

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

VC

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

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

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

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

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

JL

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

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

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

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

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

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

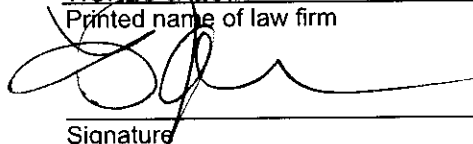
WHEREFORE, the undersigned prays that this court deny the subject request and set this matter for a hearing.

Date: 04/10/2014

Respectfully submitted,

NOKES & QUINN

Printed name of law firm



Signature

Laurence P. Nokes (SBN 106113)

Printed name

Attorney for: JOHN FRANKEL, an individual

1 LAURENCE P. NOKES, Bar No. 106113
2 THOMAS P. QUINN, JR., Bar No. 132268
3 NOKES & QUINN
4 410 Broadway Street, Suite 200
5 Laguna Beach, CA 92651
6 Tel: (949) 376-3500
7 Fax: (949) 376-3070
8 lnokes@nokesquinn.com

9 Attorneys for JOHN FRANKEL

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

14 In re:

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

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

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

17 Debtor.

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

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

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

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

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

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

11
12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct.

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

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Laurence P. Nokes

EXHIBIT A

1 LAURENCE P. NOKES, Bar No. 106113
2 THOMAS P. QUINN, JR., Bar No. 132268
3 NOKES & QUINN
4 410 Broadway Street, Suite 200
5 Laguna Beach, CA 92651
6 Tel: (949) 376-3500
7 Fax: (949) 376-3070
8 tquinn@nokessquinn.com

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
03/04/2014 at 10:12:45 AM
Clerk of the Superior Court
By Diana Cuevas, Deputy Clerk

9 Attorneys for Plaintiff John Frankel

10 **SUPERIOR COURT OF STATE OF CALIFORNIA**
11 **COUNTY OF ORANGE - CENTRAL JUSTICE CENTER**

12 JOHN FRANKEL, an individual

CASE NO.: 30-2014-00708789-CU-BC-CJC

Judge Kirk Nakamura

13 Plaintiff,

14 v.

COMPLAINT FOR:

15 HANNES TULVING, an individual; THE
16 TULVING COMPANY, a California
17 corporation; and DOES 1-50, inclusive,

- 1. BREACH OF CONTRACT
- 2. FRAUD
- 3. CONVERSION

18 Defendants.

19 Plaintiff JOHN FRANKEL ("FRANKEL") alleges as follows:

20 1. Plaintiff JOHN FRANKEL is, and at all times herein relevant was, an individual residing
21 in the State of New Jersey.

22 2. Plaintiff is informed and believes and on that basis alleges that Defendant HANNES
23 TULVING ("TULVING") is, and at all times herein relevant was, an individual residing in the
24 County of Orange, State of California.

25 3. Defendant THE TULVING COMPANY is, and at all times referenced herein was, a
26 corporation organized under the laws of the State of California, with its principal place of
27 business in the County of Orange, State of California.

28 4. Plaintiff does not presently know the true names and capacities of those entities, whether

1 individual, corporate or otherwise named herein as DOES 1-50, and therefore names these
2 defendants by their fictitious names. Plaintiff is informed and believes and on that basis alleges
3 that each of the DOE defendants is legally responsible in some manner for the events and
4 happenings herein referred to, and that when the true names and capacities are discovered,
5 Plaintiff will seek leave of the court to amend this complaint to add their true names and
6 capacities once discovered.

7 5. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein,
8 each defendant was the agent and employee of each and all of the other defendants and was
9 acting in the course of such agency and employment, and each defendant ratified each and every
10 act, omission, and thing done by each other defendant named herein.

11 6. In July 2013, Defendants TULVING and THE TULVING COMPANY agreed to sell, and
12 FRANKEL agreed to purchase, 120 one-ounce, American Eagle gold coins, more particularly
13 described in two invoices numbered 520429 and 520322. A true and correct copy of these
14 invoices is attached hereto as Exhibit 1.

15 7. FRANKEL made payment in cash and coins totaling \$156,138.00. Said payment was
16 completed on July 16, 2013.

17 8. To date, the coins purchased by FRANKEL have not been delivered to him by TULVING
18 and THE TULVING COMPANY.

19 **FIRST CAUSE OF ACTION**

20 **(BREACH OF CONTRACT AGAINST TULVING AND THE TULVING COMPANY)**

21 9. Plaintiff realleges and incorporates by reference paragraphs 1-8, as though fully set forth
22 herein.

23 10. Plaintiff has fully performed his obligations under the contract with TULVING and THE
24 TULVING COMPANY by making payment in full for the coins purchased.

25 11. TULVING and THE TULVING COMPANY breached the agreement by failing to deliver
26 the coins purchased and described in the invoices.

27 12. As a result of this breach, Plaintiff FRANKEL has been damaged in an amount of
28 \$156,138.00 plus interest accruing thereon from July 16, 2013.

