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11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**

13 **VICTOR HANNAN**, individually and on
 14 behalf of a class of similarly situated
 15 persons,

16 Plaintiff,

17 v.

18 **THE TULVING COMPANY, INC.**, a
 19 California Corporation; and **HANNES**
 20 **TULVING, JR.** a California resident,

21 Defendants.

22 **CLASS ACTION**

23 Case No. 3:14-cv-01054

24 **COMPLAINT FOR:**

- 25 • **BREACH OF CONTRACT**
- 26 • **VIOLATION OF 7 U.S.C. § 1**
- 27 • **VIOLATION OF CORP. C. §**
28 **29536**
- **VIOLATION OF BUS. & PROF. C.**
§17200
- **VIOLATION OF CIVIL C. § 1770**
- **CONVERSION**
- **UNJUST ENRICHMENT**

DEMAND FOR JURY TRIAL



1 Plaintiff Victor Hannan (“Plaintiff”) brings this action individually and on behalf of
2 classes of similarly situated persons, by and through his undersigned counsel, and
3 alleges as follows:

4 INTRODUCTION

5 1. This complaint concerns Defendants’ retention of money of unsuspecting
6 customers who purchased precious metals from Defendants but received nothing in
7 return.

8 2. Defendant The Tulving Company, Inc. (“Tulving Company”) is a California
9 corporation that was in the business of buying and selling precious metals, including gold,
10 silver, platinum, and palladium in coin and bar form. Defendant Hannes Tulving, Jr. is the
11 owner and president of Tulving Company. Defendants Tulving Company and Hannes
12 Tulving, Jr. are referred to together herein as “Defendants.”

13 3. Tulving Company did business through a website, www.tulving.com, through
14 which it advertised the prices at which Tulving Company was willing to buy and sell
15 precious metal products. Tulving Company prominently advertises on its main page “Free
16 Overnight Shipping.”

17 4. Plaintiff is an individual residing in San Jose, California. On or about January
18 15, 2014, Plaintiff agreed to purchase from Tulving Company 2,000 “2014 American
19 Eagle 1 Ounce Silver Coins” at a price of \$23.25 per coin, for a total of \$46,500. Plaintiff
20 wired \$46,500 to Tulving Company on January 16, 2014. Tulving Company sent to
21 Plaintiff an email confirmation that it had received a wire transfer from him for that amount
22 for the Silver Coins.

23 5. Despite Tulving Company’s assurances of prompt delivery of the Silver
24 Coins that Plaintiff purchased, Tulving Company has failed to ship the Silver Coins.
25 Instead, Tulving Company appears to have ceased operations and has stopped
26 responding to emails and phone calls. Tulving Company appears to have failed to fulfill
27 hundreds or thousands of paid orders for precious metals, including Plaintiff’s order.

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JURISDICTION AND VENUE

6. This action arises under the laws of the United States, and in particular, the Commodity Exchange Act, 7 U.S.C. § 1 et seq. (the “CEA”). Accordingly, this Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, and 7 U.S.C. § 25(c).

7. This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a), because these claims are so related to the federal claims in this action that they form part of the same case or controversy.

8. This Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1332(d) because the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interest and costs, and this matter is a class action in which a member of the class is a citizen of a different State from one or more of Defendants.

9. This Court has personal jurisdiction over Defendants because Defendants reside in California and a substantial part of Defendants’ misconduct that gave rise to this action occurred in California.

10. This Court is a proper venue under 28 U.S.C. § 1391 because this Court is in a judicial district in which a substantial part of the events or omissions giving rise to the claims occurred.

INTRADISTRICT ASSIGNMENT

11. Pursuant to L.R. 3-2(c), Plaintiff respectfully requests that the Clerk of this Court assign this case to the San Francisco division of the Northern District of California. This action arises in San Francisco County because all wire transfers from Plaintiff to Defendant were sent through Wells Fargo Bank, which has its headquarters in San Francisco County.

PARTIES

12. Defendant The Tulving Company, Inc. is a California corporation with its principal place of business in Newport Beach, California.

