

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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In re: : Chapter 11
FILENE'S BASEMENT, LLC, et al., : Case No. 11-13511 (KJC)
Reorganized Debtors.¹ : Jointly Administered
----- X

**CERTIFICATION OF COUNSEL REGARDING PROPOSED ORDER APPROVING
STIPULATION BY AND AMONG THE REORGANIZED DEBTORS, ELIE TAHARI,
LTD., AND TRC MASTER FUND LLC REGARDING CLAIM NO. 3115**

I, William M. Alleman, Jr., counsel to the above-captioned reorganized debtors (the “Reorganized Debtors”), certify as follows regarding the proposed *Order Approving Stipulation By and Among the Reorganized Debtors, Elie Tahari, Ltd., and TRC Master Fund LLC Regarding Claim No. 3115*, attached hereto as **Exhibit A** (the “Proposed Order”).

1. On December 22, 2011, Debtor Syms Corp. (“Syms”) filed its *Schedules of Assets and Liabilities* (D.I. 439) (the “Schedules”), which listed Elie Tahari, Ltd. (“Elie Tahari”), as holding a fixed, liquidated, and undisputed general unsecured nonpriority claim against Syms in the amount of \$157,682.25 (the “Scheduled Claim”).

2. On January 20, 2012, Elie Tahari assigned the Scheduled Claim to TRC Master Fund LLC (“TRC”) (D.I. 690).

3. On August 29, 2012, the Reorganized Debtors amended the Schedules to, among other things, reduce the Scheduled Claim to \$0.00 (D.I. 1972) (the “Amended Schedules”).

¹ The Reorganized 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 Reorganized Debtors’ address is One Syms Way, Secaucus, New Jersey 07094.



4. Elie Tahari was served with notice (the “Notice”) of the Amended Schedules but did not respond, object, or timely file a proof of claim.

5. TRC asserts that it did not receive notice of the Amended Schedules.

6. Elie Tahari asserts that it did not receive the Notice.

7. On August 30, 2012, the Court entered its *Findings of Fact, Conclusions of Law and Order Confirming the Modified Second Amended Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries* (D.I. 1983) (the “Confirmation Order”). Pursuant to the Confirmation Order, the Court confirmed the *Modified Second Amended Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries* (the “Plan”).²

8. On September 14, 2012, the Plan went effective.

9. On October 7, 2013, Elie Tahari filed a late proof of claim, assigned claim no. 3115 (“Claim No. 3115”), against Debtor Filene’s Basement, LLC, in the amount of \$141,846.75, which asserted as its basis for liability certain invoices that are redundant of the Scheduled Claim.

10. After Claim No. 3115 was filed, counsel to Elie Tahari contacted counsel to the Reorganized Debtors regarding the issues described above. Following negotiation, the parties entered into the *Stipulation By and Among the Reorganized Debtors, Elie Tahari, Ltd., and TRC Master Fund LLC Regarding Claim No. 3115*, attached as Exhibit 1 to the Proposed Order (the “Stipulation”).

11. Pursuant to the terms of the Stipulation, the Parties agreed, among other things, that Claim No. 3115 shall be allowed as a Syms General Unsecured Claim in the amount of \$141,846.75, and the Reorganized Debtors shall make a distribution on account of Claim No. 3115

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Plan.

exclusively and directly to TRC in accordance with the terms and conditions of the Plan and Confirmation Order in full and final satisfaction of Claim No. 3115 and the Scheduled Claim.

12. Elie Tahari and TRC have reviewed the Stipulation and Proposed Order and consent to entry of the Proposed Order.

WHEREFORE, the Reorganized Debtors respectfully request that the Court enter the Proposed Order attached hereto as **Exhibit A** and grant such other relief as may be just and proper.

Dated: January 24, 2014
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ William M. Alleman, Jr.

Robert J. Dehney (Bar No. 3578)

Curtis S. Miller (Bar No. 4583)

William M. Alleman, Jr. (Bar No. 5449)

1201 North Market Street

P.O. Box 1347

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Fax: (302) 658-3989

Counsel for Reorganized Debtors

EXHIBIT A

[Proposed 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, <u>et al.</u> ,	:	Case No. 11-13511 (KJC)
	:	
Reorganized Debtors. ¹	:	Jointly Administered
	:	
	:	Re: D.I. _____
	X	

**ORDER APPROVING STIPULATION BY AND AMONG THE REORGANIZED
DEBTORS, ELIE TAHARI, LTD., AND TRC MASTER FUND LLC
REGARDING CLAIM NO. 3115**

Upon consideration of the *Certification of Counsel Regarding Proposed Order Approving Stipulation By and Among the Reorganized Debtors, Elie Tahari, Ltd., and TRC Master Fund LLC Regarding Claim No. 3115*;² and it appearing that good and sufficient notice of this matter has been given; and after due deliberation and good and sufficient cause appearing therefore;

