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9 Trustee for The Tulving Company, Inc.

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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

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

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

Chapter 11

**APPLICATION OF R. TODD NEILSON,
CHAPTER 11 TRUSTEE, TO EMPLOY
BERKELEY RESEARCH GROUP, LLC, OF
WHICH HE IS A MEMBER, AS
ACCOUNTANTS AND FINANCIAL
ADVISORS, *NUNC PRO TUNC* TO MARCH
21, 2014**

**[NO HEARING REQUIRED PER L.B.R.
2014-1(B)]**

[Declaration of Adam Tenenbaum filed
concurrently herewith]

20 R. Todd Neilson, the duly appointed chapter 11 trustee (“Trustee”) in the above-captioned
21 chapter 11 case of The Tulving Company, Inc. hereby files this application (the “Application”) to
22 employ Berkeley Research Group, LLC (“BRG”), of which the Trustee is a member, as accountants
23 and financial advisors for the Trustee in this chapter 11 case (the “Estate”) *nunc pro tunc* to March
24 21, 2014.

25 This Application is brought pursuant to section 327(a) of title 11 of the United States Code,
26 11 U.S.C. §101 et seq. (the “Bankruptcy Code”), Federal Rule of Bankruptcy Procedure 2014, and
27 Local Bankruptcy Rule 2014-1. In support of the Application, the Trustee respectfully represents as
28 follows:

1 **A. Background**

2 This case was commenced on March 10, 2014, by the filing of a voluntary petition for relief
3 under chapter 11 of the Bankruptcy Code by The Tulving Company, Inc. (“the Debtor”).

4 On March 21, 2014, the Court entered an Order appointing the Trustee as Chapter 11 Trustee
5 of the Debtor’s estate [Docket No. 22].

6 **B. Relief Requested**

7 By this Application, the Trustee seeks to employ and retain BRG as his accountants and
8 financial advisors effective *nunc pro tunc* to March 21, 2014 the date upon which the Trustee
9 requested that BRG act as his accountants and financial advisors.

10 Based on the complexities associated with administering this case and the estate, the Trustee
11 has determined that he requires the assistance of a financial advisor and accountant with specialized
12 experience in bankruptcy, fraud and taxation consulting services. Accordingly, the Trustee desires
13 to employ BRG.

14 The Trustee is a member of BRG, the financial services firm he is seeking to employ.
15 “Cause,” as outlined in *In re Butler Industries, Inc.*, 101 B.R. 194 (Bankr. C.D. Cal. 1989), *aff’d*,
16 114 B.R. 694 (C.D. Cal. 1990), exists in this case for the Trustee to retain the services of the firm
17 with which he is professionally affiliated. The Trustee has determined that the retention of his own
18 firm is necessary and appropriate to discharge his duties as Trustee and is in the best interests of the
19 Debtor’s estate, due to BRG’s expertise and qualifications in performing the analyses required in this
20 particular bankruptcy case and for the reasons enumerated herein.

21 BRG provides expert services, including economic and financial analyses, expert testimony,
22 litigation support, and strategic management consulting to a range of public and private enterprises.
23 It delivers independent expert testimony, original authoritative studies and strategic advice to
24 legislative, judicial, regulatory and business decision makers. BRG’s other services include factual
25 and statistical analyses, report preparation and presentation and data collection. BRG employs more
26 than 400 persons in the United States and the United Kingdom, and has been engaged by thousands
27 of clients, including many Fortune 500 companies.

28 The Trustee has delineated the following terms regarding BRG’s employment: (1) Nicholas

1 R. Troszak and David Judd are the persons at BRG who will be primarily responsible for the
2 services provided by BRG, (2) They will supervise BRG's associates and staff working on this
3 matter, (3) the estate will be the source of funds for compensating BRG for services and reimbursing
4 BRG for expenses, and (4) BRG will be paid from funds of the estate for its fees and expenses for
5 services pursuant to the same terms by which other professionals employed by the estate in this case
6 will be paid.

7 The Trustee is informed and believes BRG's professionals have on many occasions
8 performed similar services to the ones required in this case for numerous receivers, trustees,
9 examiners and creditors' committees in other non-related cases under receivership, bankruptcy and
10 other insolvency proceedings in the State of California and elsewhere. In addition, BRG's
11 professionals have experience working on cases with similar fact scenarios in which they were
12 presented with issues and performed analyses similar to the work at hand in this case.

