

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

**Hearing Date: October 30, 2012**  
**Time: 10:00 a.m.**

**Objections Due: October 23, 2012**  
**Time: 5:00 p.m.**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK**

-----X  
In re:

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

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,

Adv. Pro. No.: 10-08372 (DTE)

-against-

NICHOLAS AUSTINE,

Defendant.

-----X

**NOTICE OF MOTION PURSUANT  
TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019  
FOR AN ORDER APPROVING THE STIPULATION RESOLVING  
CLAIMS AGAINST DEFENDANT AND PROVIDING FOR RELATED RELIEF**

**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 **October 30, 2012 at 10:00 a.m.**, seeking approval of the Stipulation

Settling Trustee's Claims against Nicholas Austine. 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: Anthony C. Acampora, Esq.; and (v) mailed to the Office of the United States Trustee, 560 Federal Plaza, Central Islip, New York 11722, no later than **October 23, 2012**.

**PLEASE TAKE FURTHER NOTICE**, that if objections to the Application are filed and served in compliance with the above-paragraph, the Court will schedule a hearing on the Application.

Dated: Jericho, New York  
October 5, 2012

**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  
Jericho, New York 11753  
(516) 479-6300

**SILVERMANACAMPORA LLP**  
Counsel to Kenneth P. Silverman, Esq.,  
Chapter 7 Trustee  
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Anthony C. Acampora, Esq.  
David J. Mahoney, Esq.  
Randy J. Schaefer, Esq.

**Hearing Date: October 30, 2012**  
**Time: 10:00 a.m.**

**Objections Due: October 23, 2012**  
**Time: 5:00 p.m.**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re:

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

Debtors.

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

Plaintiff,

-against-

NICHOLAS AUSTINE,

Defendant.  
-----X

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

Adv. Pro. No.: 10-08372 (DTE)

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

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 Federal Rule of Bankruptcy Procedure 9019 for entry of an Order (attached as **Exhibit A**) approving the proposed settlement of the Trustee's claims under 11 U.S.C. §§547, 550 and 551, and New York common law against Nicholas Austine as memorialized in the Stipulation Settling the Trustee's Claims Against Nicholas Austine (the "Stipulation"), which has been attached hereto

as **Exhibit B**. All parties are encouraged to review the 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 Nicholas Austine ("Defendant") received transfers from Agape in the amount of \$86,375.00 (the "Transfers").

9. On August 27, 2010, the Trustee commenced an adversary proceeding against Defendant (the "Adversary Proceeding") by filing a complaint seeking to, *inter alia*, avoid the Transfers pursuant to 11 U.S.C. §§547, 550 and 551, and New York common law and to recover the Transfers from Defendant pursuant to 11 U.S.C. §550(a) (the "Trustee's Claims").

10. The Trustee and Defendant, through their counsel, 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.

11. For all of the reasons set forth herein, the Trustee submits that accepting Defendant's offer to remit \$51,825.00 (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**

12. 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 prosecution of the Trustee's Claims and any resulting judgment enforcement efforts.

13. Indeed, after consultation with his retained professionals and in the exercise of his business judgment, the Trustee has determined that the payment of the Settlement Sum, which is 60% of the Transfers, outweighs the potential net recovery to the estate if the Trustee elected to prosecute the Trustee's Claims through trial and enforce a resulting judgment against Defendant.

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

### Basis for Relief Requested

15. Federal Rule of Bankruptcy Procedure 9019(a), which governs the approval of compromises and settlement, provides:

(a) Compromise. On motion by the trustee and after notice and 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.

16. In approving a compromise and settlement, the Bankruptcy 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 [any] 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.

*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 *American Can Co. v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 605, 607 (5th Cir. 1980); *Chopin Assoc. v. Smith (In re Holywell Corp.)*, 93 B.R. 291, 294 (Bankr.S.D.Fla. 1988); *In re Arrow Air, Inc.*, 85 B.R. 886, 891 (Bankr. S.D. Fla. 1988); *In re Bell & Beckwith*, 77 B.R. 628, 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").

17. In making its determination, the Court should consider whether the proposed compromise is in the "best interest of the estate". *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). 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 [or debtor in possession]". *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." *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir.), *cert denied*, 464 U.S. 822 (1983) (*quoting Newman v. Stein*, 464 F.2d 689, 693 (2d Cir.), *cert denied*, 409 U.S. 1039 (1972)). See *Holywell* 93 B.R. at 294. ("In order to exercise this discretion properly, the Court must consider all the relevant facts and evaluate whether the compromise suggested falls below the 'lowest point in the range of reasonableness'") (*quoting In re Teltronics Services, Inc.*, 762 F.2d. 185, 189 (2d Cir. 1985)). In passing upon the reasonableness of a proposed compromise, the Court "may give weight to the opinions of the Trustee [or debtor in possession], the parties and their counsel." *Bell & Beckwith*, 77 B.R. at 512.

