

1 James K.T. Hunter (CA Bar No. 73369)
Pachulski Stang Ziehl & Jones LLP
2 10100 Santa Monica Blvd., 13th Floor
Los Angeles, California 90067
3 Telephone: 310-277-6910
Facsimile: 310-201-0760
4 E-mail: jhunter@pszjlaw.com

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

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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 LEVON GUGASIAN,

20 Defendant.

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

Chapter 7

Adv. Proc. No. _____

**TRUSTEE'S (1) COMPLAINT FOR
AVOIDANCE AND RECOVERY OF
FRAUDULENT TRANSFERS AND (2)
OBJECTIONS TO PROOFS OF
CLAIM NOS. 308, 309 AND 310**

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 Levon Gugasian ("Defendant") and his objections to Proofs of Claim Nos. 308,
24 309 and 310 (the "Objections") alleges as follows:
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1 **The Parties**

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 Levon
6 Gugasian ("Gugasian" or "Defendant") is an individual residing in Newport Beach, California.

7 **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.
10 § 157(b)(2)(B), (C), (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 502, 544, 548, 549
13 and 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.

15 **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 **Rent Payment Transfers**

14 10. Plaintiff is informed and believes, and based thereon alleges, that on or about August
15 16, 2006, Defendant and Debtor entered into separate leases of the two adjoining residential
16 properties located at 2110 ½ W. Ocean Front, Newport Beach CA 92663 (“2110 ½ W. Ocean
17 Front”) and 2112 ½ W. Ocean Front, Newport Beach CA 92663 (“2112 ½ W. Ocean Front”),
18 respectively. Plaintiff is informed and believes, and based thereon alleges, that true and copies of
19 said leases (the “Original 2110 ½ W. Ocean Front Lease” and the “Original 2112 ½ W. Ocean Front
20 Lease”, respectively) are attached as Exhibits “1” and “2” hereto.

21 11. Both the Original 2110 ½ W. Ocean Front Lease and the Original 2112 ½ W. Ocean
22 Front Lease provided for identical five year terms commencing on September 1, 2006 and
23 terminating on August 31, 2011 and identical monthly rents set at \$12,500 for the first year (i.e., for
24 the period from September 1, 2006 through August 31, 2007), \$13,500 for the second year (i.e., for
25 the period from September 1, 2007 through August 31, 2008), \$14,500 for the third year (i.e., for the
26 period from September 1, 2008 through August 31, 2009), \$15,500 for the fourth year (i.e., for the
27 period from September 1, 2009 through August 31, 2010) and \$16,500 for the fifth year (i.e., for the
28 period from September 1, 2010 through August 31, 2011).

1 12. Plaintiff is informed and believes, and based thereon alleges, that on or about
2 September 30, 2008, Defendant and Debtor entered into a leases of the commercial property located
3 at 750 W. 17th Street, Unit A, Costa Mesa, CA 92627 (“750 W. 17th Street, Unit A”). Plaintiff is
4 informed and believes, and based thereon alleges, that a true and copy of said lease (the “Original
5 750 W. 17th Street, Unit A Lease”) is attached as Exhibit “3” hereto.

6 13. The Original 750 W. 17th Street, Unit A Lease provided for a ten year term
7 commencing on October 1, 2008 and terminating on September 30, 2018 with the monthly rent set at
8 \$12,000 for the first year (i.e., for the period from October 1, 2008 through September 30, 2009) and
9 increases of five percent (5%) annually on the anniversary date each year of said lease (i.e., a
10 monthly rent of \$12,600 for the period from October 1, 2009 through September 30, 2010, a monthly
11 rent of \$13,230 for the period from October 1, 2010 through September 30, 2011, a monthly rent of
12 \$13,891.50 for the period from October 1, 2011 through September 30, 2012, and so on for the next
13 six years).