SECOND CAUSE OF ACTION

(FRAUD/MISREPRESENTATION AGAINST TULVING AND THE TULVING COMPANY)

13. Plaintiff realleges and incorporates by reference paragraphs 1-12, as though fully set forth herein.

14. In early July 2013, Defendant TULVING, individually and as agent for THE TULVING COMPANY, represented that, in exchange for cash and coins having a value of \$156,138.00, he would sell FRANKEL 120 one-ounce, American Eagle gold coins.

15. Said representation was false. In truth, TULVING and THE TULVING COMPANY did not intend to deliver the coins to FRANKEL, but instead intended to induce FRANKEL to deliver cash and coins to them with no intention of delivering the gold coins as represented.

16. In reliance on said representations, and without knowledge of their falsity, FRANKEL delivered cash and coins having a total value of \$156,138.00 to Defendants. FRANKEL had no basis to believe that the representations made by TULVING were false because he had previously completed transactions with TULVING and THE TULVING COMPANY without incident.

17. As a result of the fraud of TULVING and THE TULVING COMPANY, FRANKEL has been damaged in the sum of \$156,138.00 plus interest.

18. The actions of TULVING and THE TULVING COMPANY were fraudulent and done with the specific intention of inducing FRANKEL to deliver cash and coins to them as alleged, thereby justifying an award of punitive and exemplary damages against both TULVING and THE TULVING COMPANY.

THIRD CAUSE OF ACTION

(CONVERSION AGAINST TULVING AND THE TULVING COMPANY)

19. Plaintiff realleges and incorporates by reference paragraphs 1-18, as though fully set forth herein.

20. On or about July 8 and July 16, 2013, Plaintiff FRANKEL delivered cash and coins totaling \$156,138.00 in value to Defendants in exchange for which FRANKEL was to receive 120 one-ounce, American Eagle gold coins from Defendants.

21. Defendants failed to deliver the promised coins and since July 16, 2013 have converted

1 the cash and coins owned by FRANKEL to their own use.

2 22. Despite demand for return of the converted cash and coins, Defendants have failed and
3 refused to return the property and continue in possession of said property.

4 23. As a result of this conversion, Plaintiff has been damaged in the sum of \$156,138.00.

5 24. The acts of the Defendants in converting FRANKEL's property were fraudulent, willful
6 and malicious, thereby justifying an award of punitive and exemplary damages.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff FRANKEL prays for judgment against Defendants, and each of
9 them, as follows:

- 10 1. On the First Cause of Action, for damages in the amount of \$156,138.00 plus
11 interest accruing at the legal rate from July 16, 2013;
- 12 2. On the Second and Third Causes of Action;
- 13 a. For damages of \$156,138.00 plus interest accruing at the legal rate from
14 July 16, 2013;
- 15 b. For punitive and exemplary damages;
- 16 3. On all causes of action:
- 17 a. For costs of suit incurred herein; and
18 b. For such other and further relief as the Court deems just and proper.

19
20 Dated: March 3, 2014

NOKES & QUINN

21
22
23 By: 

Thomas P. Quinn, Jr.
Attorneys for Plaintiff JOHN FRANKEL

EXHIBIT 1

Invoice

PAID
07/08/2013

Invoice #	Pymt Type	Date
520322	Wire	7/5/2013

Bill To
John Frankel 4 Chelsea Dr Livingston, NJ 07039

Ship To
John Frankel 4 Chelsea Dr Livingston, NJ 07039

Qty	Item Code	Description	Price Ea	Amount
60	AMGE0001-OM	American Eagle 1 Ounce Gold Coin	1,266.85	76,011.00
ship w/o 9-9			Total	\$76,011.00

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.

Invoice

Invoice #	Pymt Type	Date
520429	Wire	7/15/2013

Bill To
John Frankel 4 Chelsea Dr Livingston, NJ 07039

PAID
07/16/2013

Ship To
John Frankel 4 Chelsea Dr Livingston, NJ 07039

Qty	Item Code	Description	Price Ea	Amount
60	AMGE2013-OM	2013 American Eagle 1 Ounce Gold Coin	1,335.45	80,127.00
ship w/o 9-9/Trade			Total	\$80,127.00

New Specials Everyday. See The Gold Bullion Page On Our Website At
www.tulving.com

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

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

In re:

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

THE TULVING COMPANY, INC., a
California corporation,

Debtor.

