

The Tulving Company, Inc. - Trustee Report #8

April 10, 2016

R. Todd Neilson, the duly appointed Chapter 7 trustee (“Trustee”) in The Tulving Company, Inc. (“Tulving”) bankruptcy, provides this Eighth Trustee Report (Trustee Report #8).

This will be my last report to you as I have recently resigned my position as Chapter 7 Trustee for the Tulving Bankruptcy effective April 1, 2016. The purpose of my resignation will be to allow my wife and I to serve a Humanitarian Mission in Zimbabwe on behalf of the Mormon Church during which time we will be assisting in the construction of orphanages, building wells to provide water to remote villages, providing wheelchairs and similar humanitarian efforts.

The newly appointed Trustee is Weneta M.A. Kosmala. She is an experienced Trustee and is both an attorney and a CPA. We are fortunate to have someone of her skills move this case to the next stage. Her e-mail address is – [wkosmala@kosmalalaw.com](mailto:wkosmala@kosmalalaw.com). While you have every right to contact her, I would encourage you not to inundate her with e-mails as it will take a considerable amount of time for her to become familiar with all of the ongoing issues in the Tulving bankruptcy.

My departure will not change the functioning operation of the estate in any practical manner. You will simply be dealing with a new Chapter 7 Trustee with the same responsibilities and duties. While the new Trustee is well within her rights to appoint a new set of professionals, that is very unlikely. Thus, most of the professionals who have worked and have amassed a significant amount of institutional knowledge will probably remain the same.

Although the new Trustee will be required to perform the normal statutory functions such as the filing of tax returns and other reports with the Court there are very few residual matters remaining to be filed or resolved. The case is truly in a concluding stage although the sale of the remaining assets and the outstanding litigation (which is described below) may take a considerable amount of time to resolve.

The remaining substantive matters awaiting final resolution are as follows: (1) The transfer of the Presidential Error Coins (“Error Coins”) to victim/creditors opting for inclusion;

(2) The sale of the remaining inventory by Heritage Auctions ("Heritage"); (3) Continuation of the litigation recently filed by the estate against Mr. Levon Gugasian and his son Armen; (4) Pursuit of possible other assets which may belong to the estate but have not been fully resolved.

### Coins

We have an agreement with Heritage, which was approved by the Court, which will allow Heritage to mail the Error Coins to those creditors who have chosen to receive them. For your information, of the 381 victim/creditors in the estate only 31 made the decision to opt out of receiving the Error Coins. Thus, 350 victim/creditors can expect to receive Error Coins in the future. All other remaining coins, including the Error Coins assigned to Creditors who declined to participate, will then be batched and sold by Heritage over a period of approximately two or three months.

Although we previously had an inventory (which we utilized to provide a tentative allocation of the Error Coins to the accepting victim/creditors), it was necessary for Heritage to prepare a new and more detailed inventory. Initially we thought the process of categorizing the coins would take approximately ten days to two weeks. However, following an initial inspection by Heritage of the approximately 177,000 coins and the 12,539 Error Coins they informed me that the magnitude and wide variation in the coin population would necessitate a few more weeks for review. I have just been informed that Heritage is close to finalizing the review and the inventory should be completed this week.

Following receipt of the inventory we will need to confirm our previously prepared schedule allocating the coins to the 350 victim/creditors referenced above. Following the completion of that analysis, we will provide the final list to Heritage after which they will mail the Error Coins to all 350 victim/creditors. If the process proceeds as I have envisioned the Error Coins should start arriving by the first half of May.

The sale of the general coins and the Error Coins not being accepted by victim/creditors would probably commence in earnest during that same time period and while I have not received a definitive date, I would suspect that the bulk of all sales would be completed by the early fall. The net proceeds of sale of these coins (net of costs of sale and administration) will be

distributed to victim/creditors on a pro rata basis in partial payment of the remaining amount of their claims.

### Valuation of Presidential Error Coins

A few of you have raised concerns about the valuation of the Error Coins as provided by Miles Standish which we used for the allocation of the Error Coins to those creditors wishing to receive them. Miles Standish is arguably one of the premier coin valuation experts in the nation, especially in the area of Error Coins. However, as I reviewed the valuation and discussed it with other experts in the field it became apparent that the valuation was not an accurate measurement of what one could expect to receive in a reasonably prompt sale. In my view, the Standish valuation, which was listed at \$7 million, was vastly overvalued and I have so stated at Hannes Tulving's sentencing hearing.

