

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

Debtor.

Case No. 7-01-10779-SA  
Chapter 7

OCT 18 PM 1:33  
U.S. BANKRUPTCY COURT  
ALBUQUERQUE, NM

**MOTION TO APPROVE SETTLEMENT OF ADVERSARY PROCEEDINGS 02-01090  
AND 02-1194, AND UNASSERTED CLAIM**

Yvette G. Gonzales, the Chapter 7 Trustee (the "Trustee"), by counsel, pursuant to F. R. Bankr. P. 9019, moves the Court for an order approving the settlement of (i) adversary proceeding No. 02-01090, captioned *Yvette J. Gonzales, Trustee v. Nestle USA, Inc.* (the "Preference Adversary Proceeding"), against Nestle USA, Inc. ("Nestle") (ii) adversary proceeding No. 02-1194, captioned *Yvette J. Gonzales, Trustee v. Nestle USA, Inc.* (the "Pre-Paid Adversary Proceeding") against Nestle, and (iii) an unasserted claim against Nestle for a post-petition account receivable (the "Post-Petition A/R Claim"), and in support hereof states:

1. Commencement and Conversion of Case. On February 8, 2001 (the "Petition Date"), Furr's Supermarkets, Inc. (the "Debtor") filed a voluntary petition in this Court under Chapter 11 of the Bankruptcy Code. On December 19, 2001, this Court entered an order converting the chapter 11 case to a case under chapter 7.

2. Appointment of Chapter 7 Trustee. On December 19, 2001, the United States Trustee appointed Yvette Gonzales as the Trustee for the Debtor's bankruptcy estate, in which capacity she continues to serve.

3. Jurisdiction And Venue. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

1902

4. The Preference Adversary Proceeding. In the Preference Adversary Proceeding, the Trustee sought to recover \$121,216.22 from Nestle, plus all other amounts, if any, recoverable pursuant to 11 U.S.C. § 547.

5. The Settlement of the Preference Adversary Proceeding. Nestle has offered to pay the Trustee \$103,033.79 in full satisfaction of any and all claims asserted in the Preference Adversary Proceeding (the "Preference Settlement"). The Preference Settlement is fair and equitable, and is in the best interests of and beneficial to the Debtor's estate and the creditors.

6. The Pre-Paid Adversary Proceeding. In the Pre-Paid Adversary Proceeding, the Trustee sought to recover \$103,915.37 from Nestle, plus all other amounts, if any, recoverable.

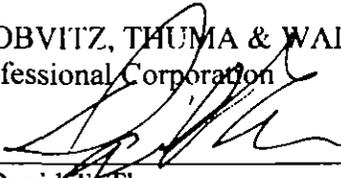
7. The Settlement of the Pre-Paid Adversary Proceeding. Nestle has offered to pay the Trustee \$25,406.46 in full satisfaction of any and all claims asserted in the Pre-Paid Adversary Proceeding (the "Pre-Paid Settlement"). The Pre-Paid Settlement is fair and equitable, and in the best interests of and beneficial to the Debtor's estate and the creditors. The amount of the Pre-Paid Settlement is based primarily on Nestle demonstrating to the Trustee that it paid the estate \$79,240.76 on account of the estate's pre-paid account receivable on or about November 28, 2001.

8. The Settlement of the Post-Petition A/R Claim. Nestle has offered to pay the Trustee \$20,500 in full satisfaction of the Post-Petition A/R Claim (the "Post-Petition A/R Settlement"), which is the amount of the Post-Petition A/R Claim. The Post-Petition A/R Settlement is fair and equitable, and in the best interests of and beneficial to the Debtor's estate and the creditors.

9. The Settlement and Release Agreement. If the proposed settlements are approved, the parties would execute a settlement and release agreement memorializing the terms of their settlement.

WHEREFORE, the Trustee requests that the Court enter an order approving the Preference Settlement, the Pre-Paid Settlement, and the Post-Petition A/R Settlement, approving the execution of a settlement and release agreement memorializing the terms of the settlement, and for all other just and proper relief.

JACOBVITZ, THUMA & WALKER  
a Professional Corporation

By: 

David T. Thuma  
500 Marquette NW, Suite 650  
Albuquerque, NM 87102  
(505) 766-9272  
Attorneys for the Trustee

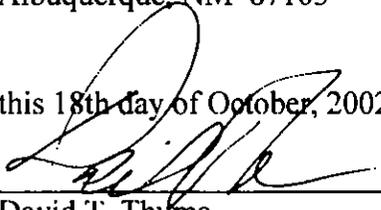
This certifies that a copy of the foregoing Motion was served by mail on:

Ronald E. Andazola  
P.O. Box 608  
Albuquerque, New Mexico 87103

Paul Fish  
P.O. Box 2168  
Albuquerque, NM 87103

Jennie D. Behles  
P.O. Box 849  
Albuquerque, NM 87103

this 18th day of October, 2002.

  
David T. Thuma