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Special Litigation Counsel for Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
AT CENTRAL ISLIP

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In re:

Chapter 7
Case No. 09-70660 (AST)
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.

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**INTERIM APPLICATION FOR ALLOWANCE OF COMPENSATION BY
REID COLLINS & TSAI LLP, TRUSTEE'S SPECIAL COUNSEL**

The law firms of Reid Collins & Tsai LLP (“**RCT**”)¹ and Ruskin Moscou Faltischek PC (“**RMF**” and collectively with RCT, “**Special Counsel**”), Special Counsel for Kenneth P. Silverman, Esq., in his capacity as the Chapter 7 Trustee (the “**Trustee**”) for Agape World Inc. and its related entities substantively consolidated into the estate (“**Debtors**”) hereby submit this application for compensation and respectfully set forth and represent as follows:

I. BACKGROUND AND TERMS OF SPECIAL COUNSEL’S ENGAGEMENT

1. RCT and RMF were retained as the Trustee’s special litigation counsel by order of this Court dated January 20, 2010, which authorized Special Counsel “to take all steps necessary to analyze certain of the Trustees’ potential third-party claims, as requested by the Trustee (the “Claims”)” The January 20, 2010 Order further provided that, “if the Trustee determines that prosecution of the Claims would serve the best interests of the Debtors’ creditors, Special Counsel shall only be retained to prosecute the Claims upon proper application and further Order of this Court. A copy of the January 20, 2010 Order is attached as **Exhibit A**.

2. During the first half of 2010, Special Counsel conducted an initial factual and legal investigation focused on determining whether the Trustee could pursue claims against the commodities trading firms/futures commission merchants (“**FCMs**”) that permitted Nicholas Cosmo to open trading accounts in the name of Agape, and accepted transfers of millions of dollars from Agape in those accounts. Special Counsel conducted legal research and reviewed FCM account statements of trading activity in the accounts, account opening documentation, and Agape’s bank statements. Thereafter, Special Counsel prepared a detailed memorandum for the Trustee that outlined a creative and aggressive legal theory upon which the Trustee could pursue recoveries against the FCMs for the benefit of Agape’s creditors. Building on the analysis of the

¹ Reid Collins & Tsai LLP was formerly known as Reid Davis LLP.

United States Federal District Court for the Southern District of New York in *Bear Stearns Sec. Corp. v. Gredd (In re Manhattan Inv. Fund, Ltd.)*, 397 B.R. 1 (S.D.N.Y. 2007), Special Counsel recommended that the Trustee assert actual fraudulent transfer claims pursuant to 11 U.S.C. § 548(A)(1)(a), against the six FCMs that had opened accounts for Cosmo and received transfers from Agape. Although Special Counsel did not find any reported case where this legal theory had been pursued under an identical fact pattern, Special Counsel proposed to take on the risk of litigating these rather novel and challenging claims on a contingent basis so long as the Trustee retained Special Counsel to pursue all of the FCMs, which would somewhat spread the risk.

3. The Trustee decided to retain Special Counsel to pursue claims against all six FCMs on his behalf. The Trustee and Special Counsel entered into a separate retention agreement dated May 25, 2010, pursuant to which Special Counsel agreed to “represent the Trustee to pursue certain claims against the following commodities trading firms: Alaron, Cunningham, Shatkin Arbor, MF Global, Penson, and RJ O’Brien (the “**CTF Claims**”).”² A copy of the May 25, 2010 engagement letter is attached as **Exhibit B** (the “**Engagement Letter**”). Subject to Bankruptcy Court approval, the Trustee and Special Counsel agreed to the following terms for Special Counsel’s Contingent Fee Compensation:

In recognition of the fact that Special Counsel are working on a pure contingency fee, we have agreed that, upon proper application to and Order of the Court, the Debtors’ estate will pay Special Counsel a contingent fee in the amount of thirty percent (30%) of any gross Recoveries received through settlement or other resolution of the CTF Claims (the “**Contingent Fee**”).

“**Recoveries**” shall include any monies received by the Trustee, whether by settlement, judgment enforcement, or otherwise, in connection with any resolution of the CTF Claims. In the event the

² The Terms “FCM” in this application and “CTF” in the Engagement Letter are interchangeable: “Futures Commission Merchant” or “Commodities Trading Firm.”

Trustee accepts or recovers non-monetary compensation in a resolution of the CTF Claims, the non-monetary compensation will not become a recovery unless or until the Trustee, in his sole discretion, liquidates the non-monetary compensation.

Exhibit B at pg. 3, section 5 (all emphasis original).

4. The Trustee sought Court approval to retain Special Counsel on the terms set forth in the Engagement Letter. The Court granted its approval in an order dated June 29, 2010, which stated, in part: “Special Counsel . . . hereby is retained as special litigation counsel to the Trustee, as of May 25, 2010, *upon the terms set forth in the Application and Letter of Engagement . . .*” A copy of the June 29, 2010 Order is attached as **Exhibit C**. (Emphasis added.)

II. SERVICES RENDERED BY SPECIAL COUNSEL

5. Special Counsel have devoted thousands of hours of lawyer and paraprofessional time over more than three years. To date, RCT has invested more than \$3.6 million worth of time investigating and litigating the Trustee’s claims against the six FCMs. Without question, the investment, creativity, hard work, and tenacity of RCT has resulted in substantial benefits to the Agape estate. The aggregate recoveries to the Agape estate from the cases litigated by RCT total more than \$18 million.

A. General Work on All FCM Cases

6. The claims that the Trustee pursued against the FCMs are fraudulent transfer claims under Section 548(a)(1) of the Bankruptcy Code.³ Actual intent fraudulent transfer claims require proof that (1) that the debtor transferred funds with the intent to hinder, delay, or defraud creditors; and (2) that the transferee had dominion and control over the transferred funds. The only defense

³ As set forth within, all of the cases, but one, have now settled. The remaining case, *Silverman v. Alaron Trading Corp.*, Case 8-11-08946-nhl, was stayed by the bankruptcy of the defendant. RCT filed a proof of claim on behalf of the Agape Trustee in the Alaron bankruptcy and continues to monitor developments in that case.

available to an actual fraudulent transfer claim is the so-called “good faith defense” set forth in 548(c). Thus, to prevail on the CTF Claims, Special Counsel would have to establish these elements and overcome the assertion of the good faith defense.

7. Special Counsel concluded the first element of the fraudulent transfer claims against the FCMs could be satisfied by the “Ponzi scheme presumption,” which establishes, as a matter of law, that all transfers made by a Ponzi entity (like Agape) are made for the purpose of hindering, defrauding, or delaying creditors. Beyond that, Special Counsel would have to litigate difficult factual and legal issues to establish that each FCM had sufficient dominion and control over the money transferred by Agape to the trading accounts to qualify as a transferee. Moreover, Special Counsel expected each FCM to assert the good faith defense, an inherently fact-specific issue that would require extensive fact and expert discovery.

8. Given the highly specialized nature of futures and commodities trading, Special Counsel decided to use consulting experts to assist in formulating the CTF Claims. However, finding former industry participants who had the necessary experience in the operational details of an FCM, and who were willing to take on the assignment, was a difficult task. Once again, Special Counsel needed to get creative to identify consulting experts. Ultimately, with the permission of the Trustee, Special Counsel retained an outstanding consulting expert with broad experience in the FCM industry who played an invaluable role helping Special Counsel learn the customs, practices, and intricacies of the FCM industry.

9. Before making final decisions about which FCMs to sue and what claims to assert, Special Counsel obtained documents and testimony from the FCMs pursuant to Bankruptcy Rule 2004. Special Counsel spent a significant amount of time preparing for these oral examinations because of the complex and specialized nature of the subject matter. Special Counsel conducted

examinations of six corporate representatives of FCMs, as well as examinations of corporate representatives of two other FCMs that refused to open and/or opened, but immediately shut down, trading accounts that Cosmo attempted to open on Agape's behalf. In addition to the examinations of FCMs, Special Counsel also conducted oral examinations of four introducing brokers ("IBs") who also had contact with Cosmo concerning the FCM accounts. In all, Special Counsel conducted eleven oral examinations of witnesses pursuant to Rule 2004.