14 14. Plaintiff is informed and believes, and based thereon alleges, that for the years 2006
15 through 2010, Debtor and its president and sole shareholder, Hannes Tulving (“Hannes”), treated all
16 of the rent paid by Debtor with respect to the Original 2110 ½ W. Ocean Front Lease and fifty
17 percent (50%) of the rent paid by Debtor with respect to the Original 2112 ½ W. Ocean Front Lease
18 (the unit in which Hannes resided) as constituting compensation of Hannes by Debtor which Hannes
19 was required to, and did, recognize as income for which Hannes was liable to pay income taxes to
20 both The Internal Revenue Service (“IRS”) and the California Franchise Tax Board (“CFTB”).

21 15. Plaintiff is informed and believes, and based thereon alleges, that on or about January
22 1, 2011, Defendant and Debtor entered into new leases for 2110 ½ W. Ocean Front, 2112 ½ W.
23 Ocean Front and 750 W. 17th Street, Unit A which replaced the Original 2110 ½ W. Ocean Front
24 Lease, the Original 2112 ½ W. Ocean Front Lease and the Original 750 W. 17th Street, Unit A Lease
25 and reallocated the rents among the three leased premises to substantially increase the rent for 750
26 W. 17th Street, Unit A (i.e., for January, 2011, the monthly rent was increased from \$13,891.50 to
27 \$30,000) and substantially decrease the rents for 2110 ½ W. Ocean Front (i.e., for January, 2011, the
28 monthly rent was decreased from \$16,500 to \$4,500) and 2112 ½ W. Ocean Front (i.e., for January,

1 2011, the monthly rent was decreased from \$16,500 to \$5,800). Plaintiff is informed and believes,
2 and based thereon alleges, that true and copies of said leases, hereinafter referred to as Replacement
3 2110 ½ W. Ocean Front Lease, Replacement 2112 ½ W. Ocean Front Lease and Replacement 750
4 W. 17th Street, Unit A Lease (collectively, the “Replacement Leases”) are attached as Attachments 2
5 to Exhibits “4”, “5” and “6” hereto, respectively.

6 16. Plaintiff is informed and believes, and based thereon alleges, that the rents specified
7 in the Replacement Leases did not reflect, and were not understood or intended by either Debtor or
8 Defendant to reflect, the respective fair market rents of the three leased premises. Rather, Plaintiff is
9 informed and believes, and based thereon alleges, that the Replacement Leases were entered into as
10 part of a plan on the part of Debtor, of which Defendant was cognizant, to defraud two of its
11 creditors, the IRS and CFTB, by artificially and fraudulently reallocating the rental obligations to (1)
12 decrease the rents for 2110 ½ W. Ocean Front and 2112 ½ W. Ocean Front, which Hannes was
13 required to recognize as income/distributions for which Hannes was liable to pay income taxes to the
14 IRS and CFTB, below the fair market rents of those premises, and (2) increase the rent for 750 W.
15 17th Street, Unit A, which Hannes was not required to recognize as income/distributions for which
16 Hannes was liable to pay income taxes to the IRS and CFTB, above the fair market rent of those
17 premises. Thus, Plaintiff is informed and believes, and based thereon alleges, that whereas Hannes
18 would have been required to recognize as income for which Hannes was liable to pay income taxes
19 to the IRS and CFTB the sum of \$24,750 of the rents due for January 2011 pursuant to the Original
20 2110 ½ W. Ocean Front Lease and the Original 2112 ½ W. Ocean Front Lease. Hannes only
21 recognized as income for which Hannes was liable to pay income taxes to the IRS and CFTB the
22 sum of \$7,400 of rents due for January 2011 pursuant to the Replacement 2110 ½ W. Ocean Front
23 Lease and the Replacement 2112 ½ W. Ocean Front Lease (i.e., \$4,500 for 2110 ½ W. Ocean Front
24 and \$2,900 [50% of \$5,800] for 2112 ½ W. Ocean Front). , These lease modifications reduced the
25 income that he would have recognized for January 2011 by \$17,350 and an amount which Plaintiff is
26 informed and believes, and based thereon alleges, exceeded \$200,000 for the entirety of 2011.

