

SILVERMANACAMPORA LLP
Attorneys for Kenneth P. Silverman, Esq.,
Chapter 7 Trustee
100 Jericho Quadrangle, Suite 300
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(516) 479-6300
Jay S. Hellman
Brett S. Silverman
Jessi L. Kleinman

Hearing Date: March 20, 2014
Time: 10:00 a.m.

Objections Due: March 13, 2014
Time: 4:00 p.m.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re:

AGAPE WORLD, INC., *et al.*,

Debtors.

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

-----X

**NOTICE OF HEARING ON TRUSTEE'S
MOTION PURSUANT TO §§105 AND 502(J) OF
TITLE 11, UNITED STATES CODE AND RULE 3008
OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE
SEEKING RECONSIDERATION OF CERTAIN ORDERS GRANTING
CERTAIN OMNIBUS OBJECTIONS TO CERTAIN CLAIMS FILED AGAINST
THE DEBTORS, AND THE ENTRY OF AN ORDER MODIFYING THOSE ORDERS**

PLEASE TAKE NOTICE, Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") of the above-captioned substantively consolidated bankruptcy estate of Agape World, Inc., *et al.* (collectively, the "Debtors"),¹ by and through his attorneys, SilvermanAcampora LLP, will move (the "Motion") before the Honorable Dorothy T. Eisenberg, United States Bankruptcy Judge, United States Bankruptcy Court for the Eastern District of New York, located at 290 Federal Plaza, Central Islip, New York on **March 20, 2014 at 10:00 a.m.** (the "Hearing") on the Motion seeking (a) reconsideration of certain Orders (each an "Omnibus Order") entered by the Court that granted certain omnibus objections filed by the Trustee to certain proofs of claim filed against the Debtors' estate (collectively, the "Reconsidered Claims"), and (b) the entry of an Order modifying the Omnibus Orders as set forth on **Exhibit A** attached thereto. A copy of the Motion and all Exhibits, including the proposed order is enclosed with this Notice.

¹ The substantively consolidated estates are: Agape World, Inc., Agape Merchant Advance LLC, Agape Community LLC, Agape Construction Management, LLC, Agape World Bridges LLC, and 114 Parkway Drive South LLC.

PLEASE TAKE FURTHER NOTICE, that responses, if any, to the relief requested in the Motion 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 for the Eastern District of New York, Alfonse M. D'Amato 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: Brett S. Silverman, Esq., and (v) mailed to the Office of the United States Trustee, 560 Federal Plaza, Central Islip, New York 11722, so as to be received no later than **4:00 p.m. on March 13, 2014**.

PLEASE TAKE FURTHER NOTICE, that the Hearing may be adjourned without further notice other than the announcement of such adjournment in open Court.

PLEASE TAKE FURTHER NOTICE, that you need not appear at the Hearing if you do not object to the relief requested in the Motion.

Dated: Jericho, New York
February 19, 2014

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

By: s/ Jay S. Hellman
Jay S. Hellman
Member of the Firm
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In re:

AGAPE WORLD, INC., *et al.*,

Debtors.

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Chapter 7

Case No.: 09-70660 (DTE)

Substantively Consolidated

**TRUSTEE'S MOTION PURSUANT TO §§105 AND 502(J) OF
TITLE 11, UNITED STATES CODE AND RULE 3008 OF THE FEDERAL RULES
OF BANKRUPTCY PROCEDURE SEEKING RECONSIDERATION OF CERTAIN ORDERS
GRANTING CERTAIN OMNIBUS OBJECTIONS TO CERTAIN CLAIMS FILED AGAINST
THE DEBTORS, AND THE ENTRY OF AN ORDER MODIFYING THOSE ORDERS**

**To: THE HONORABLE DOROTHY T. EISENBERG
UNITED STATES BANKRUPTCY JUDGE:**

Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") of the above-captioned substantively consolidated bankruptcy estate of Agape World, Inc., *et al.* (collectively, the "Debtors"),¹ by and through his attorneys, SilvermanAcampora LLP, respectfully submits this motion (the "Motion") pursuant to §§105 and 502(j) of Title 11, United States Code (the "Bankruptcy Code") and Rule 3008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), seeking (a) reconsideration of certain Orders (each an "Omnibus Order") entered by the Court that granted certain omnibus objections filed by the Trustee to certain proofs of claim filed against the Debtors' estate (collectively, the "Reconsidered Claims"), and (b) the entry of an Order modifying the Omnibus Orders as set forth on **Exhibit A** attached hereto.

