

1 M. Candice Bryner, State Bar No. 192462
Tumy N. Nguyen, State Bar No. 192268
2 **LAW OFFICES OF M. CANDICE BRYNER**
A PROFESSIONAL CORPORATION
3 900 Roosevelt
Irvine, CA 92620
4 Telephone: (949) 371-9056
Facsimile: (949) 679-2492
5 Email: Candice@brynerlaw.com

6 Attorneys For Creditor
Giuseppe Minuti

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8 **UNITED STATES BANKRUPTCY COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
10 **(SANTA ANA DIVISION)**

11 In Re:) Chapter 11 Case No. 8:14-11492-ES
12 THE TULVING COMPANY, INC.,)
13 Debtor) **RESPONSE OF CREDITOR GIUSEPPE**
14) **MINUTI TO TRUSTEE’S OBJECTION TO**
15) **PROOF OF CLAIM NO. 147-1;**
16) **DECLARATION OF GIUSEPPE MINUTI**
17) **Date: January 21, 2016**
18) **Time: 10:30 a.m.**
19) **Crtrm 5A**
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1 Creditor Giuseppe Minuti hereby submits his Response to the Trustee's Objection to
2 Minuti's Filed Proof of Claim (Claim No. 147-1).

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4 **1. STATEMENT OF FACTS**

5 Minuti was a long-time customer of Debtor the Tulving Company, Inc. and had
6 purchased and sold coins from the Debtor over a period of several years. More recently, in
7 December 2013, Minuti ordered and paid the Debtor for 200 hundred gold coins, totaling
8 approximately \$250,000.00. However, Minuti never received all of the gold coins for which he
9 paid. More particularly, Minuti never received the 100 "2013 Canadian Maple Leaf Gold Coins"
10 referenced in invoice Nos. 521870 and 521872. Minuti paid a total of \$126,075 for these Gold
11 Coins. He also never received all of the 100 "Canadian Maple Leaf Gold Coins" referenced in
12 invoice #521834. (Declaration of Giuseppe Minuti, ¶¶ 2-4).

13 Rather, Minuti only received 20 of these Gold Coins. The invoice states that the
14 remaining 80 coins "Ship Separately for Insurance Purposes." However, Minuti never received
15 this alleged second shipment. The tracking number referenced in invoice #521834 (i.e. tracking
16 # 1Z63RD08A277336287) pertains to the 20 Gold Coins that the Debtor shipped in one package
17 to Minuti on February 18, 2014 via United Parcel Service. Thus, while Minuti paid Debtor
18 \$126,355.00 for 100 Gold Coins, Minuti only received 20 of the Gold Coins. Thus, the Debtor
19 owes Minuti \$101,084.00 for the 80 Gold Coins referenced on invoice #521834 which he never
20 received, in addition to the \$126,075.00 for the 100 Gold Coins referenced in invoices 521870
21 and 521872. (Minuti Dec., ¶¶ 4-5).

22 In January and February 2014, Minuti made several attempts to ascertain the status of the
23 Gold Coins he had purchased from the Debtor. Specifically, he called the Debtor approximately
24 15 times. Each time, he spoke to the office assistant, Karen, and she assured him that his orders
25 had been received and that the Gold Coins would be shipped to him. Minuti also sent an email to
26 the Debtor's principal, Hannes Tulving. However, Mr. Tulving never responded to this email.
27 The Debtor did ship 20 of the Gold Coins at issue in mid-February 2014. However, the Debtor
28 never shipped the other Gold Coins Minuti had ordered. Nor did the Debtor provide Minuti any

1 information regarding any alleged second shipment (i.e. no shipment date, tracking number, bill
2 of lading or any other documentation to demonstrate that the Debtor ever shipped the 80 Gold
3 Coins at issue). (Minuti Dec., ¶ 6).

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5 **2. THE TRUSTEE’S OBJECTION AND MINUTI’S RESPONSE**

6 The Trustee does not dispute that the Debtor owes Minuti \$126,075.00 for the Gold
7 Coins referenced on invoices 521870 and 521872. However, the Trustee objects to Minuti’s
8 Proof of Claim as it pertains to the 80 Gold Coins referenced on invoice #521834 for which
9 Minuti claims \$101,084.00.