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

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

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

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

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

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

19
20 Dated: April 10, 2014

NOKES & QUINN

21
22
23 By: 

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

24
25 NOKES & QUINN
26 410 Broadway Street, Suite 200
27 Laguna Beach, CA 92651
28 Tel: (949) 376-3500
Fax: (949) 376-3070
lnokes@nokesquinn.com

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

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
410 Broadway Street, Suite 200, Laguna Beach, CA 92651

A true and correct copy of the foregoing documents entitled: **Notice of Opposition and Request for a Hearing; Declaration of Laurence P. Nokes; Exhibit A-Complaint for Breach of Contract, Fraud, Conversion w/exhibit 1; Memorandum of Points and Authorities in Support of Request for Judicial Notice** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 04/11/2014, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (date) 04/11/2014, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) 04/11/2014, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

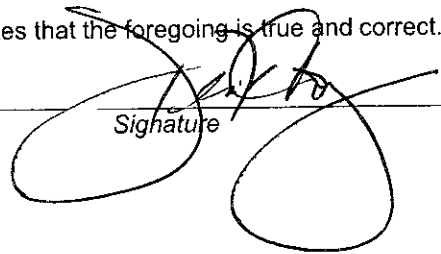
Via Fed Ex

The Honorable Erithe A. Smith, United States Bankruptcy Court-Central District of California
R Reagan Federal Building & Courthouse, 411 West Fourth St., Suite 5040 / Courtroom 5A, Santa Ana, CA 92701

Service information continued on attached page

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

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


Signature

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

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

8:14-bk-11492-ES Notice of Opposition and Request for a Hearing will be electronically mailed to:

Andrew S Bisom on behalf of Debtor The Tulving Company Inc
abisom@bisomlaw.com

Nancy S Goldenberg on behalf of U.S. Trustee United States Trustee (SA)
nancy.goldenberg@usdoj.gov

Lawrence J Hilton on behalf of Creditor Jeffrey Roth
lhilton@oneil-llp.com, ssimmons@oneil-llp.com; kdonahue@oneil-llp.com

Matthew B Learned on behalf of Interested Party Courtesy NEF
bknotice@mccarthyholthus.com

R. Todd Neilson (TR)
rneilson@brg-expert.com, sgreenan@brg-expert.com; rneilson@ecf.epiqsystems.com; ntroszak@brg-expert.com

Robert J Pfister on behalf of Interested Party Courtesy NEF
rpfister@ktbslaw.com

Michael B Reynolds on behalf of Interested Party Courtesy NEF
mreynolds@swlaw.com, kcollins@swlaw.com

United States Trustee (SA)
ustpreion16.sa.ecf@usdoj.gov

Linda F Cantor on behalf of Trustee R. Todd Neilson (TR)
lcantor@pszjlaw.com

Laurence P Nokes on behalf of Creditor John Frankel
lnokes@nokessquinn.com

2. SERVED BY UNITED STATES MAIL:

Debtor

The Tulving Company Inc
P.O. Box 6200
Newport Beach, CA 92658

Counsel for Debtor

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The Bisom Law Group
8001 Irvine Center Drive, Ste. 1170
Irvine, CA 92618

Trustee

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U.S. Trustee

United States Trustee (SA)
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Counsel for U.S. Trustee

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Linda F. Cantor
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Leonard M. Schulman, Esq.
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Counsel for Scott Stuart, as Trustee of the James Stuart Revocable Trust, now Irrevocable

Melissa Robbins Coutts, Esq.
Matthew B. Learned, Esq.
McCarthy & Holthus, LLP
1770 Fourth Avenue
San Diego, CA 92101

Creditors

Amy Lepard
1748 St. Andrews
Moraga, CA 94556

Anne Dezelski
c/o Bethany C. Warner
107 Cass Street, Suite G
Traverse City, MI 49684

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Betty M. Harris
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Cherri Elaine Trahan
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Danny M. Shook
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David E Duke
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Hannes Tulving, Jr.
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Newport Beach, CA 92658

Internal Revenue Service
PO Box 7346
Philadelphia, PA 19101-7346

Jade McGaff
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Kamuela, HI 96743

Jeff Roth
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Kaela Perrotti
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Kendra Pearsall
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Redoven Rusimovic
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Auburn, WA 98001

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Panhandle, TX 79068

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Robert W Bone and Barbera B Bone
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Kimberling City, MO 65686

Robert Cafarelli
872 Doyle Davis Rd
Greeneville, TN 33743

Robert J Espinosa
1280 Heresa Ave
Campbell, CA 95008

Robert J Chevako
2787 Kiley Rd
PO Box 290
New Woodstock, NY 95008

Thoa Hoang
335 St. James Ave
Woodbridge, NJ 07095

William Clark Berry
PO Box 686
Carlsborg, WA 98324

Creditors Holding 20 Largest Unsecured Claims

Leo Gushgarian
11 Ridgeline
Newport Beach, CA 92660

Kenneth W. Stach
c/o The Clinebell Law Firm
P.O. Box 3808
San Clemente, CA 92674

Alfred J. Olsen
c/o Burch & Cracchiolo, P.A.
702 East Osborn Road
Phoenix, AZ 85014

Kristian and Jennifer Assaley
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Irvine, CA 92620

Willis G. Eshbaugh, Jr.
c/o Candice Bryner, Esq.
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Irvine, CA 92620

Victor Hannan
c/o Kronenberger Rosenfeld, LLP
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San Francisco, CA 94108

John Frankel
c/o Nokes & Quinn
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Laguna Beach, CA 92651