

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	X	
	:	Chapter 11
	:	
FILENE'S BASEMENT, LLC, <u>et al.</u> ,	:	Case No. 11-13511 (KJC)
	:	
Debtors. ¹	:	Jointly Administered
	:	
	X	Related Docket No. 564, 566 567

ORDER UNDER 11 U.S.C. §§ 105, 502 AND 503 AND FED. R. BANKR. P. 2002, 3003(c)(3) AND 9007 (I) SETTING GENERAL BAR DATE AND INITIAL ADMINISTRATIVE CLAIMS BAR DATE (INCLUDING WITH RESPECT TO CLAIMS ASSERTED PURSUANT TO 11 U.S.C. § 503(B)(9)), (II) ESTABLISHING PROCEDURES FOR FILING PROOFS OF CLAIM AND ADMINISTRATIVE CLAIM REQUESTS (INCLUDING WITH RESPECT TO CLAIMS ASSERTED PURSUANT TO 11 U.S.C. § 503(B)(9)), (III) ESTABLISHING PROCEDURES FOR RECONCILING, AND AUTHORIZING PAYMENT OF, ADMINISTRATIVE CLAIM REQUESTS (INCLUDING WITH RESPECT TO CLAIMS ASSERTED PURSUANT TO 11 U.S.C. § 503(B)(9)), AND (IV) APPROVING FORM AND MANNER OF NOTICE THEREOF

Upon the motion (the "Motion")² of the Debtors for entry of an order under Bankruptcy Code sections 105, 502 and 503 and Bankruptcy Rules 2002, 3003(c)(3) and 9007 (i) setting a general bar date and an initial administrative claims bar date (including with respect to claims asserted pursuant to 11 U.S.C. § 503(b)(9)), (ii) establishing procedures for filing proofs of claim and administrative claim requests (including with respect to claims asserted pursuant to 11 U.S.C. § 503(b)(9)), (iii) establishing procedures for reconciling, and authorizing payment of, administrative claim requests (including with respect to claims asserted pursuant to 11 U.S.C. § 503(b)(9), and (iv) approving the form and manner of notice thereof; and the Court having

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Filene's Basement, LLC (8277), Syms Corp. (5228), Syms Clothing, Inc. (3869), and Syms Advertising Inc. (5234). The Debtors' address is One Syms Way, Secaucus, New Jersey 07094.

² Unless otherwise defined herein, capitalized terms used shall have the meanings ascribed to them in the Motion.



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determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is GRANTED.
2. **General Bar Date:** Pursuant to Bankruptcy Rule 3003(c)(3), all "entities" and "persons" (as defined respectively in Bankruptcy Code sections 101(15) and (41)), except any Governmental Unit, that are creditors holding or wishing to assert Claims arising before the Petition Date against any of the Debtors are required to file **on or before 5:00 p.m. (Eastern) on March 1, 2012 (the "General Bar Date")** a separate, completed and executed proof of claim form (conforming substantially to Official Bankruptcy Form No. 10) on account of any such claims in accordance with the procedures set forth below.
3. Pursuant to Bankruptcy Rule 3003(c) and Bankruptcy Code section 502(b)(9), any Governmental Units that are creditors holding or wishing to assert Claims arising before the Petition Date against any of the Debtors are required to file **on or before 5:00 p.m. (Eastern) on May 4, 2012 (the "Governmental Bar Date")** a separate, completed and executed Proof of Claim Form (conforming substantially to Official Bankruptcy Form No. 10) on account of any such claims in accordance with the procedures set forth below.
4. Notwithstanding the preceding paragraphs, creditors holding or wishing to assert the following types of claims (collectively, the "Excluded General Claims") against the Debtors need not file a proof of claim:

- (i) Claims listed in the Schedules and Statements or any amendments thereto that are not therein listed as "contingent," "unliquidated" or "disputed" and that are not disputed by the holders thereof as to (a) amount, (b) classification or (c) the identity of the Debtor against whom such Claims are scheduled;
- (ii) Claims on account of which a proof of claim has already been properly filed with the Court against the correct Debtor;
- (iii) Claims previously allowed or paid pursuant to an order of the Court;
- (iv) Claims allowable under Bankruptcy Code sections 503(b) and 507(a)(2) as expenses of administration;³ and
- (v) Claims of the Debtors against other Debtors.