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1 13. Defendant Hannes Tulving, Jr. is an individual residing in Newport Beach,
2 California.

3 14. Hannes Tulving, Jr. is the sole shareholder and president of Tulving
4 Company.

5 15. Plaintiff Victor Hannan is an individual residing in San Jose, California.

6 **FACTUAL ALLEGATIONS**

7 ***Tulving Company's Operations***

8 16. Hannes Tulving, Jr. established Tulving Company in 1990. Tulving
9 Company's primary business was the purchase and sale of precious metals in coin and
10 bar form, including gold, silver, platinum, and palladium.

11 17. Upon information and belief, Hannes Tulving, Jr. is the sole shareholder of
12 Tulving Company. When Tulving Company was still operating, Hannes Tulving, Jr. was
13 directly involved in its day-to-day affairs and personally managed the company. As the
14 owner and president of Tulving Company, and as a result of his close involvement in the
15 company's day-to-day operations, Hannes Tulving, Jr. tracked and was aware of Tulving
16 Company's inventory of precious metal products and Tulving Company's financial
17 condition.

18 18. Tulving Company held itself out as a stable, established precious metals
19 dealer. Tulving Company marketed itself prominently on its website: "Gold Silver Bullion
20 U S Precious Metals Dealer Buying Selling Coins Bars At This Same Online Address
21 Since 1995."

22 19. Tulving Company states that over the last thirty years, Tulving Company
23 "has bought and sold over 1.1 million individual coins," and that from 1999 through March
24 30, 2013, Tulving Company bought and sold in excess of \$2.1 billion in precious metals.
25 Tulving Company indicates that in 2012, it sold more than \$350 million in precious
26 metals.

27 20. Tulving Company prominently marketed the speed at which products are
28 shipped, advertising (i) "Free UPS Next Day Air Shipping on All Orders When You



1 Purchase or Sell”; (ii) “Free Overnight Shipping”; and (iii) that Tulving Company is “Open
2 24 Hours a Day – 7 Days a Week.”

3 21. Tulving Company’s website provided wire instructions for customers to wire
4 money to Tulving Company to purchase precious metals.

5 22. Tulving Company’s own website, until very recently, advertised that “Gold,
6 Platinum, and Palladium are typically shipped within 72 working hours of receipt of your
7 wire,” while “[s]ilver is typically shipped within about 5 working days after receipt of your
8 wire.” The Tulving Company also represented that items paid by check would be shipped
9 within 14 working days.

10 23. In any event, federal and state law require shipment within 28 or 30 days.
11 Specifically, the FTC Mail Order Rule requires orders shipped by mail to be sent within
12 30 days and requires businesses to offer customers a “full and prompt refund” if they
13 cannot meet the original shipment date. The California Commodity Law of 1990,
14 California Corporations Code §§ 29520, 29531(b), requires bullion dealers to deliver
15 products within 28 calendar days of a purchase.

16 ***Plaintiff’s Purchase***

17 24. Plaintiff has completed several purchases of precious metals from Tulving
18 Company over the last three years.

19 25. On January 15, 2014, Plaintiff called Tulving Company’s telephone number
20 advertised on its website and spoke with a representative of Tulving Company. During
21 that phone call, Plaintiff place an order for the purchase of 2,000 “2014 American Eagle 1
22 Ounce Silver Coins” (the “Silver Coins”) at a price of \$23.35/each, for a total of \$46,500.

23 26. Pursuant to the instructions provided by Tulving Company, Plaintiff wired
24 \$46,500 to Tulving Company.

25 27. Tulving Company confirmed the transaction and receipt of the wired funds
26 through a form email on January 16, 2014, which attached a form invoice. The text of the
27 form email indicates:

28 //



1 This email is to notify you that one of the following has
2 occurred...

3 1. We have received payment for your order.

4 or

5 2. We have shipped your order.

6 Your invoice has been attached to this email. If your invoice
7 does NOT contain a tracking number or ship date, then it is
8 meant only to inform you that we have received your
9 payment.

