

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

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U.S. BANKRUPTCY COURT
ALEQUERQUE, N.M.

In re:

FURR'S SUPERMARKETS, INC.,

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

Debtor.

**MOTION TO APPROVE SETTLEMENT
OF ADVERSARY PROCEEDINGS 02-01097 AND 02-1193**

Yvette G. Gonzales, the Chapter 7 Trustee (the "Trustee"), by counsel, pursuant to Fed. R. Bankr. P. 9019, moves the Court for an order approving the settlement of (i) adversary proceeding No. 02-01097, captioned *Yvette J. Gonzales, Trustee v. Johnson & Johnson* (the "Preference Adversary Proceeding") and (ii) adversary proceeding No. 02-1193, captioned *Yvette J. Gonzales, Trustee v. Johnson & Johnson* (the "Open Account Adversary Proceeding") and in support hereof states:

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

(983)

4. The Preference Adversary Proceeding. In the Preference Adversary Proceeding, the Trustee sought to recover \$101,468.68 from Johnson & Johnson (the “Defendant”) plus all other amounts, if any, recoverable pursuant to 11 U.S.C. § 547.

5. The Settlement of the Preference Adversary Proceeding. Johnson & Johnson Sales and Logistics Company Division of Johnson & Johnson Consumer Companies, Inc. (“JJSLC”) has offered to pay the Trustee \$86,247.80 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 its creditors.

6. The Open Account Adversary Proceeding. In the Open Account Adversary Proceeding, the Trustee sought to recover \$56,636.61 from the Defendant, plus all other amounts, if any, recoverable. The Defendant filed a counterclaim in the Open Account Adversary Proceeding (the “Counterclaim”).

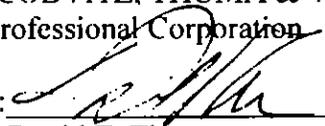
7. The Settlement of the Open Account Adversary Proceeding. JJSLC has offered to pay the Trustee \$46,102.39 in full satisfaction of any and all claims asserted in the Open Account Adversary Proceeding, and the Defendant has agreed to dismiss the Counterclaim with prejudice (the “Open Account Settlement”). The Open Account Settlement is fair and equitable, and in the best interests of and beneficial to the Debtor’s estate and its creditors.

8. 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. A form of settlement and release agreement is attached hereto as Exhibit A.

WHEREFORE, the Trustee requests that the Court enter an order approving the Preference Settlement and the Open Account 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

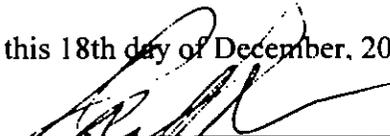
This certifies that a copy of the foregoing Motion was served by mail on:

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 December, 2002.


David T. Thuma

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the "Agreement"), made this __ day of December, 2003 by and among Yvette J. Gonzales (the "Plaintiff"), acting in her capacity as the duly appointed Chapter 7 Trustee of the Furr's Supermarkets, Inc. bankruptcy estate (the "Furr's Estate"), Johnson & Johnson Sales and Logistics Company Division of Johnson & Johnson Consumer Companies, Inc. ("JJS LC") and Johnson & Johnson (the "Defendant"), is intended to extinguish the claims and obligations set forth below.

WHEREAS, on or about May 22, 2002, the Plaintiff filed her Complaint to Avoid Preferential Transfers against the Defendant in the adversary proceeding captioned Yvette J. Gonzales, *Trustee v. Johnson & Johnson* in the United States Bankruptcy Court for the District of New Mexico (the "Bankruptcy Court"), Adv. Pro. No. 02-01097 S (the "Preference Adversary Proceeding");

WHEREAS, on or about September 12, 2002, the Plaintiff filed her First Amended Complaint to Recover Open Account Prepayments and Receivables against the Defendant in the adversary proceeding captioned *Yvette J. Gonzales, Trustee v. Johnson & Johnson* in the Bankruptcy Court, Adv. Pro. No. 02-1193 S (the "Open Account Adversary Proceeding");

WHEREAS, the Defendant asserted a counterclaim in the Open Account Adversary Proceeding (the "Counterclaim");

WHEREAS, the Preference Adversary Proceeding, the Open Account Adversary Proceeding and the Counterclaim are referred to together as the "Lawsuits";

WHEREAS, the Plaintiff, JJS LC and the Defendant desire to settle the Lawsuits and have agreed to execute this Agreement for such purpose and to extinguish the claims and obligations set forth below;

EXHIBIT

A

NOW, THEREFORE, it is agreed among the Plaintiff, JJSLC and the Defendant as follows:

1. The Plaintiff and the Defendant stipulate to the dismissal of the Lawsuits with prejudice.

2. JJSLC will pay the Plaintiff \$86,247.80 in settlement of the Preference Adversary Proceeding (the "Preference Settlement") and \$46,102.39 in settlement of the Open Account Adversary Proceeding (the "Open Account Settlement"), the sufficiency of which amounts the Plaintiff hereby acknowledges.