10. After working closely with the consulting expert, reviewing thousands of pages of documents, and conducting a dozen oral examinations, Special Counsel prepared draft complaints against six FCMs: Alaron, Cunningham, Shatkin Arbor, MF Global, Penson, and RJ O'Brien. Special Counsel provided draft complaints to all of the FCMs and invited each to engage in discussions about resolving the case on a pre-filing basis. Only Shatkin Arbor evidenced an interest in settlement negotiations. Accordingly, Special Counsel filed suit against the other five FCMs, including Penson.

B. Special Counsel's Work on the Penson Case

11. After Special Counsel approached Penson with a draft complaint, Penson chose to litigate rather than attempt to resolve the case on a pre-suit basis. Accordingly, Special Counsel commenced the Penson action by filing the complaint on February 25, 2011, seeking to avoid and recover fraudulent transfers in the amount of \$11.6 million.

12. Penson moved to dismiss the complaint on April 27, 2011, arguing that the complaint did not, and as a matter of law could not, plead the element of dominion and control, and asserting the good faith defense, among other things. The defendants in the Alaron and R.J. O'Briend cases entered into stipulations with the Trustee stating that they would be bound by the court's decision on Penson's motion to dismiss. Thus, the outcome of three cases – representing

more than \$50 million in claims – turned on the court’s decision on Penson’s motion to dismiss. Special Counsel expended a great deal of time and effort preparing its memorandum in opposition to Penson’s motion to dismiss and preparing for oral argument. After a lengthy hearing on Penson’s motion to dismiss, the Court denied Penson’s motion to dismiss from the bench on July 6, 2011.

13. Thereafter, the parties commenced fact discovery. Over the course of the next year, Special Counsel reviewed thousands of pages of documents and deposed a five witnesses on highly complex issues related to the intricacies of how an FCM conducts business.

14. After the conclusion of fact discovery, Special Counsel devoted substantial additional effort to expert discovery, which was an important aspect of the case. The complex and factually intensive issues of dominion and control and good faith were both the subject of extensive expert opinion. Special Counsel worked with its testifying expert to produce both an opening expert report and a rebuttal expert report. In addition, Special Counsel defended the deposition of its expert witness and took the deposition of Penson’s expert witness.

15. With a few weeks after the conclusion of expert depositions, in January of 2013, Penson Worldwide, Inc. (the parent holding company) commenced a Chapter 11 case, along with numerous subsidiaries and affiliates, including Penson Financial Services, Inc. (“**PFSI**”), Penson Financial Futures, Inc. (“**PFF**”), and Penson Futures (“**Futures**”) (together, “Penson”). The adversary case in this Court was stayed as a result of the bankruptcy. In due course, Special Counsel prepared and filed proofs of claim on behalf of Agape in the bankruptcy cases of PFSI, PFF, and Futures. Thereafter, Special Counsel monitored the bankruptcy cases.

16. Penson objected to the Trustee’s proofs of claim. Pursuant to an alternative dispute resolution process established and approved by the Penson bankruptcy court, the Trustee and

Penson elected to engage in mediation. On April 24, 2014, Agape and Penson participated in a day-long mediation to determine whether the parties could agree upon an allowed proof of claim for Agape. In preparation for the mediation, Special Counsel prepared a detailed written mediation statement. During the mediation, the mediator (who is a former Supreme Court law clerk) engaged Special Counsel in a lengthy debate about the relevant legal authorities, much in the nature of oral argument. Although no settlement was reached on the day of the mediation, the following week, the parties agreed to settle the claim on the terms embodied in the mediator's proposal. Accordingly, the parties agreed that the Trustee would receive an allowed claim against PSFI in the amount of \$815,000 ("**Penson Allowed Claim**").

C. Status of Other FCM Cases

17. In addition to securing an allowed proof of claim in the Penson Chapter 11 case, Special Counsel has aggressively pursued the other FCMs cases. The outcome and/or status of those cases is as follows:

- a. Alaron filed for bankruptcy on November 30, 2012, after the close of fact discovery and after the Trustee produced his expert report. The Trustee's adversary case against Alaron has been stayed since then. Special Counsel has filed timely proofs of claim on behalf of the Trustee, has engaged in some discussions with the Alaron trustee, and continues to monitor the case.
- b. The Cunningham case settled on an "ability to pay" basis, for \$475,000, which was approved by order dated February 27, 2012. *Silverman v. Cunningham Commodities LLC*, Adv. Pro. 8:11-09167 (JBR) [docket #26].
- c. The R.J. O'Brien case settled after the end of all fact discovery, and only days before the deadline for the Trustee's expert report, for \$1,300,000,

which was approved by order dated September 14, 2012. Special Counsel reviewed more than 18,000 pages of documents and took nine depositions during fact discovery. Special Counsel also worked closely with its testifying expert to prepare an expert report, although in the end, the case was settled days before the expert report would have been produced in the litigation. *Silverman v. R.J. O'Brien & Assocs.*, Adv. Pro. 8:11-09019 (NHL) [docket #35].

- d. The MF Global case proceeded through fact discovery including substantial investment of time and effort in developing an expert analysis of the complex computerized reports that MF Global produced. After the Court denied Penson's motion to dismiss, MF Global agreed to mediate with the Trustee. The mediation session on October 20, 2011, was productive, but the parties did not agree to a settlement. Shortly thereafter, MF Global shocked the financial community by its swift downfall. On October 31, 2011, liquidation proceedings commenced in *Securities Investor Protection Corp. v. MF Global, Inc.*, Case No. 11-CIV-7750 (PAE), (ECF No. 001) (the "**MF Global SIPA Case**"). Special Counsel prepared and filed several proofs of claim in the MF Global SIPA Case and, after Special Counsel had invested much time in legal research, conferences, monitoring, and presentations to counsel, the Trustee and MF Global's trustee settled for a \$15 million allowed claim. Special Counsel then worked with the Trustee's counsel to establish a sales process for the allowed claim, culminating in an April 3, 2013 auction that resulted in a purchase price of \$13.5 million.

18. For each of the settled cases, in accord with the Court's order of May 25, 2010, a copy of which is attached hereto as Exhibit C, Special Counsel was awarded a fee of 30% of the settlement proceeds.

C. THE CONTINGENT FEE PAYMENT

19. Section 328(a) of the Bankruptcy Code allows a trustee, with the Court's approval, to employ professionals on a contingent fee basis:

The trustee . . . with the court's approval, may employ or authorize the employment of a professional person . . . on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.

11 U.S.C.A. § 328(a).

20. As described above, this Court has already approved the retention of Special Counsel on a contingency fee basis. *See* Exhibit C. Special Counsel has relied on the terms of its court-approved engagement. *See* Exhibit B, Engagement Letter, at p. 3.

21. The Engagement Letter specifically contemplates that the Trustee will facilitate interim payments to Special Counsel as cases are settled or resolved:

Piecemeal Settlement. In the event that certain CTF Claims are settled piecemeal, the Trustee agrees to assist Special Counsel in any application to the Bankruptcy Court for authorization to pay the Contingent Fee earned in connection with the settled CTF Claims, and that upon proper Order of the Bankruptcy Court, the Contingent Fee earned will be promptly paid in accordance with the direction of the Court.

Id., at p. 5.

22. Pursuant to the Engagement Letter and the Court's Order approving the engagement, Special Counsel is entitled to a fee payment of 30% of any recovery (as that term is

defined in the Engagement Letter) the Trustee receives on account of the Pension Allowed Claim.

23. When counsel is engaged on a contingent fee basis and that engagement is pre-approved by the court, the court need not conduct an analysis of the reasonableness of the fee unless circumstances after the retention make the retention “improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.” *In re Smart World Technologies, LLC*, 552 F.3d 228, 232 (2d Cir. 2009). There are no such circumstances in this case; therefore, there is no requirement that the Court evaluate the reasonableness of Special Counsel’s fee.

