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*Electronically Filed On: January 4, 2017*

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11  
12 UNITED STATES BANKRUPTCY COURT  
13 DISTRICT OF NEVADA

14 In re:  
15 ROBERT C. GRAHAM, LTD. fdba ROB  
16 GRAHAM & ASSOCIATES fdba  
LAWYERSWEST,

17 Debtor.

Case No. BK-S-16655-BTB  
Chapter 7

**DECLARATION OF KATHY BAZOIAN  
PHELPS, ESQ. IN SUPPORT OF EX  
PARTE APPLICATION TO EMPLOY  
DIAMOND MCCARTHY LLP, NUNC  
PRO TUNC TO DECEMBER 28, 2016, AS  
SPECIAL LITIGATION COUNSEL FOR  
VICTORIA L. NELSON, CHAPTER 7  
TRUSTEE PURSUANT TO 11 U.S.C. §  
327(a) AND FEDERAL RULE OF  
BANKRUPTCY PROCEDURE 2014**

Date of Hearing: N/A  
Time of Hearing: N/A

Judge: Honorable Bruce T. Beesley<sup>1</sup>

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26 <sup>1</sup> Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11  
27 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The  
28 Federal Rules of Civil Procedure will be referred to as “FRCP” and the Federal Rules of  
Bankruptcy Procedure will be referred to as “FRBP.” The Local Rules of Practice for the United  
States Bankruptcy Court for the District of Nevada shall be referred to as the “Local Rules”.

1 I, KATHY BAZOIAN PHELPS, Esq., hereby declare as follows:

2 1. I am over the age of 18 and mentally competent. Except where stated on  
3 information and belief, I have personal knowledge of the facts in this matter and if called upon to  
4 testify, could and would do so. I make this declaration in support of the *Ex Parte Application to*  
5 *Employ Diamond McCarthy LLP, Nunc Pro Tunc to December 28, 2016, as Special Litigation*  
6 *Counsel for Victoria L. Nelson, Chapter 7 Trustee Pursuant to 11 U.S.C. §§ 327(a) and 328(a)*  
7 *and Federal Rule of Bankruptcy Procedure 2014* (the “Application”).<sup>2</sup>

8 2. I am an attorney licensed to practice law in the State of California. I am a  
9 shareholder with the law firm of Diamond McCarthy LLP (the “Firm”). The Firm maintains  
10 offices at 1999 Avenue of the Stars, Suite 1100, Los Angeles, California 90067.

11 3. This Declaration is made pursuant to 11 U.S.C. § 329 and Federal Rule of  
12 Bankruptcy Procedure 2014(b) and is in support of the Application.

13 4. The Firm is well suited for the type of representation required by Victoria L.  
14 Nelson, the Chapter 7 Trustee (the “Trustee”). The Firm has experience in the practice of  
15 business, commercial and complex litigation, with expertise in areas of substantive law likely to  
16 become relevant in prosecution of the claims in the adversary proceeding. Accordingly, the  
17 Trustee has determined that the Firm has the resources and experience necessary to represent it in  
18 this case.

19 5. The attorneys of the Firm that will render services in relation to the above-  
20 captioned bankruptcy case are familiar with the United States Bankruptcy Code, the Federal  
21 Rules of Bankruptcy Procedure, the Federal Rules of Civil Procedure, and the Local Rules of  
22 Practice for the United States Bankruptcy Court for the District of Nevada (the “Local Rules”)  
23 and will comply with them, as well as the procedures set forth in the “Guide to Applications for  
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26 <sup>2</sup> Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11  
27 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The  
28 Federal Rules of Civil Procedure will be referred to as “FRCP” and the Federal Rules of  
Bankruptcy Procedure will be referred to as “FRBP.” Unless otherwise stated herein, all  
undefined, capitalized terms shall have the meaning ascribed to them in the Application.

1 Professional Compensation,” promulgated by the Office of the United States Trustee (the “U.S.  
2 Trustee”) with regard to compensation of professionals.

3 6. Following the Trustee’s request that the Firm represent her in this case as general  
4 bankruptcy counsel, a conflicts check was undertaken, utilizing the Firm’s client list. Based upon  
5 the conflicts check and my information and belief, I believe that the Firm and its attorneys are  
6 “disinterested persons” as defined by 11 U.S.C. § 101 and do not hold or represent any interest  
7 adverse to the bankruptcy estate.

