

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

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

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

This Class Settlement Agreement (“Settlement Agreement” or “Agreement”) is made and entered into as of this 24th day of July, 2017, by and between the Settling Parties: Supervalu Inc. (“Supervalu”) and Plaintiff D&G, Inc., on behalf of the Champaign DC Non-Arbitration Class (collectively the “Settlement Class”), as defined herein and in the Court’s Class Certification Order in *In re Wholesale Grocery Products Antitrust Litigation*, 09-md-2090 (D. Minn. Sept. 7, 2016), ECF No. 651, subject to the approval of the Court (the “Settlement”). The Settling Parties intend for the Class Settlement Agreement to fully, finally, and forever resolve, discharge, and settle all released rights and claims, subject to the terms and conditions set forth in this Agreement.

**RECITALS**

A. On December 31, 2008, Plaintiff D&G, Inc. filed a putative class action in the U.S. District Court for the Western District of Wisconsin against Supervalu and C&S Wholesale Grocers, Inc. (“C&S”). D&G is prosecuting the above-captioned Action on its own behalf and on behalf of the Settlement Class.

B. D&G alleged, among other things, that Supervalu and C&S entered into a contract, combination or conspiracy in restraint of trade, the purpose and effect of which was to allocate customers and territories for full-line grocery wholesale goods and services, to suppress competition and to allow Supervalu to charge supra-competitive prices in the Midwest during the Class Period, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

C. In 2009, the D&G case was transferred to the District of Minnesota and subsequently centralized with several other actions for coordinated pretrial proceedings by the Judicial Panel on Multidistrict Litigation. On February 9, 2011, Plaintiffs filed a Second Amended Consolidated Class Action Complaint, which sets forth the claims in this litigation.

D. On September 7, 2016, the Court issued a Class Certification Order certifying, among other classes, the Champaign Non-Arbitration Class, comprising certain purchasers from Supervalu's Champaign, Illinois Distribution Center (as defined in the Order), which are asserting claims for damages against Supervalu and C&S. The Champaign Non-Arbitration Class is the only class that is asserting claims against Supervalu in this litigation. The four other certified classes are asserting claims solely against C&S.

E. Co-Lead Counsel have conducted an investigation into the facts and law regarding the Action, which has been pending in one form or another since December 2008, and the possible legal and factual defenses thereto, and have concluded that a settlement with Supervalu according to the terms set forth below is fair, reasonable, and adequate, and beneficial to, and in the best interests of, the Class, given the uncertainties, risks, and costs of continued litigation.

F. Supervalu has denied, and continues to deny, that it entered into any unlawful agreement with C&S. Supervalu has maintained throughout this litigation that the Asset Exchange Agreement at issue in this litigation did not contain any unlawful

agreement to allocate customers or territories, and that the Asset Exchange Agreement helped Supervalu improve its distribution network efficiency and, therefore, its ability to continue to provide wholesale goods and services at competitive prices, in turn helping its customers to remain competitive with self-distributing chains and other formats.

G. Despite its belief that it is not liable for, and has strong defenses to, the Claims asserted by Plaintiff, Supervalu desires to settle the Action on the terms and conditions embodied in this Agreement for several reasons, including to avoid the further expense, inconvenience, disruption, and burden of this litigation and any other present or future litigation arising out of the facts that gave rise to this litigation, to avoid the risks inherent in uncertain complex litigation and trial regardless of legal merit, and thereby to put to rest this controversy.

H. Arm's-length settlement negotiations have taken place between Co-Lead Counsel and Supervalu's Counsel, principally with the assistance of a neutral third-party mediator, Professor Eric Green, and this Agreement has been reached as a result of those negotiations.

I. The Parties to this Agreement desire to fully and finally settle all actual and potential Claims arising from or in connection with the Action, the factual allegations underlying the Action, and each of them, and avoid the costs and risks of protracted litigation and trial.

J. This Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, or regulation or of any liability or wrongdoing by Supervalu, of the truth of any of Plaintiff's Claims or allegations, or of the validity of any defenses that could be or have been asserted by Supervalu.

K. This Agreement, any negotiations, proceedings, or documents related to this Agreement, its implementation, or its judicial approval cannot be asserted or used by any person to support a contention that liability does or does not exist, or for any other reason,

in the above-captioned action or in any other proceedings, *provided, however*, that Settlement Class Members, Class Counsel, Supervalu, other related persons, and any person or entity that is a beneficiary of a release set forth herein, may reference and file this Agreement, and any resulting Order or Judgment, with the Court, or any other tribunal or proceeding, in connection with the implementation or enforcement of its terms (including but not limited to the releases granted therein or any dispute related thereto).

**THEREFORE**, in consideration of the mutual promises and covenants contained herein, **IT IS HEREBY AGREED** by and among the Settling Parties, that this Action and all Released Claims are finally and fully settled and compromised and that this Action shall be dismissed in its entirety with prejudice as to the Released Persons, subject to approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, upon and subject to the following terms and conditions:

**I. DEFINITIONS**

**A. Class Definition**

“Class” and “Settlement Class” mean the class certified by the Court 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).