24. Although the Court is not required to evaluate the reasonableness of the amount of fee, if the Court were to undertake such an analysis, it would reveal that Special Counsel’s fee is reasonable. As set forth in the foregoing sections, Special Counsel have spent millions of dollars’ worth of time and more than three years investigating, preparing, and prosecuting the CTF Claims, including the case against Pension. The Declaration of Rachel S. Fleishman (“**Fleishman Declaration**”) confirms this work. *See Exhibit D*. A contingency fee of 30% is reasonable and standard in cases such as these considering the complexity of the legal and factual issues. *See id.*

25. Special Counsel have not included their time records as exhibits to this fee application. The time records contain attorney-client privileged information. If requested, Special Counsel will provide redacted copies of the time records to the Office of the United States Trustee and the Court for *in camera* inspection.

26. Special Counsel has advanced expenses on the Agape matters, including expenses for expert witness fees. The Engagement Letter approved by the Court provides for expenses to be paid by the Trustee from the estate account. Special Counsel is not seeking reimbursement of any expenses in this fee application.

27. No agreement or understanding exists between Special Counsel and any other person to share compensation received for services rendered in connection with the representation of the Trustee.

28. Pursuant to the Court-approved Engagement Letter, Special Counsel is entitled to a fee of 30% of the gross Recovery obtained by the Trustee in consequence of its case against Penson, which has resulted in the Penson Allowed Claim. Accordingly, Special Counsel respectfully requests entry of an order permitting Special Counsel to be paid 30% of any Recovery obtained by the Trustee from the Penson Allowed Claim. A copy of the proposed Order awarding this Interim Application for Allowance of Compensation is attached as **Exhibit E**.

29. All services for which Special Counsel seeks compensation were performed for and on behalf of the Trustee and not on behalf of any committee, creditor, entity, or other person. Special Counsel has received no compensation for the services rendered in connection with the Penson Allowed Claim and no previous allowance or application for payment of its fees has been made in connection with the Penson settlement.⁴

30. RMF and RCT have agreed that RCT will be entitled to 100% of the contingent fee awarded on the Penson case. This agreement reflects an acknowledgement of the fact that RCT performed the vast majority of the work on the Penson case, including most of the fact discovery and all of the expert discovery in the adversary proceeding, all of the work related to the preparation of the Trustee's proofs of claims, and all of the work related to the mediation that resulted in the Penson Allowed Claim. Accordingly, RMF and RCT jointly request an Order awarding the entire legal fee in this case to RCT.

⁴ By Application filed with the Court on July 13, 2010 (Doc. No. 2120), Special Counsel sought payment of its fees in connection with the initial investigation of potential claims against third parties and in accordance with the Court's January 20, 2010 Order granting the Trustee's retention of Special Counsel. By Order of the Court dated August 3, 2010, the Court approved Special Counsel's fees in the amount of \$48,057.03.

WHEREFORE, Special Counsel respectfully requests enter of an Order awarding the Interim Application for Allowance of Compensation by Special Counsel for services rendered to the Trustee in the amount of 30% of any Recovery on the Pension Allowed Claim, and for such other, further and different relief as this Court may deem just and proper.

Dated: New York, New York
September 9, 2014

Respectfully submitted,

REID COLLINS & TSAI LLP

s/Rachel S. Fleishman

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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re: Chapter

7
Case No. 09-70660 (DTE)
Consolidated

AGAPE WORLD, INC., Substantively
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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**ORDER FOR RETENTION OF REID DAVIS LLP AND RUSKIN MOSCOU
FALTISCHEK, P.C., AS SPECIAL LITIGATION COUNSEL TO THE TRUSTEE**

Upon the application of Kenneth P. Silverman, Esq., the Chapter 7 Trustee (the "Trustee") of the Agape World, Inc., *et al.*, (the "Debtors") estate, by his attorneys, SilvermanAcampora LLP, seeking the entry of an order authorizing the retention of Reid Davis LLP ("Reid Davis") and Ruskin Moscou Faltischek, P.C. ("RMF", and collectively, "Special Counsel"), as of December 16, 2009, as special litigation counsel to the Trustee to investigate the viability of certain third-party claims (the "Application") as directed by the Trustee, and it appearing that the retention of Special Counsel represents no interest adverse to the Trustee or the Debtors' estate in the matters upon which Special Counsel are to be engaged, and that Special Counsel's employment as special litigation counsel is necessary and would be in the best interest of the estate, and no additional notice being required, it is hereby

ORDERED, that Special Counsel be, and it is hereby, retained as special litigation counsel to the Trustee, as of December 16, 2009, as set forth in the Letter of Engagement and Application and to the extent provided for herein; it is further

ORDERED, that as special counsel to the Trustee and estate, Reid Davis is authorized to take all steps necessary to analyze certain of the Trustee's potential third-party claims, as requested by the Trustee (the "Claims"), including, but not limited to, (i) evaluating information currently in the Trustee's possession, (ii) conducting legal research

regarding the Claims and the economic viability of the Claims, (iii) interviewing out-of-district witnesses, and (iv) preparing a written report for the Trustee regarding analysis and economic viability of the Claims; and it is further

ORDERED, that as special counsel to the Trustee and estate, RMF is authorized to take all steps necessary to assist Reid Davis in analyzing the Claims, including, (i) consulting and coordinating with the petitioning creditors and other creditors of the estate, (ii) interviewing local witnesses, and (iii) conducting selected research; and it is further

ORDERED, that Reid Davis and RMF, shall consult and coordinate with the Trustee and amongst themselves to ensure that the services provided by the firms are not duplicative; and it is further

ORDERED, that services provided by Reid Davis shall not be duplicative of services provided by RMF; and it is further

ORDERED, that services provided by RMF shall not be duplicative of services provided by Reid Davis, and it is further

ORDERED, that if the Trustee determines that prosecution of the Claims would serve the best interests of the Debtors' creditors, Special Counsel shall only be retained to prosecute the Claims upon proper application and further Order of this Court; and it is further

ORDERED, that notwithstanding anything else contained in this order, Special Counsel is directed to maintain contemporaneous time records of the services performed for the estate in a manner consistent with the Bankruptcy Code and the United States Trustee's Guidelines; and it is further

ORDERED, that no compensation or reimbursement of expenses shall be paid to Special Counsel for professional services rendered to the Trustee, except upon proper application and by further order of this Court.

Dated: Central Islip, New York
January 19, 2010

NO OBJECTION:

s/ Alfred M. Dimino
Office of the United States Trustee

Dated: Central Islip, New York
January 20, 2010



Dorothy Eisenberg
Dorothy Eisenberg
United States Bankruptcy Judge

EXHIBIT B

PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION

May 25, 2010

VIA EMAIL (tsilverman@silvermanacampora.com)

Kenneth P. Silverman, Esq., as Chapter 7 Trustee
c/o SilvermanAcampora LLP
100 Jericho Quadrangle, Suite 300
Jericho, NY 11753

Re: *In re Agape World Inc.*
Case No. 8:09-BK-70660-DTE (Chapter 7)
United States Bankruptcy Court, Eastern District of New York
> Letter of Engagement

Mr. Silverman:

Thank you very much for engaging Reid Davis LLP (“Reid Davis,” the “Firm,” or “we”) and Ruskin Moscou Faltischek PC (“Ruskin Moscou” and collectively with Reid Davis, “Special Counsel”) to represent Kenneth P. Silverman in his capacity as the Chapter 7 Trustee (the “Trustee”) for Agape World Inc. and its related entities substantively consolidated into the estate (collectively, “Agape”). We appreciate the opportunity to assist the Trustee. Part 1215 of the Joint Rules of the Appellate Divisions of the State of New York (enclosed), as well as our Firm policy, requires us to document our engagement in writing and specify the terms and conditions of our fee engagement arrangement. That is the purpose of this letter and the attached *Additional Terms of Engagement* (collectively referred to as the “Letter of Engagement”). If you have any questions about the Letter of Engagement, or any aspect of the engagement or our relationship, please contact me immediately.

