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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
15 California corporation,

16 Debtor.

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

Chapter 11

CHAPTER 11 STATUS REPORT

Status Conference Date

Date: May 22, 2014

Time: 10:30 a.m.

Place: Courtroom 5A

411 West Fourth Street

Santa Ana, CA 92701-4593

Judge: Honorable Erithe A. Smith

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19 R. Todd Neilson, duly appointed chapter 11 trustee (“Trustee”) in the above-captioned
20 bankruptcy case (the “Case”), hereby files its First Chapter 11 Status Report in accordance with the
21 Court’s Order: (1) *Setting Hearing on Status of Chapter 11 Case*; and (2) *Requiring Report on*
22 *Status of Chapter 11 Case* entered on March 11, 2014 [Docket No. 7] and respectfully represents as
23 follows.

24 **1. Circumstances Precipitating Filing of Petition.**

25 The Debtor was in the business of selling and purchasing gold, silver, coins, bullion, and
26 other precious metals through its internet website or by phone. Over the past year, customer
27 complaints against the Debtor concerning delayed or undelivered orders were increasingly made to
28

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

15 **2. Compliance with 11 U.S.C. §§ 521, 1106, and 1107, and all applicable guidelines**
16 **of the Office of the U.S. Trustee.**

17 The Debtor has not yet filed its Schedule of Assets and Liabilities and Statement of Financial
18 Affairs (the "Schedules and Statements"). An Order extending the deadline to May 31, 2014 to file
19 the Schedules and Statements was entered on March 24, 2014 [Docket No. 27]. The Trustee has
20 filed the first Monthly Operating Report for the Debtor's estate for the period from the Petition Date
21 through March 31, 2014.

22 **3. Cash Collateral Issues.**

23 There are no cash collateral issues.

24 **4. Retention of Professionals.**

25 On March 21, 2014, the Debtor filed an application seeking to retain The Bisom Law Group
26 (the "BLG") as its general bankruptcy counsel. On April 4, 2014, the Office of the United States
27 Trustee (the "UST") objected to the Debtor's retention of BLG. On April 22, 2014, the Debtor filed
28 an amended application to employ BLG. Objections to BLG's retention application were due on or

1 before May 5, 2014. As of this date, no objections have been filed. On April 3, 2014, the Trustee
2 filed his application to employ Pachulski Stang Ziehl & Jones LLP (“PSZJ”) as his general
3 bankruptcy counsel, which application is pending. On April 10, 2014, the Trustee also filed an
4 application seeking to retain Berkeley Research Group, LLC (“BRG”), of which he is a member, as
5 his accountants and financial advisors. Objections were filed to both PSZJ and BRG’s retention
6 applications. A hearing has been set for May 22, 2010 at 10:00 a.m. on the PSZJ and BRG retention
7 applications.

8 **5. Post-petition Operations.**

9 The Debtor has no post-petition operations. The Debtor ceased operating on March 9, 2014.

10 **6. Post-petition Litigation.**

11 The Debtor is currently subject to a criminal investigation by the United States Attorney in
12 Charlotte, North Carolina. A class action lawsuit was filed against the Debtor earlier this year in the
13 U.S. District Court, Northern District of California, titled Victor Hannan, individually and on behalf
14 of a class of similarly situated persons, v. The Tulving Company Inc., a California corporation; and
15 Hannes Tulving, Jr., a California resident, bearing case no. 5:14-cv-01054.

16 **7. Rejection of Executory Contracts and Unexpired Leases.**

17 By Order entered May 1, 2014 [Docket No. 79], the Trustee has rejected the following two
18 non-residential real property leases: (i) 2110 ½ W. Oceanfront Boulevard, Newport Beach,
19 California 92663 (the “Home Office Lease”) and (ii) 2112 ½ W. Oceanfront Boulevard, Newport
20 Beach California 92663 (the “Residential Lease”). On May 6, 2014, The Trustee filed a motion to
21 reject a third lease located at 150 West 17th Street, Unit A, Costa Mesa, California (the “Costa Mesa
22 Motion”). Objections to the Costa Mesa Motion are due by May 20, 2014.

23 **8. Estimated Plan and Disclosure Statement Filing**

24 The Trustee has filed a motion to convert the case to one under Chapter 7 of the Bankruptcy
25 Code (the “Conversion Motion”), which is scheduled to be heard on May 22, 2014 at 10:00 a.m.
26 The outcome of the Conversion Motion will determine plan filing matters.

27 **9. Circumstances Surrounding Plan and Disclosure Statement**

28 See response to no. 8 above.

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 **CHAPTER 11 STATUS REPORT** 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 8, 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 8, 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 8, 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 8, 2014
Date

Janice G. Washington
Printed Name

/s/ Janice G. Washington
Signature

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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
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21 Elizabeth A Lossing on behalf of U.S. Trustee United States Trustee (SA)
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23 R. Todd Neilson (TR)
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25 Gary A Pemberton on behalf of Interested Party Courtesy NEF
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Michael B Reynolds on behalf of Interested Party Courtesy NEF
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2. SERVED BY UNITED STATES MAIL

Debtor

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U.S. Trustee

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Counsel for U.S. Trustee

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