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7 for The Tulving Company, Inc.

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

11 In re:
12 THE TULVING COMPANY, INC., a California
13 corporation,

14 Debtors

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

Chapter 7

**NOTICE OF MOTION AND MOTION
FOR ORDER RECLASSIFYING CLAIM
84-1 FILED BY WILLIS G. ESHBAUGH
JR.; MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATIONS OF
NICHOLAS R. TROSAK AND LINDA F.
CANTOR IN SUPPORT THEREOF**

15 Date: January 19, 2016
16 Time: 10:30 a.m.
17 Place: Courtroom 5A
411 West Fourth Street
Santa Ana, CA 92701
18 Judge: Hon. Erithe A. Smith

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24 **PLEASE TAKE NOTICE** that, pursuant to section 502 of title 11 of the United States Code
25 (the “Bankruptcy Code”), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy
26 Rules”) and Rule 3007-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for
27 the Central District of California (the “Local Bankruptcy Rules”), R. Todd Neilson, in his capacity
28 as the duly appointed, authorized and acting Chapter 7 Trustee (the “Trustee”) of The Tulving

1 Company, Inc. (the “Debtor”) hereby moves (the “Motion”) the Court for an order reclassifying
2 Claim No. 84-1 (“Claim 84-1”) filed by Willis G. Eshbaugh Jr. (“Claimant”) to a general unsecured
3 claim in the amount of \$53,041.00 on the grounds that the Claimant has provided no grounds or
4 basis upon which Claim No. 84-1 is entitled to secured status and no such support is shown in
5 Debtor’s books and records.

6 **PLEASE TAKE FURTHER NOTICE** that the Motion has been served upon the Claimant
7 and all parties entitled thereto and is based upon the supporting Memorandum of Points and
8 Authorities, the Declaration of Nicholas S. Troszak, the Declaration of Linda F. Cantor, the
9 statements, arguments and representations of counsel who appear at the hearing on the Motion, the
10 files and records in the above-captioned case, any evidence properly before the court prior to or at
11 the hearing regarding the Motion and all matters of which the court may properly take judicial
12 notice.

13 **PLEASE TAKE FURTHER NOTICE** that pursuant to Local Bankruptcy Rule 9013-1(f),
14 responses to the Motion must be filed with the Court and served upon the Trustee’s counsel at the
15 address set forth in the upper left-hand corner of this Motion no later than fourteen (14) days prior to
16 the hearing date. Responses must contain a written statement of all reasons the Motion is opposed
17 and must include declarations and copies of all documentary evidence on which the responding party
18 intends to rely. Responses must be filed either electronically or at the following location:

19 United States Bankruptcy Court
20 411 West Fourth Street
Santa Ana, CA 92701

21 **PLEASE TAKE FURTHER NOTICE** that if a response is not timely filed and served, the
22 Trustee will request that the court grant the relief requested in the Motion without further notice or
23 hearing.

24 **PLEASE TAKE FURTHER NOTICE** that if a response is timely filed and served upon the
25 Trustee’s counsel, the Court, in its discretion, may treat the initial hearing as a status conference if it
26 determines that the Motion involves disputed factual issues or will require presentation of substantial
27 evidence or argument.

28 **WHEREFORE**, the Trustee respectfully requests that the Court enter an order (a) granting

1 the Motion; (b) reclassifying Claim 84-1 as a general unsecured claim; and (c) granting the Trustee
2 such other and further relief as may be appropriate under the circumstances.

3
4 Dated: December 17, 2015

PACHULSKI STANG ZIEHL & JONES LLP

5 By /s/ Linda F. Cantor

Linda F. Cantor

Jason S. Pomerantz

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

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **I.**
4 **BACKGROUND**

5 **A. The Bankruptcy Case, Jurisdiction and Venue**

6 The Debtor was in the business of selling and purchasing gold, silver, coins, bullion, and
7 other precious metals through its internet website or by phone. Prior to the filing of this bankruptcy
8 case, customer complaints concerning delayed or undelivered orders were increasingly made to the
9 Better Business Bureau against the Debtor. In early March 2014, a class action lawsuit was filed
10 against the Debtor and its principal in the United States District Court for the Northern District of
11 California. The Debtor ceased operations on or about March 3, 2014. Shortly before the
12 commencement of its bankruptcy proceedings, Special Agents of the United States Secret Service
13 executed a Search Warrant on the Debtor's offices on probable cause that the Debtor and its
14 principal, Hannes Tulving, Jr., were engaged in fraud. The Search Warrant resulted in the seizure of
15 the Debtor's property including computers, documents and valuable coins as part of an ongoing
16 criminal investigation.

