B10 (Official Form 10) (Rev 10/96)

UNITED STATES BANKRUPTCY COURT For the District of Delaware	PROOF OF CLAIM
In re **Fleming Companies, Inc**	Case Number **03-10945**

NOTE This claim 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

Creditor Name (Person or entity debtor owes)	**Nick Munafo**
Address Line 1	**c/o William D Sullivan, Esq**
Address Line 2	**Elzufon Austin et al**
Address Line 3	**300 Delaware Ave, Suite 1700**
City ST ZIP	**Wilmington, DE 19899**

☐ 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

Check here if this claim ☐ replaces ☐ amends a previously filed claim dated _____

1 BASIS FOR CLAIM

☐ Goods sold ☐ Personal injury/wrongful death ☐ Retiree benefits as defined in 11 U S C § 1114(a)

☐ Services performed ☐ Taxes ☐ Wages salaries and compensation (Fill out below)

Your social security No _____

☐ Money loaned ☒ Other (Describe Briefly) **(Breach of Contract)**

Unpaid compensation for services performed from _____ (date) to _____ (date)

2 Date Debt Incurred (MMDDYY)

3 If Court Judgment Date Obtained

4 CLASSIFICATION OF CLAIM Under the Bankruptcy Code all claims are classified as one or more of the following (1) Unsecured nonpriority (2) Unsecured Priority (3) Secured It is possible for part of a claim to be in one category and part in another CHECK THE APPROPRIATE BOX OR BOXES that best describe your claim and STATE THE AMOUNT OF THE CLAIM AT TIME CASE FILED

☐ SECURED CLAIM
Attach evidence of perfection of security interest
Brief Description of Collateral

☐ Real Estate ☐ Motor Vehicle ☐ Other (Describe briefly)

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

☒ UNSECURED NONPRIORITY CLAIM
A claim is unsecured if there is no collateral or lien on property of the debtor securing the claim or to the extent that the value of such property is less than the amount of the claim

☐ UNSECURED PRIORITY CLAIM Specify the priority of the claim

☐ Wages salaries or commissions (up to $4300) earned not more than 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)

☐ Taxes or penalties of governmental units 11 U S C § 507 (a)(7)

☐ Other Specify applicable paragraph of 11 U S C § 507(a) 19

5 AMOUNT OF CLAIM AT TIME CASE FILED

(Secured)	(Unsecured Nonpriority)	(Unsecured Priority)
	$ unliq	.

☐ Check this box if claim includes charges in addition to the principal amount of the claim Attach itemized statement of all additional charges

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 promissory notes purchase orders invoices itemized statements of running accounts contracts court judgments or evidence of security interests If the documents are not available explain If the documents are voluminous attach a summary

Please see attached summary of claim

8 TIME STAMPED COPY To receive an acknowledgment of the filing of your claim enclosed a stamped, self addressed envelope and copy of this proof of claim

Date 9/12/03

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)

William D Sullivan Atty in Fact

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FILED
SEP 15 2003
BMC

Fleming Companies Claim
13804

Penalty for presenting fraudulent claim Fine of up to $500 000 or imprisonment for up to 5 years or both 18 U S C §§ 152 and 3571

In re Fleming Industries, Inc , C A. No. 03-10945
Claimants· Munafo of Maysville, Inc.
Munafo, Inc.
Nick Munafo

Proof of Claim Summary

Munafo of Maysville, Inc , Munafo, Inc , and Nick Munafo (collectively "Munafo") file this proof of claim for damages relating to Fleming's breach of contract As set forth more fully in the attached Objection to Assumption and Assignment and Cure Objection filed with the Bankrutpcy Court on August 12, 2003, Munafo is the counterparty to several franchise contracts, Facility Standby Agreements, and leases with Fleming Fleming has breached the Facility Standby Agreement and has caused damages to Munafo in an unliquidated amount, but which is not less than $52,000 00, plus additional damages which are contingent or not presently calculable

The damages include

(a) $32,000 00, as the cost of joining AWG, the co-op that has been designated to replace Fleming as the supplier to Munafo of groceries and other products
(b) $20,000 00, as the cost of switching private label product for the two stores operated by Munafo
(c) additional advertising costs relating to the transition to a new supplier of private label product
(d) costs for re-tagging product and re-programming Munafo's inventory and check-out equipment

In addition, Fleming's inability to supply adequate product to Munafo in accordance with the Facility Standby Agreement has exposed Munafo to liability under a promissory note executed in connecting with the Facility Standby Agreement and letter agreement between the parties The agreement called for forgiveness of the note over time provided that Munafo met the Teamwork Score designated in the agreement However, Fleming's defaults under the Facility Standby Agreement has rendered it impossible for Munafo to meet the Teamwork Score and obtain forgiveness under the note To the extent that any party will seek performance of Munafo's obligations under the note, Munafo is entitled to collect the sums due from Fleming, as any continuing liability under the note is a direct consequence of Fleming's breach of contract

In addition, Munafo has been required to obtain "cover" goods as a result of Fleming's breach of the contract, which is ongoing Munafo continues to seek cover goods as of the claims bar date The damages to Munafo are not presently calculable, and continue to accrue

