

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address Laurence P. Nokes (SBN 106113) NOKES & QUINN 410 Broadway Street, Suite 200 Laguna Beach, CA 92651 (949) 376-3500 office (949) 376-3070 fax lnokes@nokesquinn.com <input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: JOHN FRANKEL, an individual	FOR COURT USE ONLY <div style="border: 1px solid black; padding: 5px; text-align: center;"> FILED APR 11 2014 CLERK U.S. BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA BY: <i>QC</i> Deputy Clerk </div>
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION	
In re: THE TULVING COMPANY, INC., a California corporation, Debtor(s).	CASE NO.: 8:14-bk-11492-ES CHAPTER: 11 <div style="text-align: center; padding: 20px;"> NOTICE OF OPPOSITION AND REQUEST FOR A HEARING </div>

1. TO (specify name): the Debtor and Its Counsel

2. NOTICE IS HEREBY GIVEN that John Frankel, an individual
a party in interest, hereby opposes the following request (specify that which is opposed):

 Application of the Chapter 11 Trustee for The Tulving Company, Inc. for Order Approving Employment of Pachulski Stang Ziehl & Jones LLP as General Counsel to the Trustee NUNC PRO TUNC

3. This opposition is based upon the following grounds (specify grounds):

 Fees are unreasonably high. It is requested that fees for lawyers not exceed \$375 per hour, and fees for paralegals not exceed \$125 per hour. Fees to lawyers representing non-creditors will exhaust all funds available to pay claims. Our client is the victim of a fraud and wants to be sure that as much money as possible will be available to pay his claim.

This form is optional. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

4. Attached hereto are the following documents in support of this opposition which are admissible under the Federal Rules of Evidence (*specify declarations and exhibits by name or description*):

- 1) Declaration of Laurence P. Nokes;
- 2) Exhibit A: Complaint for: Breach of Contract; Fraud; Conversion;
- 3) Exhibit 1 to Complaint: Invoices numbered 520322 and 520429 dated July 2013, in agreement of sale by The Tulving Company / purchase by Frankel of qty. 120 one-ounce American Eagle gold coins;
- 4) Memorandum of Points and Authorities in Support of Request for Judicial Notice of Complaint

5. (*Optional*) Attached hereto is a Memorandum of Points and Authorities upon which opposing party will rely.

6. Total number of attached pages of supporting documentation: 12

Any reply to this opposition must be filed with the court and served on this opposing party not later than 7 days prior to the hearing on the motion.

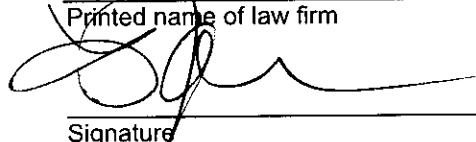
WHEREFORE, the undersigned prays that this court deny the subject request and set this matter for a hearing.

Date: 04/10/2014

Respectfully submitted,

NOKES & QUINN

Printed name of law firm



Signature

Laurence P. Nokes (SBN 106113)

Printed name

Attorney for: JOHN FRANKEL, an individual

1 LAURENCE P. NOKES, Bar No. 106113
2 THOMAS P. QUINN, JR., Bar No. 132268
3 NOKES & QUINN
4 410 Broadway Street, Suite 200
5 Laguna Beach, CA 92651
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8 lnokes@nokessquinn.com

9 Attorneys for JOHN FRANKEL

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11
12 **UNITED STATES BANKRUPTCY COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION**

14 In re:

Case No. 8:14-bk-11492-ES
Chapter: 11

15 THE TULVING COMPANY, INC., a
16 California corporation,

**DECLARATION OF LAURENCE P.
NOKES IN SUPPORT OF NOTICE OF
OPPOSITION AND REQUEST FOR A
HEARING**

17 Debtor.

18
19 I, Laurence P. Nokes, declare as follows:

20 1. I am an attorney at law duly licensed to practice before all courts of the State of California
21 and I am admitted to practice before this Court. The facts stated in this declaration are known to
22 me personally, and if called and sworn as a witness, I could competently testify thereto. As to
23 those matters stated herein on information and belief, I am informed and believe that the same are
24 true and upon that basis, declare them to be true.

25 2. I reviewed the application for an order approving employment of counsel for the
26 bankruptcy trustee. While I am confident that counsel is extremely competent, the fees requested
27 seem excessive for both the attorney, Ms. Linda Cantor, and for her paralegal, Mr. Michael
28 Matteo.

**DECLARATION OF LAURENCE P. NOKES IN SUPPORT OF NOTICE OF OPPOSITION
AND REQUEST FOR A HEARING**

1 3. The concern of my client who has filed a lawsuit against the debtor and the debtor's
2 principal in Orange County Superior Court for breach of contract, fraud and conversion (a true
3 and correct copy of which is attached hereto as Exhibit A), and of which the court is requested to
4 take judicial notice under Fed. R. Evid. section 201, is that the entire fund available to pay
5 creditors will be devoured by attorney hourly rates. The lawyers for the trustee, who I am
6 informed and believe is also a lawyer, will impact the funds available to pay those who were truly
7 harmed in this case, the creditors.