¹ The substantively consolidated estates are: Agape World, Inc., Agape Merchant Advance LLC, Agape Community LLC, Agape Construction Management, LLC, Agape World Bridges LLC, and 114 Parkway Drive South LLC.

BACKGROUND

1. On February 5, 2009 (the "Petition Date"), an involuntary Chapter 7 petition was filed against Agape World, Inc. ("AWI") under Bankruptcy Code §303 in the United States Bankruptcy Court for the Eastern District of New York (the "Court").

2. On February 12, 2009, the Court granted the motion of petitioning creditors and directed the United States Trustee to appoint an interim trustee and, by Notice of Appointment, Kenneth P. Silverman, Esq., was appointed the interim Trustee of the AWI estate and has since duly qualified and is now the permanent Trustee in this case.

3. On March 4, 2009, the Court issued an Order for relief in the AWI case.

4. On April 12, 2009, the Court entered an Order substantively consolidating Agape Merchant Advance LLC, Agape Community LLC, Agape Construction Management LLC, Agape World Bridges LLC, and 114 Parkway Drive South LLC (together with "AWI", the "Debtors"), in the Debtors' case.

5. By Notice of Commencement dated March 27, 2009, and pursuant to Bankruptcy Rules 2002 and 3003(a)(3), the Bankruptcy Court established June 18, 2009 at 5:00 p.m. as the deadline by which creditors must file proofs of claim in the Debtors' case for claims incurred prior to the Petition Date (the "Bar Date").

6. As of the Bar Date, more than 5,000 proofs of claim filed against the Debtors' estate (the "Claims").

7. As of the date hereof, the Court has entered Orders approving Fifty-Nine (59) omnibus objections filed by the Trustee, which objected to certain of the Claims, and which sought, among other relief, to disallow, reduce or reclassify such Claims.

RELIEF REQUESTED

8. The Trustee seeks an order reconsidering and modifying the Omnibus Orders as more fully described on Exhibit A. Each Reconsidered Claim should be further modified because the holders of the Reconsidered Claims provided additional information and support to the Trustee after the entry of the Omnibus Order.

CLAIM ADMINISTRATION

9. The Trustee is required, under Bankruptcy Code §704(a)(4), to examine proofs of claim and object to the allowance of any proof of claim that is improper. In furtherance of these duties, since the Bar Date, the Trustee and his professionals, including Navigant Consulting, Inc., the Trustee's retained accountants, have examined, analyzed and reconciled the Claims and any supporting documents as maintained by Rust Omni, successor claims and noticing agent to The Garden City Group, against the Debtors' books and records (the "Reconciliation").

10. Specifically, the Trustee and his professionals reviewed, analyzed and reconciled all deposits made into the Debtors' estate by each claimant (collectively, the "Deposits"), whether evidence of such Deposits was (a) included with the supporting documents to the Claim, or (b) contained in the Debtors' books and records. Once the Deposits were validated, the Trustee subtracted any and all withdrawals attributed to each claimant, if any, which generated a net investment amount for each claimant (the "Net Investment Amount").

11. Based on the Reconciliation, the Trustee's counsel sent correspondence to each claimant that sought to amicably resolve their claim by requesting that each claimant either produce supporting documentation to substantiate any or all of the amounts asserted in such claim, or modify the claim as requested by the Trustee (collectively, the "Settlement Letters").

12. Because the Settlement Letters were not returned or responded to by the respective claimants, the Trustee objected to those Claims on various grounds, in various omnibus objections, which were granted by the Court in the form of the Omnibus Orders.

