

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

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| IN RE: WHOLESALE GROCERY PRODUCTS ANTITRUST LITIGATION | Civil Action No. 09-md-02090 ADM/TNL MDL No. 2090 |
| THIS DOCUMENT RELATES TO: ALL ACTIONS | |

**ORDER PRELIMINARILY APPROVING PROPOSED CLASS SETTLEMENT
AGREEMENT BETWEEN D&G, INC. ON BEHALF OF THE CHAMPAIGN DC
NON-ARBITRATION CLASS AND SUPERVALU INC.**

THIS CAUSE came before the Court on the Champaign DC Non-Arbitration Class’s Motion for Preliminary Approval of Settlement [Docket No. 819]. Plaintiffs have entered into a Settlement Agreement [Docket No. 823, Ex. 1] with Defendant Supervalu, Inc. (“Supervalu”). The Court, having reviewed the Motion, its accompanying memorandum and the exhibits thereto, the Settlement Agreement, and the file, hereby:

ORDERS AND ADJUDGES:

Preliminary Approval of Settlement Agreement

1. This Court has jurisdiction over this action and each of the parties to the Settlement Agreement. Upon review of the record, the Court finds that the proposed Settlement Agreement, which was arrived at by arm’s-length negotiations by highly experienced counsel, falls within the range of possible approval and is hereby preliminarily approved, subject to further consideration at the Court’s Fairness Hearing.

The Court preliminarily finds that the Settlement encompassed by the Settlement Agreement is preliminarily determined to be fair, reasonable, adequate, and in the best interests of the Class, raises no obvious reasons to doubt its fairness, and raises a reasonable basis for presuming that the Settlement and its terms satisfy the requirements of Federal Rules of Civil Procedure 23(c)(2) and 23(e) and due process so that Notice of the Settlement should be given.

Class Certification

2. This Court, by Order of September 7, 2016, previously certified the Champaign DC Non-Arbitration Class as:

The Champaign DC Non-Arbitration Class: All customers that paid ABS fees on wholesale grocery products in all four Supervalu ABS product categories (grocery, dairy, frozen, and general merchandise/health and beauty care) purchased directly from Supervalu's Champaign, Illinois DC from December 31, 2004 through September 13, 2008 (the "Class Period"), are located in the relevant geographic market, and did not have an arbitration agreement with Supervalu during the Class Period. This class brings claims against both Defendants.

Excluded from [the Class] are: (a) the Court and its officers, employees, and relatives; (b) Defendants and their parents, subsidiaries, affiliates, shareholders, employees, and co-conspirators; (c) government entities; (d) any customer of either Defendant who, prior to C&S and Supervalu's September 6, 2003 AEA, entered into a contract with either Defendant that established the prices (including upcharges) the customer would pay for wholesale grocery products and related services throughout the entire Class Period and who did not amend or renegotiate the prices set in such contract during the Class Period; and (e) Tops Friendly Markets, LLC and The Great Atlantic & Pacific Tea Company, Inc. (also known as A&P).

[Docket No. 651]. D&G, Inc. d/b/a Gary's Foods has been appointed as the representative of the Champaign DC Non-Arbitration Class. The Court appointed the law firms of Lockridge Grindal Nauen P.L.L.P., Boies, Schiller & Flexner LLP, and

Kotchen & Low LLP as counsel for the Class. Any Person who previously validly and timely excluded itself from the Class under the Notice Plan currently in place is no longer a member of the Class.

Class Notice and Fairness Hearing

3. Co-Lead Counsel for Plaintiffs submitted for the Court's approval a Proposed Notice to the Class, including a proposed schedule for Class Members to object to the proposed Settlement, a proposed Plan of Notice that includes the proposed manner of Notice, a proposed Administrator for Notice and Claims and a proposed date for the Court's Fairness Hearing to determine whether the Settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court. The Court hereby orders and adjudges:

a. The Proposed Long Form Settlement Notice [Docket No. 823, Ex. 2] is approved. The Notice conforms with the Notice Plan previously ordered by the Court, which this Court has already determined meets the requirements of Rule 23 of the Federal Rules of Civil Procedure and of due process, and constitutes the best notice practicable under the circumstances. *See* [Docket No. 727]. Co-Lead Counsel shall cause notice delivered through U.S. Mail, together with access to a case-specific website and toll-free telephone number, to be disseminated to the Settlement Class.

b. The Court appoints JND Legal Administration LLC as the Settlement Administrator in this Action.