10 You will receive a second email on the day your order ships.
11 Another copy of your invoice will be attached. Your tracking
12 number, along with the ship date, will be included on this
13 invoice, directly underneath the description of the item(s) you
14 ordered. All orders are shipped overnight delivery via UPS
15 Next Day Air Saver....

16 28. The form invoice attached to the January 16, 2014 email memorialized the
17 transaction in which Plaintiff had entered with Tulving Company. It identified the "Qty"
18 (Quantity) as 2,000, the "Description" as "2014 American Eagle 1 Ounce Silver Coin
19 Sealed Box," the "Price Ea" as 23.35, and the "Amount" as 46,500.00. The invoice
20 identified Plaintiff as both the "Bill To" and "Ship To" contact, and identified the "Pymt
21 Type" as "Wire." The invoice bore a stamp "PAID 1/16/2014," confirming that Tulving
22 Company had received Plaintiff's wire for that amount. The invoice did not include a
23 tracking number. Therefore, per the attaching email, the invoice indicated receipt of
24 payment for the order but did not confirm any shipment of the coins Plaintiff purchased. A
25 copy of the above referenced email and invoice are attached hereto as **Exhibit A**.

26 29. As of March 1, 2014, Plaintiff had still not received the Silver Coins he had
27 purchased. On that date, he attempted to call Tulving Company to check on the status of
28 his order. Nobody answered Plaintiff's call; Plaintiff left a voicemail.

30. On March 4, Plaintiff emailed Tulving Company to inquire further on the
status of his order. Plaintiff has received no response to his email. On the same day,
Plaintiff called Tulving Company to check on the status of his email and left another
voicemail when nobody answered.



1 31. As of the date of this Complaint, Plaintiff has still received no response to
2 his multiple email and voicemail inquiries on the status of his order.

3 ***Tulving Company Ceases Operations Without Fulfilling Thousands of Paid Orders***

4 32. In the fall of 2013, reports began to surface on various websites that
5 Tulving Company was failing to fulfill orders for which payment had been made. Plaintiff
6 was unaware of these reports when he purchased his Silver Coins on January 15, 2014.

7 33. One website in particular, <http://about.ag>, (a popular website carrying news
8 on silver trading; “ag” is the periodic table abbreviation for the element silver), detailed
9 the mounting complaints about Tulving Company’s failure to deliver precious metals for
10 which it had received payment. The website indicates that beginning in April 2013, the
11 Better Business Bureau began to receive an increased number of complaints concerning
12 Tulving Company’s failure to timely deliver precious metals. The Better Business Bureau,
13 by November 1, 2013, had received 111 complaints of orders delayed from three to five
14 months. Many of the complaints, however, were “resolved” by Tulving Company’s
15 promise to the Better Business Bureau that it would deliver the orders about which
16 customers complained.

17 34. Between November 1, 2013 and the date of Plaintiff’s purchase, complaints
18 with the Better Business Bureau continued to mount. The Better Business Bureau, by
19 January 16, 2014, had logged 303 complaints concerning Tulving Company’s failure to
20 ship purchased precious metals, totaling \$13.8 million worth of precious metals. These
21 complaints likely represent only a small fraction of the actual number of customers to
22 whom Tulving Company failed to deliver purchased precious metals, given that not all
23 customers with unfulfilled orders will have complained specifically to the Better Business
24 Bureau.

25 35. During late 2013 and early 2014, in addition to the complaints to the Better
26 Business Bureau described above, hundreds of Tulving Company customers lodged
27 complaints on numerous websites and online forums.

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1 36. Based on Tulving Company's public representations on the volume of its
2 sales, the website <http://about.ag> estimates that "[t]here may be as many as 10,000
3 people waiting for their orders" from Tulving Company.

4 37. Since the date of Plaintiff's purchase of January 16, 2014, complaints about
5 Tulving Company have continued to mount. The website <http://about.ag> now counts
6 more than 450 complaints about failure to deliver precious metals that customers have
7 purchased.

