

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

**Presentment Date: June 28, 2013**  
**Time: 9:30 a.m.**

**Objections Due: June 21, 2013**  
**Time: 4:00 p.m.**

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

-----X  
In re:

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

Debtors.

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

Plaintiff,

-against-

LUIS DUARTE,

Defendant.  
-----X

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

Adv. Pro. No.: 11-08601 (AST)

**NOTICE OF PRESENTMENT OF PROPOSED  
ORDER UNDER BANKRUPTCY RULE 9019(a) APPROVING A  
MEDIATOR'S REPORT SETTLING THE TRUSTEE'S CLAIMS AGAINST LUIS DUARTE**

**PLEASE TAKE NOTICE**, that upon the application (the "Application") of Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") for the substantively consolidated estate of Agape World, Inc., *et al.*, by his counsel, SilvermanAcampora LLP, the Trustee will present a proposed order before the Honorable Alan S. Trust, United States Bankruptcy Judge, United States Bankruptcy Court for the Eastern District of New York, located at Long Island Federal Courthouse, 290 Federal Plaza, Courtroom 960, Central Islip, New York 11722 on **June 28**,

**2013 at 9:30 a.m.**, seeking approval of the mediated settlement of the Trustee's claims against Luis Duarte. A copy of the proposed Order is annexed hereto.

**PLEASE TAKE FURTHER NOTICE**, that objections, if any, to the relief requested in the motion or the proposed order must be: (i) made in writing; (ii) electronically filed with the Court; (iii) mailed to Chambers of the Honorable Alan S. Trust, United States Bankruptcy Judge, 290 Federal Plaza, Courtroom 960, Central Islip, New York 11722; (iv) mailed to SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753, Attention: Robert J. Ansell; and (v) mailed to the Office of the United States Trustee, 560 Federal Plaza, Central Islip, Courtroom 960 New York 11722, so as to be actually received no later than **June 21, 2013 at 4:00 p.m.** (the "Objection Deadline").

**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  
May 31, 2013

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

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

**SILVERMANACAMPORA LLP**  
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UNITED STATES BANKRUPTCY COURT  
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KENNETH P. SILVERMAN, ESQ., as  
Chapter 7 Trustee of Agape World, Inc., *et al.*,

Plaintiff,

-against-

LUIS DUARTE,

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

Adv. Pro. No.: 11-08601 (AST)

**TRUSTEE'S APPLICATION UNDER BANKRUPTCY RULE 9019(a)**  
**SEEKING THE ENTRY OF AN ORDER APPROVING A MEDIATOR'S**  
**REPORT SETTLING THE TRUSTEE'S CLAIMS AGAINST LUIS DUARTE**

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

Report”), which is annexed hereto as **Exhibit 2**. All parties are encouraged to review the annexed Mediator’s Report in its entirety for the specific terms of the proposed settlement.

### **Background**

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

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

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

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

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

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

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

8. Based upon Navigant’s analysis, the Trustee determined that Luis Duarte (“Defendant”) received certain transfers totaling Sixty-Nine Thousand Five Hundred Sixty-Two and 57/100 (\$69,562.57) Dollars (the “Transfers”) made by the Debtor to the Defendant that 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.

9. On February 10, 2011, the Trustee commenced an adversary proceeding against the Defendant (the “Adversary Proceeding”) by the filing and service of a summons and complaint under Adv. Pro. No. 11-08601 seeking to, *inter alia*, avoid the Transfers pursuant to 11 U.S.C. §§105, 502, 544 and 548, New York Debtor and Creditor Law §§273, 274, 275, 276, and 276-a, and New York common law and to recover the Transfers from Defendant pursuant to 11 U.S.C. §550(a) (the “Trustee’s Claims”).

10. The parties engaged in discovery related to the Trustee’s Claims and the defenses asserted by Defendant.

11. The Trustee, through his counsel, and the Defendant engaged in settlement discussions in an effort to consensually resolve the Adversary Proceeding. Pursuant to this Court’s Order, the parties attended a mediation session on March 13, 2013 at the United States Bankruptcy Court for the Eastern District of New York. In order to avoid the costs, expenses, and uncertainty of continued litigation, the parties have agreed to resolve the Trustee’s Claims upon the terms and conditions contained in the Mediator’s Report.

12. Defendant has offered to remit the sum of One Thousand and 00/100 (\$7,000.00) Dollars (the “Settlement Sum”) to the Trustee, in full and final satisfaction of the Trustee’s Claims.

13. The Trustee submits that the Mediator’s Report, which was signed by Defendant and his attorney, contains all of the essential terms of the settlement of the Trustee’s Claims and is sufficient to close the adversary proceeding.

14. For all of 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 Trustee’s Claims is a reasonable exercise of the Trustee’s business judgment and is in the best interests of the Debtor’s estate.

## Settlement

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 benefit of creditors, without the need to incur legal fees and risks inherent with the prosecution of the Trustee's Claims and any resulting judgment enforcement efforts.

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

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

## Basis for Relief Requested

18. 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).

19. 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.<sup>1</sup>

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<sup>1</sup> 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 &

20. 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”.<sup>2</sup> As stated in *Arrow Air*, supra, the “approval of [a] proposed compromise and settlement is a matter of this Court’s sound discretion”.<sup>3</sup> In passing upon a proposed settlement, “the bankruptcy court does not substitute its judgment for that of the trustee”. *In re 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.”<sup>4</sup> 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.”