*In re Wholesale Grocery Products Antitrust Litigation*, 09-md-2090 (D. Minn.), ECF No. 651 at 32-33. D&G, Inc. d/b/a Gary's Foods has been appointed as the representative of the Champaign DC Non-Arbitration Class. *Id.* at 33 (approved by the Court). Furthermore, any Person who as of the date of Final Approval has validly and timely excluded itself from the Class under the Notice Plan currently in place is no longer a member of the Class.

**B. General Definitions**

1. "Action" means the multidistrict litigation captioned *In re Wholesale Grocery Products Antitrust Litigation*, 09-md-2090 (D. Minn.) ("*Wholesale Grocery*"), and all of its member cases, including *D&G, Inc. v. Supervalu, Inc., et al.*, 09-cv-983 (D. Minn.), currently pending in the United States District Court for the District of Minnesota.

2. "Agreement" or "Settlement" or "Settlement Agreement" means this Class Settlement Agreement and its exhibits, attached hereto or incorporated herein, including any subsequent amendments agreed to by the Parties and any exhibits to such amendments.

3. "Claims" means any and all actual or potential causes of action, claims, contentions, allegations, assertions of wrongdoing, damages, losses, or demands for recoveries, remedies, or fees complained of, or relating or referred to, arising from the conduct alleged in the Action.

4. "Class Member" means each member of the Class that does not timely and properly exclude itself from the Class.

5. "Class Notice" means the notice to the Class that is approved by the Court, in accordance with Section II(E)(2).

6. "Class Period" means the period from and including December 31, 2004 through September 13, 2008.

7. “Co-Lead Counsel” means, collectively, the law firms of Boies Schiller Flexner LLP (principal co-lead counsel); Lockridge Grindal Nauen P.L.L.P.; and Kotchen & Low LLP.

8. “Court” or “District Court” means the United States District Court for the District of Minnesota and the Honorable Ann D. Montgomery or her successor or any other Court in which an Action is proceeding.

9. “Date of Final Approval” means the date on which the Court enters Judgment in this Action, granting final approval to this Settlement Agreement, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, as provided in Section II(E)(3).

10. “Date of Preliminary Approval” means the date on which the Court enters an order granting preliminary approval to this Settlement Agreement, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, as provided in Section II(E)(1).

11. “DC” means distribution center.

12. “Documents” means: (a) all papers, electronically stored information (“ESI”) or other materials within the scope of Rule 34(a)(1)(a) of the Federal Rules of Civil Procedure; and (b) any copies or reproductions of the foregoing, including microfilm copies or computer images.

13. “Effective Date” means the date on which this Settlement Agreement is entered into and executed by all Parties.

14. “Final Approval Date” means:

- a. if no appeal is taken from the Order and Final Judgment, thirty-five (35) days after the Court enters the Order and Final Judgment of this Class Settlement Agreement; or
- b. if an appeal is taken from the Order and Final Judgment, the date on which all appellate rights (including petitions for rehearing or re-argument, petitions for rehearing en banc, petitions for certiorari or any other form of review, and proceedings in the

United States Supreme Court or any other appellate court) have expired, been exhausted, or been finally disposed of in a manner that affirms the Order and Final Judgment.

15. “Escrow Account” means the account with the Escrow Agent that holds the Settlement Fund.

16. “Escrow Agent” means the bank into which the Settlement Fund shall be deposited and maintained as set forth in Section II(C) of this Agreement.

17. “Fairness Hearing” means a hearing on the settlement proposed in this Settlement Agreement held by the Court to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court.

18. “Net Settlement Fund” means the Settlement Fund, plus accrued interest, less any award of attorneys’ fees or reimbursement of expenses and less applicable taxes, tax preparation expenses, and costs of notice and administration, that may be awarded or approved by the Court.

19. “Notice Plan” means the Plan of Notice approved by the Court in its Memorandum Opinion and Order, dated March 1, 2017 [ECF No. 727], and subsequently implemented by the notice administrator designated in the Notice Plan.

20. “Order and Final Judgment” means the order and final judgment of the Court approving the Settlement Agreement, as described in Sections II(E)(3), dismissing the Action with prejudice as to Supervalu, releasing claims against Supervalu, and otherwise directing as the Court or the Parties may deem necessary and appropriate to effectuate the terms and conditions of this Agreement.

21. “Other Defendant” means C&S Wholesale Grocers, Inc.

22. “Parties” or “Settling Parties” means Supervalu and the Champaign DC Non-Arbitration Class, as represented by Plaintiff D&G, Inc.

23. “Person(s)” means an individual or an entity.

24. “Plaintiff” means D&G, Inc.