17 The Debtor commenced this case by the filing of a voluntary petition for relief under chapter
18 11 of the Bankruptcy Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code") on March 10, 2014. In
19 light of the pending criminal investigation and other ongoing litigation, on March 18, 2014, the
20 United States Trustee (the "UST") filed a Stipulation Appointing Chapter 11 Trustee [Docket No.
21 15] ("Stipulation"), which both the Debtor and its attorney signed. The Court approved the
22 Stipulation on March 18, 2014 [Docket No. 16]. On March 21, 2014, the Court entered an Order
23 approving the UST's Application for the Appointment of a Chapter 11 Trustee, appointing R. Todd
24 Neilson as Trustee of the Debtor's estate [Docket No. 22]. Thereafter, upon notice and hearing, the
25 case was converted to a case under chapter 7 of the Bankruptcy Code. Mr. Neilson continues to
26 serve as the Trustee [Docket No. 108].

27 The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a
28 core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this matter is appropriate pursuant to
28 U.S.C. §§ 1408 and 1409.

1 **B. The Bar Date and Proofs of Interest**

2 The deadline date to file a proof of claim in the Case was September 30, 2014. To date, 385
3 proofs of claim have been filed in the Case as reflected in the official registers of claims.

4 **C. The Claim**

5 The Trustee and his professionals have been engaged in the process of reconciling the claims
6 filed against the Debtor in this Case. Claim 84-1 is filed in the amount of \$53,041.00 as a secured
7 claim for goods purchased but not received. A copy of Claim 84-1 is attached hereto as **Exhibit 1**.
8 The Trustee has diligently reviewed Claim 84-1 and Debtor's books and records related to Claim 84-
9 1. Claimant has not provided any support for its assertion that Claim 84-1 is entitled to secured
10 status, nor do the Debtor's books and records reflect any support that Claimant is entitled to a
11 secured claim as asserted.

12 **II.**
13 **ARGUMENT**

14 **A. Procedural Requirements for Objections to Claims**

15 Bankruptcy Rule 3007 governs the procedure for objections to claims. It provides as
16 follows: "An objection to an allowance of a claim shall be in writing and filed. A copy of the
17 objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant
18 . . . at least thirty days prior to the hearing." Fed. R. Bankr. P. 3007.

19 Pursuant to Bankruptcy Rule 3007, a copy of the Motion was mailed to Claimant at the
20 addresses provided by Claimant in the Claim, and, if appropriate, on the Claimant's attorney, at least
21 thirty days prior to the hearing date for consideration of the Motion. Accordingly, the Trustee has
22 complied with Bankruptcy Rule 3007.

23 **B. The Court Must Determine the Allowance of a Claim Subject to Objection**

24 With certain exceptions, section 502(b) of the Bankruptcy Code requires, in relevant part,
25 that if a party in interest objects to a claim, "the Court, after notice and a hearing, shall determine the
26 amount of such claim in lawful currency of the United States as of the date of the filing of the
27 petition, and shall allow such claim in such amount, except to the extent that -- (1) such claim is
28 unenforceable against the debtor and property of the debtor, under any agreement or applicable law

1 for a reason other than because such claim is contingent or unmatured”

2 **C. Burden of Proof**

3 All allegations set forth in a properly filed proof of claim are taken as true and, if the
4 allegations set forth all facts necessary to establish a claim and are not self-contradictory, the proof
5 constitutes *prima facie* evidence of the validity and amount of the claim. 11 U.S.C. § 502(a); Fed. R.
6 Bankr. P. 3001(f). However, a claimant must attach copies of writings upon which claims are based
7 in order to carry its burden of establishing a *prima facie* case against the debtor. *Hardin v. Gianni*
8 (*In re King Investments Inc.*), 219 B.R. 848, 858 (B.A.P. 9th Cir. 1998). Further, a claim should not
9 be allowed if that claim is unenforceable against the debtor and property of the debtor, under any
10 agreement or applicable law. 11 U.S.C. § 502(b)(1).

