED STATES BANKRUPTCY
JUDGE; THE DEBTOR AND ITS COUNSEL, THE LANDLORD, THE OFFICE OF
THE UNITED STATES TRUSTEE; AND PARTIES REQUESTING SPECIAL
22 NOTICE:**

23 **PLEASE TAKE NOTICE** that R. Todd Neilson, the duly appointed chapter 11 trustee (the
24 “Trustee”) in the above-captioned bankruptcy case of The Tulving Company (the “Debtor”), hereby
25 moves (the “Motion”) the Court for entry of an order authorizing and approving the rejection of that
26 certain non-residential real property lease, dated January 1, 2011, between the Debtor, as tenant, and
27 Levon Gugasian, as landlord (the “Landlord”), for the premises (the “Leased Premises”) located at
28

1 150 West 17th Street, Unit A, Costa Mesa, California (the "Lease"), with said rejection being
2 effective (the "Rejection Effective Date") as of the earlier of: (a) the date that the Trustee turns over
3 the keys to the Landlord, or (b) May 20, 2014; and (2) the abandonment of any personal property
4 (the "Remaining Personal Property") belonging to the Debtor remaining at the Leased Premises as of
5 the Rejection Effective Date, with the abandonment being effective as of the Rejection Effective
6 Date.

7 The Debtor no longer occupies or uses the Leased Premises and the Trustee has no need for
8 the Lease in the administration of the estate. Based on his review, the Trustee does not believe that
9 the Lease has any value to the estate and, in fact, believes that the Lease is burdensome to the estate.
10 In order to minimize any further administrative rent obligations of the Debtor's chapter 11 estate and
11 to maximize the estate for the creditors, the Trustee has determined that rejection of the Lease is in
12 the best interest of the estate.

13 **PLEASE TAKE FURTHER NOTICE** that the Trustee, by no later than the Rejection
14 Effective Date, will have removed all personal property of any value to the estate from the Leased
15 Premises. The personal property that remains at the Leased Premises after such removal will be *de*
16 *minimis*. To the extent there may be any other Remaining Personal Property, it will be of no value to
17 the chapter 11 estate. The cost of removing, storing and marketing the Remaining Personal Property
18 would significantly outweigh the value of that property therefore, the Remaining Personal Property
19 is burdensome to the estate and should be abandoned effective as of the Rejection Effective Date.

20 **PLEASE TAKE FURTHER NOTICE** that the Motion is based on and supported by this
21 Notice, the attached Memorandum of Points and Authorities, the accompanying Declaration of R.
22 Todd Neilson, and the arguments of counsel, and other admissible evidence properly brought before
23 the Court at or before any hearing on this Motion. The Trustee further requests that the Court take
24 judicial notice of all other pleadings filed in the above-captioned chapter 11 Case.

25 **PLEASE TAKE FURTHER NOTICE** that pursuant to Local Bankruptcy Rule 9013-1(o)
26 any responses or objections to approval of the Motion by the Court must be filed with the Court and
27 served on counsel to the Trustee within 14 days of service of this Notice. If no objections or other
28 responses are timely received, the Trustee will submit a proposed order under certification of

1 counsel requesting approval of the Motion without the need of a hearing. In the event there is an
2 objection or other response contesting the entry of an order approving the Motion, the Trustee will
3 schedule a hearing subject to the Court's availability and file a separate notice of such hearing date
4 and time.

5 **PLEASE TAKE FURTHER NOTICE** that the Trustee will serve this Notice and Motion
6 on: (a) the Debtor and its counsel, (b) the Office of the United States Trustee, (c) the Landlord and
7 its counsel, and (d) the parties that file with the Court requests for notice of all matters in accordance
8 with Bankruptcy Rule 2002.

9 **PLEASE TAKE FURTHER NOTICE** that the failure to timely respond in the manner set
10 forth above by the dates indicated above may result in the Court approving the Motion or refusing to
11 consider any late-filed response or opposition.

12 **WHEREFORE**, the Trustee respectfully requests that the Court enter an Order (i) granting
13 the Motion, (ii) authorizing and approving the rejection of the Lease effective as of the Rejection
14 Effective Date, (iii) authorizing and approving the abandonment of the Remaining Personal Property
15 effective as of the Rejection Effective Date and (iv) granting such other and further relief as it deems
16 necessary and appropriate.

