

**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: July 26, 2013**  
**Time: 9:30 a.m.**

**Objections Due: July 23, 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.

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,

-against-

DIANE CAGGINO,

Adv. Pro. No.: 11-08861 (AST)

JOANN DISTEFANO,

Adv. Pro. No.: 11-08586 (AST)

JO-ANN DISTEFANO, individually and  
As Trustee of EVERSHPAR TRUST

Adv. Pro. No.: 11-08849 (AST)

EVERSHARP CONSULTING, INC.,

Adv. Pro. No.: 11-09527 (AST)

Defendants.  
-----X

**NOTICE OF PRESENTMENT OF  
PROPOSED ORDER UNDER BANKRUPTCY RULE  
9019(a) APPROVING A STIPULATION SETTLING THE TRUSTEE'S  
CLAIMS AGAINST DIANE CAGGINO, JOANN DISTEFANO, JO-ANN DISTEFANO,  
individually and as Trustee of EVERSHPAR TRUST, and EVERSHPAR CONSULTING, INC.**

**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 **July 26, 2013 at 9:30 a.m.**, seeking approval of the stipulation settling the Trustee's claims against Diane Caggino, Joann DiStefano, Jo-Ann DiStefano, individually and as Trustee of Eversharp Trust, and Eversharp Consulting, Inc. 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: David J. Mahoney; 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 **July 23, 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  
June 21, 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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Chapter 7 Trustee  
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David J. Mahoney, Esq.

**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,

-against-

DIANE CAGGINO,

Adv. Pro. No.: 11-08861 (AST)

JOANN DISTEFANO,

Adv. Pro. No.: 11-08586 (AST)

JO-ANN DISTEFANO, individually and  
As Trustee of EVERSHPAR TRUST

Adv. Pro. No.: 11-08849 (AST)

EVERSHARP CONSULTING, INC.,

Adv. Pro. No.: 11-09527 (AST)

Defendants.

-----X

**TRUSTEE’S APPLICATION UNDER  
BANKRUPTCY RULE 9019(a) SEEKING THE ENTRY OF  
AN ORDER APPROVING A STIPULATION SETTLING THE TRUSTEE’S  
CLAIMS AGAINST DIANE CAGGINO, JOANN DISTEFANO, JO-ANN DISTEFANO,  
individually and as Trustee of EVERSHPAR TRUST, and EVERSHPAR CONSULTING, 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 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, 502, 541, 542, 544, 548, 550, and 551, New York Debtor and Creditor Law §§273, 274, 275, 276, and 276-a, and New York common law against Diane Caggino, Joann DiStefano, Jo-Ann DiStefano, individually and as Trustee of Eversharp Trust, and Eversharp Consulting, Inc., and as memorialized in the Stipulation Settling the Trustee's Claims Against Diane Caggino, Joann DiStefano, Jo-Ann DiStefano, individually and as Trustee of Eversharp Trust, and Eversharp Consulting, Inc. (the "Stipulation"), which is annexed hereto as **Exhibit 2**. All parties are encouraged to review the annexed 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 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. 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 MSNK Inc. ("MSNK") and subsequent transfers made by MSNK, now a judgment debtor, to Eversharp Consulting, Inc., as well as certain transfers made by the Debtors to Diane Caggino, Joann DiStefano, and Jo-Ann DiStefano, individually and as trustee of Eversharp Trust, (collectively, with Eversharp Consulting Inc., the "Defendants").

9. The Trustee commenced the adversary proceeding against Eversharp Consulting, Inc. (Adv. Pro. No. 11-09527), by the filing of a complaint, wherein the Trustee asserted that certain transfers totaling Thirty-Two Thousand Eight Hundred Fifty-Seven and 00/100 (\$32,857.00) Dollars (the "MSNK Transfers") made to Eversharp Consulting, Inc. are recoverable pursuant to 11 U.S.C. §§105, 541, 542, 544, and 550, and New York common law, based upon MSNK's status as a judgment debtor.

10. The Trustee commenced the adversary proceeding against Diane Caggino (Adv. Pro. No. 11-08861), by the filing of a complaint, wherein the Trustee asserted that certain transfers totaling Fourteen Thousand Nine Hundred Eighty-Three and 00/100 (\$14,983.00) Dollars (the "Caggino Transfers") made to Diane Caggino are recoverable pursuant to 11 U.S.C. §§105, 502, 544, 548, 550 and 551, New York Debtor and Creditor Law §§ 273, 274, 275, 276, 276-a, and New York common law.

