

**SILVERMANACAMPORA 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.

**Presentment Date: March 4, 2013**  
**Time: 12:00 p.m.**

**Objections Due: March 1, 2013**  
**Time: 4:00 p.m.**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
In re:

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

Debtors.

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

Plaintiff,

-against-

JAMES WAGNER,

Defendant.  
-----X

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

Adv. Pro. No.: 11-08574 (AST)

**NOTICE OF PRESENTMENT OF PROPOSED ORDER UNDER  
BANKRUPTCY RULE 9019(a) APPROVING A STIPULATION  
SETTLING THE TRUSTEE'S CLAIMS AGAINST JAMES WAGNER**

**PLEASE TAKE NOTICE**, that upon the application (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, 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 290 Federal Plaza, Room 960, Central Islip, New York on **March 4, 2013 at 12:00 p.m.** (the "Presentment"): (i) seeking approval of the Stipulation Settling the Trustee's Claims against James Wagner, and (ii) granting related relief. 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) electronically filed with the Bankruptcy Court; (ii) delivered to the Chambers of the Honorable Alan S. Trust; and (iii) served upon SilvermanAcampora LLP, to be received no later than **March 1, 2013 at 4:00 p.m.**, at 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753; Attn: David J. Mahoney, Esq. Unless such objections are filed, the Order may be signed without a hearing.

**PLEASE TAKE FURTHER NOTICE**, 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, upon such additional notice as the Court may direct.

Dated: Jericho, New York  
February 1, 2013

**SilvermanAcampora LLP**  
Counsel to Kenneth P. Silverman, Esq.,  
The Chapter 7 Trustee

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

**SILVERMANACAMPORA LLP**

Attorneys for Kenneth P. Silverman, Esq.,  
Chapter 7 Trustee  
100 Jericho Quadrangle, Suite 300  
Jericho, New York 11753  
(516) 479-6300  
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,  
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114 PARKWAY DRIVE SOUTH LLC,

Debtors.

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

Plaintiff,

Adv. Pro. No.: 11-08574 (AST)

-against-

JAMES WAGNER,

Defendant.

-----X

**TRUSTEE'S APPLICATION UNDER BANKRUPTCY  
RULE 9019(a) SEEKING THE ENTRY OF AN ORDER APPROVING A  
STIPULATION SETTling THE TRUSTEE'S CLAIMS AGAINST JAMES WAGNER**

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 for entry of an Order (annexed hereto as **Exhibit 1**) approving the proposed settlement of the Trustee's claims under 11 U.S.C. §§ 548, 550, and 551, New York Debtor and Creditor Law §§ 273, 274, 275, 276, and 276-a, and New York common law against James Wagner as memorialized in the Stipulation Settling the Trustee's Claims Against James Wagner (the "Stipulation"), which has been 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 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 forensic analysis of Agape's books and records.

8. Based upon Navigant's analysis, the Trustee determined that James Wagner ("Defendant") received certain transfers totaling \$75,978.03 (the "Net Transfers") made by the

Debtors to Defendant 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 February 9, 2011, the Trustee commenced an adversary proceeding against Defendant (the “Adversary Proceeding”) by the filing and service of a summons and complaint under Adv. Pro. No. 11-08574 seeking to, *inter alia*, avoid the Net 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 to recover the Net Transfers from Defendant pursuant to 11 U.S.C. § 550(a) (the “Trustee’s Claims”).

10. On November 29, 2012, the Honorable Alan S. Trust issued an order setting this matter down for mediation (“Mediation”) in an effort to resolve all disputes between the parties (the “Mediation Order”).

11. On January 15, 2013 the parties appeared before the assigned mediator pursuant to the Mediation Order.

12. At the Mediation, Defendant provided certain financial information concerning all of his assets and liabilities (collectively “Financial Information”) to the mediator, which the mediator shared with the Trustee.

13. Based on the documentation provided by the Defendant, the mediator recommended that this action be settled for the sum of \$5,000.00 (the “Settlement Sum”).

14. The Trustee has agreed to accept the Settlement Sum in full and final settlement of the Trustee’s claims against the Defendant. At the Mediation, Defendant acknowledged that the Trustee was relying upon the accuracy of the Financial Information and would not have agreed to the Settlement Sum in the event the Financial Information was materially inaccurate, and the Defendant acknowledged the reasonableness of such reliance.

15. For all of the reasons set forth herein, the Trustee submits that accepting Defendant’s offer to remit the Settlement Sum in full and final settlement of the Trustee’s Claims

is a reasonable exercise of the Trustee's business judgment and is in the best interests of the Debtors' estate.

### **Settlement**

16. 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 additional legal fees and risks inherent with the prosecution of the Trustee's Claims and any resulting judgment efforts.

17. Indeed, 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 prosecute the Trustee's Claims through trial and enforce a resulting judgment against Defendant.

