

EXHIBIT A

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

In re : Chapter 11
: Case No. 03-10945 (MFW)
Fleming Companies, Inc., et al. : Jointly Administered
:
Debtors : Hearing Date: September 18, 2003 at 4:00 p.m.
: (Eastern Standard Time)
: Objection Deadline: September 11, 2003 at 4:00 p.m.
: (Eastern Standard Time)
:
: **Related to Docket Items 1906, 1984, 2002, 3150,
3151, 3153 and 3142**

**DECLARATION OF MICHAEL E. BUSCH IN SUPPORT OF KEIL'S
FOOD STORES' MOTION FOR ORDER GRANTING RELIEF FROM
"ORDER (A) APPROVING ASSET PURCHASE AGREEMENT WITH
C&S WHOLESALE GROCERS, INC. AND C&S ACQUISITION, LLC,
ETC." [DOCKET NO. 3142], PURSUANT TO F.R.C.P. 60(b) AND F.R.
BANKR. P. 9024 ON THE GROUNDS THAT IT RECEIVED NO NOTICE
OF MOTIONS AND ADDITIONAL GROUNDS**

I, Michael E. Busch, hereby declare:

1. I am a shareholder in the law firm of Pyle Sims Duncan & Stevenson, APC and am one of the counsel for Keil's Food Stores, a California corporation ("Keil's"). I have personal knowledge of the matters stated herein, except for those matters stated on information and belief and as to those matters, I am informed and believe they are true. I am over 18 years of age and could testify to these matters if called as a witness. I submit this declaration in support of Keil's Food Stores' Motion for Order Granting Relief from "Order (A) Approving Asset Purchase Agreement with C&s Wholesale Grocers, Inc. and C&s Acquisition, LLC, Etc." ("Order") [Docket No. 3142], Pursuant to F.C.R.P. 60(b) and F.R. Bankr. P. 9024 on the Grounds That it Received No Notice of Motions and Additional Grounds."

2. As set forth in Keil's Opposition to the motion, and the previously filed declarations of Rick Keil and Michael Busch (Docket Nos. 3150, 3151 and 3153) (collectively, "Initial Opposition Papers"), notwithstanding that certain proofs of service purport to reflect service of the motions on Keil's, Keil's received no notice of the motions. Keil's learned of the motions when it learned that there may be a claims bar date and explored what it needed to do to respond to the claims bar date. Keil's retained San Diego, and later Delaware counsel and the Opposition Papers were filed in opposition to the motion. Nevertheless, because of the failure of notice, Keil's opposition papers were not filed and served until August 15, 2003, the same date the order was entered and one day after the conclusion of the hearing on August 14, 2003. It appears that Keil's notes are treated as sold and Keil's is excluded from the protections granted to objecting parties, including, among others, paragraph 16 of the Order (related to cure amounts) and paragraph 47 (related to reservation of defenses) as well as any other protections of the Order granted to objecting parties. For the Court's convenience, copies of Mr. Keil's prior declaration ("First Keil Declaration") (Docket No. 3151) is attached as Exhibit "1"; a copy of my prior declaration ("First Busch Declaration") (Docket No. 3153) is attached as Exhibit "2", and a copy of the Opposition (Docket No. 3150) is attached as Exhibit "3."¹

3. Keil's motion under Federal Rules of Civil Procedure 60(b) and Federal Rules of Bankruptcy Procedure 9024 seeks relief from the Order on the grounds set forth in the memorandum of points and authorities. Keil's has also filed a timely notice of appeal pursuant to

¹ Copies of Exhibits 1, 2, and 3, hereto, will not be included in the service of this declaration, as they have previously been filed and served. Notwithstanding, Exhibits 1, 2 & 3, hereto are available for review on the docket for the United States Bankruptcy Court for the District of Delaware or upon request to Keil Food Stores' undersigned counsel.

F.R.B.P. 8002(b). (See Memorandum in support of this motion at point C, p.11.) The procedure for addressing this motion procedurally while the appeal is pending is set forth in that same point in the memorandum.

4. Initially, Keil's has attempted promptly to address the lack of notice to Keil's with Debtors' counsel to attempt to resolve the issues. As set forth in the First Keil Declaration, Keil's had not received any notices in the case until it received the notice of claims bar date, which was mailed on July 28, 2003 and received subsequently, and Keil's did not get notice of the sale motion or potential assumption. After Keil's contacted me, I reviewed the Court's docket and learned of the sale motion. Thus, at the point when Keil's first received the bar date notice, the deadline to timely object to the sale motion or assert a cure amount had already passed. With no prior involvement in this case, Keil's had to find counsel and Keil's and its counsel had to learn of the motions, review the relevant multiple pleadings in a very long docket, review Keil's transactional documents with Fleming and the law, try to determine what had occurred as to notice, retain local counsel and seek to oppose. Keil's and its counsel acted diligently once they learned of the motions. Counsel began monitoring the docket and local counsel began to monitor hearings. Keil's opposition was filed on August 15, 2003.

5. I am advised by Thomas Walsh, of the Wilmington Delaware, office of McCarter & English, Keil's Delaware counsel in this matter, that he approached Christopher Lhulier of Pachulski, Stang, Ziehl, Young, Jones & Weintraub following the hearing on August 19, 2003, requesting that Mr. Lhulier review the Initial Opposition Papers and contact Mr. Walsh to discuss whether there might be some resolution of the issues which are now raised by this Motion. Mr. Walsh advises me that he further e-mailed Mr. Lhulier on August 25 and 26, 2003, to follow

up with him, but has not had a direct response from Mr. Lhulier. A copy of the sequence of e-mails showing Mr. Walsh's two e-mails is attached as Exhibit "4." Mr. Walsh also advises me that at the August 19, 2003 hearing, he spoke to Richard S. Cobb, Delaware counsel for the purchaser, C&S. Mr. Walsh advises me that Mr. Cobb indicated that, at that point, he thought the issues should be addressed to Debtors' counsel in the first instance. Subsequently, Keil's and C&S have had certain settlement discussions which might in the future indirectly resolve the issue, but have not directly addressed the relief requested for Keil's by this motion. I have written a letter to Mr. Lhulier, a copy of which is attached hereto as Exhibit "5," asking him to contact me to discuss the issues. I will continue to pursue those discussions with Mr. Lhulier. However, Keil's is filing this motion while continuing to attempt to resolve the matter consensually.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the above and foregoing is true and correct.

Executed this 3rd day of September, 2003 at San Diego, California.


MICHAEL E. BUSCH