11. The Trustee commenced the adversary proceeding against Joann DiStefano (Adv. Pro. No. 11-08586), by the filing of a complaint, wherein the Trustee asserted that certain transfers totaling Twenty-One Thousand Nine Hundred Twenty-Six and 00/100 (\$21,926.00)

Dollars (the “DiStefano Transfers”) made to Joann DiStefano are recoverable pursuant to 11 U.S.C. §§105, 502, 544, 548, 550 and 551, New York Debtor and Creditor Law §§ 273, 274, 275, 276, 276-a, and New York common law.

12. The Trustee commenced the adversary proceeding against Jo-Ann DiStefano, individually and as Trustee of Eversharp Trust (Adv. Pro. No. 11-08849), by the filing of a complaint, wherein the Trustee asserted that certain transfers totaling Nine Hundred Ninety-Nine Thousand Two Hundred Twenty-One and 00/100 (\$999,221.00) Dollars (the “Eversharp Trust Transfers” and collectively with the MSNK Transfers, the Caggino Transfers, and the DiStefano Transfers, the “Transfers”) made to Jo-Ann DiStefano, individually and in her capacity as Trustee of Eversharp Trust are recoverable pursuant to 11 U.S.C. §§105, 502, 544, 548, 550 and 551, New York Debtor and Creditor Law §§ 273, 274, 275, 276, 276-a, and New York common law.<sup>1</sup>

13. All Defendants filed answers and discovery was completed in each adversary proceeding. During the course of that discovery, the Defendants demonstrated (i) additional deposits by Caggino, thereby reducing her net benefit to less than \$5,000; (ii) additional deposits by DiStefano, thereby reducing her net benefit (in her individual capacity) to less than \$12,000; (iii) additional deposits by Eversharp Trust, thereby reducing its net benefit to less than \$600,000; and (iv) Eversharp Consulting’s potentially meritorious defense to the claims in Adv. Pro. 11-09527.

14. Pursuant to this Court’s Order, the parties attended a jointly administered mediation session on March 14, 2013 at the United States Bankruptcy Court for the Eastern District of New York at Central Islip. Over the next ten (10) weeks, the parties attended several other mediation sessions. During the mediation process, the parties exchanged information related to their respective claims and defenses, and the Defendants, through their

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<sup>1</sup> The claims for relief that are set forth in paragraphs 9 through 12 are collectively referred to as the “Trustee’s Claims.”

representative, Michael DiStefano, provided documentation demonstrating, to the satisfaction of the Trustee and the Court-appointed mediator, that Defendants are financially incapable of satisfying the judgments sought by the Trustee.

15. 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 Stipulation.

16. In the spirit of compromise and without any admission of liability, Defendants have offered to remit One Hundred Thousand and 00/100 (\$100,000.00) Dollars (the "Settlement Sum") to the Trustee in full and final settlement of the Trustee's Claims.

17. For all of the reasons set forth herein, the Trustee submits that accepting 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**

18. The Trustee has determined that settling this matter for the Settlement Sum is the most economical and efficient way to realize a meaningful recovery for the 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.

19. The Trustee determined, after consulting with his retained professionals and exercising his business judgment, that accepting 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.

20. 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**

21. 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).

22. 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>2</sup>

23. 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>3</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>4</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>5</sup> In passing upon the

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<sup>2</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>3</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>4</sup> *Arrow Air*, supra, 85 B.R. at 891.

<sup>5</sup> *Bell & Beckwith*, 77 B.R. at 612; see also *In re Handler*, 386 B.R. at 421.

reasonableness of a proposed compromise, the Court "may give weight to the opinions of the Trustee, the parties and their counsel."

24. The Second Circuit in *Iridium*, supra<sup>6</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>7</sup>

25. The Defendants' collective, voluntary return of the Settlement Sum represents a significant portion of the parties' combined net benefit after deposits by Defendants for which the Trustee believes Defendants may be liable in satisfaction of the Trustee's significant benefit to the estate, without causing it to incur significant fees or expenses.

