

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

Presentment Date: January 16, 2015
Time: 9:30 a.m.

Objections Due: January 12, 2015
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.

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

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

Plaintiff,

Adv. Pro. No.: 11-08554 (AST)

-against-

KEVIN SMITH,

Defendant.
-----X

**NOTICE OF PRESENTMENT OF TRUSTEE'S MOTION UNDER
BANKRUPTCY RULE 9019(a) SEEKING AN ORDER (I) RE-OPENING
THE ADVERSARY PROCEEDING; (II) APPROVING THE STIPULATION
OF SETTLEMENT PROVIDING FOR THE CONDITIONAL SATISFACTION
OF THE JUDGMENT; AND (III) RE-CLOSING THE ADVERSARY PROCEEDING**

PLEASE TAKE NOTICE, that upon the motion (the "Motion") 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 to 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 **January 16, 2015 at 9:30 a.m.**, or as soon thereafter as counsel can be heard, for Order under

Bankruptcy Rule 9019(a): (I) Re-Opening the Adversary Proceeding; (II) Approving the Stipulation Providing for the Conditional Satisfaction of the Judgment; and (III) Re-Closing the Adversary Proceeding. 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) 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, 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 **January 12, 2015 at 4:00 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
December 19, 2014

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

By: s/ David J. Mahoney
David J. Mahoney
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SILVERMANACAMPORA LLP
Counsel to Kenneth P. Silverman, Esq.,
The Chapter 7 Trustee
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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,
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.: 11-08554 (AST)

-against-

KEVIN SMITH,

Defendant.

-----X

**TRUSTEE'S MOTION FOR AN ORDER
UNDER FEDERAL RULE OF BANKRUPTCY
PROCEDURE 9019(a) SEEKING AN ORDER (I) RE-OPENING THE
ADVERSARY PROCEEDING; (II) APPROVING THE STIPULATION
OF SETTLEMENT PROVIDING FOR THE CONDITIONAL SATISFACTION
OF THE JUDGMENT; AND (III) RE-CLOSING THE ADVERSARY PROCEEDING**

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 an Order (attached as **Exhibit 1**) (I) Re-Opening the Adversary Proceeding; (II) Approving the Stipulation Providing for the Conditional Satisfaction of the Judgment against Kevin Smith (the "Defendant"), as memorialized in the Stipulation

Providing for the Conditional Satisfaction of the Judgment (the "Stipulation"), which is attached as **Exhibit 2**; and (III) Re-Closing the Adversary Proceeding. 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 (i) certain transfers, net of deposits, of \$72,182.69 (the "Transfers") from the Debtors prior to the Petition Date.

9. On February 8, 2011, the Trustee commenced this adversary proceeding against Defendant by filing a complaint (Adv. Pro. No. 11-08554-AST) (the "Adversary Proceeding"), asserting that the Transfers 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. On June 19, 2012, the Trustee filed a motion for default judgment for Defendant's failure to answer or otherwise respond in the Adversary Proceeding (the "Default Motion").

11. On August 28, 2012, the Court granted the Default Motion and entered a default judgment (the "Judgment") against Defendant in the amount of \$72,182.69.

12. On September 13, 2012, the Adversary Proceeding was closed.

13. The Trustee commenced judgment enforcement by, *inter alia*, serving an information subpoenas and restraining notices.

14. In response to the Trustee's judgment enforcement efforts, Defendant contacted the Trustee's counsel with respect to satisfying the Judgment. The parties engaged in informal discovery related to the Trustee's Claims and the defenses asserted by Defendant, including documentation of additional deposits made by Defendant with Agape that concomitantly reduced Defendant's net liability to \$22,182.69.

15. Defendant has offered to pay \$12,000.00 (the "Settlement Sum") to the Trustee in full and final settlement of the Judgment.

16. Based upon the Trustee's review of all documentation related to the Transfers, the Trustee has, in his business judgment, agreed to accept Defendant's voluntary return of the Settlement Sum in full and final satisfaction of the Trustee's Judgment.

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

Settlement

18. 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 collecting on the Judgment.

Basis for Relief Requested

19. 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).

20. 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

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").

21. 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 *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."

22. 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;

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).

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).

- v. the competency and experience of the counsel who support the proposed settlement;
- vi. the relative benefits to be received by individuals or groups within the class; and
- vii. the extent to which the settlement is the product of arm's length bargaining.⁷

23. The Settlement Sum represents a guaranteed recovery of approximately 55% of the Transfers (net of the previously unaccounted for deposits) for which the Trustee believes Defendant is equitably liable in satisfaction of the Judgment.

24. Based upon the amount of the Transfers, the Trustee does not anticipate that any of the Debtors' creditors will object to Stipulation or the relief requested in this Motion.

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

26. The Trustee submits that considering the costs and uncertainties associated with enforcing the Judgment against Defendant, it is unlikely that further collection efforts would result in a "net benefit" of the Debtors' estate in excess of the Settlement Sum. In the Trustee's sound 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

27. 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) the Internal Revenue Service and other governmental agencies to the extent required by the Bankruptcy Rules and the Local Rules; 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. The Trustee respectfully

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

submits that the proposed service complies with this Court's Order Establishing Noticing Procedures entered on July 8, 2009 and is otherwise sufficient.

28. 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
December 19, 2014

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,

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

Adv. Pro. No.: 11-08554 (AST)

-against-

KEVIN SMITH,

Defendant.

