


UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF <u>Delaware</u>		PROOF OF CLAIM
Name of Debtor <u>Richmar Foods, Inc</u>		Case Number <u>03-10972</u>
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 USC § 503		
Name of Creditor (The person or other entity to whom the debtor owes money or property) <u>Richard J Ajamcik</u>		<input type="checkbox"/> 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 <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court
Name and address where notices should be sent <u>6035 Deoley Dr The Colony, TX 75056</u>		
Telephone number <u>469-384-4754</u>		THIS SPACE IS FOR COURT USE ONLY
Account or other number by which creditor identifies debtor <u>044-80-7145</u>		Check here if this claim <input type="checkbox"/> replaces a previously filed claim dated _____ <input type="checkbox"/> amends
1 Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input checked="" type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other <u>Intentional Tort</u> <input type="checkbox"/> Retiree benefits as defined in 11 USC § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS # _____ Unpaid compensation for services performed from _____ (date) to _____ (date)		
2 Date debt was incurred <u>6-10-2002</u>		3 If court judgment, date obtained
4 Total Amount of Claim at Time Case Filed \$ <u>10,000,000</u> If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below <input checked="" type="checkbox"/> 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 <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff) Brief Description of Collateral <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral \$ _____ Amount of arrearage and other charges at time case filed included in secured claim if any \$ _____		6 Unsecured Priority Claim <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim <input type="checkbox"/> Wages salaries or commissions (up to \$4 650) * earned within 90 days before filing of the bankruptcy petition or cessation of the debtor s business whichever is earlier 11 USC § 507(a)(3) <input type="checkbox"/> Contributions to an employee benefit plan 11 USC § 507(a)(4) <input type="checkbox"/> Up to \$2 100* of deposits toward purchase lease or rental of property or services for personal family or household use 11 USC § 507(a)(6) <input type="checkbox"/> Alimony maintenance or support owed to a spouse former spouse or child 11 USC § 507(a)(7) <input type="checkbox"/> Taxes or penalties owed to governmental units 11 USC § 507(a)(8) <input type="checkbox"/> Other Specify applicable paragraph of 11 USC § 507(a)(____) *Amounts are subject to adjustment on 4/1/04 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		THIS SPACE IS FOR COURT USE ONLY FILED SEP 15 2003 BMC <small>Fleming Companies Claim</small>  <small>13105</small>
Date <u>9-10-03</u>	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) <u>Benton Muslawhite Att</u>	
Penalty for presenting fraudulent claim Fine of up to \$500 000 or imprisonment for up to 5 years, or both 18 USC §§ 152 and 3571		

FILED

2003 JAN 21 PM 3 26

Cause No 03-572

MICHAEL D MARTIN and
RICHARD J ADAMCIK

As Plaintiffs

VS

FLEMING COMPANY D/B/A
RAINBOW GROCERY,

As Defendant

§ IN THE DISTRICT COURT
§ DISTRICT CLERK
DALLAS COUNTY TEXAS
§ DEPUTY
§ C-68th JUDICIAL DISTRICT
§ DALLAS COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT

COME now MICHAEL D MARTIN and RICHARD J ADAMCIK, as Plaintiffs, in the above styled and numbered cause, complaining of FLEMING COMPANY D/B/A RAINBOW GROCERY, as Defendant, and for cause of action would respectfully show this Honorable Court the following

I DISCOVERY CONTROL PLAN

Your Plaintiff adopts a Level II discovery control plan

II PARTIES

- 1 Your Plaintiffs, MICHAEL D MARTIN and RICHARD J ADAMCIK, are each a resident of the state of Texas
- 2 Your Defendant, FLEMING COMPANY D/B/A RAINBOW GROCERY, is a corporation doing business in Texas Process may be served upon its Chairman and CEO, Mark Hansen, or any authorized company officer at its principal place of business Fleming Company, 1945 Lakepoint Drive, Lewisville, Texas 75057 (Tel 972-906-8000

)

III NATURE OF CASE, JURISDICTION AND VENUE

1 This is a wrongful termination suit brought by two former employees of RAINBOW
GROCERY, who used to work in their Meat Department. The Plaintiffs seek damages
for wrongful termination under the doctrine of Sabine Pilot, fraud, and the intentional
infliction of mental distress. The suit arises out of the Plaintiffs' employment at Fleming
Company d/b/a Rainbow Grocery, at 5300 Main Street, The Colony, Texas 75056.
Plaintiffs contend that the Defendant had a meat-handling policy of re-dating or re-
cycling out-of-date meat, and passing it off to innocent, unsuspecting customers as fresh
meat. The Plaintiffs objected, and refused to perform these meat-handling practices (
which the Plaintiffs contend are illegal acts: Texas Penal Code 22.09, Tampering With A
Consumer Product, Texas Penal Code 32.42, Deceptive Trade Practices), and as a direct
result of their refusal to perform such illegal acts, they were both fired. Also, and in the
alternative, the Plaintiffs had "blown the whistle," i.e., they reported to practices to the
Defendant's confidential hot-line. Instead of keeping the Plaintiffs' names confidential,
as the Defendant had promised, the Defendant revealed their names to management, who
in turn retaliated against the Plaintiffs, humiliated them, harassed them, and eventually
fired them. Finally, the Plaintiffs seek a permanent injunction to enjoin the Defendant
from committing deceptive trade practices in the future regarding its meat-handling
practices. An injunction is necessary to prevent irreparable harm and injury to the public
(and to the Plaintiffs who are consumers of the Defendant's goods)