17 Dated: May 6, 2014

PACHULSKI STANG ZIEHL & JONES LLP

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19 By: /s/ Linda F. Cantor
Linda F. Cantor (SBN 153872)

20 Proposed Attorneys for R. Todd Neilson, Chapter
21 11 Trustee
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 In order to avoid incurring unnecessary administrative expenses for the Debtor's chapter 11
5 estate (the "Estate"), the Trustee filed the attached *Notice of Motion and Motion of the Chapter 11*
6 *Trustee for Order Authorizing (i) Rejection of Non-Residential Real Property Lease Located in*
7 *Costa Mesa California, and (ii) Abandonment of Remaining Personal Property Pursuant to 11*
8 *U.S.C. §§ 365 and 554* (the "Motion") seeking an order of the Court authorizing and approving the
9 rejection of that certain non-residential real property lease located in Costa Mesa, as described
10 below, and the abandonment of the Remaining Personal Property. The Debtor no longer occupies or
11 uses the Leased Premises and the Trustee has no need for the Leased Premises in the administration
12 of the estate. Based upon the Trustee's review, the Lease has no value to the estate and the Trustee,
13 therefore, has determined that the rejection of the Lease and the abandonment of the Remaining
14 Personal Property is in the best interest of the estate.

15 **II.**

16 **JURISDICTION AND VENUE**

17 This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This
18 matter relates to the administration of the estate and is accordingly a core proceeding pursuant to 28
19 U.S.C. § 157(b)(2)(A) and (O). Venue of this case is proper in this Court pursuant to 28 U.S.C. §§
20 1408 and 1409. The statutory predicate for the relief requested herein are sections 365(a) and 554(a)
21 of title 11 of the United States Code (the "Bankruptcy Code").

22 **III.**

23 **STATEMENT OF FACTS**

24 **A. The Background of the Debtor's Business**

25 The Debtor is a California corporation. Hannes Tulving, Jr. is the President and sole equity
26 holder of the Debtor. The Debtor was in the business of selling and purchasing gold, silver, coins,
27 bullion, and other precious metals through its internet website or by phone. Over the past year,
28 customer complaints against the Debtor concerning delayed or undelivered orders were increasingly

1 made to the Better Business Bureau as well as various law enforcement agencies. In early March,
2 2014, a class-action lawsuit was filed against the Debtor and Hannes Tulving, Jr. in the United States
3 District Court, Northern District of California. The Debtor ceased operations on or about March 3,
4 2014. Shortly before the initiation of these proceedings, a raid was conducted at the business offices
5 of the Debtor by the Secret Service and the Department of Justice and the Debtor's computers,
6 documents and inventory were seized for an ongoing criminal investigation.

7 **B. Procedural Background of Case**

8 The Debtor commenced this case by the filing of a voluntary petition for relief under chapter
9 11 of the Bankruptcy Code on March 10, 2014. In light of the pending criminal investigation and
10 other ongoing litigation, on March 18, 2014, the United States Trustee filed a *Stipulation Appointing*
11 *Chapter 11 Trustee* [Docket No. 15] ("Stipulation"), which was signed by both the Debtor and its
12 attorney. The Stipulation was approved by the Bankruptcy Court on March 18, 2014 [Docket
13 No. 16] and an Order was entered by the Court on March 21, 2014 approving the *U.S. Trustee's*
14 *Application for the Appointment of a Chapter 11 Trustee*, appointing R. Todd Neilson as Trustee of
15 the Debtor's estate [Docket No. 22].

16 **C. The Lease**

17 The Debtor is a party to, a non-residential real property lease, dated January 1, 2011, between
18 the Debtor, as tenant, and Levon Gugasian, as landlord (the "Landlord"), for the premises (the
19 "Leased Premises") located at 150 West 17th Street, Unit A, Costa Mesa, California (the "Lease").
20 The lease is for a ten-year term, commencing January 1, 2011 and terminating February 28, 2021.
21 The base monthly rental for the Lease is \$30,000 plus an added \$1,000 per month for other expenses.
22 The Debtor paid a security deposit to the Landlord in the amount of \$30,000 for the Lease. The
23 Trustee is informed and believes that the Landlord applied the security deposit towards payment of
24 unpaid rent in 2013.

25 **D. The Rejection of the Lease**

26 The Trustee has determined in his business judgment that continued occupancy of the Leased
27 Premises is not in the best interests of the estate. The Debtor no longer occupies or uses the Leased
28 Premises and the Leased Premises are not necessary for the Trustee's administration of the estate .

1 The Trustee has determined that the rejection of the Lease is in the best interests of the estate so that
2 it can avoid the incurrence of additional unnecessary administrative rent, which is no less than
3 \$31,000 per month. The Trustee is, therefore, seeking approval of the rejection of the Lease, which
4 might otherwise become an unnecessary drain on the assets of this estate, with said rejection being
5 effective (the "Rejection Effective Date") as of the earlier of: (a) date that the Trustee turns over the
6 keys to the Landlord, or (b) May 20, 2014.

