

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

Hearing Date: May 14, 2013  
Time: 2:00 p.m.

Objections Due: May 7, 2013  
Time: 4:00 p.m.

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
In re:

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

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

Debtors.

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

Plaintiff,

Adv. Pro. No.: 10-08266 (DTE)

-against-

CHRISTIAN TAUSSIG,

Defendant.

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

Plaintiff,

Adv. Pro. No.: 11-09122 (DTE)

-against-

CHRISTIAN TAUSSIG and SEA MICHAEL, INC.,

Defendants.  
-----X

**NOTICE OF MOTION UNDER FEDERAL RULE OF BANKRUPTCY  
PROCEDURE 9019(a) FOR AN ORDER APPROVING THE STIPULATION SETTLING  
THE TRUSTEE'S CLAIMS AGAINST CHRISTIAN TAUSSIG AND SEA MICHAEL, INC.**

**PLEASE TAKE NOTICE**, that upon the motion (the "Motion") of Kenneth P. Silverman,  
Esq., the chapter 7 trustee (the "Trustee or "Plaintiff") for the substantively consolidated estate

of Agape World, Inc., *et al.*, by his counsel, SilvermanAcampora LLP, 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 **May 14, 2013 at 2:00 p.m.**, or as soon thereafter as counsel can be heard, seeking entry of an Order granting the Trustee's Motion under Bankruptcy Rule 9019(a) Seeking the Entry of an Order Approving the Stipulation Settling the Trustee's Claims against Christian Taussig and Sea Michael, Inc. A copy of the proposed Order is annexed to the Motion as **Exhibit A.**

**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 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: 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 **May 7, 2013 at 4:00 p.m.**

**PLEASE TAKE FURTHER NOTICE**, that the hearing may be adjourned without further notice other than by announcement of such adjournment in open court.

Dated: Jericho, New York  
April 5, 2013

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

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

**SILVERMANACAMPORA LLP**  
Counsel to Kenneth P. Silverman, Esq.,  
Chapter 7 Trustee  
100 Jericho Quadrangle, Suite 300  
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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 (DTE)  
Substantively Consolidated

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

Debtors.

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

Plaintiff,

Adv. Pro. No.: 10-08266 (DTE)

-against-

CHRISTIAN TAUSSIG,

Defendant.

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

Plaintiff,

Adv. Pro. No.: 11-09122 (DTE)

-against-

CHRISTIAN TAUSSIG and SEA MICHAEL, INC.,

Defendants.

-----X

**TRUSTEE'S MOTION UNDER  
FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019(a)  
SEEKING THE ENTRY OF AN ORDER APPROVING THE STIPULATION SETTLING  
THE TRUSTEE'S CLAIMS AGAINST CHRISTIAN TAUSSIG AND SEA MICHAEL, INC.**

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 (annexed hereto as **Exhibit A**) approving the proposed settlement of the Trustee's claims against Christian Taussig ("Taussig") and Sea Michael, Inc. (collectively with Taussig, the "Defendants") as memorialized in the Stipulation Settling the Trustee's Claims Against Christian Taussig and Sea Michael, Inc. ("Stipulation"), which has been annexed hereto as **Exhibit B**. All parties are encouraged to review the 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 (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 Taussig received certain transfers totaling \$29,671.00 (the "Taussig Transfers") made by the Debtors to Taussig that are avoidable pursuant to 11 U.S.C. §§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 June 11, 2010, the Trustee commenced an adversary proceeding, numbered 10-08259 (DTE), against Taussig (the "Taussig Proceeding") by filing a complaint seeking to avoid the Taussig Transfers pursuant to 11 U.S.C. §§544, 548, 550 and 551, New York Debtor and Creditor Law §§273, 274, 275, 276 and 276-a, and New York common law (the "Taussig Claim").

10. On August 17, 2010, Taussig interposed an answer in the Taussig Proceeding.

11. Moreover, after obtaining a judgment (the "Cyrek Judgment") against Cyrek, Inc., in the amount of \$16,000,000.00,<sup>1</sup> the Trustee determined that Defendants received certain transfers totaling \$130,305.26 (the "Subsequent Transfers," and collectively with the Taussig Transfers, the "Transfers"), made by Cyrek to Defendants, that were recoverable, in partial satisfaction of the Cyrek Judgment pursuant to 11 U.S.C. §§541, 542, 544, and 550(a)(2).

12. On June 6, 2011, the Trustee commenced an adversary proceeding, numbered 11-09122 (DTE), against Defendants by filing a complaint seeking to avoid the Subsequent Transfers pursuant to 11 U.S.C. §§541, 542, 544, and 550(a)(2) (the "550 Claim," and collectively with the Taussig Claim, the "Claims").