13 The Trustee is further informed and believes that this employment shall aid in conserving the
14 estate's resources. The professional services that BRG will render to the Trustee may include, but
15 are not limited to the following:

- 16 a) to assist with the operations of the Debtor,
17 b) to analyze the books and records of the Debtor to investigate the status and
18 values of the assets of the estate,
19 c) to analyze and liquidate claims against the estate,
20 d) as determined appropriate and necessary, to reconstruct financial transactions of
21 the Debtor,
22 e) to complete tax work and other financial analyses that is required by the Trustee
23 to properly administer the estate and conclude this case,
24 f) to prepare Chapter 11 operating and interim reports in compliance with Office
25 of the United States Trustee Guidelines,
26 g) to assist in the identification and pursuit of any causes of action,
27 h) to assist the Trustee in preparing the necessary income tax returns for the estate,
28 i) to communicate with taxing authorities on behalf of the estate; and

j) other accounting services as required by the Trustee.

C. Proposed Compensation

Subject to Court approval in accordance with section 330(a) of the Bankruptcy Code, compensation will be payable to BRG on an hourly basis, plus reimbursement of actual, necessary expenses and other charges incurred by BRG. The schedule of BRG’s 2014 billing rates are as follows:

Professional	Position	Rates
Judd, David H.	Director	\$ 600
Calder, Vernon	Director	570
Shields, Paul	Director	510
Strong, Ray S.	Director	510
Jeremiassen, Tom	Director	510
Babcock, Matthew	Senior Managing Consultant	410
Larsen, Leif	Senior Managing Consultant	390
Troszak, Nick	Senior Managing Consultant	385
Shaw, Jeff	Managing Consultant	350
Dahl, Garrit	Consultant	285
Armstrong, James	Consultant	280
Ferrero, Spencer	Consultant	280
Laura Kramer	Associate	210
Allred, Connie	Para-Professional	180
Greenan, Susan	Para-Professional	160
Dizon, Rowen	Para-Professional	145
Perry, Evelyn	Para-Professional	145

The resumes of the professionals anticipated to have primary responsibility for this case are attached as **Exhibit A** to the *Declaration of Adam Tenenbaum* (“Tenenbaum Declaration”).

The Trustee is informed and believes that BRG’s hourly rates are comparable to other firms in the Central District of California offering similar services. BRG has not received any retainer in contemplation of its proposed employment. However, it is contemplated that BRG will seek interim compensation during the case as permitted by sections 330 and 331 of the Bankruptcy Code and Bankruptcy Rule 2016. BRG understands that its compensation in the case is subject to the prior

1 approval of this Court. No compensation will be paid except upon application to and approval by
2 this Court after notice and a hearing in accordance with sections 330 and 331 of the Bankruptcy
3 Code and Bankruptcy Rule 2016.

4 **D. Disinterestedness**

5 BRG and/or principals of BRG who will be involved in this case, have served in numerous
6 matters where Pachulski Stang Ziehl and Jones LLP (“PSZJ”), proposed counsel to the Trustee, has
7 served, including, but not limited to, the following:

8 a) *In re R. Esmerian, Inc., and Ralph Esmerian* (S.D.N.Y. 10-12719 (RDD)) (R.
9 Todd Neilson serves as examiner; BRG serves as financial advisors/accountants to the examiner;
10 PSZJ is counsel to the examiner);

11 b) *In re Society of Jesus, Oregon Province* (D. Or. 09-30938-elp11) (BRG is
12 financial advisor to the Official Committee of Unsecured Creditors; PSZJ is counsel to the Official
13 Committee of Unsecured Creditors);

14 c) *In re Catholic Diocese of Wilmington, Inc.* (D. Del. 09-13560 (CSS)).(LECG
15 was financial advisor to the Official Committee of Unsecured Creditors; PSZJ is counsel to the
16 Official Committee of Unsecured Creditors)¹

17 d) *In re The Harris Agency, LLC* (E.D. Pa. 09-10384) (Mr. Neilson served as
18 chapter 11 trustee; PSZJ was counsel to Mr. Neilson).

19 e) *In re Galleria USA, Inc.* (C.D. Cal. 8:09-bk-20651 TA) (R. Todd Neilson of
20 BRG is Chapter 11 Trustee; PSZJ is Mr. Neilson’s counsel);

21 f) *In re BDB Management, LLC* (N.D. Cal. 08-31001 (TEC)) (Mr. Neilson is
22 Chapter 11 Trustee; PSZJ represents Mr. Neilson);

23 g) *In re BDB Management III, LLC* (N.D. Cal. 08-31002 (TEC)) (Mr. Neilson is
24 Chapter 11 Trustee; PSZJ represents Mr. Neilson);

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28 ¹ During each of these engagements, the BRG advisors were part of LECG, LLC. Effective on or about March 1,
2011, this group of advisors transferred its practice from LECG, LLC to BRG.