25. “Released Claims” means any and all existing or potential causes of action, claims, damages, controversies, losses, injuries, expenses, demands, debts, liabilities, obligations, liens, attorneys’ fees, costs, judgments, remedies, and rights of action, of every nature and description, whether known or unknown (including unknown claims), suspected or unsuspected, asserted or unasserted, matured or unmatured, liquidated or unliquidated, absolute or contingent, accrued or unaccrued, whether or not concealed or hidden, direct or indirect, at law, equity, or otherwise, including monetary, injunctive, or declaratory relief, arising from, in any way relating to, the conduct alleged in the litigation or the Second Consolidated Amended Complaint. This includes, *inter alia*, and for the avoidance of doubt, all such claims that relate in any way to Defendants’ September 6, 2003 Asset Exchange Agreement or the pricing of wholesale grocery products and services purchased during the Class Period. Notwithstanding the above, “Released Claims” do not include (a) claims asserted against the Other Defendant; or (b) any claims based on product defect or breach of warranty or breach of contract that are unrelated to the conduct alleged in the litigation or the Second Consolidated Amended Complaint.

26. “Released Persons” means and includes Supervalu and each of its affiliated entities, subsidiaries, predecessors, successors, and assigns, including the present and former directors, officers, employees, shareholders, agents, insurers, partners, privies, representatives, attorneys, accountants, and all persons acting by, through, under the direction of, or in concert with them. Notwithstanding the foregoing, “Released Persons” does not include the Other Defendant, either explicitly or as a 3rd party beneficiary.

27. “Releasing Parties” means jointly and severally, individually and collectively, Plaintiff, the Class, and each Class Member, on behalf of themselves and any person or entity claiming by or through them as, including without limitation, their respective predecessors; successors; assigns; and any and all past, present, and future parents, owners, subsidiaries, divisions, departments, affiliates, heirs, executors, devisees,

administrators, officers, directors, stockholders, partners, agents, attorneys, advisors, auditors, accountants, contractors, servants, employees, representatives, insurers, and assignees.

28. “Settlement Amount” means the cash payment of \$8,750,000 described in Section II(A)(1)(a), below.

29. “Settlement Fund” means the funds deposited, plus accrued interest, in the separate Escrow Account for the settlement contemplated by this Settlement Agreement established in accordance Sections II(A) and II(C), below.

30. “Supervalu” means Supervalu Inc., a Delaware corporation with its principal place of business in Eden Prairie, Minnesota, and its predecessors, subsidiaries, shareholders, affiliates, officers, directors, partners, employees, agents, servants, assignees, successors, and/or other transferees or representatives.

31. “Supervalu’s Counsel” means the law firm of Robins Kaplan LLP.

## **II. SETTLEMENT**

### **A. Performance By Supervalu**

#### **1. Settlement Payments**

a. Supervalu shall pay \$8.75 million (\$8,750,000.00) in United States dollars, all in cash, as the settlement amount in settlement of the Action, inclusive of class recovery amounts, fees (attorneys’ fees and any other fees), and costs. This Settlement Amount shall be paid by Supervalu into the Escrow Account described herein within 30 days of the Date of Preliminary Approval. The Settling Parties may extend this deadline by mutual agreement.

b. Supervalu’s payment to the Escrow Agent described herein shall be by wire transfer pursuant to instructions from the Escrow Agent or Co-Lead Counsel.

c. The payment described in Section II(A)(1)(a) shall constitute the total Settlement Amount, and the obligations described in Section II(A)(2) shall continue so long as this Settlement Agreement remains in effect.

d. Each Class Member shall look solely to the Settlement Amount for settlement and satisfaction, as provided herein, of all claims released by the Releasing Parties pursuant to this Agreement.

e. In no event shall Supervalu's total contribution to the Settlement Fund exceed \$8.75 million (\$8,750,000.00).

f. In the event the Final Approval Date does not occur, all amounts paid into the Settlement Fund, less amounts incurred for taxes, claims administration and notice as provided in Section II(C)(2), shall be returned to Supervalu.

**2. Other Terms:** In the event that a trial is scheduled in this Action, Supervalu shall provide, approximately 14 days before the deadline for Plaintiffs' exhibit list, a certificate that complies with Federal Rules of Evidence 902(11) and (12) with respect to documents produced by Supervalu that Plaintiffs seek to include on their exhibit list, that its business records, as defined by Federal Rule of Evidence 803(6), are authentic Supervalu business records, and that all documents created by Supervalu and produced in the Action that Plaintiff seeks to include on its exhibit list are authentic under Federal Rule of Evidence 901. Following the deadlines the Court provides for pretrial submissions, approximately 28 days in advance of the deadline for Plaintiff's exhibit list Plaintiff will provide Supervalu a list of documents that it requests Supervalu to certify. Supervalu will determine what is an authentic Supervalu document and what is a business record in the first instance. Any dispute or Court determination concerning this paragraph, the certificate provided, or what constitutes a business record or an authentic document shall not constitute a breach of this agreement and will be resolved by the Court in the normal course of the Action.

