

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

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

Objections Due: January 17, 2013
Time: 5:00 p.m.

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

-----X
In re:

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

Debtors.

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

Plaintiff,

-against-

NICHOLAS PEZOLANO,

Defendant.
-----X

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

Adv. Pro. No.: 10-08635 (DTE)

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

PLEASE TAKE NOTICE, that upon the application (the "Application") of Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") for the substantively consolidated estate of Agape World, Inc., *et al.*, by his counsel, SilvermanAcampora LLP, the Trustee will move before the Honorable Dorothy T. Eisenberg, United States Bankruptcy Court for the Eastern District of New York, located at Long Island Federal Courthouse, 290 Federal Plaza, Central Islip, New York 11722 on **January 24, 2013 at 10:00 a.m.**, seeking approval of the Stipulation

Settling Trustee's Claims against Nicholas Pezolano. A copy of the proposed Order is annexed hereto.

PLEASE TAKE FURTHER NOTICE, that objections, if any, to the relief requested in the Application or the proposed Order must be (i) made in writing; (ii) electronically filed with the Bankruptcy Court; (iii) delivered to Chambers of the Honorable Dorothy T. Eisenberg, United States Bankruptcy Judge, United States Bankruptcy Court, Eastern District of New York, Long Island Federal Courthouse, 290 Federal Plaza, Central Islip, New York 11722; (iv) mailed to SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753, Attn: Anthony C. Acampora, Esq.; and (v) mailed to the Office of the United States Trustee, 560 Federal Plaza, Central Islip, New York 11722, no later than **January 17, 2013**.

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

Dated: Jericho, New York
December 6, 2012

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

By: s/ Randy J. Schaefer
Randy J. Schaefer
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SILVERMANACAMPORA LLP
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AGAPE WORLD, INC.,
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KENNETH P. SILVERMAN, ESQ., as
Chapter 7 Trustee of Agape World, Inc., *et al.*,

Plaintiff,

-against -

NICHOLAS PEZOLANO,

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

Adv. Pro. No.: 10-08635 (DTE)

**TRUSTEE'S MOTION UNDER BANKRUPTCY RULE
9019(a) SEEKING THE ENTRY OF AN ORDER APPROVING A STIPULATION
SETTLING THE TRUSTEE'S PREFERENCE CLAIM AGAINST NICHOLAS PEZOLANO**

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 Rule of Bankruptcy Procedure 9019 for entry of an Order approving the proposed settlement of the Trustee's claims under 11 U.S.C. §§547(b) and 550 against Nicholas Pezolano (attached as **Exhibit A**) as memorialized in the Stipulation Settling the Trustee's Preference Claim Against

Nicholas Pezolano (the “Stipulation”), which is attached as **Exhibit B**. All parties are encouraged to review the annexed Stipulation in its entirety for the specific terms of the proposed settlement.

Background

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

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

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

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

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

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

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

8. Based upon Navigant's analysis, the Trustee determined that within the ninety (90) day period immediately preceding the Petition Date, Agape transferred \$18,992.20 (the "Transfers") to Nicholas Pezolano ("Defendant").

9. On October 18, 2010, the Trustee commenced an adversary proceeding by filing a complaint against Defendant, which was assigned adversary proceeding number 10-08635 (the "Adversary Proceeding") seeking to, *inter alia*, avoid the Transfers.

10. The Trustee and Defendant engaged in settlement discussions seeking to consensually resolve the Adversary Proceeding. In an effort to avoid the costs, expenses and uncertainty of continued litigation, the parties have now agreed to resolve the Preference Claim upon the terms and conditions contained in the Stipulation.

11. For all of the reasons set forth herein, the Trustee submits that accepting Defendant's offer to voluntarily remit \$8,000.00 (the "Settlement Sum") in full and final settlement of the Preference Claim is a reasonable exercise of his business judgment and in the best interests of the Debtors' estate.

Settlement

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

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

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

Basis for Relief Requested

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

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

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

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

Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-425, *reh'g denied*, 391 U.S. 909 (1968). See *American Can Co. v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 605, 607 (5th Cir. 1980); *Chopin Assoc. v. Smith (In re Holywell Corp.)*, 93 B.R. 291, 294 (Bankr.S.D.Fla. 1988); *In re Arrow Air, Inc.*, 85 B.R. 886, 891 (Bankr. S.D. Fla. 1988); *In re Bell & Beckwith*, 77 B.R. 628, 611 (Bankr.N.D.Ohio), *aff'd*, 87 B.R. 472 (N.D.Ohio 1987); *Cf. Magill v. Springfield Marine Bank (In re Heissing Resources Ltd.)*, 67 B.R. 378, 383 (C.D. Ill. 1986) ("the law favors compromise").

