

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

FILED
12:00 MIDNIGHT

SEP 21 2001

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 11-01-10779-SA
Chapter 11

U.S. BANKRUPTCY COURT
United States Bankruptcy Court
Albuquerque, New Mexico

Debtor.

**DEBTOR'S MOTION TO EMPLOY SAGE ACCOUNTING AS ACCOUNTANTS FOR
THE DEBTOR**

The Debtor and Debtor in Possession, Furr's Supermarkets, Inc. (the "Debtor"), pursuant to 11 U.S.C. § 327(a), requests that the Court approve its employment of Sage Accounting, Small/Kefauver CPA's, P.C. ("Sage") to provide certain accounting services to the Debtor. In support of this Motion (the "Motion"), the Debtor states:

1. On February 8, 2001, the Debtor commenced this bankruptcy case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Pursuant to Bankruptcy Code §§1107(a) and 1108, Debtor has retained possession of its assets, as Debtor in Possession, and is continuing to operate its business.

2. Debtor wishes to employ Sage as accountants for the Debtor, to provide the accounting services set forth below. Sage is well qualified to provide the accounting services to the Debtor in this case. Sage has represented in its disclosure filed pursuant to Bankruptcy Rules 2014 and 2016 that except for its representation of clients in matters wholly unrelated to the Debtor or this bankruptcy case and its own unsecured claim, to Sage's knowledge it does not have any interests that are materially adverse to the Debtor.

3. In general, the professional services Sage may render to the Debtor are:

A. W-2 Work

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- (i) Purchase W-2 Pro software and deliver to Furr's;
- (ii) Transfer W-2 Pro software to Sage after Lawson data successfully uploaded onto W-2 Pro & reconciled;
- (iii) Verify data on W-2 Pro represents and totals originally uploaded into W-2 Pro;
- (iv) Print, stuff & mail W-2's for employees tracked in Lawson only, with Sage's return address (in November or December, 2001);
- (v) Submit W-3 with ADP information in January 2002;
- (vi) Prepare and file 940 annual return with ADP information in January 2002; and
- (vii) Reprint and mail any lost W-2s through December 2002.

B. Staff Accounting. Sage will provide a staff accountant to work at Furr's, under the direction of Furr's controller, on an "as needed" basis.

4. A copy of Sage's engagement letters with the Debtor, dated September 21, 2001 and September 13, 2001 (the "Engagement Letters"), are attached hereto as Exhibit A and incorporated herein by reference. Sage seeks a determination that the rates described in the Engagement Letters are reasonable and appropriate and meet with this Court's approval.

5. To the best of Debtor's knowledge, information and belief, employment of Sage would be in the best interest of the estate, and Sage has no interest that is, for the matters that are subject of Sage's employment, adverse to the Debtor, its creditors, or any other party in interest or their respective attorneys, other than any interests set forth in Sage's statement pursuant to Bankruptcy Rules 2014 and 2016 (the "Sage Disclosure") filed concurrently with this Motion.

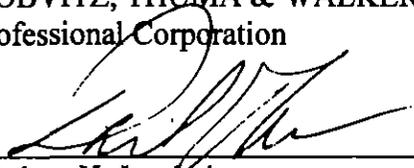
6. The fees, costs and gross receipts tax that Sage will charge Debtor are set forth in the Engagement Letters. In general, for the W-2 work Sage will charge a flat rate of \$7,500 plus gross receipts tax. Sage requires that such amount be paid in advance. For the staff accounting work, Sage will charge \$100 per hour, plus gross receipts tax.

7. Sage requests that the Debtor be authorized to make an advance payment to Sage for the W-2 work, and for the staff accounting work to make interim payments to Sage on a monthly basis upon receipt of Sage's billing statements and prior to the Court's determination of the allowability of Sage's compensation, under the same terms as set forth in the Motion for Order Authorizing Payment of Interim Compensation and Reimbursement of Expenses of Debtor's Professionals.

8. Sage's employment is in the best interest of the estate and should be made effective as of the date this application is filed.

WHEREFORE Debtor requests approval of the Court to employ Sage to provide accounting services pursuant to 11 U.S.C. § 327(a) under the terms of the Engagement Letters and this Motion, effective as of the date hereof, to make interim payments to Sage prior to allowance of compensation, as described above, and for all other just and proper relief.

JACOBVITZ, THUMA & WALKER
A Professional Corporation

By: 

Robert H. Jacobvitz

David T. Thuma

500 Marquette N.W., Suite 650

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(505) 766-9272

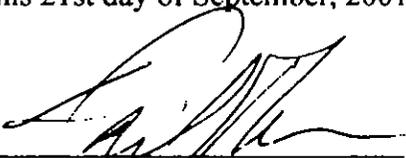
(505) 766-9287 (fax)

Attorneys for the Debtor-in-Possession

This certifies that a copy of
the foregoing document was
served by first class mailed on:

United States Trustee
P.O. Box 608
Albuquerque, NM 87103

this 21st day of September, 2001.



