

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

FILED  
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U.S. BANKRUPTCY COURT  
ALBUQUERQUE, NM

In re:

FURR'S SUPERMARKETS, INC.,

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

Debtor.

**MOTION TO APPROVE SETTLEMENT OF ADVERSARY PROCEEDING 03-1172**

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. 03-1172, captioned **Yvette J. Gonzales, Trustee v. Socorro Electric Co-op** (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 the 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., sections 157 and 1334. This matter is a core proceeding under 28 U.S.C. section 156(b)(2). Venue is proper pursuant to 28 U.S.C. section 1408 and 1409.

3. **The Preference Action.** In the Preference Action, the Trustee sought to recover \$32,407.22 from the Preference Defendant, plus all other amounts, if any, recoverable under 11 U.S.C. section 547.

4. **The Settlement of the Preference Action.** Preference Defendant has offered

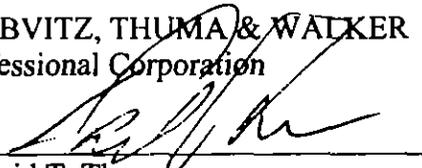
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to pay the Trustee \$5,000 in full satisfaction of any and all claims known, unknown, asserted or unasserted or which could have been asserted including those asserted in the Adversary Action (the "Preference Settlement"). In consideration of the Preference Settlement, upon the entry of a final non-appealable order granting this Motion and approving the Preference Settlement, the 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. section 547. The parties shall execute a settlement and release agreement in the form attached hereto as **Exhibit A**.

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. Of the original amount claimed, \$9,960.86 was for a check that was dishonored. In addition, Socorro provided new values in the approximate amount of \$16,000.

WHEREFORE, the Trustee requests that the Court enter an order approving the Preference Settlement and confirm and approve **Exhibit A** and for all other just and proper relief.

JACOBVITZ, THUMA & WALKER  
a Professional Corporation

By: 

David T. Thuma  
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(505) 766-9272

Attorneys for the Trustee

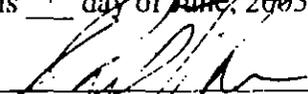
This certified that a copy of the foregoing Motion was served by mail on:

Ronald E. Andazola  
P.O. Box 608  
Albuquerque NM 87103

Paul Fish  
P.O. Box 2168  
Albuquerque NM 87103

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

this 1 day of ~~June~~ <sup>July</sup> 2003

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

## SETTLEMENT AND RELEASE OF ALL CLAIMS AGREEMENT

This Settlement and Release Agreement (the "Agreement"), made this \_\_\_\_ day of \_\_\_\_, 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 Socorro Electric Co-op (the "Defendant"), on the other, is intended to extinguish the claims and obligations set forth below.

WHEREAS on or about February 7, 2003, the Plaintiff filed her Complaint to Avoid Preferential Transfers against the Defendant in the case captioned **Yvette J. Gonzales, Trustee v. Socorro Electric Co-op** in the United States Bankruptcy Court for the District of New Mexico, Adv. Pro. No. 03-1172 M (the "Avoidance Action");

WHEREAS the Plaintiff and the Defendant desire to settle the Avoidance Action and any other claim or claims which could be asserted by the parties against each other and they have agreed to execute this Agreement for such purpose and to extinguish any claims and obligations set forth below;

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

1. The Plaintiff will dismiss the Avoidance Action with prejudice.
2. The Defendant will pay the Plaintiff \$5,000, the receipt and sufficiency of which the Plaintiff hereby acknowledges.
3. The Plaintiff and the Defendant shall each bear their respective costs

**EXHIBIT A**

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 divisions, agents, officers, directors, employees, attorneys, successors, and assigns from any and all claims, known or unknown, asserted or unasserted or which could be asserted, including demands, actions, costs, expenses and attorney fees that were made or raised in the Avoidance Action or which could have been made or raised in any other cause of action.

5. The Defendant, on its behalf and on behalf of its 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 known or unknown, asserted or unasserted or which could be asserted, including demands, actions, costs, expenses, and attorney fees assertable or allowable under 11 U.S.C., section 503(b) or any other statute for any claim which could have been made or asserted by Defendant against Plaintiff or Furr's Estates agents, officers, employees, attorneys, successors and assigns.

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

**EXHIBIT A**

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. This settlement and release is intended to forever put to rest and discharge all claims of any nature including the present avoidance action which the parties have asserted or have the right to assert known or unknown from the beginning of time to the date shown hereon and on the date the Court confirms this Settlement and Release agreement. This release is contractual and is not a mere recital.

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

The Plaintiff

The Defendant

Socorro Electric Co-op

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

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