**B. Release, Discharge, and Covenant Not to Sue.**

**1. Release and Discharge.** Upon the occurrence of the Date of Final Approval, and in consideration of the valuable consideration set forth in this Agreement, the Releasing Parties, and each of their successors, assigns, heirs, and personal representatives, shall be deemed to, and by operation of the Order and Final Judgment shall have, hereby fully, finally, and forever released, relinquished, and discharged the Released Persons of all of the Released Claims. The Released Claims shall be construed as broadly as possible to effect complete finality over this litigation involving the Asset Exchange Agreement and the alleged conduct and transactions at issue in the Released Claims.

**2. Covenant Not to Sue.** The Releasing Parties shall not, after the date hereof, seek to establish liability against any Released Person based, in whole or in part, upon any of the Released Claims or conduct at issue in the Released Claims.

**3. Difference in Facts.** Plaintiff fully understands that the facts upon which this Class Settlement Agreement is executed may hereafter be other than or different from the facts now believed by Plaintiff and Class Counsel to be true and nevertheless agree that this Class Settlement Agreement shall remain effective notwithstanding any such difference in facts.

**4. Full and Complete Defense.** To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding that may be instituted, prosecuted, or attempted in breach of or contrary to this Agreement.

**C. Settlement Fund Administration.** The Settlement Fund shall be administered pursuant to the provisions of this Settlement Agreement and subject to the Court's continuing supervision and control, until the funds in the Settlement Fund are fully distributed, as follows:

**1.** The Settlement Fund shall be established within an Escrow Account and administered by an Escrow Agent at a bank agreed to by Co-Lead Counsel and

administered by an Escrow Agent designated by Co-Lead Counsel. Co-Lead Counsel and Supervalu's Counsel agree to cooperate in good faith to prepare an appropriate escrow agreement in conformance with this Agreement.

2. Neither the Class, nor Co-Lead Counsel, shall have any responsibility, financial obligation, or liability for any fees, costs, or expenses related to providing notice to the Class or obtaining approval of the settlement, or administering the Settlement. Co-Lead Counsel may, without prior order of the Court, withdraw from the Settlement Fund up to \$25,000 to pay the costs for notice and for preliminary and final approval of this Settlement. In the event that Court-ordered notice and administration costs exceed \$25,000, Plaintiffs and Co-Lead Counsel may apply to the Court to pay such additional notice and administration costs from the Settlement Fund. Such costs of notice and administration shall be non-refundable in the event that, for any reason, the Settlement is not finally approved.

3. No other funds shall be paid or disbursements made from the Settlement Fund without an order of the Court.

4. The Escrow Agent shall, to the extent practicable, invest the funds deposited in the Settlement Fund in discrete and identifiable instruments backed by the full faith and credit of the United States Government, or fully insured by the United States Government or any agency thereof, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. Any cash portion of the Settlement Fund not invested in instruments of the type described in the first sentence of this Section II(C)(4) shall be maintained by the Escrow Agent, and not commingled with any other funds or monies, in a federally insured bank account. Subsequent to payment into the Settlement Fund pursuant to Section II(A)(1), neither Supervalu nor Supervalu's Counsel shall bear any responsibility or risk related to the Settlement Fund or the Net Settlement Fund.

5. The Parties agree that the Settlement Fund and the Net Settlement Fund are each intended to be a “Qualified Settlement Fund” within the meaning of Treasury Regulation § 1.468B-1 and that the Escrow Agent, as administrator of the Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing tax returns for the Escrow Account and paying from the Escrow Account any Taxes, as defined below, owed with respect to the Escrow Account. Neither Supervalu nor Supervalu’s Counsel shall have any liability or responsibility of any sort for filing any tax returns or paying any Taxes with respect to the Escrow Account.

6. All: (i) taxes on the income of the Settlement Fund (“Taxes”), and (ii) expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants) shall timely be paid by the Escrow Agent out of the Settlement Fund. The Class Members shall be solely responsible for paying any and all federal, state, and local income taxes due on any distribution made to them pursuant to the Settlement provided herein.

7. After the Date of Final Approval, the Net Settlement Fund shall be disbursed in accordance with a plan of distribution approved by the Court. The Class Members shall look solely to the Net Settlement Fund for settlement and satisfaction of any and all Released Claims from Released Persons.

**D. No Reversion**

Except as provided in Section II(E)(7)(b), Supervalu shall have no rights to reversion in the Settlement Fund or the Net Settlement Fund.

