

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

Presentment Date: August 25, 2014
Time: 9:30 a.m.

Objections Due: August 18, 2014
Time: 5:00 p.m.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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

Plaintiff,

Adv. Pro. No. 10-08948 (AST)

-against-

PHILIA LLC,

Defendant.

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

Plaintiff,

Adv. Pro. No. 11-09141 (AST)

-against-

PHILIA LLC,

Defendant.
-----X

**NOTICE OF PRESENTMENT OF AN ORDER UNDER
FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019(a) APPROVING
THE STIPULATION SETTLING THE TRUSTEE'S CLAIMS AGAINST PHILIA LLC**

PLEASE TAKE NOTICE, that upon the annexed motion (the "Motion"), 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, will present a proposed order before the Honorable Alan S. Trust, United States Bankruptcy Judge, United States Bankruptcy Court for the Eastern District of New York, located at the Alfonse M. D'Amato Federal Courthouse, 290 Federal Plaza, Courtroom 960, Central Islip, New York 11722 on **August 25, 2014 at 9:30 a.m.**, seeking entry of an Order under Bankruptcy Rule 9019(a) Approving the Stipulation Settling the Trustee's Claims against Philia LLC. A copy of the proposed Order is attached to the Motion as **Exhibit 1**.

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 Alan S. Trust, United States Bankruptcy Judge, United States Bankruptcy Court, Eastern District of New York, Alfonse M. D'Amato Federal Courthouse, 290 Federal Plaza, Courtroom 960, 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 **August 18, 2014 at 5:00 p.m.**

PLEASE BE ADVISED, that if an objection is timely filed to the relief requested, or if the Court determines that a hearing is appropriate, the Court will schedule a hearing. Notice of such hearing will be provided by the applicant.

**PLEASE BE ADVISED, that if no objection is received by the Objection Deadline,
the order may be signed without a hearing.**

Dated: Jericho, New York
July 25, 2014

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

By: s/ David J. Mahoney
Anthony C. Acampora
David J. Mahoney
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UNITED STATES BANKRUPTCY COURT
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KENNETH P. SILVERMAN, ESQ., as
Chapter 7 Trustee of Agape World, Inc., *et al.*,

Plaintiff,

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-against-

PHILIA LLC,

Defendant.

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

Plaintiff,

Adv. Pro. No. 11-09141 (AST)

-against-

PHILIA LLC,

Defendant.
-----X

**MOTION FOR AN ORDER UNDER FEDERAL
RULE OF BANKRUPTCY PROCEDURE 9019(a) APPROVING THE
STIPULATION SETTLING THE TRUSTEE'S CLAIMS AGAINST PHILIA LLC**

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 motion (the "Motion") under 11 U.S.C. §105 and Federal Rules of Bankruptcy Procedure 9019(a) for entry of an Order (attached as **Exhibit 1**) approving the settlement of the Trustee's claims against Philia LLC (the "Defendant") as memorialized in the Stipulation Settling the Trustee's claims against Philia LLC (the "Stipulation"), which is attached as **Exhibit 2**. All parties are encouraged to review the Stipulation in its entirety for the specific terms of the 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 (Docket No. 106), the Trustee retained Navigant Consulting Inc. ("Navigant") to, among other things, conduct a forensic analysis of Agape's books and records.

11 U.S.C. §§554 and 548 Adversary Proceeding

8. Based upon Navigant's analysis, the Trustee determined that Defendant received certain transfers, net of deposits into Agape, totaling One Hundred Eighty-Four Thousand Six Hundred Fifty and 00/100 (\$184,650.750) Dollars from the Debtors prior to the Petition Date

9. On December 12, 2010, the Trustee commenced an adversary proceeding, assigned adversary proceeding number 10-08948 (AST), against Defendant by the filing of a complaint, wherein the Trustee asserted that certain transfers, net deposits into the Debtors, totaling One Hundred Eighty-Four Thousand Six Hundred Fifty and 78/100 (\$184,650.78) Dollars (the "Fraudulent Transfers") are avoidable pursuant to 11 U.S.C. §§105(a), 544, 548, 550 and 551, New York Debtor and Creditor Law §§273, 274, 275, 276, and 276-a, and New York common law (the "2010 Proceeding").