10 According to the Trustee’s Objection, “the Debtor’s books and records show that all of
11 the items on invoice #521834 were shipped to Claimant.” However, the Trustee does not attach
12 or otherwise provide copies of any such documents (i.e. no bills of lading, no tracking numbers,
13 or any other documentation). If the Trustee has documents which can demonstrate the Debtor
14 actually shipped the 80 Gold Coins, the Trustee should provide this documentation so that the
15 parties can ascertain what happened to the Gold Coins which Minuti never received.

16 To the extent the “books and records” to which the Trustee refers consists only of invoice
17 #521834 which is attached to Minuti’s Proof of Claim, this invoice is simply insufficient to
18 demonstrate the Debtor ever did ship the 80 Gold Coins at issue. Indeed, the invoice merely
19 states that 80 Gold Coins “Ship Separately for Insurance Purposes.” The invoice is unclear as to
20 whether the Debtor was claiming that such Gold Coins had actually been shipped or merely that
21 they would supposedly be shipped at some future date. In any event, Minuti can assure this
22 Court and the Trustee that he never received these 80 Gold Coins. Nor was he aware until he
23 received the Trustee’s Objection to his Proof of Claim that there has ever been any contention
24 that the Debtor shipped the 80 Gold Coins that Minuti never received. (Minuti Dec., ¶ 7).

25 Notably, while invoice #521834 provides a tracking number for the 20 Gold Coins which
26 the Debtor did ship to Minuti, it provides no similar tracking information for the remaining Gold
27 Coins. If the Debtor did ship these Gold Coins (which Minuti never received), there should at
28 the very least be some documentation to demonstrate such fact.

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3. CONCLUSION

Creditor Giuseppe Minuti never received the 80 Gold Coins referenced in invoice #521834 for which he paid \$101,084.00. Therefore, Minuti respectfully requests that the Court allow Minuti's Proof of Claim against the Debtor in its entirety.

Dated: January 6, 2016

Respectfully submitted,

LAW OFFICES OF M. CANDICE BRYNER

/s/mcbryner

M. Candice Bryner

Attorney for Creditor Giuseppe Minuti

DECLARATION OF GIUSEPPE MINUTI

1
2 I, Giuseppe Minuti, declare as follows:

3 1. I am over the age of 18 and I am a creditor of Debtor, the Tulving Company. I
4 have personal knowledge of the facts stated in this Declaration, and if called upon to testify, I
5 could and would competently do so.

6 2. I was a long-time customer of Debtor the Tulving Company, Inc. and had
7 purchased and sold coins from the Debtor over a period of several years. More recently, in
8 December 2013, I ordered and paid the Debtor for 200 hundred gold coins, totaling
9 approximately \$250,000.00. However, I never received most of the gold coins for which I paid.

10 3. More particularly, I never received the 100 “2013 Canadian Maple Leaf Gold
11 Coins” referenced in invoice Nos. 521870 and 521872. I paid a total of \$126,075 for these Gold
12 Coins.

13 4. With respect to the 100 “Canadian Maple Leaf Gold Coins” referenced in invoice
14 #521834, I only received 20 of these Gold Coins. The invoice states that the remaining 80 coins
15 “Ship Separately for Insurance Purposes.” However, I never received any second shipment. The
16 tracking number referenced on invoice 521834 (i.e. tracking # 1Z63RD08A277336287) pertains
17 to the 20 Gold Coins that the Debtor shipped to me via United Parcel Service in one package on
18 February 18, 2014.

19 5. I paid the Debtor \$126,355.00 for 100 Gold Coins referenced in invoice #521834.
20 However, I only received 20 of the Gold Coins for which I paid. Therefore, the Debtor owes me
21 \$101,084.00 for the 80 Gold Coins referenced on invoice #521834 which I never received, in
22 addition to the \$126,075.00 for the 100 Gold Coins referenced in invoices 521870 and 521872.

