

EXHIBIT B

**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 2:00 p.m.
: (E.S.T)
: Objection Deadline: September 11, 2003 at 4:00 p.m.
: (E.S.T.)
:
: **Related to Docket Items 1906, 1984, 2002, 3150,
3151, 3153 and 3142**

**DECLARATION OF RICK KEIL 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, Rick Keil, hereby declare:

1. I am the President of 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.' [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."

2. For the reasons described in my prior declaration filed August 15, 2003, Docket

No. 3151, I am confident that Keil's did not receive notice either of the motion for approval of the sale, or of the potential assumption and assignment of certain executory contracts, regardless of whether any affidavits of service purport to show a mailing to Keil's. Keil's had no notice either of these motions, or, of any other proceeding in this case until receipt of the Claims Bar Date Notice dated July 28, 2003, which was received after that date.

3. Keil's operates two stores in San Diego, California. Store 1, which is also its headquarters, is at 3015 Clairemont Drive, San Diego, California 92117 and Store 2 is located at 7403 Jackson Drive, San Diego.

4. Dated as of February 1, 1996, Keil's and Fleming entered into a series of agreements which Keil's believes constituted one transaction. Under the agreements, Fleming made a loan evidenced by three promissory notes, which was used to pay off a prior indebtedness to third parties and to fund the acquisition of the store located at 7403 Jackson Drive, San Diego, and the parties contemporaneously entered into a Supply Agreement. The loans were secured by security interests in Keil's equipment and inventory for the Clairemont and Jackson Drive stores, as well as purportedly guaranteed by Ronald O. Keil, Keil's Chairman. Unsigned copies of the Loan Agreement and Supply Agreement, which were signed by the parties, were attached as Exhibits "B" and "C", respectively to my prior declaration.

5. Subsequent to the initial transaction and documents executed as of February 1, 1996, the parties entered into a number of amendment and modification documents, including five amendments and modifications to the Loan Agreement.

6. The Supply Agreement expressly provides that Fleming shall meet certain specified service levels. If Fleming falls below "the average service level of at least 94% for the

immediate past 4-week period,” and the service level does not exceed 94% in the subsequent 4-week period, it is “deemed a default by Fleming hereunder.” Supply Agreement ¶ 6 at page 3. Fleming was in material breach of the Supply Agreement for a period of time prior to and during the bankruptcy. Keil’s position is that Fleming’s material breach was a total, incurable breach of contract.

7. This declaration supplements my declaration dated August 13, 2003, to address the amount of damage which Keil’s believes it has incurred as a result of the Debtors’ (“Fleming”) breach of Fleming’s obligations to Keil’s. Fleming’s breach damaged Keil’s in a number of different ways, which Keil’s is still in the process of quantifying:

A. Keil’s customer counts declined due to the negative impact on Keil’s of not having in stock items on which Fleming “shorted” deliveries to Keil’s in Fleming’s failure to meet the service level obligation. As a result, customers could not find the items they were looking for and went to other supermarkets, resulting in loss not only of the immediate sale, but in the loss of long term patronage. This reduction is attributable to Fleming’s failure to meet the service level obligation.

B. Keil’s incurred expenses in a number of categories as a result of Fleming’s material breach. Keil’s incurred additional expenses in advertising to offset the decline in customer counts, described above. Keil’s had to shift to an alternate supply source in very short order, and incurred expenses in retagging its stores to reflect the new supplier’s inventory numbers. There were numerous other costs associated with this change, which had to be made due to the deteriorated service by Fleming. This change caused Keil’s to incur additional

expenses and/or to lose revenue in a number of ways.

C. Although Keil's is still in the process of determining its damages with precision, Keil's estimates its damages as being on the order of \$500,000 to \$600,000. This estimate is derived from the reduction in net income before taxes for Keil's two stores, comparing the first two quarters plus the projected third quarter of 2003 with the prior year's comparable quarters. That reduction for those three sets of quarters is as follows:

**Comparison of Net Income Before Taxes
2003 vs. 2002**

	<u>FIRST QUARTER 2003</u>	<u>FIRST QUARTER 2002</u>
Store No. 1	\$116,283.01	\$140,649.20
Store No. 2	\$ 11,232.66	\$ 53,421.57
Total:	\$127,515.67	\$194,070.77
Net Change First Quarter 2003 vs. 2002		<\$66,555.10>
	<u>SECOND QUARTER 2003</u>	<u>SECOND QUARTER 2002</u>
Store No. 1	\$ 27,679.45	\$128,821.63
Store No. 2	< \$118,519.64>	\$ 40,734.55
Total:	< \$ 90,840.19>	\$169,556.18
Net Change Second Quarter 2003 vs. 2002		<\$260,396.37>

<u>PROJECTED THIRD QUARTER 2003</u>	<u>ACTUAL THIRD QUARTER 2002</u>
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Store No. 1	\$ 75,000.00	\$150,649.93
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Store No. 2	< \$ 50,000.00 >	\$ 32,924.51
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Total:	\$ 25,000.00	\$183,574.44
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Projected Net Change Third Quarter 2003 vs. 2002	<\$158,577.44>
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TOTAL PROJECTED DAMAGE FOR 3 QUARTERS:	<\$485,525.91>
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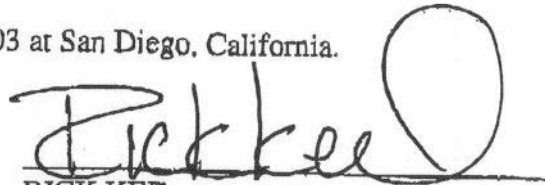
8. Keil's believes that the impact on it may extend beyond the third quarter of 2003.

Keil's has suffered other damages such as incurring certain costs or losing certain discounts, rebates or advertising advantages due to the difference between Fleming's program and the

program of its current supplier. Taking all of these factors together, Keil's estimates its damages at \$500,000 to \$600,000.

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.


RICK KEIL