As you know, we previously entered into an engagement letter dated December 16, 2009, wherein Reid Davis was hired as special counsel for the limited purpose of evaluating the potential third-party claims that may be brought in the Trustee’s name on Agape’s behalf. We have now

agreed that Special Counsel will represent the Trustee to pursue certain claims against the following commodities trading firms: Alaron,¹ Cunningham, Shatkin Arbor, MF Global,² Penson, and RJ O'Brien (the "CTF Claims"). This Letter of Engagement replaces, in its entirety, the existing limited-purpose engagement letter with respect to the CTF Claims.

I will be the principal Reid Davis attorney responsible for this representation. Rachel S. Fleishman, Lisa S. Tsai, Barbara Whiten Balliette, C. Randall Carr, and Nathaniel J. Palmer will be assisting me in this matter. It is also possible that other attorneys, paralegals, and legal assistants from Reid Davis may participate in the representation from time to time to contribute particular expertise or efficiencies. Mark S. Mulholland and John A. DeMaro of Ruskin Moscou will be the principal Ruskin Moscou attorneys responsible for this representation. We look forward to an active, collaborative working relationship with you. All of Special Counsel's services in this matter will end at such time as the Trustee advises us to terminate our services.

Subject to Bankruptcy Court approval, we have agreed to the following terms for our services.

(1) **Special Counsel's Services.** Special Counsel agree to investigate and take all necessary steps to "work up," file suit, and prosecute any and all viable CTF Claims. Under the terms set forth in paragraph 13, Special Counsel reserve the right to withdraw from further representation if, in their sole discretion, Special Counsel determine that the potential CTF Claims lack sufficient merit or value to justify the risk of further pursuit.

(2) **Special Counsel's Obligations.** Special Counsel shall perform the tasks that, in their judgment, are necessary to evaluate, investigate, and prosecute the CTF Claims. Special Counsel shall not perform any legal services, including the selection of any experts or a potential mediator, without consultation and authorization from the Trustee. Special Counsel will keep the Trustee informed of all significant events and provide monthly updates.

(3) **Client's General Obligations.** The Trustee agrees to comply with all obligations set out herein, including, but not limited to, assisting Special Counsel in making all necessary applications to authorize payments required by this Letter of Engagement, making all Court-authorized payments to Special Counsel, cooperating fully with Special Counsel, keeping Special

¹ Alaron is in the process of being acquired. Its website currently redirects users to the website for another commodities firm, PFG Best.

² MF Global was a defendant in the investor lawsuits. Judge Spatt's recent opinion dismissed all claims against MF Global. Significantly, the case did not involve any fraudulent transfer claims.

Counsel informed of all matters necessary for Special Counsel to fully represent the Trustee, and promptly responding to Special Counsel's requests. The Trustee agrees to cooperate with Special Counsel in the prosecution of the CTF Claims; to appear, through counsel, on reasonable notice at any and all depositions and court appearances; to produce relevant documents in the Trustee's possession, custody, or control; and to comply with all of Special Counsel's reasonable requests in connection with the preparation and prosecution of the CTF Claims.

(4) **The Trustee's Obligations To Maintain Information Relevant to Claims.** In order to comply with discovery obligations during the case, it is necessary that the Trustee maintain all information, whether in electronic or documentary form. To the extent the Trustee has regular practices whereby information is discarded, those practices must cease immediately. The Trustee is obligated to maintain all data relevant to the case in any and every form and must not discard any relevant data or information without first discussing the matter with Special Counsel.

(5) **Special Counsel's Contingent-Fee Compensation.** In recognition of the fact that Special Counsel are working on a pure contingency fee, we have agreed that, upon proper application to and Order of the Court, the Debtors' estate will pay Special Counsel a contingent fee in the amount of thirty percent (30%) of any gross Recoveries received through settlement or other resolution of the CTF Claims (the "**Contingent Fee**"). Special Counsel have agreed to set forth the proposed division of the Contingent Fee in their fee application to the Bankruptcy Court, consistent with the proportion of effort expended by Reid Davis and Ruskin Moscou, respectively.

"**Recoveries**" shall include any monies received by the Trustee, whether by settlement, judgment enforcement, or otherwise, in connection with any resolution of the CTF Claims. In the event the Trustee accepts or recovers non-monetary compensation in a resolution of the CTF Claims, the non-monetary compensation will not become a Recovery unless or until the Trustee, in his sole discretion, liquidates the non-monetary compensation.

For informational purposes, even though this is purely a contingent-fee engagement (subject to various provisions contained herein), we will provide the Trustee with a monthly statement reflecting the value of the work we have performed at full hourly rates, along with a computer printout describing the services performed by each attorney and paralegal working on this matter (the "**Time Records**"), in conformity with the United States Trustee Fee Guidelines (the "**UST Guidelines**") and the Local Rules of the Bankruptcy Court. As will be evident from each month's printout, the rates typically charged by Reid Davis and Ruskin Moscou attorneys range from \$200 to \$650 per hour. Special Counsel understand that the UST Guidelines require that an application for compensation contain the Time Records and that such Time Records be submitted to the Bankruptcy Court and the Office of the United States Trustee, and made available

upon request for inspection by interested parties. Special Counsel further understand that the Time Records are not confidential and, therefore, should not contain any attorney-client privileged material.

(6) **Expenses.** The Trustee agrees that all reasonable out-of-pocket expenses (the “Expenses”) incurred by Special Counsel in the pursuit of the CTF Claims up to \$100,000 will be promptly paid by the estate to Special Counsel upon written request by submission of invoices, receipts, or other documentation substantiating the Expenses. Special Counsel understand that the Expenses are not final until approved by Order of the Bankruptcy Court. Special Counsel further understand that in the event the Bankruptcy Court enters an Order either reducing or denying the final allowance of the Expenses, Special Counsel shall disgorge all advanced Expenses not allowed. In the event the Expenses exceed \$100,000, Special Counsel will confer with the Trustee to determine the amount of additional Expenses that may be necessary, at which point Bankruptcy Court approval for an additional expense budget shall be sought. It is agreed that Special Counsel may, but shall not be required to, advance out-of-pocket costs. Reid Davis agrees that it will not charge any travel-related expenses associated with bringing its Texas lawyers to New York to participate in hearings or other activities that its New York lawyers, or Ruskin Moscou, could have handled without the need to travel. We anticipate that the out-of-pocket Expenses may include, among other things, photocopying (consistent with rates commonly approved by the United States Trustee for Region 2) and other document-related services, postage, travel, delivery services, and other expenses reasonably incurred in prosecuting the CTF Claims. We will obtain prior approval before incurring any expense in excess of \$1,000.

(7) **Supplemental Retentions.** Special Counsel may recommend to the Trustee the retention of a mediator or additional professionals necessary to pursue the CTF Claims, including, but not limited to, investigators, expert witnesses, and consultants. Any supplemental retention of a mediator or additional professionals is subject to approval of the Trustee. In the event the Trustee agrees to retain additional professionals, such retentions shall be by a separate engagement letter by and between the Trustee and the additional professional and subject to Bankruptcy Court approval.

(8) **Payment by Wire.** For ease or convenience, fees and Expenses may be paid via wire-transfer, and such funds can be wired directly to Reid Davis’s bank account, as follows:

To: PlainsCapital Bank
2705 Bee Caves Road, Suite 120
Austin, Texas 78746
ABA No. 111322994
Account No. 4200008136
Reid Davis LLP (IOLTA)

(9) **Piecemeal Settlement.** In the event that certain CTF Claims are settled piecemeal, the Trustee agrees to assist Special Counsel in any application to the Bankruptcy Court for authorization to pay the Contingent Fee earned in connection with the settled CTF Claims, and that upon proper Order of the Bankruptcy Court, the Contingent Fee earned will be promptly paid in accordance with the direction of the Court.

(10) **Settlement.** Special Counsel agree to make no settlement of any CTF Claims without the Trustee's approval. Both Special Counsel and the Trustee mutually agree to notify one another whenever a settlement offer is received and to disclose the amount and terms of any such offer.

(11) **Court Award of Attorneys' Fees or Costs.** Special Counsel are authorized to apply to any court for the maximum amount of compensation, attorneys' fees, costs, pre- and post-judgment interest, and litigation expenses normally allowed to the Trustee's other retained professionals by law (the "Court-Awarded Fees and Costs").

