

**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 02-1112-S
(Azar Nut Company)**

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 Azar Nut Company (“Azar Nut Company”), as set forth in the adversary proceeding No. 02-1112-S, captioned *Yvette J. Gonzales, Trustee v. Azar Nut Company* (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 One Hundred Ninety-Three Thousand Six Hundred Twenty-Nine Dollars and 21/100 (\$193,629.21) from Azar Nut Company, plus all other amounts, if any, recoverable pursuant to

11 U.S.C. §547. The Defendant alleged, inter alia, that its products came under the protection of PACA, which the Trustee disputes, and further alleged that Defendant was not liable under other defenses.

5. **The Settlement.** Azar Nut Company has offered to pay the Trustee One Hundred Twenty Thousand Two Hundred Eighty-Two Dollars and 36/100 (\$120,282.36) in full satisfaction of any and all pre-petition and post-petition claims, including without limitation claims asserted in the Adversary Proceeding (the “Settlement”). No party admits or acknowledges any liability to any other party and specifically denies the existence of such liability. The Settlement resolves all claims, counterclaims and causes of action held by the Trustee against the Defendant, and by the Defendant against the Trustee, and, upon approval of the Settlement, the Trustee and the Defendant shall mutually release each other from any and all such claims, provided that Defendant shall have an allowed unsecured claim equal to the amount it pays under the settlement. The Defendant specifically reserves its rights with regard to its pre-petition unsecured claim in Case No. 7-01-10779-SA, including without limitation its rights to receive payment on such claim to the extent permitted by applicable bankruptcy law, and to the extent that there is a distribution to holders of allowed pre-petition unsecured claims. The full terms of the Settlement will be contained in a Settlement Agreement and Release, in substantially the form as the Settlement Agreement attached hereto. 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.

/s/ Electronically filed 08/26/04

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I hereby certify that on August 26, 2004,
a true and correct copy of the foregoing
was either electronically transmitted,
faxed, delivered or mailed to:

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/s/ 08/26/04

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