

SILVERMANACAMPORA LLP
Counsel to Kenneth P. Silverman, Esq.,
Chapter 7 Trustee
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300
David J. Mahoney, Esq.
Randy J. Schaefer, Esq.

Hearing Date: March 5, 2013
Time: 11:00 a.m.

Objections Due: February 26, 2013
Time: 4:00 p.m.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re:

AGAPE WORLD, INC.,
AGAPE MERCHANT ADVANCE LLC,
AGAPE COMMUNITY LLC, AGAPE
CONSTRUCTION MANAGEMENT LLC,
AGAPE WORLD BRIDGES LLC, AND
114 PARKWAY DRIVE SOUTH LLC,

Debtors.

-----X
KENNETH P. SILVERMAN, ESQ., as
Chapter 7 Trustee of Agape World, Inc., *et al.*,

Plaintiff,

-against-

JOSEPH CAPPARELLI,

Defendant.
-----X

Chapter 7
Case No.: 09-70660 (DTE)
Substantively Consolidated

Adv. Pro. No.: 10-08890 (DTE)

**NOTICE OF MOTION UNDER FEDERAL RULE OF
BANKRUPTCY PROCEDURE 9019 FOR AN ORDER APPROVING THE
STIPULATION SETTling THE TRUSTEE'S CLAIMS AGAINST JOSEPH CAPPARELLI**

PLEASE TAKE NOTICE, that upon the application (the "Application") of Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") for the substantively consolidated estate of Agape World, Inc., *et al.*, by his counsel, SilvermanAcampora LLP, the Trustee will move before the Honorable Dorothy T. Eisenberg, United States Bankruptcy Court for the Eastern District of New York, located at Long Island Federal Courthouse, 290 Federal Plaza, Central Islip, New York 11722 on **March 5, 2013 at 11:00 a.m.**, or as soon thereafter as counsel can be heard, seeking entry of an order granting the Trustee's Application under Bankruptcy Rule

9019(a) Seeking the Entry of an Order Approving the Stipulation Settling the Trustee's Claims against Joseph Capparelli. A copy of the proposed Order is annexed hereto.

PLEASE TAKE FURTHER NOTICE, that objections, if any, to the relief requested in the Application or the proposed Order must be (i) made in writing; (ii) electronically filed with the Bankruptcy Court; (iii) delivered to Chambers of the Honorable Dorothy T. Eisenberg, United States Bankruptcy Judge, United States Bankruptcy Court, Eastern District of New York, Long Island Federal Courthouse, 290 Federal Plaza, Central Islip, New York 11722; (iv) mailed to SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753, Attn: David J. Mahoney, Esq.; and (v) mailed to the Office of the United States Trustee, 560 Federal Plaza, Central Islip, New York 11722, no later than **February 26, 2013 at 4:00 p.m.**

PLEASE TAKE FURTHER NOTICE, that the hearing may be adjourned without further notice other than by announcement of such adjournment in open court.

Dated: Jericho, New York
February 1, 2013

SILVERMANACAMPORA LLP
Attorneys for Kenneth P. Silverman, Esq.,
the Chapter 7 Trustee

By: s/ Randy J. Schaefer
Randy J. Schaefer
Counsel to the Firm
100 Jericho Quadrangle, Suite 300
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SILVERMANACAMPORA LLP
Counsel to Kenneth P. Silverman, Esq.,
Chapter 7 Trustee
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
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David J. Mahoney, Esq.
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UNITED STATES BANKRUPTCY COURT
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In re:

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KENNETH P. SILVERMAN, ESQ., as
Chapter 7 Trustee of Agape World, Inc., *et al.*,

Plaintiff,

-against-

JOSEPH CAPPARELLI,

Defendant.
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Chapter 7
Case No.: 09-70660 (DTE)
Substantively Consolidated

Adv. Pro. No.: 10-08890 (DTE)

**TRUSTEE'S APPLICATION UNDER BANKRUPTCY
RULE 9019(a) SEEKING THE ENTRY OF AN ORDER APPROVING A
STIPULATION SETTLING THE TRUSTEE'S CLAIMS AGAINST JOSEPH CAPPARELLI**

Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") of the substantively consolidated estate of Agape World, Inc., *et al.*, by his attorneys SilvermanAcampora LLP, respectfully submits this application (the "Application") under 11 U.S.C. § 105 and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for entry of an Order (annexed hereto as **Exhibit A**) approving the proposed settlement of the Trustee's claims against Joseph Capparelli (the "Defendant") as memorialized in the Stipulation Settling the Trustee's Preference Claim Against Joseph Capparelli (the "Stipulation"), which has been

annexed hereto as **Exhibit B**. All parties are encouraged to review the annexed Stipulation in its entirety for the specific terms of the proposed settlement.

Background

1. On February 5, 2009 (the "Petition Date"), an involuntary chapter 7 petition was filed by four petitioning creditors ("the Petitioning Creditors") pursuant to 11 U.S.C. § 303(b), against Agape World, Inc. ("AWI"), in the United States Bankruptcy Court for the Eastern District of New York.

2. On February 9, 2008, the Petitioning Creditors filed a motion to appoint an interim chapter 7 trustee under 11 U.S.C. § 303(g).

3. On February 12, 2009, the Court granted the Petitioning Creditors' motion and entered an order directing the United States Trustee's Office to immediately appoint an interim chapter 7 trustee in the AWI case.

4. On February 12, 2009, Kenneth P. Silverman, Esq., was appointed the interim trustee in the AWI case, and has since duly qualified and is now the permanent Trustee in the Debtors' substantively consolidated case.

5. On March 4, 2009, the Court issued an Order for relief in the AWI chapter 7 case.

6. On April 14, 2009, the Court issued an Order substantively consolidating AWI, Agape Merchant Advance LLC, Agape Community LLC, Agape Construction Management, LLC, Agape World Bridges LLC, and 114 Parkway Drive South LLC (collectively, "Agape" or the "Debtors").

7. Thereafter, pursuant to an Order of this Court dated April 21, 2009 (Dkt. No. 106), the Trustee retained Navigant Consulting Inc. ("Navigant") to, among other things, conduct a forensic analysis of Agape's books and records.

8. Based upon Navigant's analysis, the Trustee determined that Defendant received certain transfers totaling Three Hundred Seventy-Eight Thousand Ninety-Nine and 84/100 (\$378,099.84) Dollars (the "Net Transfers") made by the Debtors to Defendant that are

avoidable pursuant to 11 U.S.C. §§ 548, 550 and 551, New York Debtor and Creditor Law §§273, 274, 275, 276 and 276-a, and New York common law; and Two Hundred Seventy Thousand Nine Hundred Forty-Seven and 85/100 (\$270,947.85) Dollars (the “Preferential Transfers”) avoidable pursuant to 11 U.S.C. §§ 547 and 550.

9. On December 6, 2010, the Trustee commenced an adversary proceeding against Defendant (the “Adversary Proceeding”) by the filing and service of a summons and complaint under Adv. Pro. No. 10-08890 seeking to, *inter alia*, avoid the Net Transfers pursuant to 11 U.S.C. §§ 548, 550 and 551, New York Debtor and Creditor Law §§ 273, 274, 275, 276 and 276-a, and New York common law; avoid the Preferential Transfers pursuant to 11 U.S.C. §547; and recover the Net Transfers and Preferential Transfers from Defendant pursuant to 11 U.S.C. § 550(a) (the “Trustee’s Claims”).

10. On January 25, 2011, Defendant interposed an answer asserting general denials and several affirmative defenses.

11. Thereafter, the parties engaged in informal discovery related to the Trustee’s Claims and the defenses asserted by Defendant whereby Defendant provided the Trustee with certified financial disclosures (the “CFDs”). Based upon his review of the CFDs, the Trustee determined that Defendant lacked the financial wherewithal necessary for the Trustee to recover the full amount of the Net Transfers and the Preferential Transfers without complicated judgment enforcement over an extended time period.