**E. Approval of Settlement Agreement and Dismissal of Claims.**

Plaintiffs and Supervalu shall use their best efforts to effectuate this Settlement Agreement, including cooperating in promptly seeking the Court's approval of the Settlement Agreement, the giving of appropriate class notice under Federal Rules of Civil Procedure 23(c) and (e), and the prompt, complete, and final dismissal with prejudice

of the Action as to the Supervalu only, as follows:

**1. Preliminary Approval.** Plaintiffs shall submit to the District Court a motion, which Supervalu shall not oppose, requesting entry of an order, substantially in the form of Exhibit A, attached hereto, preliminarily approving the settlement (“Preliminary Order”). The Preliminary Approval Order shall provide that, *inter alia*:

- a. the settlement proposed in the Settlement Agreement has been negotiated at arm’s length and is preliminarily determined to be fair, reasonable, adequate, and in the best interests of the Class;
- b. the Class Notice will be given to Class Members at a time and in a manner consistent with the terms of this Agreement, which meets the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process, and constitutes the best notice practicable under the circumstances for settlement purposes;
- c. a hearing on the settlement proposed in this Settlement Agreement shall be held by the Court to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court (the “Fairness Hearing”);
- d. Class Members who wish to object to this Agreement must submit an appropriate and timely written statement of the grounds for objection;
- e. Class Members who wish to appear to object to this Agreement may do so at the Final Approval Hearing pursuant to directions provided by the Court;
- f. 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; and
- g. The claims by Plaintiff and the Champaign DC Non-Arbitration Class against Supervalu are stayed for all purposes except those necessary to effectuate this Agreement.

**2. Class Notice.** The Class Notice shall provide for a right to object to the proposed Settlement. Individual notice of the Settlement shall be mailed or emailed to

the Class in conformance with the Notice Plan previously authorized by the Court or as otherwise ordered by the Court. *See* ECF No.727. Within ten (10) days of filing of this Settlement Agreement in court, Supervalu will mail to the appropriate state officials and the appropriate federal official the notice required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715(b) (“CAFA”).

**3. Final Approval.** If this Settlement Agreement is preliminarily approved by the Court, the Class shall seek entry of an Order and Final Judgment, which Supervalu shall not oppose, and which, *inter alia*:

- a. finally approves this Settlement Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms and conditions;
- b. determines that the Class Notice constituted, under the circumstances, the most effective and practicable notice of this Settlement Agreement and the Fairness Hearing, and constituted due and sufficient notice for all other purposes to all Persons entitled to receive notice;
- c. orders that all claims made against Supervalu in *In re Wholesale Grocery Products Antitrust Litigation*, 09-md-2090 (D. Minn.) by Plaintiff and all members of the Settlement Class be dismissed with prejudice and, except as provided for in this Settlement Agreement, without further costs or fees;
- d. incorporates the Release set forth in this Agreement and makes the Release effective as of the date of the Final Order and Final Judgment;
- e. reserves to the United States District Court for the District of Minnesota exclusive jurisdiction over the settlement and this Settlement Agreement, including the administration and consummation of this Agreement;
- f. determines under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directs that the judgment of dismissal as to the Released Persons shall be final and entered forthwith; and

- g.** orders that Settlement funds may be disbursed following the Final Approval Date, as provided in the Final Approval Order or other order of the Court.

**4. Cost of Class Notice.** The costs of providing Class Notice to Class Members shall be paid by the Escrow Agent from the Settlement Fund pursuant to Section II(C)(2). With the object of reducing the costs of notice, Co-Lead Counsel will use their reasonable best efforts to coordinate the provision of Class Notice with the previous provision of notice in this action.

**5. Class Counsel Fees and Expenses; No Other Costs.**

**a.** Except as otherwise expressly provided in this Settlement Agreement, Supervalu shall have no responsibility for any other costs, including Co-Lead Counsel's attorneys' fees, costs, and expenses or the fees, costs, or expenses of any Plaintiff's or Class Member's respective attorneys, experts, advisors, or representatives, provided, however, that with respect to the Action, including this Settlement Agreement, Supervalu shall bear its own costs and attorneys' fees.

**b.** Co-Lead Counsel may seek, after proper notice to the Class and opportunity to object, a court order awarding attorneys' fees and expenses from the Settlement Fund. Co-Lead Counsel intend to seek reasonable attorneys' fees of no more than 33% of the Settlement Amount, in addition to reimbursement of reasonable expenses. Supervalu agrees to take no position on Co-Lead Counsel's petition for attorneys' fees or reimbursement of expenses, or for any petition for service awards or reimbursement of expenses for the Class Representative, or for any other fees or expenses relating to the prosecution of this Action.

**c.** The procedure for and the allowance or disallowance by the Court of any applications by Co-Lead Counsel for attorneys' fees and expenses, or the expenses of Plaintiffs, to be paid out of the Settlement Fund, are not part of or a condition to the Settlement set forth herein, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set

forth in this Agreement, and any order or proceeding relating to an application for attorneys' fees or expenses shall not operate to terminate or cancel this Agreement or the releases set forth herein, or affect or delay the finality of the judgment approving this settlement.

d. Class Counsel may seek from the Settlement Fund reimbursement of D&G's costs and a service award for the work it has performed on behalf of the class, and to compensate for the time and expense it has incurred in bringing this Action.

e. Within 15 days after this Court's order awarding attorneys' fees, expenses, class representative service awards or expenses, the Escrow Agent shall pay the approved attorneys' fees, costs, and service award via wire transfer from the Settlement Fund to the Grocers Litigation Fund. In the event the settlement is reversed on appeal, or the amount of attorneys' fees, costs, or service award is reduced on appeal, Class Counsel shall, within 30 days of such appellate order, cause the difference in the amount paid and the amount awarded on appeal to be returned to the Settlement Fund.