- c. The Court sets the following schedule for:
- i. disseminating the notice to the Settlement Class as set forth in this motion;
 - ii. filing the Motion for Final Approval;
 - iii. filing objections to the Settlement;
 - iv. responding to any Class Member objections to the Settlement;
 - and
 - v. the Final Approval or Fairness Hearing:

| Event | Date |
|--------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Deadline to disseminate class notice | <p>Mail: Fourteen (14) days from the date of entry of the Preliminary Approval Order</p> <p>Website/Toll-Free Line: Fourteen (14) days from the date of the entry of the Preliminary Approval Order, update the content of the website and toll-free phone script to include notice of the Proposed Settlement</p> |
| Last day for objections to Settlement | Fourteen (14) days prior to Final Approval (Final Fairness) Hearing. |
| Last day to file Motion for Final Approval | Seven (7) days prior to Final Approval (Final Fairness) Hearing. |
| Fairness Approval (Final Fairness) Hearing | Wednesday, November 15, 2017 |

- d. The Court will hold a Final Fairness Hearing on **Wednesday, November 15, 2017, at 10:00 a.m.** at the United States District Court for the District of Minnesota, United States Courthouse,

Courtroom 13W, 300 South Fourth Street, Minneapolis, Minnesota
55415.

Procedure for Objections

4. Attorneys representing Class Members who wish to object to this Agreement must submit an appropriate and timely written statement of representation and the grounds for objection as provided for above.

5. Any Person who has not requested exclusion from the Class and who objects to the settlement may appear in person or through counsel, at that Person's own expense, at the Fairness Hearing to present any evidence or argument that the Court deems proper and relevant. However, no such Person shall be heard, and no papers, briefs, pleadings, or other Documents submitted by any such Person shall be received and considered by the Court, unless such Person properly submits a written objection that includes: (a) a notice of intention to appear; (b) proof of membership in the Class; and (c) the specific grounds for the objection and any reasons why such Person desires to appear and be heard, as well as all Documents or writings that such Person desires the Court to consider. Such a written objection must be both filed with the Court no later than fourteen (14) calendar days prior to the date set for the Fairness Hearing and mailed to Co-Lead Counsel and Supervalu's Counsel at the addresses provided in the Class Notice and postmarked (or mailed by overnight delivery) no later than fourteen (14) calendar days prior to the date of the Fairness Hearing. Any Person who fails to object in the manner prescribed herein shall be deemed to have waived its objections and will

forever be barred from making any such objections in the Action or in any other action or proceeding, unless otherwise excused for good cause shown as determined by the Court.

Other Provisions

6. The Settlement Fund shall be applied to pay in full and in the following order:

- a. any necessary taxes and tax expenses;
- b. all costs and expenses associated with disseminating notice to the Settlement Class;
- c. all costs and expenses associated with the administration of the Settlement, including but not limited to, processing claims and fees of the Class Action Settlement Administrator.
- d. any Attorneys' Fees and Expenses award made by the Court to Class Counsel pursuant to Section II(E)(5) of this Class Settlement Agreement;
- e. any reimbursement or service award made by the Court to Plaintiff D&G, Inc. under Section II(E)(5)(d) of this Class Settlement Agreement; and
- f. payments distributed to the Settlement Class as approved by the Court.

7. Terms used in this Order that are defined in the Settlement Agreement are, unless otherwise defined herein, used in this Order as defined in the Settlement Agreement.

8. In aid of the Court's jurisdiction to implement and enforce the proposed Settlement, as of the date of entry of this Order, all claims asserted by the Class against

Supervalu are stayed pending further Order of the Court, and Plaintiffs and all members of the Class shall be preliminarily enjoined from commencing or prosecuting any action or other proceeding against Supervalu asserting any of the Claims released in Section II(B) of the Settlement Agreement pending final approval of the Settlement Agreement or until such time as this Court lifts such injunction by subsequent order.

9. If the Settlement Agreement is terminated in accordance with its provisions, or is not approved by the Court or any appellate court, then the Settlement Agreement and all proceedings had in connection therewith shall be vacated, and shall be null and void, except insofar as expressly provided to the contrary in the Settlement Agreement, and without prejudice to the *status quo ante* rights of Plaintiffs, Supervalu, and the members of the Class.

10. If the Settlement Agreement is terminated or is ultimately not approved, the Court will modify any existing scheduling order to ensure that the Champaign DC Non-Arbitration Class and Supervalu will have sufficient time to prepare for the resumption of litigation, including, but not limited to, dispositive motion practice, and preparation for trial.

The Motion for Preliminary Approval of Settlement [Docket No. 819] is **GRANTED.**

BY THE COURT:

s/Ann D. Montgomery
ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: August 10, 2017.