

HONORABLE SAMUEL J. STEINER

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON

In re

BROWN & COLE STORES, LLC  
1331 COMMERCIAL ST.  
BELLINGHAM, WA 98225  
Tax ID 91-2122791,

Debtor.

No. 06-13950

ORDER GRANTING DEBTOR'S  
MOTION TO APPROVE PROCEDURES  
FOR ADMINISTERING CLAIMS  
UNDER BANKRUPTCY CODE  
SECTION 503(b)(9)

THIS MATTER came before the Court on the 26<sup>th</sup> day of January, 2007, on the motion ("Motion") of Brown & Cole Stores, LLC, debtor-in-possession herein ("Debtor"), for an Order approving procedures for administering claims Bankruptcy Code § 503(b)(9). The Court has reviewed the files and records herein and finds that cause exists for the relief requested. Therefore, it is hereby

**ORDERED as follows:**

1. The Motion is granted.
2. The Section 503(b)(9) Notice<sup>1</sup> in the form attached to this Order as Exhibit A is hereby approved as providing adequate notice to Section 503(b)(9) Claimants of the Section 503(b)(9) Claim Procedures.

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<sup>1</sup> Capitalized terms not defined herein shall have their meanings as ascribed in the Motion.

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2           3.     Section 503(b)(9) Notice. Within three (3) business days following entry of the order  
3 granting this Motion (“Section 503(b)(9) Order”), the Debtor shall send a Notice of the Section  
4 503(b)(9) Procedures (“Section 503(b)(9) Notice”) by first-class mail to all parties on its creditor  
5 matrix, all parties who have filed a request for special notice, counsel for the Secured Lenders, the  
6 Office of the United States Trustee, and counsel for the Unsecured Creditors’ Committee.

7           4.     Section 503(b)(9) Claim Deadline. Any vendor asserting a prepetition claim under 11  
8 U.S.C. § 503(b)(9) (“Section 503(b)(9) Claim”) must demonstrate that it has satisfied the  
9 requirements of section 503(b)(9) by submitting the amount of such Section 503(b)(9) Claim,  
10 sufficient documentation and information evidencing delivery of goods to the Debtor between the  
11 dates of October 18, 2006 and November 7, 2006, including all referenced invoices and a statement  
12 that such invoices remain unpaid, to the Debtor no later than thirty (30) days following entry of the  
13 Section 503(b)(9) Order (the “Section 503(b)(9) Claim Deadline”). The Debtor shall supply counsel  
14 for Secured Lenders copies of the documentation and information supplied by the Section 503(b)(9)  
15 Claimants within five (5) business days of receipt.

16           5.     Section 503(b)(9) Report. As soon as practicable, but in no event later than twenty-one  
17 (21) days after the Section 503(b)(9) Claim Deadline, the Debtor will file a report (“Section 503(b)(9)  
18 Report”) with the Court listing:

- 19           a.     Section 503(b)(9) Claims which the Debtor has determined are valid in whole  
20                   or in part, with the amounts asserted; and  
21           b.     Section 503(b)(9) Claims of which the Debtor asserts all or a portion are  
22                   invalid, setting forth the legal and factual reasons for such assertion with  
23                   specificity (“Debtor Objection”).

1 In addition to the filing with the Court, the Section 503(b)(9) Report shall be sent by first-class  
2 mail to all Section 503(b)(9) Claimants whose Section 503(b)(9) Claims are listed in the Section  
3 503(b)(9) Report and to counsel for the Secured Lenders.

4 6. Section 503(b)(9) Claimant Response. On or before fifteen (15) days after the Section  
5 503(b)(9) Claim Report is filed with the Court, any Section 503(b)(9) Claimant or any other party-in-  
6 interest, including the Secured Lenders, who disputes amounts listed in the Section 503(b)(9) Report  
7 and/or who is responding to a Debtor Objection shall file and serve on counsel for the Debtor a  
8 response (“Response”), including a verified statement identifying which information on the Section  
9 503(b)(9) Report is incorrect and stating any legal or factual basis for the Response.

10 7. Allowed Section 503(b)(9) Claims and Section 503(b)(9) Claims Deemed Invalid.

11 a. Response Filed/Dispute Resolved. With respect to each Section 503(b)(9)  
12 Claim listed in the Section 503(b)(9) Report as invalid (in whole or in part) and  
13 as to which a Response is timely filed, to the extent the parties resolve the  
14 dispute by agreement, such Section 503(b)(9) Claim shall be treated as an  
15 Allowed Section 503(b)(9) Claim or invalid Section 503(b)(9) Claim, in whole  
16 or in part, as agreed to by the parties, without further order of the Court, upon  
17 the filing by the Debtor of a notice setting forth the agreement of the parties.