10. On February 10, 2010, Defendant interposed an answer in the 2010 Proceeding asserting general denials and several affirmative defenses.

11 U.S.C. §550 Adversary Proceeding

11. On or about October 1, 2009, the Trustee commenced an adversary proceeding against Cyrek, and its principal, Jason Keryc, in the Bankruptcy Court (the "Cyrek Adversary Proceeding") seeking to set aside fraudulent transfers from Agape to Cyrek (the "Cyrek Transfers") under 11 U.S.C. §§105(a), 544, 548, 550 and 551, New York Debtor and Creditor Law §§273, 274, 275, 276 and 276-a, and New York common law.

12. A confession of judgment avoiding the Cyrek Transfers was executed by Jason Keryc, individually, and on behalf of Cyrek, and entered by the Bankruptcy Court Clerk on March 31, 2011 in the amount of Sixteen Million and 00/100 (\$16,000,000.00) Dollars (the "Judgment").

13. To date, the Judgment has not been satisfied.

14. Subsequent to the Cyrek Transfers, Cyrek made a transfer to Defendant in the amount of Ten Thousand Nine Hundred Ninety-Seven and 02/100 (\$10,997.02) Dollars (the "Subsequent Transfer").

15. On June 6, 2011, the Trustee commenced an adversary proceeding, assigned adversary proceeding number 11-09141 (AST), by the filing of a complaint wherein the Trustee asserted that the Subsequent Transfer are avoidable under 11 U.S.C. §§542, 544 and 550 (the "2011 Proceeding," and collectively with the 2010 Proceeding, the "Trustee's Claims").

Discovery and Settlement Negotiations

16. On July 7, 2011, Defendant interposed an answer in the 2011 Proceeding asserting general denials and several affirmative defenses.

17. Subsequently, Defendant contacted the Trustee in an effort to discuss the Trustee's Claims and the Defendant's affirmative defenses.

18. The parties engaged in informal discovery related to the Claims and the defenses asserted by Defendant. By way of that discovery, Defendant established that it dissolved on January 5, 2010, prior to the commencement of the 2010 Proceeding and 2011 Proceeding.

19. Defendant also provided previously unaccounted for deposits made by Defendant, or for the benefit of Defendant by its former principals, Peter Oates and Marcel Blais. Accordingly, Defendant's liability for the Fraudulent Transfers was concomitantly reduced to \$91,366.78 (the "Net Transfers").

20. Additionally, Defendant provided Form 1099-INT documents for the 2008 fiscal year (the "1099 Forms"), whereby it was determined that a significant portion of the Net Transfers were paid to parties who invested with the Debtors through the Defendant (the "1099 Distributions"). A majority of the 1099 Distributions were for nominal amounts, and the Trustee determined that any attempts to avoid the 1099 Distributions, in whole or in part, would not result in a net benefit to the Debtor's estate.

21. Defendant has offered to pay \$20,000.00 (the "Settlement Sum") to the Trustee in full and final settlement of the Trustee's Claims.¹

22. Based the Trustee's review of all documentation related to the Transfers, including the 1099 Forms, and his investigation of all attendant factors, the Trustee has, in his business judgment, agreed to settle the Trustee's Claims.

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

Settlement

24. The Trustee has determined that settling this matter for the Settlement Sum is the most economical and efficient way to realize a meaningful recovery for the creditor's benefit without incurring additional legal fees and the risks inherent with prosecuting the Trustee's Claims and collecting on any resulting judgment efforts.

Basis for Relief Requested

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

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

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

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

¹ The Settlement Sum has been received by the Trustee and is in the "Estates' Earnest Monies" account, pending the Court approval of the Settlement.

[e]ducated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of litigation.²

27. In making its determination on the "propriety of the settlement," the Court should consider whether the proposed settlement is in the "best interest of the estate."³ As stated in *Arrow Air*, the "approval of [a] proposed compromise and settlement is a matter of this Court's sound discretion."⁴ In passing upon a proposed settlement, "the bankruptcy court does not substitute its judgment for that of the trustee."⁵ 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."⁶ In passing upon the reasonableness of a proposed compromise, the Court "may give weight to the opinions of the Trustee, the parties and their counsel."