27 17. Plaintiff is informed and believes, and based thereon alleges, that within the four
28 years preceding the Petition Date, Debtor made those payments to Defendant for rent under the

1 Replacement 2110 ½ W. Ocean Front Lease, Replacement 2112 ½ W. Ocean Front Lease and
2 Replacement 750 W. 17th Street, Unit A Lease (collectively, the “Rent Payment Transfers”),
3 (collectively, the “Rent Payment Transfers”), the details of which payments are set forth on Exhibits
4 “7”, “8” and “9” hereto, respectively, and incorporated herein by reference.

5 **Consulting Fees Transfers**

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

12 **740 West 16th Street Transfers**

13 19. 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 rent for, or to pay for the repair or maintenance of, those premises owned by Defendant
16 and located at 740 W. 16th Street, Costa Mesa, CA 92627 (collectively, the “740 W. 16th Street
17 Transfers”) despite the fact that Debtor received no benefit from the rent, repair or maintenance of
18 said premises, the details of which payments are set forth on Exhibit “11” hereto and incorporated
19 herein by reference.

20 **FIRST CLAIM FOR RELIEF**

21 **(To Avoid Intentionally Fraudulent Rent Payment Transfers under**

22 **11 U.S.C. §§ 544(b) and 548(a)(1)(A), and Cal. Civ. Code §§ 3439.04(a)(1) and 3439.07)**

23 20. Plaintiff realleges and incorporates by reference each and every allegation set forth in
24 paragraphs 1 through 19 above, inclusive, as though fully set forth herein.

25 21. Plaintiff is informed and believes and thereon alleges that the Rent Payment Transfers
26 were made by Debtor, with the cognizance and material assistance of Defendant, with an actual
27 intent to hinder, delay or defraud two of Debtors’ creditors, the IRS and CFTB.
28

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

3 **SECOND CLAIM FOR RELIEF**

4 **(To Avoid Constructively Fraudulent Pre-Petition Transfers Under**
5 **11 U.S.C. §§ 544(b) and 548(a)(1)(B) and Cal. Civ. Code §§ 3439.04(a)(2), 3439.05 and 3439.07)**

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

8 24. Plaintiff is informed and believes, and thereon asserts that at all relevant times, and at
9 least since December 31, 2010, the Debtor: (a) was insolvent; (b) was engaged in or was about to
10 engage in transactions for which its remaining assets were unreasonably small in relation to the s
11 transactions; or (c) intended to incur, or believed or reasonably should have believed that they would
12 incur, debts beyond its ability to pay as they became due.

13 25. Plaintiff is informed and believes, and thereon asserts, that Defendant did not give the
14 Debtor, and the Debtor did not otherwise receive, reasonably equivalent value for any of (a) those
15 payments to Defendant for rent under the Replacement 750 W. 17th Street, Unit A Lease, the details
16 of which payments are set forth on Exhibit "9" hereto, and incorporated herein by reference, (b) the
17 Consulting Fees Transfers and (c) the 740 W. 16th Street Transfers.

18 26. At all relevant times, said Transfers were avoidable pursuant to 11 U.S.C
19 §§ 544(b) and 548(a)(1)(B) and Cal. Civ. Code §§ 3439.04(a)(2), 3439.05 and 3439.07.

20 **THIRD CLAIM FOR RELIEF**

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

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

23 27. Plaintiff repeats and realleges the allegations contained in each preceding paragraph
24 of the Complaint as though set forth fully herein.