(12) **The Trustee's Right To Terminate Special Counsel's Representation.** The Trustee may terminate Special Counsel's representation with or without cause by giving 30 days' notice in writing to Special Counsel. In the event such termination is without cause, then Special Counsel's right to seek entry of a Bankruptcy Court Order awarding payment of a Contingent Fee on all Recoveries and final allowance of reimbursed Expenses shall remain intact and unaffected. The Trustee agrees that in order to terminate Special Counsel "for cause," the Trustee will have to demonstrate: (i) a material violation of applicable disciplinary rules; or (ii) a breach of this Letter of Engagement; or (iii) that Special Counsel failed to exercise reasonable care or diligence in the investigation or prosecution of the CTF Claims. In the event the Trustee terminates Special Counsel for cause, Special Counsel's Contingent Fee interest shall be extinguished; however, the right to apply to the Bankruptcy Court for an Order directing the Debtors' estate to repay Expenses advanced by Special Counsel will remain intact.

(13) **Special Counsel's Right To Withdraw.** Special Counsel reserve the right to withdraw from further representation in the following circumstances:

- (a) If Special Counsel, in their sole discretion, determine that the CTF Claims lack sufficient merit or value to justify the risk of continuing to pursue them. Further, Special Counsel reserve the right and authority to withdraw from this representation for any other reasons.
- (b) If the Trustee fails to advance repayment of Expenses on an interim basis, as required under this Letter of Engagement, fails to comply with an Order of the Bankruptcy Court directing the payment of the Contingent Fee to Special Counsel, or otherwise fails to comply with the Trustee's obligations under the Letter of Engagement as to the Contingent Fee, after written notice and a 30-day opportunity to cure.

If Special Counsel elect to withdraw, Special Counsel shall notify the Trustee immediately in writing. In the event Special Counsel elect, pursuant to paragraph 13(b), to withdraw because of the Trustee's material breach of this Letter of Engagement, at Special Counsel's election, Special Counsel may make an application to the Bankruptcy Court for entry of an Order directing payment for all services rendered to the Trustee, calculated on the basis of actual work hours performed at Special Counsel's normal schedule of hourly rates in effect at the time of withdrawal, and final allowance of reimbursed Expenses. The Trustee reserves all rights with respect to any and all applications by Special Counsel for payment of fees. Special Counsel will provide 30 days' written notice of their intent to withdraw hereunder. The Trustee agrees to sign all necessary documents to facilitate the withdrawal of Special Counsel from any pending lawsuit immediately after written notification to the Trustee by Special Counsel of their intention to withdraw pursuant to the provisions of this Letter of Engagement.

(14) **No Guarantees.** The Trustee hereby acknowledges that Special Counsel have made no guarantees regarding the successful outcome of the CTF Claims or any other matter arising out of this Letter of Engagement, and that any and all expressions about possible outcomes are only preliminary opinions.

(15) **Severability.** In case any one or more of the provisions contained in this Letter of Engagement shall for any reason be found unenforceable in any respect, the parties agree that such unenforceability shall not affect any other provision, and that all other provisions of this agreement shall remain valid and enforceable.

(16) **Governing Law and Dispute Resolution.** This Letter of Engagement shall be construed in accordance with the laws of the State of New York, without regard for its

conflict-of-laws rules. Any disputes arising under this Letter of Engagement shall be submitted to the United States Bankruptcy Court for the Eastern District of New York for resolution.

(17) **Integration; Amendment.** This Letter of Engagement constitutes the final, sole, and only agreement of the parties hereto regarding Special Counsel's fees and the parties' duties and obligations in this matter, and supersedes any prior written or oral understandings or agreements between the parties respecting those subjects. This Letter of Engagement may not be modified, amended, or replaced except by another written agreement signed by the parties hereto, or their successors or assigns.

(18) **Execution in Counterparts.** It is understood and agreed that this Letter of Engagement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes, but all of which shall constitute one and the same agreement.

(19) **Effective Date.** This Letter of Engagement, once approved by the Bankruptcy Court, shall be binding, *nunc pro tunc*, to the date of its execution by the Trustee and Special Counsel.

(20) **Availability of ADR.** The parties hereto are fully cognizant of the fact that various ADR (alternative dispute resolution) techniques and procedures may be available or required by law to resolve the CTF Claims or other matters arising out of Special Counsel's representation of the Trustee. These techniques and procedures include mediation, non-binding arbitration, mini-trial, summary jury trial, and early case evaluation. During the progress of the representation, Special Counsel will provide guidance to the Trustee concerning the availability and potential use of ADR to resolve the CTF Claims.

(21) **Independent Determination as to Fairness and Reasonableness.** The Trustee acknowledges that: (i) the Trustee and Special Counsel have a conflict of interest that prevents Special Counsel from representing the Trustee in any way with respect to the negotiation or execution of this Letter of Engagement; (ii) Special Counsel have not acted as the Trustee's counsel in preparing or negotiating this Letter of Engagement; (iii) the Trustee has made sufficient investigation and inquiry to determine that this Letter of Engagement is fair and reasonable; (iv) this Letter of Engagement was the product of an arm's-length negotiation between the Trustee, on the one hand, and Special Counsel, on the other; (v) the Trustee has had ample opportunity to review the agreement independently and, to the extent the Trustee has chosen to do so, with separate counsel; and (vi) the Trustee is entering into this engagement freely and voluntarily. Please do not sign this Letter of Engagement until you feel you have had sufficient opportunity to

Kenneth P. Silverman, Chapter 7 Trustee
In re Agape World Inc.
May 25, 2010
Page 8

review and consider it and until you have received any input from other counsel you think would be useful to you.

If this Letter of Engagement, including the incorporated *Additional Terms of Engagement*, accurately reflects our agreement, please sign this letter and return it to me.

Thank you again for the opportunity to represent you.

Very truly yours,



William T. Reid IV, Partner
REID DAVIS LLP



Mark S. Mulholland, Partner
RUSKIN MOSCOU FALTISCHEK PC

Enclosures

ACCEPTED:



Kenneth P. Silverman
Chapter 7 Trustee for Agape World Inc., et al.

Date: _____



ADDITIONAL TERMS OF ENGAGEMENT

These are the *Additional Terms of Engagement* incorporated into and made a part of our Letter of Engagement. Because they are an integral part of our agreement to provide legal services, we ask that you review this document carefully and retain it for your files. If you have any questions after reading it, please contact us promptly.

Who Will Provide the Legal Services?

In most cases, one attorney will be your principal contact. From time to time, that attorney may delegate parts of your work to other lawyers or to legal assistants or non-legal professionals in the Firm. We do this in order to involve those with special knowledge or experience in an area and/or to provide service to you in a timely and efficient manner.

The Scope of the Representation

As lawyers, we undertake to provide representation and advice on the legal matters for which we are engaged, and it is important that we both have a clear understanding of the legal services that the Firm has agreed to provide. In our Letter of Engagement, we specify the matter in which we will provide representation and the scope of the services we will provide. If there are any questions about the terms of engagement, including the scope of the representation that we are to provide in the matter, please raise those questions promptly with your principal contact at the Firm.

We cannot guarantee the outcome of any matter. Any expression of our professional judgment regarding your matter or the potential outcome is, of course, limited by our knowledge of the facts and based on the law at the time of expression. It is also subject to any unknown or uncertain factors or conditions beyond our control.

Who Is Our Client?

It is our policy to represent only the person or entity identified in our Letter of Engagement and not any affiliates. For example, unless otherwise specifically stated in our Letter of Engagement, if you are a corporation or partnership, our representation does not include any parents, subsidiaries, employees, officers, directors, shareholders, or partners of the corporation or partnership, or commonly owned corporations or partnerships; if you are a trade association, our representation excludes members of the trade association; if you are an individual, our representation does not include your employer, partners, spouse, siblings, or other family members.

Your Cooperation

To enable us to provide effective representation, you agree to: (1) disclose to us, fully and accurately and on a timely basis, all facts and documents that are or might be material or that we may request; (2) keep us apprised on a timely basis of all developments relating to the representation that are or might be material; (3) attend meetings, conferences, and other proceedings when it is reasonable to do so; and (4) otherwise cooperate fully with us.

