

Hearing Date and Time: October 18, 2012 at 2:00 p.m. (Prevailing Eastern Time)
Objection Deadline: October 11, 2012 at 4:00 p.m. (Prevailing Eastern Time)

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*Counsel to the BGI Creditors' Liquidating
Trust and Curtis R. Smith in his capacity
as the Liquidating Trustee*

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

In re:

BGI, INC., f/k/a Borders Group, Inc.,

Debtor.

Chapter 11

Case No. 11-10614 (MG)

Substantively Consolidated

**MOTION OF BGI CREDITORS' LIQUIDATING TRUST AND THE LIQUIDATING
TRUSTEE FOR ENTRY OF AN ORDER ESTABLISHING PROCEDURES
GOVERNING ADVERSARY PROCEEDINGS COMMENCED PURSUANT
TO SECTIONS 547 AND 550 OF THE BANKRUPTCY CODE**

The BGI Creditors' Liquidating Trust (the "Trust"), as successor to the debtors and debtors-in-possession (collectively, the "Debtors" or "Borders"), and Curtis R. Smith, the Liquidating Trustee (the "Trustee"), respectfully requests entry of an order, substantially in the form annexed hereto as Exhibit A, establishing certain procedures (the "Proposed Procedures") to govern claims asserted, and adversary proceedings commenced, by the Trustee pursuant to 11

U.S.C. §§ 547 and 550 (the “Motion”). In support hereof, the Trustee respectfully states as follows:

JURISDICTION AND VENUE

1. The Court (defined below) has subject matter jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334.
2. Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (B), (F), (H) and (O).

BACKGROUND

4. On February 16, 2011 (the “Petition Date”), each of Debtors commenced a voluntary case (collectively, the “Bankruptcy Cases”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) before the United States Bankruptcy Court for the Southern District of New York (the “Court”). The Debtors were authorized to operate their businesses and manage their properties as debtors in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

5. Additional information regarding the Debtors’ businesses, capital structure, and the circumstances leading to the Bankruptcy Cases is contained in the *Declaration of Scott Henry Pursuant to Local Bankruptcy Rule 1007-2 in Support of First Day Motions* [Docket No. 20].

6. On November 10, 2011, the Debtors filed their *First Amended Joint Plan of Liquidation Pursuant to Chapter 11 of the Bankruptcy Code Proposed by the Debtors and the Official Committee of Unsecured Creditors*, dated November 10, 2011 (the “Plan”)

[Docket No. 2110].

7. The Court conducted a hearing on confirmation of the Plan on December 20, 2011, and entered an order confirming the Plan (the “Confirmation Order”) on December 21, 2011 [Docket No. 2384].

8. The Plan became effective on January 12, 2012 (the “Effective Date”) [Docket No. 2465].

9. On the Effective Date, as contemplated by the Plan and Confirmation Order and pursuant to the BGI Creditors’ Liquidating Trust Agreement (the “Trust Agreement”), the Trust was established and Curtis R. Smith was named as the sole Trustee. *See* Plan, Art. IV.

10. In July of 2012, the Trustee caused to be sent demand letters (the “Demand Letters”) to approximately 350 transferees requesting the return of transfers the Trustee believed were preferential pursuant to Bankruptcy Code §§ 547 and 550. Additional demand letters may be sent to other transferees to whom demands were not previously sent.

11. Since the Demand Letters were sent, the Trustee has worked with each transferee that responded to a Demand Letter to evaluate the particular defenses raised by that responding transferee.

12. The Trustee anticipates that he will have to file adversary proceedings (the “Avoidance Actions”) in this Court against a number of transferees (each a “Defendant” and collectively, the “Defendants”), seeking to avoid and recover preferential transfers pursuant to Bankruptcy Code §§ 547 and 550.

13. This extremely large volume of Avoidance Actions may present logistical issues for the Court, the Clerk's Office and the parties. Absent the Proposed Procedures requested in this Motion, it would be extremely difficult for the Trustee to prosecute the Avoidance Actions in an efficient and cost effective manner (and equally difficult for the Court to administer the Avoidance Actions) in light of the large number of entities against which claims may be made.

