

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

mgm 3024

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In re

Chapter 11

Case No. 09-75473-reg

SUFFOLK READY MIX, LLC,

Debtor.

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**APPLICATION FOR ORDER FIXING THE FINAL DATE FOR FILING PROOFS OF
CLAIMS AGAINST THE DEBTOR HEREIN, AND PRESCRIBING
FORM AND MANNER OF NOTICE**

TO THE HONORABLE ROBERT E. GROSSMAN, UNITED STATES BANKRUPTCY
JUDGE:

The above-named chapter 11 debtor-in-possession (the "Debtor"), by its counsel herein, the Law Offices of Michael G. Mc Auliffe, Esq., respectfully shows this Honorable Court and represents:

1. On July 24, 2009 (the "Filing Date"), the Debtor filed a voluntary petition for relief herein under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. Sections 101-et seq. (the "Bankruptcy Code").

2. No trustee has been appointed in the Debtor's case. Consequently, the Debtor is continuing to act as a debtor in possession, with all the rights, duties, and responsibilities set forth at 11 U.S.C. sections 1107(a) and 1108.

3. There has been no duly authorized committee of unsecured creditors constituted or appointed in this case under section 1102 of the Bankruptcy Code.

4. By this application, the Debtor seeks the entry of a proposed Order in the form of the proposed Order annexed hereto at Exhibit "A", under 11 U.S.C. section 105(a) and

Federal Rules of Bankruptcy Procedure 2002, 3003, and 9008, inter alia, directing that except as otherwise provided in the Order, all creditors and claimants possessing or alleging to possess a claim against the Debtor or the Debtor's property, or the Debtor's Estate which arose or may be deemed to have arisen at any time on or before the Filing Date, and thereafter through and including the date of the entry of the annexed proposed Order, to file proofs of such claims with the Court on or before a date fixed by the Court (the "Final Filing Date").

5. It is respectfully submitted that fixing a Final Filing Date for the filing of claims herein is necessary and essential, in order for the Debtor to ascertain and verify whether and to what extent any creditors or claimants disagree with the Debtor's statements of its outstanding liabilities as set forth in the Debtor's schedules and statement of liabilities, and to determine whether objections to claims will be necessary.

6. Notice to creditors and parties in interest of the fixing of the Final Filing Date is proposed to be given by way of a notice in the form of the proposed notice annexed hereto at Exhibit "B", which the Debtor respectfully submits will provide adequate advance notice to all creditors and claimants herein, of the establishment of the Final Filing Date.

7. No advance notice of or hearing on this application is required by or under the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure.

8. No previous application for the relief herein requested has been made to this or any other Court.

WHEREFORE, the Debtor respectfully requests this Court to issue the annexed proposed Order, together with such other and further relief to the Debtor and its Estate as this Court deems to be just and proper.

Dated: Melville, New York
August 4, 2009

Law Offices of Michael G. Mc Auliffe
Counsel to the Debtor

By: /s/ Michael G. Mc Auliffe
Michael G. Mc Auliffe, Esq.(mgm3024)
48 South Service Road
Suite 102
Melville, NY 11747
(631) 465-0044

EXHIBIT “A”

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

mgm 3024

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In re

Chapter 11
Case No. 09-75473-reg

SUFFOLK READY MIX, LLC,

Debtor.

-----X

ORDER (a) FIXING THE FINAL DATE FOR FILING PROOFS OF CLAIMS IN THIS CASE, AND (b) PRESCRIBING FORM AND MANNER OF NOTICE

UPON the application dated August 4, 2009 (the "Application") of the above-named chapter 11 debtor in possession (the "Debtor"); and no advance notice of or hearing on the Application being required by the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure ("FRBP"); and after due deliberation and sufficient cause appearing therefor; and this Court having determined that (1) it is necessary and appropriate to immediately establish a final date for the filing of proofs of claims against the Debtor, the Debtor's property, and the Debtor's Estate, i.e., the Final Filing Date, as the term is defined in the paragraph numbered "1" below, and (2) notice of the Final Filing Date in the form and manner set forth below is reasonably calculated, under all the circumstances herein present, to apprise all of the Debtor's creditors and all other entities having an interest in the Debtor's case, of the Final Filing Date, and to provide them with an adequate opportunity to that file their proofs of claims; it is hereby