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

### **Basis for Relief Requested**

19. Federal Rule of Bankruptcy Procedure 9019(a), which governs the approval of compromises and settlements, provides

(a) Compromise. On motion by the trustee and after notice and hearing, the court may approve a compromise or settlement. Notice shall be given to the 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.

20. In approving a compromise and settlement, the Bankruptcy Court is required to make an "informed and independent judgment" as to whether the compromise and settlement is fair and equitable based on:

[e]ducated estimate of the complexity, expense and likely duration of [any] 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.

*Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25, *reh'g denied*, 391 U.S. 909 (1968). See *American Can Co. v. Herpal (In re Jackson Brewing Co.)*, 624 F.2d 605, 607 (5th Cir. 1980); *Chopin Assoc. v. Smith (In re Holywell Corp.)*, 93 B.R. 291, 294 (Bankr. S.D. Fla. 1988); *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”).

21. In making its determination, the Court should consider whether the proposed compromise is in the “best interests of the estate.” *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). 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 bankruptcy court does not substitute its judgment for that of the Trustee [or debtor in possession].” *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.” *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 *Hollywell*, 93 B.R. at 294 (“In order to exercise this discretion properly, the Court must consider all the relevant facts and evaluate whether the compromise suggested falls below the ‘lowest point in the range of reasonableness’”) (*quoting In re Teltronics Services, Inc.*, 762 F.2d 185, 189 (2d Cir. 1985)). In passing upon the reasonableness of a proposed compromise, the Court “may give weight to the opinions of the Trustee [or debtor in possession], the parties and their counsel.” *Bell & Beckwith*, 77 B.R. at 612.

22. The factors to be considered by the Court in determining whether to approve a compromise or settlement include (a) probability of success in the litigation, with due consideration for the uncertainty in fact and law, (b) complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and (c) all other factors bearing on the wisdom of the compromise. *Arrow Air*, 85 B.R. at 891 (citing *TMT Trailer Ferry*, 390 U.S. at 424-25). See *Jackson Brewing Co.*, 624 F.2d at 507; *Holywell Corp.*, 93 B.R. at 294-95 (citations omitted).

23. Here, Defendant deposited \$65,000.00 with the Debtors and received \$140,978.03 from the Debtors, thereby reducing the total of the Net Transfers to \$75,978.03. Based on the Financial Information produced by Defendant at the Mediation and the mediator's recommendation, the Trustee and Defendant have agreed to settle for the sum of \$5,000.00 in satisfaction of the Trustee's Claims without causing the Debtor's estate to incur significant fees or expenses. The Trustee submits that considering the costs and uncertainties associated with trial and judgment enforcement, and the amount of the Trustee's demand, it is unlikely that further litigation would result in a "net benefit" to the Debtors' estates 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 interests of the estate.

#### **Notice**

24. The Trustee has served the Notice of Presentment, 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) Defendant; (iv) the appropriate taxing authorities; and (v) 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 amended by this Court's Order in this Adversary Proceeding on October 14, 2011, and is otherwise sufficient.

25. 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 Application authorizing and approving the Stipulation and granting such other further and different relief as this Court deems just and proper.

Dated: Jericho, New York  
February 1, 2013

**SILVERMANACAMPORA LLP**  
Counsel to Kenneth P. Silverman, Esq.,  
The Chapter 7 Trustee

By: s/ David J. Mahoney  
David J. Mahoney  
Member 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-

JAMES WAGNER,

Defendant.  
-----X

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

Adv. Pro. No.: 11-08574 (AST)

**ORDER UNDER BANKRUPTCY RULE 9019(a) APPROVING A  
STIPULATION SETTLING THE TRUSTEE'S CLAIMS AGAINST JAMES WAGNER**

Upon the Notice of Presentment (the "Notice"), dated February 1, 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.*, by his counsel, SilvermanAcampora LLP, seeking the entry of an Order approving a Stipulation (the "Stipulation") Settling the Trustee's Claims against James Wagner (the "Defendant"); and upon the Affidavit of Service filed with the Court; and no objections to the Application or the proposed Order having been filed; and the Court having found that the settlement of the Trustee's claims pursuant to 11 U.S.C. §§ 548, 550, and 551, New York Debtor and Creditor Law §§ 273, 274, 275, 276, and 276-a, and New York common law against Defendant to be fair and reasonable and in the best interest of the Debtors' estate; and sufficient cause having been shown therefore; 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; and upon the presentment of the Order before the Honorable Alan S. Trust, United States Bankruptcy Judge, United States Bankruptcy Court for the Eastern District of New York, located at 290 Federal Plaza, Room 960, Central Islip, New York on March 4, 2013 at 12:00 p.m., the transcript of which is incorporated herein by reference; and sufficient cause having been shown therefore; 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 Debtors; (iii) Defendant; (iv) the appropriate taxing authorities; and (v) all parties having 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 amended by this Court's Order in this Adversary Proceeding on October 14, 2011, and is otherwise sufficient; and it is further

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

**ORDERED**, that the settlement of Trustee's Claims against Defendant as memorialized in this 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 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.