-----X

**ORDER UNDER FEDERAL RULE OF BANKRUPTCY
PROCEDURE 9019(a) (I) RE-OPENING THE ADVERSARY
PROCEEDING; (II) APPROVING THE STIPULATION PROVIDING FOR
THE CONDITIONAL SATISFACTION OF THE TRUSTEE'S JUDGMENT
AGAINST KEVIN SMITH; AND (III) RE-CLOSING THE ADVERSARY PROCEEDING**

Upon the Notice of Motion (the "Notice"), dated December 19, 2014, and related documents (collectively, the "Motion") of Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") of the substantively consolidated estate of Agape World, Inc., *et al.*, by his counsel, SilvermanAcampora LLP, seeking the entry of an Order (I) Re-Opening The Adversary Proceeding; (II) Approving The Stipulation Providing For The Conditional Satisfaction Of The Trustee's Judgment Against Kevin Smith; and (III) Re-Closing The Adversary Proceeding; 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 and judgment 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 the Motion is granted, and it is further

ORDERED, that the Clerk of the Court is directed to re-open this adversary proceeding assigned case number 11-08554 (AST); and it is further

ORDERED, that the settlement of the Trustee's Claims against the Defendant as memorialized in the Stipulation, a copy of which is attached to the Motion as Exhibit "2", is approved; and it is further

ORDERED, that the Trustee is authorized to take all actions necessary to have the Judgment marked satisfied against Kevin Smith; and it is further

ORDERED, that upon entry of the within Order the instant Adversary Proceeding shall be re-closed.

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-

KEVIN SMITH,

Defendant.
-----X

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

Adv. Pro. No.: 11-08554 (AST)

**STIPULATION PROVIDING FOR THE CONDITIONAL SATISFACTION OF
TRUSTEE'S JUDGMENT AGAINST KEVIN SMITH**

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").

The Trustee's Adversary Proceeding

VII. The Trustee and his counsel have investigated the financial affairs of the Debtors, including a detailed analysis of the extent and validity of certain transfers made by Agape to Kevin Smith ("Defendant").

VIII. On February 8, 2011, the Trustee commenced this adversary proceeding against Defendant by the filing of a complaint, wherein the Trustee asserted that certain transfers totaling Seventy Two Thousand One Hundred Eighty Two And 69/100 (\$72,182.69) Dollars (the "Net Transfers") made by the Debtors to the Defendant prior to the Filing Date were avoidable pursuant to 11 U.S.C. §§544, 548, 550 and 551 and New York Debtor and Creditor Law §§273 through 276-a and New York Common Law (the "Trustee's Claims").

IX. On June 19, 2012, the Trustee filed a motion for default judgment (the "Motion") for Defendant's failure to answer or otherwise respond to the complaint.

X. On August 28, 2012, the Court granted the Trustee's Motion and entered a judgment (the "Judgment") against the Defendant.

XI. Thereafter, the Trustee commenced judgment enforcement proceedings by, *inter alia*, serving an information subpoena and restraining notice on JPMorgan Chase, N.A. (collectively, the "Subpoena").

XII. In response to the Trustee's Subpoena, JPMorgan Chase, N.A. (the "Bank") restrained a bank account (the "Bank Account").

XIII. Thereafter, Defendant contacted the Trustee's counsel with respect to satisfying the Judgment and subsequently provided the Trustee with additional information which demonstrated previously unaccounted for deposits, which made the Defendant a net winner of \$22,182.69.

XIV. The parties engaged in informal discovery related to the Judgment and the defenses asserted by Defendant.

XV. In the spirit of compromise, Defendant has offered to voluntarily remit the sum of Twelve Thousand And 00/100 (\$12,000.00) Dollars (the "Settlement Sum") to the Trustee in full and final satisfaction of the Trustee's Judgment (the "Stipulation").

XVI. Based upon 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 Judgment upon the following terms and conditions.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the parties hereto, that the Trustee's Judgment 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 the execution of this Stipulation, the Defendant will remit a certified check in the amount of \$12,000.00 payable to "Kenneth P. Silverman, Esq., as Chapter 7 Trustee", by delivering the check to Trustee's counsel at SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York, 11753, Attention: Linda Tumino.

3. The Trustee's proposed satisfaction of the Judgment is expressly conditioned upon his timely receipt of the Settlement Sum. The Trustee will withhold from further judgment enforcement efforts until November 14, 2014. In the event that the Trustee does not receive the Settlement Sum, the Trustee shall be relieved of his duty to satisfy the Judgment under this

Stipulation and he shall retain all of his rights and remedies as a judgment creditor under New York law.

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

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

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

No Admission of Criminal or Civil Liability

7. 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 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 2 in the event that Defendant fails to make timely payment of the Settlement Sum.

Releases

8. 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 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 Trustee's receipt and clearance of the Settlement Sum, the Trustee and the estate will authorize the Bank to lift the pending restraint on Defendant's Bank Accounts, cease further efforts to enforce the Judgment and file a satisfaction of Judgment on the docket of this Adversary Proceeding.

10. Upon execution of this Stipulation, Defendant releases, discharges and waives any and all claims against the Debtors' estates, the Trustee and the Trustee's agents, representative, 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.

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

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

Dated: Jericho, New York
October , 2014

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

By: s/ David J. Mahoney
David J. Mahoney
100 Jericho Quadrangle, Suite 300
Jericho, New York 11753
(516) 479-6300

Dated: Eden Prairie, Minnesota
October 2, 2014

Kevin Smith, Pro Se

By: s/ Kevin Smith
Kevin Smith
14057 Carmody Drive
Eden Prairie, Minnesota 55347
(631) 235-4790