12. The Trustee and Defendant engaged in settlement discussions in an effort to consensually resolve the Adversary proceeding. In order to avoid the costs, expenses and uncertainty of continued litigation, the parties have now agreed to resolve the Trustee’s Claims upon the terms and conditions contained in the Stipulation.

13. Defendant has offered to remit the sum of One Hundred Thousand and 00/100 (\$100,000.00) Dollars (the “Settlement Sum”) to the Trustee.

14. For all of the reasons set forth herein, the Trustee submits that accepting Defendant's offer to remit the Settlement Sum in full and final settlement of the Trustee's Claims is a reasonable exercise of the Trustee's business judgment and is in the best interests of the Debtors' estate.

Settlement

15. The Trustee has determined that settling this matter for the Settlement Sum is the most economical and efficient way to realize a meaningful and beneficial recovery for the benefit of creditors without the need to incur legal fees and risks inherent with the litigation of the Trustee's Claims and any resulting judgment efforts.

16. After consultation with his retained professionals and in the exercise of his business judgment, the Trustee has determined that the voluntary return of the Settlement Sum outweighs the potential net recovery to the estate if the Trustee elected to litigate the Trustee's Claims through trial and enforce a resulting judgment against Defendant.

17. In light of the foregoing and mindful of costs and risks of litigating the Trustee's Claims, the Trustee has agreed to accept the Settlement Sum.

Basis for Relief Requested

18. Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") governs the approval of compromises and settlements, and provides as follows:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice 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.

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

19. In approving the compromise and settlement, the Court is required to make an "informed and independent judgment" as to whether the compromise and settlement is fair and equitable based on an:

[e]ducated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment

which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of litigation.

In re Iridium Operating LLC, 478 F.3d 452, 462 n.15 (2d Cir. 2007) (quoting *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425, *reh'g denied*, 391 U.S. 909 (1968)). See *In re Arrow Air, Inc.*, 85 B.R. 886, 891 (Bankr. S.D. Fla. 1988); *In re Bell & Beckwith*, 77 B.R. 606, 611 (Bankr.N.D.Ohio), *aff'd*, 87 B.R. 472 (N.D.Ohio 1987); *Cf. Magill v. Springfield Marine Bank (In re Heissinger Resources Ltd.)*, 67 B.R. 378, 383 (C.D. Ill. 1986) ("the law favors compromise").

20. In making its determination on the "propriety of the settlement", the Court should consider whether the proposed settlement is in the "best interest of the estate".¹ As stated in *Arrow Air*, the "approval of [a] proposed compromise and settlement is a matter of this Court's sound discretion". *Arrow Air*, 85 B.R. at 891. In passing upon a proposed settlement, "the bankruptcy court does not substitute its judgment for that of the trustee". *In re Depo*, 77 B.R. at 384 (citations omitted). The bankruptcy court is not required "to decide the numerous questions of law and fact raised by [objectors] [R]ather [the Court should] canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness."² In passing upon the reasonableness of a proposed compromise, the Court "may give weight to the opinions of the Trustee, the parties and their counsel." *Bell & Beckwith*, 77 B.R. at 612; see also *In re Handler*, 386 B.R. at 421.

21. The Second Circuit in *In re Iridium Operating LLC*³ outlined the following seven

¹ *Handler v. Roth (In re Handler)*, 386 B.R. 411, 420 (Bankr. E.D.N.Y. 2007)(quoting *In re Adelpia Communications Corp.*, 327 B.R. 143, 158 (Bankr. S.D.N.Y. 2005)); *Depo v. Chase Lincoln First Bank, N.A.* (In re Depo), 77 B.R. 381, 383 (N.D.N.Y. 1987), *aff'd*, 863 F.2d 45 (2d Cir. 1988).

² *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983), *cert denied*, 464 U.S. 822 (1983)(quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972), *cert denied*, 409 U.S. 1039 (1972); See *In re Handler*, 386 B.R. at 420-21.

