

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:)	CHAPTER 11
)	
Stacy's, Inc.,)	Case No. 13-03600-dd
)	
Debtor.)	
<hr style="width: 45%; margin-left: 0;"/>		
)	
Stacy's Inc.)	
)	
)	Adv. Pro. No. 13-80180-dd
Plaintiff,)	
)	
vs.)	
)	
Sun Gro Horticulture Distribution, Inc.)	
)	
Defendant.)	
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TO: All Creditors and Parties in Interest

NOTICE AND APPLICATION FOR SETTLEMENT AND COMPROMISE

YOU ARE HEREBY NOTIFIED THAT Stacy's, Inc. ("Debtor") is applying for approval of compromise or settlement of the estate's claims against Sun Gro Horticulture Distribution, Inc. ("Sun Gro").

TAKE FURTHER NOTICE that any response, return and/or objection to this application should be filed with the Clerk of the Bankruptcy Court no later than twenty-one (21) days from service of this motion/application and a copy simultaneously served on all parties in interest.

TAKE FURTHER NOTICE that no hearing will be held on this application unless a response, return and/or objection is timely filed and served, in which case, the Court will conduct a hearing on **May 14, 2014 at 2:00 p.m.**, at the **Donald Stuart Russell Federal Courthouse, 201 Magnolia Street, Spartanburg, SC 29306**. No further notice of this hearing will be given.

NATURE OF DISPUTE: Sun Gro has asserted an administrative claim against the Debtor in the amount of \$72,321.40. The Debtor has asserted claims against Sun Gro on behalf of the bankruptcy estate in the amount of \$447,866.21 for preferential transfers and a claim against Sun Gro on behalf of the bankruptcy estate in an amount of \$43,726.85 for avoidable

post petition transfers. Sun Gro either denies the Debtor's claims or asserts defenses to these claims, including the defenses pursuant to Section 547(c) of the United States Bankruptcy Code of contemporaneous exchange for value, ordinary course of business, and new value.

AMOUNT DISPUTED: Sun Gro's administrative claim of \$72,321.40; the Debtor's preference claims of \$477,866.21; and the Debtor's post petition transfer claims of \$43,726.85.

PROPOSED SETTLEMENT OR COMPROMISE: Upon entry of a final, non-appealable order approving this settlement, the administrative claim of Sun Gro in the amount of \$72,321.40 shall be deemed withdrawn by Sun Gro, and Sun Gro shall receive nothing thereby. Sun Gro shall pay the Debtor \$82,726.85 in full resolution of the Debtor's preference and post petition transfer actions. In addition, Adversary Proceeding No. 13-80180-dd will be dismissed, with prejudice, pursuant to entry of the order approving this settlement. The terms of the proposed settlement are more fully set forth in the Agreement, attached hereto as Exhibit A.

BENEFIT TO THE ESTATE: The estate benefits because it will avoid an administrative claim and it will avoid the expense, delay, and uncertainty inherent in litigation.

RESPECTFULLY SUBMITTED on this the 15th day of April, 2014, at Columbia, South Carolina.

MOVING PARTIES:

/s/Barbara George Barton, ID # 1221
1715 Pickens Street
P.O. Box 12046 (29211-2046)
Columbia, SC 29201
Telephone: 803-256-6582
bbarton@bartonlawsc.com
COUNSEL TO THE DEBTOR

/s/Robert E. Culver ID #7289
The Culver Law Firm, P.C.
575 King Street, Suite A
Charleston, SC 29403
Telephone: (843) 853-9816
COUNSEL FOR SUN GRO HORTICULTURE DISTRIBUTION, INC.

EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between **STACY’S, INC., debtor-in-possession in case No. 13-03600-dd** (the “Debtor” or “Bankruptcy Estate”) and **SUN GRO HORTICULTURE DISTRIBUTION, INC.** (“Sun Gro”), for the purpose of resolving the issues between Sun Gro and the Debtor.

WHEREAS, on June 21, 2013, the Debtor filed a Chapter 11 bankruptcy petition, Case No. 13-03600-dd (the “Bankruptcy”), in the United States Bankruptcy Court for the District of South Carolina (the “Court”);

WHEREAS, Debtor’s schedules affirm Sun Gro’s unsecured, undisputed and liquidated claim against the Bankruptcy Estate in the amount of \$815,227.29 (the “Unsecured Claim”);

WHEREAS, Sun Gro asserted an administrative claim under Bankruptcy Code §503(b)(9) against the Debtor in the amount of \$72,321.40, which was allowed by the Court pursuant to a Consent Order (the “Consent Order”), entered on October 22, 2013, and which is subject to offset by any successful claims that the Debtor has against Sun Gro (the “Administrative Claim”);

WHEREAS, the Debtor has filed Adversary Proceeding No. 13-80180-dd (the “Adversary Proceeding”) asserting preferential transfers in an amount no less than \$447,866.21 against Sun Gro and avoidable post petition transfers in an amount no less than \$43,726.85 (the “Litigation Claims”);

WHEREAS, Sun Gro disputes such allegations and asserts defenses to the Litigation Claims, including the defenses under Section 547(c) of the United States Bankruptcy Code of contemporaneous exchange for value, the ordinary course of business, and new value; and

WHEREAS, the Debtor and Sun Gro desire to enter into a settlement agreement to resolve all claims between Sun Gro and the Bankruptcy Estate under the specific conditions as set forth herein;

NOW THEREFORE, the Debtor and Sun Gro do hereby agree as follows:

1. Sun Gro will pay to the Debtor the sum of \$82,726.85 (the “Settlement Sum”), within twenty (20) days after the later of: (1) execution of this Agreement; or (2) the entry of a Final Order by the Court, no longer

subject to any appeal.

