

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

In re: Wholesale Grocery Products
Antitrust Litigation

This Document Relates to:
All Actions

Civil No. 09-CV-00983 (ADM/AJB)
Civil No. 09-CV-2940 (ADM/AJB)
Civil No. 09-CV-2932 (ADM/AJB)
Civil No. 09-CV-3191 (ADM/AJB)

MDL Docket No. 2090

**SUPERVALU'S ANSWER AND
AFFIRMATIVE DEFENSES TO THE
SECOND CONSOLIDATED AMENDED
CLASS ACTION COMPLAINT**

Defendant SuperValu Inc. for its Answer to Plaintiffs' Second Consolidated Amended Class Action Complaint (the "Complaint") states and avers as follows:

ANSWER

1. SuperValu admits that this is a purported antitrust case, and it admits that at the time it entered the Asset Exchange Agreement dated September 6, 2003, it intended to consolidate the wholesale grocery distribution business acquired in the Asset Exchange Agreement into its existing distribution network in order to gain efficiencies in its wholesale grocery business. SuperValu denies the remaining allegations in Paragraph 1.

2. SuperValu admits that the Asset Exchange Agreement contained reasonable, ancillary non-compete and non-solicitation provisions, but it denies that the Asset Exchange Agreement is a "naked agreement between competitors not to compete for over a thousand customers in New England and the

Midwest,” and it denies that the Asset Exchange Agreement is a customer and territorial allocation agreement. SuperValu states that the remaining allegations of Paragraph 2 seek to characterize sections 5.8 and 6.2 of the Asset Exchange Agreement, respectfully refers the Court to those sections for their meaning and effect, and denies any inconsistent allegations. To the extent that further answer is deemed required, SuperValu denies the remaining allegations of Paragraph 2.

3. SuperValu denies the allegations of Paragraph 3.

4. SuperValu admits that it filed a Form 10-Q with the Securities and Exchange Commission on October 21, 2009. SuperValu states that the remaining allegations of Paragraph 4 seek to characterize that filing, respectfully refers the Court to that filing for its meaning and effect, and denies any inconsistent allegations. To the extent further answer is deemed required, SuperValu denies any remaining allegations of Paragraph 4.

As to the Parties

5. SuperValu admits that Blue Goose Super Market, Inc. operates a retail grocery store in St. Charles, Illinois, and has made purchases of wholesale grocery products and related services from SuperValu within the alleged Class Period (as defined in the Amended Complaint). SuperValu denies Plaintiffs’ allegation that Blue Goose has not entered an arbitration agreement with any Defendant. SuperValu is without information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 5 and, therefore, denies those allegations.

6. SuperValu admits that D&G, Inc. operates a retail grocery store in Mount Vernon, Iowa, and that it purchased wholesale grocery products and related services directly from SuperValu within the alleged Class Period (as defined in the Amended Complaint). SuperValu is without information sufficient

to form a belief as to the truth of the remaining allegations of Paragraph 6 and, therefore, denies those allegations.

7. SuperValu admits that Plaintiff DeLuca's Corporation ("DeLuca's") operates retail grocery stores in Boston, Massachusetts. SuperValu denies that DeLuca's has purchased wholesale grocery products and related services directly from SuperValu within the alleged Class Period (as defined in the Amended Complaint). SuperValu lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 7 and therefore denies those allegations.

8. SuperValu admits that Plaintiff King Cole Foods, Inc. ("King Cole") operates a retail grocery store in Detroit, Michigan. SuperValu admits that King Cole has purchased grocery products and related services directly from SuperValu within the alleged Class Period (as defined in the Amended Complaint). SuperValu denies Plaintiffs' allegation that King Cole has not entered an arbitration agreement with any Defendant. SuperValu lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 8 and therefore denies those allegations.

9. SuperValu denies that Plaintiff Millennium Operations, Inc. d/b/a/ R.C. Dick's Market ("Millennium") operates a retail grocery store in Prior Lake, Minnesota. SuperValu admits that Millennium was a party to a supply agreement with Fleming at the time that Defendants entered into their Asset Exchange Agreement. SuperValu admits that Millennium has purchased grocery products and related services directly from SuperValu within the alleged Class Period (as defined in the Amended Complaint). SuperValu admits that Millennium and SuperValu entered into a supply agreement that contains an arbitration agreement. SuperValu lacks knowledge or information sufficient to form a belief

as to the truth of the remaining allegations of Paragraph 9 and therefore denies those allegations.

