

**SILVERMANACAMPORA LLP**  
Attorneys for Kenneth P. Silverman, Esq.,  
The Chapter 7 Trustee  
100 Jericho Quadrangle, Suite 300  
Jericho, New York 11753  
(516) 479-6300  
David J. Mahoney, Esq.  
Jay S. Hellman, Esq.

Hearing Date: January 24, 2013  
Time: 10:00 a.m.

Objections Due: January 17, 2013  
Time: 5:00 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,

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

Debtors.  
-----X

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

Plaintiff,

Adv. Pro. No. 10-08270 (DTE)

-against-

BRET ERSTER and  
KNIGHT ARMOUR L.P.,

Defendants.  
-----X

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

Plaintiff,

Adv. Pro. No.: 11-09137 (DTE)

-against-

BRET ERSTER,

Defendant.  
-----X

**NOTICE OF HEARING OF PROPOSED ORDER UNDER  
BANKRUPTCY RULE 9019(a) APPROVING A STIPULATION SETTLING  
THE TRUSTEE'S CLAIMS AGAINST BRET ERSTER AND KNIGHT ARMOUR L.P.**

**PLEASE TAKE NOTICE**, that upon the application (the "Motion") 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 Judge, at the United States Bankruptcy Court, Courtroom 760, Eastern District of New York at Central Islip, 290 Federal Plaza, Central Islip, New York 11722 on **January 24, 2013 at 10:00 a.m.**, or soon thereafter as counsel can be heard for an entry of an order granting the Trustee's Motion for an Order Approving the Stipulation of Settlement. A copy of the proposed Order is annexed hereto.

**PLEASE TAKE FURTHER NOTICE**, that objections, if any, to the relief requested in the Motion 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, Alfonso M. D'Amato 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 **January 17, 2013**.

**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  
December 11, 2012

**SILVERMANACAMPORA LLP**  
Counsel to Kenneth P. Silverman, Esq., the  
Chapter 7 Trustee

By: s/ David J. Mahoney  
David J. Mahoney  
Jay S. Hellman  
Members of 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  
100 Jericho Quadrangle, Suite 300  
Jericho, New York 11753  
(516) 479-6300  
Jay S. Hellman, Esq.  
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Hearing Date: January 24, 2013  
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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,  
AGAPE WORLD BRIDGES LLC, AND  
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-

BRET ERSTER and  
KNIGHT ARMOUR L.P.,

Defendants.

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

Plaintiff,

-against-

BRET ERSTER,

Defendant.

-----X

**TRUSTEE'S APPLICATION UNDER BANKRUPTCY RULE 9019(a)  
SEEKING THE ENTRY OF AN ORDER APPROVING A STIPULATION SETTLING  
THE TRUSTEE'S CLAIMS AGAINST BRET ERSTER AND KNIGHT ARMOUR L.P.**

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

Adv. Pro. No. 10-08270 (DTE)

Adv. Pro. No.: 11-09137 (DTE)

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 (annexed hereto as **Exhibit A**) approving the proposed settlement of the Trustee's claims under 11 U.S.C. §§544, 547, 548, 550 and 551, New York Debtor and Creditor Law §§273, 274, 275, 276 and 276-a, and New York common law against Bret Erster and Knight Armour L.P., as memorialized in the Stipulation Settling the Trustee's Claims Against Bret Erster and Knight Armour L.P. (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 the Debtor made certain transfers to Bret Erster ("Erster") totaling Forty-Two Thousand Eight Hundred Sixty-Six and 00/100 (\$42,866.00) Dollars (the "Erster Transfers") and that the Debtor made certain transfers to Knight Armour L.P. ("Knight Armour" and, collectively with Erster, the "Defendants") totaling Seventeen Thousand Seven Hundred and 00/100 (\$17,700.00) Dollars ("the Knight Transfers" and, collectively with the Erster Transfers, the "First Complaint Transfers"). The Trustee further determined that the First Complaint Transfers are avoidable pursuant to 11 U.S.C. §§544, 548, 550 and 551, New York Debtor and Creditor Law §§273, 274, 275, 276 and 276-a, and New York common law.