8 38. On February 12, 2014, the Orange County Register, a California
9 newspaper, published an article relating to story of a military veteran that "is one of
10 hundreds waiting on coins from the Tulving Co. in Newport Beach." The article reported:
11 "Consumers across the country have reported late or missing shipments of rare silver
12 and gold coins purchased from the Orange County precious-metals dealer." The article
13 further reported that Hannes Tulving, Jr. did not respond to multiple email and phone
14 requests for an interview from the newspaper.

15 39. On February 28, 2014, the website <http://about.ag> reported Tulving
16 Company is effectively out of business and has stopped answering phone calls.

17 40. On March 4, 2014, popular investment website The Street further reported
18 that Tulving Company "has ceased operations" and employees of Tulving Company
19 "have been told to go home."

20 41. The Better Business Bureau now reports on its website: "The Tulving
21 Company Inc Is Believed to Be Out of Business !"

22 42. Upon information and belief, Tulving Company continued to take purchase
23 orders for precious metals as late as February 28, 2014, long after it had decided that it
24 would no longer fulfill pending or future orders for precious metals. Tulving Company
25 accepted millions of dollars in payments from thousands of customers across the country
26 while intending **not** to actually ship any products purchased.

27 43. Upon information and belief, Tulving Company does not intend to fulfill
28 thousands of pending orders for precious metals for which it had already collected



1 payments from customers. Rather, Tulving Company and its owner, Hannes Tulving, Jr.,
2 have ceased all contact from their customers and the public, despite thousands of
3 outstanding orders.

4 **CLASS ACTION ALLEGATIONS**

5 44. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff brings this action
6 on his own behalf and as representatives of all persons in the United States who have
7 purchased and paid for precious metal products from Tulving Company, but who have
8 not received such products (the "Nationwide Class").

9 45. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff also brings this
10 action on his own behalf and as representatives of all persons in California who have
11 purchased and paid for precious metal products from Tulving Company, but who have
12 not received such products (the "California Subclass," and together with the Nationwide
13 Class, the "Classes").

14 46. A class action is appropriate here because there exists an ascertainable
15 Class and California Subclass, and a well-defined community of interest in the questions
16 of law and fact involved.

17 47. The Class and California Subclass are readily ascertainable from Tulving
18 Company's records.

19 48. A class action is the superior method of adjudicating this controversy
20 because: a) the Class and California Subclass are so numerous that the joinder of all
21 members is impracticable, b) there are questions of law and fact common to the Class
22 and California Subclass that predominate over any question affecting only individual
23 Class and California Subclass members, and c) the claims of the representative Plaintiff
24 are typical of the claims of the Class and California Subclass, and the representative
25 Plaintiff will fairly and adequately protect the interests of the Class and California
26 Subclass.

27 49. The common questions of law and fact include:

- 28
- Whether Hannes Tulving, Jr. and Tulving Company promised



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shipment of precious metal products in exchange for payments from members of the Class and California Subclass;

- Whether Tulving Company breached its agreements with members of the Class and California Subclass by failing to deliver precious metal products as promised and within the time required by California and federal law;
- Whether Hannes Tulving, Jr. and Tulving Company violated the Commodities Exchange Act through the misrepresentations and other conduct described herein;
- Whether Hannes Tulving, Jr. and Tulving Company violated the California Commodity Law through the misrepresentations and other conduct described herein;
- Whether Hannes Tulving, Jr. and Tulving Company were unjustly enriched when they retained money paid to them by members of the Class and California Subclass without providing the precious metal products they promised in return for said money;
- Whether Hannes Tulving Jr. and Tulving Company converted the funds of members of the Class and California Subclass by taking their money without providing the precious metal products they promised in return for said money;
- Whether Hannes Tulving, Jr. and Tulving Company engaged in unlawful and fraudulent business practices in violation of Business & Professions Code section 17200;
- Whether Hannes Tulving, Jr. and Tulving Company violated California Civil Code § 1770(9) by “[a]dvertising goods or services with intent not to sell them as advertised”;
- Whether Hannes Tulving, Jr. and Tulving Company violated California Civil Code § 1770(10) by “[a]dvertising goods or services

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with intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity.”

