

ORIGINAL

**United States Bankruptcy Court** District of Delaware **PROOF OF CLAIM**

Name of Debtor **Fleming Foods of Texas, L P** Case Number **03-10955**

**NOTE** This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (The person or other entity to whom the debtor owes money or property)  
**Kashu Company**

Name and address where notices should be sent  
**Michael Warner, Esq  
Warner, Stevens & Doby, L.L.P  
1700 City Center Tower II  
301 Commerce St.  
Fort Worth, TX 76102  
Telephone number (817) 810 5250**

Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars

Check box if you have never received any notices from the bankruptcy court in this case

Check box if the address differs from the address on the envelope sent to you by the court

**This space is for Court Use Only**

Account or other number by which creditor identifies debtor  
see Exhibit A

Check here if this claim  replaces  amends a previously filed claim dated \_\_\_\_\_

**1 Basis for Claim**

Goods sold  
 Services performed  
 Money loaned  
 Personal injury/wrongful death  
 Taxes  
 Other \_\_\_\_\_

Retiree benefits as defined in 11 U.S.C. § 1114(a)  
 Wages, salaries, and compensation (Fill out below)

Your SS# \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Unpaid compensation for services performed from \_\_\_\_\_ (date) to \_\_\_\_\_ (date)

**2 Date debt was incurred see Exhibit "A"** **3 If court judgment, date obtained**

**4 Total Amount of Claim at Time Case Filed** \$ 216,293.84 (see Exhibit "A" for more details)  
If all or part of your claim is secured or entitled to priority also complete Item 5 or 6 below

Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges

**5 Secured Claim**

Check this box if your claim is secured by collateral (including a right of setoff)

Brief Description of Collateral  
 Real Estate  Motor Vehicle  
 Other \_\_\_\_\_

Value of Collateral \$ \_\_\_\_\_

Amount of arrearage and other charges at time case filed included in secured claim if any \$ \_\_\_\_\_

**6 Unsecured Priority Claim**

Check this box if you have an unsecured priority claim  
Amount entitled to priority \$ \_\_\_\_\_  
Specify the priority of the claim

Wages, salaries, or commissions (up to \$4,300)\* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier 11 U.S.C. § 507(a)(3)

Contributions to an employee benefit plan 11 U.S.C. § 507(a)(4)

Up to \$1,950\* of deposits toward purchase, lease, or rental of property or services for personal family or household use 11 U.S.C. § 507(a)(6)

Alimony, maintenance, or support owed to a spouse, former spouse, or child 11 U.S.C. § 507(a)(7)

Taxes or penalties owed to governmental units 11 U.S.C. § 507(a)(8)

Other Specify applicable paragraph of 11 U.S.C. § 507(a) \_\_\_\_\_

\*Amounts are subject to adjustment on 4/1/98 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment

**7 CREDITS** The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim

**8 Supporting Documents** Attach copies of supporting documents such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. **DO NOT SEND ORIGINAL DOCUMENTS.** If the documents are not available, explain. If the documents are voluminous, attach a summary.

**9 Date-Stamped Copy** To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.

Date 9/11/03

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)  
[Signature]

This Space for Court Use Only  
**FILED**  
SEP 12 2003  
**BMC**  
Fleming Companies Claim  
10637

## **Exhibit "A"**

Kashi Company ("Kashi") is a supplier of food products to the Debtor. The Debtor is indebted to Kashi in the amount of \$216,293.84 (the "Pre-Petition Debt") for purchases by Debtor of Kashi food products. Attached hereto as Exhibit "B" is a Statement of Accounts supporting the Pre-Petition Debt. Copies of the invoices listed on the Statement of Accounts are voluminous and not attached herein but will be provided upon request.