IT IS HEREBY ORDERED THAT:

1. The Stipulation attached hereto as **Exhibit 1** is approved in its entirety.
2. The Reorganized Debtors, Elie Tahari, TRC, and the Reorganized Debtors' claims agent, Kurtzman Carson Consultants, LLC, are hereby authorized and directed to take any

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 Capitalized terms used but not defined herein shall have the meaning ascribed to them in the *Certification of Counsel Regarding Proposed Order Approving Stipulation By and Among the Reorganized Debtors, Elie Tahari, Ltd., and TRC Master Fund LLC Regarding Claim No. 3115*.

and all actions required under the Stipulation, and all such actions as are reasonably necessary to effectuate the terms of the Stipulation.

3. The Court retains jurisdiction with respect to all disputes and other matters arising from or relating to the implementation or interpretation of this Order.

Dated: _____, 2014
Wilmington, Delaware

THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

[Stipulation]

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)
:
Reorganized Debtors.¹ : Jointly Administered
:
----- X

STIPULATION BY AND AMONG THE REORGANIZED DEBTORS, ELIE TAHARI, LTD., AND TRC MASTER FUND LLC REGARDING CLAIM NO. 3115

This stipulation (the "Stipulation") is entered into by and among the above-captioned reorganized debtors (the "Reorganized Debtors"), Elie Tahari, Ltd. ("Elie Tahari"), and TRC Master Fund LLC ("TRC," and together with the Reorganized Debtors and Elie Tahari, the "Parties"). The Parties hereby stipulate and agree as follows:

RECITALS

WHEREAS, on November 2, 2011 (the "Petition Date"), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code; and

WHEREAS, on December 22, 2011, Debtor Syms Corp. ("Syms") filed its *Schedules of Assets and Liabilities* (D.I. 439) (the "Schedules"), which listed Elie Tahari as holding a fixed, liquidated, and undisputed general unsecured nonpriority claim against Syms in the amount of \$157,682.25 (the "Scheduled Claim"); and

WHEREAS, on January 20, 2012, Elie Tahari assigned the Scheduled Claim to TRC (D.I. 690); and

¹ The Reorganized 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 Reorganized Debtors' address is One Syms Way, Secaucus, New Jersey 07094.

WHEREAS, on August 29, 2012, the Reorganized Debtors amended the Schedules to, among other things, reduce the Scheduled Claim to \$0.00 (D.I. 1972) (the “Amended Schedules”); and

WHEREAS, Elie Tahari was served with notice (the “Notice”) of the Amended Schedules but did not respond, object, or timely file a proof of claim; and

WHEREAS, TRC asserts that it did not receive notice of the Amended Schedules; and

WHEREAS, Elie Tahari asserts that it did not receive the Notice; and

WHEREAS, on August 30, 2012, the Court entered its *Findings of Fact, Conclusions of Law and Order Confirming the Modified Second Amended Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries* (D.I. 1983) (the “Confirmation Order”). Pursuant to the Confirmation Order, the Court confirmed the *Modified Second Amended Joint Chapter 11 Plan of Reorganization of Syms Corp. and its Subsidiaries* (the “Plan”);² and

WHEREAS, on September 14, 2012, the Plan went effective; and

WHEREAS, on October 7, 2013, Elie Tahari filed a late proof of claim, assigned claim no. 3115 (“Claim No. 3115”), against Debtor Filene’s Basement, LLC, in the amount of \$141,846.75, which asserted as its basis for liability certain invoices that are redundant of the Scheduled Claim; and

WHEREAS, the Parties have engaged in arm’s-length negotiations and the Parties have agreed to this Stipulation to resolve their disputes on the terms and conditions set forth herein;

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Plan.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. The recitals set forth above are incorporated herein by reference and are made an integral part of this Stipulation.

2. Claim No. 3115 shall be allowed as a Syms General Unsecured Claim in the amount of \$141,846.75.

3. The Reorganized Debtors shall make a distribution on account of Claim No. 3115 exclusively and directly to TRC in accordance with the terms and conditions of the Plan and Confirmation Order in full and final satisfaction of Claim No. 3115 and the Scheduled Claim. Elie Tahari hereby acknowledges and agrees that the Reorganized Debtors shall make a distribution on account of Claim No. 3115 exclusively and directly to TRC in accordance with the terms and conditions of the Plan and Confirmation Order in full and final satisfaction of Claim No. 3115 and the Scheduled Claim, and upon execution of this Stipulation Elie Tahari hereby forever releases and discharges the Reorganized Debtors from any alleged liability, including but not limited to any alleged liability relating to Claim No. 3115 and the Scheduled Claim, and any amended claims or other claims concerning the liabilities asserted in Claim 3115 and the Scheduled Claim, and forever waives any distributions on account of Claim No. 3115 or the Scheduled Claim.