RELIEF REQUESTED

14. By this Motion, the Trustee respectfully requests that the Court implement the Proposed Procedures, detailed below, in connection with the prosecution of the Avoidance Actions by entering an order substantially in the form annexed hereto as Exhibit "A" (the "Proposed Order").

15. The Proposed Procedures are intended to avoid burdening the Court with the logistical challenges of handling potentially more than 200 Avoidance Actions as well as to permit and facilitate a fair and efficient resolution of such litigation, thus enabling the parties to bring the Avoidance Actions to a swift conclusion in an efficient and cost-effective manner.

16. In general, the Proposed Procedures seek to: (a) extend the Defendants' time to answer the complaints up to an additional 90 days (*i.e.*, up to three (3) separate thirty (30) day extensions); (b) prohibit the filing of dispositive motions in each Avoidance Action until after such action has been mediated (to the extent such action is not settled); (c) stay formal discovery in each Avoidance Action until after such action has been mediated (to the extent such action is not settled); and (d) establish procedures for the mediation of each Avoidance Action.

17. In addition, if the Court authorizes the Proposed Procedures, the Trustee proposes providing the Court with a written status update every one hundred and eighty (180) days after entry of the Proposed Order (and every 180 days thereafter). Each written report will list the status of each Avoidance Action and include the following information about each Avoidance Action, as applicable: (i) the case name and adversary proceeding number; (ii) the date the summons was served; (iii) the date a responsive pleading was filed or is due; (iv) the date a Notice of Mediator Selection (defined herein) was filed and the name of the selected Mediator (defined herein); (v) the date the Mediator's Report (defined herein) was filed; (vi) whether the Avoidance Action has been consensually resolved; and (vii) the date on which any pretrial scheduling conference is scheduled or was held.

18. By implementing the Proposed Procedures, the Trustee believes that it will also maximize the potential for settlement of the Avoidance Actions before trial either through negotiations or as a result of the mediation process.

BASIS FOR RELIEF

19. The Trustee seeks entry of the proposed Order pursuant to §§ 105(a), 547 and 550 of the Bankruptcy Code, Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") 7016 and 7026, and General Order M-390 of the Court.

20. Bankruptcy Rule 7016 affords courts significant flexibility and discretion in adopting and implementing procedures, such as the Proposed Procedures, in order to facilitate the "just, speedy, and inexpensive disposition of the action." Fed. R. Civ. P. 16 (made applicable pursuant to Bankruptcy Rule 7016). Bankruptcy Rule 7016 also provides that courts may enter scheduling and other orders that limit the time to file motions and to complete discovery. In addition, Bankruptcy Rule 7016 provides that such orders may include

modifications of the disclosures required under Bankruptcy Rule 7026, dates for conferences and trials and any other matters appropriate under the circumstances of the case. Fed. R. Civ. P. 16.

21. In addition to Bankruptcy Rule 7016, Bankruptcy Code § 105(a) grants bankruptcy courts broad authority and discretion to take such actions and implement such procedures as are necessary to enforce the provisions of the Bankruptcy Code. That provision provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a).

22. In addition to these statutory predicates, courts in this district have entered orders providing for relief similar to the Proposed Procedures in cases in which a debtor, creditors' committee or trustee anticipates filing a large number of avoidance actions. *See, e.g., In re Oldco M Corporation (f/k/a Metaldyne Corporation)*, Case No. 09-13412 (MG) (Bankr. S.D.N.Y.) (Docket No. 1726); *In re Lehman Brothers, Inc.*, Case No. 08-01420 (JMP) (Bankr. S.D.N.Y.) (Docket No. 2894); *In re Creative Group, Inc.*, Case No. 08-10975 (RDD) (Bankr. S.D.N.Y.) (Docket No. 421); *In re Bernard L. Madoff*, Adversary Case No. 08-01789 (BRL) (Bankr. S.D.N.Y.) (Docket No. 3141).¹

PROPOSED PROCEDURES

¹ Copies of these orders are not attached to this Motion. However, upon request, copies of these orders will be provided to any party requesting them. A copy of these orders will be delivered to Chambers.

