

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

**Hearing Date: July 18, 2013**  
**Time: 2:00 p.m.**

**Objections Due: July 11, 2013**  
**Time: 5:00 p.m.**

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

-----X  
In re:

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

Debtors.

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

Plaintiff,

-against-

THE DAVID MCGINNIS IRREVOCABLE  
TRUST OF 1991,

Defendant.  
-----X

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

Adv. Pro. No.: 10-08347 (DTE)

**NOTICE OF MOTION FOR AN ORDER UNDER FEDERAL RULE OF BANKRUPTCY  
PROCEDURE 9019(a) APPROVING THE STIPULATION SETTLING THE TRUSTEE'S  
PREFERENCE CLAIM AGAINST THE DAVID MCGINNIS IRREVOCABLE TRUST OF 1991**

**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, 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 **July 18, 2013 at 2:00 p.m.**, or as soon thereafter as counsel can be heard, seeking entry of an Order under Bankruptcy Rule 9019(a) Approving the Stipulation Settling the Trustee's

Preference Claim against The David McGinnis Irrevocable Trust of 1991. 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) 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 **July 11, 2013 at 5:00 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  
June 21, 2013

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

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

**SILVERMANACAMPORA LLP**

Counsel to Kenneth P. Silverman, Esq.,  
Chapter 7 Trustee  
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(516) 479-6300  
Anthony C. Acampora, Esq.  
David J. Mahoney, Esq.

**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.: 10-08347 (DTE)

-against-

THE DAVID MCGINNIS IRREVOCABLE  
TRUST OF 1991,

Defendant.

-----X

**MOTION FOR AN ORDER UNDER FEDERAL RULE OF BANKRUPTCY  
PROCEDURE 9019(a) APPROVING THE STIPULATION SETTLING THE TRUSTEE'S  
PREFERENCE CLAIM AGAINST THE DAVID MCGINNIS IRREVOCABLE TRUST OF 1991**

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 (attached as **Exhibit 1**) approving the settlement of the Trustee's preference claim against The David McGinnis Irrevocable Trust of 1991 (the "Defendant") as memorialized in the Stipulation Settling the Trustee's Preference Claim Against The David McGinnis Irrevocable Trust of 1991 (the "Stipulation"), which is

attached as **Exhibit 2**. 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 certain transfers totaling Four Hundred Ninety Thousand Nine Hundred Twenty-Five and 00/100 (\$490,925.00) Dollars (the "Transfers") from the Debtors within 90 days before the Petition Date.

9. On August 25, 2010, the Trustee commenced this adversary proceeding against Defendant by the filing of a complaint (Adv. Pro. No. 10-08347) (the "Adversary Proceeding"), asserting that the Transfers are avoidable pursuant to 11 U.S.C. §§547 and 550 (the "Preference Claim").

10. On October 11, 2010, Defendant interposed an answer asserting general denials and several affirmative defenses.

11. Thereafter, the parties engaged in informal discovery related to the Trustee's Preference Claim and the defenses asserted by Defendant.

12. Defendant has offered to pay \$245,462.50 (the "Settlement Sum") to the Trustee in full and final settlement of the Trustee's Preference Claim.

13. Based upon Defendant's defenses to the Trustee's Preference Claim and the Trustee's review of all documentation related to the Transfers and his investigation of all attendant factors, the Trustee has, in his business judgment, agreed to settle the Trustee's Preference Claim.

14. 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 Trustee's Preference Claim is a reasonable exercise of the Trustee's business judgment and is in the best interest of the Debtors' 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 creditor's benefit without incurring additional legal fees and the risks inherent with prosecuting the Trustee's Preference Claim and collecting on any resulting judgment efforts.

### Basis for Relief Requested

16. 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).

17. 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>

18. 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

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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 & 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.

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."

19. The Second Circuit in *Iridium*<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;
- 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>

20. The Settlement Sum represents a guaranteed recovery of 50% of the Transfers for which the Trustee believes Defendant may be liable in satisfaction of the Trustee's Preference Claim.

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<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).

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

21. The Trustee submits that considering the costs and uncertainties associated with trial and the resulting litigation that would be necessary to either enforce the judgment against the trust or its beneficiary, it is unlikely that further litigation would result in a “net benefit” of the Debtors’ estate 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**

22. 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) Defendant’s counsel; (v) the Internal Revenue Service and other governmental agencies to the extent required by the Bankruptcy Rules and the Local Rules; 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.

