

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

IN RE:

FLEMING COMPANIES, INC., et al.,

Debtors,

CASE NO. 03-10945 (MFW)
JOINTLY ADMINISTERED

CHAPTER 11

Objection Deadline: April 14, 2003 @ 4:00p.m.
Hearing Date: April 21, 2003 @ 12:30 p.m.

**LIMITED OBJECTION OF SUPERIOR DAIRY, INC.
TO DEBTORS' EMERGENCY MOTION PURSUANT TO
11 U.S.C. §§361, 362, 363 AND 364, FED. R. BANKR. P. 4001(b) AND 9014,
AND DEL. BANKR. LR. 4001-2, (A) FOR INTERIM AND FINAL ORDER
AUTHORIZING THE USE OF CASH COLLATERAL AND GRANT OF
ADEQUATE PROTECTION NUNC PRO TUNC TO THE PETITION DATE,
AND (B) APPROVING POST-PETITION FINANCING AND RELATED RELIEF
(Docket No. 16, 79)**

Superior Dairy, Inc. ("Superior Dairy") files this Limited Objection (the "Objection") to the Emergency Motion Pursuant to 11 U.S.C. §§361, 362, 363 and 364, Fed. R. Bankr. P. 4001(b) and 9014, and Del. Bankr. Lr. 4001-2, (A) for Interim and Final Order Authorizing the Use of Cash Collateral and Grant of Adequate Protection Nunc Pro Tunc to the Petition Date, and (B) Approving Post-Petition Financing and Related Relief (the "Motion") filed by the jointly administered debtors and debtors-in-possession herein (the "Debtors"). In support of this Objection, Superior Dairy respectfully states as follows:

1. On April 1, 2003 (the "Petition Date"), the Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 (the "Bankruptcy Code") of the United States Code, thereby commencing these jointly administered Chapter 11 cases.

2. Prior to the Petition Date, the Fleming Companies, Inc. (“Fleming”), one of the Debtors herein, and Superior Dairy entered into an agreement referred to as the Drop Ship/Central Billing Program. Through this program, Superior Dairy would sell goods to customers of Superior Dairy. Superior Dairy then would send the sales invoices to Fleming. Pursuant to agreements that Fleming had with Superior Dairy’s customers, Fleming would then debit the bank account of each customer according to the amount owed to Superior Dairy on the sales invoice. Thereafter, Fleming would forward a check representing the amount collected, less a small percentage for a billing fee retained by Fleming, to Superior Dairy.

3. On March 23, 2003, prior to the Petition Date, Superior Dairy notified Fleming that Superior Dairy was immediately terminating the Drop Ship/Central Billing Program. Fleming informed Superior Dairy that it was too late for Superior Dairy to directly bill Superior Dairy customers for invoices issued for the week ending March 15, 2003. However, Fleming informed Superior Dairy that, subject to approval of the home office, Superior Dairy could directly bill Superior Dairy customers for invoices issued for the week ending March 22, 2003. Notwithstanding the fact that the monies are owed to Superior Dairy, Fleming informed Superior Dairy on April 11, 2003 that Fleming intended to collect all monies owed to Superior Dairy, including those amounts for the week ending March 22, 2003. Moreover, Fleming informed Superior Dairy that Fleming had no intention of paying amounts collected on Superior Dairy’s behalf to Superior Dairy.

4. Superior Dairy objects to the Debtor’s use of Cash Collateral (as such term is defined in the Motion) that includes any monies that have been collected or will be collected on behalf of Superior Dairy by Fleming pursuant to the Drop Ship/Central Billing Program. Monies collected on behalf of Superior Dairy and any proceeds thereof are not property of the Debtors’ estates under Section 541 of

the Bankruptcy Code, and Superior Dairy does not consent to the Debtors' use of such monies or proceeds thereof. Accordingly, Superior Dairy respectfully requests that the Court enter an Order requiring the Debtors (1) to account for any monies collected by Fleming on behalf of Superior Dairy and any proceeds thereof; (2) to segregate any monies collected by Fleming on behalf of Superior Dairy and any proceeds thereof from other of the Debtors' inventory and Cash Collateral; (3) to deposit any such monies or funds identified as proceeds of such monies collected by Fleming on behalf of Superior Dairy into an escrow account pending further orders of the Court respecting the disposition of such proceeds; and (4) to immediately cease from collecting any further amounts on behalf of Superior Dairy.

5. In the alternative, to the extent required under the law, Superior Dairy requests adequate protection of their interest in the monies collected by Fleming on behalf of Superior Dairy and/or the proceeds thereof.

WHEREFORE, Superior Dairy respectfully requests that the Court deny the Motion pending entry of an Order (a) requiring the Debtors (i) to account for any monies collected by Fleming on behalf of Superior Dairy and any proceeds thereof; (ii) to segregate any monies collected by Fleming on behalf of Superior Dairy and any proceeds thereof from other of the Debtors' inventory and Cash Collateral; (iii) to deposit any such monies or funds identified as proceeds of such monies collected by Fleming on behalf of Superior Dairy into an escrow account pending further orders of the Court respecting the disposition of such proceeds; and (iv) to immediately cease from collecting any further amounts on behalf of Superior Dairy.

Dated: April 14, 2003

HEIMAN, ABER, GOLDLUST, & BAKER

/s/ Susan E. Kaufman

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