Nevertheless, we reviewed the value of a number of the coins with third party vendors and found some of the coins to be highly overvalued while some of the more valuable coins listed in the Standish valuation were "in the ballpark" of acceptability. Given that the process to completely value and grade the coins would take months to complete and cost the estate another \$250,000 I chose to utilize the Standish valuation solely for allocation purposes. Should the participating victim/creditors choose to quickly sell the Error Coins which they receive the results may vary widely from the Standish valuation. However, that is your decision. The Error Coins will belong to you.

Gugasian – The estate has brought two separate causes of action against the Gugasian family. (Both complaints are attached, without complaint exhibits)

As detailed in the attached complaint, the first is against Levon Gugasian and seeks the return of approximately \$1.2 million in lease payments which we assert were the result of a set of convoluted transactions which resulted in the Tulving Co. paying rents which were substantially above and below the market value for those leases as part of a tax avoidance scheme. The complaint also seeks repayment of Consulting Fees and rent, repair and maintenance expenses related to a property not used by Tulving which were paid by Tulving to Mr. Gugasian in a combined amount of approximately \$675,000 which we allege were wrongfully transferred to Mr. Gugasian and should therefore be returned to the estate.

The second complaint, which is also attached, is against Armen Haig Gugasian, the son of Levon Gugasian, and seeks the return of Consulting Fees which we assert provided no value to the estate and conferred no benefit to the Debtor.

There have been some online discussions asserting complicity on the part of Mr. Gugasian in the downfall of Tulving Co. I would caution any of you to carry this line of thought too far. The Department of Justice conducted an extensive review of the business operations of Tulving Co. and no legal action was taken against Mr. Gugasian. Further, Hannes Tulving was represented by very able legal counsel in North Carolina and pled guilty to criminal actions and was sentenced accordingly.

While it may be possible that further investigation will be conducted, it is important to understand that the primary responsibility to conduct a thorough investigation and bring criminal charges against any of the participants in the Tulving Co. collapse falls completely and squarely with the Department of Justice and their investigators. It is a wise course of action to allow them to do their own investigation and draw their own conclusions. That is the system which we have and while not perfect I have found it to be effective.

Finally, I am certain the Mr. Gugasian and his son will vigorously deny any wrongdoing and make a concerted effort to defend themselves.

### Conclusion

I want to take this opportunity to extend my sincere appreciation to the professionals involved in this undertaking. The work has been completed extremely in an extremely efficient manner and under the highest standards of care. It is always a difficult task to untangle transactions of this nature.

I also want to thank you for your collective patience as we have worked our way through this process. It is never easy to be the bearer of bad tidings and most of you have accepted the conditions and circumstances of this case with commendable restraint.

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9 Tulving Company, Inc.

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

21 In re:

22 THE TULVING COMPANY, INC., a  
23 California corporation,

24 Debtor.

25 R. TODD NEILSON, as Chapter 7 Trustee for  
26 The Tulving Company, Inc.,

27 Plaintiff,

28 vs.

LEVON GUGASIAN,

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. 17<sup>th</sup> Street, Unit A, Costa Mesa, CA 92627 (“750 W. 17<sup>th</sup> 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. 17<sup>th</sup> Street, Unit A Lease”) is attached as Exhibit “3” hereto.

6 13. The Original 750 W. 17<sup>th</sup> 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. 17<sup>th</sup> 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. 17<sup>th</sup> Street, Unit A Lease  
25 and reallocated the rents among the three leased premises to substantially increase the rent for 750  
26 W. 17<sup>th</sup> 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. 17<sup>th</sup> 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 17<sup>th</sup> 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. 17<sup>th</sup> 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 16<sup>th</sup> 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. 16<sup>th</sup> Street, Costa Mesa, CA 92627 (collectively, the “740 W. 16<sup>th</sup> 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.  
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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. 17<sup>th</sup> 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. 16<sup>th</sup> 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.  
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1           2.       For a determination that the payments to Defendant for rent under the Replacement  
2 750 W. 17<sup>th</sup> Street, Unit A Lease, the Consulting Fees Transfers and the 740 W. 16<sup>th</sup> 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.

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8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
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15 R. TODD NEILSON, as Chapter 7 Trustee for  
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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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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 Armen  
6 Haig Gugasian ("Gugasian" or "Defendant") is an individual residing in Corona Del Mar, 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. § 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.

15 **General Allegations**

16 7. The Debtor was in the business of selling and purchasing gold, silver, coins, bullion,  
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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  
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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.  
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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  
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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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