

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

Hearing Date: July 3, 2014  
Time: 9:30 p.m.

Objections Due: June 26, 2014  
Time: 5:00 p.m.

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
In re:

Chapter 7  
Case No.: 09-70660 (AST)  
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.: 11-08382 (REG)

-against-

MICHELE ARROYO,

Defendant.  
-----X

**NOTICE OF HEARING OF A MOTION  
FOR AN ORDER (I) RE-OPENING ADVERSARY PROCEEDING;  
(II) APPROVING A STIPULATION SETTLING THE TRUSTEE'S CLAIMS  
AGAINST MICHELE ARROYO; AND (III) RE-CLOSING THE ADVERSARY PROCEEDING**

**PLEASE TAKE NOTICE**, that upon the annexed motion (the "Motion"), 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 Robert E. Grossman, 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 3, 2014 at 9:30 a.m.**, or as soon thereafter as counsel can be heard, seeking entry of an Order (I) re-opening this adversary proceeding; (II) approving a stipulation of

settlement with Michele Arroyo; and (III) re-closing the adversary proceeding. 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 Robert E. Grossman, 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 **June 26, 2014 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  
May 15, 2014

**SILVERMANACAMPORA LLP**  
Attorneys for 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  
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SILVERMANACAMPORA LLP  
Counsel to Kenneth P. Silverman, Esq.,  
Chapter 7 Trustee  
100 Jericho Quadrangle, Suite 300  
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David J. Mahoney, Esq.  
Christopher J. Rubino, Esq.

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re:

Chapter 7  
Case No.: 09-70660 (AST)  
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AGAPE WORLD, INC.,  
AGAPE MERCHANT ADVANCE LLC,  
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CONSTRUCTION MANAGEMENT LLC,  
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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.: 11-08382 (REG)

-against-

MICHELE ARROYO,

Defendant.

-----X

**MOTION FOR AN ORDER  
(I) RE-OPENING ADVERSARY PROCEEDING;  
(II) APPROVING A STIPULATION SETTLING THE TRUSTEE'S CLAIMS  
AGAINST MICHELE ARROYO; AND (III) RE-CLOSING THE ADVERSARY PROCEEDING**

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**) (I) reopening the adversary proceeding; (II) approving a stipulation settling the Trustee's claims against Michele Arroyo (the "Defendant"); and (III) reclosing the adversary proceeding, respectfully sets forth and represents as follows:

## 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, net of deposits into Agape, totaling Twelve Thousand Four Hundred Eighty-Five and 00/100 (\$12,485.00) Dollars (the "Net Transfers") from the Debtors prior to the Petition Date.

9. On February 1, 2011, the Trustee commenced this adversary proceeding against Defendant by the filing of a complaint (Adv. Pro. No. 11-08382) (the "Adversary Proceeding"), asserting that the Transfers are avoidable pursuant to 11 U.S.C. §§105, 502, 544, 548, 550, and 551, New York Debtor and Creditor Law §§273, 274, 275, 276, and 276-a, and New York common law (the "Trustee's Claims").

10. On January 20, 2012, the Trustee filed a motion for default judgment (the "Motion") for Defendant's failure to answer or otherwise respond to the complaint.

11. On February 27, 2012, the Court granted the Trustee's Motion and entered a judgment (the "Judgment") against the Defendant.

12. Thereafter, the Trustee commenced judgment enforcement proceedings by, *inter alia*, serving an information subpoena and restraining notice (collectively, the "Subpoena") on Bank of America (the "Bank").

13. In response to the Trustee's Subpoena, the Bank restrained two of Defendant's accounts with the Bank (the "Bank Account").

14. Thereafter, Defendant, through her counsel, contacted the Trustee's counsel with respect to satisfying the Judgment.

15. The parties engaged in further discovery related to the Trustee's Claims, and the equitable defenses asserted by Defendant to enforcement of the Judgment.

16. Through discovery, Defendant furnished the Trustee with documentation (the "Additional Documents") exhibiting a potential partial defense to the Trustee's Claims.

17. In order to avoid the costs, expenses and uncertainty of continued litigation, the parties have now agreed to resolve the Trustee's Claims upon the terms and conditions contained in the stipulation (the "Stipulation"). A copy of the Stipulation is annexed hereto as

**Exhibit 2.**

18. Defendant has offered to remit the total sum of Eight Thousand Five Hundred and 00/100 (\$8,500.00) Dollars (the "Settlement Sum") to the Trustee in full and final settlement of the Trustee's Claims and in satisfaction of the Judgment.

