

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 No. 03-1018

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. 03-1018, captioned *Yvette J. Gonzales, Trustee v. Statewide Products Company, 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 \$32,906.77 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 will pay the Trustee \$27,970.75, payable in 11 monthly installments of \$2,000 per month, with the first payment due October 1, 2003, and a "balloon" payment of \$5,970.75 due October 1, 2004 (the "Preference Settlement"). A payment shall be in default if not paid by the 10th of the month when due. If the

Preference Defendant defaults in any of its payments to the Trustee and fails to cure the default within 10 days after written notice of the default is given to the Preference Defendant's counsel of record in the Preference Action, then the Trustee may submit an affidavit of default with the Court and the Court shall enter a judgment against the Preference Defendant in the amount of \$32,906.77, plus interest at the rate of 8.75% per annum from October 1, 2003, less any payments made by the Preference Defendant to the Trustee. In consideration of the Preference Settlement, following payment in full of the Preference Settlement with no uncured default, the Preference Action will be dismissed with prejudice.

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 grant this Motion, approve the Preference Settlement, and grant the Trustee all other just and proper relief.

JACOBVITZ, THUMA & WALKER
a Professional Corporation

By: s/ filed electronically
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 26th day of September, 2003.

s/ filed electronically
David T. Thuma