5. Any holder of an interest in any of the Debtors (each an "Interest Holder"), whose interest is based exclusively upon the ownership of common or preferred stock of any of the Debtors (an "Interest"), is not required to file a proof of Interest based solely on account of such Interest Holder's ownership interest in such stock; provided, however, that any Interest Holder who wishes to assert a Claim against any of the Debtors, including, without limitation, any Claim based on any transaction in the Debtors' securities and/or a Claim for damages or rescission based on the purchase or sale of the Interests, must file a proof of claim on or prior to the General Bar Date; provided further, however, that any Interest Holder that is a Governmental Unit, who wishes to assert a Claim against any of the Debtors, including, without limitation, based on a transaction in the Debtors' securities and/or a Claim for damages or rescission based on the purchase or sale of the Interest, must file a proof of claim on or prior to the Governmental Bar Date.⁴

³ Any creditors holding or wishing to assert Claims allowable under Bankruptcy Code sections 503(b) and 507(a)(2) (including with respect to claims asserted pursuant to 11 U.S.C. § 503(b)(9)) are required to file Administrative Claim Requests as provided for herein.

⁴ The Debtors reserve the right to seek relief at a later date requiring Interest Holders to file proofs of Interest.

6. Proofs of claim for any rejection damages claims arising from the rejection of any unexpired lease or executory contract of a Debtor (an "Agreement") during these Bankruptcy Cases must be filed by the later of (a) thirty (30) days after the effective date of rejection of such executory contract or unexpired lease as provided by an order of this Court or pursuant to a notice under procedures approved by this Court, (b) any date set by another Order of the Court or (c) the General Bar Date (the "Rejection Bar Date"); provided, however, that in the case of claims subject to a separate Order entered prior to the entry of this Order and fixing a different bar date (a "Pre-Existing Bar Date"), such claims shall continue to be subject to the Pre-Existing Bar Date and the Pre-Existing Bar Date shall not be modified or extended by this Order or the General Bar Date Notice. Proofs of claim for any other claims that arose prior to the Petition Date with respect to a lease or contract must be filed by the General Bar Date.

7. The Debtors shall serve a notice (the "General Bar Date Notice") substantially in the form of the notice attached as Exhibit A to the Motion and a Proof of Claim Form conforming substantially to Official Bankruptcy Form No. 10 attached as Exhibit C to the Motion by first class mail no later than five (5) business days after the filing of the notice setting the General Bar Date to all known and reasonably ascertainable creditors and all known holders of the Debtors' equity securities as reflected in the Debtors' books and records.

8. The Debtors shall publish a notice in a form substantially similar to the General Bar Date Notice in the national edition of USA Today, the Boston Globe, and Women's Wear Daily, as set forth in the Declaration of Christopher R. Schepper with Respect to Debtors' Proposed Publication of Bar Dates (Docket No. 645), no later than seven (7) business days after the filing of the notice setting the General Bar Date. Such publication shall constitute

adequate and appropriate notice sufficient to comply with the Debtors' due process obligations as to all creditors that are not known or reasonably ascertainable to the Debtors.

9. Subject to Paragraphs 24-27 of this Order, a creditor served with a Proof of Claim Form may rely on the information therein, if any, regarding the description of such creditor's claim in the Schedules and Statements.

10. To be considered properly filed, each Proof of Claim Form must (a) be denominated in lawful United States currency, (b) specify the full name of Debtor against which the claimant asserts the Claim, (c) set forth with specificity the legal and factual basis for the Claim, and (d) have attached to it supporting documentation upon which the claimant will rely to support the Claim.

11. Claims against multiple Debtors may not be aggregated on a single Proof of Claim Form. Any creditor or claimant holding or wishing to assert a Claim against more than one Debtor must file a separate Proof of Claim Form in the case of each Debtor against which the creditor or holder of such Claim believes it holds a Claim.