28. The Second Circuit in *In re Iridium Operating LLC*⁷ outlined the following seven factors (the "Iridium Criteria") to be considered by a court in deciding whether to approve a compromise or settlement:

- i. the balance between the litigation's possibility of success

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

³ *Handler v. Roth (In re Handler)*, 386 B.R. 411, 420 (Bankr. E.D.N.Y. 2007) (quoting *In re Adelpia Communications Corp.*, 327 B.R. 143, 158 (Bankr. S.D.N.Y. 2005)); *Depo v. Chase Lincoln First Bank, N.A. (In re Depo)*, 77 B.R. 381, 383 (N.D.N.Y. 1987), aff'd, 863 F.2d 45 (2d Cir. 1988).

⁴ *Arrow Air*, supra, 85 B.R. at 891.

⁵ *In re Depo*, 77 B.R. at 384 (citations omitted).

⁶ *Bell & Beckwith*, 77 B.R. at 612; see also *In re Handler*, 386 B.R. at 421.

⁷ 478 F.3d 452, 462 (2d Cir. 2007).

and the settlement's present and future benefits;

- ii. the likelihood of complex and protracted litigation, with its attendant expense, inconvenience, and delay, including the difficulty in collecting on the judgment if the settlement is not approved;
- iii. the paramount interest of the creditors, including the proportion of class members who do not object to or who affirmatively support the settlement;
- iv. whether other parties in interest support the settlement;
- v. the competency and experience of the counsel who support the proposed settlement;
- vi. the relative benefits to be received by individuals or groups within the class; and
- vii. the extent to which the settlement is the product of arm's length bargaining.⁸

29. The Stipulation is a product of extensive arm's length bargaining and exceeds the lowest range of reasonableness consistent with the applicable law.

30. The Settlement Sum represents a guaranteed recovery on account of the Trustee's Claims. Because Defendant dissolved prior to the filing of the 2010 Proceeding and 2011 Proceeding, Defendant may have a meritorious defense to the Trustee's Claims. However, even if its dissolution does not constitute a defense to the Trustee's Claims, it would necessarily complicate any efforts to enforce a judgment against Defendant. Moreover, upon the Trustee's review of the 1099 Forms produced by Defendant, the Trustee believes, in his business judgment, that further prosecution of the Trustee's claims would not result in a net benefit to the Debtors' estate. Particularly, any actions brought pursuant to Bankruptcy Code §550 to recover the 1099 Distributions to the Defendant's transferees would not benefit the estate due to the nominal amounts of the 1099 Distributions

31. The Parties are represented by competent and experienced counsel.

⁸ See *In re Iridium Operating LLC*, 478 F.3d at 462; See also *In re Handler*, 386 B.R. at 421.

32. The Trustee does not anticipate that any of the Debtors' creditors will object to Stipulation or the relief requested in this Motion.

33. The Trustee submits that considering the costs and uncertainties associated with further litigation, trial, and the resulting judgment enforcement against Defendant, 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

34. The Trustee has served the Notice of Motion, proposed Order, and Motion in support (with Exhibits) upon: (i) the Office of the United States Trustee; (ii) Nicholas Cosmo, Debtors' former principal; (iii) Defendant; (iv) Defendant's counsel; (v) the Internal Revenue Service and other governmental agencies to the extent required by the Bankruptcy Rules and the Local Rules; and (vi) all parties having filed a Notice of Appearance in this case, and copies have been posted on the Trustee's website located at www.agapeworldbankruptcy.com. The Trustee respectfully submits that the proposed service complies with this Court's Order Establishing Noticing Procedures entered on July 8, 2009 and is otherwise sufficient.

35. 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 Motion approving the Stipulation and grant such other further and different relief as this Court deems just and proper.

Dated: Jericho, New York
July 25, 2014

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

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

Exhibit 1

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-

PHILIA LLC,

Defendant.

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

Plaintiff,

-against-

PHILIA LLC,

Defendant.

