

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re:	:	Chapter 11
	:	
FILENE'S BASEMENT, LLC, <u>et al.</u> ,	:	Case No. 11-13511 (KJC)
	:	
Debtors. ¹	:	Jointly Administered
	:	
	X	Related Docket Nos. 1655

**CERTIFICATION OF COUNSEL IN SUPPORT OF ENTRY OF SUPPLEMENTAL
ORDER WITH RESPECT TO SOLICITATION PROCEDURES**

The undersigned counsel for the debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors") hereby certifies as follows:

On June 22, 2012, the Debtors filed the Debtors' Motion for an Order Under 11 U.S.C. §§ 105, 502, 1125, 1126 and 1128, Fed. R. Bankr. P. 2002, 3003, 3017, 3018, 3020 and 9007, Del. Bankr. L.R. 3017-1 (I) Approving Proposed Disclosure Statement; (II) Approving Key Dates and Deadlines Related to Ballot Solicitation and Tabulation Procedures, Forms of Ballots, and Manner of Notice; and (III) Fixing Date, Time and Place for Confirmation Hearing and Deadline for Filing Objections Thereto [Docket No. 1534].

On July 13, 2012, the Court entered the Order (I) Approving Disclosure Statement; (II) Approving Ballot Solicitation and Tabulation Procedures, Key Dates and Deadlines Related Thereto, Forms of Ballots, and Manner of Notice; and (III) Fixing Date, Time and Place for Confirmation Hearing and Deadline for Filing Objections Thereto [Docket No. 1655] (the "Disclosure Statement Order").

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.



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The Disclosure Statement Order approves, among other things, the solicitation procedures (the "Solicitation Procedures") annexed as Exhibit A to the Disclosure Statement Order. The Solicitation Procedures set forth the manner in which the Debtors will solicit votes to accept or reject the Second Amended Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries (as may be amended or modified, the "Plan").

The approved Solicitation Procedures currently provide that if a Claim is "recorded in the Schedules or on a proof of claim filed on or before the Bar Date and such claim is unliquidated", then "the holder of such Claim will not be entitled to vote to accept or reject the Plan unless the holder of such Claim files a 3018(a) Motion by the 3018(a) Motion Deadline." See, e.g., Solicitation Procedures at Sections 5(a)(i)(D), 5(a)(ii)(D), 5(a)(iii)(D), 5(a)(v)(I), 5(a)(vi)(D), 5(a)(vii)(D), 5(a)(viii)(D).

Since the entry of the Disclosure Statement Order, the Debtors have been working diligently with the Debtors' Court-appointed claims, noticing and docketing agent, Kurtzman Carson Consultants LLC ("KCC"), to prepare solicitation materials for mailing pursuant to the Solicitation Procedures. In the course of preparing the solicitation materials, KCC has recommended that it would be administratively and technically preferable for solicitation purposes that if a filed proof of claim asserts a claim in a wholly unknown or unliquidated amount or is docketed in the KCC database as of the Voting Record Date in the amount of \$0, such claim be temporarily allowed for voting purposes only in the amount of \$1.00.

Accordingly, attached hereto as Exhibit A is a form of Supplemental Order With Respect to Solicitation Procedures (the "Supplemental Order"). The Supplemental Order provides that the Solicitation Procedures shall be deemed modified solely to provide as follows:

"If a filed proof of claim asserts a claim in a wholly unknown or unliquidated amount or is docketed in the database of the court approved official claims docketing agent in these chapter 11 cases, Kurtzman Carson Consultants LLC ("KCC"), as of July 13, 2012 in the amount of \$0, then such claim shall be temporarily allowed for voting purposes only in the amount of \$1.00."

Pursuant to Local Rule 9013-1(k), the undersigned certifies that the proposed revision set forth herein is non-material in the context of the overall solicitation procedures scheme. Moreover, the only effect of the modification is to allow an additional subset of Claim holders to receive ballots and to vote to accept or reject the Plan. Without such modification, these Claim holders would receive only a notice of the confirmation hearing date indicating that their Claims were unliquidated and that, pursuant to the Solicitation Procedures, they would not be entitled to vote to accept or reject the Plan unless they followed the procedures with respect to filing a motion for temporary allowance of the Claim for voting purposes under Bankruptcy Rule 3018(a). Accordingly, such modification is non-material in the overall solicitation scheme and serves only to provide a small subset of creditors with additional protections regarding their Claims and to provide a more accurate vote regarding acceptance or rejection of the Plan.

The Debtors have circulated the Supplemental Order to counsel for the Office of the United States Trustee, counsel for the Official Committee of Unsecured Secured Creditors (the "Creditors' Committee") and counsel for the Official Committee of Syms Corp. Equity Security Holders (together with the Creditors' Committee, the "Official Committees"). Counsel for the Office of the United States Trustee and both Official Committees have consented to the proposed modification to the Solicitation Procedures and to entry of the Supplemental Order.

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WHEREFORE, the Debtors respectfully request that this Court enter the Supplemental Order attached hereto as Exhibit 1 at its earliest convenience.

Dated: Wilmington, Delaware
July 18, 2012

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Counsel for Debtors and Debtors in Possession

EXHIBIT 1

Supplemental Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11
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FILENE'S BASEMENT, LLC, et al., : Case No. 11-13511 (KJC)
:
Debtors.¹ : Jointly Administered
:
----- X **Related Docket Nos. 1655 & _____**

**SUPPLEMENTAL ORDER WITH RESPECT
TO SOLICITATION PROCEDURES**

Upon consideration of the Certification of Counsel in Support of Entry of Supplemental Order With Respect to Solicitation Procedures; and pursuant to Local Rule 9013-1(k); and it appearing that this Supplemental Order is in the best interests of the Debtors, their estates, their creditors, their stakeholders and other parties in interest; and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. The solicitation procedures (the "Solicitation Procedures") annexed as Exhibit A to the Disclosure Statement Order [Docket No. 1655]² and approved by this Court on July 13, 2012 shall be deemed modified so as to provide that:

"If a filed proof of claim asserts a claim in a wholly unknown or unliquidated amount or is docketed in the database of the court approved official claims docketing agent in these chapter 11 cases, Kurtzman Carson Consultants LLC ("KCC") as of July 13, 2012 in the amount of \$0, then

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² Order (I) Approving Disclosure Statement; (II) Approving Ballot Solicitation and Tabulation Procedures, Key Dates and Deadlines Related Thereto, Forms of Ballots, and Manner of Notice; and (III) Fixing Date, Time and Place for Confirmation Hearing and Deadline for Filing Objections Thereto [Docket No. 1655].

such claim shall be temporarily allowed for voting purposes only in the amount of \$1.00."

2. This Supplemental Order shall not modify, and shall have no effect on, any other term or provision contained in the Disclosure Statement Order or the Solicitation Procedures.

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

4. Notwithstanding Bankruptcy Rule 6004(h) and any other Bankruptcy Rule(s) to the contrary, this Supplemental Order shall take effect immediately upon entry.

Dated: Wilmington, Delaware
_____, 2012

Honorable Kevin J. Carey
UNITED STATES BANKRUPTCY JUDGE