



So Ordered.

Signed this 21 day of November, 2018.

Diane Davis
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

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In re: :
:
HERB PHILIPSON'S ARMY AND NAVY :
STORES INC., :
:
Debtor.¹ :
:
-----X

Chapter 11

Case No. 18-61376-6 (DD)

**ORDER ESTABLISHING PROCEDURES
FOR TREATMENT OF RECLAMATION CLAIMS**

Upon the motion (the "Motion")² of the Debtor for an order pursuant to section 105(a), 503(b)(9), and 546(c) of the Bankruptcy Code establishing Reclamation Procedures for the treatment of Reclamation Claims; and upon the Affidavit; and a hearing to consider the Motion having been held on November 14, 2018; and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be provided; and it appearing that the relief requested in the Motion is in the best interest of the Debtor, its estate, its creditors

¹ The last four digits of the Debtor's federal tax identification number are 4814.

² Capitalized terms used herein, but not otherwise defined, shall have the meanings ascribed to them in the Motion.



and other parties in interest; and after due deliberation thereon and sufficient cause appearing therefor, it is hereby:

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is **GRANTED** to the extent provided herein on a final basis.
2. The Debtor is authorized to resolve all Reclamation Claims in accordance with the following Reclamation Procedures, which are hereby approved and authorized in their entirety.
 - a. Any Seller asserting a Reclamation Claim must satisfy all procedural and timing requirements entitling it to have a right to reclamation under section 546(c) of the Bankruptcy Code.
 - b. Any Seller asserting a Reclamation Claim must submit a written demand asserting such Reclamation Claim (a “Reclamation Demand”) which must (i) include (a) a description of the goods subject to the Reclamation Demand; (b) copies of any purchase orders and invoices relating to such Goods; and (c) any evidence regarding the date(s) such Goods were shipped to and received by the Debtor; and (ii) be delivered to (a) the Debtor, Herb Philipson’s Army and Navy Stores Inc. 1899 Black River Boulevard, Rome, New York 13440; (b) counsel to the Debtor, Griffin Hamersky LLP, 420 Lexington Avenue, Suite 400, New York, New York 10170 (Attn.: Scott A. Griffin, Esq.); (c) counsel to the Creditors’ Committee, Lowenstein Sandler LLP, 1251 Avenue of the Americas, 17th Floor, New York, New York 10020 (Attn.: Eric Chafetz, Esq.); and (d) counsel to the Debtor’s secured lenders, Riemer & Braunstein LLP, Seven Times Square, New York, New York 10036 (Attn: Steven Fox, Esq.), and Hodgson Russ LLP, 677 Broadway, Suite 301, Albany, New York 12207 (Attn: Richard L. Weisz), so as to be received in accordance with the deadlines set forth in section 546(c) of the Bankruptcy Code.
 - c. Upon receipt of a Reclamation Demand, the Debtor will serve upon the Seller, at the address indicated in its Reclamation Demand, a copy of this Order.
 - d. No later than 120 days after entry of the order granting the relief requested herein (the “Reclamation Notice Deadline”), the Debtor will file with the Court a notice (the “Reclamation Notice”), listing the Reclamation Claims and the amount (if any) of each such Reclamation Claim that the Debtor determines to be valid. The Debtor will serve

the Reclamation Notice on the following parties (the “Notice Parties”): (i) the United States Trustee; (ii) the United States Attorney for the Northern District of New York; (iii) the Internal Revenue Service; (iv) the New York State Department of Taxation and Finance; (v) the Securities and Exchange Commission; (vi) the Debtor’s prepetition banking institutions; (vii) the Debtor’s prepetition secured lenders; (viii) any parties required to be served under any applicable Bankruptcy Rule or Local Rule; and (ix) each Seller listed in the Reclamation Notice, at the address indicated in the respective Seller’s Reclamation Demand