50. Plaintiff can and will fairly and adequately represent and protect the interests of the Class and California Subclass because:

- All of the questions of law and fact regarding the liability of Defendants are common to the Class and California Subclass and predominate over any individual issues that may exist, such that by prevailing on his own claims, Plaintiff will necessarily establish the liability of Defendants to all Class and California Subclass members;
- Without the representation provided by Plaintiff, it is unlikely that any Class or California Subclass members would receive legal representation and/or obtain recourse for the misconduct carried out by Defendants; and
- Plaintiff has retained competent attorneys who are experienced in both the conduct of class actions and consumer protection law. Plaintiff and his counsel have the necessary resources to litigate this class action, and Plaintiff and his counsel are aware of their fiduciary responsibility to the Class and California Subclass members and are determined to discharge those duties to obtain the best possible recovery for the Class and California Subclass.

FIRST CLAIM FOR RELIEF

(Breach of Contract—brought by Plaintiff individually and on behalf of the Classes Against Tulving Company)

51. Plaintiff incorporates by reference the allegations contained in the paragraphs above.

52. Plaintiff and members of the Classes entered into substantially similar contracts with Tulving Company, the terms of which were reflected in Tulving Company’s common promises to Plaintiff and members of the Classes, and in form invoices and

1 other communications that memorialized the pertinent terms of the contracts between
2 Tulving Company and Plaintiff and members of the Classes.

3 53. Tulving Company has breached its contracts with Plaintiff and members of
4 the Classes by failing to deliver the precious metal products for which Plaintiff and
5 members of the Classes paid.

6 54. Plaintiff and members of the Classes have been damaged as a direct and
7 proximate result of Tulving Company’s breach and are entitled to damages.

8 **SECOND CLAIM FOR RELIEF**

9 **(Violation of the Commodities Exchange Act, 7 U.S.C. § 6b(a)— brought by Plaintiff**
10 **individually and on behalf of the Classes Against both Defendants)**

11 55. Plaintiff incorporates by reference the allegations contained in the
12 paragraphs above.

13 56. The Commodity Exchange Act (“CEA”), in 7 U.S.C. § 6b(a) makes it
14 unlawful “for any person, in or in connection with any order to make, or the making of,
15 any contract of sale of any commodity for future delivery made, or to be made, for or on
16 behalf of any other person if such contract for future delivery is or may be used for (A)
17 hedging any transaction in interstate commerce in such commodity or the products or
18 byproducts thereof, or (B) determining the price basis of any transaction in interstate
19 commerce in such commodity, or (C) delivering any such commodity sold, shipped, or
20 received in interstate commerce for the fulfillment thereof:

- 21 (i) to cheat or defraud or attempt to cheat or defraud such other person;
- 22 (ii) willfully to make or cause to be made to such other person any false
23 report or statement thereof, or willfully to enter or cause to be entered for such
24 person any false record thereof;
- 25 (iii) willfully to deceive or attempt to deceive such other person by any
26 means whatsoever in regard to any such order or contract or the disposition or
27 execution of any such order or contract, or in regard to any act of agency
28 performed with respect to such order or contract for such person...”





1 57. Under 7 U.S.C. § 25(a)(1), any person who violates the CEA, or who
2 willfully aids, abets, counsels, induces, or procures the commission of a violation of the
3 CEA, shall be liable for actual damages from one or more commodities transactions, and
4 caused by such violation to any other person who made such transactions.

5 58. Defendants marketed and operated as a national business, marketing and
6 selling precious metals in interstate commerce to customers throughout the country.

7 59. Defendants' agreements to sell precious metals to Plaintiff and members of
8 the Classes constitute contracts for the sale of commodity made, or to be made, for
9 delivery in interstate commerce.

10 60. By receiving orders and payments for precious metals without intent to
11 deliver such metals, Defendants cheated and defrauded Plaintiff and members of the
12 Classes.

13 61. Defendants' representations and promises that the orders placed by
14 Plaintiff and members of the Classes would be shipped constituted a false report or
15 statement in connection with a commodity transaction.