1 h) *In re Estate Financial, Inc.* (C.D. Cal. 9:08-bk-11457-RR) (Thomas
2 Jeremiassen of BRG is Chapter 11 Trustee; BRG serves as accountants to him; PSZJ represents Mr.
3 Jeremiassen);

4 i) *In re Le-Nature's* (W.D. Penn. 06-25454 (MBM)) (Mr. Neilson was the
5 Chapter 11 Trustee and was represented by PSZJ);

6 j) *In re Death Row Records, Inc.* (LA 06-11205 EC) (Mr. Neilson was the
7 Chapter 11 Trustee; PSZJ represented the Committee);

8 k) *In re Michael G. Tyson* (S.D.N.Y. 03-41300) (Mr. Neilson is currently the
9 trustee of the MGT Liquidating plan trust and PSZJ is his counsel; BRG serves as accountants to Mr.
10 Neilson);

11 l) *In re Adelphia Communications Corporation* (S.D.N.Y. 02-41729 RG) (BRG
12 serves as forensic accountants to the Creditors' Committee and PSZJ represents a separate ad hoc
13 committee);

14 m) *In re Reed E. Slatkin* (C.D. Cal. 01-11549 RR) (PSZJ represented the Debtor
15 and Mr. Neilson was the Chapter 11 Trustee and now the Liquidating Agent; BRG serves as
16 accountants to Mr. Neilson);

17 n) *In re Focus Media, Inc.* (C.D. Cal. 00-38197 VZ);

18 o) *In re JMS Automotive Rebuilders, Inc.* (C.D. Cal. 2:98-56224-EC) (Current
19 BRG employees handled tax issues; PSZJ represented Dana Holdings Corporation, indirect parent of
20 CP Product Inc. as successor to Ace Electric Company, Inc., a claimant);

21 p) *In re Magic Ford* (CD Cal. SV 96-20969-GM) (Mr. Neilson served as the
22 chapter 11 trustee; PSZJ was his counsel);

23 q) *In re Hiuka America Corporation* (CD Cal. 95-27964) (Mr. Neilson was the
24 Chapter 11 Trustee, then the Disbursing Agent; PSZJ represented Mr. Neilson in both capacities);
25 and

26 r) *In re Bruce McNall* (LA 94-48351 TD) (Mr. Neilson was the Chapter 11
27 Trustee; PSZJ represented the purchaser of the estate's interest in the Los Angeles Kings hockey
28 team).

1 Notwithstanding the foregoing, the Trustee does not believe that any of these relationships
2 will in any way impair BRG's independence or ability to perform the required services for the
3 Trustee.

4 To the best of the Trustee's knowledge and based upon the attached Tenenbaum Declaration,
5 BRG is not a creditor, equity security holder, or an "insider" of the Debtor as that term is defined in
6 section 101(31) of the Bankruptcy Code.

7 To the best of the Trustee's knowledge and based upon the attached Tenenbaum Declaration,
8 BRG is not nor was, within two years before the date of the filing of the petition, a director, officer,
9 or employee of the Debtor.

10 To the best of the Trustee's and BRG's knowledge, BRG has no interest adverse to the estate.

11 **E. Notice**

12 Pursuant to Local Bankruptcy Rule 2014-1(b)(4), a hearing is not required in connection with
13 the Application unless requested by the United States Trustee, a party in interest, or otherwise
14 ordered by the Court. Pursuant to Local Bankruptcy Rule 2014-1(b)(3), any response to the
15 Application and request for hearing must be in the form prescribed by Local Bankruptcy Rule 9013-
16 1(f)(1), and must be filed with the Court and served upon the Trustee, his counsel, and the United
17 States Trustee no later than fourteen (14) calendar days from the date of service of notice of the
18 filing of the Application.

19 Notice of filing of this Application was provided to the Debtor and its counsel, the Office of
20 the United States Trustee, and any party who filed and served a request for special notice as of the
21 date of service of the Notice.
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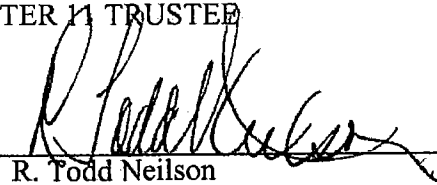
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WHEREFORE, the Trustee requests that the Court approve the employment of Berkeley Research Group, LLC effective as of March 21, 2014 to render services as described above, with compensation to be paid by the estate as an administrative expense in such amounts as this Court may hereafter determine and allow.

Dated: April 9, 2014

CHAPTER 11 TRUSTEE

By


R. Todd Neilson

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

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7 Stephen L Burton on behalf of Attorney Stephen L. Burton
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29 **2. SERVED BY UNITED STATES MAIL:**

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