

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: : Chapter 11

Fleming Companies, Inc., et al. : Case No. 03-10945 (MFW)

: Jointly Administered

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Debtors. :

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**STIPULATED PROTECTIVE ORDER**

**I. Introduction**

WHEREAS, Fleming Companies, Inc., and GLN, Inc. (and the Subsidiaries of GLN, Inc.), parties to this action, (referred to collectively as "Parties" and singularly by name or as " Party") believe in good faith that certain information discoverable in this case consists of financial information, proprietary information, confidential sales and marketing information, and/or commercially valuable information that the respective Parties maintain in confidence in the ordinary course of business;

WHEREAS, the Parties reasonably believe that public disclosure of such confidential information would cause financial and competitive harm to the disclosing Party;

WHEREAS, the Parties believe that good cause exists for the entry of this Protective Order, which is narrowly tailored to protect the aforementioned confidential information of the Parties.

By reason of the foregoing, the Parties, by their counsel, jointly request that this Court enter the following Protective Order in this matter.

**II. Information Subject to this Agreement**

1. Material Designated as "Confidential." Any document as that term is defined in Federal Rules of Civil Procedure 34(a), including without limitation electronic or

computerized data compilations, tangible item, or testimony provided by Fleming Companies, Inc., and GLN, Inc. (and subsidiaries of GLN, Inc.), which that Party in good faith contends contains trade secret, or other confidential research or analyses, developmental or commercial information, sales or financial information, or other information which is proprietary to it and is entitled to protection under FRCP 26(c)(7) and Fed. R. Bankr. P. 7026 may be designated as "Confidential" and, except as permitted by further order of a court of competent jurisdiction, or by subsequent written agreement of the producing Party, such designated documents or testimonial information shall be received by counsel of record for the Party upon the terms and conditions of this Protective Order. The Parties agree to designate information as "Confidential" on a good faith basis and not for purposes of harassing the receiving Party or for purposes of unnecessarily restricting the receiving Party's or the public's access to information concerning the lawsuit.

2. Limitations on Use of "Confidential" Information. No person or Party receiving any "Confidential" information shall directly or indirectly disclose, disseminate, transfer, provide access to, or give such "Confidential" information obtained pursuant to any pretrial discovery in this action, except for the purpose of this action only, in accordance with this Protective Order, and in accordance with any further order issued by the Court, to any company or entity other than Fleming, GLN, or to any person not employed by Fleming or GLN.

### **III. Designation of Material As "Confidential"**

3. Procedure for Designating Material. Documents or tangible items shall be designated "Confidential" within the meaning of this Protective Order in the following ways:

(a) In the case of documents and the information contained therein, by placing on the document the legend "Confidential."

(b) In the case of interrogatory answers and the information contained therein, designation shall be made by placing on the first page and all subsequent pages containing the confidential information the legend "Confidential."

(c) In the case of tangible items, designation shall be made by visibly marking the item "Confidential" if practicable or, if not practicable, by placing such marking visibly on a package or container for the item.

4. Deposition Testimony.

(a) Neither Fleming nor GLN shall directly or indirectly disclose, utilize, disseminate, transfer, provide access to or give such "Confidential" information to any person not employed by Fleming or GLN or to any attorney who does not represent Fleming or GLN during a deposition or for the purpose of conducting a deposition in this action, nor shall Fleming or GLN or their attorneys disclose, disseminate or transfer deposition transcripts to any person or attorney who is not employed by or does not represent Fleming or GLN.

(b) In addition to subparagraph (a) above, if, in the course of this proceeding, testimony, either during a deposition or in court, is conducted that involves confidential information, counsel for the witness or Party providing such testimony may state, on the record, the portion of the deposition which counsel believes may contain "Confidential" information. If such designation is made, that portion of the testimony will be taken with no one present except those persons who are authorized to have access to such "Confidential" information in accordance with this Protective Order, the court personnel and reporter.