2 The amount in controversy exceeds the minimum jurisdictional limits of this Court, and
the Court has jurisdiction over the subject matter.

3 The Court has jurisdiction over the Defendant, FLEMING COMPANY D/B/A
RAINBOW GROCERY, and the Court has jurisdiction over the parties.

4 Venue in Dallas County, Texas, is proper.

IV LIABILITY FACTS

- 1 The Defendant, FLEMING COMPANY operated the Rainbow Grocery Store at Rainbow Grocery, at 5300 Main Street, The Colony, Texas 75056 Your Plaintiffs each worked in the Meat Department of that store
- 2 Your Plaintiff, MICHAEL D MARTIN, was hired in April, 2002, as a meat and cheese stocking person He had worked at the same store for a predecessor, Brookshire Grocery Co He was terminated on June 9, 2002 The employer's stated reason for termination was a layoff to cut back on overhead
- 3 Your Plaintiff, RICHARD J ADAMCIK, was hired on April 2, 2002, as an Assistant Meat Manager He was terminated on June 10, 2002 The employer's stated reason for his termination was the same - a layoff to cut back on overhead
- 4 At the time of their employment, the employer had a handbook entitled, Ethics & Compliance - Code of Business Conduct On page 5, the handbook states

Where To Seek Guidance & Open Door Policy

"We are committed to fostering an environment where associates feel free to communicate issues, problems, concerns, as well as give suggestions for improving our business The door is always open to anyone who chooses to write, telephone, or talk face-to-face with any Fleming supervisor or manager

"If this Code of Business Conduct does not answer your questions adequately, or if you have knowledge of a violation of our Code of Business Conduct, any legal requirement, or corporate policy, contact your supervisor or manager If you feel is inappropriate to discuss a problem with you supervisor or manager, contact your Human Resources Manager, another department head, Legal Department, Vice President of Internal Audit / Corporate Compliance Officer, or call the associate hotline at 1-877-788-FAST ***You may report violations knowing that Fleming will not allow retaliation against you*** (Refer to Human Resource Policy # 30 for more information on the Open Door Policy) (*Emphasis supplied*)

- 5 During their employment at the Rainbow Grocery Store, both Plaintiffs observed illegal and unethical business practices in the Meat Department These meat-handling practices involved the following

- a Re-dating old meat to pass off as fresh, in-date meat (beef, chicken, pork, fish, and lunch meat) As an example, fingernail polish would be used to cover the “Cryvak” date affixed by the meat manufacturer on to the plastic vacuum-sealed packaging
- b Re-working the old meat into the fresh meat As an example, in the morning all meat with a current date of expiration would be removed, unwrapped and re-packaged with a new date three or four days later

6 The Plaintiffs complained to the Meat Market manager, Jeffrey Reed, about these practices, but they were rebuked In fact, Jeffrey Reed told the Plaintiffs that “back dating meat is not illegal” and that “Rainbow does back date its meat ” And despite the Plaintiffs’ continuing protests, the practices continued

7 On May 12, 2002, the television news show, *Date Line NBC*, ran an investigative news story entitled, “Is the Meat, Poultry and Fish You Buy as Fresh as You Think?” The Plaintiffs even discussed this news program with the Meat Market manager, because of their heightened concerns The Plaintiffs announced that they were opposed to the meat-handling practices, and refused to re-date or re-cycle out-of-date meat But, the Meat Market manager continued the practices, and, as a result, a strong animosity developed between the two Plaintiffs and their manager, Jeffrey Reed

8 Even though the Meat Market manager claimed that the practices were legal, the Plaintiffs did not believe him So, the Plaintiffs contacted the employer’s internal, confidential hot-line to report the practices The calls were recorded, and the Defendant has actual knowledge of the Plaintiffs’ complaints The Plaintiffs contacted the hot-line because they believed that their communications would be confidential, that their identities would be kept secret, and that they would not be retaliated against