23. In light of this statutory and historical framework, the Trustee proposes the following procedures to apply to all of the Avoidance Actions:

Stipulation to Extend Time for Defendants to Respond to the Complaint, Mediation before Response

- Without further order of the Court, the Trustee and any Defendant may stipulate to up to three (3) separate extensions of time for a Defendant to respond to the Complaint (the “Response Due Date”), with each extension to be no more than thirty (30) days each. The stipulation must be in writing to be binding on the Trustee.
- If the parties jointly agree in writing (which writing shall be filed in the adversary proceeding) to enter mediation prior to the Response Due Date, the Response Due Date shall be deferred while the mediation is pending. If the mediation does not resolve the Avoidance Action, the Response Due Date shall be extended for an additional thirty (30) days following the completion of mediation and the filing of the mediator’s report (the “Mediator’s Report”).
- Except as set forth above, further extensions of the Response Due Date shall not be granted except upon a motion or by stipulation of the Trustee and Defendant, approved by Order of the Court.

Stay of Requirement to Conduct Rule 26(f) Conference

- The conference required by Federal Rule of Civil Procedure 26(f), made applicable pursuant to Bankruptcy Rule 7026 (mandatory meeting before scheduling conference/discovery plan), shall be stayed until the completion of mediation and, if the Avoidance Action is not resolved at the mediation, then after the Defendant’s response is filed. Following the filing of the Mediator’s Report and assuming the Avoidance Action was not resolved during the mediation, the parties shall conduct a Rule 26(f) conference and submit a proposed discovery scheduling order (the “Scheduling Order”) to the Court prior to or at the Pretrial Scheduling Conference (as defined herein).

Stay of Requirement to Conduct Pretrial Conference

- The conference required by Federal Rule of Civil Procedure 16, made applicable herein pursuant to Bankruptcy Rule 7016, shall be stayed until the completion of mediation. Accordingly, the summons filed and served by the Trustee will not include a date for a pretrial conference. Upon the filing of the Mediator’s Report, with respect to each Avoidance Action that is not resolved through mediation or otherwise, the Trustee shall file with the Court and serve on the Defendant a notice of pretrial scheduling conference (the “Pretrial Scheduling Conference”) to take place in the adversary proceeding at the next scheduled Omnibus Hearing; provided,

however, that a minimum of fourteen (14) days notice of the Pretrial Scheduling Conference is required.

Stay of Discovery

- All formal discovery, including Rule 26 disclosures, shall be stayed until after a Scheduling Order is entered and after the Pretrial Scheduling Conference has occurred in accordance with these Proposed Procedures; provided, however, this stay of discovery shall in no way preclude the parties from informally exchanging documents and other information in an attempt to resolve an Avoidance Action in advance of, or during, the mediation process.

Settlement of Avoidance Actions

- The Trustee is authorized to compromise or settle the Avoidance Actions without court approval, as provided in Article VII, section E of the Plan and article III, Section 3.1 of the Trust Agreement. In the event of a settlement, the Trustee shall file a notice of settlement with the Court within twenty (20) days of the later of (i) the parties' execution of the settlement agreement, or (ii) the date of payment of any amount due under the settlement agreement.

Stay of Filing Dispositive Motions Until After Mediation

- Defendants are prohibited from filing any dispositive motions, including but not limited to, any motions under Federal Rule of Civil Procedure 12(b)(1) to (7) (made applicable by Bankruptcy Rule 7012) and under Federal Rule of Civil Procedure 56 (made applicable by Bankruptcy Rule 7056) until after the mediator files a Mediator's Report signifying that the mediation is concluded and a settlement has not been reached.

