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UNITED STATES BANKRUPTCY COURT DISTRICT OF THE CLERK  
DISTRICT OF NEW MEXICO

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In Re:

UNITED STATES BANKRUPTCY COURT  
ALBUQUERQUE, N.M.

FURR'S SUPERMARKETS, INC.,

Chapter 11  
Case Nos. 01-10779-SA

Debtor.

No Hearing Date

**SUPPLEMENTAL APPLICATION OF CHAIRPERSON OF THE  
OFFICIAL UNSECURED CREDITORS' COMMITTEE FOR  
ORDER PURSUANT TO 11 U.S.C. § 327(a)  
AUTHORIZING THE RETENTION AND  
EMPLOYMENT OF PEPPER HAMILTON LLP  
TO SERVE AS COUNSEL TO THE COMMITTEE**

JAMES SALVADORI, Chairperson of the Official General Unsecured Creditors' Committee (the "Committee") of the Debtor herein, for his Supplemental Application for Order Pursuant to 11 U.S.C. § 327(a) Authorizing the Retention and Employment of Pepper Hamilton LLP to serve as Counsel for the Committee (the "Supplemental Application"), states as follows:

1. On February 8, 2001, the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code (the "Code").
2. On or about February 13, 2001, the United States Trustee appointed the Committee under Section 1102 of the Code.
3. On February 14, 2001, at a scheduled telephonic conference call of the Committee, at which all of its members were present, and pursuant to the provisions of Section 1103 of the Code, the Committee selected and authorized the employment of Pepper Hamilton LLP to serve as its general counsel.

143

4. The Committee has selected Pepper Hamilton LLP for the reason that its attorneys have considerable experience in the bankruptcy and commercial law areas and are particularly well qualified to represent the Committee in these proceedings.

5. On February 20, 2001, the Committee filed its Application for Order Pursuant to 11 U.S.C. § 327(a) Authorizing the Retention and Employment of Pepper Hamilton (the "Retention Application").

6. The Committee has requested that Pepper Hamilton LLP immediately commence work on this case because of the numerous motions scheduled for expedited hearing and other pending matters in which the Committee has an interest. As such, it is imperative that the Retention Application be considered by the Court as expeditiously as possible. To this end, the Committee has served copies of the Retention Application and this Supplemental Application on all parties required to be served pursuant to this Court's February 15, 2001 Order Prescribing Notice on Debtor's Applications to Retain Skadden, Arps, Slate, Meagher & Flom LLP, Jacobvitz, Thuma & Walker, and PricewaterhouseCoopers, LLP (the "February 15 Order Prescribing Notice")<sup>1</sup>.

7. The February 15 Order Prescribing Notice also stated that the Debtor may supplement each retention application to seek Court approval that the retained professional may invoice the Debtor monthly and propose that the Debtor may pay, on a monthly basis, 75% of each professional's time charges and 100% of its out-of-pocket expenses, all payments to be subject to the Court's approval pursuant to 11 U.S.C. §§330 and 331 (the "Interim Fee Motion").

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<sup>1</sup>The Order directed that the Debtor, on twenty day's notice, serve a copy of each of its professional's retention applications on the following parties: (a) the United States Trustee; (b) the Debtor's creditors set forth on the list filed pursuant to Bankruptcy Rule 1007(d); (c) the lenders entitled to notice under this Court's Interim Order authorizing debtor-in-possession financing, entered on February 9, 2001. (d) all parties-in-interest who have requested special notice in this case, and (e) all other persons who commented on the Applications at the February 8 hearings thereon.

8. In accordance with the Court's suggestion as set forth in the February 15 Order Prescribing Notice, and in recognition of the Debtor's Interim Fee Motion filed on February 20, the Committee requests that the following procedures for compensating and reimbursing its court-approved professionals on a monthly basis be established, in accordance with the regular procedures of this Court. The procedures requested by the Committee are as follows:

- (a) Each Committee professional will submit to the Debtor, on a monthly basis, a detailed statement (a "Fee Statement") of services rendered and expenses incurred by such professional during the prior month. The Debtor shall have until the fifteenth calendar day of the following month after the submission of the Fee Statement to review it (although the Debtor is not required to wait the full fifteen days). In the event there are no objections, the Debtor would be authorized to immediately pay 75% of the amount in fees billed each month and 100% of the expenses billed for each month. In the event there are objections raised with regard to specific items, subject to paragraph (b) *infra*, the Debtor would still be authorized to immediately pay 75% of the amount in uncontested fees billed each month and 100% of the uncontested expenses billed for each month. These payments would be subject to the Court's subsequent approval as part of the normal interim fee application process.
- (b) In the event the Debtor determines that the compensation and or reimbursement sought in a particular statement is inappropriate or unreasonable, or that the numbers and calculations are incorrect, the Debtor shall, on or before the fifteenth day of the calendar month after the submission of the Fee Statement, serve upon the professional whose statement is objected to a "Notice of Objection" with an affidavit setting forth the precise nature of the objection and amount at issue. Thereafter, the Debtor and the professional whose Fee Statement is objected to shall meet or confer to attempt to reach an agreement regarding the correct payment to be made. If an agreement cannot be reached or if no meeting takes place, the professional whose Fee Statement is objected to shall have the option of (i) filing the Notice of Objection, the Fee Statement and a request for payment with the Court, or (ii) foregoing payment of the disputed amount until the next interim fee application hearing, at which time the Court will consider and dispose of the objection if payment of the disputed amount is requested. As set forth in paragraph (a) *supra*, the Debtor shall still be required to pay promptly that percentage set forth above of any portion of the fees and expenses requested that are not the subject of a Notice of Objection.

9. The procedures outlined in ¶8(a) above are consistent with the procedures requested by the Debtor pursuant to its February 20, 2001 Interim Fee Motion, and are appropriate given the size and complexity of this reorganization case. While the Debtor did not specify any type of

procedure to resolve disputes, the Committee believes the procedures detailed in ¶8(b) are reasonable and consistent with similar procedures implemented in comparable bankruptcy cases. The procedures suggested in this Supplemental Application will enable all parties to closely monitor costs of administration, maintain a level cash flow, and implement efficient cash management procedures.

10. No trustee or examiner has been appointed to date in these cases. Notice of this Supplemental Application has been given to the United States Trustee, the Debtor, Debtor's primary and local Counsel, and all other parties which the Court directed receive Notice pursuant to its Order of February 15 Prescribing Notice.

11. The Committee submits that the application does not present novel issues of law requiring the citation to any authority and, accordingly, no brief is necessary.

WHEREFORE, the Committee respectfully requests that the Court enter an order (i) approving its selection of Pepper Hamilton LLP, as counsel to the Committee in these proceedings, said appointment to be effective as of February 14, 2001, and (ii) establishing procedures for the payment of interim compensation and reimbursement of expenses of Pepper Hamilton on a monthly basis.

Respectfully submitted

[ORIGINAL MOTION SIGNED AND FILED

2/20/01]

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Dated: February 23, 2001

DI: #161677 v1 (AGR101) WPD) 999922-2006

I certify that on February 26, 2001, I mailed a copy of this document to:

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