

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,
Debtor.

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

**MOTION TO APPROVE SETTLEMENT OF ADVERSARY PROCEEDING No. 03-1066 S
(GONZALES V. APPLIED DECISIONS USA, INC.)**

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. 03-1066 S, captioned *Yvette J. Gonzales, Trustee v. Applied Decisions USA, Inc.* (the "Adversary Proceeding"), against the named defendant ("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 Chapter 7 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 Adversary Proceeding. In the Adversary Proceeding, the Trustee sought to avoid \$160,698.67 from the Defendant, plus all other amounts, if any, avoidable under 11 U.S.C § 547. The Defendant filed a counterclaim against the Estate, which the Trustee answered timely.

4. Settlement of the Adversary Proceeding. Defendant and Trustee desire to avoid the time and cost of further litigation and have determined to resolve their differences in an amicable fashion. Accordingly, the parties, subject to Court approval after notice and opportunity to object, agreed to settle the Adversary Proceeding pursuant to the terms set forth in the separate Settlement

and Release Agreement a copy of which is attached to this Motion (“Settlement Agreement”). In part, the Settlement Agreement provides that Defendant will pay \$80,349.34 to the Trustee, in twelve monthly installments with interest in full satisfaction of the amounts claimed by Trustee; the parties stipulated to a judgment in favor of Trustee and against Defendant in the full amount demanded, less principal payments made, which will not be submitted for entry unless Defendant Defaults (as defined in the Settlement Agreement) on the Settlement Agreement and, if necessary, the Adversary Proceeding will be reopened so that the affidavit may be filed and the stipulated judgment may be entered; the Court shall retain jurisdiction to enforce the Settlement Agreement and enter the stipulated judgment; following (i) entry of a final non-appealable order granting this Motion and approving the Settlement Agreement and (ii) following receipt by the Trustee of the total of the Settlement Amount without Default (as such terms are defined in the Settlement Agreement), Trustee will file a stipulation of dismissal of the Adversary Proceeding with prejudice; and Defendant’s counterclaim will be dismissed with prejudice. The Settlement Agreement includes provisions not described in this Motion.

5. The Settlement Agreement 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 this Motion and the Settlement Agreement, dismissing with prejudice the Defendant’s counterclaim, retaining jurisdiction to address the continuing issues that may arise under the Settlement Agreement, and for all other just and proper relief.

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This certifies that a copy of the foregoing
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