Mediation Procedures and Requirements

- To the extent an Avoidance Action has not been resolved and/or settled within thirty (30) days after an answer is filed, then said Avoidance Action (the "Remaining Avoidance Actions") shall be referred to mandatory mediation. Within two weeks thereafter (the "Mediation Deadline"), the Defendant and the Trustee shall jointly select a mediator (the "Mediator") from the list of mediators (the "Mediator List") to be filed electronically² on the Court's case filing system within two (2) weeks before the hearing on the Motion and the Trustee shall file on the respective adversary proceeding docket a notice of mediator selection (the "Notice of Mediator Selection") on or before the Mediation Deadline. If the parties are unable to agree on a mediator within two (2) weeks, the Trustee shall request that the Court appoint one from the Mediator List. Each

² To the extent a party does not have access to the Court's electronic case filing system, they may access the Mediator List for free from the Trust's notice and claims agent, The Garden City Group, Inc., at www.bordersreorganization.com or by calling 877.906.7675.

individual listed on the Mediator List is from the register of mediators maintained by the United States Bankruptcy Court for the Southern District of New York.³

- The Mediator's fees and reasonable and actual expenses shall be split equally by the parties, and payment arrangements reasonably satisfactory to the Mediator must be completed on or prior to the commencement of the mediation.
- Promptly after the filing of the Notice of Mediator Selection, the Trustee and Defendant's counsel (or the Defendant, if appearing *pro se*) shall jointly contact the selected Mediator to discuss the mediation. The mediation will be scheduled within sixty (60) days of the filing of the Notice of Mediator Selection.
- The mediation shall take place in New York, New York and shall be held at the law offices of Trustee's counsel, the Mediator's office, or at another location agreed upon by the Mediator, the Trustee and the Defendant.
- Except as set forth herein, the mediation shall be conducted in accordance with General Order M-390 which is available on the Court's website (<http://www.nysb.uscourts.gov/>).
- The parties shall exchange, and provide the Mediator with a copy of their position statements ("Position Statements"), which may not exceed ten (10) pages double-spaced in 12 point type (exclusive of exhibits and schedules), at least ten (10) days prior to the scheduled mediation. The Mediator may also require the parties to provide to the Mediator any relevant papers and exhibits as well as a settlement proposal.
- The Mediator will preside over the mediation with full authority to determine the nature and order of the parties' presentations and with the full authority to implement any additional procedures which are reasonable and practical under the circumstances.
- The length of time necessary to effectively complete the mediation will be within the Mediator's discretion. The Mediator may also adjourn a mediation that has been commenced if the Mediator determines that an adjournment is in the best interests of the parties.

³ The Trust and the Trustee reserve the right to add or remove mediators from the Mediator List any time after the original Mediator List is filed with the Court, including after any order is entered approving the Motion, provided that the additional mediators will be selected from the register of mediators maintained by the United States Bankruptcy Court for the Southern District of New York.

- The parties shall participate in the mediation in good faith and with a view toward reaching a consensual resolution. The mediation(s) shall be attended in person by a representative of the Defendant with full settlement authority (and if a Defendant is represented by counsel, their counsel) as well as counsel for the Trustee (who must have settlement authority from the Trustee).
- No Mediator shall mediate an Avoidance Action in which the Mediator or the Mediator's law firm currently represents a party with respect to any Avoidance Action or is otherwise currently adverse to the Trust or the Debtors' estates.
- All proceedings and writings incident to the mediation will be considered privileged and confidential and subject to all the protections of Federal Rule of Evidence 408, and shall not be reported or admitted in evidence for any reason whatsoever. Nothing stated or exchanged during mediation shall operate as an admission of liability, wrongdoing or responsibility.
- The mediation shall be conducted so as to be completed within one hundred and twenty (120) days after the date the Notice of Mediator Selection is filed, which deadline may be extended by the mutual consent of the Trustee, the Defendant and the Mediator.
- If a party (a) fails to submit the required Position Statement or other submissions as provided in these Proposed Procedures or as may be agreed to by the Mediator or ordered by the Court, or (b) fails to attend the mediation, then the non-defaulting party may file a motion for default judgment or a motion to dismiss the adversary proceeding, as applicable.
- Within ten (10) days after the conclusion of each mediation, the Mediator shall file a Mediator's Report in the Remaining Avoidance Action, which shall be limited to stating only (i) whether the Remaining Avoidance Action settled or did not settle; (ii) the date or dates the mediation took place; and (iii) the names of the parties and/or counsel who attended.