### **Settlement**

21. The Trustee has determined that settling this matter for the Settlement Sum is the most economical and efficient way to realize a meaningful and beneficial recovery for the benefit of creditors without the need to incur legal fees and risks inherent with the prosecution of the Trustee's Claims and any resulting judgment efforts.

22. After consultation with his retained professionals and in the exercise of his business judgment, the Trustee has determined that 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 the Defendant.

23. 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 in satisfaction of the Judgment.

### **Basis for Relief Requested**

24. Federal Rule of Bankruptcy Procedure 9019(a), which governs the approval of compromises and settlement, 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 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.

25. 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 an:

[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, 424-425, *reh'g denied*, 391 U.S. 909 (1968). See *American Can Co. v. Herpel (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. 628, 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").

26. In making its determination, the Court should consider whether the proposed compromise is in the "best interest 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.), *cert denied*, 464 U.S. 822 (1983) (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir.), *cert denied*, 409 U.S. 1039 (1972)). See *Holywell* 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 512.

27. 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) the 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).

28. Following the entry of the Judgment and restraining of the Bank Account, Defendant provided the Trustee with the Additional Documents, exhibiting a potential partial defense to the Trustee's Claims. By offering to remit the Settlement Sum, Defendant has offered to remit a significant portion of the Net Transfers in satisfaction of the Trustee's Claims and the Judgment, without causing the Debtors' estate to incur significant fees or expenses.

29. The Trustee submits that considering the costs and uncertainties associated with 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' 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.

30. Accordingly, the Trustee respectfully requests that this Court enter an Order (I) reopening the adversary proceeding; (II) approving a stipulation settling the Trustee's Claims against Defendant; and (III) reclosing the adversary proceeding.

#### **Notice**

31. The Trustee has served the Notice of Hearing, 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) Defendant's Counsel, (v) the appropriate taxing authorities, and (vi) all parties having filed a Notice of Appearance in this case, and



copies have been posted on the Trustee's website located at [www.agapeworldbankruptcy.com](http://www.agapeworldbankruptcy.com).

The Trustee respectfully submits that the proposed service complies with this Court's Order Establishing Noticing Procedures entered on July 8, 2009 and is otherwise sufficient.

32. 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 enter an Order under Bankruptcy Code §105 and Bankruptcy Rule 9019 (I) reopening the adversary proceeding; (II) approving a stipulation settling the Trustee's claims against Defendant; and (III) reclosing the adversary proceeding, and granting such other, further, and different relief as this Court deems just and proper.

Dated: Jericho, New York  
May 15, 2014

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

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

MICHELE ARROYO,

Defendant.  
-----X

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

Adv. Pro. No.: 11-08382 (REG)

**ORDER (I) RE-OPENING ADVERSARY PROCEEDING;  
(II) APPROVING A STIPULATION SETTLING THE TRUSTEE'S CLAIMS  
AGAINST MICHELE ARROYO; AND (III) RE-CLOSING THE ADVERSARY PROCEEDING**

Upon the Notice of Hearing (the "Notice"), dated May 15, 2014, 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 (I) reopening the adversary proceeding; (II) approving a stipulation settling the Trustee's claims against Michele Arroyo (the "Defendant"); and (III) reclosing the adversary proceeding; 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 good cause exists to reopen adversary proceeding number 11-08382 (REG), and the Court having found that the settlement of the Trustee's claims pursuant to 11 U.S.C. §§105, 502, 544, 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, reasonable

and in the best interest of the Debtors' 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 11 U.S.C. §105 and 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) Defendant's Counsel, (v) the appropriate taxing authorities, and (vi) all parties having filed a Notice of Appearance in this case, and copies have been posted on the Trustee's website located at [www.agapeworldbankruptcy.com](http://www.agapeworldbankruptcy.com) 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 adversary proceeding number 11-08382 (REG) is reopened; and it is further

**ORDERED**, that the settlement of the Trustee's Claims against Defendant as memorialized in the Stipulation is approved; and it is further

**ORDERED**, that the proposed satisfaction of judgment against Defendant, as memorialized in the Stipulation, is approved, and it is further

**ORDERED**, that adversary proceeding number 11-08382 (REG) is to be reclosed upon entry of this Order, 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

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

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

Plaintiff,

Adv. Pro. No.: 11-08382 (REG)

-against-

MICHELE ARROYO,

Defendant.

