

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

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In re : Chapter 11  
: :  
FLEMING COMPANIES, INC., et al.<sup>1</sup> : Case No. 03-10945 (MFW)  
: :  
Debtors. : (Jointly Administered)  
: :  
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**FIRST INTERIM APPLICATION FOR APPROVAL OF PROFESSIONAL  
FEES AND EXPENSES INCURRED BY KEKST AND COMPANY AS  
COMMUNICATIONS CONSULTANTS TO THE DEBTORS FOR THE  
PERIOD APRIL 1, 2003 THROUGH MAY 31, 2003**

Pursuant to 11 U.S.C. §§ 330 and 331 and Rule 2016 of the Federal Rules of Bankruptcy Procedure, the communications consulting firm of Kekst and Company hereby applies to this Court pursuant to the Court's "Order Pursuant to Sections 105(a) and 331 of the Bankruptcy Code Establishing Procedures For Interim Compensation and Reimbursement of Expenses of Professionals," for an Order awarding it reasonable compensation for services rendered to the above-captioned debtors and debtors in possession (collectively, the "Debtors") for the period commencing April 1, 2003 through and including May 31, 2003 (the "Interim Fee Period"), in the total amount of \$95,563.14, which is composed of (i) \$92,512.50 for professional

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<sup>1</sup> The Debtors are the following entities: Core-Mark International, Inc.; Fleming Companies, Inc.; ABCO Food Group, Inc.; ABCO Markets, Inc.; ABCO Realty Corp.; ASI Office Automation, Inc.; C/M Products, Inc.; Core-Mark Interrelated Companies, Inc.; Core-Mark Mid-Continent, Inc.; Dunigan Fuels, Inc.; Favar Concepts, Ltd.; Fleming Foods Management Co., L.L.C., Fleming Foods of Texas, L.P.; Fleming International, Ltd.; Fleming Supermarkets of Florida, Inc.; Fleming Transportation Service, Inc.; Food 4 Less Beverage Company, Inc.; Fuelserv, Inc.; General Acceptance Corporation; Head Distributing Company; Marquise Ventures Company, Inc.; Minter-Weisman Co.; Piggly Wiggly Company; Progressive Realty, Inc.; Rainbow Food Group, Inc.; Retail Investments, Inc.; Retail Supermarkets, Inc.; RFS Marketing Services, Inc.; and Richmar Foods, Inc. (collectively, the "Debtors")

fees incurred during the Interim Fee Period and (ii) \$3,050.64 for expenses incurred during the Interim Fee Period. In support of its Application, Kekst respectfully represents as follows:

### **KEKST'S RETENTION**

1. On April 1, 2003, (the "Petition Date"), the Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases"). The Debtors are operating their businesses as Debtors in Possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases. An official committee of unsecured creditors (the "Committee") was appointed on April 14, 2003.

2. On April 29, 2003, the Debtors filed an application (the "Retention Application") for an order authorizing and approving the employment and retention of Kekst as their communications consultants. By order dated June 5, 2003, the Court authorized the Debtors to retain and employ Kekst.

### **SERVICES RENDERED AND RELATED COMPENSATION REQUESTED**

3. Kekst requests interim approval and allowance of compensation for its professional services in the aggregate amount of \$92,512.50 and for the reimbursement of the reasonable and necessary out-of-pocket expenses that it incurred in connection therewith of \$3,050.64.

4. In rendering the services described herein, Kekst expended a total of 515 hours, comprised of 429 hours in April and 86 hours in May. April time charges were \$204,675.00, against which a March 31, 2003 credit balance of \$152,075.00 was applied, for an April time charge balance of \$52,600. May time charges total \$39,912.50. Kekst's average blended hourly rate for the Interim Fee Period was approximately \$475.

5. The rates for which Kekst seeks approval herein are its usual and customary billing rates for the types of services performed, as described in the Retention Application and the Declaration of Gershon Kekst in support of the Retention Application.

6. Attached as Exhibit A is a summary of the hours charged for services rendered by the Applicant, including the name of each professional who worked on the case during the Interim Fee Period, the number of hours that they expended, and a description of the services rendered.

7. Kekst performed extensive essential communications services for the Debtors during the Interim Period, including:

- Provided advice and interacted with the Debtors and their advisors in person, by phone, via faxes and electronically on the strategy and preparation of communications materials (for internal and public dissemination) relating to (i) the Debtors' restructuring and chapter 11 cases; and (ii) business developments during the chapter 11 case;
- Interacted with the media and employees on all these and related areas;
- Participated in conference calls with the client and the client's advisors regarding strategy and communications recommendations;
- Advised the Debtors with respect to media relations, and participated in discussions between the client and various reporters from national, local and trade media;
- Prepared extensive written materials for external and internal communications for management of the Debtors' communications to key constituencies (including employees, vendors and suppliers, customers, and the media) on the status of the chapter 11 filing, reorganization process and business developments, including the business segment sales process.