Avoidance Actions Omnibus Hearings

- The Court will schedule regular Omnibus Hearing dates in the Bankruptcy Case, on which dates any post-mediation Pretrial Scheduling Conference will take place. Any pretrial motions filed by the parties in the Avoidance Actions must be set for hearing on one of the Omnibus Hearing dates unless otherwise ordered by the Court.

Motions Affecting all Avoidance Actions

- Any motions filed by the Trustee that affect all of the Avoidance Actions shall be

filed in the Bankruptcy Case and not in each separately docketed Avoidance Action; provided, however, that each Defendant shall receive notice of the filing of the same.

24. The Trustee believes that the Proposed Procedures, including mandatory mediation, will provide for an efficient and cost effective means of resolving the Avoidance Actions as formal discovery, seeking broad categories of documents and information, will operate to delay and increase the cost involved in prosecuting and defending the Avoidance Actions; whereas, the temporary stay of formal discovery and temporary prohibition of filing dispositive motions provided for in the Proposed Procedures will enable the parties to resolve the Avoidance Actions through the informal exchange of information and documentation before the parties are required to incur the substantial costs of formal discovery and litigation.

25. In addition, after the mediation process, including the submission of Position Statements and participation in the mediation sessions, the parties will have a clear understanding of the factual and legal issues in dispute which will hopefully enable them to narrowly tailor their discovery needs.

26. The Proposed Procedures are consistent with the Bankruptcy Rules, the Local Rules and General Order M-390 and are designed to further the goals of judicial economy and efficiency.

NO PRIOR REQUEST

27. No other or prior motion for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Trust respectfully requests that the Court grant the Motion in all respects, enter the proposed order substantially in the form attached hereto as Exhibit A, and grant such other and further relief as the Court deems just and proper.

Dated: September 27, 2012

LOWENSTEIN SANDLER PC

By: /s/ Bruce Buechler
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*Counsel to the BGI Creditors' Liquidating
Trust and Curtis R. Smith in his capacity
as the Liquidating Trustee*

EXHIBIT A

Proposed Order

LOWENSTEIN SANDLER PC

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*Counsel to the BGI Creditors' Liquidating
Trust and Curtis R. Smith in his capacity
as the Liquidating Trustee*

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

In re:

**BGI, INC., f/k/a Borders Group, Inc.,

Debtor.**

Chapter 11

Case No. 11-10614 (MG)

Substantively Consolidated

**ORDER GRANTING MOTION OF BGI CREDITORS' LIQUIDATING TRUST AND
THE LIQUIDATING TRUSTEE TO ESTABLISH PROCEDURES
GOVERNING ADVERSARY PROCEEDINGS BROUGHT PURSUANT
TO SECTIONS 547 AND 550 OF THE BANKRUPTCY CODE**

*Upon the Motion of the BGI Creditors' Liquidating Trust and Liquidating Trustee for
Entry of an Order Establishing Procedures Governing Adversary Proceedings Commenced
Pursuant to Sections 547 and 550 of the Bankruptcy Code dated September 27, 2012 (the*

“Motion”¹); and the Court having jurisdiction to consider the Motion and grant the relief requested in the Motion; and consideration of the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having held a hearing to consider the requested relief in the Motion (the “Hearing”); and upon the record of the Hearing and all of the proceedings before the Court, the Court finds and determines that the relief requested in the Motion is in the best interests of the Trust, creditors, and all parties-in-interest, that the Trust and Trustee have provided due and adequate notice of the Motion and Hearing, that no other notice is necessary, and that the legal and factual bases set forth in the Motion establish just and sufficient cause to grant the relief requested therein, it is hereby:

ORDERED, that the Motion is granted; and it is further

ORDERED, that the procedures governing all parties to the Avoidance Actions, attached hereto as Exhibit “1” (the “Avoidance Action Procedures”) and incorporated herein by reference, are hereby approved and shall govern the Avoidance Actions, effective as of the date of this Order.