³ 478 F.3d 452 (2d Cir. 2007).

factors (the “Iridium Criteria”) to be considered by a court in deciding whether to approve a compromise or settlement:

- i. the balance between the litigation's possibility of success and the settlement's present and future benefits;
- ii. the likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay, including the difficulty in collecting on the judgment if the settlement is not approved;
- iii. the paramount interest of the creditors, including the proportion of class members who do not object to or who affirmatively support the settlement;
- iv. whether other parties in interest support the settlement;
- v. the competency and experience of the counsel who support the proposed settlement;
- vi. the relative benefits to be received by individuals or groups within the class; and
- vii. the extent to which the settlement is the product of arm's length bargaining.

See *In re Iridium Operating LLC*, 478 F.3d at 462.

18. By offering to voluntarily return the Settlement Sum, Defendant has offered to remit a significant portion of the Net Transfers and Preferential Transfers for which the Trustee believes Defendant may be liable in satisfaction of the Trustee's Claims without causing the Debtor's estate to incur significant fees or expenses.

19. The Trustee submits that considering the costs and uncertainties associated with trial and judgment enforcement, and the amount of the Trustee's demand, it is unlikely that further litigation would result in a “net benefit” to the Debtors' estate in excess of the Settlement Sum. In the sound business judgment of the Trustee, the proposed settlement is both appropriate and warranted. The Trustee believes that the settlement is fair and equitable and in the best interest of the estate.

Notice

20. The Trustee has served the Notice of Hearing, proposed Order, and Motion in support with Exhibit upon: (i) the Office of the United States Trustee; (ii) Nicholas Cosmo, former principal of the Debtors, (iii) Defendant, (iv) Defendant's counsel, (v) the appropriate taxing authorities, and (vi) all parties having filed a Notice of Appearance in this case, and copies have been posted on the Trustee's website located at www.agapeworldbankruptcy.com. The Trustee respectfully submits that the proposed service complies with this Court's Order Establishing Noticing Procedures entered on July 8, 2009 and is otherwise sufficient.

21. No previous application for the relief requested herein has been made to this or any other Court.

WHEREFORE, the Trustee respectfully requests that this Court grant this Application authorizing and approving the Stipulation and grant such other further and different relief as this Court deems just and proper.

Dated: Jericho, New York
February 1, 2013

SILVERMANACAMPORA LLP
Attorneys for Kenneth P. Silverman, Esq.,
Chapter 7 Trustee

By: s/ Randy J. Schaefer
Randy J. Schaefer
Counsel to the Firm
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----x
In re:

AGAPE WORLD, INC.,
AGAPE MERCHANT ADVANCE LLC,
AGAPE COMMUNITY LLC, AGAPE
CONSTRUCTION MANAGEMENT LLC,
AGAPE WORLD BRIDGES LLC, AND
114 PARKWAY DRIVE SOUTH LLC,

Debtors.

-----x
KENNETH P. SILVERMAN, ESQ., as
Chapter 7 Trustee of Agape World, Inc., *et al.*,

Plaintiff,

-against-

JOSEPH CAPPARELLI,

Defendant.
-----x

Chapter 7
Case No.: 09-70660 (DTE)
Substantively Consolidated

Adv. Pro. No.: 10-08890 (DTE)

**ORDER UNDER BANKRUPTCY RULE 9019(a) APPROVING A
STIPULATION SETTLING THE TRUSTEE'S CLAIMS AGAINST JOSEPH CAPPARELLI**

Upon the Notice of Motion (the "Notice"), dated February 1, 2013, and related application (collectively, the "Application") of Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") of the substantively consolidated estate of Agape World, Inc., *et al.*, by his counsel, SilvermanAcampora LLP, seeking the entry of an Order approving a Stipulation (the "Stipulation") Settling the Trustee's Claims Against Joseph Capparelli (the "Defendant"); and upon the Affidavit of Service filed with the Court; and no objections to the Application or the proposed Order having been filed; and the Court having found that the settlement of the Trustee's claims pursuant to 11 U.S.C. §§ 547, 548, 550 and 551, New York Debtor and Creditor Law §§ 273, 274, 275, 276 and 276-a, and New York common law against Defendant to be fair, reasonable and in the best interest of the Debtors' estate; and sufficient cause having been shown therefor; and after due deliberation and consideration; and it appearing that

sufficient notice of the Application and proposed Order has been given; and it appearing that good and sufficient cause exists for granting the Application and proposed Order; and no additional notice being necessary or required:

NOW, THEREFORE, upon the Notice and Application of the Trustee and pursuant to Federal Rule of Bankruptcy Procedure 9019(a) and other applicable law, it is hereby

ORDERED, that service of the Notice and Application and proposed Order, having been provided to: (i) the Office of the United States Trustee; (ii) Nicholas Cosmo, former principal of the Debtors, (iii) Defendant, (iv) Defendant's counsel, (v) the appropriate taxing authorities, and (vi) all parties having filed a Notice of Appearance in this case, and copies have been posted on the Trustee's website located at www.agapeworldbankruptcy.com complies with this Court's Order Establishing Noticing Procedures entered on July 8, 2009 and is otherwise sufficient; and it is further

ORDERED, that the Application is granted, and it is further

ORDERED, that the settlement of the Trustee's Claims against Defendant as memorialized in the Stipulation is approved, and it is further

ORDERED, that the Trustee be, and hereby is authorized and directed to take such steps, execute such documents and expend such funds as may be reasonably necessary to effectuate and implement the terms and conditions of this Order.

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re:

AGAPE WORLD, INC.,
AGAPE MERCHANT ADVANCE LLC,
AGAPE COMMUNITY LLC, AGAPE
CONSTRUCTION MANAGEMENT LLC,
AGAPE WORLD BRIDGES LLC, AND
114 PARKWAY DRIVE SOUTH LLC,

Debtors.

Chapter 7
Case No.: 09-70660 (DTE)
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KENNETH P. SILVERMAN, ESQ., as
Chapter 7 Trustee of Agape World, Inc., *et al.*,

Plaintiff,

Adv. Pro. No.: 10-08890 (DTE)

-against-

JOSEPH CAPPARELLI,

Defendant.
-----X

**STIPULATION SETTLING THE
TRUSTEE'S PREFERENCE CLAIM AGAINST JOSEPH CAPPARELLI**

I. On February 5, 2009 (the "Filing Date"), an involuntary chapter 7 petition was filed by four petitioning creditors (the "Petitioning Creditors") pursuant to 11 U.S.C. §303(b), against Agape World, Inc. ("AWI"), in the United States Bankruptcy Court for the Eastern District of New York.

II. On February 9, 2009, the Petitioning Creditors filed a motion to appoint an interim chapter 7 trustee under 11 U.S.C. §303(g).

III. On February 12, 2009, the Court granted the Petitioning Creditors' motion and entered an order directing the United States Trustee's Office to immediately appoint an interim chapter 7 trustee in the AWI case.

IV. On February 12, 2009, Kenneth P. Silverman, Esq., was appointed the interim trustee in the AWI case, and has since duly qualified and is now the permanent Trustee in the Debtors' substantively consolidated case.

V. On March 4, 2009, the Court issued an Order for relief in the AWI chapter 7 case.

VI. On April 14, 2009, the Court issued an Order substantively consolidating AWI, Agape Merchant Advance LLC, Agape Community LLC, Agape Construction Management, LLC, Agape World Bridges LLC, and 114 Parkway Drive South LLC (collectively, the "Debtors").

VII. The Trustee and his counsel have investigated the financial affairs of the Debtors, including a detailed analysis of the extent and validity of certain transfers made by the Debtors to Joseph Capparelli ("Defendant") within 90 days prior to the Filing Date.