26. The Trustee submits that considering the costs and uncertainties associated with trial and resulting judgment enforcement against defendants with limited financial means, it is

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<sup>6</sup> 478 F.3d 452, 462 (2d Cir. 2007).

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

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**

27. 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) Defendants; (iv) Defendants’ Counsel; (v) Michael DiStefano, as representative of Eversharp Consulting Inc., and beneficiary of Eversharp Trust, (vi) the appropriate taxing authorities; and (vii) 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). 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.

28. 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 Stipulation, and grant such other, further and different relief as the 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  
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-

DIANE CAGGINO,

Adv. Pro. No.: 11-08861 (AST)

JOANN DISTEFANO,

Adv. Pro. No.: 11-08586 (AST)

JO-ANN DISTEFANO, individually and  
As Trustee of EVERSHPAR TRUST

Adv. Pro. No.: 11-08849 (AST)

EVERSHPAR CONSULTING, INC.,

Adv. Pro. No.: 11-09527 (AST)

Defendants.  
-----X

**ORDER UNDER BANKRUPTCY RULE 9019(a)  
APPROVING A STIPULATION SETTLING THE TRUSTEE'S  
CLAIMS AGAINST DIANE CAGGINO, JOANN DISTEFANO, JO-ANN DISTEFANO,  
individually and as Trustee of EVERSHPAR TRUST, and EVERSHPAR CONSULTING, INC.**

Upon the Notice of Presentment (the "Notice"), dated June 21, 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 stipulation (the "Stipulation") settling the Trustee's claims against to Diane Caggino, Joann DiStefano, Jo-Ann DiStefano, individually and as trustee of Everssharp Trust, and Everssharp Consulting Inc. (the "Defendants"); 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, 541, 542, 544, 548, 550, and 551, New York Debtor and Creditor Law §§273, 274, 275, 276, and 276-a, and New York common law against Defendants 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) Defendants; (iv) Defendants' Counsel; (v) Michael DiStefano, as representative of Eversharp Consulting Inc., and beneficiary of Eversharp Trust, (vi) the appropriate taxing authorities; and (vii) 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 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.



# Exhibit 2

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
In re:

AGAPE WORLD, INC., *et al.*

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

Debtors.

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

-against-

DIANE CAGGINO,

Adv. Pro. No.: 11-08861 (AST)

JOANN DISTEFANO,

Adv. Pro. No.: 11-08586 (AST)

JO-ANN DISTEFANO, individually and  
As Trustee of EVERSARP TRUST

Adv. Pro. No.: 11-08849 (AST)

EVERSARP CONSULTING, INC.,

Adv. Pro. No.: 11-09527 (AST)

Defendants.

-----X

**STIPULATION SETTLING THE TRUSTEE'S  
CLAIMS IN THE ABOVE-CAPTIONED ADVERSARY PROCEEDINGS**

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 MSNK Inc. ("MSNK") and subsequent transfers made by MSNK, now a judgment debtor, to Eversharp Consulting, Inc., as well as certain transfers made by the Debtors to Diane Caggino, Joann DiStefano, and Jo-Ann DiStefano, individually and as trustee of Eversharp Trust, (collectively, with Eversharp Consulting Inc., the "Defendants").

VIII. The Trustee commenced the adversary proceeding against Eversharp Consulting, Inc. (Adv. Pro. No. 11-09527) by the filing of a complaint, wherein the Trustee asserted that certain transfers totaling Thirty-Two Thousand Eight Hundred Fifty-Seven and 00/100 (\$32,857.00) Dollars (the "MSNK Transfers") made to Eversharp Consulting, Inc. are recoverable pursuant to 11 U.S.C. §§105, 541, 542, 544, and 550, and New York common law, based upon MSNK's status as a judgment debtor

IX. The Trustee commenced the adversary proceeding against Diane Caggino, (Adv. Pro. No. 11-08861) by the filing of a complaint, wherein the Trustee asserted that certain transfers totaling Fourteen Thousand Nine Hundred Eighty-Three and 00/100 (\$14,983.00) Dollars (the "Caggino Transfers") made to Diane Caggino are recoverable pursuant to 11 U.S.C. §§105, 502, 544, 548, 550 and 551, New York Debtor and Creditor Law §§ 273, 274, 275, 276, 276-a, and New York common law.