- e. If the Debtor fails to file the Reclamation Notice by the Reclamation Notice Deadline, any holder of a Reclamation Claim that submitted a Reclamation Demand in accordance with these Reclamation Procedures may bring a motion on its own behalf to seek relief with respect to its Reclamation Claim.
- f. Any party that wishes to object to the Reclamation Notice must file and serve an objection (a “Reclamation Notice Objection”) on the Notice Parties and counsel to the Debtor, Griffin Hamersky LLP, 420 Lexington Avenue, Suite 400, New York, New York 10170, Attn.: Scott A. Griffin, Esq. so as to be received no later than 4:00 pm (Eastern Time) on the twentieth (21st) day after the date on which the Reclamation Notice is filed (the “Objection Deadline”). Any Reclamation Notice Objection must include (i) a copy of the Reclamation Demand, with evidence of the date mailed to the Debtor; and (ii) a statement describing with specificity the objections to the Reclamation Notice and any legal basis for such objections.
- g. Any Reclamation Claim listed in the Reclamation Notice for which no Reclamation Notice Objection was filed and served by the Objection Deadline shall be deemed allowed by the Court in the amount identified by the Debtor in the Reclamation Notice, provided that all issues relating to the treatment of any such allowed Reclamation Claim shall be reserved.
- h. Notwithstanding and without limiting the foregoing, the Debtor will be authorized, but not required, to negotiate, in its sole discretion, with any Seller and to seek an agreement resolving the Seller’s Reclamation Claim or Reclamation Notice Objection. If the Debtor and Seller agree on the validity, amount, or treatment of the Seller’s Reclamation Claim, the Debtor will prepare and file with the Court a notice of settlement (a “Settlement Notice”) and serve such Settlement Notice on the Notice Parties. Each Notice Party will have ten (10) days from the date of service of such Settlement Notice to file with the Court and

serve on the other Notice Parties and attorneys for the Debtor an objection thereto (a “Settlement Objection”).

- i. If no Settlement Objection with respect to a Reclamation Claim that is the subject of a Settlement Notice is timely filed and served, such Reclamation Claim will be treated in accordance with the Settlement Notice without further order of the Court.
- j. If a Settlement Objection with respect to a Reclamation Claim that is the subject of a Settlement Notice is timely filed and served, the parties may negotiate a consensual resolution of such objection to be incorporated in a stipulation filed with the Court (a “Settlement Stipulation”). Upon the filing of a Settlement Stipulation, the applicable Reclamation Claim shall be allowed and treated in accordance with the terms of the Settlement Stipulation without further order of the Court.
- k. If no consensual resolution of a Settlement Objection with respect to a Reclamation Claim that is the subject of a Settlement Notice is reached within thirty (30) days after the date the Settlement Objection was filed and served, the Debtor may file a motion with the Court requesting a hearing to fix the allowed amount of the Reclamation Claim, unless the Debtor and the party filing the Settlement Objection agree to extend such thirty (30) day period
- l. If any Reclamation Claims are still subject to a pending Reclamation Notice Objection ninety (90) days following the Objection Deadline (or a later date as may be agreed to by the Seller and the Debtor and no Settlement Notice has been filed therewith, the Debtor may file a motion with the Court to fix the allowed amounts of such Reclamation Claims and schedule a hearing to consider such motion.

3. The foregoing Reclamation Procedures are the sole and exclusive method for resolving unpaid Reclamation Claims asserted against the Debtor.

4. Neither the Debtor’s filing of this Motion, nor any Seller’s filing of a Reclamation Claim, shall be in any way construed to mean that any Reclamation Claim is in fact a valid obligation against the Debtor’s estate.³

³ The Creditors’ Committee has not yet had an opportunity to review all asserted secured claims, but there is possibility following such review that Reclamation Claims are rendered valueless due to the lenders’ asserted floating lien on inventory

5. All Sellers are prohibited from seeking any other means for the resolution or treatment of their Reclamation Claims, including: (a) commencing adversary proceedings and contested matters in connection with any Reclamation Claims, (b) seeking to obtain possession of any Goods, and (c) interfering with the delivery of any Goods to the Debtor; provided, that nothing in this Order shall bar a Seller from asserting a claim pursuant to section 503(b)(9) of the Bankruptcy Code.

