

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

FILED
2011 MAR 19 PM 4:05
CLERK OF 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 03-1083-S
(Brink's, Incorporated)**

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 Brink's, Incorporated ("Brink's."), as set forth in the adversary proceeding No. 03-1083-S, captioned *Yvette J. Gonzales, Trustee v. Brink's, Incorporated*. (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 Forty-Two Thousand Five Hundred Fifty Four Dollars and 31/100 (\$42,554.31) from Brink's, plus all other amounts, if any, recoverable pursuant to 11 U.S.C. §547. After

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investigation and analysis of Brink's new value defense, which includes analysis of goods and/or services delivered to the Debtor within the preference period, the Trustee now believes that the total claim against Brink's is \$7,983.71.

5. **The Settlement.** Brink's has offered to pay the Trustee Six Thousand Three Hundred Eighty-Six Dollars and 97/100 (\$6,386.97) in full satisfaction of any and all claims the Trustee has or may have against Brink's., both pre-petition and post-petition, including without limitation claims asserted in the Adversary Proceeding. The parties will also execute a Mutual Release of Claims as a part of the settlement (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.



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Cynthia M. Tessman, Esq.

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I hereby certify that on March 19th, 2004, a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered or mailed to:

Mac McMahan, Esq.

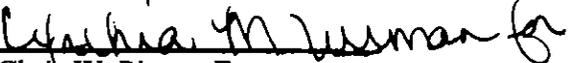
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Chris W. Pierce, Esq.

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the "Agreement"), made this ___ day of March, 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 Brink's, Incorporated (the "Defendant"), on the other, is intended to extinguish the claims and obligations set forth below.

WHEREAS on or about February 4, 2003, the Plaintiff filed her Complaint to Avoid Preferential Transfers against the Defendant in the case captioned *Yvette J. Gonzales, Trustee v. Brink's, Incorporated*, in the United States Bankruptcy Court for the District of New Mexico, Adv. Pro. No. 03-1083 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. Plaintiff shall, as soon as practicable, file a motion with the Bankruptcy Court for the District of New Mexico seeking an order approving this Agreement.
2. Within 15 days of the entry of an order approving this agreement, the Defendant shall pay the Plaintiff \$6,386.97 (the "Settlement Amount") 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 Settlement Amount, made out to Yvette J. Gonzales, Trustee (tax ID 75-2364418); or wire transfer the funds to the Trustee upon receiving wire transfer instructions from the Trustee.

3. Upon receipt of the Settlement Amount, Plaintiff will dismiss the Avoidance Action with prejudice.

4. The Plaintiff and the Defendant shall each bear their respective costs and attorneys' fees incurred in connection with the Avoidance Action.

5. The Plaintiff, on her behalf and on behalf of the Furr's Estate, hereby voluntarily and knowingly releases and forever discharges the Defendant from (i) any and all claims, causes of action, demands, liabilities, obligations, losses, rights, expenses and attorneys fees of whatever kind or nature, whether known or unknown, suspected or unsuspected, which the Plaintiff and/or the Furr's Estate now owns or holds as against Defendant that were 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 and/or services from Defendant pre-petition, and/or the payment for such goods and/or services; 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.

6. The Defendant hereby voluntarily and knowingly releases and forever discharges the Plaintiff and the Furr's Estate from any and all claims, causes of action, demands, liabilities, obligations, losses, rights, expenses and attorneys fees of whatever kind or nature, whether known or unknown, suspected or unsuspected, which the Defendant now owns or holds as against Plaintiff and/or the Furr's Estate that were raised or could have been raised in the Avoidance Action; 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 that includes a pre-petition unsecured claim for amounts paid in

settlement of the Avoidance Action.

7. Defendant shall be allowed a pre-petition unsecured claim in the amount of **\$17,469.18**, which claim includes amounts paid in settlement of the Avoidance Action, to be paid to the same extent, at the same time and in the same manner as other similar pre-petition unsecured claims.

8. This Agreement shall be binding upon and shall inure to the benefit of the Plaintiff, the Furr's Estate and the Defendant, and their respective heirs, executors, representatives, administrators, agents, directors, officers, employees, servants, shareholders, trustees, partners, successors, subsidiaries, affiliates and assigns, whether past or present.

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

10. 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.

11. This Agreement shall be construed as if both Plaintiff and/or the Furr's Estate and Defendant prepared it. Section titles or captions contained in this Agreement are used for convenience of reference only and are not intended to and shall not in any way enlarge, define, limit, extend or describe the rights or obligations of any party or affect the meaning or construction of this Agreement, or any provisions hereof.

12. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

13. Copies of signatures, including fax copies, shall be treated as original signatures

for purposes of this Agreement.

14. 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.

15. The parties understand and agree this settlement is the compromise of doubtful and disputed claims, and the agreement and payment set forth herein are not to be construed as admission of liability by any party, which liability is expressly denied.

16. This Agreement shall become effective and enforceable at the time an order by the Bankruptcy Court for the District of New Mexico approving this Agreement becomes final and non-appealable.

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

The Plaintiff
YVETTE J. GONZALES, TRUSTEE

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

Date: March ____, 2004

The Defendant
BRINK'S, INCORPORATED

By: _____

Printed Name: _____

Title: _____

Date: March ____, 2004