9 The Plaintiffs’ communications were not kept confidential, because very shortly thereafter the store manager himself, Kevin Frydinger, became hostile, and made the remark, “I am not going to get rid of Jeff He’ll be here ” And in the same conversation, the store manager told the Plaintiffs to “stop being negative ”

- 10 On June 9th, MICHAEL D MARTIN was terminated, and on the following day,
RICHARD J ADAMCIK was terminated. In both instances, the Plaintiffs were told that
the employer had to lay off employees in order to cut back on overhead. The employer
then turned around and hired replacement workers.
- 11 The Defendant's meat-handling practices of either re-dating out-of-date meat, or else re-
cycling old meat in with the new meat are illegal, and are deceptive trade practices (
intentionally passing off old meat as new or fresh meat, when it is not) These practices
constitute fraud and theft by false pretext, i e , accepting money in return for the sale of
an adulterated food product.
- 12 The Plaintiffs were both fired solely on account of their refusal to participate in an illegal
act, namely, participating in the company's scheme to back-date or re-cycle out-of-date
meat. This termination of employment is in violation of the doctrine announced in
Hauck v Sabine Pilots, Inc., 687 S W 2d 733 (Tex 1985).
- 13 In the alternative, the Plaintiffs were fired in retaliation for reporting the company's
meat-handling practices. In this regard, then, the Defendant committed fraud, because it
had represented to the Plaintiffs in its handbook, *above*, that they could make a
confidential report without any retaliation. This was a material representation, and the
Plaintiffs reasonably relied upon it. The representation was false, and the company did in
fact retaliate. The retaliation occurred in the form of job termination for each Plaintiff.
- 14 In the alternative, the Defendant acted unusually cruelly toward the Plaintiffs because of
their reporting, and this conduct was intended to inflict mental distress.
- 15 As a result of the termination, each Plaintiff lost his job and accompanying benefits, and
has suffered extreme emotional distress and mental anguish, and has also suffered
damage to his reputation.
- 16 At all material times referred to herein, the Defendant was acting by and through one of
its vice-principals, or employees within the course and scope of employment.
- 17 The Defendant acted with malice, or, alternatively, acted intentionally with a wanton
disregard for the rights of the Plaintiffs.

18 Your Plaintiffs have performed all conditions precedent

V CAUSES OF ACTION, DAMAGES AND RELIEF

1 On the occasion in question, the Defendant, FLEMING COMPANY D/B/A RAINBOW GROCERY, acting by and through its vice-principal, terminated the Plaintiffs, MICHAEL D MARTIN and RICHARD J ADAMCIK, solely on account of their refusal to perform an illegal act, and this was a proximate cause of the Plaintiffs' damages, as stated below

2 In the alternative, on the occasion in questions, the Defendant, FLEMING COMPANY D/B/A RAINBOW GROCERY, committed fraud against the Plaintiffs, MICHAEL D MARTIN and RICHARD J ADAMCIK. The Defendant had represented to the Plaintiffs in its handbook, *above*, that they could make a confidential report without any retaliation. This was a material representation and the Plaintiffs reasonably relied upon it. The representation was knowingly false, and the company did in fact retaliate. The retaliation occurred in the form of a job termination for each Plaintiff. This fraud was a proximate cause of the Plaintiffs' damages, as stated below

3 In the alternative, the Defendant intentionally inflicted mental distress upon the Plaintiffs, MICHAEL D MARTIN and RICHARD J ADAMCIK. This conduct was a proximate cause of the Plaintiffs' damages, as stated below

4 Your Plaintiff, MICHAEL D MARTIN, seeks to recover his actual damages, as follows

A Lost wages and job benefits in the past

Amount An amount in excess of the minimum jurisdictional limits of this Court

B Lost wages and job benefits in the future

Amount An amount in excess of the minimum jurisdictional limits of this Court

C Mental Anguish in the past

Amount An amount in excess of the minimum jurisdictional limits of this

Court

D Damage to reputation

Amount An amount in excess of the minimum jurisdictional limits of this Court

5 Your Plaintiff, RICHARD J ADAMCIK , seeks to recover his actual damages, as follows

A Lost wages and job benefits in the past

Amount An amount in excess of the minimum jurisdictional limits of this Court

B Lost wages and job benefits in the future

Amount An amount in excess of the minimum jurisdictional limits of this Court

C Mental Anguish in the past

Amount An amount in excess of the minimum jurisdictional limits of this Court

D Damage to reputation

Amount An amount in excess of the minimum jurisdictional limits of this Court

6 Because of the willful and outrageous nature of the Defendant's conduct, and the wanton disregard that the Defendant has shown for the rights of the Plaintiffs, as well as for the health and safety of the public, the imposition of punitive damages is both appropriate and imperative in this case. The Plaintiffs each ask that they jury assess and properly impose punitive damages upon this corporation, the FLEMING COMPANY, in order to punish the Defendant for its outrageous conduct, to deter it from engaging in these harmful and predatory practices in the future, and to serve as an example to other food retailers who might be tempted to sell adulterated meat to innocent, unsuspecting

members of the public In this regard, the each Plaintiffs asks the jury to impose the following exemplary damages