**6. When Settlement Becomes Final.** The settlement contemplated by this Settlement Agreement shall become final on the Final Approval Date.

**7. Termination and Rescission.**

a. **Rejection or Alteration of Settlement Terms.** If the Court declines to grant either preliminary or final approval to this Settlement Agreement or any material part hereof (as set forth in Sections II(E)(1) or (E)(3) above, respectively), or if the Court approves this Settlement Agreement in a materially modified form, or if, after the Court's approval, such approval is materially modified or set aside on appeal, or if the Court does not enter the Final Order and Judgment, or if the Court enters the Final Order and Judgment and appellate review is sought and, on such review, such Final Order and Judgment is not affirmed (collectively "Triggering Events"); then Supervalu and Plaintiff shall each, in their respective sole discretion, have the option to rescind this Settlement

Agreement in its entirety by providing written notice of their election to do so (“Termination Notice”) to each other within thirty (30) calendar days of such Triggering Event. For purposes of this Section II(E)(7), a material modification includes, but is not limited to, the scope of the Released Claims and the settlement payment pursuant to Section II(A).

**b. Termination of Settlement.** In the event this Settlement Agreement is rescinded or terminated pursuant to this Section II(E)(7), then: (i) within fifteen (15) business days, the Settlement Fund (including accrued interest), less any necessary taxes and tax-related expenses, and less expenses and costs that have been disbursed pursuant to Section II(C)(2), shall be refunded by the Escrow Agent to Supervalu pursuant to written instructions from Supervalu’s Counsel to Co-Lead Counsel; (ii) the Parties shall be restored to their respective positions in the Action as of the date hereof, and without waiver of any positions asserted in the Action as the date hereof, which shall then resume proceedings in the District Court, that Court having retained jurisdiction over the Settlement and related matters and, except as otherwise expressly provided in this Settlement Agreement, the Parties shall proceed in all respects as if this Settlement Agreement had not been executed. In such event, the terms and provisions of this Class Settlement Agreement shall have no further force and effect and shall not be used in the Action for any other proceeding or for any purpose, and the Parties will jointly make an application requesting that any Judgment entered by the Court in accordance with the terms of this Class Settlement Agreement shall be treated as vacated, nunc pro tunc.

**8. No Admission and Denial of Liability.**

**a.** Supervalu denies all liability in this Action, and has denied and continues to deny that its conduct and Asset Exchange Agreement with C&S was anticompetitive or violated any statute, law, regulation, rule, standard of conduct, or other legal requirement, including but not limited to Plaintiff’s allegation that Supervalu and C&S unlawfully agreed to allocate customers and territories in violation of the Sherman

Antitrust Act. Supervalu is entering into this Class Settlement Agreement solely because it will eliminate the uncertainty, distraction, burden, and expense of further litigation. The provisions contained in this Class Settlement Agreement and the manner or amount of relief provided to Settlement Class Members herein shall not be deemed a presumption, concession, or admission by Supervalu, which denies the same, of any fault, liability, or wrongdoing as to any facts or claims that have been or might be alleged or asserted in the Action, or in any other action or proceeding that has been, will be, or could be brought, and shall not be interpreted, construed, deemed, invoked, offered, or received into evidence or otherwise used by any person in any action or proceeding, whether civil, criminal, or administrative, for any purpose other than as provided expressly herein.

**b.** This Settlement Agreement, and any of its terms, and any agreement or order relating thereto, shall not be deemed to be, or offered by any of the Settling Parties to be received in any civil, criminal, administrative, or other proceeding, or utilized in any manner whatsoever as, a presumption, a concession, or an admission of any fault, wrongdoing, or liability whatsoever on the part of any of Supervalu, which denies the same, or other Released Persons; provided, however, that nothing contained in this Section II(E)(8) shall prevent this Settlement Agreement (or any agreement or order relating thereto) from being used, offered, or received in evidence in any proceeding to approve, enforce, or otherwise effectuate the Settlement (or any agreement or order relating thereto) or the Order and Final Judgment, or in which the reasonableness, fairness, or good faith of any Party participating in the Settlement (or any agreement or order relating thereto) is in issue, or to enforce or effectuate provisions of this Settlement Agreement or the Order and Final Judgment. This Settlement Agreement may, however, be filed and used in other proceedings, where relevant, to demonstrate the fact of its existence and of this Settlement, including but not limited to Supervalu filing the Settlement Agreement and/or the Order and Final Judgment in any other action that may be brought against it in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release,

good faith settlement, waiver, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

### **III. MISCELLANEOUS**

**A. Entire Agreement.** This Settlement Agreement shall constitute the entire agreement between the Class, Co-Lead Counsel, and Supervalu pertaining to the Settlement of the Action against Supervalu and supersedes any and all prior and contemporaneous undertakings of the Class and Supervalu in connection therewith. All terms of the Settlement Agreement are contractual and not mere recitals.