10. SuperValu admits that Plaintiffs MFJ Market, Inc. and JFM Market, Inc. (collectively, "Village Market") operate retail grocery stores in Scituate, Massachusetts. On information and belief, SuperValu admits Village Market was party to a supply agreement with C&S that contains an arbitration agreement. SuperValu lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 10 and therefore denies those allegations.

11. SuperValu admits that it is a Delaware corporation with its principal place of business in Eden Prairie, Minnesota. SuperValu admits that it operates a grocery wholesale business as part of its food distribution and logistics business, and it admits that it operates general line wholesale grocery distribution centers that offer a wide range of wholesale grocery products and services to its retail customers, as well as limited-assortment grocery distribution centers and other distribution facilities. SuperValu admits, upon information and belief, that it is the second largest grocery wholesaler by dollar volume in the United States, and it admits that the revenues from its supply chain services business, which includes wholesale groceries, were approximately \$9 billion in fiscal 2010, which covers the period between February 28, 2009, to February 27, 2010. SuperValu denies the remaining allegations of Paragraph 11.

12. SuperValu admits that Defendant C&S is a grocery wholesaler with its principal place of business in Keene, New Hampshire, and it admits, upon information and belief, that C&S is the largest grocery wholesaler by dollar volume in the United States. SuperValu lacks knowledge or information sufficient

to form a belief as to the truth of the remaining allegations of Paragraph 12 and therefore denies those allegations.

As to Jurisdiction, Venue and Interstate Commerce

13. SuperValu admits that this Court has federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1337(a) because Plaintiffs assert ostensible claims that arise under Section 1 of the Sherman Act and Section 4 of the Clayton Act.

14. SuperValu admits that venue is proper in the United States District Court for the District of Minnesota.

15. SuperValu denies the allegations of Paragraph 15.

As to the Wholesale Grocery Industry

16. SuperValu admits that grocery wholesalers purchase products directly from consumer goods manufacturers, store the products in distribution facilities, and then resell the products to grocery retailers like Plaintiffs, but it denies that all wholesale grocery products are purchased, stored, and resold in the manner described in Paragraph 16. SuperValu admits that some grocery wholesalers provide related services such as transportation, administrative, and other services, but it denies that all grocery wholesalers offer these services. SuperValu states that the term “full-line” or “general-line” grocery wholesaler has varying definitions, and it admits that the term can refer to grocery wholesale businesses that offer a wide range of products and services to retailers. SuperValu admits that some grocery wholesalers, including SuperValu, stock tens of thousands of different products, including produce, meat, dairy products, deli products, bakery

items, health and beauty aids, and candy. SuperValu denies the remaining allegations of Paragraph 16.

17. SuperValu admits that it and certain other grocery wholesalers operate distribution centers and trucking fleets, and that those distribution centers and trucking fleets serve retailers located within more than one state. SuperValu denies the remaining allegations of Paragraph 17.

18. SuperValu admits that it and other grocery wholesalers compete for retail accounts on the basis of many factors, including service and price. SuperValu admits that within the wholesale grocery business generally, wholesale prices may include charges for the product, transportation fees, fuel surcharges, warehouse fees, and other fees, and that the product's cost can be affected by the existence of manufacturer discounts, rebates, and other concessions, which may be reflected on manufacturer invoices or in some other manner. SuperValu denies the remaining allegations of Paragraph 18.

19. SuperValu admits that it negotiates discounts from certain manufacturers, but it denies Plaintiffs' characterization that it has been "particularly" aggressive and effective in obtaining those discounts compared with other grocery wholesalers, self-distributing retail chains, and other entities that purchase consumer goods from manufacturers. SuperValu lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 19 and therefore denies those allegations.

As to SuperValu's Alleged Growth, Pricing, and Competition with C&S

20. SuperValu denies the allegations of Paragraph 20.

21. SuperValu admits that its wholesale business grew in the 1990s and early 2000s. SuperValu denies that SuperValu's growth was generated solely by two business strategies, as characterized in the Complaint.

22. SuperValu admits that its acquisition of other wholesalers in the 1990s allowed it to offer wholesale grocery products and services in new geographic regions. SuperValu admits that it acquired Sweet Life Foods, Inc. in 1994, and SuperValu admits that Sweet Life operated wholesale grocery distribution centers that served retailers in Massachusetts, Connecticut, Maine, and New York. SuperValu admits that it operated distribution facilities in Portland, Maine, Andover, Massachusetts, and Cranston, Rhode Island, as well as other locations within and outside of New England (which the Complaint defines as the region comprised of the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut (hereinafter "New England")). SuperValu denies the remaining allegations of Paragraph 22.