David T. Thuma

SAGE

ACCOUNTING

Small/Kefauver CPA'S, PC
a professional corporation

September 13, 2001

This letter confirms our mutual understanding for Sage Accounting, Small/Kefauver CPA's, PC ("Sage") to provide services related to W-2 mailings and year end payroll reporting requirements to Furr's Supermarkets, Inc ("Furr's").

Based on our discussions, I understand that Sage will be responsible for the following:

- Purchase W-2 Pro software and deliver to Furr's
- Transfer W-2 Pro software to Sage after Lawson data successfully uploaded onto W-2 Pro & reconciled
- Verify data on W-2 Pro represents the totals originally uploaded into W-2 Pro
- Print, stuff & mail W-2's for employees tracked in Lawson only, with Sage's return address (in November or December 2001)
- Prepare & file Q4 941 with ADP's payroll information
- Submit W-3 with ADP information in January 2002
- Prepare & file 940 annual return with ADP information in January 2002
- Reprint & mail any lost W-2s through December 2002

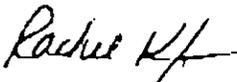
Furr's acknowledges their responsibility for the integrity and correctness of the data download from Lawson. Sage will not audit or reconcile the data submitted by Furr's. All information required to file the W-2's and related payroll tax reports will be reconciled and uploaded onto W-2 Pro before Sage can begin work. If this is not completed by the end of October, Sage has the right to terminate this agreement.

Fees for the above services are \$7,500, which will be billed in advance, and are payable upon receipt. Work may be suspended if payment is not received.

Furr's acknowledges and agrees that in the event Sage stops work or withdraws from these services as a result of Furr's failure to pay on a timely basis, or the pre-requisite reconciliation process is not completed, Sage shall not be liable for any damages that occur as a result of its ceasing to render services. Sage acknowledges and agrees that if services as indicated above are not completed in the timeframe indicated, Sage will refund a pro-rated amount based on work performed to date. For these purposes, the W-2 mailing & payroll tax reports will be valued at 85% of the total amount due, and the reprint and mail of lost W-2's will be valued at 15%.

I appreciate the opportunity to work with you.

Sincerely,



Rachel Kefauver, CPA

Acknowledged:

Steve Stork, VP-Finance

Date

EXHIBIT
A

10800 Menaul NE, Albuquerque, New Mexico 87112 • Phone: (505) 237-2273 • Fax: (505) 237-9825
E-mail: JCSMALLCPA@aol.com



September 21, 2001

Dear Steve,

The letter is to set forth the terms and objectives of our proposed engagement and the nature and limitations of the services we will provide to your company until mutually changed.

WORK TO BE DONE

- A. **Agreed Upon Services.** We will perform consulting services as directed by management of Furr's. This includes but is not limited to the training, assisting and generating of journal entries, reconciliations, postings from subsidiary ledgers, allocations, monthly closes, internal compiled financial statements, tax assistance/preparation, bankruptcy reporting requirements and other special projects. We will provide consulting services for any decisions, but final decisions are the responsibility of Furr's management.
- B. **Scope Limitations.** Our engagement cannot be relied upon to disclose errors, irregularities, or illegal acts, including fraud or defalcations, which may exist. We may inform you of any such matters that come to our attention.
- C. **Work Schedule.** We will provide a schedule of work availability at the onset of this engagement, as well as updates to this schedule on a timely basis. Changes to this schedule will be requested as needed.

FEE SCHEDULE

The following is our understanding of the fee schedule agreed upon.

- A. Consulting fees will be based on the time expended at our current hourly rate of \$100.
- B. Any additional consulting performed by other members of our firm would be negotiated as needed, but would range from \$50-\$90 per hour.
- C. Bills will be submitted weekly and presented to Furr's on each Monday for the previous week's work. Furr's agrees to make payments by immediate pay checks within 24 hours of receiving each bill.

Mr. Steven Stork, Controller
Furr's Supermarkets, Inc.
September 21, 2001
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TERMINATION

Right to Terminate. Either party may terminate this relationship with 24 hours notice by any form of written notification, including Email.

LIMIT OF LIABILITY

You agree that Sage Accounting, Small/Kefauver CPA's, PC's (Sage Accounting) liability hereunder for damages, regardless of the form of action, shall not exceed the total amount paid for the services described herein. This shall be your exclusive remedy.

You further agree that Sage Accounting will not be liable for any lost profits, or for any claim or demand against you by any other party. In no event will Sage Accounting be liable for incidental or consequential damages even if we have been advised of the possibility of such damages.

No action, regardless of form, arising out of the services under this agreement may be brought by either party more than one year after the date of the last services provided under this agreement.

COMPLETE AGREEMENT

The letter comprises the complete and exclusive statement of the agreement between the parties, superseding all proposals oral or written and all other communications between the parties. If any provision of this letter is determined to be unenforceable, all other provisions shall remain in force. If you have any questions or concerns regarding this engagement letter, please contact us at the above address.

Sincerely,



Sage Accounting
Small/Kefauver, CPA's PC

Acknowledged:
Furr's Supermarkets, Inc.

Controller

Date