7 The Trustee does not believe that the Lease holds any value, especially in light of the
8 "carrying costs" the estate would incur during any marketing period and the possibility that no viable
9 assignee would materialize. The base monthly cost of the Lease to the estate is approximately
10 \$31,000, which amounts could be treated as an administrative expenses if the Lease is not rejected in
11 a timely manner.

12 **E. The Abandonment of the Remaining Personal Property**

13 By the Motion, the Trustee seeks to abandon any personal property (the "Remaining Personal
14 Property") belonging to the Debtor remaining at the Leased Premises as of the Rejection Effective
15 Date, with the abandonment being effective as of the Rejection Effective Date. On May 2, 2014, the
16 Court entered an order (the "Sale Order") granting the *Expedited Motion of Chapter 11 Trustee for
17 Order: (1) Approving the Employment of Van Horn Auctions Appraisal Group, LLC as Auctioneer
18 for the Estate Pursuant to 11 U.S.C. Sections 327 and 328(A); (2) Authorizing the Sale of Estate
19 Property at Public Auction Outside the Ordinary Course of Business Pursuant to 11 U.S.C. Section
20 363(B); (3) Authorizing Payment of Costs and Allowing Compensation; and (4) Waiving 14-Day
21 Stay Period* (the "Sale Motion") [Docket No. 83]. The Sale Order authorized the Trustee, among
22 other things, to auction the personal property located at the Premises. The Trustee, by no later than
23 the Rejection Effective Date, will have removed all personal property of any value to the estate from
24 the Leased Premises. The personal property that remains at the Leased Premises after such removal
25 will be *de minimis*. To the extent there may be any other Remaining Personal Property, it will be of
26 no value to the chapter 11 estate. The cost of removing, storing and marketing the Remaining
27 Personal Property would significantly outweigh the value of that property, therefore, the Remaining
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1 Personal Property is burdensome to the estate and should be abandoned effective as of the Rejection
2 Effective Date.

3 IV.
4 ARGUMENT

5 A. **Immediate Rejection of the Lease Is Justified**

6 Section 365(a) of the Bankruptcy Code provides that a trustee, “subject to the court’s
7 approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C.
8 § 365(a). This provision allows a trustee “to relieve the bankruptcy estate of burdensome
9 agreements which have not been completely performed.” *Stewart Title Guar. Co. v. Old Republic*
10 *Nat’l Title Co.*, 83 F.3d 735, 741 (5th Cir. 1996) (citing *In re Muerexco Petroleum, Inc.*, 15 F.3d 60,
11 62 (5th Cir. 1994)).

12 The standard applied to determine whether the rejection of an executory contract or
13 unexpired lease should be authorized is the “business judgment” standard. As the Bankruptcy
14 Appellate Panel held in *In re Chi-Feng Huang*, 23 B.R. 798, 800 (B.A.P. 9th Cir. 1982), a trustee
15 may exercise his business judgment to reject executory contracts or unexpired leases that are no
16 longer useful or necessary to the bankruptcy estate. The standard for rejection is satisfied when a
17 trustee has made a business determination that rejection will benefit the estate. *See Commercial Fin.*
18 *Ltd. v. Haw. Dimensions, Inc. (In re Haw. Dimensions, Inc.)*, 47 B.R. 425, 427 (Bankr. D. Haw.
19 1985) (“[U]nder the business judgment test, a court should approve a debtor’s proposed rejection if
20 such rejection will benefit the estate.”). In applying the business judgment standard, courts show
21 great deference to the trustee’s decision to reject. *See, e.g., Summit Land Co. v. Allen (In re Summit*
22 *Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (noting that, absent extraordinary circumstances,
23 court approval of a debtor’s decision to assume or reject an executory contract “should be granted as
24 a matter of course”).

25 Based on the Trustee’s knowledge of the Lease and his knowledge of the rental market in the
26 area where the Leased Premises are located, the Trustee does not believe that the estate can obtain
27 any material value by seeking to assume and assign the Lease. The estate would be risking the full
28 weight of further possible administrative rent if no assignee materializes for the Lease with no

1 corresponding benefit to the estate. Prompt rejection will minimize unnecessary administrative costs
2 for the benefit of all creditors of the estate. In the exercise of his business judgment, the Trustee has
3 therefore concluded that rejection of the Lease is in the best interests of the estate.