Kashi has previously asserted a reclamation claim (the "Reclamation Claim") in these cases pursuant to 11 U.S.C. Section 546(c) in the amount of \$36,252.70 (the "Reclamation Amount"). Contained within the Pre-Petition Debt of \$216,293.848 is the Reclamation Amount of \$36,252.70. The remaining \$180,041.14 is not subject to a reclamation demand under Section 546(c). The Reclamation Amount is subject to dispute in accordance with procedure set forth by the Order Under 11 U.S.C. §§ 105(a), 503(b), and 546(c) (A) Establishing Procedure for Treatment of Reclamation Claims and (B) Prohibiting Third Parties From Interfering With Delivery of Debtors' Goods entered on or about April 22, 2003 (the "Reclamation Order").

Notwithstanding Kashi's assertion of the Reclamation Claim, Kashi files this Proof of Claim to preserve its right to seek allowance in full of the Pre-Petition Debt as a general unsecured claim (1) in the event that the Reclamation Amount, or any portion thereof, is disallowed as a reclamation claim under Section 546(c), or (2) if the Reclamation Amount, or any portion thereof, is allowed as a valid reclamation claim but is an undersecured claim (if its junior lien is not paid in full). In the event any portion of the Reclamation Amount is allowed and paid by the Debtor as a valid reclamation claim under Section 546(c), Kellogg shall not seek the allowance as a general unsecured claim of such portion. Kellogg will also amend this Proof of Claim to reduce the amount asserted herein by the amount of the Reclamation Amount allowed as a valid reclamation claim.

This Proof of Claim and the Reclamation Claim are cumulative, and, therefore, the filing of the Proof of Claim herein does not in any way limit or affect whatever rights Kashi has with respect to the Reclamation Claim, including, but not limited to, liens provided by Orders of the Court securing any allowed reclamation claim.

**Exhibit “B”**

## Kashi Statement of Account- Fleming

Invoice Number	Purchase Order #	Invoice Date	Amount
eDMS	DEDUCTION	\$ 2,003 00 \$	9,037 34
0071791	DEDUCTION	\$ 37,224 00 \$	332 55
0072241	DEDUCTION	\$ 37,245 00 \$	121 63
0072453	DEDUCTION	\$ 37,259 00 \$	1,950 48
0072569	DEDUCTION	\$ 37,267 00 \$	307 08
0072939	DEDUCTION	\$ 37,285 00 \$	(121 63)
0073552	DEDUCTION	\$ 37,312 00 \$	228 48
0073573	DEDUCTION	\$ 37,312 00 \$	169 85
0074490	DEDUCTION	\$ 37,340 00 \$	280 08
0074699	DEDUCTION	\$ 37,344 00 \$	1,206 97
0074903	DEDUCTION	\$ 37,350 00 \$	2,393 24
0074907	DEDUCTION	\$ 37,351 00 \$	4,590 00
0075346	DEDUCTION	\$ 37,370 00 \$	1,043 74
0075747	DEDUCTION	\$ 37,382 00 \$	60 00
0075996	DEDUCTION	\$ 37,390 00 \$	553 00
0076747	DEDUCTION	\$ 37,413 00 \$	4,783 38
0077073	DEDUCTION	\$ 37,426 00 \$	188 90
0077136	DEDUCTION	\$ 37,428 00 \$	424 69
0077227	DEDUCTION	\$ 37,432 00 \$	4,636 02
0077553	DEDUCTION	\$ 37,445 00 \$	1,030 68
0077588	DEDUCTION	\$ 37,448 00 \$	229 42
0077799	DEDUCTION	\$ 37,453 00 \$	1,312 33
0078533	DEDUCTION	\$ 37,482 00 \$	3,801 79
0079509	DEDUCTION	\$ 37,509 00 \$	973 24
0079409	DEDUCTION	\$ 37,510 00 \$	1,870 83
0079937	DEDUCTION	\$ 37,526 00 \$	65 29
0080300	DEDUCTION	\$ 37,537 00 \$	1,559 92
0080459	DEDUCTION	\$ 37,543 00 \$	550 83