-----X

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

Adv. Pro. No. 10-08948 (AST)

Adv. Pro. No. 11-09141 (AST)

**ORDER UNDER FEDERAL RULE OF
BANKRUPTCY PROCEDURE 9019(a) APPROVING THE
STIPULATION SETTLING THE TRUSTEE'S CLAIMS AGAINST PHILIA LLC**

Upon the Notice of Motion (the "Notice"), dated July 25, 2014, and related documents (collectively, the "Motion") of Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") of the substantively consolidated estate of Agape World, Inc., *et al.* (collectively, the "Debtors"), by his counsel, SilvermanAcampora LLP, seeking the entry of an Order approving the settlement of the Trustee's claims against Philia LLC (the "Defendant") as memorialized in the Stipulation

Settling the Trustee's claims against Philia LLC (the "Stipulation"), and upon the Affidavit of Service filed with the Court; and no objections to the Motion or the proposed Order having been filed; and the Court having found that settling the Trustee's Claims arising under 11 U.S.C. §§105, 502, 542, 544, 548, 550, and 551, and New York Debtor and Creditor Law §§273, 274, 275, 276, and 276-a, and New York common law, is reasonable and in the best interest of the Debtors' estate; and sufficient cause having been shown therefor; and after due deliberation and consideration; and it appearing that sufficient notice of the Motion and proposed Order has been given; and it appearing that good and sufficient cause exists for granting the Motion and proposed Order; and no additional notice being necessary or required:

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

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

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

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

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

Exhibit 2

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----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.

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

Plaintiff,

Adv. Pro. No. 10-08948 (AST)

-against-

PHILIA LLC,

Defendant.

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

Plaintiff,

Adv. Pro. No. 11-09141 (AST)

-against-

PHILIA LLC,

Defendant.

-----X
STIPULATION SETTLING THE TRUSTEE'S CLAIMS AGAINST PHILIA LLC

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

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

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

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

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

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

11 U.S.C. §§554 and 548 Adversary Proceeding

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 Philia LLC (the "Defendant") prior to the Filing Date.

VIII. On December 12, 2010, the Trustee commenced an adversary proceeding, assigned adversary proceeding number 10-08948 (AST), against Defendant by the filing of a complaint, wherein the Trustee asserted that certain transfers, net deposits into the Debtors, totaling One Hundred Eighty Four Thousand Six Hundred Fifty and 78/100 (\$184,650.78) Dollars (the "Fraudulent Transfers") are avoidable pursuant to 11 U.S.C. §§105(a), 544, 548, 550 and 551, New York Debtor and Creditor Law §§273, 274, 275, 276, and 276-a, and New York common law (the "2010 Proceeding").

IX. On February 10, 2010, Defendant interposed an answer in the 2010 Proceeding asserting general denials and several affirmative defenses.

11 U.S.C. §550 Adversary Proceeding

X. On or about October 1, 2009, the Trustee commenced an adversary proceeding against Cyrek, and its principal, Jason Keryc, in the Bankruptcy Court (the "Cyrek Adversary

Proceeding”) seeking to set aside fraudulent transfers from Agape to Cyrek (the “Cyrek Transfers”) under 11 U.S.C. §§105(a), 544, 548, 550 and 551, New York Debtor and Creditor Law §§273, 274, 275, 276 and 276-a, and New York common law.

XI. A confession of judgment avoiding the Cyrek Transfers was executed by Jason Keryc, individually, and on behalf of Cyrek, and entered by the Bankruptcy Court Clerk on March 31, 2011 in the amount of Sixteen Million and 00/100 (\$16,000,000.00) Dollars (the “Judgment”).

XII. To date, the Judgment has not been satisfied.

XIII. Subsequent to the Cyrek Transfers, Cyrek made a transfer to Defendant in the amount of Ten Thousand Nine Hundred Ninety-Seven and 02/100 (\$10,997.02) Dollars (the “Subsequent Transfer”).

XIV. On June 6, 2011, the Trustee commenced an adversary proceeding, assigned adversary proceeding number 11-09141 (AST), by the filing of a complaint wherein the Trustee asserted that the Subsequent Transfer are avoidable under 11 U.S.C. §§542, 544 and 550 (the “2011 Proceeding,” and collectively with the 2010 Proceeding, the “Trustee’s Claims”).

XV. On July 7, 2011, Defendant interposed an answer in the 2011 Proceeding asserting general denials and several affirmative defenses.

XVI. Subsequently, Defendant contacted the Trustee in an effort to discuss the Trustee’s Claims and the Defendant’s affirmative defenses.