X. The Trustee further commenced the adversary proceeding against Joann DiStefano, Adv. Pro. No. 11-08586 (AST) by the filing of a complaint, wherein the Trustee asserted that certain transfers totaling Twenty-One Thousand Nine Hundred Twenty-Six and 00/100 (\$21,926.00) Dollars (the "DiStefano Transfers") made to Joann DiStefano are recoverable pursuant to 11 U.S.C. §§105, 502, 544, 548, 550 and 551, New York Debtor and Creditor Law §§ 273, 274, 275, 276, 276-a, and New York common law.

XI. The Trustee further commenced the adversary proceeding against Jo-Ann DiStefano, individually and as Trustee of Eversharp Trust, Adv. Pro. No. 11-08849 (AST), by the filing of a complaint, wherein the Trustee asserted that certain transfers totaling Nine Hundred Ninety-Nine Thousand Two Hundred Twenty-One and 00/100 (\$999,221.00) Dollars (the "Eversharp Trust Transfers" and collectively with the MSNK Transfers, the Caggino Transfers, and the DiStefano Transfers, the "Transfers") made to Jo-Ann DiStefano, individually and in her capacity as Trustee of Eversharp Trust are recoverable pursuant to 11 U.S.C. §§105, 502, 544, 548, 550 and 551, New York Debtor and Creditor Law §§ 273, 274, 275, 276, 276-a, and New York common law.<sup>1</sup>

XII. All Defendants filed answers and discovery was completed in each adversary proceeding.

XIII. Pursuant to this Court's Order, the parties attended a jointly administered mediation session on March 14, 2013 at the United States Bankruptcy Court for the Eastern District of New York at Central Islip. Over the next ten (10) weeks, the parties attended several other mediation sessions. During the mediation process, the parties exchanged information related to their respective claims and defenses, and the Defendants, through their representative, Michael DiStefano, provided documentation demonstrating, to the satisfaction of

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<sup>1</sup> The claims for relief that are set forth in recital paragraphs VIII through XI are collectively referred to as the "Trustee's Claims."

the Trustee and the Court-appointed mediator, that they are financially incapable of satisfying the judgments sought by the Trustee.

XIV. In the spirit of compromise and without any admission of liability, Defendants have offered to remit One Hundred Thousand and 00/100 (\$100,000.00) Dollars (the "Settlement Sum") to the Trustee in full and final settlement of the Trustee's Claims.

XV. Based upon his 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 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' Obligation to Pay the Settlement Sum**

1. This stipulation (the "Stipulation") is subject to approval of the Bankruptcy Court pursuant to Fed. R. Bankr. P. 9019 (the "Approval Order").

2. The Trustee has authorized Defendants to pay the Settlement Sum in installments as set forth in the annexed Schedule A. 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: Jessi L. Kleinman, Esq. Nothing contained herein shall preclude or penalize Defendant from pre-paying any installment or portion of any installment.

3. If Defendants fail to make timely payment 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 ten (10) business days after written notice sent by Federal Express or other reputable overnight courier 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 (i) Dianne Caggino in the amount of Four Thousand Nine Hundred Eighty-Three and 00/100 (\$4,983.00) Dollars; (ii) Joann DiStefano, individually, in the amount of Eleven Thousand Nine Hundred Twenty-Six and 00/100 (\$11,926.00) Dollars; (iii) Eversharp Consulting Inc., in the amount of Thirty-Two Thousand Eight Hundred Fifty-Seven and 00/100 (\$32,857) Dollars; and (iv) Eversharp Trust and Joann Distefano, in her capacity as the Trustee of Eversharp Trust, in the amount of Nine Hundred Ninety-Nine Thousand Two Hundred Twenty-One and 00/100 (\$999,221.00) 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.

4. Written notice of default shall be sent by Federal Express or other reputable overnight courier to:

Defendants at:

Eversharp Consulting, Inc.  
72-09 Grand Avenue  
Maspeth, New York 11378  
Attention: Michael DiStefano

Diane Caggino  
72-07 Grand Avenue  
Maspeth, New York 11378

Joann DiStefano  
58-36 75<sup>th</sup> Street  
Middle Village, New York 11379

Jo-Ann DiStefano, individually and as  
Trustee of Eversharp Trust  
58-36 75<sup>th</sup> Street  
Middle Village, New York 11379  
and  
72-09 Grand Avenue  
Maspeth, New York 11378

Defendants' attorney at:

Andrew Paul Cooper, Esq.  
Jonathan M. Cader, Esq.  
Davidoff Hutcher & Citron LLP  
200 Garden City Plaza, Suite 315  
Garden City, New York 11530

5. Any funds remitted by Defendants in full or partial payment of the Settlement Sum prior to the entry of the Approval Order shall be held in the Trustee's segregated "Earnest Monies" account until the Approval Order becomes final and non-appealable under 28 U.S.C. §158(c)(2) and Bankruptcy Rule 8002.