**B. Inurement.** The terms of the Settlement Agreement are and shall be binding upon, to the fullest extent possible, each of the Releasing Parties and the Released Persons, and upon all other Persons claiming any interest in the subject matter hereto through any of the Parties, Releasing Parties, or Released Persons, including any Class Members.

**C. Modification.** This Settlement Agreement may be modified or amended only by a writing executed by the Class and Supervalu, subject (if after preliminary or final approval) to approval by the Court. Amendments and modifications may be made without notice to the Class unless notice is required by law or by the Court.

**D. Drafted Mutually.** For the purpose of construing or interpreting this Settlement Agreement, the Class and Supervalu shall be deemed to have drafted it equally, and it shall not be construed strictly for or against any party.

**E. Interpretation.** This Agreement shall be construed and interpreted to effectuate the intent of the parties which is to provide, through this Agreement, for a complete resolution of the Released Claims with respect to Supervalu. Nothing expressed or implied in this Agreement is intended to or shall be construed to confer upon or give any person or entity other than Class Members, Releasing Parties, and Released Persons any right or remedy under or by reason of this Agreement.

**F. Settlement Communications.** The Parties agree that information and documents exchanged in negotiating this Settlement Agreement were done so pursuant to

Fed. R. Evid. 408, and no such confidential information exchanged or produced by either side may be revealed for any other purpose than this Settlement or as required by law. This does not apply to publicly available information or documents.

**G. Governing Law.** All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of Minnesota without regard to its choice-of-law or conflict-of-law principles.

**H. Jurisdiction.** This Settlement Agreement is subject to the continuing and exclusive jurisdiction of the United States District Court for the District of Minnesota, for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement, including, without limitation, any suit, action, proceeding, or dispute relating to the release provisions herein. If for any reason this Settlement Agreement is rescinded, terminated or fails to become effective, then, in such event, nothing in this Settlement Agreement or with regard to any conduct of Supervalu or Supervalu's Counsel pursuant to any obligations Supervalu has pursuant to the Agreement shall constitute or are intended to be construed as any agreement to personal jurisdiction (general or specific) or subject matter jurisdiction so as to confer the jurisdiction of the District Court over Supervalu, nor shall it constitute any waiver of any defenses based on personal or subject matter jurisdiction.

**I. Counterparts.** This Settlement Agreement may be executed in counterparts by Co-Lead Counsel and Supervalu's Counsel, each of which shall be deemed an original and all of which taken together shall constitute the same Settlement Agreement. A facsimile or .pdf signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

**J. Represented by Counsel.** The Class and Supervalu acknowledge that each have been represented by counsel, and have made their own investigations of the matters covered by this Settlement Agreement to the extent they have deemed it necessary to do so and are not relying on any representation or warranty by the other party other than as set

forth herein. Therefore, the Settling Parties and their respective counsel agree that they will not seek to set aside any part of the Settlement Agreement on the grounds of mistake.

**K. Authorization.** Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement, subject to Court approval; the undersigned Co-Lead Counsel represent that they are authorized to execute this Settlement Agreement on behalf of the Class; and the undersigned Supervalu's Counsel represent that they are authorized to execute the Settlement Agreement on behalf of Supervalu.

**L. Privilege.** Nothing in this Settlement Agreement, Settlement, or the negotiations or proceedings relating to the foregoing is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, the accountants' privilege, the attorney-client privilege, the joint defense privilege, or work product immunity.

**M. Notice.** Any notice required pursuant to or in connection with this Settlement shall be in writing and shall be given by: (1) hand delivery; (2) registered or certified mail, return receipt requested, postage prepaid; or (3) UPS or similar overnight courier, addressed, in the case of notice to any Plaintiff or Class Member, to Co-Lead Counsel at their addresses set forth below, and, in the case of notice to Supervalu, to their representative at the address set forth below, or such other address as Supervalu or Co-Lead Counsel may designate, from time to time, by giving notice to all Parties in the manner described in this Section III(M).

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IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement as of the Effective Date.

Dated: July 21, 2017  
Steph Safranski

Martin R. Lueck (#115548)  
K. Craig Wildfang (#117043)  
Stephen P. Safranski (#331326)  
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***Counsel for Defendant Supervalu Inc.***

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Supervalu Inc.