(c) Subject to the terms hereof, "Confidential" information may be disclosed by a receiving Party in a deposition, to the extent that its use is necessary, at the deposition(s) or during court testimony of:

- (1) present employees of the producing Party;

(2) an author, addressee, or other person indicated as a lawful recipient of a document containing the information;

(3) a person clearly identified in prior discovery or by the person providing the testimony as an author or recipient of the information (without prior disclosure of the specific confidential information);

(4) an independent advisor, consultant or expert otherwise qualified under this Protective Order to receive such information;

(5) a person for the purpose of impeachment or refreshing recollection, who is otherwise qualified under this Protective Order to receive such information; or

(6) any person for whom prior authorization is obtained from the producing Party or the Court.

(d) The Parties agree to cooperate to maintain the confidentiality of confidential information used at a deposition, including obtaining a written Undertaking in the form of Exhibit A from the witness.

5. Court Filings Containing Confidential Information. Any document, pleading, or tangible item which contains confidential information, if filed or submitted to the court, shall be filed in a sealed envelope marked "Confidential," together with a motion for leave to file it under seal. Counsel shall attempt to agree to file documents without seal unless truly necessary.

6. Limitations on Disclosure of "Confidential" Materials. Except as permitted by further order of this Court or by subsequent written agreement of the producing Party, disclosure of "Confidential" documents, deposition transcripts or other transcripts of testimony, tangible items or information, including summaries thereof, but not including documents or tangible items with the confidential portions redacted, shall be limited to:

(a) Kirkland Ellis, LLP, counsel for Fleming Companies, Inc., and Stevens & Lee, P.C. (counsel for GLN, Inc. (and subsidiaries of GLN, Inc.), and in-house counsel for the Parties, and associate attorneys, paralegal, secretarial and clerical employees of those law firms or in-house counsel assisting such counsel;

(b) Judges, Magistrates, law clerks, and clerical personnel of the Court before which this action is pending or qualified court reporters;

(c) Persons employed by Fleming Companies, Inc. or GLN, Inc. (and the subsidiaries of GLN, Inc.);

(d) consultants or experts, not agents, employees or officers or directors of the Parties, retained by any of the Parties to consult or testify in the case, provided that such consultant or expert is not presently or formerly employed by, affiliated with, an agent of, consulting with or in any way connected to C&S Acquisitions LLC or Associated Wholesale Grocers, Inc., or with any other business that is in competition in any way, directly or indirectly, with any of the Parties;

(e) authors or drafters, addressees and those who received the documents or information prior to the commencement of this action; and

(f) contractors and their employees involved solely in document management services for this litigation, provided that such contractor or any of its employees is not presently or formerly an agent of, employed by, affiliated with, consulting with or in any way connected to a business that is in competition in any way, directly or indirectly, with Fleming Companies, Inc. or GLN, Inc. (or a subsidiary of GLN, Inc.).

Before disclosure of any "Confidential" information is made to any of the foregoing persons or entities, except for: (1) outside counsel of record and their respective legal and support staffs who shall be automatically bound, and (2) those persons identified in

subparagraph (b) above, counsel for the Party disclosing the information shall obtain the written Undertaking attached hereto as Exhibit A.

7. Additional Information Covered by This Order. In addition to information designated "Confidential", all information provided by a party to this order to another party to this action, including but not limited to all financial, sales or other business information, is subject to the confidentiality obligations set forth in this Order.

#### **IV. Challenge Procedure And Procedure For Disclosures To Other Persons**

8. If the receiving Party disagrees with the designation and marking by any producing Party of any material as "Confidential," then the Parties shall first try to resolve such disputes on an informal basis. If agreement cannot be reached between counsel, then such dispute may be presented to the Court by any Party by motion or otherwise. In the resolution of such matter, the burden of establishing confidentiality shall be on the Party who made the claim of confidentiality, but information designated as "Confidential" shall be deemed as such until the matter is resolved.

