

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

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

Debtor.

**ORDER APPROVING SETTLEMENT OF ADV. PROCEEDING No. 02-1196 S
(*Gonzales v. Mars, Inc., d/b/a Kal-Kan Foods, Inc. and/or Uncle
Ben's, Inc.*)**

THIS MATTER came before the Court on the Chapter 7 Trustee's ("Trustee") Motion to Approve Settlement of Adversary Proceeding No. 03-1196 S (the "Motion") (docket #2235). The Adversary Proceeding is captioned *Yvette J. Gonzales, Trustee v. Gonzales v. Mars, Inc., d/b/a Kal-Kan Foods, Inc. and/or Uncle Ben's, Inc. (the "Adversary Proceeding")*.

Having reviewed the Motion, and being otherwise advised in the matter, the Court FINDS:

A. On February 8, 2001, Furr's Supermarkets, Inc. (the "Debtor") filed a voluntary petition in this Court under Chapter 11 of the Bankruptcy Code. On December 19, 2001, the Chapter 11 case was converted to a case under Chapter 7. On the same day Yvette Gonzales was appointed the Chapter 7 Trustee for the Debtor's bankruptcy estate, in which capacity she continues to serve.

B. The Court has jurisdiction over the 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.

C. In the Adversary Proceeding, the Trustee sought to collect \$33,764.61 in alleged post-petition excess prepayments made to Defendant (the "Prepaid Account Balance") and \$8,885.45 in Incentive Money, as that term is defined in the First Amended Complaint, alleged to be owed by Defendant to the Furr's Estate.

D. Defendant and Trustee have agreed, without admission or acknowledgment of liability by either side, and subject to Court approval after notice and opportunity to object, to settle the Adversary Proceeding pursuant to the Settlement Agreement attached hereto as Exhibit "A" (the "Settlement Agreement"). Pursuant to the Settlement Agreement, the Defendant shall pay to the Trustee \$30,000.00 (the "Settlement Amount") within (15) days of entry of this Order. Following the entry of this Order and receipt of the Settlement Amount, the Trustee will dismiss the Adversary Proceeding with prejudice and will release all claims the Debtor's estate may have against the Defendant to collect the Prepaid Account Balance and the Incentive Money, as those terms are defined in the First Amended Complaint. On October 21, 2003, notice of the Motion (the "Notice") (docket #2236) was mailed by first class United States mail, postage prepaid, to all persons on the limited mailing matrix maintained in the above captioned bankruptcy case, as shown by the certificate of service on the

Notice filed with the Court.

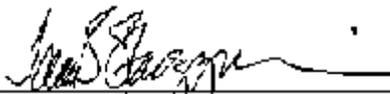
F. The Notice provided for a deadline to object to the Motion of November 13, 2003, which was 23 days after the date of mailing of the Notice. The Notice was sufficient and appropriate in the particular circumstances.

G. The deadline to object to the Motion has expired, and no objections to the Motion were filed.

H. The requirements of the Bankruptcy Code and Rules, including Rule 9019, have been satisfied with respect to the relief granted by this Order. The Settlement Agreement is fair and equitable, and is in the best interests of and beneficial to the Debtor's estate and the creditors.

I. Entry of this Order, without further notice or hearing, is appropriate.

THE COURT THEREFORE ORDERS that the Motion and the Settlement Agreement are approved. Defendant shall pay the Trustee the Settlement Amount within fifteen (15) days following entry of this Order if no appeal is timely taken. Thereafter, Trustee will dismiss the Adversary Proceeding with prejudice.



JAMES S. STARZYNSKI
United States Bankruptcy Judge

APPROVED:

JACOBVITZ, THUMA & WALKER, P.C.

By: s/ submitted by e-mail

Thomas D. Walker

500 Marquette N.W., Suite 650

Albuquerque, NM 87102

(505) 766-9272

(505) 766-9287 (fax)

Attorneys for the Trustee

Approved:

GRANT & MORASSE, PC

By: Approved by e-mail 10/9/03

Steven R. Morasse

4921 Birch Street, Suite 120

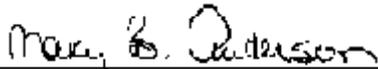
Newport Beach, California 92660-2144

(949) 622-0600

(949) 622-0601 (fax)

Attorney for Defendant

I hereby certify that on November 21, 2003, a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered, or mailed to the listed counsel and parties.


Mary B. Anderson
Mary B. Anderson

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the "Agreement"), is made this 28 day of October 2003 by and between Yvette J. Gonzales (the "Trustee"), acting in her capacity as the duly appointed Chapter 7 Trustee of the bankruptcy estate of Furr's Supermarkets, Inc. (the "Furr's Estate") and Mars, Inc., a Delaware corporation, and its wholly owned subsidiaries Kal-Kan Foods, Inc. and Uncle Ben's, Inc., (the "Defendant"). The term "Defendant" is defined to include Mars, Inc., Kal-Kan Foods, Inc. and Uncle Ben's, Inc.