9. On June 11, 2010, the Trustee commenced an adversary proceeding against the Defendants (the "First Adversary Proceeding") by the filing and service of a summons and complaint under Adv. Pro. No. 10-08270 seeking to, *inter alia*, avoid the First Complaint Transfers pursuant to 11 U.S.C. §§544, 547, 548, 550 and 551, New York Debtor and Creditor Law §§273, 274, 275, 276 and 276-a, and New York common law and to recover the First Complaint Transfers from Defendants pursuant to 11 U.S.C. §550(a) (the "Trustee's First Complaint Claims").

10. On August 31, 2010 Defendants filed an answer to the First Complaint, which asserted certain denials, affirmative defenses, and counter-claims in the amount of \$183,896.00 (the "First Counter-Claims").

11. In an associated adversary proceeding numbered 10-08212 (DTE), the Trustee also avoided certain transfers (the "Cet-It-Off Transfers") made by the Debtors to Cet-It-Off

Records Corp. ("Cet-It-Off") pursuant to 11 U.S.C. §§544, 548, 550 and 551 and New York Debtor and Creditor Law §§273, 274, 275, 276 and 276-a.

12. Subsequent to the Cet-It-Off Transfers, Cet-It-Off made transfers to Erster totaling One Hundred Seventy-Three Thousand Five Hundred Eighty and 00/100 (\$173,580.00) Dollars (the "Second Complaint Transfers" and, together with the First Complaint Transfers, the "Transfers").

13. On June 6, 2011 the Trustee commenced an adversary proceeding against Erster (the "Second Adversary Proceeding" and, together with the First Adversary Proceeding, the "Adversary Proceedings") by the filing and service of a summons and complaint under Adv. Pro. No. 11-09137 seeking to recover the Second Complaint Transfers pursuant to 11 U.S.C. §§541, 542, and 550 (the "Trustee's Second Complaint Claims" and, together with the Trustee's First Complaint Claims, the "Trustee's Claims").

14. On July 6, 2011 Erster filed an answer to the Second Complaint, which asserted certain denials, affirmative defenses, and counter-claims in the amount of \$103,510.00 (the "Second Counter-Claims" and, together with the First Counter-Claims, the "Counter-Claims").

15. The parties engaged in discovery related to the Trustee's Claims and the defenses asserted by Defendants whereby Defendants produced documentation demonstrating triable issues of fact relating to some of the Defendant's defenses to the Trustee's Claims and the asserted Counter-Claims.

16. Through discovery, Erster demonstrated that Knight Armour is a dissolved entity, lacking any assets to satisfy a judgment against it.

17. The Trustee and the Defendants, through their counsel, engaged in settlement discussions in an effort to consensually resolve the Adversary Proceedings. 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.

18. Erster has offered to remit the sum of Thirty Thousand and 00/100 (\$30,000.00) Dollars (the "Settlement Sum") to the Trustee, in full and final satisfaction of the Trustee's Claims.

19. For all of the reasons set forth herein, the Trustee submits that accepting Erster'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**

20. 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 efforts.

21. Through discovery, Erster has demonstrated that Defendants have potential defenses against the Trustee's Claims and Counter-Claims. Further, the Trustee understands that the Defendants' defenses and Counter-Claims could be resolved in Defendant's favor which would reduce or eliminate the "net benefit" to the estate.

22. 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 prosecute the Trustee's Claims through trial and enforce a resulting judgment against the Defendants.

23. 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**

24. 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.

25. 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").

26. 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.

27. 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).

28. By offering to voluntarily return the Settlement Sum, Defendants have offered to return a significant portion of the Transfers without causing the Debtors' estate to incur significant fees or expenses in litigating the Claims, or the Defendants' asserted fair consideration defenses under 11 U.S.C. §548(c) and New York Debtor and Creditor Law §272 to the First Complaint Claims and 11 U.S.C. §550(b) defense to the Second Complaint Claims.

29. Further, Defendants have produced certified financial disclosures raising material questions relating to the enforceability of a potential judgment.