Our Relationships With Others

Our Firm represents various companies and individuals. In some instances, the applicable rules of professional conduct may limit our ability to represent clients with conflicting or potentially conflicting interests. Those rules of conduct often allow us to exercise our independent judgment in determining whether our relationship with one client prevents us from representing another. In other situations, we may be permitted to represent a client only if the other clients consent to that representation.

If a controversy unrelated to the subject matter of the representation develops between you and any other client of the Firm, we will follow the applicable rules of professional responsibility to determine whether we may represent either you or the other client in the unrelated controversy. In making this determination, we will consider your agreement to the Conflicts of Interest provisions in these *Additional Terms of Engagement*.

We have professional and personal relationships with many other attorneys and law firms, often because of our participation in bar associations and other professional organizations. We believe that these relationships with other attorneys do not adversely affect our ability to represent any client and, in some circumstances, may enhance our representation. Your acceptance of our Letter of Engagement means you consent to any such relationships between our Firm and other lawyers or law firms, even counsel who may be representing a party that is adverse to you in the matter that is the subject of this engagement or in some other matter.

Conflicts of Interest

Conflicts of interest greatly concern both lawyers and clients. We attempt to identify actual and potential conflicts at the outset of any engagement, and may request that you sign a conflict waiver before we accept an engagement from you. Occasionally, other clients or prospective clients may ask us to seek a conflict waiver from you so that we can accept an engagement on their behalf. Please do not take such a request to mean that we will represent you less zealously; rather, that we take our professional responsibilities to all clients and prospective clients very seriously.

Unfortunately, conflicts sometimes arise or become apparent after work begins on an engagement. When that happens, we will do our best to address and resolve the situation in the manner that best serves the interests of all of our affected clients.

We may be asked to represent someone whose interests may be adverse to yours. We are accepting this engagement on the understanding that our representation of you will not preclude us from accepting any other engagement from any existing or new client provided that (i) such engagement is not substantially related to the subject matter of any services we are providing to you, and (ii) in accepting such other engagement we would not impair the confidentiality of proprietary, sensitive, or otherwise confidential communications you have made to us.

Rules concerning conflicts of interest vary with the jurisdiction. In order to avoid any uncertainty, our policy is that the New York Rules of Professional Conduct will be applicable to the representation. Your acceptance of our Letter of Engagement means you agree with that policy, unless the Letter of Engagement specifically states that some other rules of professional responsibility will govern our attorney-client relationship.

How We Set Our Fees

The basis for determining our fee for legal services is set forth in the Letter of Engagement. If you are unclear about the basis for determining your fee, please contact the attorney responsible for your representation. Clients frequently ask us to estimate the fees and other charges they are likely to incur in connection with a particular matter. We are pleased to respond to such requests whenever possible with an estimate based on our professional judgment. This estimate always carries the understanding that, unless we agree otherwise in writing, it does not represent a maximum, minimum, or fixed-fee quotation. The ultimate cost frequently is more or less than the amount estimated.

Charges for Other Expenses and Services

As an adjunct to providing legal services, we may incur and pay a variety of charges on your behalf or charge for certain ancillary support services. Whenever we incur such charges on your behalf or charge for such ancillary support services, we will bill them to you as part of your monthly invoice. Accordingly, our invoices usually will include amounts not only for legal services rendered, but also for other expenses and services. Examples include charges for photocopying, postage, facsimiles, long-distance telephone calls, travel and conference expenses, delivery charges, computerized research, and facsimile and other electronic transmissions. Outside expenses will generally be billed at cost, while some in-house expenses (e.g., copying, telecopying, computer services, and in-house research) will include a reasonable allocation of overhead. Travel expenses also are billed at cost, including the cost of business-class travel on flights longer than two hours. In appropriate cases, reimbursable expenses will also include overtime charges for secretaries and other staff.

We generally make and retain copies of all documents generated or received by us in the course of your representation. Should you request documents from us at the conclusion of our representation of you (other than your original documents), you agree that we may generate copies for our files at your expense, including both the reproduction charges and professional fees for time expended in reviewing files to be returned to you.

Billing Arrangements and Terms of Payment

We will bill you on a regular basis, normally each month, for both fees and other charges as outlined above. We look to you, the client, for payment regardless of whether you are insured to cover the particular risk. From time to time, we assist clients in pursuing third parties for recovery of attorneys' fees and other charges resulting from our services. These situations include payments under contracts, statutes, or insurance policies.

Termination

Because our Firm has been engaged to provide legal services in connection with the representation in the matter, as specifically defined in our Letter of Engagement, the attorney-client relationship terminates upon our completion of our services related to the representation in the matter. After completion of the representation, however, changes may occur in the applicable laws or regulations that could affect your future rights and liabilities in regard to the matter. Unless we are actually engaged after the completion of the representation to provide additional advice on such issues, the Firm has no continuing obligation to give advice with respect to any future legal developments that may relate to the matter.

If you later retain us to perform further or additional services, our attorney-client relationship will be subject to the terms of engagement agreed to at that time. Any future engagements would not be performed on the basis of a flat fee unless both parties agree otherwise in writing. Normally, we charge by the hour for our services.

We look forward to the opportunity to complete our representation of you in the specified matter. You may, however, terminate our representation at any time, with or without cause, by notifying us in writing. We will return your papers and other property to you promptly upon receipt of your request for those materials, unless they are appropriately subject to a lien. You agree that we will own and retain our own files pertaining to the matter or case, including, for example, Firm administrative records, time and expense reports, personnel and staffing materials, credit and accounting records, and internal lawyers' work product such as drafts, notes, internal memoranda, legal and factual research, and investigative reports, prepared by or for the internal use of lawyers.

Document Retention

At the conclusion of the representation, we generally return to the client the client's original documents and any other documents that are specifically requested to be returned. As to any original documents so returned, we may elect to keep, at our expense, a copy of the documents in our stored files. Should you request other documents from us at the conclusion of our representation of you, you agree that we may generate copies for our files at your expense, including both the reproduction charges and professional fees for time expended in reviewing files to be returned to you.

At the close of any matter, we usually send the pertinent parts of our files in that matter to a storage facility for safekeeping at our expense. However, we do not store voluminous papers at our expense. The attorney closing the file will determine what part of the file is sent to storage and how long we will maintain the files in storage. Documents we choose not to store will be returned to you or destroyed.

Disclaimer

By signing the Letter of Engagement or otherwise indicating your acceptance of the Letter of Engagement, you acknowledge that Reid Davis has made no promises or guarantees to you about the outcome of the representation, and nothing in these terms of engagement shall be construed as such a promise or guarantee of any specific result. Either at the commencement or during the course of the representation, we may express opinions or beliefs about the matter or various courses of action and the results that might be anticipated. Any expressions on our part concerning the outcome of the representation, or any other legal matters, are based on our professional judgment and are not guarantees.

Our Professional Responsibility

The code of professional responsibility to which we are subject lists several types of conduct or circumstances that require or allow us to withdraw from representing a client. These include, for example, nonpayment of fees or charges, misrepresentation or failure to disclose material facts, action contrary to our advice, and conflict of interest with another client.

We try to identify in advance and discuss with our clients any situation that may lead to our withdrawal. If withdrawal ever becomes necessary, we give our client written notice as soon as practicable.

Modification of Our Agreement

The Letter of Engagement, including these *Additional Terms of Engagement*, reflects our entire agreement on the terms of this engagement. These written terms of engagement are not subject to

any oral agreements or understandings, and any change in these terms can only be made in a written instrument signed by both Reid Davis and you.

In Conclusion

We look forward to a long and mutually satisfying relationship with you. Again, if at any time you have a question or concern, please feel free to bring it to the attention of your principal contact at our Firm.



ADDENDUM

RECORDS POLICY

During the course of our representation of Client, we will create or receive a variety of records, documents, and data. These will include administrative records, such as accounting records, but also records directly related to the work that we do during our representation of Client, such as pleadings, correspondence, documents received from Client and from third parties, and so on. These may be paper or electronic, and if electronic may be both on our computer system and on movable media such as tapes, CDs, or DVDs. The records directly related to the work we do for Client are collectively called the "matter file."