8 7. The conclusion that the Firm is a “disinterested” person within the meaning of 11  
9 U.S.C. § 101(14) for purposes of 11 U.S.C. § 327(a) is based upon the fact neither the Firm nor  
10 any of its attorneys:

- 11 (a) Are or were a creditor, equity security holder, or insider of  
12 the Debtor;
- 13 (b) Are or were, within two (2) years before the date of the  
14 filing the bankruptcy petition, a director, officer or  
15 employee of Debtor as specified in subparagraph (c) of  
16 Section 101(14);
- 17 (c) Hold, or have ever held, an interest materially adverse to the  
18 interest of the estate or of any class of creditors, equity  
19 holders, or parties in interest, by reason of any direct or  
20 indirect relationship to, or interest in, the Debtor or for any  
21 other reason except as stated herein;
- 22 (d) Represent, or have ever represented, the Debtor, insiders of  
23 the Debtor, creditors of the Debtor, any other party in  
24 interest, or their respective attorneys and accountants except  
25 as set forth herein; and
- 26 (e) Is a relative or employee of the U.S. Trustee or a  
27 Bankruptcy Judge except as stated herein.

28 8. To the best of my knowledge and belief, the Firm represents no interest that is  
adverse to the Trustee, to the Debtor’s estate, any creditor, any party in interest, the U.S. Trustee,  
or any attorney or accountant employed by the foregoing, in matters upon which it will be  
engaged as counsel.

1 9. Except as set forth herein, to the best of my information and belief, neither the  
2 Firm nor any of its attorneys has any connection with the Debtor, the creditors, any other parties  
3 in interest, their respective attorneys and accountants, the Office of the United States Trustee, or  
4 any person employed in the Office of the United States Trustee and that the Firm and each of its  
5 attorneys are all disinterested persons pursuant to 11 U.S.C. § 101(14).

6 10. The Trustee desires to employ the Firm as her special litigation counsel in the  
7 above-captioned case to render the following professional services:

8 (a) To investigate the financial affairs of the Debtor and  
9 determine if there are any preferential transfers, fraudulent  
10 conveyances, or turnover actions that may be filed on behalf  
11 of the bankruptcy estate pursuant to 11 U.S.C. §§ 542, 544,  
12 547, and 548, or other litigation claims owned by the estate  
13 against third parties.

14 (b) To prosecute any and all preferential transfers, fraudulent  
15 conveyances, or turnover actions that may be filed on behalf  
16 of the bankruptcy estate pursuant to 11 U.S.C. §§ 542, 544,  
17 547, and 548, or other litigation claims owned by the estate  
18 against third parties.

19 (c) To assist the Trustee in developing legal positions and  
20 strategies with respect to litigation matters in these  
21 proceedings

22 11. Subject to Court approval, in accordance with 11 U.S.C. § 330, the Trustee seeks  
23 to retain the Firm on an hourly basis at the customary and standard rates that the Firm charges for  
24 similar representation, plus reimbursement of actual and necessary expenses incurred by the Firm  
25 in performing its duties.

26 12. The Firm proposes the compensation of attorneys be at varying rates currently  
27 ranging from \$380 per hour to \$750 per hour for the services of partners of the Firm and at  
28 varying rates currently ranging from \$270 per hour to \$320 per hour for the services of associates  
of the Firm, subject to change from time to time, and all subject to application to, and approval  
by, this Court pursuant to Sections 330 and 331 of the Bankruptcy Code.

13. The Firm proposes the compensation of paraprofessionals be at varying rates  
currently ranging from \$145 per hour to \$220 per hour for paraprofessionals, subject to change

1 from time to time, and all subject to application to, and approval by, this Court pursuant to  
2 Sections 330 and 331 of the Bankruptcy Code. A true and correct copy of the proposed Retainer  
3 Agreement between the Trustee and the Firm is attached hereto as **Exhibit "1"**.

4 14. The Firm contemplates that it may seek interim compensation during this case as  
5 permitted by 11 U.S.C. § 331 and Federal Rule of Bankruptcy Procedure 2016. The Firm  
6 understands that its compensation is subject to prior Court approval.

7 15. The Firm further requests that its employment be approved *nunc pro tunc* as of  
8 December 28, 2016, in order to account for time expended reviewing the docket in the Debtor's  
9 bankruptcy case, conducting legal research, and participating in conference calls with the Trustee  
10 to discuss case strategy.


11 16. Finally, the request for *nunc pro tunc* employment only covers a seven (7) day  
12 period of time from when the Firm first began working on issues related to the Debtor's  
13 bankruptcy case and the filing of the Application.

14 17. No promises have been received by the Firm or any attorney of the Firm, as to  
15 payment or compensation in connection with the above-referenced bankruptcy case in accordance  
16 with the provisions of the Bankruptcy Code, FRBP and the Local Rules (the "Local Rules") and  
17 orders of the Court. The Firm has no agreement with any other entity to share with such entity  
18 any compensation received by the Firm, except as permitted under Section 504(b)(1).

19 18. The Firm has not shared, or agreed to share, with any other individual or entity,  
20 other than with members of the Firm, any compensation paid or to be paid.

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

23 Dated this 4<sup>th</sup> day of January, 2017.

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Kathy Bazoian Phelps, Esq.

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