4 **B. Abandonment of Remaining Personal Property Is Appropriate**

5 Section 554(a) of the Bankruptcy Code provides that, “[a]fter notice and a hearing, the
6 trustee may abandon any property of the estate that is burdensome to the estate or that is of
7 inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a). In evaluating decisions to
8 abandon property of the estate, courts focus on whether such decision reflects a business judgment
9 made in good faith. *See, e.g., In re Cult Awareness Network, Inc.*, 205 B.R. 575, 579 (Bankr. N.D.
10 Ill. 1997) (citations omitted); *In re Wilson*, 94 B.R. 886, 888-889 (Bankr. E.D. Va. 1989); *In re*
11 *Moore*, 110 B.R. 924, 928 (Bankr. C.D. Cal. 1990) (“The choice of which type of action [is
12 appropriate to liquidate the assets of the estate] (whether it be acceptance of the offer, a counteroffer,
13 negotiation, open bidding, or bringing a formal motion for abandonment) belongs to the trustee
14 within the sound exercise of the trustee's business judgment so long as the trustee fulfills his
15 statutory duties.”).

16 The Trustee believes that the value of the Remaining Personal Property is *de minimis*.
17 Abandonment of the Remaining Personal Property is appropriate because the cost of moving, storing
18 and marketing the Remaining Personal Property would out strip the value of that property. Further,
19 its abandonment is necessary to eliminate any issues regarding administrative expenses associated
20 with leaving the property at the Premises.

21 After duly considering such factors, the Trustee has determined, in the exercise of his sound
22 business judgment, that abandonment of the Remaining Personal Property is in the best interests of
23 the estate and requests that the Court approve abandonment of the Remaining Personal Property
24 effective as of the Rejection Effective Date.

V.

CONCLUSION

For the reasons set forth herein, the Trustee respectfully requests that the Court enter an order (a) granting the Motion, (b) authorizing and approving the rejection of the Lease effective as of the Rejection Effective Date, (c) authorizing and approving the abandonment of the Remaining Personal Property effective as of the Rejection Effective Date, and (d) granting such other and further relief as it deems necessary and appropriate.

Dated: May 6, 2014

PACHULSKI STANG ZIEHL & JONES LLP

By: /s/ Linda F. Cantor

Linda F. Cantor (SBN 153762)

Proposed Attorneys for R. Todd Neilson, chapter
11 Trustee

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

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DECLARATION OF R. TODD NEILSON

I, R. Todd Neilson, declare as follows:

1. I am the duly appointed chapter 11 trustee (the "Trustee") in the above-captioned bankruptcy case (the "Case"). I make this Declaration on facts within my personal knowledge (albeit my own or that gathered by professionals rendering services to me), or as a result of having reviewed the court file in this Case. If called upon, I can and will competently testify to the facts stated herein.

2. I make this Declaration in support of the *Notice of Motion and Motion of the Chapter 11 Trustee for Order Authorizing (i) Rejection of Real Property Leases Located in Costa Mesa, California, and (ii) Abandonment of Remaining Personal Property Pursuant to 11 U.S.C. §§ 365 and 554* (the "Motion"). Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.

3. The Debtor had been in the business of selling and purchasing gold, silver, coins, bullion, and other precious metals through its internet website or by phone. Over the past year, customer complaints against the Debtor concerning delayed or undelivered orders were increasingly made to the Better Business Bureau as well as various law enforcement agencies. In early March, 2014, a class-action lawsuit was filed against the Debtor and Hannes Tulving, Jr. in the United States District Court, Northern District of California. The Debtor ceased operations on or about March 3, 2014. Shortly before the initiation of these proceedings, a raid was conducted at the business offices of the Debtor by the Secret Service and the Department of Justice and the Debtor's computers, documents and inventory were seized for an ongoing criminal investigation..

4. On March 10, 2014, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. In light of the pending criminal investigation and other ongoing litigation, on March 18, 2014, the United States Trustee filed a Stipulation Appointing Chapter 11 Trustee which was signed by both the Debtor and its attorney. The Stipulation was approved by the Bankruptcy Court on March 18, 2014 and an Order was entered by the Court on March 21, 2014, approving my appointment as Trustee of the Debtor's estate [Docket No. 22].

1 5. I am informed and believe that the Debtor is a party to, among others, that certain
2 non-residential real property lease, dated January 1, 2011, between the Debtor, as tenant, and Levon
3 Gugasian, as landlord (the "Landlord"), for the premises (the "Leased Premises") located at 150
4 West 17th Street, Unit A, Costa Mesa, California (the "Lease"). I am informed and believe that the
5 lease is for a ten-year term, commencing January 1, 2011 and terminating February 28, 2021, and
6 that the base monthly rental for the Lease is \$30,000 plus an added \$1,000 per month for other
7 expenses. I am informed and believe that the Debtor paid a security deposit to the Landlord in the
8 amount of \$30,000 for the Lease. I am informed and believe that the Landlord applied the security
9 deposit towards payment of unpaid rent in 2013.