11 Once the objector raises “facts tending to defeat the claim by probative force equal to that of
12 the allegations of the proofs of claim themselves,” *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623
13 (9th Cir. 1991), then “the burden reverts to the claimant to prove the validity of the claim by a
14 preponderance of the evidence.” *Ashford v. Consolidated Pioneer Mortgage (In re Consolidated*
15 *Pioneer Mortgage)*, 178 B.R. 222, 226 (B.A.P. 9th Cir. 1995), *aff’d*, 91 F.3d 151 (9th Cir. 1996).
16 “[T]he ultimate burden of persuasion is always on the claimant.” *Holm*, 931 F.2d at 623. In
17 considering an objection to a claim, a bankruptcy court may take judicial notice of the underlying
18 records in a bankruptcy case. *O’Rourke v. Seaboard Surety Co., (In re ER Fergert, Inc.)*, 887 F.2d
19 955, 957-958 (9th Cir. 1998).

20 **D. The Objection**

21 Claimant asserts that he is owed a secured amount of \$53,041.00. The Trustee does not
22 dispute the amount claimed, but rather seeks to have Claim 84-1 reclassified as a general
23 unsecured claim, as the Trustee has determined that Claimant has not provided any support for its
24 assertion that Claim 84-1 is entitled to secured status, nor do the Debtor’s books and records
25 reflect any support for Claimant’s assertion that it is entitled to a secured claim.

26 **III.**
27 **RESERVATION OF RIGHTS**

28 The Trustee has not attempted to raise in this Motion each defense, counterclaim, or setoff

1 that may apply to Claim 84-1. If a response to this Motion is received, the Trustee reserves the right
2 to amend, and supplement this Motion, or file additional objections to assert any defenses,
3 counterclaims, and/or setoffs against Claim 84-1. In all instances, the Trustee reserves the right to
4 file future objections or motions or to supplement this Motion as to the validity, amount, or status of
5 Claim 84-1 upon different grounds than set forth herein.

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7 **IV.**
CONCLUSION

8 For the reasons set forth herein, the Trustee respectfully requests that the Court enter an
9 order: (a) granting the Motion; (b) reclassifying Claim 84-1 as a general unsecured claim; and (c)
10 granting the Trustee such other and further relief as may be appropriate under the circumstances.

11 DATED: December 17, 2015

PACHULSKI STANG ZIEHL & JONES LLP

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14 By: /s/ Linda F. Cantor

Linda F. Cantor

Jason S. Pomerantz

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

DECLARATION OF NICHOLAS R. TROZAK

I, Nicholas R. Trozszak, declare as follows:

1. I am a Senior Managing Consultant at Berkeley Research Group, LLC ("BRG"), the duly employed accountants and financial advisor to the Trustee.

2. I make this Declaration in support of the *Motion for Order Reclassifying Claim 84-1 Filed by Willis G. Eshbaugh Jr.* (the "Motion"). Capitalized terms not defined in this Declaration shall have the same meaning ascribed to them as set forth in the Motion.

3. Except as otherwise stated, all facts contained within this Declaration are based upon personal knowledge (albeit my own or that gathered from others under my supervision), my review of the books and records of the Debtor, the proofs of claim filed in this case, or my opinion based on my experience as a consultant and financial advisor for trustees. If called upon to testify, I would testify to the facts set forth in this Declaration. I am authorized to submit this Declaration on behalf of the Trustee.

4. I have reviewed Claim 84-1 and conferred with the Trustee and counsel regarding Claim 84-1. Claimant has not provided any support for its assertion that Claim 84-1 is entitled to secured status. I have reviewed the Debtor's books and records that relate to Claim 84-1 and have determined that the Debtor's books and records do not reflect any basis to support Claimant's assertion that it is entitled to a secured claim. Therefore, while the amount of Claim 84-1 remains undisputed at this time, the Trustee seeks to reclassify Claim 84-1 as a general unsecured claim.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 18 day of December, 2015, at Rochester, Minnesota.



Nicholas R. Trozszak, Declarant

DECLARATION OF LINDA F. CANTOR

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I, Linda F. Cantor, declare as follows:

1. I am an attorney at law, duly licensed and entitled to practice before all courts in the State of California and before this Court. I am a partner with the law firm of Pachulski Stang Ziehl & Jones LLP, counsel to R. Todd Neilson, the Chapter 7 Trustee.