ORDERED, that the Trustee shall file a written status update every one hundred and eighty (180) days after entry of the Proposed Order (and every 180 days thereafter). Each written report shall list the status of each Avoidance Action and include the following information about each Avoidance Action, as applicable: (i) the case name and adversary proceeding number; (ii) the date the summons was served; (iii) the date a responsive pleading was filed or is due; (iv) the date a Notice of Mediator Selection (defined herein) was filed and the name of the selected Mediator (defined herein); (v) the date the

¹ Capitalized terms used in this Order but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Mediator's Report (defined herein) was filed; (vi) whether the Avoidance Action has been consensually resolved; and (vii) the date on which any pretrial scheduling conference is scheduled or was held.

ORDERED, that the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules shall apply to the Adversary Proceedings, except to the extent that they conflict with the Avoidance Action Procedures.

ORDERED, that the time periods set forth in this Order and the Avoidance Action Procedures shall be calculated in accordance with Bankruptcy Rule 9006(a).

ORDERED, that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

ORDERED, that this Order shall be effective immediately upon its entry.

DATED: New York, New York
October ____, 2012

HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

AVOIDANCE ACTION PROCEDURES

Stipulation to Extend Time for Defendants to Respond to the Complaint, Mediation before Response

- Without further order of the Court, the Trustee and any Defendant may stipulate to up to three (3) separate extensions of time for a Defendant to respond to the Complaint (the “Response Due Date”), with each extension to be no more than thirty (30) days each. The stipulation must be in writing to be binding on the Trustee.
- If the parties jointly agree in writing (which writing shall be filed in the adversary proceeding) to enter mediation prior to the Response Due Date, the Response Due Date shall be deferred while the mediation is pending. If the mediation does not resolve the Avoidance Action, the Response Due Date shall be extended for an additional thirty (30) days following the completion of mediation and the filing of the mediator’s report (the “Mediator’s Report”).
- Except as set forth above, further extensions of the Response Due Date shall not be granted except upon a motion or by stipulation of the Trustee and Defendant, approved by Order of the Court.

Stay of Requirement to Conduct Rule 26(f) Conference

- The conference required by Federal Rule of Civil Procedure 26(f), made applicable pursuant to Bankruptcy Rule 7026 (mandatory meeting before scheduling conference/discovery plan), shall be stayed until the completion of mediation and, if the Avoidance Action is not resolved at the mediation, then after the Defendant’s response is filed. Following the filing of the Mediator’s Report and assuming the Avoidance Action was not resolved during the mediation, the parties shall conduct a Rule 26(f) conference and submit a proposed discovery scheduling order (the “Scheduling Order”) to the Court prior to or at the Pretrial Scheduling Conference (as defined herein).

Stay of Requirement to Conduct Pretrial Conference

- The conference required by Federal Rule of Civil Procedure 16, made applicable herein pursuant to Bankruptcy Rule 7016, shall be stayed until the completion of mediation. Accordingly, the summons filed and served by the Trustee will not include a date for a pretrial conference. Upon the filing of the Mediator’s Report, with respect to each Avoidance Action that is not resolved through mediation or otherwise, the Trustee shall file with the Court and serve on the Defendant a notice of pretrial scheduling conference (the “Pretrial Scheduling Conference”) to take place in the adversary proceeding at the next scheduled Omnibus Hearing; provided,

however, that a minimum of fourteen (14) days notice of the Pretrial Scheduling Conference is required.

Stay of Discovery

- All formal discovery, including Rule 26 disclosures, shall be stayed until after a Scheduling Order is entered and after the Pretrial Scheduling Conference has occurred in accordance with these Proposed Procedures; provided, however, this stay of discovery shall in no way preclude the parties from informally exchanging documents and other information in an attempt to resolve an Avoidance Action in advance of, or during, the mediation process.

Settlement of Avoidance Actions

- The Trustee is authorized to compromise or settle the Avoidance Actions without court approval, as provided in Article VII, section E of the Plan and article III, Section 3.1 of the Trust Agreement. In the event of a settlement, the Trustee shall file a notice of settlement with the Court within twenty (20) days of the later of (i) the parties' execution of the settlement agreement, or (ii) the date of payment of any amount due under the settlement agreement.

Stay of Filing Dispositive Motions Until After Mediation

- Defendants are prohibited from filing any dispositive motions, including but not limited to, any motions under Federal Rule of Civil Procedure 12(b)(1) to (7) (made applicable by Bankruptcy Rule 7012) and under Federal Rule of Civil Procedure 56 (made applicable by Bankruptcy Rule 7056) until after the mediator files a Mediator's Report signifying that the mediation is concluded and a settlement has not been reached.