6. Once the Approval Order becomes final and non-appealable, on the fourteenth day after the date of the entry of the Approval Order, Trustee's counsel shall transfer all settlement funds being held in the "Earnest Monies" account into the Debtors' estate account. If the Bankruptcy Court denies entry of the Approval Order, then Trustee's counsel will return all funds remitted by Defendant in payment of the Settlement Sum without undue delay, this Stipulation will be null and void, and none of the terms herein shall be usable as evidence by either party.

7. All payments made by Defendants after the Approval Order becomes final and non-appealable shall be deposited directly into the Debtors' estate account.

### **Releases**

8. Upon the Approval Order becoming final and non-appealable, and the Trustee's receipt and clearance of each installment of the Settlement Sum, the Trustee and the estate release and forever discharge Defendants and Michael DiStefano, 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.

9. Upon the Approval Order becoming final and non-appealable, Defendants, and Michael DiStefano, 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, proofs of claim, claims for relief, demands, costs, expenses, damages, liabilities, and obligations of any nature.

10. Upon the Approval Order becoming final and non-appealable, Eversharp Trust and Michael J. DiStefano understand and agree that Proof of Claim No. 4507 shall be expunged.

**No Admission**

11. 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 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 if Defendants fail to make timely payment of the Settlement Sum.

**Miscellaneous**

12. 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.

13. 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.

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

15. The Bankruptcy Court shall retain exclusive jurisdiction over the subject matter of this Stipulation, including but not limited to its enforcement and the implementation and interpretation of its terms and conditions.

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

**Two (2) Signature Pages to Follow**

18. Upon the entry of this Stipulation as an Approval Order in this proceeding, the Clerk of the Court is directed to close this adversary proceeding.

Dated: Jericho, New York  
June 21, 2013

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

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

Dated: Garden City, New York  
June 21, 2013

**Davidoff Hutcher & Citron, LLP**  
Attorney for Defendants

By: s/ Andrew Paul Cooper  
Andrew Paul Cooper, Esq.  
Davidoff Hutcher & Citron, LLP  
200 Garden City Plaza, Suite 315  
Garden City, New York 11530

Dated: Maspeth, New York  
June 21, 2013

Defendant

By: s/ Michael J. DiStefano  
Eversharp Consulting, Inc.  
By Michael J. DiStefano  
72-09 Grand Avenue  
Maspeth, New York 11378

Dated: Maspeth, New York  
June 21, 2013

Defendant

By: s/ Diane Caggino  
Diane Caggino  
72-07 Grand Avenue  
Maspeth, New York 11378

Dated: Middle Village, New York  
June 21, 2013

Defendant

By: s/ Joann DiStefano  
Joann DiStefano  
58-36 75<sup>th</sup> Street  
Middle Village, New York 11379

Dated: Middle Village, New York  
June 21, 2013

Defendant

By: s/ Jo-Ann DiStefano, as Trustee  
Jo-Ann DiStefano, as  
Trustee of Eversharp Trust  
58-36 75<sup>th</sup> Street  
Middle Village, New York 11379  
and  
72-09 Grand Avenue  
Maspeth, New York 11378

Dated: Maspeth, New York  
June 21, 2013

Consent to Expunge Proof of Claim 4507

By: s/ Michael J. DiStefano  
Michael J. DiStefano  
72-09 Grand Avenue  
Maspeth, New York 11378

**Schedule A**

<b>Payment Due:</b>	<b>Installment Payment Due:</b>	<b>Balance Remaining Under Settlement:</b>
Upon Execution of the Stipulation	\$25,000.00	\$75,000.00
October 1, 2013	\$25,000.00	\$50,000.00
February 1, 2014	\$25,000.00	\$25,000.00
June 1, 2014	\$25,000.00	ZERO