

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

**Hearing Date: April 25, 2013**  
**Time: 2:00 p.m.**

**Objections Due: April 18, 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-

JOHN THUOTTE,

Defendant.  
-----X

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

Adv. Pro. No.: 10-08393 (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 **April 25, 2013 at 2:00 p.m.**, seeking approval of the Stipulation

Settling Trustee's Claims against John Thuotte. 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 **April 18, 2013**.

Dated: Jericho, New York  
March 20, 2013

**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  
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**SILVERMANACAMPORA LLP**  
Counsel to Kenneth P. Silverman, Esq.,  
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**UNITED STATES BANKRUPTCY COURT  
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In re:

AGAPE WORLD, INC.,  
AGAPE MERCHANT ADVANCE LLC,  
AGAPE COMMUNITY LLC, AGAP  
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 -

JOHN THUOTTE,

Defendant.

-----X

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

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 John Thuotte (attached as **Exhibit A**) as memorialized in the Stipulation Settling the Trustee's Preference Claim Against John

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

Adv. Pro. No.: 10-08393 (DTE)

Thuotte (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 \$58,834.00 (the “Transfers”) to John Thuotte (“Defendant”).

9. On August 27, 2010, the Trustee commenced an adversary proceeding by filing a complaint against Defendant which was assigned adversary proceeding number 10-08393 (the "Adversary Proceeding") seeking to, *inter alia*, avoid the Transfers totaling \$58,834.00.<sup>1</sup>

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 \$11,075.00 (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 Adversary Proceeding 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 Adversary Proceeding 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 Adversary Proceeding, the Trustee has agreed to accept the Settlement Sum.

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<sup>1</sup> Thereafter, the Defendant provided evidence that he gave new value in excess of \$35,000.00 thereby reducing the Trustee's preference claim to \$22,000.00.

### 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 50% of the Transfers (less credit for new value) 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 Claim and Defendant's Bankruptcy Code §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 Trustee's business judgment, 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, (ii) Defendant, (iii) the taxing authorities, and (iv) 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](http://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 approving the Stipulation and grant such other further and different relief as this Court deems just and proper.

Dated: Jericho, New York  
March 20, 2013

**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-

JOHN THUOTTE,

Defendant.  
-----X

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

Adv. Pro. No.: 10-08393 (DTE)

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

Upon the Notice of Motion (the "Notice"), dated March 20, 2013, 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 John Thuotte (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) the appropriate taxing authorities, and (v) 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](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 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.

***EXHIBIT B***

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.: 10-08393 (DTE)

-against-

JOHN THUOTTE,

Defendant.  
-----X

**STIPULATION SETTLING THE  
TRUSTEE'S PREFERENCE CLAIM AGAINST JOHN THUOTTE**

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 John Thuotte ("Defendant") within 90 days prior to the Filing Date.

VIII. On October 5, 2010, the Trustee filed an amended adversary proceeding complaint against Defendant by the filing of a complaint, wherein the Trustee asserted that certain transfers totaling \$58,834.00 (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 "Trustee's Claims").

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

X. The parties engaged in informal discovery related to the Trustee's Claims and the defenses asserted by Defendant.

XI. The Defendant demonstrated to the Trustee's satisfaction a new value defense aggregating not less than \$36,685.96.

XII. In the spirit of compromise and without any admission of liability, Defendant has offered to remit the sum of \$11,075.00 (the "Settlement Sum") to the Trustee in full and final settlement of the Trustee's Claims, payable as \$1,075.00 upon execution of this Stipulation and four (4) quarterly payments of \$2,500.00 commencing on April 1, 2013, and quarterly thereafter.

XIII. 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 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 be 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. Upon execution of this Stipulation, on or before March 1, 2013, Defendant will remit the first installment of the Settlement Sum in the amount of \$1,075.00 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.

3. Thereafter, Defendant will remit four quarterly equal installment payments in the amount of \$2,500.00 each on April 1, 2013, July 1, 2013, October 1, 2013 and January 1, 2014.

4. If Defendant fails to make timely payment of the Settlement Sum in accordance with paragraph 3, above, or if Defendant's payment is dishonored for any reason whatsoever and Defendant does not cure such default within five (5) business days after written notice sent by regular mail 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 and upon the affidavit by the Trustee attesting to the default (a) for the entry of a judgment against Defendant for Twenty-Two Thousand One Hundred Forty-Eight and 04/100 Dollars (\$22,148.04), plus 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 regular mail to (i) Defendant at 840 Loma Drive, #1, Hermosa Beach, CA 90254; and (ii) Defendant's counsel, Mickee M. Hennessy, Esq., at Westerman Ball Ederer Miller & Sharfstein, LLP, 1201 RXR Plaza, Uniondale, New York 11556.

5. 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.

6. 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.

7. 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**

8. 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, his 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 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 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, except as otherwise set forth in this Stipulation.

**Effect of Settlement upon Timely-Filed Proofs of Claim**

10. 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).

11. The parties to the Stipulation acknowledge and agree that notwithstanding the release language contained in paragraphs 8 and 9, 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 and Defendant shall not be deemed to have waived any such claim.

12. Upon final payment in full of the Settlement Sum, but no more than sixty (60) days after payment in full 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 (i) it is not filed and served on Trustee's counsel within sixty (60) days of the final payment of the Settlement Sum; or (ii) it is for an amount other than the settlement sum.

**No Admission of Criminal or Civil Liability**

13. 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 4 in the event that Defendant fails to make timely payment of the Settlement Sum.

**Miscellaneous**

14. 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.

15. 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.

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

17. 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.

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

Dated: Jericho, New York  
February \_\_, 2013  
March 11,

**SILVERMAN ACAMPORA 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

Dated: Uniondale, New York  
February 20, 2013

**WESTERMAN BALL EDERER MILLER &  
SHARFSTEIN, LLP**  
Attorneys for Defendant

By: s/ Mickee M. Hennessy  
Mickee M. Hennessy, Esq.  
1201 RXR Plaza  
Uniondale, New York 11556  
(516) 622-9200, ex.404

Dated: Hermosa Beach, California  
February 14, 2013

John Thuotte  
Defendant

s/ John Thuotte  
840 Loma Drive, #1  
Hermosa Beach, CA 90254