At the close of the representation, we will reorganize and compact the file by removing duplicates and other extraneous material, and returning original documents and other important documents to Client or other parties from whom they were received. The file will then be sent to storage for a period of years, as determined on our records-retention schedule. Generally, the remaining file will be held in storage for seven years after the close of the matter, although there may be some exceptions, depending on the type of document.

At the end of the storage period, closed files that have no further value will be destroyed by a bonded record-destruction service. Prior to any destruction, a responsible attorney conducts a review to determine that the file is of no further value, and to identify documents that may require longer retention. Some documents, determined on a case-by-case basis, may be segregated for longer term maintenance.

Prior to final disposition, we may notify Client of the impending disposition of the file. If we deem notification appropriate, it will be sent to the last address and contact person we have on file for Client. If Client is interested in receiving the notification, Client must provide us with current contact information in the event that data changes after the close of the representation. If, after having received the notification, Client would prefer that the file be returned rather than being destroyed, Client must respond to the notification with instructions, within the time period stated in the notification letter. If Client does not respond, we will assume that Client has no further interest in the file and authorizes its destruction.

All records are the property of Client, and, therefore, upon termination or withdrawal, counsel will immediately return all property to Client.

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OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 22. JUDICIARY
SUBTITLE B. COURTS
CHAPTER IV. SUPREME COURT
SUBCHAPTER E. ALL DEPARTMENTS
PART 1215. WRITTEN LETTER OF ENGAGEMENT

Current through February 15, 2010.

Section 1215.1. Requirements.

(a) Effective March 4, 2002, an attorney who undertakes to represent a client and enters into an arrangement for, charges or collects any fee from a client shall provide to the client a written letter of engagement before commencing the representation, or within a reasonable time thereafter:

(1) if otherwise impracticable; or

(2) if the scope of services to be provided cannot be determined at the time of the commencement of representation.

For purposes of this rule, where an entity (such as an insurance carrier) engages an attorney to represent a third party, the term client shall mean the entity that engages the attorney. Where there is a significant change in the scope of services or the fee to be charged, an updated letter of engagement shall be provided to the client.

(b) The letter of engagement shall address the following matters:

(1) explanation of the scope of the legal services to be provided;

(2) explanation of attorney's fees to be charged, expenses and billing practices; and

(3) where applicable, shall provide that the client may have a right to arbitrate fee disputes under Part 137 of this Title.

(c) Instead of providing the client with a written letter of engagement, an attorney may comply with the provisions of subdivision (a) of this section by entering into a signed written retainer agreement with the client, before or within a reasonable time after commencing the representation, provided that the agreement addresses the matters set forth in subdivision (b) of this section.

Section 1215.2. Exceptions.

This section shall not apply to:

(a) representation of a client where the fee to be charged is expected to be less than \$3,000;

(b) representation where the attorney's services are of the same general kind as previously rendered to and paid for by the client;

(c) representation in domestic relations matters subject to Part 1400 of this Title; or

(d) representation where the attorney is admitted to practice in another jurisdiction and maintains no office in the State of New York, or where no material portion of the services are to be rendered in New York.

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**Statement of Client's Responsibilities
(As adopted by the Administrative Board of the Courts)**

Reciprocal trust, courtesy and respect are the hallmarks of the attorney-client relationship. Within that relationship, the client looks to the attorney for expertise, education, sound judgment, protection, advocacy and representation. These expectations can be achieved only if the client fulfills the following responsibilities:

1. The client is expected to treat the lawyer and the lawyer's staff with courtesy and consideration.
2. The client's relationship with the lawyer must be one of complete candor and the lawyer must be apprised of all facts or circumstances of the matter being handled by the lawyer even if the client believes that those facts may be detrimental to the client's cause or unflattering to the client.
3. The client must honor the fee arrangement as agreed to with the lawyer, in accordance with law.
4. All bills for services rendered which are tendered to the client pursuant to the agreed upon fee arrangement should be paid promptly.
5. The client may withdraw from the attorney-client relationship, subject to financial commitments under the agreed to fee arrangement, and, in certain circumstances, subject to court approval.
6. Although the client should expect that his or her correspondence, telephone calls and other communications will be answered within a reasonable time frame, the client should recognize that the lawyer has other clients equally demanding of the lawyer's time and attention.
7. The client should maintain contact with the lawyer, promptly notify the lawyer of any change in telephone number or address and respond promptly to a request by the lawyer for information and cooperation.
8. The client must realize that the lawyer need respect only legitimate objectives of the client and that the lawyer will not advocate or propose positions which are unprofessional or contrary to law or the Lawyer's Code of Professional responsibility.
9. The lawyer may be unable to accept a case if the lawyer has previous professional commitments which will result in inadequate time being available for the proper representation of a new client.
10. A lawyer is under no obligation to accept a client if the lawyer determines that the cause of the client is without merit, a conflict of interest would exist or that a suitable working relationship with the client is not likely.

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**Statement Of Client's Rights
(As adopted by the Administrative Board of the Courts)**

1. You are entitled to be treated with courtesy and consideration at all times by your lawyer and the other lawyers and personnel in your lawyer's office.
2. You are entitled to an attorney capable of handling your legal matter competently and diligently, in accordance with the highest standards of the profession. If you are not satisfied with how your matter is being handled, you have the right to withdraw from the attorney-client relationship at any time (court approval may be required in some matters and your attorney may have a claim against you for the value of services rendered to you up to the point of discharge).
3. You are entitled to your lawyer's independent professional judgment and undivided loyalty uncompromised by conflicts of interest.
4. You are entitled to be charged a reasonable fee and to have your lawyer explain at the outset how the fee will be computed and the manner and frequency of billing. You are entitled to request and receive a written itemized bill from your attorney at reasonable intervals. You may refuse to enter into any fee arrangement that you find unsatisfactory.
5. You are entitled to have your questions and concerns addressed in a prompt manner and to have your telephone calls returned promptly.
6. You are entitled to be kept informed as to the status of your matter and to request and receive copies of papers. You are entitled to sufficient information to allow you to participate meaningfully in the development of your matter.
7. You are entitled to have your legitimate objectives respected by your attorney, including whether or not to settle your matter (court approval of a settlement is required in some matters).
8. You have the right to privacy in your dealings with your lawyer and to have your secrets and confidences preserved to the extent permitted by law.
9. You are entitled to have your attorney conduct himself or herself ethically in accordance with the Code of Professional Responsibility.
10. You may not be refused representation on the basis of race, creed, color, religion, sex, sexual orientation, age, national origin or disability.



EXHIBIT C

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re: Chapter

7
Case No. 09-70660 (DTE)
Consolidated

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

Debtors.
-----X

**ORDER FOR RETENTION OF REID DAVIS LLP AND RUSKIN MOSCOU
FALTISCHEK, P.C., AS SPECIAL LITIGATION COUNSEL TO THE TRUSTEE**

Upon the application (the "Application") of Kenneth P. Silverman, Esq., the Chapter 7 Trustee (the "Trustee") of the Agape World, Inc., *et al.*, (the "Debtors") estate, by his attorneys, SilvermanAcampora LLP, seeking the entry of an order authorizing the retention of Reid Davis LLP ("Reid Davis") and Ruskin Moscou Faltischek, P.C. ("RMF" and together with Reid Davis, "Special Counsel"), as of May 25, 2010, as special litigation counsel to the Trustee to pursue certain claims against certain commodities trading firms as directed by the Trustee (the "CTF Claims"), and it appearing that the retention of Special Counsel represents no interest adverse to the Trustee or the Debtors' estate in the matters upon which Special Counsel are to be engaged, and that Special Counsel's employment as special litigation counsel is necessary and would be in the best interest of the estate, and no additional notice being required, it is hereby

ORDERED, that Special Counsel be, and hereby is, retained as special litigation counsel to the Trustee, as of May 25, 2010, upon the terms set forth in the Application and Letter of Engagement, and to the extent provided for herein; it is further

ORDERED, that as special counsel to the Trustee and estate, Special Counsel is authorized to take all steps necessary to investigate and prosecute the CTF Claims; and it is further

ORDERED, Special Counsel is directed to maintain contemporaneous time records of the services performed for the estate in a manner consistent with the Bankruptcy Code and the United States Trustee's Guidelines; and it is further

ORDERED, that no compensation or reimbursement of expenses shall be paid to Special Counsel for professional services rendered to the Trustee, except upon proper application and by further order of this Court.