ORDERED, pursuant to 11 U.S.C. Section 105(a) and FRBP 2002(k), 3003, and 9008:

1. All entities and persons (as those terms are defined in 11 U.S.C. Section 101) which hold or allegedly hold a claim (as that term is defined in 11 U.S.C. Section 101)

against either of the Debtor or the Debtor's Estate which arose or can be deemed to have arisen at any time on or before the July 24, 2009 filing date of the Debtor's petition in this case, must file proofs of such claims in a form in substantial conformance with Official Bankruptcy Form No. 10, so that they are actually received by the Clerk of this Court **on or before 5:00 p.m. on** _____, **2009** (the "Final Filing Date"), except that:

- a. Professional persons employed and/or retained herein pursuant to 11 U.S.C. Sections 327 and/or 1103 need not file any proof of claims herein on or before the Final Filing Date in respect of their postpetition professional services or disbursements, and/or their services or disbursements in contemplation of the case before the filing date of the petition;
- b. Entities or persons which heretofore properly filed a proof of claim herein, utilizing a claim form which substantially complies with Official Bankruptcy Form No. 10, and otherwise with this Order, need not file additional proofs of each claim on or before the Final Filing Date, unless they desire to amend such previously filed claims;
- c. Entities or persons whose claims have been liquidated or allowed under an Order of this Court (which has been "so Ordered"), need not file additional proofs of such claims on or before the Final Filing Date.
- d. Entities or persons whose claims are listed in the Debtor's most current schedules or amended schedules of liabilities on file herein (the "Schedules") need not file additional proofs of claim herein on or before the Final Filing Date, unless their claim is listed in the Schedules as "contingent," "disputed," "unliquidated," "unknown," or for an approximate amount, or unless the classification or amount of the listing is for any reason disputed by the person or entity;
- e. Entities or persons whose claims are presently listed in the Schedules and who are not required to file proofs of claims under subparagraph "d" above, but whose listing is redesignated, reduced, or reclassified by a future amendment of the Schedules, shall be entitled to file proofs of claims herein on or before the later of the

Final Filing Date or twenty-five (25) days after the Debtor serves them with notice of any amendment of the Schedules which redesignates, reduces or reclassifies their claim.

- f. Entities or persons who are not listed in the Schedules and are not sent direct notice of the Final Filing Date in the manner set forth below, and whose claims are listed for the first time in amended schedules filed by the Debtor after the date hereof, shall be entitled to file proof of their claims on or before the later of the Final Filing Date and twenty-five (25) days following the date on which the Debtor serves them with notice of their listing in the amended schedules.
- g. Entities or Persons whose claim arises from the rejection of any executory contract or unexpired lease (the "Rejection") by the Debtor after the date of the entry hereof, shall be entitled to file proofs of claims on or before the later of the Final Filing Date and twenty-five (25) days following the date of the authorization of the Rejection.

2. Proofs of claims which fail substantially to conform to the above requirements and to Official Bankruptcy Form No. 10, shall be disallowed and shall be deemed null and void, even if they are filed on or before the Final Filing Date. Proofs of claims filed after the Final Filing Date, except as allowed above, shall be disallowed and shall be deemed null and void. If a proof of claim is sent to the Debtor or its counsel or to any other entity or person other than the Clerk of this Court, such entity or person shall have no duty or obligation to forward the proof of claim to the Clerk of this Court or otherwise in respect of such claim, and it shall be the sole duty of each claimant or creditor to ensure that its proof of claim is timely received by the Clerk of this Court in a form substantially conforming to Official Bankruptcy Form No. 10 on or before the Final Filing Date.

3. Any entity or person which is required to file a proof of claim and which fails properly to do so on or before the Final Filing Date in the manner set forth herein or in the notice approved below in this Order

- shall not be treated as a creditor or claimant of or against the Debtor, the Debtor's property, or the Debtor's bankruptcy Estate for the purpose of objecting to, voting for or against, or receiving any distribution under any chapter 11 plan confirmed in the Debtor's case, and

- shall be forever barred, restrained, and enjoined from asserting any unfiled claim against the Debtor; any successor[s] or assign[s] of the Debtor; and/or the Debtor's bankruptcy Estate, or the Debtor's or the Debtor's bankruptcy Estate's properties.