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<sup>1</sup> On March 31, 2011, the Court granted judgment against Cyrek, Inc., in adversary proceeding 09-08444 (DTE).

13. Thereafter, the parties engaged in informal discovery related to the Claims and defenses asserted by Defendants. During informal discovery, Defendants provided the Trustee with Certified Financial Statements and other documents related to Defendants financial condition and ability to pay any resulting judgment.

14. The Trustee and Defendants engaged in settlement discussions in an effort to resolve the Claims. In order to avoid the costs, expenses and uncertainty of continued litigation, the parties have now agreed to resolve the Claims upon the terms and conditions contained in the Stipulation.

15. Defendants have offered to pay \$15,000.00 (the "Settlement Sum") to the Trustee in full and final settlement of the Claims.

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

#### **Terms of the Settlement**

17. 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 litigation of the Claims and any resulting judgment efforts.

18. 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 litigate the Claims through trial and enforce a resulting judgment against Defendants.

19. In light of the foregoing and mindful of the costs and risks of litigating the Claims, the Trustee has agreed to accept the Settlement Sum.

### Basis for Relief Requested

20. 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).

21. 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.

*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").

22. 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*, 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

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<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).

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>3</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." *Bell & Beckwith*, 77 B.R. at 612; see also *In re Handler*, 386 B.R. at 421.

23. The Second Circuit in *In re Iridium Operating LLC*<sup>4</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;
- 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.

See *In re Iridium Operating LLC*, 478 F.3d at 462.

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<sup>3</sup> *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983), *cert denied*, 464 U.S. 822 (1983)(quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972), *cert denied*, 409 U.S. 1039 (1972)); See *In re Handler*, 386 B.R. at 420-21.

<sup>4</sup> 478 F.3d 452 (2d Cir. 2007).



24. By offering to voluntarily return the Settlement Sum, Defendants have offered to remit a significant portion of the Transfers for which the Trustee believes Defendants may be liable in satisfaction of the Claims without causing the Debtor's estate to incur significant fees or expenses

25. The Trustee submits that considering the costs and uncertainties associated with trial and judgment enforcement, with special consideration paid to Defendants' financial disclosures, 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**

26. 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, former principal of the Debtors, (iii) Defendants, (iv) Defendants' counsel, (v) the appropriate taxing authorities, and (vi) all parties having filed a Notice of Appearance in this case, and copies have been posted on the Trustee's website located at [www.agapeworldbankruptcy.com](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.

27. 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 authorizing and approving the Stipulation and grant such other further and different relief as this Court deems just and proper.

Dated: Jericho, New York  
April 5, 2013

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

By: s/ David J. Mahoney  
David J. Mahoney  
Anthony C. Acampora  
Members of 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-

CHRISTIAN TAUSSIG,

Defendant.

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

Plaintiff,

-against-

CHRISTIAN TAUSSIG and SEA MICHAEL, INC.,

Defendants.

-----X  
**ORDER UNDER FEDERAL RULE OF BANKRUPTCY  
PROCEDURE 9019(a) APPROVING THE STIPULATION SETTLING  
THE TRUSTEE'S CLAIMS AGAINST CHRISTIAN TAUSSIG AND SEA MICHAEL, INC.**

Upon the Notice of Motion (the "Notice"), April 5, 2013, 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 approving a Stipulation (the "Stipulation") Settling the Trustee's Claims Against Christian Taussig and Sea Michael, Inc.

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

Adv. Pro. No.: 10-08266 (DTE)

Adv. Pro. No.: 11-09122 (DTE)

(collectively, the "Defendants"); 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 Claims against Defendants to be fair, 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 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, Motion and proposed Order, having been provided to: (i) the Office of the United States Trustee; (ii) Nicholas Cosmo, Debtors' former principal; (iii) Defendants; (iv) Defendants' counsel; (v) the appropriate taxing authorities; and (vi) all parties having filed a Notice of Appearance in this case (and copies of which 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 Claims against Defendants as memorialized in the Stipulation is approved, and it is further

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

**SO ORDERED:**

***EXHIBIT B***

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----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.: 10-08266 (DTE)

-against-

CHRISTIAN TAUSSIG,

Defendant.

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

Plaintiff,

Adv. Pro. No.: 11-09122 (DTE)

-against-

CHRISTIAN TAUSSIG and SEA MICHAEL, INC.,

Defendants.

-----X  
**STIPULATION SETTLING THE TRUSTEE'S  
CLAIMS AGAINST CHRISTIAN TAUSSIG AND SEA MICHAEL, INC.**

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").