Dated: Central Islip, New York
June 29, 2010

NO OBJECTION:

s/ Alfred M. Dimino
Office of the United States Trustee

Dated: Central Islip, New York
July 1, 2010



Dorothy Eisenberg

Dorothy Eisenberg
United States Bankruptcy Judge

REID COLLINS & TSAI LLP

William T. Reid, IV
Rachel S. Fleishman
One Penn Plaza, 49th Floor
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212.344.5200 (telephone)
212.344.5299 (facsimile)

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512.647.6100 (telephone)
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RUSKIN MOSCOU FALTISCHEK, P.C.

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512.663.6600 (telephone)

Special Litigation Counsel for Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
AT CENTRAL ISLIP

-----X

In re:

Chapter 7
Case No. 09-70660 (AST)
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

**VERIFIED STATEMENT OF RACHEL S. FLEISHMAN IN SUPPORT OF INTERIM
APPLICATION FOR ALLOWANCE OF COMPENSATION BY REID
COLLINS & TSAI LLP, TRUSTEE’S SPECIAL COUNSEL**

The undersigned, **Rachel S. Fleishman**, submits this verified statement pursuant to

28 U.S.C. § 1746 under penalty of perjury and states as follows:

1. I am an attorney admitted to practice law in the State of New York. I am a member of the law firm Reid Collins & Tsai, LLP (“**RCT**” or the “**Firm**”) and have practiced law with RCT (formerly known as Reid Davis, LLP) since April of 2010. My offices are located at One Penn Plaza, 49th Floor, New York, New York 10119. Together with Ruskin Moscou Faltischek PC (“**RMF**”), RCT has acted as special counsel to Kenneth P. Silverman, Esq., in his capacity as the Chapter 7 Trustee (the “**Trustee**”) for Agape World Inc. and its related entities substantively consolidated into the estate (“**Debtors**”).

2. I submit this verified statement in support of Special Counsel’s Interim Application for Allowance of Compensation. Except as otherwise stated herein, all facts set forth in this verified statement are based upon my personal knowledge and upon the client/matter records of the Firm, reviewed by other lawyers and paraprofessionals at the Firm under my supervision and direction, or derived from information available to me that I believe to be true and correct.

3. My firm has worked on Agape matters as Special Counsel since December 2009. In July 2010, this Court approved an initial payment of \$48,057.03 to my firm for its work in preparing an analysis of potential claims that the Trustee might bring against certain third-parties.

4. After the initial analysis of potential claims against third-parties, the Court approved the retention of RCT and RMF as “Special Counsel” to pursue claims against six commodities trading firms/futures commission merchants (“**FCMs**”). Penson was one of the six firms. The Court approved the engagement of Special Counsel on a contingent fee basis with

a fee of thirty percent (30%) of any gross recoveries received through settlement or other resolution of the claims against those trading firms.

5. Special Counsel litigated the Penson case for more than one year before Penson filed for bankruptcy. At the outset of the case, Special Counsel successfully opposed Penson's motion to dismiss. Thereafter, Special Counsel engaged in fact discovery, with RCT taking the lead and RMF playing a minor role. RCT reviewed thousands of pages of often complex documents, including trading records, and took the depositions of a variety of Penson employees and representatives. After the conclusion of fact discovery, RCT worked with an industry expert, whom RCT had identified after months of research and retained as a testifying expert witness, to prepare both an opening and a rebuttal expert report. RCT also prepared the expert witness for his deposition and defended the deposition. In addition, RCT prepared for and took the deposition of Penson's expert witness.

6. Given that the fraudulent transfer claims asserted in the Penson case were novel and untested in the context of an FCM, the discovery that RCT conducted in this case was particularly complicated. Among other things, the legal issue of whether Penson had "dominion and control" of the money that Agape transferred to Penson required RCT to develop a detailed understanding of Penson's business practices.

7. Shortly after the conclusion of expert discovery, Penson (*i.e.*, the parent holding company and various subsidiaries) filed for bankruptcy. At that point, RCT expanded its team of attorneys assigned to the Penson case to include Angela J. Somers, an experienced bankruptcy lawyer who is Of Counsel to the Firm. Ms. Somers prepared and filed appropriate proofs of claim for the Trustee and thereafter monitored the status of the Penson bankruptcy.

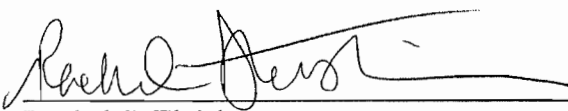
8. Penson objected to the Trustee's proofs of claim. In due course, Penson offered the Trustee an opportunity to engage in mediation, pursuant to a process established in the Penson bankruptcy. The Trustee agreed to engage in mediation. In advance of the mediation, RCT prepared a detailed mediation statement that both explained the applicable law and presented the evidence RCT had amassed during the course of fact and expert discovery.

9. As a result of the mediation, the parties agreed to settle by Penson awarding the Trustee an allowed claim in the amount of \$815,000.

10. In all, RCT has invested more than \$3.6 million in attorney and paralegal time litigating the six cases it filed against RCMs on behalf of the Trustee. (The rates recorded are RCT's customary fees for national and/or New York cases.) As described above, RCT litigated the Penson case all the way through expert discovery, after which point RCT filed proofs of claims and engaged in a full-day mediation session before a settlement was reached. In my opinion, the time that RCT has spent litigating all of the FCM cases for the Trustee, including the Penson case, was reasonable.

11. In my opinion, the Court-approved contingent fee of 30% of gross recoveries is a reasonable and customary percentage for a contingent fee recovery, especially given the complexity of the legal and factual issues involved in the claims against the FCMs. Moreover, given the time and effort that RCT expended on the Penson case – litigating all the way through expert discovery and a mediation before a settlement was reached – a 30% contingent fee recovery is fully justified.

SIGNED under penalty of perjury this 10th day of September, 2014.



Rachel S. Fleishman

EXHIBIT E

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
AT CENTRAL ISLIP

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

**[PROPOSED] ORDER AWARDING
THE INTERIM APPLICATION FOR ALLOWANCE OF COMPENSATION BY
REID COLLINS & TSAI LLP, TRUSTEE'S SPECIAL COUNSEL**

Upon consideration of the Interim Application for Allowance of Compensation by Reid Collins & Tsai LLP (“RCT”), Special Counsel to Kenneth P. Silverman, Esq., in his capacity as the Chapter 7 Trustee (the “Trustee”) for Agape World Inc. and its related entities substantively consolidated into the estate (“Debtors”); and notice of the hearing on the Fee Application having been given pursuant to this Court’s Order entered July 8, 2009, Establishing Noticing Procedures; and no opposition to the Fee Application having been filed or otherwise brought before the Court; and a hearing on the Fee Applications having been held on _____, 2014, the record of which is incorporated herein by reference; and RCT having appeared on that day in support of the Fee Applications, and sufficient cause having been shown therefore; and upon the Affidavit of Service of notice of the hearing on the Fee Applications on file with the Court; and upon due deliberation and consideration of the facts and circumstances relevant to the matter; and no additional notice being necessary or required, it is hereby:

ORDERED, that Special Counsel's Interim Application is GRANTED and Special Counsel is authorized to receive 30% of any recovery the Trustee obtains from the Pension Allowed Claim; and it is further

ORDERED, that, subject to the terms of this Order, the Trustee is directed to pay all of the fees awarded pursuant to this Order to Reid Collins & Tsai LLP promptly upon receipt of any recovery the Trustee obtains from the Pension Allowed Claim.

Dated: Central Islip, New York
_____, 2014

Honorable Alan S. Trust
United States Bankruptcy Judge