

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

FILED
12:00 MIDNIGHT

In re:

FURR'S SUPERMARKETS, INC.,

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

SEP 21 2001

DROP BOX
United States Bankruptcy Court
Albuquerque, New Mexico

Debtor.

MOTION (I) FOR SECOND ORDER SUPPLEMENTING FINAL AUTHORIZING DEBTOR TO OBTAIN SECURED FINANCING, AND FOR USE OF CASH COLLATERAL, IN OCTOBER, 2001, (II) TO ESTABLISH PROCEDURE FOR USE OF CASH COLLATERAL IN SUBSEQUENT MONTHS, AND (III) FOR EXPEDITED PRELIMINARY HEARING TO AVOID IRREPARABLE HARM

Furr's Supermarkets, Inc., debtor in possession ("Furr's"), pursuant to Bankruptcy Code §363(c)(2) and Bankruptcy Rule 4001(b) and (d), files this Motion (I) For Second Order Supplementing Final Authorizing Debtor To Obtain Secured Financing, And For Use Of Cash Collateral in October, 2001, (II) to Establish Procedure for Use of Cash Collateral in Subsequent Months, and (III) for Expedited Preliminary Hearing to Avoid Irreparable Harm (the "Motion").

Furr's moves the Court as follows:

A. To schedule a preliminary hearing on September 25, 2001 at 3:00 p.m. to authorize secured financing and use of cash collateral from October 1, 2001 through October 6, 2001 (the "Initial October Period"), on the terms set forth in the First Order Supplementing Final Order (1) Authorizing Debtor To Obtain Secured Financing, (2) Granting Adequate Protection And (3) Granting Other Relief, To Permit Short-Term Financing And Use Of Cash Collateral, entered September 18, 2001 (the "First Supplemental Order"), and in the amounts set forth for the first week of the budget attached hereto as Exhibit A (the "October Budget");

B. To schedule a continued preliminary hearing on October 4 or 5, 2001 to authorize secured financing and use of cash collateral from October 7, 2001 through October 30, 2001 (the "Remaining October Period"), on the terms set forth in the First Supplemental Order and in the amounts set forth for the in the last three weeks of the October Budget, pending a final hearing. Before October 4, 2001, Furr's expects to amend the October Budget for the Remaining October Period to provide some payment of existing administrative claims;

C. To clarify at the second preliminary hearing that amounts budgeted for Third Party Services in the Short Term Budget (as those terms are defined in the First Supplemental

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Order), if not yet incurred, may be incurred and funded after the expiration of the Short Term Budget period;

D. To establish a procedure to grant continued use of cash collateral on a monthly basis for November and December, 2001, as proposed in paragraph 3 below; and

E. To set this Motion for a final hearing on an expedited basis, pursuant to Bankruptcy Code §363(c) and Bankruptcy Rule 4001(b)(2), and to grant the relief requested herein at the final hearing.

In support of this Motion, Furr's states:

1. Creditors Holding Liens Against Cash Collateral. All cash currently held by Furr's constitutes cash collateral or claimed cash collateral under Bankruptcy Code § 363(a), securing, inter alia, (i) any unpaid balance owed to Heller Financial, Inc. ("Heller"), as agent for Fleet Capital Corporation ("Fleet"), Bank of America N.A. ("B of A"), Heller, and the Metropolitan Life Insurance Company ("MetLife") (together, the "DIP Lenders"), pursuant to the loan of up to \$33 million made by the DIP Lenders on or about February 8, 2001 (the "DIP Loan"); (ii) approximately \$49 million owed to Heller, as agent for Heller, Fleet, and B of A (together, the "Pre-Petition Senior Lenders") under a Loan Agreement dated December 21, 2000 (the "Pre-Petition Senior Indebtedness"); and (iii) a \$25 million loan made to Furr's by MetLife as described in finding D(iii) of the Final DIP Order (the "Pre-Petition ML Senior Debt") (together, the Pre-Petition Senior Indebtedness and Pre-Petition ML Senior Debt are called the "Pre-Petition Senior Loans"). The DIP Lenders, the Pre-Petition Bank Lenders, and MetLife are sometimes referred to as the "Lenders." The Pre-Petition Senior Lenders and MetLife are sometimes referred to as the "Pre-Petition Bank Lenders." The Lenders have liens against collateral constituting cash collateral within the meaning of 11 U.S.C. § 363(a). Furr's does not seek to use cash collateral, or claimed cash collateral, of other creditors, such as liquor wholesalers and Texas taxing authorities.

2. Irreparable Harm to the Estate Without Continued Use Of Cash Collateral. During October, 2001 Furr's must use cash collateral or obtain secured financing as set forth in this paragraph to avoid immediate and irreparable harm to the estate and its creditors. Furr's needs to use cash collateral in accordance with the October Budget to continue to operate; to pay

rent; to pay its current employees, whose duties will include compliance with certain statutory requirements, including preparation of tax returns and generation of W-2s, 1099s, and Cobra certificates for current and former employees; to preserve the value of remaining assets in Furr's estate; and to pay necessary professional fees. Without authority to use cash after September 28, 2001, Furr's would be forced to convert to Chapter 7 on or about October 1, 2001. Furr's remaining assets include, among other things, inventory prepaids (which require substantial accounting work to reconcile against deliveries), accounts receivable (which require reconciliation and compilation of supporting documents), Furr's leasehold interest in its El Paso warehouse, liquor licenses, preference claims, and various equipment, fixtures, and furnishings.

