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U.S. BANKRUPTCY COURT
ALBUQUERQUE, N.M.

In re:

FURR'S SUPERMARKETS, INC.,
A Delaware Corporation,

Case No. 11-01-10779 SA
Chapter 11

Debtor.

OBJECTION TO DEBTOR'S AMENDED MOTION FOR (i) APPROVAL OF WIND-DOWN BUDGET, (ii) AUTHORITY TO APPLY FUNDS AND OPERATE IN ACCORDANCE WITH THE WIND-DOWN BUDGET WITHOUT FURTHER COURT ORDER, (iv) APPROVAL OF EMPLOYEE RETENTION PLAN, (v) AN ORDER DIRECTING DISBURSEMENT OF FLEMING SALE PROCEEDS AND OTHER DEBTOR PROPERTY, (vi), APPROVING THE SETTLEMENT OF ALL ESTATE CLAIMS AGAINST THE SECURED LENDERS, AND (vii) ALLOWING CLAIMS OF SECURED LENDERS

COMES NOW the Attorney General of the State of New Mexico on behalf of her agency the New Mexico Alcohol and Gaming Division (the Division), by and through its attorney of record, Assistant Attorney General Daniel Rubin, and hereby specially appears and objects to the above-named motion, filed by the Debtor on or about August 10, 2001.

IN SUPPORT THEREOF, the Attorney General alleges as follows:

1. The Division hereby specially appears in this matter subject to and without waiving any rights enjoyed by the State of New Mexico pursuant to the Eleventh Amendment of the United States Constitution, including its immunity to suit in federal court. A state's right to specially appear in federal bankruptcy court without waiving its immunity pursuant to the Eleventh Amendment is well settled. *See, e.g., In re Secretary of Dep't of Crime Control and Public Safety*, 7 F.3d 1140, 1148 n.6 (4th Cir. 1993).

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2. The Division further specially appears in this matter subject to and without waiving any rights enjoyed by the State of New Mexico pursuant to the Twenty-First Amendment of the United States Constitution.

3. Debtor's assets include licenses, as issued by the Division that permit the Debtor to engage in the retail sale of alcoholic beverages.

4. The licenses are currently subject to several liquor wholesalers' liens. The lienholders appearing in this matter are the following: Desert Eagle Distributing Company, The New Mexico Beverage Company, Southern Wine and Spirits, National Distributing Company, Premier Distributing Co. and Joe Maloof & Co. (collectively, the Wholesalers). Other holders of wholesalers' liens may exist but have not appeared in this matter.

5. The Wholesalers claim a first priority lien against the licenses, as is at issue in Adversary No. 01-01073S, pending before this Court.

6. Paragraph 22 of Debtor's motion in this proceeding seeks, *inter alia*, to preclude the satisfaction of the Wholesalers' liens as a precondition to transfer of the licenses. The Division objects to this proposed action.

7. The Division previously set forth its objection to a similar action proposed by the Debtor in the *Division's Objection and Response to the Debtor's Motion for Order Determining that the Director of the New Mexico Alcohol and Gaming Division May Not Condition Approval of the Transfer of Debtor's Liquor Licenses Upon Payment In Full to Liquor Wholesalers*, and in the Supporting *Memorandum* attached thereto, filed with this court on or about August 1, 2001.

8. The Division steadfastly asserts that all Wholesalers must be paid in full before any liquor licenses held by the Debtor are transferred to purchasers.

9. Conversely, the Debtor suggests that the proceeds from the sale of the Debtor's liquor licenses should be placed in a common fund for Wholesalers to argue the priority to the funds.

10. Simply stated, the Wholesalers must be and should be paid before the Debtor's liquor licenses are ever transferred.

11. The Division thus asks the Court to approve the Debtor's motion only after the Debtor and Purchaser(s) comply with all applicable provisions of the Liquor Control Act, and all regulations promulgated thereunder by the Division, as described above.

WHEREFORE, the Division prays:

(a) that the Court deny Debtor's motion to the extent it seeks to preclude the satisfaction of the Wholesalers' liens as a precondition to transfer of the Debtor's liquor licenses; and

(b) that the Court award such other and further relief as it deems just and proper.

Respectfully submitted,

PATRICIA MADRID
Attorney General of New Mexico

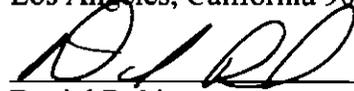
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CERTIFICATE OF SERVICE

The undersigned hereby affirms that he served a copy of the forgoing *Special Appearance and Objection* on the following counsel of record by first-class U.S. mail, postage prepaid, this 22nd day of August, 2001:

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