

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re:  
FURR'S SUPERMARKETS, INC.,  
Debtor.

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

FILED  
OFFICE OF THE CLERK  
04 MAR -1 PM 4:10  
U.S. BANKRUPTCY COURT  
ALBUQUERQUE, N.M.

**MOTION TO APPROVE SETTLEMENT OF  
ADVERSARY PROCEEDING 03-1093-S  
(Jimmy Dean Foods)**

Yvette Gonzales, the Chapter 7 Trustee (the "Trustee"), by counsel, moves the Court for an order approving the settlement of all claims the estate has against Jimmy Dean Foods ("Jimmy Dean"), as set forth in the adversary proceeding No. 03-1093-S, captioned *Yvette J. Gonzales, Trustee v. Jimmy Dean Foods, an Operating Division of Sara Lee Corporation* (the "Adversary Proceeding"), pursuant to F.R.Bankr.P.9019, and in support hereof states:

1. **Commencement and Conversion of Case.** On February 8, 2001, (the "Petition Date"), 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.

2. **Appointment of Chapter 7 Trustee.** On December 19, 2001, the United States Trustee appointed Yvette Gonzales as the Trustee for the Debtor's bankruptcy estate, in which capacity she continues to serve.

3. **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.

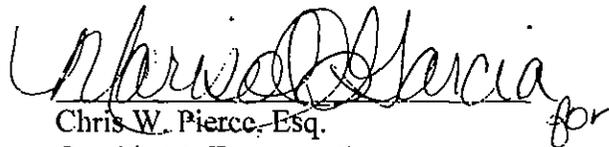
4. **The Adversary Proceeding.** In the Adversary Proceeding, the Trustee sought to recover Twenty Four Thousand One Hundred Three Dollars and 58/100 (\$24,103.58) from Jimmy Dean, plus all other amounts, if any, recoverable pursuant to 11 U.S.C. §547.

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5. **The Settlement.** Jimmy Dean has offered to pay the Trustee Twenty Thousand Four Hundred Eighty Eight Dollars and 04/100 (\$20,488.04) in full satisfaction of any and all pre-petition claims, including without limitation claims asserted in the Adversary Proceeding (the "Settlement"). The full terms of the Settlement are set forth in the attached Settlement Agreement. The Settlement is fair and equitable, and 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 Settlement and for such other relief as may be just.

**DAVIS & PIERCE, P.C.**

A handwritten signature in black ink, appearing to read "Chris W. Pierce", with a small "for" written at the end of the signature.

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I hereby certify that a true and correct copy of the foregoing was mailed on March 1<sup>st</sup>, 2004, to:

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Chris W. Pierce, Esq.

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the "Agreement"), made this \_\_\_\_ day of January, 2004 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 Jimmy Dean (the "Defendant"), on the other, is intended to extinguish the claims and obligations set forth below.

WHEREAS on or about March 18, 2003, the Plaintiff filed her Amended Complaint to Avoid Preferential Transfers against the Defendant in the case captioned *Yvette J. Gonzales, Trustee v. Jimmy Dean Foods, an Operating Division of Sara Lee Corporation.*, in the United States Bankruptcy Court for the District of New Mexico, Adv. Pro. No. 03-1093 S (the "Avoidance Action");

WHEREAS the Plaintiff and the Defendant desire to settle the Avoidance Action and have agreed to execute this Agreement for such purpose and to extinguish the claims and obligations set forth below;

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

1. Upon Court approval of this Agreement, the Plaintiff will dismiss the Avoidance Action with prejudice.
2. Upon court approval of this Agreement, the Defendant will pay the Plaintiff \$20,488.04 in settlement of the Avoidance Action, the receipt and sufficiency of which the Plaintiff hereby acknowledges. Defendant agrees to provide Plaintiff a check for the above

amount, made out to Yvette J. Gonzales, Trustee; or wire transfer the funds to the Trustee upon receiving wire transfer instructions from the Trustee.

3. The Plaintiff and the Defendant shall each bear their respective costs and attorneys' fees incurred in connection with 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 all of the Defendants, and Defendant's Affiliates, divisions, and subsidiaries' officers, directors, employees, and attorneys from (i) any and all **pre-petition** claims, demands, actions, costs, expenses, and attorney fees that were made or raised or could have been raised in the Avoidance Action, (ii) any and all claims owned by the Furr's estate related to Furr's purchase of goods from Defendant pre-petition, and/or the payment for such goods; and (iii) any and all claims under 11 U.S.C. § 544-550; provided, however, that this Agreement does not waive or release any claims arising in connection with this Agreement, and provided further that this Agreement does not waive or release the Plaintiff's **post-petition** claims against the Defendant, including without limitation claims for **post-petition** pre-payments or overpayments, or for **post-petition** incentives such as, without limitation, volume discounts, "bill backs," advertising money, special promotion discounts, cash discounts, and rebates. The Plaintiff expressly reserves all such post-petition claims, and the Defendant expressly reserves all of its defenses to such claims.

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, demands, actions, costs, expenses, and attorney fees assertable or allowable under 11 U.S.C. § 503(b); provided, however, that this

Agreement does not (i) waive or release any future claims or any claims arising in connection with this Agreement, or (ii) prevent Defendant from filing a proof of claim asserting a pre-petition unsecured claim for amounts paid in settlement of the Avoidance Action.

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 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 agreement and payments set forth herein are not to be construed as admission of liability by any party, which liability is expressly denied.

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

The Plaintiff

The Defendant

JIMMY DEAN FOODS

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

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

Title: \_\_\_\_\_