WHEREAS, on February 8, 2001 (the "Petition Date"), Furr's Supermarkets, Inc. (the "Debtor") filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Mexico (the "Court"); on December 19, 2001, the Court entered an order converting the Chapter 11 case to a case under Chapter 7; and on December 19, 2001, the United States Trustee appointed Trustee as the Chapter 7 Trustee for the Furr's Estate, in which capacity she continues to serve;

WHEREAS on or about 8/13/02 February 6, 2003 Trustee filed a Complaint initiating Adversary Proceeding 02-1196 S (the "Adversary Proceeding") against Defendant to recover post-petition payments by Debtor alleged to be in excess the amounts due (referred to in the Complaint the "Prepaid Account Balance;")

WHEREAS on or about September 6, 2002 Trustee filed a First Amended Complaint in the Adversary Proceeding adding a claim to recover pursuant to state law and/or 11 U.S.C. §542 certain amounts defined in the First Amended Complaint as "Incentive Money" that Trustee alleged was owed to Debtor for post-petition obligations not paid by Defendant;

WHEREAS the Defendant denies that it owes to Trustee any of the amounts alleged to be owed in this Adversary Proceeding;

EXHIBIT A

WHEREAS the Trustee and the Defendant desire to settle the Adversary Proceeding and have agreed to execute this Agreement for such purpose;

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

1. Trustee will file a motion seeking approval of this settlement and will give notice of the motion with an opportunity to object as required by the Court.

2. No later than fifteen (15) days following entry of an order by the Court approving the Agreement, from which no timely appeal shall have been taken, the Defendant will pay the Trustee \$30,000.000 (the "Settlement Amount").

3. Following entry of an order approving this settlement and upon receipt of the Settlement Amount, Trustee will file a notice of dismissal of the Adversary Proceeding with prejudice.

4. The Trustee and Defendant hereby expressly agree and understand that nothing in this Agreement shall constitute any admission or acknowledgment of liability by either the Trustee or Defendant.

5. The Trustee and the Defendant shall each bear their respective costs and attorneys' fees incurred in the Adversary Proceeding, and in connection with settlement of the Adversary Proceeding.

6. The Trustee, on her behalf and on behalf of the Furr's Estate, for good and adequate consideration, hereby voluntarily and knowingly releases and forever discharges the Defendant, and all of the Defendant's agents, officers, directors, employees, attorneys, successors and assigns, from any and all claims, demands, actions, costs, expenses, and attorney fees that were made or raised or could have been raised to collect any amounts constituting a Prepaid Account Balance and/or Incentive Money, as those terms are defined in the First

Amended Complaint; provided, however, that this Agreement does not waive or release any claims arising in connection with this Agreement.

7. The Defendant, on its behalf and on behalf of its affiliates, subsidiaries, and divisions, voluntarily and knowingly releases and forever discharges the Trustee, the Furr's Estate, and all of the Trustee's and/or the Furr's Estate's agents, officers, directors, employees, attorneys, successors and assigns, from any and all claims, demands, actions, costs, expenses, and attorney fees assertable in connection with the Prepaid Account Balance and/or Incentive Money, as those terms are defined in the First Amended Complaint; provided, however, that this Agreement does not waive or release any claims arising in connection with this Agreement, nor does the Defendant release any pre-petition claim asserted in any proof of claim filed in the Debtor's bankruptcy case (the "Preserved Claim").

9. Defendant shall be allowed to amend the Preserved Claim to increase the general unsecured claim asserted therein by the Settlement Amount. The Trustee agrees that she shall not object to such amendment to the Preserved Claim on any basis, including lateness, and that the Settlement Amount shall be deemed an allowed general unsecured claim.

10. The Trustee and the Defendant each acknowledge having had full opportunity to consult with counsel of their choice before executing this Agreement.

11. The Trustee 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.

12. This Agreement is entered into under the laws of the State of New Mexico and is subject to approval of the Court, after appropriate notice and an opportunity to object. The Court shall have exclusive jurisdiction to hear and determine any matter arising from this Agreement.

If an action is filed to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable costs and attorney fees.

13. If any part of this Agreement is held invalid, void or voidable against public policy or otherwise, the invalidity thereof shall not affect any other provisions, or parts hereof, which shall be given effect without the invalid provision or part.

14. No provision of this Agreement may be changed except by a written instrument executed by the Trustee and Defendant.

15. All of the terms and provisions of this Agreement shall be binding in all respects upon and inure to the benefit of the parties to the Agreement and their respective successors and assigns.

16. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which when taken together shall constitute one and the same agreement. Signatures may be exchanged by telecopy. Each party agrees that it will be bound by its telecopied signature and that it accepts the telecopied signature of the other party.

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

PLAINTIFF


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

DEFENDANT

Mars, Inc.

By: _____
Its: _____

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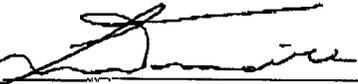
Yvette J. Gonzales, in her capacity as
the Chapter 7 Trustee of the Furr's
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DEFENDANT

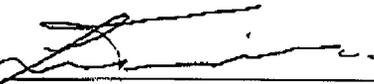
Mars, Inc.

By: 
Its: NATIONAL FINANCE MANAGER

Kal-Kan Foods, Inc.

By: 
Its: NATIONAL FINANCE MANAGER

Uncle Ben's, Inc.

By: 
Its: NATIONAL FINANCE MANAGER