XVII. The parties engaged in informal discovery related to the Claims and the defenses asserted by Defendant, it was also established that Defendant dissolved on January 5, 2010, prior to the commencement of the 2010 Proceeding and 2011 Proceeding.

XVIII. Defendant also provided previously unaccounted for deposits made by Defendant, or for the benefit of Defendant by its former principals, Peter Oates and Marcel Blais. Accordingly, Defendant’s liability for the Fraudulent Transfers was concomitantly reduced to \$91,366.78 (the “Net Transfers”).

XIX. Additionally, Defendant provided Form 1099-INT documents for the 2008 fiscal year (the "1099 Forms"), whereby it was determined that a significant portion of the Net Transfers were paid to parties who invested with the Debtors through the Defendant (the "1099 Distributions"). A majority of the 1099 Distributions were for nominal amounts, and the Trustee determined that any attempts to avoid the 1099 Distributions, in whole or in part, would not result in a net benefit to the Debtor's estate.

XX. In the spirit of compromise and without any admission of liability, Defendant's former principals have offered to remit the sum of \$20,000.00 (the "Settlement Sum") on behalf of Defendant to the Trustee in full and final settlement of the Trustee's Claims.

XXI. Based upon the his review of all documentation related to the Preferential Transfers and the Subsequent Transfers, and his investigation of all attendant factors, including the 1099 Distributions, 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 are resolved upon the terms and conditions set forth herein as follows:

Defendant's Obligation to Pay the Settlement Sum

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

2. On or before July 31, 2014, Defendant will remit the Settlement Sum to "Kenneth P. Silverman, Esq., as Chapter 7 Trustee," by delivering a check to Trustee's counsel at SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York, 11753, Attn: Cooper J Macco, Esq.

3. If Defendant fails to make timely payment of the Settlement Sum in accordance with paragraph 2, or if Defendant's payment is dishonored for any reason whatsoever and

Defendant does not cure such default within ten (10) business days after written notice is sent by Federal Express or other reputable overnight courier to Defendant and Defendant's Counsel at the addresses set forth herein, then the Trustee shall be entitled to move before the Bankruptcy Court, without further notice upon the affidavit by the Trustee attesting to the default (a) for the entry of a judgment against Defendant for Ninety-One Thousand Three Hundred Sixty-Six and 78/100 (\$91,366.78) Dollars, together with costs, less any sums previously paid as provided herein, and (b) for any further relief necessary to enforce the Trustee's rights under this Stipulation. Written notice of default shall be sent to (i) Defendant at c/o Spiegel & Ultrera P.A.P.C., 1 Maiden Lane, 5th Floor, New York, New York 10038; and (ii) Defendant's counsel at Lax & Neville, LLP, 1450 Broadway, 35th Floor, New York, New York 10018, Attn: Gabrielle J. Pretto, Esq

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

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

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

Releases

7. Upon the entry of the Approval Order and the Trustee's receipt and clearance of the Settlement Sum, the Trustee and the estate release and forever discharge Defendant, its former principals, Peter Oates and Marcel Blais, its investors solely to the extent they are listed on the 1099 Forms provided to the Trustee, its affiliated entities, agents, representatives,

present or former officers, attorneys, directors, assigns and successors-in-interest from any and all claims, claims for relief, demands, costs, expenses, damages, liabilities, and obligations of any nature arising out of or relating to the Claim.

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

No Admission of Criminal or Civil Liability

9. It is understood and agreed that this Stipulation is entered into to avoid costly and protracted litigation. Neither the execution of this Stipulation, nor the payment of the Settlement Sum shall be construed as an admission of any criminal or civil liability on Defendant's part. For clarification, this paragraph is not intended and shall not be deemed to affect Defendant's obligation to make timely payment of the Settlement Sum or adversely affect the Trustee's rights and remedies in the event that Defendant fails to make timely payment of the Settlement Sum.

Miscellaneous

10. 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.

11. 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.

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

13. The Bankruptcy Court shall retain exclusive jurisdiction over the subject matter of this Stipulation, including but not limited to its enforcement and the implementation and interpretation of its terms and conditions.

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

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

16. Upon the entry of the Approval Order in this proceeding, the Clerk of the Court is directed to close the 2010 Proceeding and 2011 Proceeding.

Dated: Jericho, New York
July __, 2014

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