10 6. I have determined in my business judgment that continued occupancy of the Leased
11 Premises is not in the best interests of the estate. The Debtor no longer occupies or uses the Leased
12 Premises and the Leased Premises are not necessary for the administration of the estate. I have
13 determined that the rejection of the Lease is in the best interests of the estate, in order to avoid the
14 incurrence of additional unnecessary administrative rent of approximately \$31,000 per month.
15 Therefore, I request approval of the rejection of the Lease, which might otherwise become an
16 unnecessary drain on the assets of this estate, with said rejection being effective as of the earlier of:
17 (a) date that I turn over the keys to the Landlord, or (b) May 20, 2014.

18 7. I do not believe that the Lease holds any value, especially in light of the "carrying
19 costs" the estate would incur during any marketing period and the possibility that no viable assignee
20 would materialize. The base monthly cost of the Lease to the estate is approximately \$31,000,
21 which amount could be treated as an administrative expense if the Lease is not rejected in a timely
22 manner.

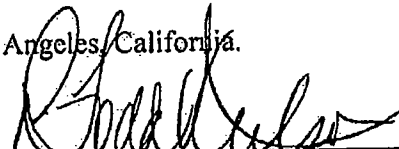
23 8. I further request to abandon any Remaining Personal Property belonging to the
24 Debtor remaining at the Leased Premises as of the Rejection Effective Date, with the abandonment
25 being effective as of the Rejection Effective Date. On May 2, 2014, the Court entered an order (the
26 "Sale Order") granting the *Expedited Motion of Chapter 11 Trustee for Order: (1) Approving the*
27 *Employment of Van Horn Auctions Appraisal Group, LLC as Auctioneer for the Estate Pursuant to*
28 *11 U.S.C. Sections 327 and 328(A); (2) Authorizing the Sale of Estate Property at Public Auction*

1 *Outside the Ordinary Course of Business Pursuant to 11 U.S.C. Section 363(B); (3) Authorizing*
2 *Payment of Costs and Allowing Compensation; and (4) Waiving 14-Day Stay Period* (the "Sale
3 Motion") [Docket No.83]. The Sale Order authorized the Trustee, among other things, to auction the
4 personal property located at the Premises. By no later than the Rejection Effective Date, all personal
5 property of any value to the estate will have been removed from the Leased Premises. The personal
6 property that remains at the Leased Premises after such removal primarily will be *de minimis*. To
7 the extent there may be any other Remaining Personal Property, it will be of no value to the chapter
8 11 estate. I believe that the value of the Remaining Personal Property is *de minimis*. Abandonment
9 of the Remaining Personal Property is appropriate because the cost of moving, storing and marketing
10 the Remaining Personal Property would out strip the value of that property. Further, its
11 abandonment is necessary to eliminate any issues regarding administrative expenses associated with
12 leaving the property at the Premises.

13 9. After duly considering such factors, I have determined, in the exercise of my sound
14 business judgment that abandonment of the Remaining Personal Property is in the best interests of
15 the estate and request that the Court approve abandonment of the Remaining Personal Property
16 effective as of the Rejection Effective Date.

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

19 Executed this 6th day of May, 2014, at Los Angeles, California.

20 
21 R. Todd Neilson

PROOF OF SERVICE OF DOCUMENT

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

A true and correct copy of the foregoing document **NOTICE OF MOTION AND MOTION OF THE CHAPTER 11 TRUSTEE FOR ORDER AUTHORIZING (1) REJECTION OF NON-RESIDENTIAL REAL PROPERTY LEASE LOCATED IN COSTA MESA, CALIFORNIA, AND (2) ABANDONMENT OF REMAINING PERSONAL PROPERTY PURSUANT TO 11 U.S.C. §§ 365 AND 554; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF R. TODD NEILSON 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, 2014, 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, 2014, 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, 2014, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Via Federal Express

The Honorable Erithe A. Smith
United States Bankruptcy Court
Central District of California
Ronald Reagan Federal Building and Courthouse
411 West Fourth Street, Suite 5040 / Courtroom 5A
Santa Ana, CA 92701-4593