4. Elie Tahari and TRC each agree that they will not (i) re-assert, re-file, amend, modify, or revise Claim No. 3115, or any other proof of claim or request for payment, whether unsecured, administrative, or otherwise, that Elie Tahari has filed in these chapter 11 cases or (ii) file or otherwise assert any further claim or request for payment, whether unsecured, administrative, or otherwise, against the Debtors, the Reorganized Debtors, or their property.

5. This Stipulation shall be effective and binding upon the Parties following an order of the Bankruptcy Court approving the Stipulation becoming final and non-appealable.

6. This Stipulation shall be binding upon any successors or assigns of the Parties.

7. This Stipulation constitutes the entire agreement between the Parties and supersedes all prior or contemporaneous written or oral communications, understandings, and agreements with respect to the subject matter hereof; provided, however, that nothing in this paragraph shall affect the agreements between TRC and Elie Tahari in the Assignment of Claim between TRC and Elie Tahari, which shall remain in effect. This Stipulation cannot be amended except by written agreement between the Parties.

8. Each Party acknowledges and agrees that nothing in this Stipulation constitutes an admission or concession of any legal or factual issue raised, referred to, or contained in this Stipulation.

9. Each Party agrees to bear its own costs, expenses, and attorneys' fees incurred in connection with the negotiations related to and preparation of this Stipulation and to not seek from each other reimbursement of any such costs, expenses, or attorneys' fees.

10. This Stipulation may be executed in counterparts, each of which shall be an original, and such counterparts shall be construed together as one instrument. Facsimile or electronic signatures shall be deemed original signatures.

11. Each person executing this Stipulation in a representative capacity represents and warrants that he or she is empowered to do so.

12. Each of the Parties acknowledges that it has read all of the terms of this Stipulation, has had an opportunity to consult with counsel of its own choosing or voluntarily waived such right, and enters into this Stipulation voluntarily and without duress.

13. Each Party represents and warrants that it has participated in the drafting and preparation of this Stipulation. In any construction of this Stipulation, the Stipulation shall not be construed for or against any Party, but shall be construed fairly and according to its plain meaning.

14. Each Party covenants that it has entered into this Stipulation in good faith, and agrees to do all things necessary or convenient to carry out and effectuate the terms of this Stipulation, including, without limitation, the execution of all further and additional documents and authorization of all transfers of funds necessary to implement the terms of this Stipulation. Further, each Party covenants that it will not do or fail to do anything, directly or indirectly, that will interfere with the terms or conditions of this Stipulation or adversely affect any of the rights provided by this Stipulation.


15. The Reorganized Debtors, the Reorganized Debtors' claims agent, Kurtzman Carson Consultants, and the Clerk of the Bankruptcy Court are authorized to take all necessary and appropriate actions to give effect to this Stipulation.

16. THE BANKRUPTCY COURT SHALL RETAIN JURISDICTION OVER THE IMPLEMENTATION OF THIS STIPULATION AND ANY DISPUTES ARISING HEREUNDER. DELAWARE LAW SHALL GOVERN THE CONSTRUCTION OF NON-BANKRUPTCY PROVISIONS, IF ANY AND TO THE EXTENT APPLICABLE, RELEVANT TO THIS STIPULATION, WITHOUT REGARD TO THE CONFLICTS OF LAW OR PRINCIPLES THEREOF.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the
Parties have executed this Stipulation as of the date set forth below.

REORGANIZED DEBTORS

ELIE TAHARI, LTD.

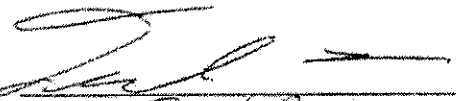
By: 
Name: Richard G. Pyonter
Title: CFO

By: _____
Name: _____
Title: _____

Date: 1/23/14, 2014

Date: _____, 2014

TRC MASTER FUND LLC

By: 
Name: Terrell Ross
Title: managing member

Date: 1/22/, 2014

[Signature Page for Stipulation By and Among the Reorganized Debtors, Elie Tahari, Ltd.,
and TRC Master Fund LLC Regarding Claim No. 3115]

IN WITNESS WHEREOF, and intending to be legally bound hereby, the
Parties have executed this Stipulation as of the date set forth below.

REORGANIZED DEBTORS

ELIE TAHARI, LTD.

By: _____
Name: _____
Title: _____

By: _____
Name: Natali E. Gallier
Title: General Counsel

Date: _____, 2014

Date: 1/22/14, 2014

TRC MASTER FUND LLC

By: _____
Name: _____
Title: _____

Date: _____, 2014

*[Signature Page for Stipulation By and Among the Reorganized Debtors, Elie Tahari, Ltd.,
and TRC Master Fund LLC Regarding Claim No. 3115]*