2. I have personal knowledge of the facts set forth herein and could and would competently testify thereto if called upon as a witness.

3. I make this Declaration in support of the *Motion for Order Reclassifying Claim 84-1 Filed by Willis G. Eshbaugh Jr.* (the "Motion"). Capitalized terms not defined in this Declaration shall have the same meaning ascribed to them as set forth in the Motion.

4. Pursuant to Local Bankruptcy Rule 3007-1(a)(4)(B) attached hereto as **Exhibit "1"** is a true and correct copy of Claim 84-1 obtained from the Public Access to Court Electronic Records ("PACER").

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 17th day of December, 2015, at Los Angeles, California.

/s/ Linda F. Cantor
Linda F. Cantor

PACHULSKI STANG ZIEHL & JONES LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

EXHIBIT 1

B10 (Official Form 10) (04/13)

UNITED STATES BANKRUPTCY COURT Central District of California - Santa Ana		PROOF OF CLAIM
Name of Debtor: The Tulving Company, Inc.	Case Number: 8:14-bk-11492-ES	COURT USE ONLY
NOTE: Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing. You may file a request for payment of an administrative expense according to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Willis Eshbaugh, Jr.		
Name and address where notices should be sent: Law Offices of M. Candice Bryner, APC 900 Roosevelt, Irvine, CA 92620		<input type="checkbox"/> Check this box if this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____
Telephone number: (949) 371-9056 email: candice@brynerlaw.com		
Name and address where payment should be sent (if different from above): Willis G. Eshbaugh, Jr. 4611 Via Ravenna Bonita Springs, FL 34134		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving particulars.
Telephone number: (239) 989-9550 email: eshbaugh@gmail.com		
1. Amount of Claim as of Date Case Filed: \$ <u>53,041.00</u>		
If all or part of the claim is secured, complete item 4.		
If all or part of the claim is entitled to priority, complete item 5.		
<input type="checkbox"/> Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.		
2. Basis for Claim: (See instruction #2)		
3. Last four digits of any number by which creditor identifies debtor:	3a. Debtor may have scheduled account as: _____ (See instruction #3a)	3b. Uniform Claim Identifier (optional): _____ (See instruction #3b)
4. Secured Claim (See instruction #4) Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.		Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: \$ _____
Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other		Basis for perfection: _____
Describe: Eshbaugh obtained a Writ of Attachment as to 40 one ounce American Eagle Gold Coins on 3/7/14		Amount of Secured Claim: \$ <u>53,041.00</u>
Value of Property: \$ <u>52,546.00</u>		Amount Unsecured: \$ _____
Annual Interest Rate _____% <input type="checkbox"/> Fixed or <input type="checkbox"/> Variable (when case was filed)		
5. Amount of Claim Entitled to Priority under 11 U.S.C. § 507 (a). If any part of the claim falls into one of the following categories, check the box specifying the priority and state the amount.		
<input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507 (a)(1)(A) or (a)(1)(B).	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,475*) earned within 180 days before the case was filed or the debtor's business ceased, whichever is earlier – 11 U.S.C. § 507 (a)(4).	<input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. § 507 (a)(5). Amount entitled to priority: \$ _____
<input type="checkbox"/> Up to \$2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507 (a)(7).	<input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. § 507 (a)(8).	<input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. § 507 (a)(____).
*Amounts are subject to adjustment on 4/01/16 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.		
6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)		

B10 (Official Form 10) (04/13)

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7. Documents: Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. If the claim is secured by the debtor's principal residence, the Mortgage Proof of Claim Attachment is being filed with this claim. (See instruction #7, and the definition of "redacted".)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

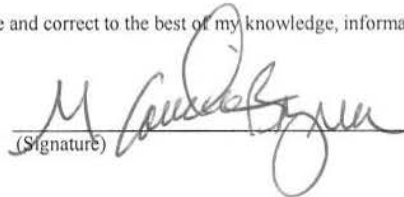
8. Signature: (See instruction #8)

Check the appropriate box.

- I am the creditor. I am the creditor's authorized agent. I am the trustee, or the debtor, or their authorized agent. I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)
(See Bankruptcy Rule 3004.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: M. Candice Bryner
Title: President
Company: Law Offices of M. Candice Bryner, APC
Address and telephone number (if different from notice address above):

 6/11/14
(Signature) (Date)

Telephone number: _____ email: _____

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, exceptions to these general rules may apply.