16 62. Defendants' representations and promises that the orders placed by
17 Plaintiff and members of the Classes would be shipped constituted willful deceit in the
18 contracting and disposition of contracts for commodities.

19 63. Plaintiff and members of the Classes reasonably relied on these
20 misrepresentations and omissions, and the false statements sent by Defendants to
21 Plaintiff and members of the Classes.

22 64. Plaintiff and members of the Classes have been damaged as a direct and
23 proximate result of Defendants' violations of the Commodities Exchange Act.

24 65. Defendants willfully and knowingly acted to damage the interests of Plaintiff
25 and members of the Classes, and did so with malice, oppression and fraud and in
26 conscious disregard of the rights of Plaintiff and members of the Classes. Accordingly,
27 Plaintiff and the Classes are entitled to recover punitive damages from Defendants.

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THIRD CLAIM FOR RELIEF

(Violation of California Corporations Code § 29536 — brought by Plaintiff individually and on behalf of the Classes Against both Defendants)

66. Plaintiff incorporates by reference the allegations contained in the paragraphs above.

67. California Corporations Code § 29536 makes it unlawful for “any person, directly or indirectly, in connection with the purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into, or the entry into, a commodity, commodity contract, or commodity option to do any of the following:

- (a) To willfully employ any device, scheme, or artifice to defraud;
- (b) To willfully make any false report, enter any false record, make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;
- (c) To willfully engage in any transaction, act, practice, or course of business which operates or would operate as a fraud or deceit upon any persons;
- (d) To willfully misappropriate or convert the funds, security, or property of any other person.”

68. California Corporations Code § 29552 provides that any person who “materially assists” in any violation of the California Commodity Law “is jointly or severally liable with any other person” under the law for the violation.

69. Defendants’ sales of precious metals to Plaintiff and the members of the Classes set forth above constitute the sales of commodities as defined under the California Commodity Law.

70. By the conduct described above, Defendants have violated the California Commodity Law and/or materially assisted in the violations of such law by making material misrepresentations to Plaintiff and members of the Classes concerning Defendants’ intent and ability to ship the precious metals sold to Plaintiff and members of



1 the Classes. Defendants’ conduct constitutes a device, scheme, or artifice to defraud;
2 untrue statements of material fact; a course of business that operated as a fraud; and the
3 willful misappropriation and conversion of funds.

4 71. Plaintiff and members of the Classes reasonably relied on Defendants’
5 false statements and representations.

6 72. Plaintiff and members of the Classes have been damaged as a direct and
7 proximate result of Defendants’ violations of the California Commodity Law.

8 **FOURTH CLAIM FOR RELIEF**

9 **(Violation of Unlawful Prong of California Business and Professions Code §**
10 **17200— brought by Plaintiff individually and on behalf of the Classes Against both**
11 **Defendants)**

12 73. Plaintiff incorporates by reference the allegations contained in the
13 paragraphs above.

14 74. Throughout the class period, Defendants have regularly conducted
15 business throughout the state of California.

16 75. Defendants’ business was implemented and directed from Tulving
17 Company’s offices in Newport Beach, California. California’s unfair competition law
18 applies to all customers, both within and outside of California, who have been harmed as
19 a result of Defendants’ conduct described herein.

20 76. California Business & Progressions Code §§ 17200 *et seq.* prohibits acts of
21 unfair competition, including any “unlawful, unfair, or fraudulent business act of practice.”

22 77. Hannes Tulving, Jr. and Tulving Company accepted payments from Plaintiff
23 and members of the Classes while knowing that it would not be able to fulfill such orders.

24 78. Defendants have engaged in an unlawful business act or practice in
25 violation of California Business and Professions Code section 17200.

26 79. In violating the Federal Commodities Exchange Act, 15 U.S. C. § 6(b)(a),
27 Defendants entered into contracts with Plaintiff and members of the Classes for the sale
28 of commodities with the intent of cheating, defrauding, and deceiving them.

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1 80. In violation of the California Commodity Law of 1990, California
2 Corporations Code §§ 29520, 29531(b), Hannes Tulving, Jr. and Tulving Company failed
3 to deliver commodities within 28 calendar days of purchase by the Plaintiff and members
4 of the Classes.