23 6. In January and February 2014, I made several attempts to ascertain the status of
24 the Gold Coins I had purchased from the Debtor. Specifically, I called the Debtor approximately
25 15 times. Each time, I spoke to the office assistant, Karen, and she assured me that my orders
26 had been received and that the Gold Coins would be shipped to me soon. I also sent an email to
27 the Debtor’s principal, Hannes Tulving. However, Mr. Tulving never responded to this email.
28 The Debtor did ship 20 of the Gold Coins at issue to me in mid-February 2014. However, the

1 Debtor never shipped the other Gold Coins I had ordered. Nor did the Debtor provide me with
2 any information regarding any alleged second shipment of Gold Coins (i.e. no shipment date,
3 tracking number, bill of lading or any other documentation to demonstrate that the Debtor ever
4 shipped the 80 Gold Coins at issue).

5 7. The first time I was ever aware that there was any contention that the Debtor had
6 shipped 80 additional Gold Coins to me was when I received the Trustee's Objection to my
7 Proof of Claim. The Debtor never advised me or claimed to me that it had ever shipped these
8 Gold Coins. However, I can assure this Court and the Trustee that I never received the 80 Gold
9 Coins at issue.

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11 I declare under penalty of perjury under the laws of the United States of America that the
12 foregoing is true and correct. Executed this 6th day of January 2016 at Hoboken, New Jersey.

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GIUSEPPE MINUTI

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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:
900 Roosevelt, Irvine, CA 92620

A true and correct copy of the foregoing document entitled (*specify*): RESPONSE OF CREDITOR GIUSEPPE MINUTI TO TRUSTEE'S OBJECTION TO PROOF OF CLAIM NO. 147-1; DECLARATION OF GIUSEPPE MINUTI

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 (*date*) 1/7/2015, 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:

See attached list

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) 1/7/2015, 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.

See attached list

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 (*date*) 1/7/2015, 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.

The Honorable Erithe A. Smith
U.S. Bankruptcy Court
Ronald Reagan Federal Building
411 W. Fourth Street, Suite 5040
Santa Ana, CA 92701

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.

1/7/2015
Date

M. Candice Bryner
Printed Name

/s/mcbryner
Signature

TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING

Wesley H. Avery wamiracle6@yahoo.com, waverly@rpmlaw.com
 Candice Bryner candice@brynerlaw.com
 Philip Burkhardt phil@burkhardtandlarson.com, Stacey@burkhardtandlarson.com
 Stephen L Burton steveburtonlaw@aol.com
 Frank Cadigan frank.cadigan@usdoj.gov
 Linda F Cantor lcantor@pszjlaw.com
 David L. Gibbs david.gibbs@gibbslaw.com, ecf@gibbslaw.com
 Nancy S Goldenberg nancy.goldenberg@usdoj.gov
 Lawrence J Hilton lhilton@oneil-llp.com ssimons@oneil-llp.com, kdonhue@oneil-llp.com
 John H. Kim jkim@cookseylaw.com
 R. Todd Neilson (TR) tneilson@brg-expert.com, sgreenan@brg-expert.com;tneilson@ecf.epiqsystems.com;ntroszak@brg-expert.com
 Jason S. Pomerantz jspomerantz@pszjlaw.com
 Nanette D. Sanders becky@ringstadlaw.com
 Richard T. Spencer rspencer@rspencerlaw.com
 United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov

SERVED BY U.S. MAIL:

Andrew S. Bisom The Bisom Law Group 8001 Irvine Center Dr., #1700 Irvine, CA 92618	Laurence P Nokes Nokes & Quinn 410 Broadway St Ste 200 Laguna Beach, CA 92651	James F. Wyatt III Wyatt & Blake, LLP 435 E. Morehead St. Charlotte, NC 28202
Brent Murdoch Murdoch & Morris, LLP 114 Pacifica, Ste. 320 Irvine, CA 92618	Frye & Hsieh Douglas J. Frye, Esq. 24955 Pacific Coast Hwy, #A201 Malibu, CA 90265	Nanette Sanders, Esq. Ringstad & Sanders, LLP 2030 Main St., Ste. 1600 Irvine, CA 92614
On the Rocks Jewelry & Rare Coins Attn: David Halpin and Disirea Sloan 207 N. El Camino Real San Clemente, CA 92672	The Tulving Company, Inc. 2049 Century Park E, Ste. 2525 Los Angeles, CA 90067-3225	