

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

Presentment Date: August 18, 2015
Time: 9:30 a.m.

Objections Due: August 14, 2015
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.: 10-08992 (AST)

-against-

CARLOS ARROYO,

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 CARLOS ARROYO**

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 18, 2015 at 9:30 a.m.**, seeking entry of an Order under Bankruptcy Rule 9019(a)

Approving the Stipulation Settling the Trustee's Claims against Carmen Kent. 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 14, 2015 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 15, 2015

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

By: s/ David J. Mahoney
David J. Mahoney
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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

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

AGAPE WORLD, INC.,
AGAPE MERCHANT ADVANCE LLC,
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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.: 10-08892 (AST)

-against-

CARLOS ARROYO,

Defendant.

-----X

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

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 Carlos Arroyo (the "Defendant") as memorialized in the Stipulation (i) Settling the Trustee's Claims; and (ii) Directing the Clerk of the Court to Close the Adversary Proceeding (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.

8. Based upon Navigant's analysis, the Trustee determined that Defendant received certain transfers, net of deposits into Agape, totaling Three Hundred Twenty-Three Thousand Twenty-Five (\$323,025) Dollars from the Debtors prior to the Petition Date.

9. The Trustee commenced this adversary proceeding (Adv. Pro. No. 10-08992) (the "Adversary Proceeding") against Defendant by the filing of a complaint (the "Complaint"),

asserting that certain transfers, net deposits into the Debtors, totaling Three Hundred Twenty-Three Thousand Twenty-Five (\$323,025) Dollars (the "Net Transfers") made by the Debtors to Defendant, are avoidable pursuant to 11 U.S.C. §§105, 502, 544, 548, 550, and 551, New York Debtor and Creditor Law §§273, 274, 275, 276, and 276-a, and New York common law (the "Trustee's Claims").

10. Defendant interposed an answer to the Complaint asserting general denials and several affirmative defenses..

11. Thereafter, the Parties engaged in informal discovery related to the Trustee's Claims and the defenses asserted by Defendant, during which Defendant raised triable issues of fact relating to whether he received one disbursement, in the amount of Forty Thousand (\$40,000) Dollars, from Agape to him.

12. Defendant has offered to consent to the entry of judgment in the amount of Two Hundred Eighty-Three Thousand Twenty-Five (\$283,025) Dollars (the "Judgment") to the Trustee in full and final settlement of the Trustee's Claims.

13. Based the Trustee's review of all documentation related to the Transfers and his investigation of all attendant factors, including but not limited to the financial wherewithal of Defendant, the Trustee has, in his business judgment, agreed to settle the Trustee's Claims.

14. For all the reasons set forth herein, the Trustee submits that accepting Defendant's offer to consent to the Judgment 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

15. 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

16. 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).

17. 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:

[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.¹

18. 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."² As stated in

¹ *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").

² *Handler v. Roth (In re Handler)*, 386 B.R. 411, 420 (Bankr. E.D.N.Y. 2007) (quoting *In re Adelphia 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).

Arrow Air, the "approval of [a] proposed compromise and settlement is a matter of this Court's sound discretion."³ In passing upon a proposed settlement, "the bankruptcy court does not substitute its judgment for that of the trustee."⁴ 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."⁵ 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."

19. The Second Circuit in *In re Iridium Operating LLC*⁶ 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 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

³ *Arrow Air*, supra, 85 B.R. at 891.

⁴ *In re Depo*, 77 B.R. at 384 (citations omitted).

⁵ *Bell & Beckwith*, 77 B.R. at 612; see also *In re Handler*, 386 B.R. at 421.

⁶ 478 F.3d 452, 462 (2d Cir. 2007).

vii. the extent to which the settlement is the product of arm's length bargaining.⁷

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

21. Although the proposed settlement does not result in any immediate payment to the estate, resolving the Adversary Proceeding by entry of the Judgment is in the creditors' best interest. Under the circumstances of this case, the Trustee believes that the added benefit of an additional Forty Thousand (\$40,000) to any resulting judgment would be illusory as it is unlikely that the Trustee will recover more than the Judgment amount.