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

Plaintiff,

-against-

JAMES WAGNER,

Defendant.  
-----X

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

Adv. Pro. No.: 11-08574 (AST)

**STIPULATION AND ORDER (I) SETTLING THE TRUSTEE'S CLAIMS; AND  
(II) DIRECTING THE CLERK OF THE COURT TO CLOSE THE ADVERSARY PROCEEDING**

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 to James Wagner ("Defendant").

VIII. Thereafter, the Trustee commenced this adversary proceeding against Defendant by the filing of a complaint, wherein the Trustee asserted that certain transfers totaling \$75,978.03 (the "Net Transfers") made to Defendant are recoverable pursuant to Bankruptcy Code §§105, 541, 544, 548, 550 and New York Debtor and Creditor Law §§ 273, 274, 275, 276 ("The Trustee's Claims").

IX. Thereafter, Defendant retained his undersigned counsel to defend against the Trustee's Claims.

X. Pursuant to this Court's Order, the parties attended a mediation session on January 15, 2013 at the United States Bankruptcy Court for the Eastern District of New York at Central Islip.

XI. In the spirit of compromise and without any admission of liability, Defendant has offered to remit \$5,000.00 (the "Settlement Sum") to the Trustee in full and final settlement of the Trustee's Claims.

XII. Based upon the his review of all documentation related to the Net 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:

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

1. Upon this stipulation (the "Stipulation") being "So Ordered" by the Court (the "Approval Order"), this adversary proceeding will be closed.

2. The Trustee has authorized Defendant to pay the Settlement Sum in (11) installments as set forth as follows:

payment Number	Due Date	Amount Due
1	1/25/2013	\$1,000.00
2	2/28/2013	\$400.00
3	3/28/2013	\$400.00
4 <sup>1</sup>	4/28/2013	\$400.00
5	5/28/2013	\$400.00
6	6/28/2013	\$400.00
7	7/28/2013	\$400.00
8	8/28/2013	\$400.00
9	9/28/2013	\$400.00
10	10/28/2013	\$400.00
11	11/28/2013	\$400.00

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<sup>1</sup> Defendant shall accelerate payment of the Settlement Sum by payment of any net tax refund received. Net tax refund shall mean net of state vs. federal. Defendant shall provide the Trustee with copies of all tax returns by April, 15, 2013.

3. All installments shall be payable to “Kenneth P. Silverman, Esq., as Chapter 7 Trustee.”

4. All installments shall be mailed to the Trustee’s counsel at:

**SilvermanAcampora LLP  
100 Jericho Quadrangle, Suite 300  
Jericho, New York, 11753  
Attention: Randy J. Schaefer, Esq.**

5. Nothing contained herein shall preclude or penalize Defendant from pre-paying any installment or portion of any installment at any time.

6. If Defendant fails to make timely payment of any installment of the Settlement Sum in accordance with paragraph 2, above, 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 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 \$75,978.03, plus costs, (less any sums previously paid as provided herein), and (b) for any further relief necessary to enforce his rights under this Stipulation.

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

**Defendant at:**

**James Wagner  
205 West 9<sup>th</sup> Street  
Deer Park, New York 11729**

8. Any portion of the Settlement Sum received prior to the Approval Order’s entry shall be held in the Trustee’s 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.

9. Upon the Approval Order becoming final and non-appealable, (which is the 14<sup>th</sup> day after the Approval Order's entry), the Trustee's counsel will transfer all portions of the Settlement Sum being held in the segregated "Earnest Money" account to the Debtors' estate account. If the Bankruptcy Court denies the entry of the Approval Order, the Trustee shall return any portion of the Settlement Sum being held in the segregated "Earnest Money" Account, without interest, to Defendant or his/her counsel without undue delay.

10. 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**

11. 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 Defendant 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. For purposes of clarification, 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).

12. Upon the Approval Order becoming final and non-appealable, Defendant releases, discharges, and waives 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, proofs of claim, claims for relief, demands, costs, expenses, damages, liabilities, and obligations of any nature.

**No Admission**

13. 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 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 if Defendant fails to make timely payment of the Settlement Sum.

**Miscellaneous**

14. 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.

15. 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.

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

17. 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.

18. 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.

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

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20. 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: Central Islip, New York  
January 15, 2013

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

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

Dated: Central Islip, New York  
January 15, 2013

Defendant:

s/James Wagner  
James Wagner  
205 West 9<sup>th</sup> Street  
Deer Park, New York 11729

**SO ORDERED:**