23. SuperValu denies the allegations of Paragraph 23.

24. SuperValu denies that the Activity Based Sell ("ABS") pricing system was simply an effort to "improve revenues and margins." SuperValu states that it began implementing ABS in an effort to make its pricing more competitive and to help its retail customers become more competitive. SuperValu states that the remaining allegations of Paragraph 24 seek to characterize SuperValu's 1998 Form 10-K, respectfully refers the Court to that document for its meaning and effect, and denies any inconsistent allegations. To the extent that further answer is deemed required, SuperValu denies any remaining allegations of Paragraph 24.

25. SuperValu denies that it was the "dominant grocery wholesaler" in the Midwest (defined in the Complaint as the states of Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, and Wisconsin (hereinafter "the Midwest")).

SuperValu admits that it implemented its ABS pricing program in its distribution centers located in the Midwest, as well as in other regions of the United States. SuperValu admits that as of September 2003, SuperValu had not yet implemented its ABS pricing system in its distribution facilities located in New England and certain other parts of the United States, but it denies that the timing of such implementation was the result of “competition from C&S.” SuperValu denies the remaining allegations of Paragraph 25.

As to C&S’ Alleged Entry Into the Midwest

26. SuperValu admits that, in the early 2000s, C&S was a supplier of wholesale grocery products in parts of New England and other areas of the United States, and it admits that Fleming was a grocery wholesaler that filed for bankruptcy in 2003. SuperValu admits that, at the time of Fleming’s bankruptcy filing, Fleming operated distribution facilities in La Crosse, Wisconsin; Waukesha, Wisconsin; and Massillon, Ohio; as well as other locations in the Midwest and other parts of the United States. SuperValu denies the remaining allegations of Paragraph 26.

27. SuperValu admits that C&S announced in late June 2003 that it would purchase Fleming’s wholesale grocery business, and that C&S’s press release announcing the transaction was attached to Fleming’s Form 8-K dated June 27, 2003. SuperValu states that the remaining allegations of Paragraph 27 seek to characterize the press release attached to Fleming’s Form 8-K, respectfully refers the Court to that press release for its meaning and effect, and denies any inconsistent allegations. To the extent that further answer is deemed required, SuperValu denies any remaining allegations of Paragraph 27.

28. SuperValu lacks information sufficient to form a belief that C&S stated that it expected to operate Fleming's Wisconsin-based distribution facilities, and SuperValu therefore denies that allegation. SuperValu states that the remaining allegations of Paragraph 28 seek to characterize a news article appearing in the La Crosse Tribune dated July 19, 2003, respectfully refers the Court to that news article for its meaning and effect, and denies any inconsistent allegations. To the extent that further answer is deemed required, SuperValu denies any remaining allegations of Paragraph 28.

29. SuperValu denies that C&S used the Fleming distribution facilities to "enter" the Midwest region, and it denies that C&S's acquisition of Fleming assets "commenced" competition between C&S and SuperValu. SuperValu lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 29 and therefore denies those allegations.

30. SuperValu denies that C&S's acquisition of Fleming assets in the Midwest was a "substantial threat to SuperValu" and lacks sufficient information to form a belief that C&S's announcement affected SuperValu's stock price and therefore denies that allegation. SuperValu states that the remaining allegations of Paragraph 30 seek to characterize a news article dated June 30, 2003, and published on CBS MarketWatch.com, respectfully refers the Court to that news article for its meaning and effect, and denies any inconsistent allegations. To the extent that further answer is deemed required, SuperValu denies any remaining allegations of Paragraph 30.

As to the Alleged Conspiracy to Suppress Competition

31. SuperValu denies the allegations of Paragraph 31.

32. SuperValu denies the allegations of Paragraph 32, and further states that the joint-venture negotiations between SuperValu and Associated Grocers in the Pacific Northwest are totally irrelevant to this case.

33. SuperValu states that the allegations of Paragraph 33 seek to characterize the complaint and published decision in the *SuperValu Inc. v. Associated Grocers, Inc.* litigation, respectfully refers the Court to those documents for their meaning and effect, and denies any inconsistent allegations. Further answering, SuperValu states that the order and pleadings in the *SuperValu Inc v. Associated Grocers, Inc.* litigation are totally irrelevant to this case. To the extent that further answer is deemed required, SuperValu denies any remaining allegations of Paragraph 33.