3. Proposed Procedure for Approving November and December Monthly Budgets. Furr's proposes that it be allowed to use cash collateral in November and December, 2001, pursuant to monthly budgets Furr's would prepare. The monthly budgets would be subject to prior approval of the Lenders and either the Unsecured Creditors' Committee or the Court. Furr's would prepare and submit to the Lenders and the Unsecured Creditors' Committee a proposed November monthly budget by October 12, 2001, and a proposed December monthly budget by November 12, 2001. If the Unsecured Creditors' Committee did not approve a proposed monthly budget within five days of receipt, the Court would hold a final hearing on the proposed monthly budget as soon as practicable thereafter.

4. Treatment Under the First Supplemental Order. The Lenders are entitled to adequate protection for the use of their cash collateral. Furr's therefore proposes that all cash collateral Furr's uses be treated for all purposes as if the cash were loaned to Furr's pursuant to the First Supplemental Order.

5. The Requested Relief is in the Best Interest of the Estate. The requested relief is in the best interest of the estate. It permits Furr's to complete the issuance of W-2s and 1099s, wind down its pension plan and 401(k) plan in an orderly manner, prepare tax returns, and pay further administrative expenses. The requested relief also permits Furr's to liquidate assets for the benefit of creditors for a value substantially greater than what Furr's believes a trustee could achieve. Furthermore, if Furr's proposed November and December monthly budgets are not deemed by the Lenders and Debtor (and the Committee or the Court) to be in the mutual best

interest of the parties, Furr's right to use cash collateral would expire, and no rights would be prejudiced.

6. Request For an Expedited Preliminary Hearings. Furr's requests the Court to conduct, pursuant to 11 U.S.C. § 363(c), an expedited preliminary hearing on the proposed use of cash collateral for the Initial October Period on September 25, 2001 at 3:00 p.m., and to conduct a continued preliminary hearing for the Remaining October Period on October 4 or 5, 2001, on notice to Furr's, the Lenders, the Unsecured Creditors' Committee, the persons on the limited mailing matrix in this case, and the United States Trustee; and to authorize use of cash collateral as requested in this Motion pending a final hearing on the Motion. As shown above, this is necessary to avoid irreparable harm to the estate.

7. Consent of Lenders. The Lenders have not consented to this Motion or to the October Budget. Furr's is negotiating with the Lenders to obtain such consent.

WHEREFORE, Furr's respectfully requests that this Court grant the interim relief requested above, grant the additional relief requested after a final hearing on the Motion, to be held as soon as reasonably possible, and to grant Furr's all other just and proper relief.

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POST CLOSING OPERATING BUDGET

	Wk End <u>10/06/01</u>	Wk End <u>10/13/01</u>	Wk End <u>10/20/01</u>	Wk End <u>10/27/01</u>
HEADCOUNT	23	23	23	23
PAYROLL				
SALARIES	32.0	32.0	32.0	32.0
BENEFITS/TAXES	2.6	2.6	2.6	2.6
TOTAL PAYROLL	<u>34.6</u>	<u>34.6</u>	<u>34.6</u>	<u>34.6</u>
CONSULTING FEES	8.6	8.6	8.6	8.6
RENT	25.0	-	-	-
OPERATING COSTS				
CHAIRMAN/VICE CHAIRMAN	-	-	-	50.0
DATA CENTER	14.0	10.0	10.0	10.0
UTILITIES	2.0	2.0	2.0	2.0
TELEPHONE	2.2	2.2	2.2	2.2
SUPPLIES	0.5	0.5	0.5	0.5
HOUSEKEEPING	0.2	0.2	0.2	0.2
SECURITY	0.3	0.3	0.3	0.3
POSTAGE	0.5	0.5	0.5	0.5
MISC EXPENSE	5.6	5.6	5.6	5.6
TAXES	-	-	-	-
TOTAL OPERATING COSTS	<u>25.3</u>	<u>21.3</u>	<u>21.3</u>	<u>71.3</u>
SUB TOTAL	<u>93.5</u>	<u>64.5</u>	<u>64.5</u>	<u>114.5</u>
CUM	<u>93.5</u>	<u>158.0</u>	<u>222.5</u>	<u>337.0</u>
JTW	-	-	50.0	-
CARRYING/CLOSURE COSTS--WHSE	104.0	10.0	13.0	13.0
ADMIN EXPENSE	-	-	TBD	-
RETENTION	-	-	-	76.0
SUB TOTAL	<u>104.0</u>	<u>10.0</u>	<u>63.0</u>	<u>89.0</u>
CUM	<u>104.0</u>	<u>114.0</u>	<u>177.0</u>	<u>266.0</u>
GRAND TOTAL	<u>197.5</u>	<u>74.5</u>	<u>127.5</u>	<u>203.5</u>
CUM	<u>197.5</u>	<u>272.0</u>	<u>399.5</u>	<u>603.0</u>

EXHIBIT

A