25 28. Upon information and belief, Plaintiff alleges that Defendant is the initial transferee
26 of the Transfers referenced above, the immediate or mediate transferee of such initial transferee, or
27 the person for whose benefit said Transfers were made.
28

1 29. Plaintiff is entitled to avoid and recover the value of the Rent Payment Transfers
2 under 11 U.S.C. §§ 544(b) and 548(a)(1)(B) and Cal. Civ. Code §§ 3439.04(a)(2), 3439.05 and
3 3439.07 and the value of the payments to Defendant for rent under the Replacement 750 W. 17th
4 Street, Unit A Lease, the Consulting Fees Transfers and the 740 W. 16th Street Transfers under 11
5 U.S.C. §§ 544(b) and 548(a)(1)(B) and Cal. Civ. Code §§ 3439.04(a)(2), 3439.05 and 3439.07.

6 **FOURTH CLAIM FOR RELIEF**

7 **(Objection to Allowance of Claims – 11 U.S.C. §§ 502(b) and 502(d))**

8 30. Plaintiff repeats and realleges the allegations contained in each preceding paragraph
9 of the Complaint as though set forth fully herein.

10 31. Plaintiff is informed and believes, and based thereon alleges, that because the
11 Replacement 2110 ½ W. Ocean Front Lease and the Replacement 2112 ½ W. Ocean Front Lease
12 decreased the rents for both those premises below the fair market values thereof, Defendant not only
13 did not suffer any damages, but to the contrary was substantially benefitted, by reason of the
14 termination of those leases. Accordingly, pursuant to 11 U.S.C. §§ 502(b) and Bankruptcy Rules
15 3007 and 7001, Plaintiff objects to Proofs of Claim Nos. 309 and 310 filed by Defendant, true and
16 correct copies of which are attached as Exhibits “4” and “5” hereto, respectively, and requests that
17 they both be disallowed in their entireties.

18 32. In the alternative as to Proofs of Claim Nos. 309 and 310, and in the first instance as
19 to Proof of Claim No. 308 filed by Defendant, a true and correct copy of which is attached as Exhibit
20 “6” hereto, pursuant to the applicable provisions of the Bankruptcy Code, including without
21 limitation section 502(d), and Bankruptcy Rules 3007 and 7001, the Court should disallow each and
22 all of such Proofs of Claim unless and until Defendant has paid the amount for which Defendant is
23 liable under Bankruptcy Code § 550.

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

25 1. For a determination that the Rent Payment Transfers are avoidable as fraudulent
26 transfers under 11 U.S.C. §§ 544(b) and 548(a)(1)(A) and Cal. Civ. Code §§ 3439.04(a)(2), 3439.05
27 and 3439.07 and that Plaintiff is entitled to recover each such Transfer or the value thereof under
28 section 550 of the Bankruptcy Code;

1 2. For a determination that the payments to Defendant for rent under the Replacement
2 750 W. 17th Street, Unit A Lease, the Consulting Fees Transfers and the 740 W. 16th Street Transfers
3 are avoidable as fraudulent transfers under 11 U.S.C. §§ 544(b) and 548(a)(1)(B) and Cal. Civ. Code
4 §§ 3439.04(a)(2), 3439.05 and 3439.07 and that Plaintiff is entitled to recover each such Transfer or
5 the value thereof under section 550 of the Bankruptcy Code;

6 3. For the disallowance of Proofs of Claim Nos. 309 and 310 in their entireties pursuant
7 to 11 U.S.C. §§ 502(b) and Bankruptcy Rules 3007 and 7001; and, in the alternative as to Proofs of
8 Claim Nos. 309 and 310, and in the first instance as to Proof of Claim No. 308, for the disallowance
9 of each and all of such Proofs of Claim pursuant to 11 U.S.C. §§ 502(d) unless and until Defendant
10 has paid the amount for which Defendant is liable under Bankruptcy Code § 550;

11 4. Prejudgment interest;

12 5. Costs of suit incurred herein; and

13 6. For such other and further relief as the Court may deem just and proper.

14 Dated: March 9, 2016

PACHULSKI STANG ZIEHL & JONES LLP

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16
17 By James K.T. Hunter
 James K.T. Hunter

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