30. The Trustee submits that considering the costs and uncertainties associated with trial and judgment enforcement, 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**

31. 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) Defendants, (iv) Defendants' 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). 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.

32. 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  
December 11, 2012

**SILVERMANACAMPORA LLP**  
Attorneys for Kenneth P. Silverman, Esq.,  
the chapter 7 trustee

By: s/ David J. Mahoney  
David J. Mahoney  
Jay S. Hellman  
Members of 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-

BRET ERSTER and  
KNIGHT ARMOUR L.P.,

Defendants.

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

Plaintiff,

-against-

BRET ERSTER,

Defendant.

-----X

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

Adv. Pro. No. 10-08270 (DTE)

Adv. Pro. No.: 11-09137 (DTE)

**ORDER UNDER BANKRUPTCY  
RULE 9019(a) APPROVING A STIPULATION SETTLING THE  
TRUSTEE'S CLAIMS AGAINST BRET ERSTER AND KNIGHT ARMOUR L.P.**

Upon the Notice of Hearing (the "Notice"), dated December 11, 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 Bret Erster and Knight Armour L.P. (the

“Defendants”); 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. §§544, 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 therefore; and after due deliberation and consideration having been had; 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) Defendants, (iv) Defendants’ 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 Defendants 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:

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. 10-08270 (DTE)

-against-

BRET ERSTER and  
KNIGHT ARMOUR L.P.,

Defendants.

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

Plaintiff,

Adv. Pro. No.: 11-09137 (DTE)

-against-

BRET ERSTER,

Defendant.

-----X  
**STIPULATION OF SETTLEMENT**

I. 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.

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 Bret Erster ("Erster") and Knight Armour L.P. ("Knight Armour" and, collectively with Erster, the "Defendants").

VIII. On June 11, 2010, the Trustee commenced Adversary Case No. 10-08270 against Defendants by the filing of a complaint (the "First Complaint"), wherein the Trustee asserted that: (i) certain transfers totaling \$42,866.00 (the "Erster Transfers") made by the Debtors to Erster are avoidable pursuant to 11 U.S.C. §§544, 547, 548, 550 and 551, New York Debtor and Creditor Law §§273, 274, 275 and 276; and (ii) certain transfers totaling \$17,700.00 (the "Knight Transfers" and, together with the Erster Transfers, the "First Complaint Transfers") made by the Debtors to Knight Armour L.P. are avoidable pursuant to 11 U.S.C. §§544, 547, 548, 550 and 551, New York Debtor and Creditor Law §§273, 274, 275 and 276 (collectively, the "First Complaint Claims").

IX. On August 31, 2010, Defendants filed an answer to the First Complaint, which asserted counter-claims in the amount of \$183,896.00 (the "First Counter-Claims").

X. On June 6, 2011, the Trustee commenced Adversary Case No. 11-09137 against Erster by the filing of a complaint (the "Second Complaint"), wherein the Trustee asserted that: (i) certain transfers (the "Cet-It-Off Transfers") made by the Debtors to Cet-It-Off Records Corp. ("Cet-It-Off") were avoided pursuant to 11 U.S.C. §§544, 548, 550 and 551, New York Debtor and Creditor Law §§273, 274, 275, 276 and 276-a; (ii) subsequent to the Cet-It-Off Transfers, Cet-It-Off made transfers to Erster totaling \$173,580.00 (the "Second Complaint Transfers" and, together with the First Complaint Transfers, the "Transfers"); and (iii) the Second Complaint Transfers were recoverable by the Trustee pursuant to 11 U.S.C. §§541, 542 and 550 (collectively, the "Second Complaint Claims" and, together with the First Complaint Claims, the "Claims").

XI. August 31, 2010, Erster filed an answer to the Second Complaint, which asserted counter-claims in the amount of \$103,510.00 (the "Second Counter-Claims" and, together with the "First Counter-Claims," the "Counter-Claims").

XII. The parties engaged in discovery related to the Claims, the Counter-Claims, the defenses asserted by Defendants, and the enforceability of a potential judgment in the amount of the Transfers.