18. The factors to be considered by the Court in determining whether to approve a compromise or settlement include (a) probability of success in the litigation, with due consideration for the uncertainty in fact and law, (b) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and (c) all other factors bearing on the wisdom of the compromise. *Arrow Air*, 85 B.R. at 891 (*citing TMT Trailer Ferry*, 390 U.S. at 424-25). See *Jackson Brewing Co.*, 624 F.2d at 507; *Holywell Corp.*, 93 B.R. at 294-95 (citations omitted).

19. By offering to voluntarily return the Settlement sum, Defendant has offered to remit 60% of the Transfers in satisfaction of the Trustee's Claims without causing the Debtors' estate to incur significant fees or expenses. 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.

**Notice**

20. The Trustee has served the Notice and Motion and proposed Order on: (i) the Office of the United States Trustee; (ii) Nicholas Cosmo, former principal of the Debtors, (iii) criminal counsel to Nicholas Cosmo, (iv) the appropriate taxing authorities, and (v) 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](http://www.agapeworldbankruptcy.com). The Trustee respectfully submits that the Trustee's 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  
October 5, 2012

**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  
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-

NICHOLAS AUSTINE,

Defendant.  
-----X

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

Adv. Pro. No.: 10-08372 (DTE)

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

Upon the Notice of Presentment (the "Notice"), dated October 5, 2012, 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 Nicholas Austine (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, 550 and 551, 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 therefore; and after due deliberation and consideration having been

had; and it appearing that good and sufficient cause exists for granting the Application and proposed Order; and additional notice being neither necessary nor required:

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

**ORDERED**, that service of the Notice, 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](http://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.

**SO ORDERED:**

# **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)  
Substantively Consolidated

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

Plaintiff,

Adv. Pro. No.: 10-08372 (DTE)

-against-

NICHOLAS AUSTINE,

Defendant.  
-----X

**STIPULATION SETTLING THE  
TRUSTEE'S PREFERENCE CLAIM AGAINST NICHOLAS AUSTINE**

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 Nicholas Austine ("Defendant") within 90 days prior to the Filing Date.

VIII. On August 27, 2010, the Trustee commenced this adversary proceeding against Defendant by the filing of a complaint, wherein the Trustee asserted that certain transfers totaling \$86,375.00 (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. On April 2, 2012, the Trustee filed a motion for default judgment (the "Motion") for Defendant's failure to answer or otherwise respond to the complaint.

X. On May 30, 2012, the Court granted the Trustee's Motion and entered a judgment (the "Judgment") against the Defendant on May 31, 2012.

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

XII. In the spirit of compromise and without any admission of liability, Defendant has offered to remit the sum of \$51,825.00 (the "Settlement Sum") to the Trustee in full and final settlement of the Trustee's Claims and the entered Judgment.

XIII. Based upon 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. The Trustee has agreed to allow the Defendant to pay the Settlement Sum of \$51,825.00 in three (3) installments. The first installment, in the amount of \$17,275.00 is due upon execution of the Stipulation, which shall be no later than September 28, 2012. The second installment, in the amount of \$17,275.00 is due on or before December 28, 2012. The third installment, in the amount of \$17,275.00, is due on or before February 28, 2013. All installments shall be remitted 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. Nothing contained herein shall preclude or penalize Defendant from pre-paying any installment or portion of any installment.

3. If Defendant fails to make timely payments 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 (a) enforce the full amount of the Judgment, plus costs, less any sums previously paid as provided herein, and (b) pursue any further relief necessary to enforce his rights under this Stipulation.

4. Written notice of default shall be sent by Federal Express or other reputable overnight courier to (i) Defendant at 92-22 92<sup>nd</sup> Street, Woodhaven, New York, 11421; and (ii) Brian A. Andrews, Esq., Defendant's counsel, at Law Offices of Brian A. Andrews, PLLC, 13235 Main Road, P.O. BOX 43, Mattituck, New York, 11952.

5. The Settlement Sum shall be held in the escrow account of the Trustee's counsel until the Approval Order becomes final and non-appealable under 28 U.S.C. §158(c)(2) and Bankruptcy Rule 8002.

6. Upon the Approval Order becoming final and non-appealable, the fourteenth day after the date of the entry of the Approval Order, Trustee's counsel will transfer the Settlement Sum to the Trustee to be deposited into the Debtors' estate account. If the Bankruptcy Court denies the entry of the Approval Order, Trustee's counsel will return the Settlement Sum to Defendant's counsel without undue delay.

7. 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**

8. 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, her affiliated entities, agents, representatives, attorneys, 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).

9. 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.

10. Upon the entry of the Approval Order, 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.

**No Admission of Criminal or Civil Liability**

11. 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**

12. 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.

13. 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.

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

15. 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.

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

Dated: Jericho, New York  
September \_\_, 2012

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

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

Dated: Mattituck, New York  
September 24, 2012

**BRIAN A. ANDREWS, ESQ.**  
Attorney for Defendant Nicholas Austine

By: s/ Brian A. Andrews  
Law Offices of Brian A. Andrews, PLLC  
13235 Main Road  
P.O. Box 43  
Mattituck, New York 11952

Dated: Woodhaven, New York  
September 20, 2012

Nicholas Austine  
Defendant

By: s/ Nicholas Austine  
92-22 92<sup>nd</sup> Street  
Woodhaven, New York 11421