13. After the entry of the Omnibus Orders, the holders of the Reconsidered Claims provided additional information (the "Additional Information") to the Trustee, which, after a thorough analysis, demonstrates that the current status of the Reconsidered Claims must be modified.

THE BASIS FOR THE RELIEF REQUESTED

14. Bankruptcy Code §105 grants the Court the authority to issue "any order, process or judgment that is necessary or appropriate to carry out the provisions of this title."

15. Bankruptcy Code §502(j) provides in relevant part that:

[a] claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case.²

16. What may constitute cause under Bankruptcy Code §502(j) “falls upon the equitable judgment of the court and is within the sound discretion of the court.”³

17. Bankruptcy Rule 3008 provides:

[a] party in interest, may move for reconsideration of an order allowing or disallowing a claim against the estate. The court after a hearing on notice shall enter an appropriate order.

18. Bankruptcy courts, when asked to reconsider allowance or disallowance of proofs of claim, have broad discretion under Bankruptcy Code §502(j) and Bankruptcy Rule 3008.⁴

19. “[I]t has been frequently noted that ‘the bankruptcy court’s discretion in deciding whether to reconsider a claim is virtually plenary.’”⁵

20. If reconsideration is granted, the court may readjust the claim “according to the equities of the case.”⁶

21. As stated above, the Trustee’s analysis of the Additional Information demonstrates that the Reconsidered Claims must be modified as set forth on Exhibit A hereto.

² 11 U.S.C. §502(j).

³ *In re Coudert Bros. LLP*, 2009 WL 2928911, *1 (Bankr. S.D.N.Y. 2009)(quoting *In re Flagstaff Foodservice Corp.*, 56 B.R. 910, 913 (S.D.N.Y.1986)); see also *In re Smith*, 305 Fed.Appx. 683, 2008 WL 5220903 (2d Cir. 2008); *In re Dana Corp., et al.*, 2008 WL 724220, *2 (Bankr. S.D.N.Y. 2008); *In re Johansmeyer*, 231 B.R. 467, 470 (E.D.N.Y. 1999); Advisory Committee Note to Fed. R. Bankr.P. 3008 (“Reconsideration of a claim that has been previously allowed or disallowed after objection is discretionary with the court.”).

⁴ See *New York Cmty. Bank v. Smith (In re Smith)*, 2008 U.S. App. Lexis 25339, *3 (2d. Cir. 2008).

⁵ *Coudert Bros. LLP, supra*, note 3, at *1 (quoting *In re Enron Corp.*, 352 B.R. at 367 (“As the Advisory Committee Note to the Bankruptcy Rule 3008 evidences, the bankruptcy court’s discretion in deciding whether to reconsider a claim is virtually plenary...”)); see also *In re Dana Corp., supra*, at *2.

⁶ See *In re Smith, supra*, note 5, at *3-4; see also *In re Tender Loving Care Health Care Servs., Inc.*, 377 B.R. 798 (E.D.N.Y. 2007).

22. Based upon his analysis of the Additional Information, the Trustee believes that “cause” exists for the Court’s reconsideration and modification of the Omnibus Orders and the respective Reconsidered Claims. Furthermore, the Trustee respectfully submits that, in the interests of justice, and based upon the “equities” of these cases, the Court should modify the Omnibus Orders and the respective Reconsidered Claims.

23. Accordingly, the Trustee respectfully requests that the Court modify the Omnibus Orders as set forth on Exhibit A hereto.

NOTICE

24. The Trustee has served the Notice of this Motion, the Motion and all exhibits hereto, on: (i) the Office of the United States Trustee; and (ii) all holders of the Reconsidered Claims. Moreover copies of the foregoing documents have been posted on the Trustee’s website located at www.agapeworldbankruptcy.com. The Trustee respectfully submits that the Trustee’s service complies with this Court’s Order Establishing Noticing Procedures entered on July 8, 2009, and is otherwise sufficient.

CONCLUSION

25. No prior application for the relief sought herein has been made by the Trustee to this or any other Court.

WHEREFORE, the Trustee respectfully requests that the Court entered an Order substantially in the form attached hereto as **Exhibit B**, modifying the Omnibus Orders as set forth on Exhibit A.

