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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

ROBERT C. GRAHAM, LTD. fdba ROB
GRAHAM & ASSOCIATES fdba
LAWYERS WEST,

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 American Express Company, American Express Travel Related Services Company, Inc. and American Express National Bank, f/k/a American Express Centurion Bank and successor by merger to American Express Bank FSB (collectively, “AMEX” and together with the Trustee, the “Parties”), by and through its counsel, Frank N. White, Esq. of the law firm of Arnall Golden Gregory LLP, 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

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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. f/d/b/a Rob Graham &
4 Associates f/d/b/a Lawyerswest (the “Debtor”) pursuant to 11 U.S.C. § 303. The Involuntary
5 Petition was filed by the Estate of Michael B. Macknin, the Sharona Dagani Trust, and the
6 Margueritte Owens 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 AMEX under applicable state and federal law (collectively, the “Claims”).

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28 ² All references to “ECF No.” are to the numbers assigned to the documents filed in the above-
referred 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 November 5, 2019, the Parties filed a *Stipulation to Approve Agreement to Toll*
8 *Statute of Limitations and Statute of Repose* [ECF No. 339] 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. 341].

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
14 of repose relating to the Claims until June 13, 2019.

15 13. On March 15, 2019, the Parties filed a *Stipulation to Approve First Amendment*
16 *to Agreement to Toll Statute of Limitations and Statute of Repose* [ECF No. 425] that sought
17 approval of the First Amendment to Tolling Agreement.

18 14. On March 15, 2019, the Court entered an *Order Approving Stipulation to Approve*
19 *First Amendment to Agreement to Toll Statute of Limitations and Statute of Repose* [ECF No.
20 427].

21 15. In order to further facilitate investigation and an orderly discussion between the
22 Parties concerning the merits of the Claims and potential settlement discussions, the Parties have
23 entered into a second amendment to the Tolling Agreement (the “Second Amendment to Tolling
24 Agreement”) to toll any applicable statute of limitations and statute of repose relating to the
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26 _____
27 ³ Although the Order for Relief in the Debtor’s bankruptcy case was entered on December 22,
28 2016, the Trustee has assumed December 15, 2018, is the deadline to commence avoidance
actions out of an abundance of caution.

1 Claims until August 12, 2019.⁴ A true and correct copy of the Second Amendment to Tolling
2 Agreement is attached hereto as Exhibit “1”.

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

5 **STIPULATION**

6 **IT IS HEREBY STIPULATED AND AGREED** that:

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

8 2. Any and all applicable statutes of limitation and statutes of repose relating to the
9 Claims shall be tolled until August 12, 2019, as set forth in the Second Amendment to Tolling
10 Agreement; and

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

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

16 Dated this 12th day of June, 2019.

Dated this 12th day of June, 2019.

17 By: /s/ Kyle J. Ortiz
18 Jacob L. Houmand, Esq. (NV Bar No. 12781)
19 Kyle J. Ortiz, Esq. (NV Bar No. 14252)
20 Houmand Law Firm, Ltd.
9205 West Russell Road, Building 3, Suite 240
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By: /s/ Frank N. White
Frank N. White, Esq.
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171 17th Street NW, Suite 2100
Atlanta, GA 30363

21 *Counsel for Shelley D. Krohn, Chapter 7*
22 *Trustee*

Counsel for AMEX

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26 ⁴ The description of the Tolling Agreement set forth herein is a summary only and does not
27 modify or otherwise affect the terms of the Tolling Agreement. To the extent of any conflict
28 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.

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