

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 TRUSTEE'S COLLECTION OF THE
DEFAULT JUDGMENT ENTERED IN ADVERSARY PROCEEDING 03-1133 M**

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 the Trustee's collection of the default judgment entered in adversary proceeding No. 02-01103 M, captioned *Yvette J. Gonzales, Trustee v. Banc of America Vendor Finance, Inc.* (the "Preference Action"), against the named defendant ("Preference 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 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 \$35,424.90 from the Preference Defendant, plus all other amounts, if any, recoverable under 11 U.S.C § 547.

4. Entry of Default Judgment. The Preference Defendant did not answer the complaint in the Preference Action, and the Court entered a default judgment in the amount of \$35,574.90 (the "Default Judgment").

5. Efforts to Set Aside the Default Judgment. The Preference Defendant believes it has grounds to seek to set aside the Default Judgment. The Trustee believes that the Default Judgment was properly entered and would not be set aside.

6. Proposed Settlement of the Default Judgment Collection. Preference Defendant has offered to pay the Trustee \$28,000 in full satisfaction of the Default Judgment (the “Settlement”). The settlement also includes the Trustee’s release of any other avoidance claims against the Defendant and its predecessors and successors in interest. In consideration of the Settlement, upon the entry of a final non-appealable order granting this Motion and approving the Settlement, the Preference Action will be dismissed with prejudice and the parties shall execute a settlement and release agreement in the form attached hereto as Exhibit A (the “Settlement Agreement”).

7. Fair and Equitable. The Settlement 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, approving the execution of the Settlement Agreement, and for all other just and proper relief.

JACOBVITZ, THUMA & WALKER
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By: Filed electronically
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This certifies that a copy of the
foregoing Motion was served by mail on:

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

this 9th day of August, 2004.

Filed electronically
David T. Thuma