Dated: \_\_\_\_\_

W. Joseph Bruckner (#147758)  
Elizabeth R. Odette (#0340698)  
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Dated: \_\_\_\_\_

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Dated: \_\_\_\_\_

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

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

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

This Class Settlement Agreement (“Settlement Agreement” or “Agreement”) is made and entered into as of this 24th day of July, 2017, by and between the Settling Parties: Supervalu Inc. (“Supervalu”) and Plaintiff D&G, Inc., on behalf of the Champaign DC Non-Arbitration Class (collectively the “Settlement Class”), as defined herein and in the Court’s Class Certification Order in *In re Wholesale Grocery Products Antitrust Litigation*, 09-md-2090 (D. Minn. Sept. 7, 2016), ECF No. 651, subject to the approval of the Court (the “Settlement”). The Settling Parties intend for the Class Settlement Agreement to fully, finally, and forever resolve, discharge, and settle all released rights and claims, subject to the terms and conditions set forth in this Agreement.

**RECITALS**

A. On December 31, 2008, Plaintiff D&G, Inc. filed a putative class action in the U.S. District Court for the Western District of Wisconsin against Supervalu and C&S Wholesale Grocers, Inc. (“C&S”). D&G is prosecuting the above-captioned Action on its own behalf and on behalf of the Settlement Class.

B. D&G alleged, among other things, that Supervalu and C&S entered into a contract, combination or conspiracy in restraint of trade, the purpose and effect of which was to allocate customers and territories for full-line grocery wholesale goods and services, to suppress competition and to allow Supervalu to charge supra-competitive prices in the Midwest during the Class Period, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

C. In 2009, the D&G case was transferred to the District of Minnesota and subsequently centralized with several other actions for coordinated pretrial proceedings by the Judicial Panel on Multidistrict Litigation. On February 9, 2011, Plaintiffs filed a Second Amended Consolidated Class Action Complaint, which sets forth the claims in this litigation.

D. On September 7, 2016, the Court issued a Class Certification Order certifying, among other classes, the Champaign Non-Arbitration Class, comprising certain purchasers from Supervalu's Champaign, Illinois Distribution Center (as defined in the Order), which are asserting claims for damages against Supervalu and C&S. The Champaign Non-Arbitration Class is the only class that is asserting claims against Supervalu in this litigation. The four other certified classes are asserting claims solely against C&S.

E. Co-Lead Counsel have conducted an investigation into the facts and law regarding the Action, which has been pending in one form or another since December 2008, and the possible legal and factual defenses thereto, and have concluded that a settlement with Supervalu according to the terms set forth below is fair, reasonable, and adequate, and beneficial to, and in the best interests of, the Class, given the uncertainties, risks, and costs of continued litigation.

F. Supervalu has denied, and continues to deny, that it entered into any unlawful agreement with C&S. Supervalu has maintained throughout this litigation that the Asset Exchange Agreement at issue in this litigation did not contain any unlawful

agreement to allocate customers or territories, and that the Asset Exchange Agreement helped Supervalu improve its distribution network efficiency and, therefore, its ability to continue to provide wholesale goods and services at competitive prices, in turn helping its customers to remain competitive with self-distributing chains and other formats.

G. Despite its belief that it is not liable for, and has strong defenses to, the Claims asserted by Plaintiff, Supervalu desires to settle the Action on the terms and conditions embodied in this Agreement for several reasons, including to avoid the further expense, inconvenience, disruption, and burden of this litigation and any other present or future litigation arising out of the facts that gave rise to this litigation, to avoid the risks inherent in uncertain complex litigation and trial regardless of legal merit, and thereby to put to rest this controversy.

H. Arm's-length settlement negotiations have taken place between Co-Lead Counsel and Supervalu's Counsel, principally with the assistance of a neutral third-party mediator, Professor Eric Green, and this Agreement has been reached as a result of those negotiations.

I. The Parties to this Agreement desire to fully and finally settle all actual and potential Claims arising from or in connection with the Action, the factual allegations underlying the Action, and each of them, and avoid the costs and risks of protracted litigation and trial.

J. This Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, or regulation or of any liability or wrongdoing by Supervalu, of the truth of any of Plaintiff's Claims or allegations, or of the validity of any defenses that could be or have been asserted by Supervalu.

K. This Agreement, any negotiations, proceedings, or documents related to this Agreement, its implementation, or its judicial approval cannot be asserted or used by any person to support a contention that liability does or does not exist, or for any other reason,

in the above-captioned action or in any other proceedings, *provided, however*, that Settlement Class Members, Class Counsel, Supervalu, other related persons, and any person or entity that is a beneficiary of a release set forth herein, may reference and file this Agreement, and any resulting Order or Judgment, with the Court, or any other tribunal or proceeding, in connection with the implementation or enforcement of its terms (including but not limited to the releases granted therein or any dispute related thereto).

**THEREFORE**, in consideration of the mutual promises and covenants contained herein, **IT IS HEREBY AGREED** by and among the Settling Parties, that this Action and all Released Claims are finally and fully settled and compromised and that this Action shall be dismissed in its entirety with prejudice as to the Released Persons, subject to approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, upon and subject to the following terms and conditions:

**I. DEFINITIONS**

**A. Class Definition**

“Class” and “Settlement Class” mean the class certified by the Court 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).