If it becomes necessary for counsel for a Party receiving "Confidential" information to disclose any such "Confidential" information to any person, other than those persons referred to in Paragraph 6, such as any employee of the receiving Party or a witness or potential witness, and in order to properly prepare this litigation for trial, the following procedure shall be employed: (a) Counsel for the receiving Party shall, notify, in writing, counsel for the Party producing the "Confidential" information of their desire to disclose certain "Confidential" information and shall identify the person(s) to whom they intend to make disclosure; (b) If no objection to such disclosure is made by counsel for the producing Party within three (3) business days of such notification, counsel for the receiving Party shall be free to make such disclosure to the designated person(s); provided, however, that counsel for the receiving Party shall serve

upon opposing counsel, prior to disclosure, an Undertaking in the form attached hereto as Exhibit A, whereby such person agrees to comply with and be bound by this Protective Order;

(c) If the producing Party objects to such disclosure, no disclosure shall be made. Any Party may bring before the court the questions of whether the particular "Confidential" information can be disclosed.

The three-day notice period set forth herein does not apply to AWG.

9. No Limitation of Other Rights. This Protective Order shall be without prejudice to the right of any Party to oppose production of any information on any and all grounds other than confidentiality.

10. Relief from or Modification of this Order. This Protective Order shall not prevent any Party or interested member of the public from applying to the court for relief therefrom, or from applying to the court for further or additional protective orders, or from agreeing among themselves to modify or vacate this Protective Order, subject to the approval of the court.

## **V. Disposition Of Confidential Information**

11. Return of Confidential Information. At the conclusion of this action, including any appeals, all "Confidential" information furnished pursuant to this Protective Order, and all copies thereof, shall be returned to the attorneys of record for the producing Party, or, at the producing or receiving Party's option, destroyed by counsel for the receiving Party. In the case where the Confidential information is to be destroyed, within thirty (30) days of the conclusion of this action, counsel for the receiving Party shall notify counsel for the producing Party, in writing, that such destruction has taken place. The provisions of this Protective Order insofar as it restricts the disclosure, communication of, and use of, "Confidential" information produced hereunder shall continue to be binding after the conclusion of this action.

## VI. Third Parties

12. Discovery from Third Parties. If discovery is sought of a Third Party requiring disclosure of such Third Party's "Confidential" information, the "Confidential" information disclosed by such Third Party will be accorded the same protection as the Parties' "Confidential" information, and will be subject to the same procedures as those governing disclosure of the Parties' "Confidential" information pursuant to this Protective Order.

13. In the event a Party determines it needs different (such as enhanced) protection of confidentiality for information or documents than now is provided under this Protective Order, it will first seek the agreement of all Parties. If the Parties are unable to agree, the Party proposing the additional protection may apply to the Court for a Protective Order to provide for the protection sought.

AGREED:

KIRKLAND & ELLIS LLP

STEVENS & LEE, P.C.

By: \_\_\_\_\_

Richard S. Berger  
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*Counsel for Debtor*

By: \_\_\_\_\_

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*Counsel for the Retailers*

STIPULATION APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2003

BY THE COURT

\_\_\_\_\_  
Bankruptcy Judge



EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: : Chapter 11

Fleming Companies, Inc., et al. : Case No. 03-10945 (MFW)  
: Jointly Administered

Debtors. :  
:  
:

AGREEMENT AND UNDERTAKING TO FULLY  
ABIDE BY THE TERMS OF THE PROTECTIVE ORDER

I, \_\_\_\_\_, declare under penalty of perjury that:

- (1) My address is: \_\_\_\_\_
- (2) My present employer is: \_\_\_\_\_
- (3) My present occupation or job description is: \_\_\_\_\_

I hereby certify and agree that I have read and understood the terms of the Protective Order in *In re: Fleming Companies, Inc., et al.*, Case No. 03-10945 (MFW), United States Bankruptcy Court for the District of Delaware. Except as provided in the Protective Order, I will not use or disclose to anyone any of the contents of any "Confidential" information that I receive under the protection of the Protective Order, and I agree to be bound by the terms and conditions of the Protective Order.

I understand that I am to retain all copies of any of the information that I receive which have been designated as "Confidential" information, in a secure place in a manner consistent with the Protective Order, and that all copies are to remain in my custody until I have completed my assigned or legal duties, after which time the copies are to be returned or destroyed as set forth in the Protective Order. I acknowledge that the destruction of those

documents will not relieve me from any of the continuing obligations imposed on me by the Protective Order.

Dated: \_\_\_\_\_