2. Checks in payment of the Settlement Sum shall be made payable to Stacy's, Inc., and shall be mailed or delivered to Barton Law Firm, P.A., 1715 Pickens Street, Columbia, SC 29201. Upon satisfaction of the conditions under Paragraph 2, and receipt by Debtor of the Settlement Sum, this Settlement Agreement shall be in full force and effect (the "Effective Date")
3. Upon the Effective Date, Sun Gro shall be deemed to have withdrawn the Administrative Claim and shall receive nothing thereby.
4. The Adversary Proceeding will be dismissed, with prejudice, pursuant to entry of the order approving this Agreement.
5. In consideration of the execution and delivery of this Agreement, the mutual releases set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Sun Gro does, on the Effective Date, fully and forever remise, release, and discharge, and by these presents, do for its agents, servants, past, present, or future officers, shareholders, directors, employees, attorneys, representatives, parents, subsidiaries, subdivisions, executors, administrators, predecessors, successors, and assigns, remise, release, and discharge the Bankruptcy Estate, from any and all actions, causes of action, suits, debts, dues, sums of money, interest, penalties, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands, including, but not limited to the Litigation Claims, that Sun Gro had or currently has against the Debtor and the Bankruptcy Estate, *except* that the foregoing release, waiver and discharge shall not release, waive or discharge: (i) the Unsecured Claim; and, (ii) the right to enforce this Agreement..
6. In consideration of the execution and delivery of this Agreement, , the mutual releases set forth herein and other good and valuable consideration , the receipt and sufficiency of which is hereby

acknowledged, the Debtor and the Bankruptcy Estate does, on the Effective Date, fully and forever remise, release, and discharge, and by these presents, do for their agents, servants, past, present, or future officers, shareholders, directors, employees, attorneys, representatives, parents, subsidiaries, subdivisions, executors, administrators, predecessors, successors, and assigns, remise, release, and discharge Sun Gro, from any and all actions, causes of action, suits, debts, dues, sums of money, interest, penalties, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands, including but not limited to the Litigation Claims stated herein, that the Debtor and the Bankruptcy Estate had or currently has against Sun Gro, *except* that the foregoing release, waiver and discharge shall not release, waive or discharge the right to enforce this Agreement.

7. Each party hereby represents and warrants to the other party that the person signing this Agreement on its behalf is duly authorized to enter into this Agreement on that party's behalf and that no further consent or approval is required from or by any other person, party or entity in order for such party to enter into or carry out, the provisions of this Agreement. Each party hereby represents and warrants to the other party that (i) it has the power and authority to execute this Agreement; (ii) neither the execution nor the performance of this Agreement by such party violates any other contract by which such party is bound; and (iii) upon its execution hereof, this Agreement constitutes a valid and binding obligation of such party, enforceable against such party in accordance with its terms.
8. This Agreement constitutes the entire and only agreement between the parties with respect to the subject matter hereof, and the parties hereby expressly agree that any and all other understandings or agreements heretofore had by them with respect to the subject matters covered herein, whether oral or written, are superseded by, and merged into, this

Agreement which fully and completely expresses the parties' agreement. The parties agree and affirm that the only consideration for the execution of this Agreement are the terms stated herein and that there are no other promises or agreements of any kind which have caused them to execute this instrument.

9. This Agreement may not be amended or modified orally. Accordingly, no amendment to, or modification of, this Agreement shall be effective unless it is made in writing and signed by duly authorized representatives of each and every party to this Agreement.
10. The parties agree that subsequent changes in any law deemed applicable, through legislation or judicial decision, which create or find additional or different rights or obligations of the parties, shall not affect this Agreement.
11. This Agreement shall be subject to approval by the Court and is not enforceable by or against either party until and unless it is approved by order of the Court, pursuant to a Final Order, with any possible appeal rights having been exhausted.
12. Any notices, demands, requests and communications required to be made by or relating to this Agreement shall be made in writing and shall be deemed to have been duly given if sent by overnight courier or by facsimile, addressed as follows:

If to Sun Gro:

Daniel J. Bugbee
Garvey Schubert Barber
Second & Seneca Building, Eighteenth Floor
1191 Second Avenue
Seattle, Washington 98101-2939

If to the Debtor:

Barbara George Barton, Esq.
Barton Law Firm, P.A.
P.O. Box 12046
Columbia, South Carolina 29211-2046

13. This Agreement may be executed in counterparts, and each of such

counterparts shall for all purposes be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the DEBTOR and SUN GRO, through their respective undersigned authorized representatives, have executed this Agreement on this day, April __, 2014.

STACY'S, INC.

By: _____

Timothy Brindley

Its: President

**SUN GRO HORTICULTURE
DISTRIBUTION, INC.**

By: _____

Its:

counterparts shall for all purposes be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the DEBTOR and SUN GRO, through their respective undersigned authorized representatives, have executed this Agreement on this day, April 11, 2014.

STACY'S, INC.

By: _____
Timothy Brindley

Its: President

**SUN GRO HORTICULTURE
DISTRIBUTION, INC.**

By: Andrew H. H. H.

Its: CFO