6. Any adversary proceedings or contested matters related to Reclamation Claims, whether currently pending or initiated in the future, except those proceedings initiated by the Debtor in accordance with the Reclamation Procedures, are stayed and the claims asserted therein shall be resolved exclusively pursuant to the Reclamation Procedures set forth herein.

7. To the extent a Reclamation Claim has been paid by the Debtor pursuant to another order entered by the Court in this Chapter 11 Case, including any orders authorizing the Debtor to pay prepetition claims of certain essential suppliers and vendors or foreign creditors, the Reclamation Procedures shall not apply to such Seller and any Reclamation Claim filed by such Seller with the Court shall be deemed withdrawn without the need for any further order of the Court.

8. The notice to assert a Section 503(b)(9) Claim (the “Section 503(b)(9) Bar Date Notice”) attached hereto as Exhibit A is approved in its entirety.

9. Each person or entity (including, without limitation, individuals, partnerships, joint ventures, corporations, estates, governmental units (as such term is defined in section 101(27) of the Bankruptcy Code), and trusts), that asserts an administrative expense against any Debtor for the value of any materials, supplies, goods, products, and related items (collectively, the “Goods”) sold to such Debtor in the ordinary course of business and received by the Debtor

within 20 days before the Petition Date (*i.e.*, between September 18, 2018 and October 8, 2018) (a “Section 503(b)(9) Claim”) is required to file an original signed Section 503(b)(9) Claim Request so as to be actually received on or before December 28, 2018 at 5:00 p.m. (Eastern Time) (the “Section 503(b)(9) Bar Date”).

10. In order to request (the “Section 503(b)(9) Claim Requests”) payment of a Section 503(b)(9) Claim, holders of such claims must following the following procedures to assert such claim:

- a. Each Section 503(b)(9) Claim Request must identify (i) the amount of the Section 503(b)(9) Claim; (ii) the value of the Goods the Section 503(b)(9) claimant contends the Debtor received within 20 days before the Petition Date; (iv) the date and place of receipt of the Goods by the Debtor; and (v) the method of delivery of the Goods to the Debtor.
- b. Each Section 503(b)(9) Claim Request must include or attach documentation identifying (i) the particular invoice(s) related to such Section 503(b)(9) Claim and (ii) any demand to reclaim Goods sold to the Debtors under section 546(c) of the Bankruptcy Code.
- c. Each Section 503(b)(9) Claim Request must include a certification that the Goods with respect to which the Section 503(b)(9) Claim is being filed were provided in the ordinary course of the Debtor’s business.
- d. (d) The **original** signed Section 503(b)(9) Claim Request must be delivered by mail, courier service, hand delivery, or in person so as to be **actually received** by KCC on or before the Section 503(b)(9) Bar Date at the following address:

Herb Philipson's Claims Processing Center
c/o KCC
2335 Alaska Ave
El Segundo, CA 90245

Section 503(b)(9) Claim Requests sent by facsimile or email will not be accepted.

11. A copy of the Section 503(b)(9) Claim Request must also be sent to (i) the Debtors, Herb Philipson's Army and Navy Stores Inc., 1899 Black River Boulevard North, Rome, NY 13440; (ii) Counsel to the Debtor, Griffin Hamersky LLP, 420 Lexington Avenue,

Suite 400, New York, NY 10170 (Attn: Scott A. Griffin, Esq. and Michael D. Hamersky, Esq.); and (iii) proposed counsel for the Official Committee of Unsecured Creditors, Lowenstein Sandler LLP, 1251 Avenue of the Americas (Attn: Jeffrey L. Cohen, Esq. and Eric S. Chafetz, Esq.).