Mediation Procedures and Requirements

- To the extent an Avoidance Action has not been resolved and/or settled within thirty (30) days after an answer is filed, then said Avoidance Action (the "Remaining Avoidance Actions") shall be referred to mandatory mediation. Within two weeks thereafter (the "Mediation Deadline"), the Defendant and the Trustee shall jointly select a mediator (the "Mediator") from the list of mediators (the "Mediator List"), that was filed on _____, 2012 [Docket No. ___] in accordance with the Motion, and the Trustee shall file on the respective adversary proceeding docket a notice of mediator selection (the "Notice of Mediator Selection") on or before the Mediation Deadline. If the parties are unable to agree on a mediator within two (2) weeks, the Trustee shall request that the Court appoint one from the Mediator List. Each individual listed on the Mediator List is from the register of mediators maintained by the United States Bankruptcy Court for the

Southern District of New York.²

- The Mediator's fees and reasonable and actual expenses shall be split equally by the parties, and payment arrangements reasonably satisfactory to the Mediator must be completed on or prior to the commencement of the mediation.
- Promptly after the filing of the Notice of Mediator Selection, the Trustee and Defendant's counsel (or the Defendant, if appearing *pro se*) shall jointly contact the selected Mediator to discuss the mediation. The mediation will be scheduled within sixty (60) days of the filing of the Notice of Mediator Selection.
- The mediation shall take place in New York, New York and shall be held at the law offices of Trustee's counsel, the Mediator's office, or at another location agreed upon by the Mediator, the Trustee and the Defendant.
- Except as set forth herein, the mediation shall be conducted in accordance with General Order M-390 which is available on the Court's website (<http://www.nysb.uscourts.gov/>).
- The parties shall exchange, and provide the Mediator with a copy of their position statements ("Position Statements"), which may not exceed ten (10) pages double-spaced in 12 point type (exclusive of exhibits and schedules), at least ten (10) days prior to the scheduled mediation. The Mediator may also require the parties to provide to the Mediator any relevant papers and exhibits as well as a settlement proposal.
- The Mediator will preside over the mediation with full authority to determine the nature and order of the parties' presentations and with the full authority to implement any additional procedures which are reasonable and practical under the circumstances.
- The length of time necessary to effectively complete the mediation will be within the Mediator's discretion. The Mediator may also adjourn a mediation that has been commenced if the Mediator determines that an adjournment is in the best interests of the parties.
- The parties shall participate in the mediation in good faith and with a view toward

² The Trust and the Trustee reserve the right to add or remove mediators from the Mediator List any time after the original Mediator List is filed with the Court, including after any order is entered approving the Motion, provided that the additional mediators will be selected from the register of mediators maintained by the United States Bankruptcy Court for the Southern District of New York.

reaching a consensual resolution. The mediation(s) shall be attended in person by a representative of the Defendant with full settlement authority (and if a Defendant is represented by counsel, their counsel) as well as counsel for the Trustee (who must have settlement authority from the Trustee).

- No Mediator shall mediate an Avoidance Action in which the Mediator or the Mediator's law firm currently represents a party with respect to any Avoidance Action or is otherwise currently adverse to the Trust or the Debtors' estates.
- All proceedings and writings incident to the mediation will be considered privileged and confidential and subject to all the protections of Federal Rule of Evidence 408, and shall not be reported or admitted in evidence for any reason whatsoever. Nothing stated or exchanged during mediation shall operate as an admission of liability, wrongdoing or responsibility.
- The mediation shall be conducted so as to be completed within one hundred and twenty (120) days after the date the Notice of Mediator Selection is filed, which deadline may be extended by the mutual consent of the Trustee, the Defendant and the Mediator.
- If a party (a) fails to submit the required Position Statement or other submissions as provided in these Proposed Procedures or as may be agreed to by the Mediator or ordered by the Court, or (b) fails to attend the mediation, then the non-defaulting party may file a motion for default judgment or a motion to dismiss the adversary proceeding, as applicable.
- Within ten (10) days after the conclusion of each mediation, the Mediator shall file a Mediator's Report in the Remaining Avoidance Action, which shall be limited to stating only (i) whether the Remaining Avoidance Action settled or did not settle; (ii) the date or dates the mediation took place; and (iii) the names of the parties and/or counsel who attended.

