

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

Presentment Date: March 4, 2013  
Time: 9:30 a.m.

Objections Due: March 1, 2013  
Time: 4:00 p.m.

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
In re:

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

Debtors.

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

Plaintiff,

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

Adv. Pro. No.: 11-09116 (AST)

-against-

DEVINE EQUITIES LTD., and  
MICHAEL DEVINE,

Defendant.  
-----X

**NOTICE OF PRESENTMENT OF PROPOSED ORDER UNDER  
BANKRUPTCY RULE 9019 APPROVING A STIPULATION SETTLING  
THE TRUSTEE'S CLAIMS AGAINST DEVINE EQUITIES LTD., AND MICHAEL DEVINE**

**PLEASE TAKE NOTICE**, that upon the application (the "Application") of Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") for the substantively consolidated estate of Agape World, Inc., *et al.*, by his counsel, SilvermanAcampora LLP, the Trustee will 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 Long Island Federal Courthouse, 290 Federal Plaza, Courtroom 960, Central Islip, New York 11722 on **March 4**,

**2013 at 9:30 a.m.**, seeking approval of the stipulation settling the Trustee's claims against Devine Equities Ltd. and Michael Devine. A copy of the proposed order is annexed hereto.

**PLEASE TAKE FURTHER NOTICE**, that objections, if any, to the relief requested in the motion or the proposed order must be: (i) made in writing; (ii) electronically filed with the Court; (iii) mailed to Chambers of the Honorable Alan S. Trust, United States Bankruptcy Judge, 290 Federal Plaza, Courtroom 960, Central Islip, New York 11722; (iv) mailed to SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753, Attention: Robert J. Ansell; and (v) mailed to the Office of the United States Trustee, 290 Federal Plaza, Central Islip, Courtroom 960 New York 11722, so as to be actually received no later than **March 1, 2013 at 4:00 p.m.** (the "Objection Deadline").

**PLEASE TAKE FURTHER NOTICE**, 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, upon such additional notice as the Court may direct.

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

Dated: Jericho, New York  
February 4, 2013

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

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

SILVERMANACAMPORA LLP  
Counsel to Kenneth P. Silverman, Esq.,  
Chapter 7 Trustee  
100 Jericho Quadrangle, Suite 300  
Jericho, New York 11753  
(516) 479-6300  
Robert J. Ansell, Esq.  
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Presentment Date: March 4, 2013  
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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
In re:

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

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

Debtors.

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

Plaintiff,

Adv. Pro. No.: 11-08681 (AST)

-against-

DEVINE EQUITIES LTD., and  
MICHAEL DEVINE,

Defendant.  
-----X

**TRUSTEE'S APPLICATION UNDER BANKRUPTCY RULE 9019  
SEEKING THE ENTRY OF AN ORDER APPROVING A STIPULATION SETTLING  
THE TRUSTEE'S CLAIMS AGAINST DEVINE EQUITIES LTD. AND MICHAEL DEVINE**

Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") of the substantively consolidated estate of Agape World, Inc., *et al.*, by his attorneys SilvermanAcampora LLP, respectfully submits this application (the "Application") under 11 U.S.C. §105 and Federal Rule of Bankruptcy Procedure 9019 for entry of an order (the "Order") (annexed hereto as **Exhibit 1**) approving the proposed settlement of the Trustee's claims under 11 U.S.C. §§105, 541, 542, 544, and 550 and New York common law against Devine Equities Ltd., and Michael Devine as memorialized in the stipulation settling the Trustee's claims against Devine Equities Ltd., and

Michael Devine (the "Stipulation"), which is annexed hereto as **Exhibit 2**. All parties are encouraged to review the annexed Stipulation in its entirety for the specific terms of the proposed settlement.

### **Background**

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

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

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

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

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

8. Based upon Navigant's analysis, the Trustee determined the Debtor made certain transfers to Cyrek Inc. and its principal, Jason Keryc (collectively, "Cyrek"), and Cyrek

made subsequent transfers to Devine Equities Ltd., ("Devine Equities") and Michael Devine (together with Devine Equities, the "Defendants") totaling Three Hundred Eighteen Thousand Twenty-Eight and 82/100 (\$318,028.82) Dollars (the "Subsequent Transfers") that are avoidable pursuant to 11 U.S.C. §§105, 541, 542, 544, and 550(a)(2) and New York common law, based upon Cyrek's status as a judgment debtor.

9. On June 6, 2011, the Trustee commenced an adversary proceeding against the Defendants (the "Adversary Proceeding") by the filing and service of a summons and complaint under Adv. Pro. No. 11-09116 seeking to, *inter alia*, set aside and recover the Subsequent Transfers pursuant to 11 U.S.C. §§105, 541, 542, 544, and 550(a)(2) and New York common law (the "Trustee's Claims").