12. The form to assert a Section 503(b)(9) the (“Section 503(b)(9) Claim Request Form”), in the form attached to the Bar Date Notice as Exhibit A, is approved in all respects.

13. Any holder of a Section 503(b)(9) Claim that fails to timely file and serve a Section 503(b)(9) Claim Request in accordance with the terms of this Order on or before the Section 503(b)(9) Bar Date shall be forever barred, estopped, and permanently enjoined from asserting such Section 503(b)(9) Claim against the Debtor or its estate, and such holder shall not be entitled to receive any distribution in this chapter 11 case on account of such Section 503(b)(9) Claim or receive further notices regarding such Section 503(b)(9) Claim; *provided, however*, that holders of Section 503(b)(9) Claims shall not be prevented from filing non-priority general unsecured claims for such amounts before the applicable bar date.

14. Holders of Section 503(b)(9) Claims are prohibited from filing motions to compel the allowance of payment of administrative expenses for their Section 503(b)(9) Claims.

15. The Debtor, with the assistance of KCC, is authorized and directed to serve the Section 503(b)(9) Bar Date Notice, together with a copy of the Section 503(b)(9) Claim Request Form, by first-class U.S. mail, postage prepaid, no later than five business days after the date of entry of this Order, upon the following parties:

- a. all known creditors and their counsel (if known);
- b. all parties on the service list established pursuant to Local Rule 2002-1;
- c. the U.S. Trustee; and

d. all taxing authorities for the jurisdictions in which the Debtor does business.

16. The aforementioned service of the Section 503(b)(9) Bar Date Notice constitutes good, adequate, and sufficient notice of the Section 503(b)(9) Bar Date and satisfies the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

17. The Debtor is hereby authorized and empowered to take all actions necessary to implement the relief granted in this Order.

18. Nothing in the Motion or this Order or the relief granted herein (including any actions taken or payments made by the Debtor) is to be construed as (i) an admission of the validity of any claim against the Debtor; (ii) an admission with respect to the validity, extent, or perfection of any lien; (iii) a waiver of the Debtor's rights or those of any party in interest to dispute, contest, setoff, or recoup any claim, or assert any related rights, claims, or defenses; (iv) a waiver of the Debtor's rights or those of any party in interest over the validity, extent, perfection, or possible avoidance of any lien; or (v) an approval or assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code.

19. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

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Exhibit A

Section 503(b)(9) Bar Date Notice

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

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	:
In re:	: Chapter 11
	:
HERB PHILIPSON’S ARMY AND NAVY	:
STORES INC.,	:
	: Case No. 18-61376-6 (DD)
Debtor. ⁴	:
	:
-----X	

**NOTICE OF DEADLINE FOR FILING REQUESTS FOR
PAYMENT OF CLAIMS ENTITLED TO ADMINISTRATIVE
EXPENSE STATUS UNDER SECTION 503(B)(9) OF THE BANKRUPTCY CODE**

**TO: ALL ENTITIES WHO MAY HAVE AN ADMINISTRATIVE EXPENSE ARISING
UNDER SECTION 503(b)(9) OF THE BANKRUPTCY CODE AGAINST THE DEBTOR
PLEASE TAKE NOTICE THAT:**

1. October 8, 2018 (the “Petition Date”), Herb Philipson's Army and Navy Stores Inc. (the “Debtor”) filed a voluntary petition for relief under chapter 11 of the of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of New York (the “Court”).

**DEADLINE FOR FILING SECTION 503(B)(9) CLAIMS
AGAINST THE ABOVE-REFERENCED DEBTOR**

2. Pursuant to an order of this Court entered on November 21, 2018 (the “Section 503(b)(9) Bar Date Order”), the deadline for all persons and entities (including, without limitation, individuals, partnerships, joint ventures, corporations, estates, governmental units (as such term is defined in section 101(27) of the Bankruptcy Code), and trusts) to file a request for payment (a “Section 503(b)(9) Claim Request”) for the value of any goods sold to the Debtor in the ordinary course of business and received by the Debtor within 20 days before the Petition Date (*i.e.*, between September 18, 2018 and October 8, 2018) (a “Section 503(b)(9) Claim”) is **December 28, 2018 at 5:00 p.m. (Eastern Time)**.

