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U.S. BANKRUPTCY COURT
ALBUQUERQUE N.M.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

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In re : Case No. 01-11-~~0~~**11-01-10779-SA**
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FURR'S SUPERMARKETS, INC., : Chapter 11
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Debtor. :
:
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APPLICATION FOR ORDER APPOINTING
ROBERT L. BERGER & ASSOCIATES, LLC
AS CLAIMS, VOTING AND NOTICING AGENT OF THE
BANKRUPTCY COURT UNDER 28 U.S.C. § 156(c)

Furr's Supermarkets, Inc., debtor and debtor-in-possession in the above-captioned case (the "Debtor"), hereby moves for an order under 28 U.S.C. § 156(c) approving an agreement with Robert L. Berger and Associates, LLC ("Berger") appointing Berger as claims, noticing and balloting agent of the Bankruptcy Court. In support of this Application, the Debtor relies on the Declaration of Steven L. Mortensen in Support of Chapter 11 Petitions and First Day Orders, dated February 7, 2001, and on the Declaration of John Vander Hooven (the "Vander Hooven Declaration"), dated February 7, 2001. In further support of this Application, the Debtor respectfully represents as follows:

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BACKGROUND

A. The Chapter 11 Filing

1. On February 8, 2001 (the "Petition Date"), the Debtor filed a voluntary petition in this Court for reorganization relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (as amended, "Bankruptcy Code"). The Debtor continues to operate its business and manage its properties as debtor-in-possession in accordance with sections 1107(a) and 1108 of the Bankruptcy Code.

2. No creditors' committee has yet been appointed in this case by the United States Trustee.

3. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b)(2).

B. The Debtor's Business

4. The Debtor is a leading regional supermarket chain, with operations in New Mexico and Western Texas. The Debtor has a leading market share in this region. The Debtor employs approximately 4,900 individuals, and operates seventy-one stores.

5. The Debtor's stores offer a broad selection of grocery, meat, poultry, seafood, dairy, fresh fruits, vegetables and frozen food products. The stores

also offer an extended line of non-food products, health and beauty care products, housewares, general merchandise and, in many instances, in-store pharmacies.

RELIEF REQUESTED

6. By this Application, the Debtor seeks entry of an order authorizing it to retain and employ Berger as claims, noticing and balloting agent (the "Claims and Noticing Agent") to, among other things: (i) serve as the Court's notice agent to mail certain notices to the estate's creditors and parties-in-interest, (ii) provide computerized claims, objection and balloting database services, and (iii) provide expertise, consultation and assistance with claim and ballot processing and with other administrative information related to the Debtor's bankruptcy cases.

BASIS FOR RELIEF

7. The Debtor has thousands of creditors, potential creditors and parties-in-interest to whom certain notices, including notice of this chapter 11 case, must be sent. Additionally, many of these parties may file proofs of claim and cast ballots with respect to a plan of reorganization. The size of the Debtor's creditor body makes it impracticable for the Clerk of the Bankruptcy Court (the "Clerk") to send notices to the creditors and other parties-in-interest, maintain a claims register and tabulate ballots. The Debtor respectfully submits that the most effective and efficient way to accomplish the above-mentioned tasks is to engage an independent third party to act as an agent of the Court to perform those functions.

8. Berger is a data processing firm that specializes in noticing, claims processing and other administrative tasks in chapter 11 cases. The Debtor wishes to engage Berger as its Noticing and Claims Agent in accordance with 28 U.S.C. § 156(c) to (i) distribute certain designated notices to creditors and parties-in-interest, (ii) receive and maintain a register of proofs of claim, (iii) receive and tabulate ballots and (iv) perform other services as detailed herein (the "Notice and Claims Services"). The Debtor believes that this assistance will expedite service of certain notices, streamline the claims administration process and permit the Debtor to focus more effectively on its reorganization efforts.

9. The Debtor believes that Berger is well-qualified to provide these services, expertise, consultation and assistance. As set forth in the Vander Hooven Declaration, Berger has assisted and advised numerous chapter 11 debtors in connection with noticing, claims administration and reconciliation and administration of plan votes. Berger has provided identical or substantially similar services in other chapter 11 cases, including the recent chapter 11 case of Federal Employees Distributing Company ("Fedco"), filed in the Central District of California in July 1999. In the Fedco case, Berger was responsible for sending notices to more than 2,000,000 parties in interest.

10. Bankruptcy Rule 2002 generally regulates what notices must be provided to creditors and other parties-in-interest in bankruptcy cases. Under

Bankruptcy Rule 2002, the Court may direct that some person other than the Clerk give notice of the various matters described below.

11. Moreover, 28 U.S.C. § 156(c), which governs the staffing and expenses of the Bankruptcy Court, states in pertinent part:

Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the cost of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

28 U.S.C. § 156(c). The engagement of Berger as the Claims and Noticing Agent is therefore expressly authorized under Bankruptcy Rule 2002 and 28 U.S.C. § 156(c).

