

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

Debtor.

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

03 MAR 19 PM 2:50  
U.S. BANKRUPTCY COURT  
ALBUQUERQUE, NM

**MOTION TO APPROVE SETTLEMENT OF ADVERSARY PROCEEDING 03-1038**

Yvette G. Gonzales, the Chapter 7 Trustee (the "Trustee"), by counsel, pursuant to F. R. Bankr. P. 9019, moves the Court to approve the settlement of adversary proceeding No. 03-1038, captioned *Yvette J. Gonzales, Trustee v. Pepperidge Farms* (the "Preference Action"), against the named defendant ("Preference Defendant"), 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. On that date the Trustee was appointed as the trustee for the Debtor's bankruptcy estate, in which capacity she continues to serve.

2. 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.

3. The Preference Action. In the Preference Action, the Trustee sought to recover \$23,648.76 from the Preference Defendant, plus all other amounts, if any, recoverable under 11 U.S.C § 547.

4. The Settlement of the Preference Action. Preference Defendant has offered to pay the Trustee \$17,500 in full satisfaction of any and all claims asserted in the Adversary Action (the "Preference Settlement"). In consideration of the Preference Settlement, upon the entry of a final non-appealable order granting this Motion and approving the Preference Settlement, the

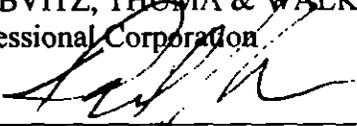
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Preference Action will be dismissed with prejudice and the Trustee will release any and all estate claims against Preference Defendant under 11 U.S.C. §547. The parties shall execute a settlement and release agreement in the form attached hereto as Exhibit A. The Preference Defendant may file a proof of claim for the amount paid in settlement, as an unsecured, nonpriority, prepetition claim.

5. The Preference Settlement is fair and equitable, and is in the best interests of and beneficial to the Debtor's estate and the creditors.

WHEREFORE, the Trustee requests that the Court enter an order approving the Preference 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

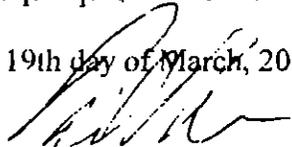
This certifies that a copy of the  
foregoing Motion was served by mail on:

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

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

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

this 19th day of March, 2003.

  
\_\_\_\_\_  
David T. Thuma

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the "Agreement"), made this \_\_ day of March, 2003 by and between 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"), on the one hand, and Pepperidge Farm, Inc. (the "Defendant"), on the other, is intended to extinguish the claims and obligations set forth below.

### **BACKGROUND**

WHEREAS on or about January 29, 2003, the Plaintiff filed her Complaint to Avoid Preferential Transfers against the Defendant in the case captioned *Yvette J. Gonzales, Trustee v. Pepperidge Farms*, in the United States Bankruptcy Court for the District of New Mexico, Adv. Pro. No. 03-1038 S (the "Avoidance Action");

WHEREAS, the Defendant did not file an Answer to the Avoidance Action and denies that the transfers were preferences;

WHEREAS the Plaintiff and the Defendant desire to settle the Avoidance Action and have agreed to execute this Agreement for such purpose and to extinguish the claims and obligations set forth below;

WHEREAS, neither this Agreement nor any of the terms of the Agreement will constitute evidence or an admission with respect to any issue of law or fact.

NOW THEREFORE, with the foregoing Background deemed incorporated herein by reference and made part hereof, and in consideration of the mutual promises, covenants, and agreements hereinafter set forth, the parties hereto, intending to be legally bound hereby, agree as follows:

**EXHIBIT**

A

## AGREEMENT

1. The Plaintiff will dismiss the Avoidance Action with prejudice.
2. The Defendant will pay the Plaintiff \$17,500, the receipt and sufficiency of which the Plaintiff hereby acknowledges.
3. The Plaintiff and the Defendant shall each bear their respective costs and attorneys' fees incurred in the Avoidance Action, and in connection with settlement of the Avoidance Action.
4. The Plaintiff, on her behalf and on behalf of the Furr's Estate, hereby voluntarily and knowingly releases and forever discharges the Defendant and its parents, subsidiaries, affiliates, divisions, agents, officers, directors, employees, attorneys, successors, and assigns from any and all claims, lawsuits, causes of action, obligations, losses, demands, actions, rights, costs, expenses, and attorney fees (collectively, the "Claims"), arising from or related to the Avoidance Action
5. The Defendant, on its behalf and on behalf of its parents, affiliates, subsidiaries, and divisions, voluntarily and knowingly releases and forever discharges the Plaintiff, the Furr's Estate, and all of the Plaintiff's and/or the Furr's Estate's agents, officers, directors, employees, attorneys, successors, and assigns, from any and all Claims arising from or related to the Avoidance Action; provided, however, the Defendant may file a proof of claim in the Furr's bankruptcy case for the amount paid in settlement, as an unsecured, nonpriority, pre-petition claim.
6. The Plaintiff and the Defendant each acknowledge having had full opportunity to consult with counsel of their choice before executing this Agreement.

7. The Plaintiff 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.

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

9. The parties 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.

10. This Agreement shall constitute the entire settlement agreement between the parties and all prior statements, representations, and warranties heretofore made between the parties are merged into this Agreement. This Agreement may be modified only by a writing that is dated and duly signed by both parties. No waivers of any provisions of this Agreement shall be effective unless in writing and signed and dated by the parties hereto.

11. This Agreement shall inure to the benefit of and bind the parties hereto, and their respective successors and assigns.

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

The Plaintiff

The Defendant

Pepperidge Farm, Inc.

By: \_\_\_\_\_

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