Dated: Jericho, New York
February 19, 2014

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

By: s/ Jay S. Hellman
Jay S. Hellman
Member of the Firm
100 Jericho Quadrangle - Suite 300
Jericho, New York 11753
(516) 479-6300

EXHIBIT A

Exhibit A
Claims to be Reconsidered and Allowed

<u>Claimant Name and Address</u>	<u>Claim No.</u>	<u>Allowed General Unsecured Claim Amount</u>	<u>Reason for Reconsideration</u>
MGN INVESTMENTS, LLC 160 CROWN ST BROOKLYN, NY 11225	289	\$40,100.00	Claim 289 was previously reduced on Omnibus Objection 25 to \$38,925.00. Subsequently, Claimant provided additional documentation in support of the reconsidered allowed general unsecured amount.
DAN INVESTMENTS LLC 160 CROWN ST BROOKLYN, NY 11225	290	\$25,514.00	Claim 290 was previously reduced on Omnibus Objection 25 to \$10,618.00. Subsequently, Claimant provided additional documentation in support of the reconsidered allowed general unsecured amount.
STELLAKIS, JOHN CHARLES 15 COLLECTOR LANE LEVITTOWN, NY 11756	894	\$10,000.00	Claim 894 was previously expunged on Omnibus Objection 2 as duplicative of claim 893. Subsequently, Claimant provided documentation demonstrating Claim 894 is not duplicative and should be allowed in the reconsidered general unsecured amount.
JAMAROW ASSOCIATES LLC- (JAMES R REISER) C/O JAMES R REISER 11 COTTONTAIL RD MELVILLE, NY 11747	1908	\$303,175.00	Claim 1908 was previously expunged on Omnibus Objection 32 as duplicative of claim 3733. Subsequently, Claimant provided documentation demonstrating Claim 1908 is not duplicative and should be allowed in the reconsidered general unsecured amount.

Exhibit A
Claims to be Reconsidered and Allowed

<u>Claimant Name and Address</u>	<u>Claim No.</u>	<u>Allowed General Unsecured Claim Amount</u>	<u>Reason for Reconsideration</u>
CHETRAM, NEIL 3675 PEACEFUL VALLEY DR CLERMONT, FL 34711	2763	\$50,000.00	Claim 2763 was previously reduced on Omnibus Objection 28 to \$15,000.00. Subsequently, Claimant provided additional documentation in support of the reconsidered allowed general unsecured amount.
STEPHAN-BLANK, MICHELLE 1754 STARCREST PL. SAN MARCOS, CA 92078	4070	\$26,282.55	Claim 4070 was previously expunged on Omnibus Objection 57 based on a net benefit received. Subsequently, Claimant provided additional documentation demonstrating Claim 4070 should be allowed in the reconsidered general unsecured amount.
LOPEZ, OMAR 5 ANCHOR DR MASSAPEQUA, NY 11758	4178	\$5,000.00	Claim 4178 was previously expunged on Omnibus Objection 53 based on a net benefit received. Subsequently, Claimant provided additional documentation demonstrating Claim 4178 should be allowed in the reconsidered general unsecured amount.
APPARATTO, JOSE A 334 EDGEWOOD CT KISSIMMEE, FL 34759	376	\$25,041.00	Claim 376 was previously reduced on Omnibus Objection 25 to \$5,041.00. Subsequently, Claimant provided additional documentation in support of the reconsidered allowed general unsecured amount.