21. The Second Circuit in *Iridium*, supra<sup>5</sup> 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;

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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”).

<sup>2</sup> *Handler v. Roth (In re Handler)*, 386 B.R. 411, 420 (Bankr. E.D.N.Y. 2007)(quoting *In re Adelpia 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).

<sup>3</sup> *Arrow Air*, supra, 85.B.R. at 891.

<sup>4</sup> *Bell & Beckwith*, 77 B.R. at 612; see also *In re Handler*, 386 B.R. at 421.

<sup>5</sup> 478 F.3d 452, 462 (2d Cir. 2007).

- 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
- vii. the extent to which the settlement is the product of arm's length bargaining.<sup>6</sup>

22. The proposed settlement was the result of an arms-length negotiation facilitated by Ted A. Berkowitz, Esq., a mediator appointed by this Court. The payment of the Settlement Sum will result in a guaranteed benefit to the Debtor's creditors without causing the Debtor's estate to incur significant fees or expenses.

23. The Trustee submits that considering the costs and uncertainties associated with trial and judgment enforcement, and the amount of the Trustee's demand, it is unlikely that further litigation would result in a "net benefit" to the Debtors' estate in excess of 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**

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

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<sup>6</sup> See *In re Iridium Operating LLC*, 478 F.3d at 462; See also *In re Handler*, 386 B.R. at 421.



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

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

Dated: Jericho, New York  
May 31, 2013

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

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

# **EXHIBIT 1**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----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-

LUIS DUARTE,

Defendant.  
-----X

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

Adv. Pro. No.: 11-08601 (AST)

**ORDER UNDER BANKRUPTCY RULE 9019(a) APPROVING A  
MEDIATOR'S REPORT SETTLING THE TRUSTEE'S CLAIMS AGAINST LUIS DUARTE**

Upon the Notice of Presentment (the "Notice"), dated May 31, 2013, and related application (collectively, the "Application") of Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") of the substantively consolidated estate of Agape World, Inc., *et al.* (the "Debtor"), by his counsel, SilvermanAcampora LLP, seeking the entry of an order (the "Order") approving a mediator's report (the "Mediator's Report") settling the Trustee's claims against Luis Duarte (the "Defendant"); and upon the affidavit of service filed with the Court; and no objections to the Application or the proposed Order having been filed; and the Court having found that the settlement of the Trustee's claims pursuant to 11 U.S.C. §§105, 502, 544, 548, 550, and 551, New York Debtor and Creditor Law §§273, 274, 275, 276, and 276-a, and New York common law against Defendant to be fair, reasonable, and in the best interests of the Debtor's estate; and sufficient cause having been shown therefor; and after due deliberation and consideration

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

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

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

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

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

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

# **EXHIBIT 2**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
In re:

Agape World, Inc.,  
Agape Merchant Advance LLC,  
Agape Community LLC, Agape  
Construction Management LLC,  
Agape World Bridges LLC, and  
114 Parkway Drive South LLC,

Chapter 7

Case No. 09-70660-478  
Substantively Consolidated

Debtors.  
-----X

Kenneth P. Silverman,  
Chapter 7 Trustee of Agape World, Inc., et al.

Plaintiff,

Adv. Pro. No. 11-08601 (AST)

- against -

Luis Duarte,

Defendant(s).  
-----X

**MEDIATOR'S REPORT**

**Mediator:** I, Ted A. Berkowitz, was the mediator of the  
above captioned adversary proceeding. On March 13, 2013, I conducted a  
mediation of this dispute, and file the following report:

**Mediation was successful** – the essential terms of settlement are as follows, and have been  
agreed to by the parties.

**Terms of Settlement:**

1. Defendant shall pay the Trustee the total sum of \$ 7,000.00, to  
be paid as follows:

- |                          |                 |
|--------------------------|-----------------|
| <u>May 30, 2013</u>      | <u>\$ 1,500</u> |
| <u>August 31, 2013</u>   | <u>\$ 1,500</u> |
| <u>November 30, 2013</u> | <u>\$ 1,500</u> |
| <u>February 28, 2014</u> | <u>\$ 1,500</u> |
| <u>April 30, 2014</u>    | <u>\$ 1,000</u> |

2. (Choose one) [ ] Defendant shall be allowed an unsecured claim of

\$ \_\_\_\_\_ OR [X] Defendant shall waive all claims.

3. Other essential terms:

An additional mediation session has been requested by the parties, and I have agreed to conduct another session, to be held on or before: \_\_\_\_\_ at \_\_\_\_\_

Mediation was unsuccessful.

A translator was used for mediation.

*The Attorney, Mr. Polanco translated.*

By signing below, the parties acknowledge that the above accurately represents the results of the mediation, and, if an agreement was reached, that the essential terms of their settlement is

accurately stated above:

*Silwang Aragon LLC*

Kenneth P. Silverman  
Chapter 7 Trustee

*Robert J. Amell*

[Redacted]

Defendant *LOTS DUARTE*

[Redacted]

*Atty for Defendant*

[Redacted]

*Mediator*