Given the foregoing, Munafo files this claim in an unliquidated amount

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	)	
	)	**Chapter 11**
FLEMING COMPANIES, INC., et al.	)	
	)	**Case No. 03-10945 (MFW)**
Debtors	)	
	)	**(Jointly Administered)**
	)	

OBJECTION OF MUNAFO OF MAYSVILLE INC., MUNAFO, INC AND NICK MUNAFO TO ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACT (CONTRACT NO 'S 4578, 4579, 4580, 4581, 4582, 4681 AND 4682)

COME NOW, Munafo of Maysville, Inc , Munafo, Inc , Thernick, Inc and Nick Munafo, ("Munafo"), by and through the undersigned counsel and for its Objection to the Motion of Fleming Companies, Inc , et al ("Fleming") to assign various executory contracts to AWG Acquisition, LLC ("AWG") and/or C&S Acquisition LLC ("C&S") and state to the Court as follows

1 Munafo is listed on the schedule of contracts to be assigned to C&S with four "franchise" contracts numbered 4578, 4579, 4580 and 4581 Munafo is also listed on the schedule of contracts to be assigned to AWG with Facility Standby Agreements ("FSA's") numbered 4681 and 4682, as well as "Leases" numbered 4582 Munafo objects to the assumption and assignment of the franchise contracts, for which no location information was provided, as Munafo has been provided inadequate time to identify what, if any, franchise agreements it has with Fleming Munafo further objects to the notice as confusing, in that it indicates that the executory contracts and unexpired leases are being assigned to more than one party Munafo incorporates its objection to the assumption of the FSA as more fully set forth below into its objection to the assumption of the franchise agreements

2 On or about November 6, 2002, Munafo and Fleming entered into a Facility Standby Agreement A copy of the Facility Standby Agreement is attached hereto as Exhibit A and incorporated herein as if more fully set forth

3 Pursuant to the terms of the Facility Standby Agreement, Fleming agreed to provide Munafo food, grocery and related products for sale in Munafo's retail operations

4 Fleming is in default under the terms of the Facility Standby Agreement Fleming has failed to maintain sufficient capital, employees, inventory, equipment and facilities sufficient to supply products to Munafo in accordance with the Nashville Division Sell Plan as of June 8, 1998 Munafo purchases approximately $10,000,000 00 of product per year Munafo has no information whatsoever as to the ability of AWG to perform and no information is provided is as to the ability of the AWG or any potential assignee concerning their ability to perform Likewise, Munafo has no information as to the price of the proposed assignee to determine if it can be competitive in the sale of product It is unreasonable with the minimal notice that has been provided to expect Munafo to decide whether its contract should be assumed and assigned with having been provided no information on the proposed purchaser or assignee

5 Prior to the assumption and assignment of the Contracts, the Debtor must comply with the provisions of 11 U S C §365(b)(1) which state that

> (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—
>
> (A) cures, or provides adequate assurance that the trustee will promptly cure, such default,
>
> (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default, and

(C) provides adequate assurance of future performance under such contract or lease

There has been no provision made in accordance with 11 U S C § 365(b)(1)(c) to provide adequate assurance of future performance as to

a) price,
b) availability of product,
c) quality of product,
d) ease of maintenance of an inventory system,
e) delivery, and
f) service

Accordingly, the purchaser and/or proposed assignee cannot demonstrate "adequate assurance" necessary to permit the contracts to be assumed and assigned

6 Furthermore, Munafo has been advised that AWG is a co-op and in order to remain competitive Munafo would be required to pay $32,000 00 (or perhaps $32,000 00 per each of Munafo's five stores) to join the co-op and get the lowest prices to remain competitive Again, Munafo has been provided insufficient time to investigate this The FSA is tied to a Note and a Letter Agreement that provides for forgiveness or a credit in the amount of one percent of purchases Insufficient notice has been provide as to the disposition of the Note The Note and related documents are integrated into the FSA and the disposition of the Note must be determined prior to assumption

7 In addition, for five years, Munafo has promoted the private label of Fleming known as "Best Yet" This product has become the staple of Munafo, there being 800 to 1000 items in the store bearing this label There is no information as to whether this label will be continued The cost of switching private labels would be $10,000 00 per store, along with additional advertising costs The purchaser or its assignee must continue this brand to afford equivalent service to Munafo

8 Munafo has been further advised that all products would need to be re-tagged and re-programmed to bring Munafo into conformity with the system of the purchaser or its assignee No information has been provided as to the extent of the changes necessary, or whether Munafo's computer system will accommodate a new inventory system as may be proposed by the purchaser

9 Finally, there is a franchise of Jubilee that requires promotion by the Debtor The purchaser proposes to assume the Franchise Agreement but gives no assurance of future performance as to the promotion of the franchise or the name, or whether it will continue to use this name

WHEREFORE, Munafo prays that the Court deny the proposed assumption and assignment of its contracts unless adequate notice is given, all existing or ongoing defaults are cured, and adequate assurance of future performance by the proposed assignee is demonstrated, and for such other and further relief as the Court deems just and proper

Dated August 11, 2003

ELZUFON AUSTIN REARDON
TARLOV & MONDELL, P A

/s/ Charles J Brown, III
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Attorneys for Munafo of Maysville, Inc ,
Munafo, Inc , and Nick Munafo

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing pleading was served by facsimile this 12th day of August, 2003, to

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