

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

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U.S. BANKRUPTCY COURT
ALBUQUERQUE, NM

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 11-01-10779-SA
Chapter 11

Debtor.

MOTION TO REJECT CERTAIN EXECUTORY CONTRACT

Furr's Supermarkets, Inc. (the "Debtor") submits this motion (the "Motion") for an order under 11 U.S.C. § 365(a) approving its rejection of a certain executory contract, and respectfully represents as follows:

1. On February 8, 2001, the Debtor filed a voluntary petition in this Court for reorganization relief under chapter 11 of the United States Bankruptcy Code. The Debtor continues to operate its business and manage its properties as debtor-in-possession under Bankruptcy Code §§ 1107(a) and 1108.

2. The Debtor requests that the Court approve, under 11 U.S.C. § 365(a), its rejection of the executory contract listed on Exhibit A attached hereto (the "Contract"), the rejection to be effective as of the date of this Motion.

3. The Contract that the Debtor has elected to reject deals with software for retail marketing. The Debtor has determined in its business judgment that the Contract is not necessary to its ongoing business operations, and that the costs of performing under the Contract constitute a substantial and unnecessary drain on its cash resources. By rejecting the Contract now, the Debtor will avoid unnecessary administrative charges.

4. Under Bankruptcy Code §365 a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." NLRB v. Bildisco

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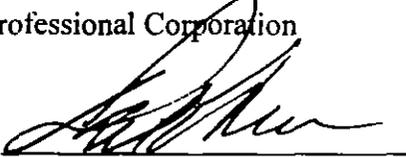
and Bildisco, 465 U.S. 513, 523 (1984). In Bildisco, the Supreme Court acknowledged that a decision to assume or reject an executory contract is governed by the traditional business judgment standard. See also In re Mile Hi Metal Systems, Inc., 899 F.2d 887, 896 n. 13 (10th Cir. 1990) (Seymour, J. concurring) (the so-called "business judgment" test applies to executory contracts). The debtor satisfies this standard if it shows that rejection will benefit the estate. Commercial Fin., Ltd. v. Hawaii Dimensions, Inc. (In re Hawaii Dimensions, Inc.), 47 B.R. 425, 427 (D. Ha. 1985) ("Under the business judgment test, a court should approve a debtor's proposed rejection if such rejection will benefit the estate.") (citation omitted).

5. The Contract is costly to maintain and unnecessary to the Debtor's ongoing operations and business. It constitutes an unnecessary drain on the Debtor's cash resources. Rejection of the Contract is in the best interests of the Debtor's estate, creditors, and interest holders. The decision to reject the Contract reflects an exercise of sound business judgment.

6. The Debtor may have claims against the other party(ies) to the Contract, arising under or independent of the Contracts. This Motion is not an election of remedies, and the Debtor does not waive any such claims by filing this Motion or rejecting the Contract. The Debtor reserves its right to object to any proof of claim filed by the party(ies).

WHEREFORE, the Debtor requests that the Court enter an order approving its rejection of the Contract as of the date of this Motion, and granting such other and further relief as is just and proper.

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EXHIBIT A

REJECTED EXECUTORY CONTRACTS

<u>Contract Vendor</u>	<u>Subject of Contract</u>
Valassis Relationship Marketing Systems	MarketEXPERT Software License Agreement dated October 17, 1997 (and any agreements related thereto, e.g. the TargetEXPERT installation and support agreement)