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

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

24. 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

25. 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.

⁷ See *In re Iridium Operating LLC*, 478 F.3d at 462; See also *In re Handler*, 386 B.R. at 421.

26. 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 15, 2015

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

By: s/ David J. Mahoney
David J. Mahoney
A Member 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-

CARLOS ARROYO,

Defendant.
-----X

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

Adv. Pro. No.: 10-08992 (AST)

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

Upon the Notice of Presentment (the "Notice"), dated July 15, 2015, 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 Carlos Arroyo (the "Defendant") as memorialized in the Stipulation (i) Settling the Trustee's Claims; and (ii) Directing the Clerk of the Court to Close the Adversary Proceeding (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, 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:

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-

CARLOS ARROYO,

Defendant.
-----X

Chapter 7

Case No.: 09-70660 (AST)

Substantively Consolidated

Adv. Pro. No.: 10-08892 (AST)

**STIPULATION AND ORDER (I) SETTLING THE TRUSTEE'S CLAIMS; AND
(II) DIRECTING THE CLERK OF THE COURT TO CLOSE THE ADVERSARY PROCEEDING**

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 Debtor's financial affairs, including a detailed analysis of the extent and validity of certain transfers made to Carmen Kent ("Defendant").

VIII. Thereafter, the Trustee commenced this adversary proceeding against Defendant by filing a complaint asserting that certain transfers totaling Three Hundred Twenty Nine Thousand Nine Hundred Twenty-Five and 00/100 (\$329,925.00) Dollars (the "Net Transfers") made to Defendant are avoidable and recoverable pursuant to Bankruptcy Code §§105, 541, 544, 548, 550 and New York Debtor and Creditor Law §§ 273, 274, 275, 276 ("The Trustee's Claims").

IX. Thereafter, Defendant filed an answer asserting general denials and certain affirmative defenses to the Trustee's Claims.

X. In October 2014 the parties engaged in a Court ordered mediation before Andrew Thaler, Esq. The mediation was unsuccessful.

XI. In the spirit of compromise and without any admission of liability, Defendant consents to the entry of judgment in the amount of \$283,025 (the "Judgment") to the Trustee in full and final settlement of the Trustee's Claims.

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

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

1. This Stipulation is subject to approval by the Bankruptcy Court. Upon the entry of an Order (the "Approval Order") approving this stipulation (the "Stipulation"), this adversary proceeding will be closed.

2. By executing this Stipulation, Carlos Arroyo consents to the entry of Judgment in the amount of \$283,025.00.

3. Defendant understands and acknowledges that the Trustee's rights under this Stipulation and the resulting Judgment may be sold or assigned subject to further order of the Bankruptcy Court.

4. Carlos Arroyo understands and agrees that the Trustee is not providing any release with respect to the Judgment provided herein and that, upon entry of the Approval Order, the Trustee shall have all of the rights and remedies afforded to a judgment creditor by law and may enforce his Judgment against Carlos Arroyo as allowed by law.

5. If the Court declines to enter the Approval Order, this Stipulation will be null and void and nothing contained herein can be used as evidence by either party.

6. Upon the Approval Order becoming final and non-appealable, the Trustee agrees that the Judgment shall constitute a full and final resolution of the Adversary Proceeding.

7. Upon the Approval Order becoming final and non-appealable, 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, proofs of claim, claims for relief, demands, costs, expenses, damages, liabilities, and obligations of any nature.

8. 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.

9. 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.

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

11. 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.

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.

14. Upon the entry of this Stipulation as an Approval Order in this proceeding, the Clerk of the Court is directed to close this adversary proceeding.

Dated: Jericho, New York
July 8, 2015

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

By: s/ David J. Mahoney
David J. Mahoney, Esq.
Member of the Firm
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(516) 479-6300

Dated: Uniondale, New York
July 8, 2015

Forchelli, Curto, Deegan et al.,
Attorneys for Carlos Arroyo

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s/ Carlos Arroyo
Carlos Arroyo