Service information continued on attached page

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

May 6, 2014
Date

Janice G. Washington
Printed Name

/s/ Janice G. Washington
Signature

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

PROOF OF SERVICE OF MOTION

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

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

3 Andrew S Bisom on behalf of Debtor The Tulving Company Inc
4 abisom@bisomlaw.com

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

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

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

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

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

15 Matthew B Learned on behalf of Interested Party Courtesy NEF
16 bknotice@mccarthyholthus.com

17 Elizabeth A Lossing on behalf of U.S. Trustee United States Trustee (SA)
18 elizabeth.lossing@usdoj.gov

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

22 Gary A Pemberton on behalf of Interested Party Courtesy NEF
23 gpemberton@shbllp.com, tlenz@shbllp.com

24 Robert J Pfister on behalf of Interested Party Courtesy NEF
25 rpfister@ktbslaw.com

26 Michael B Reynolds on behalf of Interested Party Courtesy NEF
27 mreynolds@swlaw.com, kcollins@swlaw.com

28 United States Trustee (SA)
ustpreion16.sa.ecf@usdoj.gov

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

30 **Debtor**
31 **The Tulving Company Inc**
32 P.O. Box 6200
33 Newport Beach, CA 92658

34 **Counsel for Debtor**
35 **Andrew S Bisom**
36 The Bisom Law Group
37 8001 Irvine Center Drive, Ste. 1170
38 Irvine, CA 92618

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Trustee

R. Todd Neilson (TR)
BRG, LLP
2049 Century Park East
Suite 2525
Los Angeles, CA 90067

U.S. Trustee

United States Trustee (SA)
411 W Fourth St., Suite 9041
Santa Ana, CA 92701-4593

Counsel for U.S. Trustee

Nancy S Goldenberg
411 W Fourth St Ste 9041
Santa Ana, CA 92701-8000

Laurence P Nokes on behalf of Interested Party John Frankel

Nokes & Quinn
410 Broadway St Ste 200
Laguna Beach, CA 92651

Accountants for Landlord

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

Interested Party

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

Counsel for Creditor Levon Gugasian

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

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

NOTICE

1 Linda F. Cantor (CA Bar No. 153762)
2 PACHULSKI STANG ZIEHL & JONES LLP
3 10100 Santa Monica Blvd., 13th Floor
4 Los Angeles, California 90067
5 Telephone: 310-277-6910
6 Facsimile: 310-201-0760
7 E-mail: lcantor@pszjlaw.com

8 Proposed Counsel for R. Todd Neilson, Chapter 11
9 Trustee 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 California
15 corporation,

16 Debtor.

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

Chapter 11

**NOTICE OF MOTION OF THE CHAPTER
11 TRUSTEE FOR ORDER AUTHORIZING
(1) REJECTION OF NON-RESIDENTIAL
REAL PROPERTY LEASE LOCATED IN
COSTA MESA, CALIFORNIA, AND (2)
ABANDONMENT OF REMAINING
PERSONAL PROPERTY PURSUANT TO 11
U.S.C. §§ 365 AND 554**

[No Hearing Required Per L.B.R. 9013-1(O)]

19 **TO: THE HONORABLE ERITHE A. SMITH, UNITED STATES BANKRUPTCY**
20 **JUDGE; THE DEBTOR AND ITS COUNSEL, THE LANDLORD, THE OFFICE OF**
21 **THE UNITED STATES TRUSTEE; CREDITORS AND OTHER PARTIES IN**
22 **INTEREST REQUESTING SPECIAL NOTICE:**

23 **PLEASE TAKE NOTICE** that R. Todd Neilson, the duly appointed chapter 11 trustee (the
24 “Trustee”) in the above-captioned bankruptcy case of The Tulving Company (the “Debtor”), has
25 filed a motion with the Bankruptcy Court (the “Motion”) requesting that the Court enter an order
26 authorizing and approving the rejection of that certain non-residential real property lease, dated
27 January 1, 2011, between the Debtor, as tenant, and Levon Gugasian, as landlord (the “Landlord”),
28 for the premises (the “Leased Premises”) located at 150 West 17th Street, Unit A, Costa Mesa,
California (the “Lease”), with said rejection being effective (the “Rejection Effective Date”) as of

1 the earlier of: (a) the date that the Trustee turns over the keys to the Landlord, or (b) May 20, 2014;
2 and (2) the abandonment of any personal property (the "Remaining Personal Property") belonging to
3 the Debtor remaining at the Leased Premises as of the Rejection Effective Date, with the
4 abandonment being effective as of the Rejection Effective Date.

5 The grounds for the Motion are that the Debtor no longer occupies or uses the Leased
6 Premises and the Trustee has no need for the Lease in the administration of the estate. Based on his
7 review, the Trustee does not believe that the Lease has any value to the estate and, in fact, believes
8 that the Lease is burdensome to the estate. In order to minimize any further administrative rent
9 obligations of the Debtor's chapter 11 estate and to maximize the estate for the creditors, the Trustee
10 has determined that rejection of the Lease is in the best interest of the estate.