Items to be completed in Proof of Claim form

Court, Name of Debtor, and Case Number:

Fill in the federal judicial district in which the bankruptcy case was filed (for example, Central District of California), the debtor's full name, and the case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is at the top of the notice.

Creditor's Name and Address:

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

1. Amount of Claim as of Date Case Filed:

State the total amount owed to the creditor on the date of the bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

2. Basis for Claim:

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on delivering health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if an interested party objects to the claim.

3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

3a. Debtor May Have Scheduled Account As:

Report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

3b. Uniform Claim Identifier:

If you use a uniform claim identifier, you may report it here. A uniform claim identifier is an optional 24-character identifier that certain large creditors use to facilitate electronic payment in chapter 13 cases.

4. Secured Claim:

Check whether the claim is fully or partially secured. Skip this section if the

claim is entirely unsecured. (See Definitions.) If the claim is secured, check the box for the nature and value of property that secures the claim, attach copies of lien documentation, and state, as of the date of the bankruptcy filing, the annual interest rate (and whether it is fixed or variable), and the amount past due on the claim.

5. Amount of Claim Entitled to Priority Under 11 U.S.C. § 507 (a).

If any portion of the claim falls into any category shown, check the appropriate box(es) and state the amount entitled to priority. (See Definitions.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

6. Credits:

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

7. Documents:

Attach redacted copies of any documents that show the debt exists and a lien secures the debt. You must also attach copies of documents that evidence perfection of any security interest and documents required by FRBP 3001(c) for claims based on an open-end or revolving consumer credit agreement or secured by a security interest in the debtor's principal residence. You may also attach a summary in addition to the documents themselves. FRBP 3001(c) and (d). If the claim is based on delivering health care goods or services, limit disclosing confidential health care information. Do not send original documents, as attachments may be destroyed after scanning.

8. Date and Signature:

The individual completing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what constitutes a signature. If you sign this form, you declare under penalty of perjury that the information provided is true and correct to the best of your knowledge, information, and reasonable belief. Your signature is also a certification that the claim meets the requirements of FRBP 9011(b). Whether the claim is filed electronically or in person, if your name is on the signature line, you are responsible for the declaration. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. If the claim is filed by an authorized agent, provide both the name of the individual filing the claim and the name of the agent. If the authorized agent is a servicer, identify the corporate servicer as the company. Criminal penalties apply for making a false statement on a proof of claim.

DEFINITIONS	INFORMATION
<p>Debtor A debtor is the person, corporation, or other entity that has filed a bankruptcy case.</p> <p>Creditor A creditor is a person, corporation, or other entity to whom debtor owes a debt that was incurred before the date of the bankruptcy filing. See 11 U.S.C. §101 (10).</p> <p>Claim A claim is the creditor's right to receive payment for a debt owed by the debtor on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.</p> <p>Proof of Claim A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.</p> <p>Secured Claim Under 11 U.S.C. § 506 (a) A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car. A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien.</p>	<p>A claim also may be secured if the creditor owes the debtor money (has a right to setoff).</p> <p>Unsecured Claim An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.</p> <p>Claim Entitled to Priority Under 11 U.S.C. § 507 (a) Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.</p> <p>Redacted A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor must show only the last four digits of any social-security, individual's tax-identification, or financial-account number, only the initials of a minor's name, and only the year of any person's date of birth. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information.</p> <p>Evidence of Perfection Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.</p> <p>Acknowledgment of Filing of Claim To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system (www.pacer.psc.uscourts.gov) for a small fee to view your filed proof of claim.</p> <p>Offers to Purchase a Claim Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 <i>et seq.</i>), and any applicable orders of the bankruptcy court.</p>