10. The parties engaged in discovery related to the Trustee's Claims, the defenses asserted by Defendants, and the enforceability of a potential judgment in the amount of the Subsequent Transfers. The Defendants also provided certificate financial disclosures demonstrating their inability to pay a potential judgment in full.

11. The Trustee, and Defendants, through their counsel, engaged in settlement discussions in an effort to consensually resolve the Adversary Proceeding. In order to avoid the costs, expenses, and uncertainty of continued litigation, the parties have agreed to resolve the Trustee's Claims upon the terms and conditions contained in the Stipulation.

12. Defendants have offered to remit the sum of Twenty Thousand and 00/100 (\$20,000.00) Dollars (the "Settlement Sum") to the Trustee, in full and final satisfaction of the Trustee's Claims.

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

### **Settlement**

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

15. Defendants have demonstrated a potentially meritorious defense to the recovery of the Subsequent Transfers pursuant to 11 U.S.C. §550(b). Although the Trustee believes he would ultimately prevail, issues of fact would preclude any summary disposition of this adversary proceeding.

16. Further, through their production of certified financial disclosures Defendants have demonstrated their inability to return the Subsequent Transfers to the Debtor's estate.

17. The Trustee determined, after consulting with his retained professionals and exercising his business judgment, that the voluntary return of the Settlement Sum outweighs the potential net recovery to the estate that may be obtained by prosecuting the Trustee's Claims through trial and enforcing a resulting judgment.

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

### **Basis for Relief Requested**

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

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

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

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

*Protective Committee for Indep. 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 Jackson Brewing Co.*, 624 F.2d 605, 607 (5th Cir. 1980); *In re Holywell Corp.*, 93 B.R. 291, 294-95 (Bankr. S.D. Fla. 1988); *In re Arrow Air, Inc.*, 85 B.R. 886, 891 (Bankr. S.D. Fla. 1988); *In re Bell & Beckwith*, 77 B.R. 606, 611 (Bankr. N.D. Ohio), *aff'd*, 87 B.R. 472 (N.D. Ohio 1987); *In re Heissinger Resources Ltd.*, 67 B.R. 378, 383 (C.D. Ill. 1986) ("the law favors compromise").

21. In making its determination, the Court should consider whether the proposed compromise is in the "best interest of the estate." *Depo v. Chase Lincoln First Bank, N.A. (In re Depo)*, 77 B.R. 381, 383 (N.D.N.Y. 1987), *aff'd*, 863 F.2d 45 (2d Cir. 1988). As stated in *Arrow Air*, the "approval of [a] proposed compromise and settlement is a matter of this Court's sound discretion." *Arrow Air*, 85 B.R. at 891. In passing upon a proposed settlement, "the bankruptcy court does not substitute its judgment for that of the Trustee [or debtor in possession]." *Depo*, 77 B.R. at 384 (citations omitted). The bankruptcy court is not required "to decide the numerous questions of law and fact raised by [objectors] but rather canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness." *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983), *cert denied*, 464 U.S. 822 (1983) (internal quotations and citations omitted). See *Holywell* 93 B.R. at 294. ("In order to exercise this discretion properly, the Court must consider all of the relevant facts and evaluate whether the compromise suggested falls below the lowest point in the range of reasonableness") (internal quotations and citations omitted). In passing upon the reasonableness of a proposed compromise, the Court "may give weight to the opinions of the Trustee [or debtor in possession], the parties and their counsel." *Bell & Beckwith*, 77 B.R. at 612.

22. The factors to be considered by the Court in determining whether to approve a compromise or settlement include (a) probability of success in the litigation, with due consideration for the uncertainty in fact and law, (b) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and (c) all other factors bearing on the wisdom of the compromise. *Arrow Air*, 85 B.R. at 891 (citing *TMT Trailer Ferry*, 390 U.S. at 424-25). See *Jackson Brewing Co.*, 624 F.2d at 607; *Holywell Corp.*, 93 B.R. at 294-95 (citations omitted).

23. The Defendants' voluntary return of the Settlement Sum represents a portion of the Transfers that the Trustee believes the Defendants may be liable for, satisfying the Trustee's Claims without causing the Debtor's estate to incur significant fees or expenses.

24. The Trustee submits that considering the costs and uncertainties associated with trial and judgment enforcement, it is unlikely that further litigation would result in a "net benefit" to the Debtor's estate in excess of the Settlement Sum. In the sound business judgment of the Trustee, the proposed settlement is fair and equitable and in the best interest of the estate.

