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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

ROBERT C. GRAHAM, LTD. fdba ROB
GRAHAM & ASSOCIATES fdba
LAWYERSWEST,

Debtor.

Case No. BK-S-16-16655-BTB
Chapter 7

**STIPULATION TO APPROVE SECOND
AMENDMENT TO AGREEMENT TO
TOLL STATUTE OF LIMITATIONS
AND STATUTE OF REPOSE**

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

Judge: Honorable Bruce T. Beesley¹

Shelley D. Krohn, the duly appointed Chapter 7 Trustee in the above-captioned bankruptcy case (the “Trustee”), by and through her counsel, Jacob L. Houmand, Esq. and Kyle J. Ortiz, Esq. of the Houmand Law Firm, Ltd., and Valassis Direct Mail, Inc. (“Valassis” and together with the Trustee, the “Parties”), by and through its counsel, Ronald A. Spinner, Esq. of Miller Canfield, hereby stipulate and agree as follows:

...

...

¹ Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The 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”.

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RECITALS

1
2 1. On December 15, 2016, an *Involuntary Bankruptcy Petition* [ECF No. 1]² (the
3 “Involuntary Petition”) was filed against Robert C. Graham, Ltd. fdba Rob Graham & Associates
4 fdba Lawyerswest (the “Debtor”) pursuant to 11 U.S.C. § 303. The Involuntary Petition was filed
5 by the Estate of Michael B. Macknin, the Sharona Dagani Trust, and the Margueritte Owens
6 Revocable Trust (collectively, the “Petitioning Creditors”).

7 2. On December 16, 2016, the Petitioning Creditors filed a *Motion to Appoint Interim*
8 *Trustee in Involuntary Case* [ECF No. 3] (the “Interim Trustee Motion”), which sought authority
9 to appoint an interim trustee to take possession of property and to manage the business operations
10 and assets of the Debtor.

11 3. On December 21, 2016, the Bankruptcy Court entered an *Order on Trustee Motion*
12 *and Order for Relief Under Chapter 7* [ECF No. 21] (the “Order for Relief”). The Order for
13 Relief provided that the Debtor had consented to the filing of a bankruptcy petition and that the
14 filing of the bankruptcy case was effective as of December 15, 2016 (the “Petition Date”). The
15 Order for Relief further required that the Office of the United States Trustee (the “U.S. Trustee”)
16 appoint an Interim Chapter 7 Trustee pursuant to 11 U.S.C. § 701.

17 4. On December 22, 2016, Victoria L. Nelson (“Trustee Nelson”) was appointed as
18 the Chapter 7 Trustee in the Debtor’s bankruptcy case [ECF No. 22].

19 5. On January 13, 2018, Trustee Nelson died.

20 6. On January 19, 2018, the Trustee was appointed as the successor Chapter 7 Trustee
21 in the Debtor’s bankruptcy case.

22 7. The Trustee has investigated the Debtor’s financial affairs and believes that there
23 may be a basis to seek avoidance and recovery of certain pre-petition transfers that were made by
24 the Debtor to Valassis under applicable state and federal law (collectively, the “Claims”).

25 ...

26 ...

27 _____

28 ² All references to “ECF No.” are to the numbers assigned to the documents filed in the above-
referenced case as they appear on the docket maintained by the clerk of the court.

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1 8. The deadline for the Trustee to file a complaint based upon the Claims was
2 December 15, 2018.³ See 11 U.S.C. §§ 108 and 546 (providing a two-year statute of limitations
3 from the entry of the order for relief for a bankruptcy trustee to commence actions under
4 nonbankruptcy law and Sections 544, 545, 547, 548, and 553).

5 9. The Parties entered into a tolling agreement (the “Tolling Agreement”) to toll any
6 applicable statute of limitations and statute of repose relating to the Claims until March 15, 2019.

7 10. On December 6, 2018, the Parties filed a *Stipulation to Approve Agreement to Toll*
8 *Statute of Limitations and Statute of Repose* [ECF No. 349] that sought approval of the Tolling
9 Agreement.

10 11. On December 7, 2018, the Court entered an *Order Approving Stipulation to*
11 *Approve Agreement to Toll Statute of Limitations and Statute of Repose* [ECF No. 353].

12 12. The parties entered into a first amendment to tolling agreement (the “First
13 Amendment to Tolling Agreement”) to toll any applicable statute of limitations and statute of
14 repose relating to the Claims until May 17, 2019.

15 13. On March 13, 2019, the Parties filed a *Stipulation to Approve First Amendment to*
16 *Agreement to Toll Statute of Limitations and Statute of Repose* [ECF No. 419] that sought
17 approval of the First Amendment to Tolling Agreement.

18 14. On March 14, the Court entered an *Order Approving Stipulation to Approve First*
19 *Amendment to Agreement to Toll Statute of Limitations and Statute of Repose* [ECF No. 421].

20 15. In order to further facilitate an orderly discussion between the Parties concerning
21 the merits of the Claims and potential settlement discussions, the Parties have entered into a
22 second amendment to the Tolling Agreement (the “Second Amendment to Tolling Agreement”)
23 to toll any applicable statute of limitations and statute of repose relating to the Claims until June
24

25
26
27 ³ Although the Order for Relief in the Debtor’s bankruptcy case was entered on December 22,
28 2016, the Trustee assumed December 15, 2018, was the deadline to commence avoidance actions
out of an abundance of caution.

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17, 2019.⁴ A true and correct copy of the Second Amendment Tolling Agreement is attached hereto as **Exhibit “1”**.

16. The Parties now seek court approval of the Second Amendment to Tolling Agreement.

STIPULATION

IT IS HEREBY STIPULATED AND AGREED that:

1. The Second Amendment to Tolling Agreement is APPROVED; and

2. Any and all applicable statutes of limitation and statutes of repose relating to the Claims shall be tolled until June 17, 2019, as set forth in the Second Amendment Tolling Agreement; and

3. The Parties have authority to enter into the Second Amendment to Tolling Agreement; and

4. This Stipulation is without prejudice to the Parties agreeing to a further extension of the tolling period set forth in the Tolling Agreement, First Amendment to Tolling Agreement, and Second Amendment to Tolling Agreement.

Dated this 17th day of May, 2019.

Dated this 17th day of May, 2019.

By: /s/ Kyle J. Ortiz
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Kyle J. Ortiz, Esq. (NV Bar No. 14252)
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By: /s/ Ronald A. Spinner
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Miller Canfield
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Counsel for Shelley D. Krohn, Chapter 7 Trustee

Counsel for Valassis Direct Mail, Inc.

⁴ The description of the Tolling Agreement set forth herein is a summary only and does not modify or otherwise affect the terms of the Tolling Agreement. To the extent of any conflict between the Tolling Agreement and the description set forth herein, the Tolling Agreement shall control. Capitalized terms used but not defined herein shall have the meaning set forth in the Tolling Agreement.