

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

In re:) **Chapter 11**
) **Case No. 03-10945 9 (MFW)**
FLEMING COMPANIES, INC., et al.,) **(Jointly administered)**
)
Debtors.)

**SUPPLEMENT TO THE OBJECTION OF DEBTORS TO E-Z MART'S MOTION FOR
RELIEF FROM AUTOMATIC STAY, OR IN THE ALTERNATIVE TO COMPEL
REJECTION OF CERTAIN EXECUTORY CONTRACTS**

1. The central focus of both E-Z Mart's motion and Core-Mark's objection to E-Z Mart's motion is Core-Mark's fill rates -- that is, the percentage of goods ordered by E-Z Mart that Core-Mark delivers. Core-Mark's objection, filed with this Court on June 19, 2003, provided Core-Mark's fill rates for the twelve weeks from petition date of April 1 through a partial week of June 15. Given the importance of the fill rates to the resolution of this issue, Core-Mark files this supplemental objection to provide the Court with Core-Mark's most recent fill rates, shown for cigarettes and all other items (classified as non-cigarettes).

| Fill Rate by Week for Cigarettes and Non-Cigarette Grocery Items Calculated Using Wholesale Units | | | |
|--|------------------|------------------|-----------------|
| | 6/22/2003 | 6/29/2003 | 7/6/2003 |
| Cigs | 98.67% | 99.42% | 99.77% |
| Non-cig | 95.91% | 98.52% | 98.84% |
| | | | |
| Overall | 96.79% | 98.83% | 99.17% |

2. As predicted in Core-Mark's Objection, the recent data prove that fill rates have returned to and surpassed Core-Mark's customary 98.5% overall fill rate. As will be demonstrated at the hearing this Wednesday, these rates exceed industry standards by a substantial margin.

3. Core-Mark's dramatic improvement and stabilization of its fill rates weighs heavily against granting E-Z Mart's motion to lift the stay. Setting aside the temporary drop in rates immediately following the bankruptcy filing, Core-Mark's service to E-Z Mart is at normal levels. There is no justification for E-Z Mart's efforts to lift the stay so that it may terminate its five year agreement with Core-Mark more than two years early, at substantial cost to Core-Mark and Core-Mark's efforts to reorganize or sell the company.

4. Moreover, this premature motion flies in the face of established bankruptcy practice and policy. The Code provides the debtor with a reasonable time to decide whether to assume or reject, which in other cases of similar complexity spans a year or longer, *see* Objection, ¶¶ 37-41. "Courts rarely force a debtor into assuming or rejecting a contract." *In re Kmart Corp.*, 290 B.R. 614, 620 (Bankr. N.D. Ill. 2003). This is because it is improper to advance one contract ahead of all the others that the debtor must evaluate during the reorganization process. The "interests of the creditors collectively and the bankruptcy estate as a whole will not yield easily to the convenience or advantage of one creditor out of many." *In re Public Serv. Co. of New Hampshire*, 884 F.2d 11, 15 (1st Cir. 1989). "Above all," the definition of a reasonable time should be interpreted in light of the broad rehabilitative purpose of Chapter 11. *In re Dunes Casino Hotel*, 63 B.R. 939, 949 (D.N.J. 1986) (emphasis added).

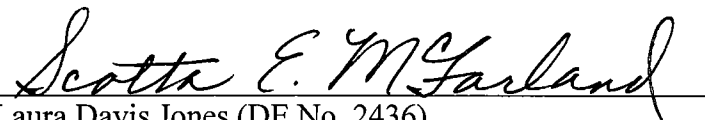
5. In sum, Core-Mark's service level is back to normal and E-Z Mart is suffering no on-going supply issues. That fact alone mandates a denial of E-Z Mart's motion. In addition,

the Code requires that Core-Mark have a reasonable time to determine whether to assume or reject the contract. Three months is not enough in this case, particularly where there is no on-going harm to the non-debtor party.

Dated: July 14, 2003

Respectfully Submitted,

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