5 81. As a result of Defendants’ misconduct, Plaintiff and the members of the
6 Classes have suffered an injury in fact and have lost money or property as a result of the
7 unfair competition.

8 **FIFTH CLAIM FOR RELIEF**

9 **(Violation of Fraudulent Prong of California Business and Professions Code §**
10 **17200— brought by Plaintiff individually and on behalf of the Classes Against both**
11 **Defendants)**

12 82. Plaintiff incorporates by reference the allegations contained in the
13 paragraphs above.

14 83. Defendants represented to Plaintiff and members of the Classes that
15 Tulving Company would ship purchased products within three to five working days from
16 the date of a wire transfer, and that items paid by check would be shipped within fourteen
17 working days. Defendants knew, at the time they accepted payment from Plaintiff and
18 members of the Classes, that they would not comply with their representations on
19 product shipment, and would not in fact ship the purchased products at any time.

20 84. The Defendants’ representations concerning shipping times were material
21 misstatements.

22 85. A reasonable consumer would have been deceived by the Defendants’
23 misstatements.

24 86. As a result of the Defendants’ misconduct, Plaintiff and the other members
25 of the Classes have suffered an injury in fact and have lost money or property as a result
26 of the unfair competition.

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SIXTH CLAIM FOR RELIEF

(Violation of California Civil Code § 1770— brought by Plaintiff individually and on behalf of the Classes Against both Defendants)

87. Plaintiff incorporates by reference the allegations contained in the paragraphs above.

88. California Civil Code § 1770(9) prohibits the “[a]dvertising [of] goods or services with intent not to sell them as advertised.”

89. Defendants advertised for sale precious metal products that they did not intend to sell as advertised. As a result of Defendants’ unlawful advertisements of precious metal products with intent not to sell them as advertised, Plaintiff and members of the Classes have suffered damage.

90. California Civil Code § 1770(10) prohibits the “[a]dvertising [of] goods or services with intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity.”

91. Defendants advertised for sale precious metal products while knowing that they could not supply the reasonably expected demand. As a result of Defendants’ unlawful advertisements of precious metal products with intent not to sell them as advertised, Plaintiff and members of the Classes have suffered damage.

92. Plaintiff seeks on behalf of himself and the Classes pursuant to California Civil Code § 1780 an injunction requiring Defendants to either deliver all precious metals products sold to Plaintiff and the members of the Classes or to return the payments of Plaintiff and members of the Class.

SEVENTH CLAIM FOR RELIEF

(Conversion—brought by Plaintiff individually and on behalf of the Classes Against both Defendants)

93. Plaintiff incorporates by reference the allegations contained in the paragraphs above.

94. Plaintiff and the members of the Classes owned the money in their bank accounts that they transferred to Defendants via wire or check as a result of Defendants’

1 false representations that the money was transferred in exchange for precious metal
2 products.

3 95. Defendants interfered with the property of Plaintiff and the members of the
4 Classes by accepting payments in exchange for precious metal products which it had no
5 intent to actually deliver.

6 96. As a result of Defendants' misconduct, Plaintiff and the other members of
7 the Classes were damaged.

8 **EIGHTH CLAIM FOR RELIEF**

9 **(Unjust Enrichment—brought by Plaintiff individually and on behalf of the Class
10 and California Subclass Against both Defendants)**

11 97. Plaintiff incorporates by reference the allegations contained in the
12 paragraphs above.

13 98. Plaintiff and the members of the Classes have conferred a substantial
14 benefit upon Defendants by paying them money in exchange for precious metal
15 products.

16 99. These payments were accepted and retained by Defendants under
17 circumstances such that it would be inequitable for Defendants to retain the benefit
18 without payment to Plaintiff and members of the Classes.

19 100. As a result of Defendants' unjust enrichment, Plaintiff and the members of
20 the Classes have sustained damages in an amount to be determined at trial and seek full
21 disgorgement and restitution of Defendants' enrichment, benefits, and ill-gotten gains
22 acquired as a result of the unlawful or wrongful conduct alleged above.