34. SuperValu denies the allegations of Paragraph 34.

35. SuperValu admits that SuperValu and C&S entered into an Asset Exchange Agreement whereby SuperValu purchased from C&S the right to acquire Fleming's Midwest wholesale grocery business out of bankruptcy and C&S purchased SuperValu's New England wholesale grocery business and 23 retail stores. SuperValu admits that the Asset Exchange Agreement was signed on September 6, 2003, and closed on September 13, 2003. SuperValu denies the remaining allegations of Paragraph 35.

36. SuperValu denies that the "real point" of the Asset Exchange Agreement between SuperValu and C&S "was eliminating each other as a competitor in the Midwest and New England, allocating the Midwest to SuperValu and New England to C&S." SuperValu admits that the lease on Fleming's former facility in Massillon, Ohio, was not included in the Asset Exchange Agreement. SuperValu denies that the ancillary non-compete and non-solicitation provisions of the Asset Exchange Agreement applied to more

than 1,000 customers. SuperValu states that the remainder of the allegations of Paragraph 36 seek to characterize sections 5.8 and 6.2 of the Asset Exchange Agreement, respectfully refers the Court to those sections for their meaning and effect, and denies any inconsistent allegations. To the extent that further answer is deemed required, SuperValu denies the remaining allegations of Paragraph 36.

37. SuperValu denies the allegations of Paragraph 37.

38. SuperValu admits that it made the decision to consolidate the Fleming wholesale distribution business acquired from C&S into its own existing distribution network before the Asset Exchange Agreement was consummated. SuperValu denies the remaining allegations of Paragraph 38.

39. SuperValu denies the allegations of Paragraph 39.

40. SuperValu denies the allegations of Paragraph 40.

41. SuperValu denies that the Asset Exchange Agreement was a “customer and territorial allocation” that Defendants used to “overcharge” retailers, and SuperValu denies that these alleged “overcharges” resulted in a “windfall” or higher profit margins. SuperValu admits that it estimated that the Asset Exchange Agreement with C&S resulted in a decline in wholesale grocery sales of approximately \$100 million for the second quarter of fiscal 2005 (ending on September 11, 2004), compared to the second quarter of fiscal 2004 (ending on September 6, 2003). SuperValu admits that the net earnings for its combined retail and food distribution businesses was approximately 26.2% higher in the second quarter of fiscal 2005 than it was in the second quarter of fiscal 2004, but SuperValu denies that the net income for its wholesale grocery business rose by 26.2% during that period. SuperValu states that the remaining allegations of Paragraph 41 seek to characterize a Supermarket News article published on

October 18, 2004, respectfully refers the Court to the article its meaning and effect, and denies any inconsistent allegations. To the extent that further answer is deemed required, SuperValu denies any remaining allegations of Paragraph 41.

42. SuperValu admits that some of the warehouses exchanged in the Asset Exchange Agreement were sold, and that some of the sold warehouses are now being used in non-wholesale-grocery industries, but SuperValu denies the remaining allegations of Paragraph 42.

43. SuperValu denies that Defendants are “co-conspirators,” and it denies that any distribution facility closures were pursuant to a conspiracy. SuperValu admits that distance to a warehouse is a factor in determining transportation fees, but it denies the remaining allegations of Paragraph 43.

44. SuperValu denies the allegations of Paragraph 44.

As to the Fraudulent Concealment Allegations

45. SuperValu denies the allegations of Paragraph 45, and it states that the Court’s Order dated July 7, 2010, has barred any claim of “fraudulent concealment.”

46. SuperValu denies the allegations of Paragraph 46, and it states that the Court’s Order dated July 7, 2010, has barred any claim of “fraudulent concealment.”

47. SuperValu admits the last two sentences of Paragraph 47, denies the remaining allegations of Paragraph 47, and states that the Court’s Order dated July 7, 2010, has barred any claim of “fraudulent concealment.”

48. SuperValu admits that it issued press releases regarding the Letter of Intent and the Asset Exchange Agreement on August 10, 2003; September 8,

2003; and September 17, 2003. SuperValu denies the remaining allegations of Paragraph 48, and it states that the Court's Order dated July 7, 2010, has barred any claim of "fraudulent concealment."

49. SuperValu denies the allegations of Paragraph 49, and it states that the Court's Order dated July 7, 2010, has barred any claim of "fraudulent concealment."

50. SuperValu denies the allegations of Paragraph 50, and it states that the Court's Order dated July 7, 2010, has barred any claim of "fraudulent concealment."

51. SuperValu denies that Plaintiffs exercised due diligence in investigating the conduct alleged herein and in bringing this lawsuit. SuperValu lacks information sufficient to form a belief as to the truth of Plaintiffs' allegation that they received "information concerning the existence of the agreement" from "a former SuperValu executive" in November 2008 and therefore denies that allegation. SuperValu denies the remaining allegations of Paragraph 51, and states that the Court's Order dated July 7, 2010, has barred any claim of "fraudulent concealment."