Avoidance Actions Omnibus Hearings

- The Court will schedule regular Omnibus Hearing dates in the Bankruptcy Case, on which dates any post-mediation Pretrial Scheduling Conference will take place. Any pretrial motions filed by the parties in the Avoidance Actions must be set for hearing on one of the Omnibus Hearing dates unless otherwise ordered by the Court.

Motions Affecting all Avoidance Actions

- Any motions filed by the Trustee that affect all of the Avoidance Actions shall be filed in the Bankruptcy Case and not in each separately docketed Avoidance

Action; provided, however, that each Defendant shall receive notice of the filing of the same.

Exhibit 2
MEDIATOR LIST

[To be filed electronically on the Court's case filing system two (2) weeks
prior to the Hearing on the Motion.]

Hearing Date and Time: October 18, 2012 at 2:00 p.m. (Prevailing Eastern Time)
Objection Deadline: October 11, 2012 at 4:00 p.m. (Prevailing Eastern Time)

Bruce Buechler, Esq.
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*Counsel to the BGI Creditors' Liquidating Trust and
Curtis R. Smith in his capacity as the Liquidating Trustee*

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

In re:

BGI, INC., f/k/a Borders Group, Inc.,

Debtor.

Chapter 11

Case No. 11-10614 (MG)

Substantively Consolidated

PLEASE TAKE NOTICE that the BGI Creditors' Liquidating Trust (the "Trust"), as successor to the debtors and debtors-in-possession (collectively, the "Debtors"), and Curtis R. Smith, the Liquidating Trustee of the Trust (the "Trustee"), have filed the attached *Motion of BGI Creditors' Liquidating Trust and the Liquidating Trustee for Entry of an Order Establishing Procedures Governing Adversary Proceedings Commenced Pursuant to Sections 547 and 550 of the Bankruptcy Code* (the "Motion").

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion shall be held on **October 18, 2012 at 2:00 p.m. (Prevailing Eastern Time)**, or as soon thereafter

as counsel may be heard, before the Honorable Martin Glenn, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of New York, Courtroom 501, One Bowling Green, New York, New York 10004 (the "Court").

PLEASE TAKE FURTHER NOTICE that objections, if any, to entry of an order granting the relief sought in the Motion shall be made in writing, shall state with particularity the grounds therefor, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, and shall be filed with the Court electronically in accordance with General Order M-399 (General Order M-399 and the User's Manual for the Electronic Case Filing System can be found at www.nysb.uscourts.gov, the official website for the Court) by registered users of the Court's case filing system, and by all other parties in interest, on a 3.5 inch disk or CD-ROM, preferably in Portable Document Format (PDF), WordPerfect, or any other Windows-based word processing format (with a hard copy delivered directly to Chambers), and served in accordance with General Order M-399 or otherwise **so as to be actually received no later than October 11, 2012 at 4:00 p.m. (Prevailing Eastern Time)** by (i) Lowenstein Sandler PC, counsel for the BGI Creditors' Liquidating Trust, 65 Livingston Avenue, Roseland, New Jersey 07068 (Attn: Bruce D. Buechler, Esq.), and 1251 Avenue of the Americas, New York, New York 10020 (Attn: Bruce S. Nathan, Esq. and David M. Banker, Esq.); and (ii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, New York, New York 10004 (Attn: Tracy Davis, Esq. and Linda Riffkin, Esq.).

PLEASE TAKE FURTHER NOTICE that the relief requested in the Motion may be granted without a hearing if no response is timely filed and served as set forth

above and in accordance with the order, dated February 16, 2011, implementing certain notice and case management procedures in this case (the "Case Management Order") [Docket No. 64].

Dated: September 27, 2012
New York, New York

By: /s/ Bruce Buechler
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