XIII. In the spirit of compromise and without any admission of liability, Erster has offered to remit the sum of \$30,000.00 (the "Settlement Sum") to the Trustee in full and final settlement of the Claims against Defendants.

XIV. Based upon the his review of all documentation related to the 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"). Upon receipt of the executed Stipulation, the Trustee will move the Bankruptcy Court for entry of the Approval Order pursuant to Bankruptcy Rule 9019.

2. The Trustee has authorized Erster to pay the Settlement Sum in installments as set forth in the annexed Schedule A. 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: Randy J. Schaefer, Esq. Nothing contained herein shall preclude or penalize Erster from pre-paying any installment or portion of any installment.

3. Any funds remitted by Defendants in full or partial payment of the Settlement Sum prior to the entry of the Approval Order shall be held in the Trustee's segregated "Earnest Monies" account until the Approval Order becomes final and non-appealable under 28 U.S.C. §158(c)(2) and Bankruptcy Rule 8002.

4. Once the Approval Order becomes final and non-appealable, Trustee's counsel shall transfer all settlement funds being held in the "Earnest Monies" account into the Debtors' estate account. If the Bankruptcy Court denies entry of the Approval Order, then Trustee's counsel will return all funds remitted by Erster in full or partial payment of the Settlement Sum each installment payment being held in escrow to Erster's counsel without undue delay and this Stipulation will be null and void and none of the terms herein shall be usable as evidence by either party.

5. All payments made by Erster after the Approval Order becoming final and non-appealable shall be deposited directly into the Debtors' estate account.

6. If Erster fails to make timely payment of any installment of the Settlement Sum in accordance with paragraph 1 and Schedule A collectively, or if any of Erster's payments are

dishonored for any reason whatsoever and Erster does not cure such default within fourteen (14) days after written notice sent by Federal Express or other reputable overnight courier to Erster and his 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 Defendants, jointly and severally, in the amount of \$234,146.00, 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) Erster at 17 Beech Street, Floral Park, NY 11001, and (ii) his undersigned counsel, Barry Levin, Esq., 1225 Franklin Avenue, Suite 325, Garden City, New York 11530.

#### **Releases**

7. Upon the Approval Order becoming final and non-appealable, the Adversary Proceeding shall be dismissed.

8. Upon the Approval Order becoming final and non-appealable, and the Trustee's receipt and clearance of the full Settlement Sum, the Trustee and the estate release and forever discharge Defendants, their 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 Claims

9. Upon the Approval Order becoming final and non-appealable, Defendants release, discharge and waive 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, including the Counter-Claims, claims for relief, demands, costs, expenses, damages, liabilities, and obligations of any nature.

#### **No Admission of Criminal or Civil Liability**

10. 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 Erster's part. For clarification, this paragraph is not intended and shall not be deemed to affect Erster's obligation to make timely payment of the Settlement Sum or adversely affect the Trustee's rights and remedies under paragraph 6 in the event that Erster fails to make timely payment of any installment of the Settlement Sum.

**Miscellaneous**

11. 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.

12. 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.

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

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

**[ONE SIGNATURE PAGE ATTACHED]**

Dated: Jericho, New York  
December 11, 2012

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

By: s/ David J. Mahoney  
David J. Mahoney  
Jay S. Hellman  
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(516) 479-6300

Dated: Levittown, New York  
December 11, 2012

**Barry Levin, Esq.**  
Counsel to Bret Erster

By: s/ Barry Levin  
Barry Levin, Esq.  
1225 Franklin Avenue, Suite 325  
Garden City, New York 11530  
(516) 222-4500

s/ Bret Erster  
Bret Erster, individually

s/ Bret Erster  
Knight Armour L.P., by  
Bret Erster, Managing Partner

Schedule A

<b>Payment Due on or Before the Last Business Day of:</b>	<b>Installment Payment Due:</b>	<b>Balance Remaining Under Settlement:</b>
December 2012	\$15,000.00	\$15,000.00
February 2013	\$15,000.00	\$0.00