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Jacob L. Houmand, Esq. (NV Bar No. 12781)
Email: jhoumand@houmandlaw.com
Bradley G. Sims, Esq. (NV Bar No. 11713)
Email: bsims@houmandlaw.com
HOUMAND LAW FIRM, LTD.
9205 West Russell Road, Building 3, Suite 240
Las Vegas, NV 89148
Telephone: 702/720-3370
Facsimile: 702/720-3371

Counsel for Shelley D. Krohn, Chapter 7 Trustee

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

**MOTION TO APPROVE COMPROMISE
PURSUANT TO FEDERAL RULE OF
BANKRUPTCY PROCEDURE 9019**

Date of Hearing: June 2, 2020
Time of Hearing: 1:30 p.m.
Place: Courtroom No. 4, Second Floor
Foley Federal Building
300 Las Vegas Blvd., S.
Las Vegas, NV 89101

Judge: Honorable Bruce T. Beesley¹

Shelley D. Krohn (the “Trustee”), the duly appointed Chapter 7 Trustee in the above-captioned bankruptcy case, by and through her counsel, Jacob L. Houmand, Esq. and Bradley G. Sims, Esq. of the Houmand Law Firm, Ltd., hereby submits this *Motion to Approve Compromise Pursuant to Federal Rule of Bankruptcy Procedure 9019* (the “Motion”).

The Motion is based on the following Memorandum of Points and Authorities and the *Declaration of Shelley D. Krohn In Support of the Motion to Approve Compromise Pursuant to*

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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9205 West Russell Road, Building 3, Suite 240 Las Vegas, NV 89148
Telephone: (702) 720-3370 Facsimile: (702) 720-3371

1 *Federal Rule of Bankruptcy Procedure 901* (the “Trustee Declaration”), which is filed separately
 2 and concurrently with this Court pursuant to Local Rule 9014(c)(2). The Motion is also based on
 3 the pleadings and papers on file herein, and any argument that may be entertained at the hearing
 4 on the Motion.²

5 MEMORANDUM OF POINTS AND AUTHORITIES

6 I. INTRODUCTION

7 Prior to the filing of an involuntary bankruptcy petition against Robert C. Graham, Ltd.
 8 fdba Rob Graham & Associates fdba Lawyerswest (the “Debtor”), Bank of America, N.A.
 9 (“BOA”)³ received transfers in the approximate amount of \$410,549.83 (collectively, the
 10 “Transfers”) from the Debtor. The Transfers were payments made by the Debtor for credit cards
 11 and loans in the name of Robert C. Graham (“Graham”), the Debtor’s principal.

12 The Trustee contends that the Transfers can be avoided and recovered for the benefit of
 13 creditors pursuant to Sections 544(b) and 548 and applicable state law and are the subject of the
 14 adversary proceeding captioned *Krohn v. Bank of America, N.A.* (Case Number BK-S-19-01028-
 15 BTB) (the “Adversary Proceeding”). BOA disputes the Trustee’s allegations and the Parties have
 16 entered into a settlement agreement (the “Settlement Agreement”) whereby BOA will pay the
 17 Trustee the sum of \$215,000 (the “Settlement Sum”).

18 II. JURISDICTION AND VENUE

19 The Court has jurisdiction over the bankruptcy case and the subject matter of this Motion
 20 pursuant to 28 U.S.C. §§ 157 and 1334. The Motion is a core proceeding under 28 U.S.C. §
 21 157(b)(2). Pursuant to Local Rule 9014.2, if the Court determines that absent consent of the
 22 parties the Court cannot enter final orders or judgment regarding the Motion consistent with
 23 Article III of the United States Constitution, the Trustee consents to entry of final orders and
 24 judgment by this Court. Venue before this Court is appropriate under 28 U.S.C. §§ 1408 and
 25

26 ² The Trustee also requests that the Court take judicial notice of all pleadings filed in the above-
 27 referenced bankruptcy case, including adversary proceedings, pursuant to Federal Rule of
 Evidence 201, incorporated by reference by FRBP 9017.

28 ³ The Trustee and BOA shall collectively be referred to as the “Parties”.