VIII. On December 6, 2010, the Trustee commenced this adversary proceeding against Defendant by the filing of a complaint, wherein the Trustee asserted certain transfers totaling \$378,099.84 (the "Net Transfers") made by the Debtors to Defendant (net of any deposits made by Defendant to the Debtors) are avoidable pursuant to, inter alia, 11 U.S.C. §§544, 548, and 550 and New York Debtor and Creditor Law §273, *et say*; and that certain transfers totaling \$270,947.85 (the "Preferential Transfers") made by the Debtors to the Defendant within 90 days prior to the Filing Date are avoidable pursuant to 11 U.S.C. §§547 and 550 (the "Trustee's Claims").

IX. Thereafter, Defendant retained his undersigned counsel to defend against the Trustee's Claims.

X. The parties engaged in informal discovery related to the Trustee's Claims and the defenses asserted by Defendant.

XI. In the spirit of compromise and without any admission of liability, Defendant has offered to remit the sum of \$100,000.00 (the "Settlement Sum") to the Trustee in full and final settlement of the Trustee's Claims.

XII. Based upon the his review of all documentation related to the Preferential Transfers and his investigation of all attendant factors, the Trustee has, in his business judgment, agreed to settle the Trustee's Claims upon the following terms and conditions, which the Trustee believes are fair and reasonable, especially in light of the costs and uncertainty associated with litigation.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the parties hereto, that the Trustee's Claims be resolved upon the terms and conditions set forth herein as follows:

Defendant's Obligation to Pay the Settlement Sum

1. This Stipulation (the "Stipulation") is subject to the approval of the United States Bankruptcy Court for the Eastern District of New York (the "Approval Order").

2. Upon execution of this Stipulation, Defendant will remit the Settlement Sum to "Kenneth P. Silverman, Esq., as Chapter 7 Trustee," by delivering a check to Trustee's counsel at SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York, 11753, Attention: Patricia Ann Kavanagh Edwards, Esq.

3. If Defendant fails to make timely payment of the Settlement Sum in accordance with paragraph 2, above, or if Defendant's payment is dishonored for any reason whatsoever and Defendant does not cure such default within five (5) business days after written notice sent by Federal Express or other reputable overnight courier to Defendant and Defendant's counsel at the addresses set forth herein, then the Trustee shall be entitled to move before the Bankruptcy Court, without further notice and upon the affidavit by the Trustee attesting to the default (a) for the entry of a judgment against Defendant for Two Hundred Seventy Thousand Nine Hundred Forty-Seven and 85/100 Dollars (\$270,947.85), plus costs, less any sums previously paid as provided herein, and (b) for any further relief necessary to enforce his rights under this Stipulation. Written notice of default shall be sent by Federal Express or other reputable overnight courier to (i) Defendant at 286 Roosevelt Way, Westbury, New York 11590

and (ii) Defendant's counsel at Macco & Stern, LLP, 135 Pinelawn Road, Suite 120S, Melville, New York 11747.

4. The Settlement Sum shall be held by the Trustee in a segregated "Earnest Money" account until the Approval Order becomes final and non-appealable under 28 U.S.C. §158(c)(2) and Bankruptcy Rule 8002.

5. Upon the Approval Order becoming final and non-appealable, the fourteenth day after the date of the entry of the Approval Order, the Trustee will transfer the Settlement Sum being held in the segregated "Earnest Money" account into the Debtors' estate account. If the Bankruptcy Court denies the entry of the Approval Order, the Trustee will return the Settlement Sum to Defendant's counsel without undue delay.

6. If the Court does not enter the Approval Order, this Stipulation will be null and void and none of the terms herein shall be usable as evidence by either party.

Releases

7. Upon the entry of the Approval Order, and the Trustee's receipt and clearance of the Settlement Sum, the Trustee and the estate release and forever discharge Defendant, his affiliated entities, agents, representatives, present or former officers, attorneys, directors, assigns and successors-in-interest from any and all claims, claims for relief, demands, costs, expenses, damages, liabilities, and obligations of any nature arising out of or relating to the Trustee's Claims. For purposes of clarification, nothing contained herein shall be construed to be a release by the Trustee of any claims that the Trustee may have or subsequently discover under 11 U.S.C. §550(a)(2) and the Trustee is specifically not releasing any claims under 11 U.S.C. §550(a)(2).