Exhibit A
Claims to be Reconsidered and Allowed

<u>Claimant Name and Address</u>	<u>Claim No.</u>	<u>Allowed General Unsecured Claim Amount</u>	<u>Reason for Reconsideration</u>
THOMAS + SUSAN VAN DE VEERDONK 8 LOOKOUT PASS PUTNAM VALLEY, NY 10579	2905	\$602,115.00	Claim 2905 was previously reduced on Omnibus Objection 28 to \$522,115.00. Subsequently, Claimant provided additional documentation in support of the reconsidered allowed general unsecured amount.
RODRIGUEZ, ERNESTO 7927 NW 188TH LN MIAMI LAKES, FL 33015	2728	\$69,930.53	Claim 2728 was previously expunged on Omnibus Objection 41 based on a net benefit received. Subsequently, Claimant provided additional documentation demonstrating Claim 2728 should be allowed in the reconsidered general unsecured amount.
AMATO, JAMES 10 SAN MARCOS DR MONROE, NY 10950	1406	\$7,450.00	Claim 1406 was errantly expunged on Omnibus Objection 5. The Trustee seeks reconsideration of the claim based on the subsequent letter agreement dated November 27, 2013, entered into by the Trustee and Claimant.
DAVIS, DONALD 23 LAKE AVE CENTER MORICHES, NY 11934	131	\$71,760.38	Claim 131 was errantly reduced on Omnibus Objection 48. The Trustee seeks reconsideration of the claim based on the subsequent letter agreement dated November 27, 2013, entered into by the Trustee and Claimant.

EXHIBIT B

This Order relates to a hearing
Held on March 20, 2014

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re:

AGAPE WORLD, INC., *et al.*,

Debtors.
-----X

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

**ORDER GRANTING TRUSTEE'S
MOTION PURSUANT TO §§105 AND 502(J) OF
TITLE 11, UNITED STATES CODE AND RULE 3008
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SEEKING RECONSIDERATION OF CERTAIN ORDERS GRANTING
CERTAIN OMNIBUS OBJECTIONS TO CERTAIN CLAIMS FILED AGAINST
THE DEBTORS, AND THE ENTRY OF AN ORDER MODIFYING THOSE ORDERS**

Upon the motion dated February 19, 2014 (the "Motion"), filed by Kenneth P. Silverman, Esq., the chapter 7 trustee (the "Trustee") of the above-captioned substantively consolidated bankruptcy estate of Agape World, Inc., *et al.* (collectively, the "Debtors"),¹ pursuant to 11 U.S.C. §§105(a) and 502(j) (the "Bankruptcy Code") and Rule 3008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") seeking (a) reconsideration of certain Orders (each an "Omnibus Order") entered by the Court that granted certain omnibus objections filed by the Trustee to certain proofs of claim filed against the Debtors' estate (collectively, the "Reconsidered Claims"), and (b) the entry of an Order modifying the Omnibus Orders as set forth on **Exhibit 1** attached hereto; and a hearing on the Motion having been held before the Honorable Dorothy T. Eisenberg, United States Bankruptcy Judge on March 20, 2014 at 10:00 a.m. (the "Hearing"), the transcript of which is incorporated herein by reference; and the Trustee having appeared at the Hearing in support of the Motion, by and through his attorneys; and due and proper notice of the Motion and the Hearing having been given to each of the claimants listed on **Exhibit A** to the Motion (collectively, the "Claimants"); and upon the Affidavit of Service

¹ The substantively consolidated estates are: Agape World, Inc., Agape Merchant Advance LLC, Agape Community LLC, Agape Construction Management, LLC, Agape World Bridges LLC, and 114 Parkway Drive South LLC.

of the Motion on file with the Court; and all objections and responses to the Motion having been resolved or overruled; and it appearing that no further notice need be given or required; and after due deliberation and sufficient cause appearing for the relief requested, it is hereby

FOUND, that the Motion and **Exhibit A** thereto support reconsideration of the Omnibus Orders under both Bankruptcy Rule 3008 and Bankruptcy Code §502(j); and, it is further

FOUND, that the modifications of the Reconsidered Claims as set forth in the Motion and **Exhibit A** thereto are necessary in light of the equities of these cases; and, it is hereby

ORDERED, that the relief requested in the Motion is granted to the extent provided for herein; and, it is further

ORDERED, that the Omnibus Orders and Reconsidered Claims listed on **Exhibit 1** annexed hereto are hereby modified as set forth on and in accordance with **Exhibit 1** annexed hereto; and, it is further

ORDERED, that the Trustee, is hereby authorized to do such things, expend such funds and execute such documents as to effectuate the terms and conditions of this Order.