23. 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  
June 21, 2013

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

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

# **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-

THE DAVID MCGINNIS IRREVOCABLE  
TRUST OF 1991,

Defendant.  
-----X

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

Adv. Pro. No.: 10-08347 (DTE)

**ORDER UNDER FEDERAL RULE OF BANKRUPTCY  
PROCEDURE 9019(a) APPROVING THE STIPULATION SETTLING THE TRUSTEE'S  
PREFERENCE CLAIM AGAINST THE DAVID MCGINNIS IRREVOCABLE TRUST OF 1991**

Upon the Notice of Motion (the "Notice"), dated June 21, 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 the Stipulation Settling the Trustee's Preference Claim against The David McGinnis Irrevocable Trust of 1991 (the "Defendant") and upon the Affidavit of Service filed with the Court; and no objections to the Motion or the proposed Order having been filed; and the Court having found that settling the Trustee's claim arising under 11 U.S.C. §§547 and 550, 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 service of the Notice and Motion and proposed Order, having been provided to: (i) the Office of the United States Trustee; (ii) Nicholas Cosmo, Debtors' former principal; (iii) Defendant; (iv) Defendant's counsel; (v) the Internal Revenue Service and other governmental agencies to the extent required by the Bankruptcy Rules and the Local Rules; 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) 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 Trustee's Claim against Defendant as memorialized in the Stipulation is approved, and it is further

**ORDERED**, that the Trustee is authorized to take such steps, execute such documents and expend such funds as may be reasonably necessary to implement the terms 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,

Debtors.

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

Plaintiff,

-against-

THE DAVID MCGINNIS IRREVOCABLE  
TRUST OF 1991,

Defendant.  
-----x

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

Adv. Pro. No. 10-08347 (DTE)

**STIPULATION SETTLING THE TRUSTEE'S PREFERENCE  
CLAIM AGAINST THE DAVID MCGINNIS IRREVOCABLE TRUST OF 1991**

- I. On February 5, 2009 (the "Filing Date"), an involuntary chapter 7 petition was filed by four petitioning creditors (the "Petitioning Creditors") pursuant to 11 U.S.C. §303(b), against Agape World, Inc. ("AWI"), in the United States Bankruptcy Court for the Eastern District of New York.
- II. On February 9, 2009, the Petitioning Creditors filed a motion to appoint an interim chapter 7 trustee under 11 U.S.C. §303(g).
- III. On February 12, 2009, the Court granted the Petitioning Creditors' motion and entered an order directing the United States Trustee's Office to immediately appoint an interim chapter 7 trustee in the AWI case.

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

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

VI. On April 14, 2009, the Court issued an Order substantively consolidating AWI, Agape Merchant Advance LLC, Agape Community LLC, Agape Construction Management, LLC, Agape World Bridges LLC, and 114 Parkway Drive South LLC (collectively, the "Debtors").

VII. The Trustee and his counsel have investigated the financial affairs of the Debtors, including a detailed analysis of the extent and validity of certain transfers made by the Debtors to The David McGinnis Irrevocable Trust of 1991 ("Defendant") within 90 days prior to the Filing Date.

VIII. On August 25, 2010, the Trustee commenced this adversary proceeding against Defendant by the filing of a complaint, wherein the Trustee asserted that certain transfers totaling \$490,925.00 (the "Preferential Transfers") made by the Debtors to the Defendant within 90 days prior to the Filing Date are avoidable pursuant to 11 U.S.C. §§547 and 550 (the "Claim").

IX. Thereafter, Defendant retained its undersigned counsel to defend against the Claims.

X. The parties engaged in informal discovery related to the Claim and the defenses asserted by Defendant.

XI. In the spirit of compromise and without any admission of liability, Defendant has offered to remit the sum of \$245,462.50 (the "Settlement Sum") to the Trustee in full and final settlement of the Claim.

XII. Based upon the his review of all documentation related to the Preferential Transfers and his investigation of all attendant factors, the Trustee has, in his business judgment, agreed to settle the Trustee's Claim upon the following terms and conditions, which

the Trustee believes are fair and reasonable, especially in light of the costs and uncertainty associated with litigation.

