

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 03-1039 S

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. 03-1039 SA, captioned *Yvette J. Gonzales, Trustee v. Hilltop Landscape Architects and Contractors* (the "Preference Action"), against the named defendant (the "Preference Defendant"), and in support hereof states:

1. Commencement and Conversion of Case. 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, 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 \$69,985.77 from the Preference Defendant.

4. The Settlement of the Preference Action. The Preference Defendant and the Trustee have agreed that Preference Defendant will pay the Trustee \$58,000 (the "Settlement Amount"), payable in 18 monthly payments of \$3,222.22, without interest. The first payment

will be made within 10 days after the Preference Defendant has notice that the order approving the settlement has been entered, and the remaining 17 payments will be made on or before the first of each month thereafter. Following payment in full of the Settlement Amount, the Trustee will dismiss the Preference Action with prejudice. To memorialize the settlement, the parties shall execute a Settlement and Release Agreement in the form attached hereto as Exhibit A.

5. Default. If the Preference Defendant defaults in any required payment and does not cure the default within 10 days after receiving written notice of the default, then the entire Preference Claim of \$69,985.77, less any amounts already paid (the “Judgment Amount”), shall become immediately due and payable. Upon the Trustee filing an affidavit of default in the Preference Action, the Bankruptcy Court shall enter a final judgment against Hilltop for the Judgment Amount, and the Trustee may take any lawful action to enforce and collect the Judgment Amount.

6. Best Interests. The settlement outlined above 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 settlement outlined above, and grant all other just and proper relief.

JACOBVITZ, THUMA & WALKER
a Professional Corporation

By: Filed electronically
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This certifies that a copy of the
foregoing was served by mail on:

Ronald E. Andazola
P.O. Box 608
Albuquerque, New Mexico 87103

This 24th day of March, 2004.

Filed electronically
David T. Thuma