

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 7-01-10779-SA

Chapter 7

Debtor.

MOTION TO APPROVE SETTLEMENT OF ADVERSARY PROCEEDING 02-1188 S

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 adversary proceeding No. 02-1188 S, captioned *Yvette J. Gonzales, Trustee v. H. J. Heinz Company* (the "Adversary Proceeding"), 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.

4. The Adversary Proceeding. In the Adversary Proceeding, the Trustee sought to recover \$79,814.34 from H. J. Heinz Company (the "Defendant") for alleged excess post-petition prepayments to Defendant and on account for funds allegedly owed post-petition but not paid by Defendant. Subsequent informal discovery, investigation and settlement discussions resulted in the settlement described herein.

5. The Settlement of the Adversary Proceeding. Defendant and the Trustee have agreed, subject to Court approval, that Defendant will pay the Trustee \$77,888.34 (the "Settlement Amount") within fifteen (15) days of entry of an order approving the settlement in full satisfaction of all claims asserted in the Adversary Proceeding. Following receipt of the Settlement Amount, the adversary proceeding will be dismissed with prejudice. The proposed settlement is fair and equitable, and 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 settlement and for all other just and proper relief.

JACOBVITZ, THUMA & WALKER
a Professional Corporation

By: s/ filed electronically
Thomas D. Walker
500 Marquette NW, Suite 650
Albuquerque, NM 87102
(505) 766-9272
(505) 766-9287 (fax)
Attorneys for the Trustee

This certifies that a copy of the
foregoing Motion was served on June 18, 2003
by postage prepaid United States mail to:

Anthony L. DiTommaso, Esq.
H.J. Heinz Company
600 Grant Street
7th Floor USX Tower
Pittsburgh, PA 15219-2857

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

s/ filed electronically
Thomas D. Walker