11 **PLEASE TAKE FURTHER NOTICE** that the Trustee, by no later than the Rejection
12 Effective Date, will have removed all personal property of any value to the estate from the Leased
13 Premises. The personal property that remains at the Leased Premises after such removal will be *de*
14 *minimis*. To the extent there may be any other Remaining Personal Property, it will be of no value to
15 the chapter 11 estate. The cost of removing, storing and marketing the Remaining Personal Property
16 would significantly outweigh the value of that property therefore, the Remaining Personal Property
17 is burdensome to the estate and should be abandoned effective as of the Rejection Effective Date.

18 **PLEASE TAKE FURTHER NOTICE** that the Motion is based on and supported by this
19 Notice of Motion, the concurrently filed Motion with accompanying Memorandum of Points and
20 Authorities and Declaration of R. Todd Neilson in Support thereof (collectively, the "Motion
21 Pleadings"), as well as the arguments of counsel, and other admissible evidence properly brought
22 before the Court at or before any hearing on this Motion. If you wish to receive a copy of the
23 Motion Pleadings, please contact the office of proposed counsel for the Trustee, attn.: Patricia
24 Jefferies by phone at (310) 277-6910 or by e-mail at pieffries@pszjlaw.com.

25 **PLEASE TAKE FURTHER NOTICE** that pursuant to Local Bankruptcy Rule 9013-1(o)
26 any responses or objections to approval of the Motion by the Court must be filed with the Court and
27 served on counsel to the Trustee within 14 days of service of this Notice. If no objections or other
28 responses are timely received, the Trustee will submit a proposed order under certification of

1 counsel requesting approval of the Motion without the need of a hearing. In the event there is an
2 objection or other response contesting the entry of an order approving the Motion, the Trustee will
3 schedule a hearing subject to the Court's availability and file a separate notice of such hearing date
4 and time.

5 **PLEASE TAKE FURTHER NOTICE** that the failure to timely respond in the manner set
6 forth above by the dates indicated above may result in the Court approving the Motion or refusing to
7 consider any late-filed response or opposition.

8
9 Dated: May 6, 2014

PACHULSKI STANG ZIEHL & JONES LLP

10
11 By: /s/ Linda F. Cantor

Linda F. Cantor (SBN 153872)

12 Proposed Attorneys for R. Todd Neilson, Chapter
13 11 Trustee
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PROOF OF SERVICE OF NOTICE

1 **PROOF OF SERVICE OF DOCUMENT**

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

4 A true and correct copy of the foregoing document **NOTICE OF MOTION OF THE CHAPTER**
5 **11 TRUSTEE FOR ORDER AUTHORIZING (1) REJECTION OF NON-RESIDENTIAL**
6 **REAL PROPERTY LEASE LOCATED IN COSTA MESA, CALIFORNIA, AND (2)**
7 **ABANDONMENT OF REMAINING PERSONAL PROPERTY PURSUANT TO 11 U.S.C. §§**
8 **365 AND 554** will be served or was served (a) on the judge in chambers in the form and manner
9 required by LBR 5005-2(d); and (b) in the manner stated below:

10 **1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):**
11 Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court
12 via NEF and hyperlink to the document. On May 6, 2014, I checked the CM/ECF docket for this
13 bankruptcy case or adversary proceeding and determined that the following persons are on the
14 Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

15 Service information continued on attached page

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

17 On May 6, 2014, I served the following persons and/or entities at the last known addresses in this
18 bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed
19 envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the
20 judge here constitutes a declaration that mailing to the judge will be completed no later than 24
21 hours after the document is filed.

22 Service information continued on attached page

23 **3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE**
24 **TRANSMISSION OR EMAIL (state method for each person or entity served):** Pursuant to
25 F.R.Civ.P. 5 and/or controlling LBR, on May 6, 2014, I served the following persons and/or entities
26 by personal delivery, overnight mail service, or (for those who consented in writing to such service
27 method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a
28 declaration that personal delivery on, or overnight mail to, the judge will be completed no later than
29 24 hours after the document is filed.