18 b. Response Filed/Dispute Not Resolved. With respect to each Section 503(b)(9)  
19 Claim listed in the Section 503(b)(9) Report as invalid (in whole or in part) and  
20 as to which a Response is timely filed, and resolution is not reached by the  
21 parties by at least thirty (30) days after the date the Section 503(b)(9) Report is  
22 filed (“Resolution Period”), or such longer period as agreed to by the Section  
23 503(b)(9) Claimant, the Debtor shall file a motion for determination of the

1 Section 503(b)(9) Claim with ten (10) days from the end of the Resolution  
2 Period.

3 c. Response Not Filed.

4 (1) With respect to each Section 503(b)(9) Claim listed in the Section  
5 503(b)(9) Report as valid (in whole or in part) and as to which no  
6 Response is timely filed, such Section 503(b)(9) Claim shall thereafter,  
7 without further order of the Court, be deemed an Allowed Claim  
8 (“Allowed Section 503(b)(9) Claim”) in whole or in part as specified in  
9 the Section 503(b)(9) Report.

10 (2) With respect to each Section 503(b)(9) Claim listed in the Section  
11 503(b)(9) Report as invalid (in whole or in part) and as to which no  
12 Response is timely filed, such Section 503(b)(9) Claim shall, without  
13 further order of the Court, be forever deemed invalid (in whole or in  
14 part as specified in the Section 503(b)(9) Report) and not entitled to the  
15 priorities provided under Section 503(b)(9) with respect to any invalid  
16 portion.

17 d. Disputed Claims Resolved by Court Decision. With respect to any sum listed  
18 in the Section 503(b)(9) Report or Response which is disputed by the Debtor or  
19 any other party in interest, including the Secured Lenders and is not resolved,  
20 such Section 503(b)(9) Claim shall be an Allowed Section 503(b)(9) Claim to  
21 the extent it is determined to be a valid Section 503(b)(9) Claim by the Court in  
22 a final order which is not subject to an appeal and the time for appeal has  
23 expired.

1           8.     Additional Section 503(b)(9) Order Provisions. In addition to the above outlined relief,  
2 the Section 503(b)(9) Order provides for the following relief:

- 3           a.     The Section 503(b)(9) Procedures are the sole and exclusive method permitted  
4 with respect to the resolution and payment of Section 503(b)(9) Claims. All  
5 Section 503(b)(9) Claimants are prohibited from seeking any other remedy than  
6 is permitted by the Section 503(b)(9) Procedures. Walton Beverage Co. and  
7 Northern Fish Products, Inc. shall be deemed to have complied with the Section  
8 503(b)(9) Procedures through submission of information and documents with  
9 respect to their respective Section 503(b)(9) claims with the filing of the  
10 Motion of Walton Beverage Co. For Allowance and Payment of Administrative  
11 Expense Pursuant to 11 U.S.C. § 503(b)(9) and the Application For  
12 Recognition and Payment of Northern Fish Products, Inc. Reclamation Claim  
13 as An Administrative Expense Under § 503(b)(9);
- 14           b.     In complying with the Section 503(b)(9) Procedures, the Debtor does not waive  
15 any rights to assert any objections, defenses, claims, counterclaims or offsets  
16 based on facts or law to such claims other than under Section 503(b)(9).

17           9.     Nothing about this Order (a) limits any interested party from seeking, through the filing  
18 of a future motion, a determination of when any Section 503(b)(9) Claim must be paid; (b) limits any  
19 interested party from seeking, through the filing of a future motion, a determination of whether Debtor  
20 must set aside funds for the payment of Section 503(b)(9) Claims; or (c) changes or interferes with the  
21 requirements set forth in 11 USC § 1129(a)(9)(A) as they relate to payment of Section 503(b)(9)  
22 Claims .  
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DATED this 26th day of January, 2007.