3. The Section 503(b)(9) Bar Date and the procedures set forth below for the filing of Section 503(b)(9) Claim Requests apply to all persons and entities asserting a Section 503(b)(9) Claim against the Debtor.

⁴ The last four digits of the Debtor’s federal tax identification number are 4814.

WHO MUST FILE A SECTION 503(B)(9) CLAIM REQUEST

4. You **MUST** file a Section 503(b)(9) Claim Request if you have a Section 503(b)(9) Claim against the Debtor for the value of any goods sold to such Debtor in the ordinary course of business and received by the Debtor within 20 days before the Petition Date (*i.e.*, between September 18, 2018 and October 8, 2018).

5. **THE FACT THAT YOU HAVE RECEIVED THIS NOTICE DOES NOT MEAN THAT YOU HOLD A CLAIM AGAINST THE DEBTOR OR THAT THE DEBTOR OR THE COURT BELIEVE THAT YOU HOLD A CLAIM AGAINST THE DEBTOR. YOU SHOULD NOT FILE A SECTION 503(b)(9) CLAIM REQUEST IF YOU DO NOT HOLD A SECTION 503(b)(9) CLAIM AGAINST THE DEBTOR.**

INSTRUCTIONS FOR FILING A SECTION 503(b)(9) CLAIM REQUEST.

6. Each Section 503(b)(9) Claim Request must:
- a. identify (i) the amount of the Section 503(b)(9) Claim, (ii) the value of the Goods the Section 503(b)(9) claimant contends the Debtor received within 20 days before the Petition Date, (iv) the date and place of receipt of the Goods by the Debtor, and (v) the method of delivery of the Goods to the Debtor;
 - b. include or attach documentation identifying (i) the particular invoice(s) related to such Section 503(b)(9) Claim and (ii) any demand to reclaim goods sold to the Debtor under section 546(c) of the Bankruptcy Code; and
 - c. certify that the goods were provided in the ordinary course of the Debtor's business

7. To file a Section 503(b)(9) Claim Request you must deliver the Section 503(b)(9) Claim Request by mail, courier service, hand delivery, or in person so as to be **actually received** by the Debtor's claims agent no later than **5:00 p.m. (Eastern Time), on December 28, 2018** at the following address:

Herb Philipson's Claims Processing Center
c/o KCC
2335 Alaska Ave
El Segundo, CA 90245

Section 503(b)(9) Claim Requests sent by facsimile or email will not be accepted.

8. A copy of your Section 503(b)(9) Claim Request must also be sent to: (i) the Debtor, Herb Philipson's Army and Navy Stores Inc., 1899 Black River Boulevard North, Rome, NY 13440; (ii) counsel to the Debtor, Griffin Hamersky LLP, 420 Lexington Avenue, Suite 400, New York, NY 10170 (Attn: Scott A. Griffin, Esq. and Michael D. Hamersky, Esq.); and (iii) proposed counsel for the Official Committee of Unsecured Creditors, Lowenstein Sandler LLP, 1251 Avenue of the Americas (Attn: Jeffrey L. Cohen, Esq. and Eric S. Chafetz, Esq.).

9. Section 503(b)(9) Claim Requests will be deemed filed only when **actually received** by KCC. If you wish to receive acknowledgment of KCC's receipt of your Section 503(b)(9) Claim Request, you must also submit a copy of your original Section 503(b)(9) Claim Request and a self-addressed, stamped envelope.