**STIPULATION OF SETTLEMENT**

I. 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.

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 (the "Trustee") in the 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 "Debtor").

VII. The Trustee and his counsel have investigated the financial affairs of the Debtor, including a detailed analysis of the extent and validity of certain transfers made by the Debtor to Michele Arroyo ("Defendant").

VIII. On February 1, 2011, the Trustee commenced this adversary proceeding (the "Adversary Proceeding") against Defendant by filing a complaint, wherein the Trustee asserted that: (i) certain transfers totaling \$12,485.00 (the "Transfers") made by the Debtor to the Defendant are avoidable pursuant to 11 U.S.C. §§544, 548, 550 and 551 and New York Debtor and Creditor Law §§273 through 276-a and New York Common Law (the "Trustee's Claims").

IX. On January 20, 2012, the Trustee filed a motion for default judgment (the "Motion") for Defendant's failure to answer or otherwise respond to the complaint.

X. On February 27, 2012, the Court granted the Trustee's Motion and entered a judgment (the "Judgment") against the Defendant in the amount of \$12,485.00.

XI. Thereafter, the Trustee commenced judgment enforcement proceedings by, *inter alia*, serving an information subpoena and restraining notice (collectively, the "Subpoena") on the Bank of America (the "Bank").

XII. In response to the Trustee's Subpoena, Bank restrained two bank accounts owned by the Defendant (the "Bank Accounts").

XIII. Defendant, through her counsel, has contacted the Trustee's counsel with respect to satisfying the Judgment and the parties engaged in discovery related to the Trustee's Claims.



XIV. In the spirit of compromise and without any admission of liability, Defendant has offered to remit the sum of \$8,500.00 (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 enforcing the Judgment.

**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 entry of an order approving the settlement by the United States Bankruptcy Court for the Eastern District of New York (the "Approval Order").

2. Upon the execution of this Stipulation, the Defendant will direct the Bank through a letter drafted by the Trustee to the Bank ("Trustee's Letter") authorizing the Bank to remit a check, in the amount of \$8,500.00, from the Bank Accounts, made payable to "Kenneth P. Silverman, Esq., as Chapter 7 Trustee", by delivering the check to Trustee's counsel at SilvermanAcampora LLP, 100 Jericho Quadrangle, Suite 300, Jericho, New York, 11753, Attention: Linda Tumino.

3. In the event that the Trustee receives the Settlement Sum, and the Settlement Sum clears, the Trustee will satisfy the Judgment. The Trustee will withhold from further judgment enforcement efforts until May 12, 2014. In the event that the Trustee does not receive the Settlement Sum or the Settlement Sum does not clear, the Trustee shall not satisfy the

Judgment, and he shall retain all of his rights and remedies as a judgment creditor under New York law.

4. The Settlement Sum shall be held by the Trustee in a segregated account until the Approval Order becomes final and non-appealable under 28 U.S.C. §158(c)(2) and Bankruptcy Rule 8002.

5. 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 Debtor's 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.

#### **Releases**

6. Upon the execution of this Stipulation, 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.

7. Upon the Trustee's receipt and clearance of the entire Settlement Sum, the Trustee and the estate will authorize The Bank to lift the current restraint on Defendant's Bank Account, cease further efforts to enforce the Judgment, and file a satisfaction of Judgment on the docket of this Adversary Proceeding.

#### **No Admission**

9. 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 the Trustee or Defendant's part.

**Miscellaneous**

10. 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.

11. 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.

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

13. This Stipulation shall be deemed to have been drafted by all parties hereto to remove any negative inference against the drafter hereof.

14. 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.

15. 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.

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

Dated: Jericho, New York  
April 28, 2014

**SILVERMANACAMPORA LLP**  
Attorneys for 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

Dated: South Amboy, New Jersey  
April 9<sup>th</sup>, 2014

**Law Office of Gregory F. Kusic**  
Attorney for Defendant, Michele Arroyo

s/ Gregory F. Kusic  
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