UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW MEXICO

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U.S. BANKRUPTCY COURT
ALBUQUERQUE, NM

In re:

FURR'S SUPERMARKETS, INC.,

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

Debtor.

DEBTOR'S MOTION TO EMPLOY MOUNCE, GREEN, MYERS, SAFI & GALATZAN AS PERSONAL INJURY DEFENSE ATTORNEYS FOR THE DEBTOR

The Debtor Furr's Supermarkets, Inc. (the "Debtor"), pursuant to 11 U.S.C. § 327(a), requests that the Court approve its employment of Mounce, Green, Myers, Safi & Galatzan, a Professional Corporation ("Mounce") to represent the Debtor as set forth herein. 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 Mounce as personal injury defense attorneys for the Debtor. Mounce is well qualified to represent the Debtor in personal injury litigation brought against the Debtor in El Paso, Texas. Mounce has represented in its disclosure filed pursuant to Bankruptcy Rules 2014 and 2016 (the "Mounce Disclosure") that, except for its representation of clients in matters wholly unrelated to the Debtor or this bankruptcy case, to Mounce's knowledge it does not have any interests that are materially adverse to the Debtor.

3. In general, the professional services Mounce would render to the Debtor would be to defend the Debtor in a pending personal injury action filed in the 34th Court of El Paso

(32)

County, Texas on or about August 21, 2001, brought by Manuel Perez and Patricia Perez, cause no. 2001-2810, which action alleges that Furr's is liable for injuries sustained post-petition (the "Personal Injury Action").

4. A copy of Mounce's engagement letter with the Debtor, dated October 4, 2001 (the "Engagement Letter"), is attached hereto as Exhibit A and incorporated herein by reference. Mounce seeks a determination that the rates described in the Engagement Letter are reasonable and appropriate and meet with this Court's approval.

5. To the best of the Debtor's knowledge, information, and belief, employment of Mounce would be in the best interest of the estate, and Mounce has no interest that is, for the matters that are subject of Mounce'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 the Mounce Disclosure.

6. The fees and costs that Mounce will charge the Debtor are set forth in the Engagement Letter.

7. Mounce requests that the Debtor be authorized to make interim payments to Mounce on a monthly basis upon receipt of Mounce's billing statements and prior to the Court's determination of the allowability of Mounce'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. Mounce'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 Mounce to represent the Debtor pursuant to 11 U.S.C. § 327(a) under the terms of the Engagement Letter and this

Motion, effective as of the date hereof, to make interim payments to Mounce prior to allowance of compensation, as described above, and for all other just and proper relief.

JACOBVITZ, THUMA & WALKER
A Professional Corporation

By: _____
David T. Thuma
500 Marquette N.W., Suite 650
Albuquerque, New Mexico 87102
(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 9th day of ~~October~~ November, 2001.

MOUNCE, GREEN, MYERS,
SAFI & GALATZAN
A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS AT LAW

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* ALSO MEMBER OF NEW MEXICO BAR

November 8, 2001

Mr. David Thuma
Jacobvitz, Thuma & Walker
500 Marquette NW, Suite 650
Albuquerque, NM 87102

Re: Perez, et al. v. Segura, et al.
Cause No. 2001-2810
34th District Court
D/Accident: March 4, 2001
Engagement Terms

Dear Mr. Thuma:

This letter will memorialize the agreement between Furr's Supermarkets, Inc., (the "Client") and Mounce, Green, Myers, Safi & Galatzan, a Professional Corporation (the "Firm"), under which the Firm will advise, counsel and represent the Client. The terms and conditions or our engagement is as follows:

1. The Firm agrees to represent Client with respect to the defense of the above-referenced lawsuit. The Firm may advise, assist or represent the Client in any other matters upon which the Client and the Firm agree.

2. Our fees for legal services are based primarily on the published hourly rates in effect for each lawyer and legal assistant at the time the services are rendered. Our current hourly rates are $175.00 per hour for shareholders, $135.00 per hour for associates, and $70.00 per hour for legal assistants. My rate for this matter will be $175.00. We review these hourly rates annually and may adjust them on January 1, if appropriate.