1409. The statutory predicate for the relief requested in the Motion is FRBP 9019.

III. STATEMENT OF FACTS

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

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

3. On December 21, 2016, the Bankruptcy Court entered an *Order on Trustee Motion and Order for Relief Under Chapter 7* [ECF No. 21] (the “Order for Relief”).

4. The Order for Relief provided that the Debtor had consented to the filing of a bankruptcy petition and that the filing of the bankruptcy case was effective as of December 15, 2016 (the “Petition Date”).

5. The Order for Relief further required that the Office of the United States Trustee (the “U.S. Trustee”) appoint an Interim Chapter 7 Trustee pursuant to 11 U.S.C. § 701.

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

7. On January 13, 2018, Trustee Nelson died.

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

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⁴ All references to “ECF No.” are to the numbers assigned to the documents filed in the above-referenced main bankruptcy case as they appear on the docket maintained by the clerk of the court.

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9205 West Russell Road, Building 3, Suite 240 Las Vegas, NV 89148
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1 9. On March 15, 2019, the Trustee commenced the Adversary Proceeding by filing a
2 *Complaint* [Adv. ECF No. 1]⁵ alleging the following claims for relief against BOA: (a)
3 Avoidance of Constructive Fraudulent Transfers Pursuant to 11 U.S.C. § 544(b), 26 U.S.C. §§
4 6502 and 6901 and N.R.S. Chapter 112; (b) Avoidance of Actual Fraudulent Transfers Pursuant
5 to 11 U.S.C. § 544(b) and N.R.S. Chapter 112; (c) Avoidance of Constructive Fraudulent
6 Transfers Pursuant to 11 U.S.C. § 548(a)(1)(B); (d) Avoidance of Actual Fraudulent Transfers
7 Pursuant to 11 U.S.C. § 548(a)(1)(A); (e) Avoidance of Transfers Pursuant to 11 U.S.C. § 544(b)
8 and the Federal Debt Collection Procedures Act (28 U.S.C. §§ 3301 Through 3308); and (f)
9 Recovery of Bankruptcy Estate Property Pursuant to 11 U.S.C. § 550.

10 10. On May 31, 2019, the Defendant filed an *Answer* [Adv. ECF No. 12] to the
11 *Complaint*.

12 11. The Trustee and BOA have entered into the Settlement Agreement that resolves
13 the dispute concerning the Adversary Proceeding. A true and correct copy of the Settlement
14 Agreement is attached to the Trustee Declaration as **Exhibit “1”**.

15 12. The principal terms of the Settlement Agreement are outlined below⁶:

- 16 a. BOA shall pay the Trustee the sum of \$215,000 (the “Settlement Sum”).
- 17 b. The Trustee and BOA shall provide one another mutual releases. The
18 release provided by BOA shall include the ability to file a proof of claim pursuant to Section
19 502(h).

20 13. The Trustee and BOA have negotiated and reached the Settlement Agreement in
21 good faith. *See* Trustee Declaration.

22 ...

23 _____
24 ⁵ All references to “Adv. ECF No.” are to the numbers assigned to the documents filed in the
25 above-referenced adversary proceeding as they appear on the docket maintained by the clerk of
the court.

26 ⁶ The description of the Settlement Agreement set forth herein and in the Trustee Declaration is a
27 summary only and does not modify or otherwise affect the terms of the Settlement Agreement.
28 To the extent of any conflict between the Settlement Agreement and the description set forth
herein, the Settlement Agreement shall control. Capitalized terms used but not defined herein
shall have the meaning set forth in the Settlement Agreement.

1 14. The Trustee now files this Motion to obtain court approval of the Settlement
2 Agreement pursuant to FRBP 9019. *See* Trustee Declaration.

3 **IV. LEGAL ARGUMENT**

4 The Bankruptcy Court may approve a compromise or settlement between a debtor and
5 another party pursuant to Fed. R. Bankr. P. 9019(a), which provides the following:

6 Compromise. On motion by the trustee and after notice and a
7 hearing, the court may approve a compromise or settlement. Notice
8 shall be given to creditors, the United States trustee, the debtor, and
indenture trustees as provided in Rule 2002 and to any other entity
as the court may direct.