4. Notice of the Final Filing Date shall be deemed to be adequate and sufficient, if a copy of a notice substantially in the form of the proposed notice annexed to the Application at Exhibit "A," is directly sent by the Debtor or its counsel by first class postage prepaid mail within 10 business days from the date of this Order to the last known address of each and all of the following entities and persons: (i) the Office of the United States Trustee for this District; (ii) all creditors listed in the Schedules; (iii) all entities who heretofore filed with this Court and served on the Debtor's counsel of record, a request for receipt of all notices in the Debtors' case; (iv) all taxing authorities.

Dated: Central Islip, New York
August _____, 2009

Hon. Robert E. Grossman
United States Bankruptcy Judge

EXHIBIT “B”

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

mgm 3024

-----X

In re

Chapter 11

Case No. 09-75473-reg

SUFFOLK READY MIX, LLC,

Debtor.

-----X

**NOTICE OF FINAL DATE FOR FILING PROOFS OF CLAIMS
AGAINST THE DEBTOR**

TO THE OFFICE OF THE UNITED STATES TRUSTEE; ALL CREDITORS LISTED IN THE DEBTOR'S SCHEDULES; ALL ENTITIES WHO HERETOFORE FILED WITH THIS COURT A REQUEST FOR RECEIPT OF ALL NOTICES IN THE DEBTOR'S CASE; AND ALL TAXING AUTHORITIES:

PLEASE TAKE NOTICE THAT on June 24, 2009 (the "Filing Date"), Suffolk Ready Mix, LLC (the "Debtor") filed a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. Section 101-et seq. (the "Bankruptcy Code") with the United States Bankruptcy Court for the Eastern District of New York (the "Bankruptcy Court"). Since then, the Debtor has continued in the possession of its property and the management of its business as a Debtor in Possession.

PLEASE TAKE FURTHER NOTICE that pursuant to Order of the Bankruptcy Court dated _____, 2009 (the "Final Claims Order"), _____, **2009** (the "Final Filing Date") has been fixed as the deadline by which all persons and entities which assert a claim against the Debtor that arose or relates to a period prior to the Filing **must file a written proof of such claim in the form set forth below against the Debtor with the Office of the Clerk of the Bankruptcy Court, United States Bankruptcy Court, 290 Federal Plaza, Central Islip, New York 11727 (the "Clerk"), so that it is actually received by the**

Clerk on or before 5:00 p.m. on the _____ Final Filing Date, except for those persons and entities described in the paragraph numbered six below.

PLEASE TAKE FURTHER NOTICE that:

- "claim"
1. As used herein and as defined in §101 of the Bankruptcy Code, the term
- a right or asserted right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, and/or unsecured; **and**
- a right or asserted right to an equitable remedy for breach of performance if such breach gives rise to a right of payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.
 2. As used herein, and as defined in §101 of the Bankruptcy Code, entities and persons who are affected by the Final Claims Order and who therefore must file proofs of claims in the manner and time set forth herein so as not to lose such and all other claims against the Debtor, include but are not limited to: individuals; partnerships; d/b/a's; corporations; LLCs; LLPs, sole proprietorships; joint ventures; all other forms of businesses; trusts; estates; governmental units; and the Office of the U.S. Trustee.
 3. Proofs of claim shall not be deemed to be filed until they are actually received by the Clerk.

Do not file or send copies of proofs of claim to the Debtor, the Debtor's counsel, or the Office of the United States Trustee.

Pursuant to the Final Claims Order, proofs of claims sent to any person or entity other than the Clerk that are not filed with the Clerk may be irrevocably deemed not properly filed for all purposes.

To receive an acknowledgment that your proof of claim has been received by the Clerk and filed, you must provide one copy and a postage-paid self-addressed envelope with your original proof of claim.

The Clerk will maintain a copy of the official claims register and copies of all proofs of claims, able to be reviewed by any creditor or party in interest between the hours of 9:00 a.m. and 4:00 p.m. during the workweek on non-legal holidays, at the Clerk's office.

4. Each proof of claim must specifically set forth the name of the Debtor and the Bankruptcy docket number (indicated above) against which the claim is being asserted, and must conform substantially to Official Bankruptcy Form No. 10.

5. In order to assist in the Debtor's review and reconciliation of claims, copies of any and all invoices, statements, or other documents necessary and appropriate to substantiate the amount, classification, and/or basis of a claim should be annexed to each proof of claim.

