

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 PARTIAL SETTLEMENT OF ADVERSARY PROCEEDING 02-01091 S**

Yvette G. Gonzales, the Chapter 7 Trustee (the "Trustee"), by counsel, pursuant to F. R. Bankr. P. 9019, moves the Court to approve a partial settlement of adversary proceeding No. 02-01091 S, captioned *Yvette J. Gonzales, Trustee v. Nabisco Division of Kraft Foods, Inc.* (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 approximately \$238,000 from the Preference Defendant, plus all other amounts, if any, recoverable under 11 U.S.C § 547.

4. Partial Settlement of the Preference Action. Preference Defendant has offered to pay the Trustee \$116,475.59 in satisfaction of certain claims asserted in the Adversary Action (the "Partial Settlement"), provided, however, that the Partial Settlement does not settle a

final issue between the parties, i.e., whether it is proper to deduct certain credit memos issued by the Preference Defendant (with a combined value of approximately \$90,180) from the amount of new value the Preference Defendant claims it delivered to the Debtor (the “Credit Memo Issue”). The Credit Memo Issue will be submitted to the Court on briefs, and upon resolution of the Credit Memo Issue the adversary proceeding will be concluded. In consideration of the Partial Settlement, upon the entry of (i) a final non-appealable order granting this Motion and approving the Partial Settlement, the Trustee will release any and all estate claims against Preference Defendant under 11 U.S.C. §547, except for the claim related to the Credit Memo Issue, and (ii) a final non-appealable order ruling on the Credit Memo Issue, the Preference Action will be dismissed with prejudice.

5. The Partial 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 Partial Settlement and for all other just and proper relief.

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

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this 15th day of August, 2003.

filed electronically  
David T. Thuma