9 FED. R. BANKR. P. 9019(a).

10 Compromise and settlement agreements have long been an inherent component of the
11 bankruptcy process. The Ninth Circuit recognized that “[t]he bankruptcy court has great latitude
12 in approving compromise agreements.” *See Woodson v. Fireman’s Fund Ins. Co. (In re*
13 *Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988). Accordingly, in approving a settlement, the Court
14 need not conduct an exhaustive investigation of the claims sought to be compromised. *See United*
15 *States v. Alaska National Bank (In re Walsh Constr., Inc.)*, 669 F.2d 1325, 1328 (9th Cir. 1982).
16 Rather, it is sufficient that the Court find that the settlement was negotiated in good faith and is
17 reasonable, fair, and equitable. *See Martin v. Kane (In re A & C Properties)*, 784 F.2d 1377, 1381
18 (9th Cir. 1986), *cert. denied*, 479 U.S. 854 (1986). The proponent of the settlement must also
19 persuade the court that the settlement is in the best interests of the estate. *See Goodwin v. Mickey*
20 *Thompson Entertainment Group. (In re Mickey Thompson Entertainment Group, Inc.)*, 292 B.R.
21 415, 420–21 (B.A.P. 9th Cir. 2003). It is within the sound discretion of the bankruptcy court
22 whether to accept or reject a compromise. *See In re Carson*, 82 B.R. 847 (Bankr. S.D. Ohio
23 1987).

24 The Ninth Circuit has identified the following factors for consideration in determining
25 whether a settlement is reasonable, fair, and equitable:

26 (a) the probability of success in the litigation; (b) the difficulties, if
27 any, to be encountered in the matter of collection; (c) the
28 complexity of the litigation involved, and the expense,
inconvenience and delay necessarily attending it; (d) the paramount

1 interest of the creditors and a proper deference to their reasonable
2 views in the premises.

3 *In re A & C Properties*, 784 F.2d at 1381. The moving party is not required to satisfy each of
4 these factors as long as the factors as a whole favor approving the settlement. *See In re Pacific*
5 *Gas & Electric Co.*, 304 B.R. 395, 416 (Bankr. N.D. Cal. 2004). In considering the factors, “a
6 precise determination of the likely outcome is not required, since an exact judicial determination
7 of the values at issue would defeat the purpose of compromising the claim.” *In re Telesphere*
8 *Comm’s, Inc.*, 179 B.R. 544, 553 (Bankr. N.D. Ill. 1994) (internal quotations omitted). Thus,
9 rather than determining various issues of fact and law, the Court should “canvass the issues and
10 see whether the settlement fall[s] below the lowest point in the range of reasonableness.” *In re*
11 *Lion Capital Group*, 49 B.R. 163, 175 (Bankr. S.D.N.Y. 1985) (internal quotations omitted).

12 **B. The Settlement Agreement Is Fair and Equitable**

13 1. The Probability of Success in the Litigation

14 The Trustee believes that she would be successful in litigation against BOA. The Trustee
15 has employed a forensic accountant that has conducted an extensive analysis of the Debtor’s
16 financial accounts and has determined that the Debtor was effectively operating a Ponzi Scheme
17 by using trust funds owed to certain clients to pay the claims of other clients. The Debtor also
18 commingled corporate funds with client funds that he was required to hold in trust. The Trustee
19 believes that the Ponzi Scheme allows her to recover the Transfers because they were made in the
20 furtherance of Graham’s scheme that defrauded the Debtor’s creditors. *Bear Stearns Secs. Corp.*
21 *v. Gredd (In re Manhattan Inv. Fund Ltd.)*, 397 B.R. 1, 8 (S.D.N.Y. 2007) (quoting *Gredd v. Bear*
22 *Stearns Secs. Corp. (In re Manhattan Fund Ltd.)*, 359 B.R. 510, 517–18 (Bankr. S.D.N.Y.
23 .2007)); *see also Picard v. Merkin (In re Bernard L. Madoff Inv. Secs. LLC)*, 440 B.R. 243, 255
24 (Bankr. S.D.N.Y. 2010) (“It is now well-recognized that the existence of a Ponzi scheme
25 establishes that transfers were made with the intent to hinder, delay and defraud investors.”)
26 (citing cases); *Rieser v. Hayslip (In re Canyon Sys. Corp.)*, 343 B.R. 615, 637 (Bankr. S.D. Ohio
27 2006) (stating that “bankruptcy [and other] courts nationwide have recognized that establishing
28 the existence of a Ponzi scheme is sufficient to prove a Debtor’s actual intent to defraud”)