12. **Initial Administrative Claims Bar Date:** Pursuant to Bankruptcy Code sections 105 and 503, all Administrative Claim Requests for payment of Administrative Claims (as defined in Bankruptcy Code sections 101(5) and 503(b), including but not limited to claims asserted pursuant to 11 U.S.C. § 503(b)(9)), first arising on or before December 31, 2011, must be filed **on or before 5:00 p.m. (Eastern) on March 1, 2012** (the "Initial Administrative Claims Bar Date") by holders of Administrative Claims, including, without limitation, individuals, partnerships, corporations, estates, trusts, indenture trustees, unions, and all non-Debtor parties to Agreements with any of the Debtors who allege that any amounts arising under any of the Agreements from and after the Petition Date are due, owing and unpaid as of **December 31**,

2011. Administrative Claims include, but are not limited to (i) rent claims relating to nonresidential real property under Bankruptcy Code sections 365(d)(3) and 503(b) (the "Landlord Administrative Claims"), and (ii) any claims asserted pursuant to Bankruptcy Code section 503(b)(9) (the "503(b)(9) Claims").

13. Notwithstanding the preceding paragraphs, claimants holding or wishing to assert the following types of claims (collectively, the "Excluded Administrative Claims") against the Debtors need not file an Administrative Claim Request:

- (i) Parties that have already properly filed Administrative Claim Requests with the Court or Kurtzman Carson Consultants LLC (the "Claims Agent" or "KCC") that clearly sets forth that such parties are asserting Administrative Claims;
- (ii) Parties whose Administrative Claims have been previously allowed by order of the Court;
- (iii) A Debtor or Debtors holding Administrative Claims against one or more other Debtors;
- (iv) Professional advisors (i.e., attorneys, financial advisors, accountants, claims agents) retained by the Debtors or any official committee appointed in these cases, under Bankruptcy Code sections 327, 328, 363 or 1103 and whose Administrative Claims are for services rendered and reimbursement of expenses in these chapter 11 cases; and
- (v) Members of any official committee appointed in these cases whose Administrative Claims are for expenses for acting in their official capacity as members of an official committee in these chapter 11 cases.

14. To be considered properly asserted and filed, each Administrative Claim Request must (a) conform substantially to the form attached as Exhibit D to the Motion, (b) be denominated in lawful United States Currency, (c) specify the full name of the Debtor against which the claimant asserts the Administrative Claim, (d) set forth with specificity the legal and

factual basis for the Administrative Claim, and (e) have attached to it supporting documentation upon which the claimant will rely to support the Administrative Claim Request.

15. Administrative Claims against multiple Debtors may not be aggregated in a single Administrative Claim Request. Any creditor or holder of an Administrative Claim holding or wishing to assert Administrative Claims against more than one Debtor must file a separate Administrative Claim Request in the case of each Debtor against which the creditor or holder of such Administrative Claim request believes it holds an Administrative Claim.

16. Any claimant asserting a 503(b)(9) Claim against a Debtor must include the following: (i) the value of the goods the claimant contends a Debtor received within twenty days prior to the Petition Date; (ii) documentation, including invoices, receipts, bills of lading and the like, identifying the particular goods for which the claim is being asserted; and (iii) documentation regarding which Debtor the goods were shipped to, the date the goods were received by the Debtors, and the alleged value of such goods. For the avoidance of doubt, the procedures described in Paragraphs 14 and 15 above apply to 503(b)(9) Claims, such that a claimant asserting a 503(b)(9) Claim must not aggregate claims against more than one Debtor into a single 503(b)(9) Claim and, instead, must specifically set forth the full name of the particular Debtor against whom the 503(b)(9) Claim is asserted and filed. Each such 503(b)(9) Claim must be supported by the documentation described in this Paragraph 16 and Paragraph 14 of this Order, identifying which Debtor the goods were shipped to, the date the goods were received by the Debtor and the alleged value of such goods received by such Debtor.

17. The Debtors shall serve a notice (the "Initial Administrative Claims Bar Date Notice") substantially in the form of the notice attached as Exhibit B to the Motion and a form of Administrative Claim Request substantially in the form attached as Exhibit D to the

Motion by first class mail no later than five (5) business days after the filing of the notice setting the Initial Administrative Claims Bar Date to all known and reasonably ascertainable holders of Administrative Claims.

18. The Debtors shall publish a notice in a form substantially similar to the Initial Administrative Claims Bar Date Notice in the national edition of USA Today, the Boston Globe, and Women's Wear Daily, as set forth in the Declaration of Christopher R. Schepper with Respect to Debtors' Proposed Publication of Bar Dates (Docket No. 645), no later than seven (7) business days after the filing of the notice setting the Initial Administrative Claims Bar Date. Such publication shall constitute adequate and appropriate notice sufficient to comply with the Debtors' due process obligations as to all creditors that are not known or reasonably ascertainable to the Debtors.