12. The Debtor proposes to retain Berger on substantially the terms and conditions set forth in the agreement (the "Berger Agreement") attached as Exhibit A to the proposed order submitted herewith. Under the Berger Agreement, it is anticipated that Berger will perform the following services as the Claims and Noticing Agent, at the request of the Debtor or the Clerk's Office:

- (1) Prepare and serve required notices in this chapter 11 case, including:
 - (a) A notice of commencement of this chapter 11 case and the initial meeting of creditors under section 341(a) of the Bankruptcy Code, in the standard form used by the Clerk, customized as appropriate for this case, in a form approved by the Clerk and the U.S. Trustee ("UST");
 - (b) A notice of the claims bar date;

- (c) Notices of any hearings on a disclosure statement and confirmation of a plan of reorganization; and
 - (d) Other miscellaneous notices as the Debtor or the Court may deem necessary or appropriate for an orderly administration of this chapter 11 case:
- (2) Within ten business days after the service of a particular notice, file with the Clerk's Office an affidavit of service that includes (i) a copy of the notice served, (ii) an alphabetical list of persons on whom the notice was served, along with their addresses, and (iii) the date and manner of service:
 - (3) Maintain copies of all proofs of claim and proofs of interest filed in this case:
 - (4) Maintain official claims registers in this case by docketing all proofs of claim and proofs of interest in a claims database that includes the following information for each claim or interest asserted:
 - (a) The name and address of the claimant or interest holder and any agent thereof, if the proof of claim or proof of interest was filed by an agent;
 - (b) The date the proof of claim or proof of interest was received by Berger and/or the Court;
 - (c) The claim number assigned to the proof of claim or proof of interest; and
 - (d) The asserted amount and classification of the claim;
 - (5) Implement necessary security measures to ensure the completeness and integrity of the claims registers;
 - (6) Transmit to the Clerk's Office a copy of the claims register as requested by the Clerk's Office:

- (7) Maintain a current mailing list for all entities that have filed proofs of claim or proofs of interest and make the list available upon request to the Clerk's Office or any party in interest;
- (8) Provide access to the public for examination of copies of the proofs of claim or proofs of interest filed in this case without charge during regular business hours;
- (9) Record all transfers of claims in accordance with Bankruptcy Rule 3001(c) and provide notice of transfers as required by Bankruptcy Rule 3001(c);
- (10) Comply with applicable federal, state, municipal and local statutes, ordinances, rules, regulations, orders and other requirements;
- (11) Provide temporary employees to process claims, as necessary;
- (12) Promptly comply with any further conditions and requirements as the Clerk's Office or the Court may at any time prescribe; and
- (13) Provide other claims processing, noticing and related administrative services as may be requested from time to time by the Debtor or the Court.

13. In addition to the foregoing, the Debtor seeks to employ Berger to assist it with, among other things: (a) the preparation of its schedules, statements of financial affairs and master creditor list, and any amendments thereto; (b) the reconciliation and resolution of claims; and (c) the preparation, mailing and tabulation of ballots for the purpose of voting to accept or reject a plan of reorganization.

14. Berger represents, among other things, that:

- (1) Berger will not consider itself employed by the United States government and shall not seek any compensation from the

United States government in its capacity as the Claims and Noticing Agent in this chapter 11 case:

- (2) By accepting employment in this chapter 11 case, Berger waives any rights to receive compensation from the United States government;
- (3) In its capacity as the Claims and Noticing Agent in this chapter 11 case, Berger will not be an agent of the United States and will not act on behalf of the United States; and
- (4) Berger will not employ any past or present employees of the Debtor in connection with its work as the Claims and Noticing Agent in this chapter 11 case.
- (5) The Debtor will use its best efforts to insure that Berger coordinates its efforts with the UST and the Clerk to insure that notices are processed in the most complete and efficient manner.
- (6) The Debtor has discussed Berger's engagement with the UST and the Clerk's office.

15. The Debtor proposes to pay Berger's fees and expenses for the above services in the ordinary course of business.¹ Berger will submit to the United States Trustee for this region, on a monthly basis, copies of the invoices it submits to the Debtor for services rendered.

16. To the best of the Debtor's knowledge, neither Berger nor any employee thereof has any connection with the Debtor, its creditors, the Office of the

¹ As an administrative agent and an adjunct to the Court, the Debtor does not believe that Berger is a "professional" whose retention is subject to approval under section 327 of the Bankruptcy Code or whose compensation is subject to approval of the Court under sections 330 and 331 of the Bankruptcy Code.

United States Trustee or any employees thereof or any other party-in-interest herein: they are "disinterested persons," as that term is defined in section 101(14) of the Bankruptcy Code; and they do not hold or represent any interest adverse to the Debtor's estate, except as set forth herein and in the Vander Hooven Declaration.

17. For all of the foregoing reasons, the Debtor believes that the retention of Berger as the Claims and Noticing Agent is appropriate and in the best interests of the Debtor and its estate and creditors.

18. No previous request for the relief sought in this Application has been made to this Court or any other court.

19. The Debtor has served notice of this Application by hand delivery on the United States Trustee and by facsimile on the Debtor's secured creditors and its twenty largest unsecured creditors. In view of the nature of the relief requested, the Debtor submits that this notice is proper and adequate under the circumstances.

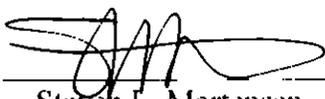
WHEREFORE, the Debtor respectfully request that the Court enter an order (i) authorizing the Debtor to retain and employ Berger as Claims and Noticing

Agent to perform the services described herein and (ii) granting such other and further relief as is just and proper.

Dated: Albuquerque, New Mexico
February 7, 2001

FURR'S SUPERMARKETS, INC.

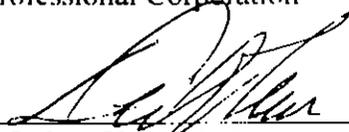
Debtor and Debtor-in-Possession

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