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HONORABLE SAMUEL J. STEINER  
United States Bankruptcy Judge

Presented by:

BUSH STROUT & KORNFELD

By /s/ Armand J. Kornfeld  
Armand J. Kornfeld, WSBA #17214  
Attorneys for Debtor in Possession

Approved, Notice of Presentation Waived:

LYON WEIGAND & GUSTAFSON PS

By /s/ Armand J. Kornfeld for Dustin E. Yeager (per email authority 1/26/07)  
Dustin E. Yeager, WSBA #36677  
Attorneys for Noel Bottling d/b/a Pepsi Bottling of Yakima

HONORABLE SAMUEL J. STEINER

**EXHIBIT A – PROPOSED FORM OF NOTICE**

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON

In re

BROWN & COLE STORES, LLC  
1331 COMMERCIAL ST.  
BELLINGHAM, WA 98225  
Tax ID 91-2122791,

Debtor.

No. 06-13950

NOTICE OF DEADLINE AND  
PROCEDURES FOR CLAIMS UNDER  
BANKRUPTCY CODE SECTION  
503(b)(9)

***IF YOU ARE CLAIMANT UNDER BANKRUPTCY CODE  
SECTION 503(b)(9) BECAUSE YOU DELIVERED GOODS  
TO BROWN & COLE STORES, LLC WITHIN 20 DAYS  
BEFORE THE BANKRUPTCY FILING, ON OR  
AFTER OCTOBER 18, 2006 THROUGH AND  
INCLUDING NOVEMBER 6, 2006, YOU MUST TAKE ALL  
ACTIONS STATED IN THIS NOTICE OR YOUR RIGHTS WILL  
BE AFFECTED***

**NOTICE OF SECTION 503(b)(9) CLAIM  
DEADLINE AND PROCEDURES**

THIS NOTICE IS PROVIDED BY BROWN & COLE STORES, LLC, INC.  
AND HAS BEEN APPROVED BY THE BANKRUPTCY COURT.

1     **A.     CHAPTER 11 BANKRUPTCY**

2             On November 7, 2006, Brown & Cole Stores, LLC (“Brown & Cole”) filed for Chapter 11  
3 bankruptcy in order to sell its stores which continue to operate.

4     **B.     PRE-BANKRUPTCY CLAIMS UNDER BANKRUPTCY CODE SECTION 503(b)(9)**

5             Certain of Brown & Cole’s vendors assert claims under Bankruptcy Code section 503(b)(9) for  
6 payment for goods delivered to and received by Brown & Cole within 20 days before the bankruptcy  
7 filing, on or after October 18, 2006 through and including November 6, 2006. The Bankruptcy Court  
8 has entered an Order (“Section 503(b)(9) Order”) setting the following deadlines and procedures for  
9 asserting claims under Bankruptcy Code section 503(b)(9).

10    **C.     DEADLINES AND PROCEDURES FOR VENDORS MAKING CLAIMS UNDER**  
11             **BANKRUPTCY CODE SECTION 503(b)(9)**

12             **1.     Section 503(b)(9) Claim Deadline.**

13             Any vendor asserting a claim under Bankruptcy Code section 503(b)(9) for goods delivered to  
14 and received by Brown & Cole within 20 days before the bankruptcy filing, on or after October 18,  
15 2006 through and including November 6, 2006 (“Section 503(b)(9) Claimant”), must submit the  
16 following:

- 17             a.     the **amount** of such Section 503(b)(9) Claim;
- 18             b.     sufficient documentation and information to evidence delivery to and receipt by  
19 Brown & Cole of goods **on or after October 18, 2006 through and including**  
20 **November 6, 2006**, including all referenced **invoices** and a statement that all  
21 such invoices remain unpaid

22             no later than the following **Section 503(b)(9) CLAIM DEADLINE:** \_\_\_\_\_,  
23 \_\_\_\_\_ **2007.**

              Claim information should be sent by hard copy to Aimee S. Willig, Bush Strout & Kornfeld,  
601 Union St., Suite 5500, Seattle, WA 98101 or in electronic form to Vivian Braxton at

vbraxton@bskd.com. **Any Section 503(b)(9) Claim not asserted within the Section 503(b)(9)**

**Claim Deadline shall be deemed invalid without further order of the Court.**



1           **2. Section 503(b)(9) Report.** As soon as practicable, but in no event later than twenty-  
2 one (21) days after the Section 503(b)(9) Claim Deadline, the Debtor will file a report (“Section  
3 503(b)(9) Report”) with the Court listing:

- 3           a. Section 503(b)(9) Claims which the Debtor has determined are valid in whole  
4 or in part, with the amounts asserted; and
- 5           b. Section 503(b)(9) Claims of which the Debtor asserts all or a portion are  
6 invalid, setting forth the legal and factual reasons for such assertion with  
7 specificity (“Debtor Objection”).