AT-120

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) M. Candice Bryner, State Bar No. 192462 LAW OFFICES OF M. CANDICE BRYNER, APC 900 Roosevelt, Irvine, CA 92620 TELEPHONE NO.: (949) 371-9056 FAX NO. (Optional): (949) 679-2492 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiffs</p>	<p>FOR COURT USE ONLY</p> <p>FILED</p> <p>SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE CENTRAL JUSTICE CENTER</p> <p>MAR 07 2014</p> <p>ALAN CARLSON, Clerk of the Court</p> <p>BY C BOLISAY</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, CA 92701 BRANCH NAME: Central Justice Center</p>	
<p>PLAINTIFF: WILLIS G. ESHBAUGH, JR. DEFENDANT: THE TULVING COMPANY, INC.</p>	
<p><input checked="" type="checkbox"/> RIGHT TO ATTACH ORDER AND ORDER FOR ISSUANCE OF WRIT OF ATTACHMENT AFTER HEARING <input type="checkbox"/> ORDER FOR ISSUANCE OF ADDITIONAL WRIT OF ATTACHMENT AFTER HEARING</p>	<p>CASE NUMBER: 30-2014-00708483-CU-CO-CJC</p>

ELECTRONICALLY RECEIVED
 Superior Court of California,
 County of Orange
03/06/2014 at 08:32:23 PM
 Clerk of the Superior Court
 By Sonya Wilson, Deputy Clerk

1. a. The application of plaintiff (name): Willis G. Eshbaugh, Jr.
 for a right to attach order and order for issuance of writ of attachment
 an order for issuance of additional writ of attachment
 against the property of defendant (name): The Tulving Company, Inc.
 came on for hearing as follows:
 (1) Judge (name): David A. Chaffee
 (2) Hearing date: March 7, 2014 Time: 1:30 p.m. Dept.: C20 Div.: Rm.:
- b. The following persons were present at the hearing:
 (1) Plaintiff (name):
 (2) Defendant (name):
 (3) Plaintiff's attorney (name): M. Candice Bryner
 (4) Defendant's attorney (name):

FINDINGS

2. THE COURT FINDS
- a. Defendant (specify name): The Tulving Company, Inc. is a natural person partnership
 unincorporated association corporation other (specify):
- b. The claim upon which the application is based is one upon which an attachment may be issued.
- c. Plaintiff has established the probable validity of the claim upon which the attachment is based.
- d. The attachment is not sought for a purpose other than the recovery on the claim upon which the attachment is based.
- e. The amount to be secured by the attachment is greater than zero.
- f. Defendant failed to prove that all the property described in plaintiff's application is exempt from attachment.
- g. The following property of defendant, described in plaintiffs application
 (1) is exempt from attachment (specify):
 (2) is not exempt from attachment (specify):
- h. The following property, not described in plaintiff's application, claimed by defendant to be exempt,
 (1) is exempt from attachment (specify):
 (2) is not exempt from attachment (specify):
- i. An undertaking in the amount of: \$ _____ is required before a writ shall issue, and plaintiff
 has has not filed an undertaking in that amount.
- j. A Right to Attach Order was issued on (date): _____ pursuant to
 Code of Civil Procedure section 484.090 (on hearing) Code of Civil Procedure section 485.220 (ex parte)
- k. other (specify):

Page 1 of 2

"A"

SHORT TITLE: ESHBAUGH v. THE TULVING COMPANY, INC. et al.	CASE NUMBER: 30-2014-00708483-CU-CO-CJC
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ORDER

3. THE COURT ORDERS

- a. Plaintiff has a right to attach property of defendant (*name*): The Tulving Company, Inc. in the amount of: \$
- b. The property described in items 2g(1) and 2h(1) of the findings is exempt and shall not be attached.
- c. The clerk shall issue a writ of attachment an additional writ of attachment in the amount stated in item 3a forthwith upon the filing of an undertaking in the amount of: \$
 - (1) for any property of a defendant who is not a natural person for which a method of levy is provided.
 - (2) for the property of a defendant who is a natural person that is subject to attachment under Code of Civil Procedure section 487.010 described as follows (*specify*):

(3) for the property covered by a bulk sales notice with respect to a bulk transfer by defendant or the proceeds of sale of such property, described as follows (*specify*):

(4) for plaintiff's pro rata share of proceeds from an escrow in which defendant's liquor license is sold. The license number is (*specify*):

- d. Defendant shall transfer to the levying officer possession of
 - (1) any documentary evidence in defendant's possession of title to any property described in item 3c;
 - (2) any documentary evidence in defendant's possession of debt owed to defendant described in item 3c;
 - (3) the following property in defendant's possession (*specify*):
\$53,041.00 or 40 one ounce American Eagle Gold Coins

