

1 KATHY POPOFF, CA State Bar #68589
2 50-B Peninsula Center Dr., #301
3 Rolling Hills Estates, CA 90274-3506
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5 Attorney for PACA Trust Creditor,
6 CALDWELL ENTERPRISES, INC.

FILED
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8 IN THE UNITED STATES BANKRUPTCY COURT
9 FOR THE DISTRICT OF DELAWARE

RECEIVED / FILED
OCT 27 2003
U.S. BANKRUPTCY COURT
DISTRICT OF DELAWARE

10
11 In re:) Chapter 11
12 FLEMING COMPANIES, INC., *et al.*, *) Case No. 03-10945 (MFW)
13 Debtors.) Jointly Administered
14) NOTICE OF NON-DEBTOR OBJECTION
15) TO DEBTORS' FOURTH SUPPLEMEN-
16) TAL REPORT OF CLAIMS UNDER THE
17) PERISHABLE AGRICULTURAL
18) COMMODITIES ACT, *ETC.*
19)
20) Objections due by: No Date Set Forth
21) Hearing Date: N/A

22 TO: THE HONORABLE MARY F. WALRATH, Judge of the United States
23 Bankruptcy Court; THE UNITED STATES TRUSTEE; Laura Davis Jones, Esq., Ira
24 D. Kharasch, Esq., Scotta E. McFarland, Esq., Christopher J. Lhulier, Esq.,
25 PACHULSKI, STANG, ZIEHL, YOUNG, JONES & WEINTRAUB, P.C., and James

26 -1-
27 NOTICE OF NON-DEBTOR OBJECTION TO DEBTORS'
28 FOURTH SUPPLEMENTAL REPORT OF CLAIMS UNDER
THE PERISHABLE AGRICULTURAL COMMODITIES ACT

* 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.; CFM 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-Welshman 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.

1 H.M. Sprayregen, Esq., Richard L. Wynne, Esq., Bennett L. Spiegel, Esq., Shirley
2 Cho, Esq., KIRKLAND & ELLIS, Attorneys for Debtors; AND TO ALL OTHER
3 PARTIES IN INTEREST HEREIN:

4 PLEASE TAKE NOTICE that PACA Trust Creditor, CALDWELL ENTER-
5 PRISES, INC., (hereinafter "CEI") through its undersigned attorney, files this
6 "NON-DEBTOR OBJECTION" to "DEBTORS" FOURTH SUPPLEMENTAL REPORT
7 OF CLAIMS UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 7
8 U.S.C. §499a ET SEQ., THE PACKERS AND STOCKYARDS ACT, 7 U.S.C. §181 ET
9 SEQ. AND SIMILAR STATE STATUTES," dated October 16, 2003, as to the validity
10 of CEI's claim. This is the first such REPORT from Debtors which lists CEI as a
11 PACA Claimant. Exhibit 1 of said REPORT (at page 2 of 12) lists claimant
12 "CALDWELL ENTERPRISES" assertion: "\$92,060.32," PACA Eligible: "\$0.00,"
13 PACA Ineligible: \$88,620.32," Unreconciled: "\$3,440.00," Payments to Date:
14 "\$0.00," Proposed Payment: blank, Disallowed: blank.

15 The within Objection is based upon CEI's "NOTICE OF PACA TRUST CLAIM;
16 DECLARATION OF JAMES CALDWELL," filed with this Court and served on the
17 above-referenced parties on or about September 15, 2003, which includes
18 documentation establishing the validity of its PACA claim in the amount of
19 \$92,060.32, and upon the accompanying DECLARATION OF KATHY POPOFF IN
20 SUPPORT" . . . of the Objection, both of which are incorporated herein as though
21 set forth in full.

22 Wherefore, CEI respectfully requests that its Non-Debtor Objection be
23 allowed by this Court and that Debtors and CEI exercise their best efforts to
24 resolve said Objection.

25 Dated: October 25, 2003.

Respectfully Submitted:

26 
27 KATHY POPOFF, Attorney for PACA Trust Creditor,
28 CALDWELL ENTERPRISES, INC.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, KATHY POPOFF, am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 50-B Peninsula Center Dr., #301, Rolling Hills Estates, California 90274-3506.

On October 25, 2003, I served the foregoing: NOTICE OF NON-DEBTOR OBJECTION TO DEBTORS' FOURTH SUPPLEMENTAL REPORT OF CLAIMS UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT; and DECLARATION OF KATHY POPOFF IN SUPPORT OF NON-DEBTOR OBJECTION TO DEBTORS' FOURTH SUPPLEMENTAL REPORT OF CLAIMS UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

THE UNITED STATES TRUSTEE

District of Delaware

ATTN: Julie L. Compton
844 King Street, Room 2313
Wilmington, DE 19801

Laura Davis Jones, Esq.
Ira D. Kharasch, Esq.
Scotta E. McFarland, Esq.
Christopher J. Lhulier, Esq.,
PACHULSKI, STANG, ZIEHL, YOUNG, JONES & WEINTRAUB, P.C.
919 North Market Street, 16th Floor
P.O. Box 8705
Wilmington, DE 19899-8705

James H.M. Sprayregen, P.C.
Richard L. Wynne, Esq.
Bennett L. Spiegel, Esq.
Shirley Cho, Esq.
Marjon Ghasemi
KIRKLAND & ELLIS
777 South Figueroa Street
Los Angeles, CA 90017

FLEMING COMPANIES, INC.

ATTN: Charles A. Cipione
AlixPartners, L.L.C.
1945 Lakewoode Drive
Lewisville, TX 75057-6426

XXXX By Mail:

XXXX I placed such envelope for deposit in the United States mail at Palos Verdes Peninsula, California for service by the United States Postal Service, with first-class postage thereon fully prepaid.

I declare under penalty of perjury under the laws of California and the United States of America that the foregoing is true and correct, and that I am a member of the bar of the United States District Court, Central District of California.

Executed on October 25, 2003, at Rolling Hills Estates, California.


KATHY POPOFF, Declarant