8. Upon the execution of this Stipulation, Defendant releases, discharges and waives any and all claims against the Debtor's Estate, the Trustee and the Trustee's agents, attorneys, assigns and successors-in-interest from any and all claims, claims for relief, demands, costs, expenses, damages, liabilities, and obligations of any nature.

9. Upon the entry of the Approval Order, Defendant releases, discharges and waives any and all claims against the Debtors' Estate, the Trustee and the Trustee's agents, attorneys, assigns and successors-in-interest from any and all claims, claims for relief, demands, costs, expenses, damages, liabilities, and obligations of any nature.

Effect of Settlement upon Timely-Filed Proofs of Claim

10. Upon execution of this Stipulation and the Trustee's receipt and clearance of the Settlement Sum, the Trustee and the estate specifically release, discharge and waive the Second Claim for Relief to disallow any proof of claim timely filed by Defendant pursuant to Bankruptcy Code §502(d).

11. The parties to the Stipulation acknowledge and agree that notwithstanding the release language contained in paragraphs 7 through 9, the Stipulation and the settlement memorialized herein are not intended, and should not be interpreted to otherwise release, waive or discharge either parties' rights, defenses, claims or objections with respect to any proof of claim that was timely-filed by Defendant in the Debtors' substantively-consolidated case. For the purposes of clarification, by entering into this Stipulation, the Trustee has not, is not intending and shall not be deemed to have validated, approved or otherwise allowed any proof of claim previously filed by Defendant.

12. Upon payment of the Settlement Sum, but no more than sixty (60) days after payment of the Settlement Sum, Defendant shall have the right to file and serve on Trustee's counsel a proof of claim or an amended proof of claim including the amount of the Settlement Sum paid hereunder, pursuant to Bankruptcy Code §502(h). Defendant acknowledges and agrees that [his/her/its] Bankruptcy Code §502(h) claim shall be disallowed if it is not filed and served on Trustee's counsel within sixty (60) days of payment.

No Admission of Criminal or Civil Liability

13. It is understood and agreed that this Stipulation is entered into to avoid costly and protracted litigation. Neither the execution of this Stipulation, nor the payment of the

Settlement Sum shall be construed as an admission of any criminal or civil liability on Defendant's part. For clarification, this paragraph is not intended and shall not be deemed to affect Defendant's obligation to make timely payment of the Settlement Sum or adversely affect the Trustee's rights and remedies under paragraph 2 in the event that Defendant fails to make timely payment of the Settlement Sum.

Miscellaneous

14. This Stipulation may be executed in one or more counterparts, with each part being deemed a part of the original document, and facsimile or other electronic signatures shall be deemed an original signature.

15. The person executing this Stipulation on behalf of each respective party warrants and represents that she or he is authorized and empowered to execute and deliver this Stipulation on behalf of such party.

16. This Stipulation may not be altered, modified, or changed unless in writing, signed by the parties or their counsel.

17. This Stipulation shall be governed by the laws of the State of New York, except with respect to matters as to which federal law is applicable without regard to any conflicts of law principles.

18. The Trustee and Defendant are each responsible for their own costs and attorneys' fees incurred in connection with this proceeding.

Dated: Jericho, New York
December 19, 2012

SILVERMANACAMPORA LLP
Attorneys for Kenneth P. Silverman, Esq.,
The Chapter 7 Trustee

By: s/ David J. Mahoney
David J. Mahoney
Anthony C. Acampora
Members of the Firm
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300

Dated: Melville, New York
December 19, 2012

MACCO & STERN, LLP
Attorneys for Defendant

By: s/ Richard L. Stern
Richard L. Stern, Esq.
135 Pinelawn Road, Suite 120 South
Melville, New York 11747
(631)549-7900

Dated: Westbury, New York
December 19, 2012

s/ Joseph Capparelli
Joseph Capparelli
Defendant
286 Roosevelt Way
Westbury, New York 11590