#### **Notice**

25. The Trustee has served the notice of presentment, proposed Order, and Application with exhibit upon: (i) the Office of the United States Trustee; (ii) Nicholas Cosmo, former principal of the Debtor, (iii) Defendants, (iv) the appropriate taxing authorities, and (v) all parties having filed a Notice of Appearance in this case. Copies have been posted on the Trustee's website located at [www.agapeworldbankruptcy.com](http://www.agapeworldbankruptcy.com). The Trustee respectfully submits that the proposed service complies with this Court's Order Establishing Noticing Procedures entered on July 8, 2009 and is otherwise sufficient.

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



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

Dated: Jericho, New York  
February 4, 2013

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

By: s/ David J. Mahoney  
Robert J. Ansell  
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  
AT CENTRAL ISLIP

-----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-

DEVINE EQUITIES LTD., and  
MICHAEL DEVINE,

Defendant.  
-----X

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

Adv. Pro. No.: 11-09116 (AST)

**ORDER UNDER BANKRUPTCY RULE  
9019 APPROVING A STIPULATION SETTLING THE  
TRUSTEE'S CLAIMS AGAINST DEVINE EQUITIES LTD. AND MICHAEL DEVINE**

Upon the notice of presentment (the "Notice"), dated February 4, 2013, and related application (collectively, the "Application") of Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") of the substantively consolidated estate of Agape World, Inc., *et al.* (the "Debtor"), by his counsel, SilvermanAcampora LLP, seeking the entry of an order (the "Order") approving a stipulation (the "Stipulation") settling the Trustee's claims against Devine Equities Ltd. and Michael Devine (the "Defendants"); and upon the affidavit of service filed with the Court; and no objections to the Application or the proposed Order having been filed; and the Court having found that the settlement of the Trustee's claims pursuant to 11 U.S.C. §§105, 541, 542, 544, and 550 and New York common law against Defendants to be fair, reasonable, and in the best interests of the Debtor's estate; and sufficient cause having been shown

therefor; and after due deliberation and consideration having been had; and it appearing that sufficient notice of the Application and proposed Order has been given; and it appearing that good and sufficient cause exists for granting the Application and proposed Order; and no additional notice being necessary or required;

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

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

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

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

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

# Exhibit 2

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
In re:

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

Debtors.

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

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

Plaintiff,

Adv. Pro. No.: 11-09116 (AST)

-against-

DEVINE EQUITIES LTD., and  
MICHAEL DEVINE,

Defendants.  
-----X

**STIPULATION OF SETTLEMENT**

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

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

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

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

VII. The Trustee and his counsel have investigated the financial affairs of the Debtor, including a detailed analysis of the extent and validity of certain transfers made by the Debtor to Cyrek Inc. and its principal, Jason Keryc (collectively, "Cyrek"), and subsequent transfers made by Cyrek, now a judgment debtor, to Devine Equities Ltd. ("Devine Equities") and Michael Devine (together with Devine Equities, collectively, the "Defendants").

VIII. On June 6, 2011, the Trustee commenced this adversary proceeding (the "Adversary Proceeding") against Defendants by the filing of a complaint, wherein the Trustee asserted that certain subsequent transfers totaling \$318,028.82 (the "Subsequent Transfers") made by Cyrek to the Defendants are avoidable pursuant to 11 U.S.C. §§105, 541, 542, 544, and 550 and New York common law, based upon Cyrek's status as a judgment debtor (the "Trustee's Claims").

IX. The parties engaged in discovery related to the Trustee's Claims, the defenses asserted by Defendants, and the enforceability of a potential judgment in the amount of the Transfers. The Defendants also provided certified financial disclosures demonstrating their inability to pay a potential judgment in full.

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

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

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

**Defendants' Obligation to Pay the Settlement Sum**

1. This stipulation (the "Stipulation") is subject to the entry of an order approving the settlement by the United States Bankruptcy Court for the Eastern District of New York (the "Approval Order"). Upon receipt of the executed Stipulation, the Trustee will move the Bankruptcy Court for entry of the Approval Order pursuant to Bankruptcy Rule 9019.

2. The Trustee has authorized Defendants to pay the Settlement Sum in twelve (12) monthly installments as set forth in the annexed Schedule A. All installments shall be remitted to "Kenneth P. Silverman, Esq., as Chapter 7 Trustee," by delivering a check to Trustee's counsel at SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753, Attention: Randy J. Schaefer, Esq. Nothing contained herein shall preclude or penalize Defendants from pre-paying any installment or portion of any installment.