NOTICE TO DEFENDANT: FAILURE TO COMPLY WITH THIS ORDER MAY SUBJECT YOU TO ARREST AND PUNISHMENT FOR CONTEMPT OF COURT.

e. Other (*specify*):

f. Total number of boxes checked in item 3: 2

Date: **MAR 07 2014**



 DAVID C. CARTER

Invoice

Invoice #	Pymt Type	Date
522157	Wire	1/27/2014

PAID
 01-27-2014

Bill To Willis G Eshbaugh, Jr 4611 Via Ravenna Bonita Springs, FL 34134
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Ship To Willis G Eshbaugh, Jr (239-494-6299) UPS HOLD FOR PICK UP 971 Commercial Blvd Naples, FL 34104
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Qty	Item Code	Description	Price Ea	Amount
40	AMGE0001-OM	American Eagle 1 Ounce Gold Coin	1,313.65	52,546.00
			Total	\$52,546.00

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.

"B"

Candice Bryner

From: Bill Eshbaugh <eshbaugh@gmail.com>
Sent: Tuesday, March 04, 2014 12:47 PM
To: Candice Bryner
Subject: Fwd: Payment / Shipping Notification: DO NOT REPLY
Attachments: Inv_522157_from_The_Tulving_Company_Inc._8436.pdf

----- Forwarded message -----

From: <order-status1@tulving.com>
Date: Mon, Jan 27, 2014 at 4:38 PM
Subject: Payment / Shipping Notification: DO NOT REPLY
To: eshbaugh@gmail.com

To Willis Eshbaugh, Jr :

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.

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:
10100 Santa Monica Boulevard, 13th Floor, Los Angeles, California 90067

A true and correct copy of the foregoing document entitled (*specify*): **NOTICE OF MOTION AND MOTION FOR ORDER RECLASSIFYING CLAIM 84-1 FILED BY WILLIS G. ESHBAUGH JR.; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF NICHOLAS R. TROSAK AND LINDA F. CANTOR IN SUPPORT THEREOF** 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 **December 18, 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:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) **December 18, 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.

Willis Eshbaugh, Jr.
c/o Law Offices of M. Candice Bryner, APC
900 Roosevelt
Irvine, CA 92620

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*) **December 18, 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.

Via Federal Express

The Honorable Erithe A. Smith
United States Bankruptcy Court
Central District of California
Ronald Reagan Federal Building and Courthouse
411 West Fourth Street, Suite 5040
Santa Ana, CA 92701-4593

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.

December 18, 2015

MYRA KULICK

/s/ Myra Kulick

Date

Printed Name

Signature

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

- Wesley H Avery wamiracle6@yahoo.com, wavery@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, 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, ssimmons@oneil-llp.com; kdonahue@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, jspomerantz@pszjlaw.com
- Nanette D Sanders becky@ringstadlaw.com
- Richard C Spencer rspencer@rspencerlaw.com
- United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov

2. SERVED BY UNITED STATES MAIL:

Debtor

The Tulving Company Inc
2049 Century Park East, Suite 2525
Los Angeles, CA 90067-3225

Counsel for Debtor

Andrew S Bisom
The Bisom Law Group
8001 Irvine Center Drive, Suite 1170
Irvine, CA 92618

Attorneys for Defendants Hannes

Tulving, Jr. and The Tulving Company
James F. Wyatt, III
Wyatt & Blake, LLP
435 East Morehead Street
Charlotte, NC 28202

Laurence P Nokes on behalf of
Interested Party

John Frankel
Nokes & Quinn
410 Broadway St Ste 200
Laguna Beach, CA 92651

Brent Murdoch

Murdoch & Morris, LLP
114 Pacifica, Ste. 320
Irvine, CA 92618

Interested Party

Frye & Hsieh
Douglas J Frye Esquire
24955 Pacific Coast Highway # A201
Malibu, CA 90265

Counsel for Creditor Levon Gugasian

Nanette D. Sanders, Esq.
Ringstad & Sanders LLP
2030 Main Street, Suite 1600
Irvine, CA 92614

Harlene Miller, Esq.

Harlene Miller Law
17910 Sky Park Circle, Suite 105
Irvine, CA 92614

On the Rocks Jewelry & Rare Coins

Attn: David Halpin and Desirea Sloan
207 N. El Camino Real
San Clemente, CA 92672