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and among the parties hereto, that the Trustee's Claims be resolved upon the terms and conditions set forth herein as follows:

**Defendant's Obligation to Pay the Settlement Sum**

1. This Stipulation (the "Stipulation") is subject to the approval of the United States Bankruptcy Court for the Eastern District of New York (the "Approval Order").
2. The Trustee has authorized Defendant to pay the Settlement Sum in eleven (11) installments (each, an "Installment" and collectively, the "Installments") as set forth in the annexed **Schedule A**. Defendant will remit each Installment 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 Defendant from pre-paying any installment or portion of any installment.
3. If Defendant fails to make timely payment of any Installment of the Settlement Sum in accordance with paragraph 2 and Schedule A, or if Defendant's payment is dishonored for any reason whatsoever and Defendant does not cure such default within ten (10) business days after written notice is sent by Federal Express or other reputable overnight courier to Defendant and Defendant's Counsel at the addresses set forth herein, then the Trustee shall be entitled to move before the Bankruptcy Court, without further notice and upon the affidavit by the Trustee attesting to the default (a) for the entry of a judgment against Defendant for Four Hundred Ninety Thousand Nine Hundred Twenty-Five and 00/100 (\$490,925.00) Dollars, 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 to (i) Defendant at 324 Rivershire Court, Lincolnshire, Illinois 60069, Attn: Olin David McGinnis,



Trustee; and (ii) Defendant's counsel at Jaspan Schlesinger LLP, 300 Garden City Plaza, Garden City, New York 11530, Attn: Shannon Anne Scott, Esq.

4. Any Installments received prior to the entry of the Approval Order 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 Installments 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 Installments to Defendant 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 Settlement Sum, the Trustee and the estate release and forever discharge Defendant, its 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 Claim. For purposes of clarification, except for the Claim, 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).

8. Upon entry of the Approval Order, and except as set forth in paragraphs 9 through and including 11 below, Defendant releases, discharges and waives any and all claims against the Debtors' Estate, the Trustee and the Trustee's agents, attorneys, assigns and

successors-in-interest from any and all claims, claims for relief, demands, costs, expenses, damages, liabilities, and obligations of any nature.

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

9. Upon entry of the Approval Order and the Trustee's receipt and clearance of the Settlement Sum, the Trustee and the estate specifically release, discharge and waive the Second Claim for Relief to disallow any proof of claim timely filed by Defendant pursuant to Bankruptcy Code §502(d).

10. The parties to the Stipulation acknowledge and agree that notwithstanding the release language contained in paragraphs 7 through 9, the Stipulation and the settlement memorialized herein are not intended, and should not be interpreted to otherwise release, waive or discharge either parties' rights, defenses, claims or objections with respect to any proof of claim that was timely-filed by Defendant in the Debtors' substantively-consolidated case. For the purposes of clarification, by entering into this Stipulation, the Trustee has not, is not intending and shall not be deemed to have validated, approved or otherwise allowed any proof of claim previously filed by Defendant.

11. Upon payment of the Settlement Sum, but no more than sixty (60) days after payment of the Settlement Sum, Defendant shall have the right to file and serve on Trustee's counsel a proof of claim or an amended proof of claim including the amount of the Settlement Sum paid hereunder, pursuant to Bankruptcy Code §502(h). Defendant acknowledges and agrees that its Bankruptcy Code §502(h) claim shall be disallowed if it is not filed and served on Trustee's counsel within sixty (60) days of payment.

**No Admission of Criminal or Civil Liability**

12. It is understood and agreed that this Stipulation is entered into to avoid costly and protracted litigation. Neither the execution of this Stipulation, nor the payment of the Settlement Sum shall be construed as an admission of any criminal or civil liability on Defendant's part. For clarification, this paragraph is not intended and shall not be deemed to

affect Defendant's obligation to make timely payment of the Settlement Sum or adversely affect the Trustee's rights and remedies under paragraph 3 in the event that Defendant fails to make timely payment of any Installment of the Settlement Sum.

**Miscellaneous**

13. 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.

14. 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.

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

16. 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.

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

Dated: Jericho, New York  
June \_\_, 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

Dated: Garden City, New York  
June 19, 2013

**JASPAN SCHLESINGER LLP**  
Attorneys for Defendant

By: s/ Shannon Anne Scott  
Shannon Anne Scott  
300 Garden City Plaza  
Garden City, New York 11530  
(516) 746-8000

**SCHEDULE A**

<b>Date</b>	<b>Amount</b>
Upon Execution	\$122,732.50
July 15, 2013	\$12,273.00
August 15, 2013	\$12,273.00
September 15, 2013	\$12,273.00
October 15, 2013	\$12,273.00
November 15, 2013	\$12,273.00
December 15, 2013	\$12,273.00
January 15, 2014	\$12,273.00
February 15, 2014	\$12,273.00
March 15, 2014	\$12,273.00
April 15, 2014	\$12,273.00