30 ***Via Federal Express***

31 The Honorable Erithe A. Smith
32 United States Bankruptcy Court
33 Central District of California
34 Ronald Reagan Federal Building and Courthouse
35 411 West Fourth Street, Suite 5040 / Courtroom 5A
36 Santa Ana, CA 92701-4593

37 Service information continued on attached page

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

40 May 6, 2014
41 *Date*

42 Janice G. Washington
43 *Printed Name*

44 /s/ Janice G. Washington
45 *Signature*

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

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

3 Andrew S Bisom on behalf of Debtor The Tulving Company Inc
4 abisom@bisomlaw.com

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

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

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

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

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

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

17 John H Kim on behalf of Interested Party Courtesy NEF
18 jkim@cookseylaw.com

19 Matthew B Learned on behalf of Interested Party Courtesy NEF
20 bknotice@mccarthyholthus.com

21 Elizabeth A Lossing on behalf of U.S. Trustee United States Trustee (SA)
22 elizabeth.lossing@usdoj.gov

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

25 Gary A Pemberton on behalf of Interested Party Courtesy NEF
26 gpemberton@shbllp.com, hillion@shbllp.com;tlenz@shbllp.com

27 Robert J Pfister on behalf of Interested Party Courtesy NEF
28 rpfister@ktbslaw.com

Michael B Reynolds on behalf of Interested Party Courtesy NEF
mreynolds@swlaw.com, kcollins@swlaw.com

United States Trustee (SA)
ustpreion16.sa.ecf@usdoj.gov

PROOF OF SERVICE OF DOCUMENT

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

A true and correct copy of the foregoing document **DECLARATION OF LINDA F. CANTOR OF NON-OPPOSITION TO MOTION OF THE CHAPTER 11 TRUSTEE FOR ORDER AUTHORIZING (1) REJECTION OF NON-RESIDENTIAL REAL PROPERTY LEASE LOCATED IN COSTA MESA, CALIFORNIA, AND (2) ABANDONMENT OF REMAINING PERSONAL PROPERTY PURSUANT TO 11 U.S.C. §§ 365 AND 554, PURSUANT TO LOCAL BANKRUPTCY RULE 9013-1(O)(3)** 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 23, 2014, 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 23, 2014, 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 23, 2014, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Via Federal Express

The Honorable Erithe A. Smith
United States Bankruptcy Court
Central District of California
Ronald Reagan Federal Building and Courthouse
411 West Fourth Street, Suite 5040 / Courtroom 5A
Santa Ana, CA 92701-4593

Service information continued on attached page

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

May 23, 2014 Megan Wertz /s/ Megan Wertz
Date *Printed Name* *Signature*

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

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

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

- 3 • Andrew S Bisom abisom@bisomlaw.com
- 4 • Candice Bryner candice@brynerlaw.com
- 5 • Stephen L Burton steveburtonlaw@aol.com
- 6 • Linda F Cantor lcantor@pszjlaw.com, lcantor@pszjlaw.com
- 7 • Nancy S Goldenberg nancy.goldenberg@usdoj.gov
- 8 • Lawrence J Hilton lhilton@oneil-llp.com, ssimmons@oneil-llp.com;kdonahue@oneil-llp.com
- 9 • John H Kim jkim@cookseylaw.com
- 10 • Matthew B Learned bknotice@mccarthyholthus.com
- 11 • Elizabeth A Lossing elizabeth.lossing@usdoj.gov
- 12 • R. Todd Neilson (TR) tneilson@brg-expert.com, sgreenan@brg-expert.com;tneilson@ecf.epiqsystems.com;ntroszak@brg-expert.com
- 13 • Gary A Pemberton gpemberton@shbllp.com, hillion@shbllp.com;tlenz@shbllp.com
- 14 • Robert J Pfister rpfister@ktbslaw.com
- 15 • Michael B Reynolds mreynolds@swlaw.com, kcollins@swlaw.com
- 16 • Nanette D Sanders becky@ringstadlaw.com
- 17 • United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov

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

19 ***Debtor***

20 **The Tulving Company Inc**
21 P.O. Box 6200
22 Newport Beach, CA 92658

23 ***Counsel for Debtor***

24 **Andrew S Bisom**
25 The Bisom Law Group
26 8001 Irvine Center Drive, Ste. 1170
27 Irvine, CA 92618

28 ***Trustee***

29 **R. Todd Neilson (TR)**
30 BRG, LLP
31 2049 Century Park East
32 Suite 2525
33 Los Angeles, CA 90067

34 ***U.S. Trustee***

35 **United States Trustee (SA)**
36 411 W Fourth St., Suite 9041
37 Santa Ana, CA 92701-4593

38 ***Counsel for U.S. Trustee***

39 **Nancy S Goldenberg**
40 411 W Fourth St Ste 9041
41 Santa Ana, CA 92701-8000

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Laurence P Nokes on behalf of Interested Party John Frankel

Nokes & Quinn
410 Broadway St Ste 200
Laguna Beach, CA 92651

Accountants for Landlord

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

Interested Party

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

Counsel for Creditor Levon Gugasian

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

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