

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. 03-1075 S
(Gonzales v. Qwest Corporation, f/k/a US West)

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. 03-1075 S, captioned *Yvette J. Gonzales, Trustee v. Qwest Corporation fka US West* (the "Adversary Proceeding"), 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 and recover \$59,312.25 from Qwest Corporation fka US West ("Defendant"), plus all other amounts, if any, avoidable under 11 U.S.C § 547.

4. The 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, without admission of liability by either party, and subject to Court approval after notice and opportunity to object, agreed to settle the Adversary

Proceeding pursuant to the terms set forth in the Settlement and Release Agreement the form of which is attached hereto as Exhibit "A" and incorporated herein by this referenced ("Settlement Agreement"). No later than twenty (20) days after an order entered by the Court approving the Agreement becomes a final order and from which no timely appeal shall have been taken, Defendant will pay the Trustee \$37,663.02. Thereafter, Trustee will dismiss the Adversary Proceeding with prejudice.

5. In the Settlement Agreement, the Trustee has agreed also to dismiss with prejudice Adversary Proceeding No. 03-1078 against Qwest Communications Corporation because pretrial discovery revealed that Qwest Communications Corporation has no liability under Section 547 of the Bankruptcy Code in connection with any of the alleged preferential payments set forth in Adversary Proceeding No. 03-1078.

6. 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 the Settlement Agreement and for all other just and proper relief.

JACOBVITZ, THUMA & WALKER
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This certifies that a copy of the foregoing
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