3. If Defendants fail to make timely payment of any installment of the Settlement Sum in accordance with paragraph 2 and Schedule A collectively, or if any one of Defendants' payments is dishonored for any reason whatsoever and Defendants do not cure that default within ten (10) business days after written notice, the Trustee shall be entitled to move before the Bankruptcy Court, without further notice and upon the affidavit by the Trustee attesting to the default (a) for the entry of a judgment against Defendants for \$20,000, together with costs, less any sums previously paid as provided herein, and (b) for any further relief necessary to



enforce his rights under this Stipulation. Written notice of default shall be sent by Federal Express or other reputable overnight courier to (i) Devine Equities at 31 Jefferson Landing Circle, Port Jefferson, New York 11777; (ii) Michael Devine at 87 Cliff Road, Port Jefferson, New York 11777; and Defendants' counsel Robert Fox, Esq. at the Law Offices of Robert M. Fox, 630 Third Avenue, 18<sup>th</sup> Floor, New York, New York 10017.

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

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

6. All payments made by Defendants after the Approval Order becomes final and non-appealable shall be deposited directly into the Debtor's estate account.

#### **Releases**

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

8. Upon the Approval Order becoming final and non-appealable, and the Trustee's receipt and clearance of the full Settlement Sum, the Trustee and the estate release and forever discharge Defendants, their affiliated entities, agents, representatives, attorneys, assigns, and successors-in-interest from any and all claims, claims for relief, demands, costs, expenses,

damages, liabilities, and obligations of any nature arising out of or relating to the Trustee's Claims. For purposes of clarification, nothing contained herein shall be construed to be a release by the Trustee of any claims that the Trustee may have or subsequently discover under 11 U.S.C. §550(a)(2) and the Trustee is specifically not releasing any claims under 11 U.S.C. §550(a)(2).

9. Upon the execution of this Stipulation, Defendants release, discharge, and waive any and all claims against the Debtor's estate, the Trustee, and the Trustee's agents, attorneys, assigns, and successors-in-interest from any and all claims, proofs of claim, claims for relief, demands, costs, expenses, damages, liabilities, and obligations of any nature.

**No Admission of Criminal or Civil Liability**

10. It is understood and agreed that this Stipulation is entered into to avoid costly and protracted litigation. Neither the execution of this Stipulation, nor the payment of the Settlement Sum shall be construed as an admission on Defendants' part. For clarification, this paragraph is not intended and shall not be deemed to affect Defendants' obligation to make timely payment of the Settlement Sum or adversely affect the Trustee's rights and remedies under paragraph 3 in the event that Defendants fail to make timely payment of any installment of the Settlement Sum.

**Miscellaneous**

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

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

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

14. This Stipulation shall be deemed to have been drafted by all parties hereto to remove any negative inference against the drafter hereof.

15. 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.

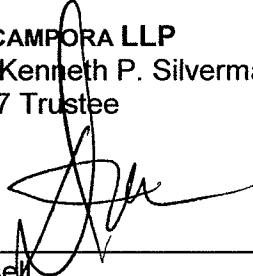
16. This Stipulation shall be governed by the laws of the State of New York, except with respect to matters as to which federal law is applicable without regard to any conflicts of law principles.

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


Dated: Jericho, New York  
January \_\_, 2013

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

By:

  
\_\_\_\_\_  
Robert J. Ansell  
David J. Mahoney  
Members of the Firm  
100 Jericho Quadrangle, Suite 300  
Jericho, New York 11753  
(516) 479-6300

Dated: Port Jefferson, New York  
January 21, 2013

  
\_\_\_\_\_  
Devine Equities Ltd., by Michael Devine

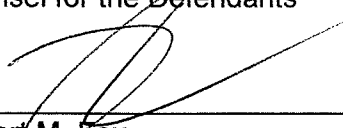
Dated: Port Jefferson, New York  
January 21, 2013

  
\_\_\_\_\_  
Michael Devine.

Dated: New York, New York  
January 28, 2013

The Law Offices of Robert M. Fox,  
Counsel for the Defendants

By: \_\_\_\_\_

  
Robert M. Fox  
630 Third Avenue, 18<sup>th</sup> Floor  
New York, New York 10017  
(212) 867-9595

**Schedule A**

<b>Payment Due on:</b>	<b>Installment Payment Due:</b>	<b>Balance Remaining Under Settlement:</b>
February 1, 2013	\$1,667.00	\$18,333.00
March 1, 2013	\$1,667.00	\$16,666.00
April 1, 2013	\$1,667.00	\$14,999.00
May 1, 2013	\$1,667.00	\$13,332.00
June 1, 2013	\$1,667.00	\$11,665.00
July 1, 2013	\$1,667.00	\$9,998.00
August 1, 2013	\$1,667.00	\$8,331.00
September 1, 2013	\$1,667.00	\$6,664.00
October 1, 2013	\$1,666.00	\$4,998.00
November 1, 2013	\$1,666.00	\$3,332.00
December 1, 2013	\$1,666.00	\$1,666.00
January 1, 2014	\$1,666.00	ZERO