## Kashi Statement of Account- Fleming

Invoice Number	Purchase Order #	Invoice Date	Amount
0080481	DEDUCTION	\$ 37,544 00 \$	4,069 69
0080771	DEDUCTION	\$ 37,554 00 \$	59 76
0080850	DEDUCTION	\$ 37,555 00 \$	1,539 39
0081165	DEDUCTION	\$ 37,565 00 \$	3,425 31
0081220	DEDUCTION	\$ 37,566 00 \$	1,220 17
0081116	DEDUCTION	\$ 37,567 00 \$	5,329 34
0081760	DEDUCTION	\$ 37,587 00 \$	5,582 49
0081791	DEDUCTION	\$ 37,592 00 \$	1,646 03
0081848	DEDUCTION	\$ 37,594 00 \$	5,282 68
0082004	DEDUCTION	\$ 37,600 00 \$	231 50
0082059	DEDUCTION	\$ 37,602 00 \$	2,462 40
0082065	DEDUCTION	\$ 37,602 00 \$	(2,462 40)
0082432	DEDUCTION	\$ 37,606 00 \$	65 23
0082403	DEDUCTION	\$ 37,610 00 \$	81 39
0082485	DEDUCTION	\$ 37,613 00 \$	860 17
0122702	DEDUCTION	\$ 37,617 00 \$	(6,045 02)
0081464	667562HW	\$ 37,578 00 \$	4,533 96
0081624	786785MG-DUP	\$ 37,580 00 \$	2,954 88
0082315	125376	\$ 37,603 00 \$	7,946 88
81851994	227988-GE	\$ 37,630 00 \$	3,024 00
1170322822	1170322822	\$ 37,651 00 \$	(2,626 56)
81904422	214576-GA	\$ 37,677 00 \$	5,853 60
81851992	4455536088	\$ 37,677 00 \$	(2,975 40)
81903462	413512-PX	\$ 37,678 00 \$	7,516 80
81904457	764299-TU	\$ 37,680 00 \$	6,737 28
81906057	049256-HW	\$ 37,683 00 \$	4,458 24
81910936	510538-MG	\$ 37,684 00 \$	6,091 14
81910910	996677	\$ 37,684 00 \$	309 12

## Kashi Statement of Account- Fleming

Invoice Number	Purchase Order #	Invoice Date	Amount
81910913	080767-KG	\$ 37,685 00	\$ 14,409 84
81930309	266275-FS	\$ 37,685 00	\$ 3,542 40
81910933	704799	\$ 37,685 00	\$ 9,496 36
81911174	705240	\$ 37,691 00	\$ 3,035 52
81911181	066831-HW	\$ 37,692 00	\$ 4,271 40
81911119	293707-GA	\$ 37,692 00	\$ 4,017 60
81918958	495921-SL	\$ 37,692 00	\$ 1,252 80
81918957	809540-KC	\$ 37,693 00	\$ 2,894 40
81918918	705945	\$ 37,694 00	\$ 14,158 36
81929135	013095-TU	\$ 37,700 00	\$ 3,740 16
81929195	062426-TU	\$ 37,700 00	\$ 5,274 24
1170328818	1170328818	\$ 37,700 00	\$ (3,408 48)
81929144	334764-FS	\$ 37,700 00	\$ 1,663 20
81929216	470337-GA	\$ 37,700 00	\$ 4,320 00
81929202	532484-LU	\$ 37,700 00	\$ 2,959 20
81929199	893637-MM	\$ 37,700 00	\$ 3,408 48
81930443	584864-MG	\$ 37,701 00	\$ 2,333 98
81930347	371923-FS	\$ 37,704 00	\$ 4,708 80
81930540	101874-HW	\$ 37,705 00	\$ 4,536 00
81934102	528417-PX	\$ 37,705 00	\$ 4,536 00
81928913	709148	\$ 37,705 00	\$ 15,731 52
81928936	606143-GE	\$ 37,706 00	\$ 2,527 20
1170328918	1170328918	\$ 37,707 00	\$ (2,856 46)
81934535	860083-KC	\$ 37,708 00	\$ 1,879 20
1170331118	1170331118	\$ 37,710 00	\$ (3,408 48)
81930472	996354	\$ 37,712 00	\$ 518 40
<b>Total Balance</b>			<b>\$ 216,293.84</b>