10. If a Section 503(b)(9) Claim Request form is not enclosed with this notice, you may obtain a Section 503(b)(9) Claim Request form by visiting KCC's website at <http://www.kccllc.net/herbphilipsons/> or by contacting KCC by regular mail at Herb Philipson's Claims Processing Center c/o KCC, 2335 Alaska Avenue, El Segundo, CA 90245 or by email at: HerbsInfo@kccllc.com or by telephone at (877) 606-7510. (toll free). KCC cannot advise you how to file, or whether you should file, a Section 503(b)(9) Request.

CONSEQUENCES OF MISSING THE DEADLINE FOR FILING SECTION 503(b)(9) CLAIMS

11. **ANY PERSON OR ENTITY HOLDING A SECTION 503(b)(9) CLAIM THAT FAILS TO FILE A SECTION 503(b)(9) CLAIM REQUEST ON OR BEFORE THE SECTION 503(b)(9) BAR DATE SHALL BE FOREVER BARRED, ESTOPPED, AND PERMANENTLY ENJOINED FROM ASSERTING SUCH SECTION 503(b)(9) CLAIM AGAINST THE DEBTOR OR ITS ESTATE, AND SUCH HOLDER SHALL NOT BE ENTITLED TO RECEIVE ANY DISTRIBUTION IN THESE CHAPTER 11 CASES ON ACCOUNT OF SUCH SECTION 503(b)(9) CLAIM OR RECEIVE FURTHER NOTICES REGARDING SUCH SECTION 503(b)(9) CLAIM; PROVIDED, HOWEVER, THAT HOLDERS OF SECTION 503(b)(9) CLAIMS SHALL NOT BE PREVENTED FROM FILING NON-PRIORITY GENERAL UNSECURED CLAIMS FOR SUCH AMOUNTS BEFORE THE APPLICABLE BAR DATE.**

GRIFFIN HAMERSKY LLP

By: /s/ Scott A. Griffin
Scott A. Griffin
Michael D. Hamersky
420 Lexington Avenue, Suite 400
New York, New York 10170
Telephone: (646) 998-5575
Facsimile: (646) 998-8284

Counsel for the Debtor
and Debtor in Possession

Section 503(b)(9) Proof of Claim Form

UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF NEW YORK	SECTION 503(b)(9) PROOF OF CLAIM FORM	503(b)(9) Claims Bar Date: December 28, 2018 at 5:00 p.m. (Eastern Time)
Herb Philipson's Army and Navy Stores Inc., Case No. 18-61376		
Name of Creditor (The person or entity to whom the debtor owes money or property)	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your administrative expense claim. Attach copy of statement giving particulars.	Check here if this claim: <input type="checkbox"/> replaces or <input type="checkbox"/> amends a previously filed administrative expense claim. Claim Number (if known): _____ Dated: _____
Name and Addresses Where Notices Should be Sent:	Name and Addresses Where Payment Should be Sent (if different):	
1. BASIS FOR CLAIM: <input type="checkbox"/> Goods sold		
2. DATE GOODS WERE RECEIVED BY THE DEBTOR (IF KNOWN):		
4. TOTAL AMOUNT OF CLAIM: \$ _____ (Total)		
5. CERTIFICATION: In filing this claim, claimant certifies that the goods for which this claim is being asserted were sold to the Debtor in the ordinary course of the Debtor's business and (to the extent known) received by the Debtor within the 20 day period prior to the October 8, 2018 bankruptcy petition date. 6. CREDITS AND SETOFFS: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. In filing this claim, claimant has deducted all amounts that claimant owes to debtor. 7. SUPPORTING DOCUMENTS: Attach copies of supporting documents, such as invoices, receipts, purchase orders, bills of lading, and the like, identifying the particular goods for which the claim is being asserted, to which Debtor the goods were shipped, to the extent you have knowledge, the date the goods were received by such Debtor, and the value of such Goods. 8. TIME-STAMPED COPY: To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY
Date:	Sign and print the name and title, if any, of the creditor or other person authorized to file this Claim (attach copy of power of attorney, if any)	