ALFA
American Law Firm Association

EXHIBIT
A

3. It is our Firm's policy to bill Client monthly for fees and out-of-pocket expenses. Each lawyer and legal assistant contemporaneously records the time required for these services, and the time records are generated by computer on a monthly basis, which we try to send out by the 15th of the following month. The monthly bill describes services performed and expenses incurred.

4. Our hourly rates do not include any interest factor for late payment. Because of this and the additional fact that we do not include a service charge for late payments, we must insist that our Clients pay their bills promptly. It is our usual practice to send to our Clients for direct payment by them invoices we receive from third parties, such as court reporters, expert witnesses, and document reproduction services. We expect you to pay such invoices promptly upon receipt.

5. If in the course of our representation we anticipate a significant increase in the level of our activity on your behalf, e.g., the commencement of trial preparation or trial, we may bill you on a basis more frequent than monthly. We will also expect that such statements will be paid promptly.

6. Our fees charge do not include expenses or disbursement made to other persons or entities, which would include filing fees, witness fees, investigator fees, transfer costs, expert witness or consultant fees, travel expenses, long-distance telephone charges, printing or duplicating costs, etc. Such expenses and disbursements are the sole responsibility of the Client and are to be paid as they are incurred.

7. Our agreement to provide legal representation in the above-referenced matter is conditioned upon your agreement to the terms of this engagement letter.

8. This Firm retains the discretion to request a deposit as retainer for legal services.

9. The Client or the Firm has a right to notify the other party of its decision to terminate this agreement and relationship at any time.

10. The Client and the Firm understand that the Firm is not able to furnish in all areas and matters legal counsel or representation that may be required by the Client and that it may be necessary for the Client to obtain such counsel and representation from others, as well as the Firm.

11. If an accountant, mediator, expert witness or other professional is hired for this matter, that professional will bill you directly for his services and you agree to pay their fees as they are incurred. No such person will be hired unless you have given your prior approval.

12. By acceptance and execution of this engagement letter, you agree that we are relieved from the responsibility of performing any further work should you fail to pay any monthly statement for fees and expenses (including bills for expenses received from third parties), or for supplemental cost deposits, within fifteen (15) days of receipt of such statements, normally by the first of the month following receipt. In such event, you agree that we may move to withdraw as your counsel in any case where we have made an appearance on your behalf, and that you will promptly execute any withdrawal motions required to accomplish this.

13. During the course of our discussion with you about handling this matter, we may have provided you with certain estimates of the magnitude of the fees and expenses that will be required at certain stages of this litigation. It is our firm policy to advise all our clients that such estimates are just that, and that the fees and expenses required are ultimately a function of many conditions over which we have little or no control, particularly the extent to which the opposition files pretrial motions and engages in its own discovery. The reason why we submit our clients bills on a monthly basis shortly after the services are rendered is so you will have a ready means of monitoring and controlling the expenses you are incurring. If you believe the expenses are mounting too rapidly, please contact us immediately so we can assist you in evaluating how they might be curtailed in the future. When we do not hear from you, we assume that you approve of the overall level of activity on our part in this case on your behalf.

14. This letter sets forth all the covenants, promises, agreements, conditions and understandings between the Firm and the Client concerning the scope of the Firm's services. No subsequent alteration, amendment, change or addition to this agreement shall be binding upon the Firm or the Client unless it is in writing and signed by the parties.

15. We enclose a copy of a brochure from the State Bar of Texas concerning any complaints or grievances that may be available to the consumer of legal services.

16. If you find that the foregoing constitutes a correct and complete statement of the agreement under which the Firm has been retained by the Client, please execute the agreement of the Client in the space provided below.

Very truly yours,

MOUNCE, GREEN, MYERS,
SAFI & GALATZAN

By: Mark C. Walker

Mark C. Walker

MCW/vr

Agreed and Accepted:

_____
David Thuma
for FSI

_____
Date