17. In making its determination, the Court should consider whether the proposed compromise is in the "best interest of the estate". *Depo v. Chase Lincoln First Bank, N.A. (In re Depo)*, 77 B.R. 381, 383 (N.D.N.Y. 1987), *aff'd*, 863 F.2d 45 (2d Cir. 1988). As stated in *Arrow Air*, the "approval of [a] proposed compromise and settlement is a matter of this Court's sound discretion." *Arrow Air*, 85 B.R. at 891. In passing upon a proposed settlement, "the bankruptcy court does not substitute its judgment for that of the Trustee [or debtor in possession]". *Depo*, 77 B.R. at 384 (citations omitted). The bankruptcy court is not required "to decide the numerous

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

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

19. Here, Defendant has offered to voluntarily remit approximately 42% of the Transfers in satisfaction of the Preference Claim without causing the Debtors' estate to incur significant fees or expenses. The Trustee submits that based upon the costs and uncertainties associated with trial and adversarial judgment enforcement, it would be mere speculation to believe that further litigation of the Preference Claims and Defendant's 11 U.S.C. §547(c) defenses, as well as the enforcement of a potential judgment would result in a "net benefit" to the Debtors' estate that exceeds the Settlement Sum. In the sound business judgment of the Trustee, the proposed settlement is both appropriate and warranted. The Trustee believes that the Settlement is fair and equitable and in the best interest of the estate.

Notice of Motion

20. The Trustee has served the Notice of Motion, proposed Order, and Motion in support with Exhibit upon: (i) the Office of the United States Trustee; (ii) Nicholas Cosmo, the former principal of the Debtor, (iii) Defendant, (iii) Defendant's counsel, (iv) the taxing authorities, and (v) pursuant to the Court's July 8, 2009 Order Establishing Noticing Procedures, 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.

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

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

Dated: Jericho, New York
December 6, 2012

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

By: s/ Randy J. Schaefer
Randy J. Schaefer
Counsel to the Firm
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X

In re:

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

Debtors.

-----X

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

Plaintiff,

-against-

NICHOLAS PEZOLANO,

Defendant.

-----X

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

Adv. Pro. No.: 10-08635 (DTE)

**ORDER UNDER BANKRUPTCY RULE 9019(a) APPROVING A STIPULATION
SETTLING THE TRUSTEE'S PREFERENCE CLAIM AGAINST NICHOLAS PEZOLANO**

Upon the Notice of Motion (the "Notice"), dated December 6, 2012, and related motion (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.*, by his counsel, SilvermanAcampora LLP, seeking the entry of an Order approving a Stipulation (the "Stipulation") Settling the Trustee's Preference Claim against Nicholas Pezolano (the "Defendant"); 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 the settlement of the Trustee's claims pursuant to 11 U.S.C. §§547(b) and 550(a) (the "Preference Claim") against Defendant to be fair, reasonable and in the best interest of the Debtors' estate; and the Court having found that service of the Notice, Motion with exhibit and proposed Order is

sufficient cause having been shown therefore; and no additional notice being necessary or required:

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

ORDERED, that service of the Notice and Motion and proposed Order, having been provided to: (i) the Office of the United States Trustee; (ii) Nicholas Cosmo, former principal of the Debtors; (iii), Defendant; (iv) Defendant's counsel; (v) the appropriate taxing authorities, and (vi) all parties having filed a Notice of Appearance in this case, and copies have been posted on the Trustee's website located at www.agapeworldbankruptcy.com 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 Preference Claim against Defendant as memorialized in the Stipulation is approved; and it is further

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

SO ORDERED:

EXHIBIT B

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

-----X
In re:

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

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

Debtors.

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

Plaintiff,

Adv. Pro. No. 10-08635 (DTE)

-against-

NICHOLAS PEZOLANO,

Defendant.
-----X

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

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

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

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

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

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

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

VII. The Trustee and his counsel have investigated the financial affairs of the Debtors, including a detailed analysis of the extent and validity of certain transfers made by the Debtors to Nicholas Pezolano ("Defendant") within 90 days prior to the Filing Date.