6. **Proofs of claims need not be filed on or before the**

_____, **2009 Final Filing Date by the following persons and entities:**

- a. Professional persons employed and/or retained by the Debtor in the Debtor's case need not file any proof of claims herein in or in connection with their services or disbursements to the Debtor in or in contemplation of these cases, on or before the Final Filing Date;
- b. Entities or persons which heretofore properly filed a claim herein, utilizing a claim form which substantially complies with Official Bankruptcy Form No. 10 and with the above, need not file additional proofs of each claim on or before the Final Filing Date, unless they desire to amend such previously filed claims;
- c. Entities or persons whose claims have been liquidated or allowed under an Order of this Court (including under a stipulation with the

Debtor, which has been "so Ordered" by the Bankruptcy Court), need not file additional proofs of such claims on or before the Final Filing Date.

- d. Entities or persons whose claims are listed in the Debtor's most current schedules or amended schedules of liabilities on file herein (the "Schedules") need not file additional proofs of claim herein on or before the Final Filing Date, **unless** their claim is listed in the Schedules as "contingent," "disputed," "unliquidated," "unknown," **or for an approximate amount**, or unless the classification or amount of the listing is for any reason disputed by the person or entity (in such last event, if the listing is disputed but no claim is filed, the manner in which the claim is listed will govern).
- e. Entities or persons whose claims are presently listed in the Schedules and who are not required to file proofs of claims under subparagraph "d" above, but whose listing is redesignated, reduced, or reclassified by an amendment of the Schedules after the date hereof, shall be entitled to file proofs of claims herein on or before the later of the Final Filing Date or twenty-five (25) days after the Debtor serve them with notice of any amendment of the Schedules which redesignates, reduces or reclassifies their claim.
- f. Entities or persons who are not listed in the Schedules and are not sent direct notice of the Final Filing Date in the manner set forth below, and whose claims are listed for the first time in amended schedules filed by the Debtor after the date hereof, shall be entitled to file proof of their claims on or before the later of the Final Filing Date and twenty-five (25) days following the date on which the Debtor serves them with notice of their listing in the amended schedules.
- g. Entities or Persons whose claim arises from the rejection of any executory contract or unexpired lease (the "Rejection") by the Debtor after the date of the entry of the Final Claims Order, are entitled to file proofs of claims on or before the later of the Final Filing Date and twenty-five (25) days following the date of the authorization of the Rejection.

7. **The Debtor reserves the right (a) to dispute and to assert offsets, counterclaims, and offenses to the amount, liability and/or priority of any claim filed**

herein, and of any claim listed in the Schedules, (b) to redesignate any scheduled claim as disputed, contingent, unliquidated, or unknown, and (c) to change the amount of any scheduled claim.

8. If you are required to file a proof of claim on or before the _____, **2009** Final Filing Date, but fail to properly and timely to do so, you will be discharged and forever barred:

- From voting on any plan(s) of reorganization filed in this Chapter 11 case; and

- From receiving any distributions under any plan(s) of reorganization that may be confirmed in this Chapter 11 case.

FURTHER, YOU WILL BE IRREVOCABLY BOUND BY THE TERMS OF ANY PLAN[S] OF REORGANIZATION THAT MAY BE CONFIRMED IN THIS CHAPTER 11 CASE.

9. Since April 1, 2002, documents in chapter 11 cases have been filed electronically (“ECF”). Documents filed in the United States Bankruptcy Court for the Eastern District of New York in ECF cases may be reviewed at the PACER terminals in the Clerk’s Office, and links for viewing those documents will be found on the docket report for a case. Copies of the Schedules, the Final Claims Order and filed Proofs of Claim are on the ECF docket maintained by the Office of the Clerk of the Bankruptcy Court. Copies of filed Proof of Claim forms are on file with the Office of the Clerk of the Bankruptcy Court and may be reviewed

between the hours of 9:00 a.m. and 4:00 p.m. during the workweek on non-legal holidays.

BY ORDER OF THE BANKRUPTCY COURT DATED

Dated: Melville, New York
August 4, 2009

Law Offices of Michael G. Mc Auliffe
Counsel to the Debtors

By: /s/ Michael G. Mc Auliffe
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