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8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SANTA ANA DIVISION**

11 In re:

12 THE TULVING COMPANY, INC., a
13 California corporation,

14 Debtor.

15 R. TODD NEILSON, as Chapter 7 Trustee for
16 The Tulving Company, Inc.,

17 Plaintiff,

18 vs.

19 ARMEN HAIG GUGASIAN,

20 Defendant.

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

Chapter 7

Adv. Proc. No. _____

**TRUSTEE'S COMPLAINT FOR
AVOIDANCE AND RECOVERY OF
FRAUDULENT TRANSFERS**

21 R. Todd Neilson, as the duly appointed chapter 7 trustee ("Trustee" or "Plaintiff") in the
22 above-captioned bankruptcy case of The Tulving Company (the "Debtor"), for his complaint (the
23 "Complaint") against Armen Haig Gugasian ("Defendant") alleges as follows:
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The Parties

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2 1. The Trustee is the duly appointed trustee for the Debtor’s chapter 7 estate.

3 2. The Debtor is a corporation organized under the laws of the State of California and is
4 the debtor in the above-captioned chapter 7 bankruptcy case.

5 3. Plaintiff is informed and believes, and based thereon alleges, that defendant Armen
6 Haig Gugasian (“Gugasian” or “Defendant”) is an individual residing in Corona Del Mar, California.

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Jurisdiction and Venue

8 4. The Court has jurisdiction over this matter under the Bankruptcy Code and pursuant
9 to 28 U.S.C. §157(a) and §1334(a) and this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)
10 (H) and (O).

11 5. Venue in this district is proper pursuant to 28 U.S.C. §1409(a).

12 6. The statutory predicates for the relief requested herein are sections 544, 548, 549 and
13 550 of the Bankruptcy Code and Rules 3007 and 7001(1) of the Federal Rules of Bankruptcy
14 Procedure and sections 3439, et seq. of the California Civil Code.

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General Allegations

16 7. The Debtor was in the business of selling and purchasing gold, silver, coins, bullion,
17 and other precious metals through its internet website or by phone. Prior to the filing of this
18 bankruptcy case, customer complaints concerning delayed or undelivered orders were increasingly
19 made to the Better Business Bureau against the Debtor. In early March 2014, a class action lawsuit
20 was filed against the Debtor and its principal in the United States District Court for the Northern
21 District of California. The Debtor ceased operations on or about March 3, 2014. Shortly before the
22 commencement of its bankruptcy proceedings, the Secret Service and the Department of Justice
23 raided the Debtor’s business offices, and seized the Debtor’s computers, documents and valuable
24 coins as part of an ongoing criminal investigation.

25 8. The Debtor commenced this case by the filing of a voluntary petition for relief under
26 chapter 11 of the Bankruptcy Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”) on March 10,
27 2014 (the “Petition Date”). In light of the pending criminal investigation and other ongoing
28 litigation, on March 18, 2014, the United States Trustee (the “UST”) filed a Stipulation Appointing

1 Chapter 11 Trustee [Docket No. 15] (“Stipulation”), which both the Debtor and its attorney signed.
2 The Court approved the Stipulation on March 18, 2014 [Docket No. 16]. On March 21, 2014, the
3 Court entered an Order approving the UST’s Application for the Appointment of a Chapter 11
4 Trustee, appointing R. Todd Neilson as Trustee of the Debtor’s estate [Docket No. 22]. Thereafter,
5 upon notice and hearing, the case was converted to a case under chapter 7 of the Bankruptcy Code.
6 Mr. Neilson continues to serve as the Trustee [Docket No. 108].

7 9. Plaintiff is informed and believes, and based thereon alleges, that at least one creditor
8 holding an unsecured claim that is allowable under Section 502 of the Bankruptcy Code or that is not
9 allowable under Section 502(e) of the Bankruptcy Code exists who can avoid the transfers and/or
10 obligations referred to in this Complaint. Plaintiff may therefore assert the rights of such creditors
11 pursuant to Section 544(b) of the Bankruptcy Code.

12 **The Transfers Sought to Be Avoided**

13 10. Plaintiff is informed and believes, and based thereon alleges, that within the four
14 years preceding the Petition Date, Debtor made a series of payments to or for the benefit of
15 Defendant as purported compensation for consulting services provided by Defendant to or for the
16 benefit of Debtor (collectively, the “Consulting Fees Transfers”) when Defendant in reality had
17 provided no such services, or anything else of value, to Debtor in return therefor, the details of which
18 payments are set forth on Exhibit “1” hereto and incorporated herein by reference.

19 **FIRST CLAIM FOR RELIEF**

20 **(To Avoid Constructively Fraudulent Pre-Petition Transfers Under**
21 **11 U.S.C. §§ 544(b) and 548(a)(1)(B) and Cal. Civ. Code §§ 3439.04(a)(2), 3439.05 and**
22 **3439.07)**

23 11. Plaintiff realleges and incorporates by reference each and every allegation set forth in
24 paragraphs 1 through 22 above, inclusive, as though fully set forth herein.

25 12. Plaintiff is informed and believes, and thereon asserts that at all relevant times, and at
26 least since December 31, 2010, the Debtor: (a) was insolvent; (b) was engaged in or was about to
27 engage in transactions for which its remaining assets were unreasonably small in relation to the s
28

1 transactions; or (c) intended to incur, or believed or reasonably should have believed that they would
2 incur, debts beyond its ability to pay as they became due.

3 13. Plaintiff is informed and believes, and thereon asserts, that Defendant did not give the
4 Debtor, and the Debtor did not otherwise receive, reasonably equivalent value for any of the
5 Consulting Fees Transfers.

6 14. At all relevant times, said Transfers were avoidable pursuant to 11 U.S.C
7 §§ 544(b) and 548(a)(1)(B) and Cal. Civ. Code §§ 3439.04(a)(2), 3439.05 and 3439.07.

8 **SECOND CLAIM FOR RELIEF**

9 **(Recovery of Property – 11 U.S.C. §§ 544(b), 548 and 550 and**

10 **Cal. Civ. Code §§ 3439.07 and 3439.08)**

11 15. Plaintiff repeats and realleges the allegations contained in each preceding paragraph
12 of the Complaint as though set forth fully herein.

13 16. Upon information and belief, Plaintiff alleges that Defendant is the initial transferee
14 of the Transfers referenced above, the immediate or mediate transferee of such initial transferee, or
15 the person for whose benefit said Transfers were made and debts were incurred.

16 17. Plaintiff is entitled to avoid the Consulting Fees Transfers under 11 U.S.C. §§ 544(b)
17 and 548(a)(1)(B) and Cal. Civ. Code §§ 3439.04(a)(2), 3439.05 and 3439.07.

18 **WHEREFORE**, Plaintiff prays for judgment as follows:

19 1. For a determination that the Consulting Fees Transfers are avoidable as fraudulent
20 transfers under 11 U.S.C. §§ 544(b) and 548(a)(1)(B) and Cal. Civ. Code §§ 3439.04(a)(2), 3439.05
21 and 3439.07 and that Plaintiff is entitled to recover each such Transfer or the value thereof under
22 section 550 of the Bankruptcy Code;

23 2. Prejudgment interest;

24 3. Costs of suit incurred herein; and

25 4. For such other and further relief as the Court may deem just and proper.

1 Dated: March __, 2016

PACHULSKI STANG ZIEHL & JONES LLP

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By James K.T. Hunter
James K.T. Hunter

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Counsel for R. Todd Neilson, Chapter 7 Trustee
for The Tulving Company, Inc.

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