8. Kekst believes that these services were reasonable and necessary in order for it to discharge its duties and obligations to the Debtors and this Court. In rendering these services, Kekst made every effort to maximize the benefit to the Debtors and to coordinate its efforts with those of the Debtors and other professionals to avoid duplication of effort.

#### **EXPENSES**

9. Attached as Exhibit B is a summary of the expenses incurred by Kekst during the Interim Fee Period in connection with this engagement. They were \$17,060.39, which after subtracting a credit in the amount of \$14,009.75, aggregates to total expenses of \$3,050.64. The expenses sought reflect actual out-of-pocket expenses incurred by Kekst, and Kekst believes that they were reasonable and necessary.

#### **COMPENSATION PAID**

10. Kekst has not received any compensation during the Interim Fee Period.

11. Certain of the Applicant's time records and expenses for the Interim Period may not be included in Exhibits A and B because they had not been tabulated or fully vouched when Kekst prepared this Application. If so, Kekst will seek allowance of that compensation and reimbursement in a subsequent application, if necessary.

12. Kekst has strived to perform its responsibilities in a cost-effective manner commensurate with providing the high-quality professional advice and service required by the Debtors. Kekst has spoken with the management of the Debtors and believes that the Debtors are pleased with the quality nature and results achieved from Kekst's assistance.


13. No agreement or understanding exists between Kekst and any other person or party for the sharing or division of the compensation received by Kekst for services rendered in, or in connection with this case. The grant of the requested relief will not prejudice any party in interest in any way. The services Kekst has rendered in these cases has advanced the interests and concerns of all parties in interest.

14. Kekst has reviewed the Local Bankruptcy Rule 2016-2, which the Debtors counsel provided to Kekst after reviewing a draft of this application. Kekst believes that its time entries are substantially in compliance with that Rule. All of the services that Kekst has performed for the Debtors fall into a single category – communications consulting. With respect to expenses, Kekst does not maintain electronic systems that would permit it to identify and allocate each separate telephone call, facsimile, or photocopy to individual clients. Accordingly, Kekst allocates its monthly internal expenses among its separate clients, based on the ratio of time devoted to each client during the month. Because of the cost of installing and maintaining systems that would permit it to track each expense, Kekst believes that this procedure is fair both to it and its clients. To the extent that its time records and expense report do not fully comply with any of the Local Rule's requirements, Kekst respectfully requests a waiver of those requirements. Kekst believes the amount requested is fair and reasonable given (a) the complexity of the case, (b) the time expended, (c) the nature and extent of the services rendered, (d) the value of such services, and (e) the costs of comparable services other than in a case under the Bankruptcy Code.

15. WHEREFORE, Kekst respectfully requests that the Court enter an order (a) approving this Application for compensation for Kekst's services during the Interim Fee Period, in the amount of \$92,512.50, and the reimbursement of necessary out-of-pocket expenses, in the amount of \$3,050.64, (b) authorizing and directing the Debtors to pay those amounts to Kekst subject to any hold back required by the Court and (c) further requests such other relief as this Court may deem just and proper.

Dated: June 26, 2003

KEKST AND COMPANY

By: 

Lawrence A. Rand  
437 Madison Avenue  
New York, NY 10022  
(212) 521-4800

VERIFICATION

STATE OF NEW YORK    )  
                                  )  
COUNTY OF NEW YORK )    SS:

Lawrence A. Rand hereby declares:

1. I am a Principal in the applicant firm, Kekst and Company, Inc.
2. I have personally performed many of the services rendered by Kekst and Company, Inc. as communications consultants for the Debtors and am thoroughly familiar with all other work performed on behalf of the Debtors by the professionals in the firm.
3. The facts set forth in the foregoing Application are true and correct to the best of my knowledge, information and belief.

Lawrence A. Rand

Lawrence A. Rand

SWORN TO AND SUBSCRIBED before me this 26 day of June, 2003.

*Frances Melisse Lopez*  
Notary Public  
**FRANCES MELISSE LOPEZ**  
Notary Public, State of New York  
No. 01LO688549  
Qualified in Richmond County  
Commission Expires 03/03/20 *07*