19. **Procedures for Filing Proofs of Claims and Administrative Claim Requests:** All proofs of claim and Administrative Claim Requests shall be filed by mail, hand, or overnight courier and shall be addressed to:

Filene's Claims Processing Center
c/o Kurtzman Carson Consultants LLC
2335 Alaska Avenue
El Segundo, CA 90245

20. Proofs of claim and Administrative Claim Requests are deemed filed only when the proof of claim or Administrative Claim Requests, together with supporting documentation, is actually received by KCC at the above address. Proofs of claim and Administrative Claim Requests submitted by facsimile or other electronic means shall be rejected by KCC and will not be deemed filed.

21. **Additional Procedures for Filing Administrative Claim Requests with Respect to Section 503(b)(9) Claims and Landlord Administrative Claims.** The Procedures

set forth in this Paragraph 21, with respect to 503(b)(9) Claims and Landlord Administrative Claims, are hereby approved and shall be the sole and exclusive method for the assertion, resolution, allowance, and satisfaction of 503(b)(9) Claims and Landlord Administrative Claims, and all Vendors and Landlords are prohibited from invoking any other means therefor, including, without limitation, the filing of a motion for allowance, or to compel payment, of any 503(b)(9) Claims or Landlord Administrative Claims.

(a) All Section 503(b)(9) Claims and Landlord Administrative Claims must be filed by the Initial Administrative Claims Bar Date;

(b) Any claimant asserting a 503(b)(9) Claim against the Debtors also must include the following: (i) the value of the goods the claimant contends the Debtors received within twenty days prior to the Petition Date; (ii) documentation, including invoices, receipts, bills of lading and the like, identifying the particular goods for which the claim is being asserted; and (iii) documentation regarding which Debtor the goods were shipped to, the date the goods were received by the Debtors, and the alleged value of such goods;

(c) The Debtors and the Committees shall have sixty (60) days after the Initial Administrative Claims Bar Date to file with the Court and serve upon claimants any objections to timely filed 503(b)(9) Claims or Landlord Administrative Claims (the "Objection Deadline");

(d) Claimants shall have thirty (30) days from the Objection Deadline to file with the Court and serve upon the Debtors, the Committees and their attorneys any replies to such objections;

(e) All timely filed 503(b)(9) Claims or Landlord Administrative Claims shall be deemed allowed unless objected to by the Debtors or the Committees on or before the Objection Deadline;

(f) To the extent the Debtors determine that a 503(b)(9) Claim or Landlord Administrative Claim should be allowed and satisfied, the Debtors shall be authorized to satisfy the 503(b)(9) Claim or Landlord Administrative Claim no earlier than fifteen (15) days after providing notice of such determination (a "Satisfaction Notice") to the Committees; provided, however, that if an objection to satisfaction is raised by the Committees within fifteen (15) days after receipt of the Satisfaction Notice, the 503(b)(9) Claim or Landlord Administrative Claim at issue shall be paid only pursuant to an order of the Court, after notice and a hearing;

(g) The Debtors shall use their best efforts to reconcile and satisfy the 503(b)(9) Claims and Landlord Administrative Claims as soon as practicable; provided,

however, that the Debtors, in consultation with the Committees, shall have discretion to defer satisfaction of allowed 503(b)(9) Claims and Landlord Administrative Claims until such time as set forth in such plan of liquidation or reorganization; provided further, however, that any Claimant asserting a 503(b)(9) Claim or Landlord Administrative Claim so deferred shall be authorized to seek an order of the Court requiring earlier payment after notice and a hearing; and

22. Notwithstanding and without limiting the foregoing, the Debtors are authorized, but not required, to negotiate, in their sole discretion, with any Claimant and to seek an agreement resolving any objection to such Claimant's 503(b)(9) Claim or Landlord Administrative Claim. The approval of such an agreement shall be subject to notice and a hearing unless otherwise consented to by the Committees, in which event, the requirement for a notice and a hearing shall be deemed waived.