A MICHAEL D MARTIN \$10,000,000

B RICHARD J ADAMCIK \$10,000,000

7 Plaintiffs seek prejudgment interest in accordance with law

8 Plaintiffs seek costs of court

9 Plaintiffs seek general relief, legal and equitable

10 Plaintiffs seek a permanent injunction against the Defendant to restrain the company from committing deceptive or misleading trade practices in the future with respect to its handling and sale of meat Specifically, the Plaintiffs seek to enjoin the Defendant from either re-dating or re-cycling its meat products without first making a full disclosure to the public In support of this application for a permanent injunction the Plaintiffs would show

A The Defendant, FLEMING COMPANY D/B/A RAINBOW GROCERY, has a practice or procedure to back-date or re-cycle out-of-date meat in order to extend the product's shelf life The Defendant puts profits before public safety

B This practice is unreasonably dangerous and exposes the Plaintiffs and the public, who would buy and consume the Defendant's meat products, to an unreasonable risk of harm

C Unless the Defendant is enjoined from continuing its practices of re-dating or re-cycling its out-of-date meat, the public will likely suffer irreparable harm or injury, or even death

D The Plaintiffs and the public have no other adequate remedy at law

Respectfully submitted,

Law Offices of Benton Musslewhite

1705 W Gray, Suite A
Houston, Texas 77019

Telephone 713-783-2250

Facsimile 713-783-2260

E-mail lobm@airmail.net

By

A handwritten signature in black ink, appearing to read 'Benton Musslewhite', written over a horizontal line.

Mr Benton Musslewhite
SBN 14752000

ATTORNEYS FOR THE PLAINTIFFS

EXECUTION OF THIS AGREEMENT

Signed on this the _____ day of _____, 200__ at the address of _____

_____ in the City of _____, State

of _____

ATTORNEYS

THE LINE LAW FIRM
2711 N Haskell Ave, Suite 2020
Dallas, Texas 75201
Telephone 214/823-1122
Facsimile 214/823-2850

By _____
Print Name _____
Print Title _____

CLIENT(S)

Indicate Capacity for Each Client
I = Individual Capacity Only
IR = Individual and Representative Capacities
(Note The person represented is named below under "Other Persons")
R = Representative Capacity Only

Client 1. Capacity I IR R
(Circle One)

Client 2: Capacity I IR R
(Circle One)

Michael D Martin (Signature)
Print Name MICHAEL D MARTIN
Address 4120 Durbin THE COLONY TX 75056
Home Telephone 912-624-0242
Work Telephone _____

Richard Adamcik (Signature)
Print Name RICHARD ADAMCIK
Address 6035 Dorey Cdokey Tx 75056
Home Telephone 94691384-4754
Work Telephone _____

OTHER CLIENT(S) APPEARING IN A REPRESENTATIVE CAPACITY

Client 3: Corresponding Client No ___ Relationship ___ Natural Parent ___
Next Friend ___
Guardian ___
Other Persons _____

Print Client's Name _____

Client 4: Corresponding Client No ___ Relationship ___ Natural Parent ___
Next Friend ___
Guardian ___
Other Persons _____

Print Client's Name _____

LAW OFFICES OF BENTON MUSSLEWHITE
Attorneys and Counselors

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Dallas, Texas 75214

Tel (214) 824-4798

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September 12 2003

Via Federal Express

Bankruptcy Management Corporation
1330 East Franklin Avenue
El Segundo CA 90245

Re	Debtors	Fleming Companies, Inc ,	Case No	03-10945 (MFW)
		Richmar Foods, Inc	Case No	03-10972
	Creditors	Richard J Adamcik	SSN	044-80-7145

Dear Sir

This law firm represents Mr Adamcik in an employment discrimination / whistleblower retaliation claim against their previous employer, Fleming Companies, Inc , and Richmar Foods, Inc , d/b/a Rainbow Grocery **The claim is one for an intentional tort**

The claim is in litigation The case is styled Michael D Martin and Richard J Adamcik vs Fleming Company d/b/a Rainbow Grocery, Cause No 03-572, 68th Judicial District Court, Dallas County, Texas A file-marked copy of the Plaintiffs' Original Petition is attached Also the signature page of the clients' power of attorney is attached

The proof of claim forms are being filed against each of debtors Fleming Companies, Inc , and Richmar Foods, Inc

The claim forms are being filed in duplicate Please return a file-stamped copy of the four claim forms to the undersigned counsel of record

Yours truly


Benton Musslewhite

cc Richard Adamcik