8 4. I believe it is in the best interest of the estate to be circumspect regarding the expenditure
9 of administrative expenses, and to maximize recovery to the creditors. A combined attorney and
10 paralegal rate of over \$1,100 per hour does not, in my view, accomplish that goal.

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12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct.

14 Executed this 10th day of April 2014 at Laguna Beach, California.

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Laurence P. Nokes

EXHIBIT A

EXHIBIT 1

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
REQUEST FOR JUDICIAL NOTICE OF COMPLAINT
[FRCP RULE 201]
AND
NOTICE OF OPPOSITION AND REQUEST FOR A HEARING**

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION**

In re:

Case No. 8:14-bk-11492-ES
Chapter: 11

THE TULVING COMPANY, INC., a
California corporation,

Debtor.

Creditor and Objector John Frankel (“Frankel”), by and through his attorney, hereby requests the Court to take judicial notice pursuant to *Federal Rule of Evidence 201* of the following facts:

Frankel filed a state court complaint for breach of contract, fraud and conversion against The Tulving Company, Inc. on March 4, 2014 (Superior Court of California-County of Orange, Case #30-2014-00708789-CU-BC-CJC, assigned to Department C15, Honorable Kirk Nakamura). A true and correct copy of the complaint is attached to the *Notice of Opposition and Request for a Hearing* as Exhibit A.

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF REQUEST FOR JUDICIAL
NOTICE AND NOTICE OF OPPOSITION AND REQUEST FOR A HEARING

1 Judicial notice may be taken of documents filed and orders or decisions entered in any
2 federal or state court. [See *United States v. Warneke* (7th Cir. 1999) 199 F3d 906, 909, fn. 1; *Fru-*
3 *Con Const. Corp. v. Controlled Air, Inc.* (8th Cir. 2009) 574 F3d 527, 541, fn. 9. Court
4 may judicially notice proceedings in other courts relating to matters at issue. [*Holder v.*
5 *Holder* (9th Cir. 2002) 305 F3d 854, 866—appellate court judicially noticed state appellate
6 opinion and briefs to determine that waiver issue was not actually litigated or necessarily
7 decided.] Judicial notice is particularly appropriate for the court’s own records in prior litigation
8 related to the case before it. [*Amphibious Partners, LLC v. Redman* (10th Cir. 2008) 534 F3d
9 1357, 1361–1362—district court was entitled to take judicial notice of its memorandum of order
10 and judgment from previous case involving same parties.]

11 By the request for judicial notice, Frankel is asking only that the court recognize that the
12 lawsuit has been filed. We are not asking that the court take judicial notice of the truth of the
13 matters asserted, only the magnitude and basis of the claim.

14 A court may take judicial notice of a document filed in another court “not for the truth of
15 the matters asserted in the other litigation, but rather to establish the fact of such litigation and
16 related filings.” [*Kramer v. Time Warner Inc.* (2nd Cir. 1991) 937 F2d 767, 774; *Opoka v.*
17 *I.N.S.* (7th Cir. 1996) 94 F3d 392, 395; *Taylor v. Charter Med. Corp.* (5th Cir. 1998) 162 F3d
18 827, 829–830]

19
20 Dated: April 10, 2014

NOKES & QUINN

21
22
23 By: 

Laurence P. Nokes (SBN 106113)
Attorneys for JOHN FRANKEL

24
25 NOKES & QUINN
26 410 Broadway Street, Suite 200
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lnokes@nokesquinn.com

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF REQUEST FOR JUDICIAL
NOTICE AND NOTICE OF OPPOSITION AND REQUEST FOR A HEARING

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:
410 Broadway Street, Suite 200, Laguna Beach, CA 92651

A true and correct copy of the foregoing documents entitled: **Notice of Opposition and Request for a Hearing; Declaration of Laurence P. Nokes; Exhibit A-Complaint for Breach of Contract, Fraud, Conversion w/exhibit 1; Memorandum of Points and Authorities in Support of Request for Judicial Notice** 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) 04/11/2014, 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 (date) 04/11/2014, 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 (date) 04/11/2014, 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.

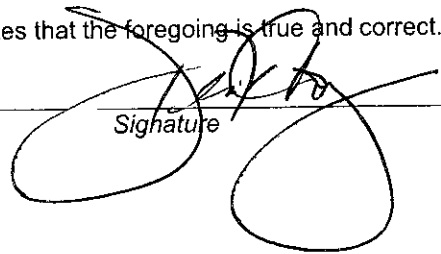
Via Fed Ex

The Honorable Erithe A. Smith, United States Bankruptcy Court-Central District of California
R Reagan Federal Building & Courthouse, 411 West Fourth St., Suite 5040 / Courtroom 5A, 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.

04/11/2014 Denise K. Coury
Date Printed Name


Signature

This form is optional. It has been approved for use in the United States Bankruptcy Court for the Central District of California.