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1 (citation omitted). “If the Ponzi scheme presumption applies, actual intent for purposes of section
2 548(a)(1)(A) is established as a matter of law.” *McHale v. Boulder Capital LLC (In re The 1031*
3 *Tax Grp.)*, 439 B.R. 47, 72 (Bankr. S.D.N.Y. 2010) (citation and internal quotation marks
4 omitted).

5 The Trustee also contends that the payments made by the Debtor towards the personal
6 obligations of Graham constitute fraudulent transfers because there was no reasonable exchange.

7 BOA has asserted several affirmative defenses and vigorously disputes the Trustee’s
8 contention that the Ponzi Scheme presumption applies in the Debtor’s bankruptcy case and that
9 the Transfers were primarily for the personal benefit of Graham,

10 Approval of the Settlement Agreement will allow the Debtor’s bankruptcy estate to
11 receive a sizable recovery while avoiding extensive litigation concerning these nuanced legal
12 issues. As a result, this factor supports approval of the Settlement Agreement.

13 2. The Difficulties in Matter of Collection

14 BOA is a well-capitalized company and, as a result, the Trustee does not anticipate any
15 difficulty in collecting upon a favorable judgment if she was successful in litigation concerning
16 the Transfers. Accordingly, this factor is neutral.

17 3. The Complexity of the Litigation Involved and the Expense, Inconvenience and
18 Delay

19 Any litigation against BOA regarding the Transfers would involve complex facts and may
20 include expert testimony and a determination from this Court following a trial on the merits. It is
21 likely that there would be several appeals if the Trustee was successful in the litigation against
22 BOA. As noted herein, BOA is well-capitalized and would be able to fund litigation costs related
23 to the litigation of the Adversary Proceeding and any related appeals. Such protracted litigation
24 would result in the Trustee incurring significant administrative expenses that would reduce the
25 amount of funds that are ultimately available for payment to the Debtor’s creditors. Accordingly,
26 this factor militates in favor of approval of the Settlement Agreement.

27 ...

28 ...

1 4. The Paramount Interest of the Creditors

2 The Settlement Agreement is in the best interests of creditors because it will result in the
3 payment of \$215,000 to the Debtor's bankruptcy estate before the Parties engage in significant
4 litigation. The Settlement Sum represents approximately fifty-two percent (52%) of the Transfers
5 that were received by BOA. The payment of the Settlement Sum also avoids the uncertainty and
6 expense that would be associated with protracted litigation. As a result, this factor weighs in
7 favor of approval of the Settlement Agreement.

8 **V. CONCLUSION**

9 For the foregoing reasons, the Trustee respectfully requests that the Court enter an order
10 (i) approving the Settlement Agreement attached as **Exhibit "1"** to the Trustee Declaration
11 pursuant to FRBP 9019 and (ii) for such other and further relief as is just and proper.

12 Dated this 24th day of April, 2020.

13 **HOUMAND LAW FIRM, LTD.**

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15 By: */s/ Jacob L. Houmand*
16 Jacob L. Houmand, Esq. (NV Bar No. 12781)
17 Bradley G. Sims, Esq. (NV Bar No. 11713)
18 9205 West Russell Road, Building 3, Suite 240
19 Las Vegas, NV 89148
20 Telephone: 702/720-3370
21 Facsimile: 702/720-3371

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28 *Counsel for Shelley D. Krohn, Chapter 7 Trustee*

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Telephone: (702) 720-3370 Facsimile: (702) 720-3371