3. Upon entry of an order by the Bankruptcy Court finally approving this Agreement, JJSLC shall deliver a sum of money equal to the sum of the Preference Settlement and the Open Account Settlement, in the form of one check, to Jacobvitz, Thuma & Walker, P.C., Att'n: David T. Thuma, Esq., 500 Marquette Avenue, N.W., #650, Albuquerque, New Mexico 87102, made payable to the Plaintiff.

4. The Plaintiff, JJSLC and the Defendant shall each bear their respective costs and attorneys' fees incurred in the Lawsuits and in connection with settlement of the Lawsuits.

5. The Plaintiff, on her behalf and on behalf of the other Released Furr's Entities (as defined below), hereby voluntarily and knowingly releases and forever discharges (a) JJSLC, the Defendant and all of such entities' respective agents, officers, directors, employees, attorneys, successors and assigns (together, the "Released J&J Entities") from any and all claims, demands, actions, obligations, liabilities, causes of action, suits, counterclaims, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, costs, expenses

and attorneys' fees whatsoever, whether known or unknown, suspected or unsuspected, choate or inchoate, which the Plaintiff or the Furr's Estate ever had, now has or hereafter can, shall or may have, including, but not limited to, those made or raised in the Lawsuits, and (b) all affiliates of the Defendant from the claims made or raised in the Lawsuits; provided, however, that this Agreement does not waive or release any obligations arising under this Agreement.

6. The Released J&J Entities voluntarily and knowingly release and forever discharge the Plaintiff, the Furr's Estate, and all of the Plaintiff's and the Furr's Estate's agents, officers, directors, employees, attorneys, successors and assigns (together, the "Released Furr's Entities"), from any and all claims, demands, actions, obligations, liabilities, causes of action, suits, counterclaims, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, costs, expenses and attorneys' fees whatsoever, whether known or unknown, suspected or unsuspected, choate or inchoate which the Defendant ever had, now has or hereafter can, shall or may have, including, but not limited to, those raised in the Counterclaim or assertable or allowable under 11 U.S.C. §503(b); provided, however, that this Agreement does not waive or release any obligations arising under this Agreement, or prevent JJSLC from filing a proof of claim asserting a pre-petition unsecured claim for the Preference Settlement amount.

7. The Plaintiff, JJSLC and the Defendant each acknowledge having had full opportunity to consult with counsel of their choice before executing this Agreement.

8. The Plaintiff, JJSLC and the Defendant warrant and represent to the other that no promise, inducement, or agreement not expressed herein has been offered, made, or relied on, and that this Agreement contains the entire agreement between the parties.

9. This Agreement is entered into under the laws of the State of New Mexico. Any dispute concerning this Agreement shall be brought before the Bankruptcy Court. If an action is filed to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable costs and attorney fees.

10. The Plaintiff, JJSLC and the Defendant understand and agree this settlement is the compromise of doubtful and disputed claims, and the agreements and payments set forth herein are not to be construed as admissions of liability by any party, which liability is expressly denied.

11. This Agreement shall become effective only when signed by, or on behalf of, the Plaintiff, JJSLC and the Defendant, and upon entry of an order by the Bankruptcy Court approving this Agreement. However, if the Court does not approve this Agreement by January 15, 2003, it shall become null and void, with the exception of this paragraph.

12. This Agreement constitutes the entire understanding between the Plaintiff, JJSLC and the Defendant and may not be changed, modified or altered, nor any of its provisions waived, except by an agreement in writing signed on behalf of the Plaintiff, JJSLC and the Defendant.

13. This Agreement may be executed in counterparts, and a facsimile signature

shall be acceptable as an original for all purposes.

IN WITNESS WHEREOF, the Plaintiff, JSLC and the Defendant have executed this Agreement as of the date first written above.

The Plaintiff

PATTERSON, BELKNAP, WEBB & TYLER LLP
Attorneys for Johnson & Johnson and Johnson &
Johnson Sales and Logistics Company Division of
Johnson & Johnson Consumer Companies, Inc.

Yvette J. Gonzales,
in her capacity as
the Chapter 7 Trustee of the Furr's
Supermarkets, Inc. bankruptcy estate

By: _____
David W. Dykhouse, a Member of the Firm