VIII. On October 18, 2010, the Trustee commenced this adversary proceeding against Defendant by the filing of a complaint, wherein the Trustee asserted that certain transfers totaling \$18,992.20 (the "Preferential Transfers") made by the Debtors to the Defendant within 90 days prior to the Filing Date are avoidable pursuant to 11 U.S.C. §§547 and 550 (the "Claim").

IX. Thereafter, Defendant retained his undersigned counsel to defend against the Claims.

X. The parties engaged in informal discovery related to the Claim and the defenses asserted by Defendant.

XI. In the spirit of compromise and without any admission of liability, Defendant has offered to remit the sum of \$8,000.00 (the "Settlement Sum") to the Trustee in full and final settlement of the Claim.

XII. Based upon the his review of all documentation related to the Preferential Transfers and his investigation of all attendant factors, the Trustee has, in his business judgment, agreed to settle the Trustee's Claim upon the following terms and conditions, which

the Trustee believes are fair and reasonable, especially in light of the costs and uncertainty associated with litigation.

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

Defendant's Obligation to Pay the Settlement Sum

1. Upon execution of this Stipulation, 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, Attention: Patricia Ann Kavanagh Edwards, Esq.

2. Upon receipt of the Settlement Sum, Trustee's counsel will transfer the Settlement Sum to the Trustee to be deposited into the Debtors' estate. Defendant acknowledges and agrees that the Settlement Sum shall become part of the Debtors' estate without Order of the Court pursuant to the "Procedures Order" entered on October 1, 2010.

Releases

3. Upon execution of this Stipulation and the Trustee's receipt and clearance of the Settlement Sum, the Trustee and the estate release and forever discharge Defendant, his 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 Claim. 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).

4. Upon the execution of this Stipulation, Defendant releases, discharges and waives any and all claims against the Debtor's Estate, the Trustee and the Trustee's agents,

attorneys, assigns and successors-in-interest from any and all claims, claims for relief, demands, costs, expenses, damages, liabilities, and obligations of any nature.

Effect of Settlement upon Timely-Filed Proofs of Claim

5. Upon execution of this Stipulation and the Trustee's receipt and clearance of the Settlement Sum, the Trustee and the estate specifically release, discharge and waive the Second Claim for Relief to disallow any proof of claim timely filed by Defendant pursuant to Bankruptcy Code §502(d).

6. The parties to the Stipulation acknowledge and agree that notwithstanding the release language contained in paragraphs 4 through 6, the Stipulation and the settlement memorialized herein are not intended, and should not be interpreted to otherwise release, waive or discharge either parties' rights, defenses, claims or objections with respect to any proof of claim that was timely-filed by Defendant in the Debtors' substantively-consolidated case. For the purposes of clarification, by entering into this Stipulation, the Trustee has not, is not intending and shall not be deemed to have validated, approved or otherwise allowed any proof of claim previously filed by Defendant.

7. Upon payment of the Settlement Sum, but no more than sixty (60) days after payment of the Settlement Sum, Defendant shall have the right to file and serve on Trustee's counsel a proof of claim or an amended proof of claim including the amount of the Settlement Sum paid hereunder, pursuant to Bankruptcy Code §502(h). Defendant acknowledges and agrees that his Bankruptcy Code §502(h) claim shall be disallowed if it is not filed and served on Trustee's counsel within sixty (60) days of payment.

No Admission of Criminal or Civil Liability

8. It is understood and agreed that this Stipulation is entered into to avoid costly and protracted litigation. Neither the execution of this Stipulation, nor the payment of the Settlement Sum shall be construed as an admission of any criminal or civil liability on Defendant's part. For clarification, this paragraph is not intended and shall not be deemed to

affect Defendant's obligation to make timely payment of the Settlement Sum or adversely affect the Trustee's rights and remedies under paragraph 2 in the event that Defendant fails to make timely payment of the Settlement Sum.

Miscellaneous

9. 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.

10. 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.

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

12. 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.

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

Dated: Jericho, New York
December 4, 2012

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

By: s/ David J. Mahoney
David J. Mahoney
Jay S. Hellman
Members of the Firm
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Jericho, New York 11753
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Dated: Mineola, New York
December 2, 2012

STEVEN G. LEGUM, ESQ.
Attorneys for Defendant

By: s/ Steven G. Legum
Steven G. Legum
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