23 **PRAYER FOR RELIEF**

24 **WHEREFORE**, Plaintiff respectfully requests judgment as follows:

25 1. That the Court enter a temporary restraining order and preliminary
26 injunction freezing all assets of Defendants to secure recovery for Plaintiff and members
27 of the Classes;

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1 2. That the Court enter a judgment finding that Tulving Company has
2 breached its contracts with Plaintiff and members of the Classes;

3 3. That the Court enter a judgment finding that Defendants have:

- 4 a. violated California Business and Professions Code § 17200;
- 5 b. violated California Civil Code § 1770;
- 6 c. violated the Commodities and Exchange Act;
- 7 d. violated the California Commodity Law;
- 8 e. committed conversion;
- 9 f. been unjustly enriched;

10 4. That the Court award damages and monetary relief as follows:

- 11 a. Damages in an amount to be determined at trial in the form of the
- 12 Class members' actual damages;
- 13 b. Exemplary damages;
- 14 c. Restitution; and
- 15 d. Plaintiff's and the other Class members' costs and attorneys' fees;

16 5. Such other relief that the Court determines is just and proper.

17 Respectfully submitted,

18 DATED: March 6, 2014

KRONENBERGER ROSENFELD, LLP

19 By: s/ Karl S. Kronenberger
20 Karl S. Kronenberger

21 Attorneys for Plaintiff

22 Of Counsel:

23 Edward F. Haber (pro hac vice forthcoming)
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REQUEST FOR JURY TRIAL

Plaintiff hereby demands a trial of this action by jury.

DATED: March 6, 2014

KRONENBERGER ROSENFELD, LLP

By: s/ Karl S. Kronenberger
Karl S. Kronenberger

Attorneys for Plaintiff



Exhibit A

Subject: Payment / Shipping Notification: DO NOT REPLY

Date: Thursday, January 16, 2014 at 1:48:41 PM Pacific Standard Time

From: order-status@tulving.com

To: [REDACTED]

To Victor Hannan :

This email is to notify you that one of the following has occurred...

1. We have received payment for your order.

or

2. We have shipped your order.

Your invoice has been attached to this email. If your invoice does NOT contain a tracking number or a ship date, then it is meant only to inform you that we have received your payment.

You will receive a second email on the day your order ships. Another copy of your invoice will be attached. Your tracking number, along with the ship date, will be included on this invoice, directly underneath the description of the item(s) you ordered. All orders are shipped overnight delivery via UPS Next Day Air Saver. To track your package click on the following link... <http://www.ups.com/tracking/tracking.html> ... then enter your tracking number. DO NOT REPLY TO THIS EMAIL.

Invoice

Invoice #	Pymt Type	Date
522106	Wire	1/16/2014

Bill To
Victor Hannan [REDACTED] San Jose, CA 95118

PAID
01/16/2014

Ship To
Victor Hannan [REDACTED] San Jose, CA 95118

Qty	Item Code	Description	Price Ea	Amount
2,000	AMSE2014-OMS	2014 American Eagle 1 Ounce Silver Coin Sealed Box	23.25	46,500.00
			Total	\$46,500.00

New Specials Everyday. See The Gold Bullion Page On Our Website At www.tulving.com

The Tulving Company is NGC Authorized Dealer #862, PCGS Authorized Dealer #1080, and CCE Dealer.

IMPORTANT NOTICE

FACTORS YOU MUST CONSIDER WHEN PURCHASING COINS OR BULLION

RISK: The purchase of coins or bullion items is highly speculative, and involves substantial risk. As in other markets, coin and bullion prices can be extremely volatile, and will rise and fall depending upon market conditions. Therefore, before purchasing coins or bullion, you should first have adequate cash reserves and other assets to absorb a potentially significant loss.

HOLDING PERIOD: Historically, few coins or bullion items have appreciated dramatically in the short term. Therefore, purchasers should recognize that it may well be necessary for them to hold coins or bullion for a 3 - 5 year period, or even a 5 - 10 year period, to have any chance of realizing a significant gain.