**Trustee vs. Christian Taussig (10-08266)**

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 Christian Taussig ("Defendant") prior to the filing date.

VIII. On June 11, 2010, the Trustee commenced adversary proceeding number 10-08266 against Defendant by the filing of a complaint, wherein the Trustee asserted that certain transfers totaling \$29,671.00 (the "Taussig Transfers") made to the Defendant are avoidable pursuant to 11 U.S.C. §§105(a), 502, 544, 548, 550 and 551, New York Debtor and Creditor Law §§273, 274, 275, 276 and 276-a and New York Common Law .

**Trustee vs. Christian Taussig and Sea Michael, Inc. (11-09122)**

IX. Thereafter, on June 6, 2011, the Trustee commenced adversary proceeding number 11-09122 against Defendant and Sea Michael, Inc., (hereinafter collectively referred to as "Defendants") by the filing of a complaint, wherein the Trustee asserted that certain transfers totaling \$130,305.26 (the "Subsequent Transfers")<sup>1</sup> made by Cyrek and to Defendants are

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<sup>1</sup> The Taussig Transfers and the Subsequent Transfer are collectively referred to as the "Transfers".

fraudulent transfers under 11 U.S.C. §§105(a), 544, 550 and 551 (the "550 Claims" and collectively the "Trustee Claims").

X. Thereafter, Defendants retained undersigned counsel to defend against the Trustee's Claims.

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

XII. In the spirit of compromise and without any admission of liability, Defendants have offered to remit the sum of \$15,000.00 (the "Settlement Sum") to the Trustee in full and final settlement of the Trustee's Claims in adversary proceeding numbers 10-08266 and 11-09122.

XIII. Based upon the his review of all documentation related to the Transfers and Subsequent 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:

**Defendants' Obligations 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. The Trustee has authorized Defendants to pay the Settlement Sum in five (5) installments. The first installment, in the amount of \$5,000.00 is due upon execution of the Stipulation, on or before April 1, 2013. The second installment, in the amount of \$2,500.00, is due on or before June 1, 2013. The third installment, in the amount of \$2,500.00, is due on or before September 1, 2013. The fourth installment, in the amount of \$2,500.00, is due on or

before December 1, 2013. The final installment, in the amount of \$2,500.00, is due on or before March 1, 2014. All installments shall be remitted 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: Randy J. Schaefer, Esq. Nothing contained herein shall preclude or penalize Defendants from pre-paying any installment or portion of any installment.

3. If Defendants fail to make timely payment of any installment of the Settlement Sum in accordance with paragraph 2, above, or if Defendants' payment is dishonored for any reason whatsoever and Defendants do not cure such default within five (5) business days after written notice sent by regular mail to Defendants and Defendants' 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 Defendants for the full amount of the Transfers, *ie.*, One Hundred Fifty-Nine Thousand Nine Hundred Seventy-Six and 25/100 Dollars (\$159,976.25), 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) Christian Taussig at 79 North Emerson Avenue, Copiague, New York 11726; (ii) Sea Michael, Inc., at 79 North Emerson Avenue, Copiague, New York 11726, Attention: Christian Taussig; and (iii) Defendants' counsel, Peter J. Creedon, Esq., at Creedon & Gill, P.C., 24 Woodbine Avenue, Suite 14, Northport, New York 11768.

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 (14) day after the date of the entry of the Approval Order, the Trustee will transfer each installment of 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.

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.

**Releases**

7. Upon the entry of the Approval Order, and the Trustee's receipt and clearance of the full Settlement Sum, the Trustee and the estate release and forever discharge Defendants, their 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.

8. Upon the entry of the Approval Order, Defendants release, discharge and waive any and all claims against the Debtor's Estate, the Trustee and the Trustee's agents, attorneys, assigns and successors-in-interest from any and all claims, claims for relief, demands, costs, expenses, damages, liabilities, and obligations of any nature.

9. Upon the entry of the Approval Order, Defendants release, discharge and waive 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.

**No Admission of Criminal or Civil Liability**

10. 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 Defendants fail to make timely payment of the Settlement Sum.

**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 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.

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 Defendants are each responsible for their own costs and attorneys' fees incurred in connection with this proceeding.

Dated: Jericho, New York  
March \_\_, 2013  
April 14,

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

By: s/ David J. Mahoney  
Anthony A. Acampora  
David J. Mahoney  
Members of the Firm  
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Dated: Northport, New York  
March \_\_, 2013

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March 25, 2013

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Dated: Copiague, New York  
March 25, 2013

Sea Michael, Inc.  
Defendant

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