8           In addition to the filing with the Court, the Section 503(b)(9) Report shall be sent by first-class  
9 mail to all Section 503(b)(9) Claimants whose Section 503(b)(9) Claims are listed in the Section  
10 503(b)(9) Report and to counsel for the Secured Lenders.

11           **3. Section 503(b)(9) Claimant Response.** On or before fifteen (15) days after the  
12 Section 503(b)(9) Claim Report is filed with the Court, any Section 503(b)(9) Claimant or any other  
13 party-in-interest, including the Secured Lenders, who disputes amounts listed in the Section 503(b)(9)  
14 Report and/or who is responding to a Debtor Objection shall file and serve on counsel for the Debtor a  
15 response (“Response”), including a verified statement identifying which information on the Section  
16 503(b)(9) Report is incorrect and stating any legal or factual basis for the Response.

17           **4. Allowed Section 503(b)(9) Claims and Section 503(b)(9) Claims Deemed Invalid.**

- 18           a. Response Filed/Dispute Resolved. With respect to each Section 503(b)(9)  
19 Claim listed in the Section 503(b)(9) Report as invalid (in whole or in part) and  
20 as to which a Response is timely filed, to the extent the parties resolve the  
21 dispute by agreement, such Section 503(b)(9) Claim shall be treated as an  
22 Allowed Section 503(b)(9) Claim or invalid Section 503(b)(9) Claim, in whole  
23 or in part, as agreed to by the parties, without further order of the Court, upon  
the filing by the Debtor of a notice setting forth the agreement of the parties.
- b. Response Filed/Dispute Not Resolved. With respect to each Section 503(b)(9)  
Claim listed in the Section 503(b)(9) Report as invalid (in whole or in part) and  
as to which a Response is timely filed, and resolution is not reached by the  
parties by at least thirty (30) days after the date the Section 503(b)(9) Report is  
filed (“Resolution Period”), or such longer period as agreed to by the Section  
503(b)(9) Claimant, the Debtor shall file a motion for determination of the  
Section 503(b)(9) Claim with ten (10) days from the end of the Resolution  
Period.
- c. Response Not Filed.
- (1) With respect to each Section 503(b)(9) Claim listed in the Section  
503(b)(9) Report as valid (in whole or in part) and as to which no

1 Response is timely filed, such Section 503(b)(9) Claim shall thereafter,  
2 without further order of the Court, be deemed an Allowed Claim  
3 (“Allowed Section 503(b)(9) Claim”) in whole or in part as specified in  
4 the Section 503(b)(9) Report.

5 (2) With respect to each Section 503(b)(9) Claim listed in the Section  
6 503(b)(9) Report as invalid (in whole or in part) and as to which no  
7 Response is timely filed, such Section 503(b)(9) Claim shall, without  
8 further order of the Court, be forever deemed invalid (in whole or in  
9 part as specified in the Section 503(b)(9) Report) and not entitled to the  
10 priorities provided under Section 503(b)(9) with respect to any invalid  
11 portion.

12 d. Disputed Claims Resolved by Court Decision. With respect to any sum listed  
13 in the Section 503(b)(9) Report or Response which is disputed by the Debtor or  
14 any other party in interest, including the Secured Lenders and is not resolved,  
15 such Section 503(b)(9) Claim shall be an Allowed Section 503(b)(9) Claim to  
16 the extent it is determined to be a valid Section 503(b)(9) Claim by the Court in  
17 a final order which is not subject to an appeal and the time for appeal has  
18 expired.

19 5. Additional Section 503(b)(9) Order Provisions. In addition to the above outlined relief,  
20 the Section 503(b)(9) Order provides for the following relief:

21 a. The Section 503(b)(9) Procedures are the sole and exclusive method permitted  
22 with respect to the resolution and payment of Section 503(b)(9) Claims. All  
23 Section 503(b)(9) Claimants are prohibited from seeking any other remedy than  
is permitted by the Section 503(b)(9) Procedures.

b. In complying with the Section 503(b)(9) Procedures, the Debtor does not waive  
any rights to assert any objections, defenses, claims, counterclaims or offsets  
based on facts or law to such claims other than under Section 503(b)(9).

DATED this \_\_\_\_ day of January, 2007.

BUSH STROUT & KORNFIELD

By \_\_\_\_\_  
Aimee S. Willig, WSBA #22859  
Attorneys for Brown & Cole Stores, LLC