23. Any creditor or holder of a Claim or an Administrative Claim that is required to file but fails to file a proof of claim or Administrative Claim Request for its claim in accordance with this Order on or before the General Bar Date, the Governmental Bar Date, the Rejection Bar Date, the Initial Administrative Claims Bar Date, or such other date established by prior or future order of the Court or established hereby (as applicable) shall be barred from asserting such claim against the Debtors and their property and their estates, and such holder or creditor shall not be permitted to vote on any plan or participate in any distribution in the Debtors' chapter 11 cases on account of such claim.

24. In the event that the Debtors amend the Schedules and Statements after having given notice of the General Bar Date and the Initial Administrative Claims Bar Date as provided herein, the Debtors shall give notice of any amendment to the holders of claims affected thereby, and if the subject amendment reduces the unliquidated, noncontingent, and liquidated amount or changes the nature or classification of a claim against a Debtor or the Debtor liable on the claim as reflected therein, such holders shall be given until the later of (a)

the General Bar Date or the Initial Administrative Claims Bar Date (as applicable) or (b) thirty (30) days from the date such notice is given (or such other time period as may be fixed by the Court) to file proofs of claim or Administrative Claim Requests with respect to such affected claim, if necessary, or be barred from doing so in accordance with Paragraph 23 above.

25. In the event that the Debtors amend the Schedules and Statements after having given notice of the Governmental Bar Date as provided herein, the Debtors shall give notice of any amendment to the holders of claims that are Governmental Units and that are affected thereby, and if the subject amendment reduces the unliquidated, noncontingent and liquidated amount or changes the nature or classification of a claim against a Debtor or the Debtor liable on the claim as reflected therein, such holders shall be given until the later of (a) the Governmental Bar Date or (b) thirty (30) days from the date such notice is given (or such other time period as may be fixed by the Court) to file proofs of claim or Administrative Claim Requests with respect to such affected claim, if necessary, or be barred from doing so in accordance with Paragraph 23 above.

26. Nothing in this Order shall, or shall be deemed to, prejudice the Debtors' or any other party in interest's right to object to any Claim, whether filed or scheduled (e.g., as contingent, unliquidated or disputed), on any ground, or to dispute, or to assert offsets against or defenses to, any claim reflected on the Schedules and Statements, or any amendments thereto, as to amount, liability, classification, or otherwise, and to subsequently designate any claim as disputed, contingent or unliquidated, and nothing in this Order or the Schedules and Statements shall be considered an admission as to the amount, liability, classification or other characteristic of a Claim, including, without limitation, whether such Claim is asserted or scheduled against the proper Debtor.

27. Nothing contained herein shall limit, abridge, or otherwise affect the Debtors' right to request that the Court fix a date by which the holder of a Claim or Interest that is specifically excluded from the requirements to file such a Claim by this Order must file a proof of claim or interest or the holder of an Administrative Claim that is specifically excluded from the requirements to file an Administrative Claim Request by this Order must file an Administrative Claim Request.

28. Notwithstanding any other provision of this Order or any other order entered by the Court to the contrary: (i) Quest 28 Millbury LLC, 4 USS LLC, and New Woodbridge II, L.L.C. shall have until the General Bar Date to file their respective rejection damage and prepetition proofs of claim; (ii) the claims addressed or reserved by the Motion and the Landlord Supplement of Connecticut/DeSales LLC (Docket Nos. 397 & 636) are to be treated as "Excluded Administrative Claims" and shall not be governed by this Order; and (iii) the Initial Administrative Claims Bar Date shall not apply to governmental units with respect to claims described in Bankruptcy Code section 503(b)(1)(B) and (C) in accordance with Bankruptcy Code section 503(b)(1)(D).

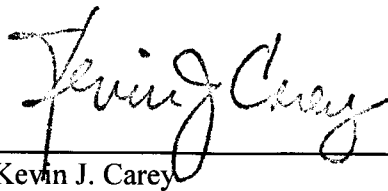
29. The provisions of this Order apply to all Claims of whatever character against the Debtors or their property, whether such Claims are secured or unsecured, entitled or not entitled to priority, liquidated or unliquidated, or fixed or contingent.

30. The Debtors are authorized to take such steps and do such things as they deem to be reasonably necessary to fulfill the notice requirements established by this Order, including the expenditure of all sums reasonably necessary to implement the provisions of this Order.

31. This Order shall be enforceable and effective immediately upon its entry.

32. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: Wilmington, Delaware
Jan. 18, 2012



Honorable Kevin J. Carey
UNITED STATES BANKRUPTCY JUDGE