52. SuperValu denies the allegations of Paragraph 52, and it states that the Court's Order dated July 7, 2010, has barred any claim of "fraudulent concealment."

53. SuperValu denies the allegations of Paragraph 53, and it states that the Court's Order dated July 7, 2010, has barred any claim of "fraudulent concealment."

54. SuperValu denies the allegations of Paragraph 54, and it states that the Court's Order dated July 7, 2010, has barred any claim of "fraudulent concealment."

55. SuperValu denies the allegations of Paragraph 55, and it states that the Court's Order dated July 7, 2010, has barred any claim of "fraudulent concealment."

**As to the Alleged Market for Full-Line Grocery
Wholesale Goods and Related Services**

56. SuperValu admits that SuperValu and C&S are wholesale grocery competitors, but SuperValu denies the remaining allegations of Paragraph 56, and expressly denies without limitation the validity of the purported product market definition. SuperValu denies that the terms and characterizations used in Paragraph 56 are accurate and complete. SuperValu states that the allegations of Paragraph 56 constitute legal conclusions to which no responsive pleading is required or appropriate and therefore denies the same.

57. SuperValu denies the allegations of Paragraph 57, and expressly denies without limitation the validity of the purported product market definition. SuperValu denies that the terms and characterizations used in Paragraph 57 are accurate and complete. SuperValu states that the allegations of Paragraph 57 constitute legal conclusions to which no responsive pleading is required or appropriate and therefore denies the same.

58. SuperValu denies that grocery retailers generally strongly prefer dealing with full-line suppliers. SuperValu lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 58 and therefore denies those allegations.

59. SuperValu admits that C&S operates in New England and other parts of the United States, and it admits that the distribution facilities in New England that C&S closed were located in New England. SuperValu denies the remaining allegations of Paragraph 59, and expressly denies without limitation the validity of the purported geographic market definition. SuperValu denies that the terms and characterizations used in Paragraph 59 are accurate and complete. SuperValu states that the allegations of Paragraph 59 constitute legal conclusions to which no responsive pleading is required or appropriate and therefore denies the same.

60. SuperValu lacks information sufficient to form a belief as to the truth of the allegation that Plaintiffs Rangeley IGA and DeLuca's have purchased grocery wholesale products and services only from wholesalers in New England and have never purchased from wholesalers outside of New England and therefore denies that allegation. SuperValu denies the remaining allegations of Paragraph 60, and expressly denies without limitation the validity of the purported geographic market definition. SuperValu denies that the terms and characterizations used in Paragraph 60 are accurate and complete. SuperValu states that the remaining allegations of Paragraph 60 constitute legal conclusions to which no responsive pleading is required or appropriate and therefore denies the same.

61. SuperValu admits that it operates in, among other locations, various Midwestern states and that the former Fleming distribution facilities in the Midwest that were closed were located in the Midwest. SuperValu denies the remaining allegations of Paragraph 61, and expressly denies without limitation the validity of the purported geographic market definition. SuperValu denies that the terms and characterizations used in Paragraph 61 are accurate and complete. SuperValu states that the remaining allegations of Paragraph 61 constitute legal

conclusions to which no responsive pleading is required or appropriate and therefore denies the same.

62. SuperValu lacks information sufficient to form a belief as to the truth of the allegation that Plaintiffs D&G and Blue Goose have purchased grocery wholesale products and services only from wholesalers in the Midwest and have never purchased from wholesalers outside of the Midwest and therefore denies that allegation. SuperValu denies the remaining allegations of Paragraph 62, and expressly denies without limitation the validity of the purported geographic market definition. SuperValu denies that the terms and characterizations used in Paragraph 62 are accurate and complete. SuperValu states that the allegations of Paragraph 62 constitute legal conclusions to which no responsive pleading is required or appropriate and therefore denies the same.

63. SuperValu denies the allegations of Paragraph 63, and expressly denies without limitation the validity of the allegations regarding purported market power. SuperValu denies that the terms and characterizations used in Paragraph 63 are accurate and complete. SuperValu states that the allegations of Paragraph 63 constitute legal conclusions to which no responsive pleading is required or appropriate and therefore denies the same.

64. SuperValu denies the allegations of Paragraph 64, and expressly denies without limitation the validity of the allegations regarding purported market power. SuperValu denies that the terms and characterizations used in Paragraph 64 are accurate and complete. SuperValu states that the allegations of Paragraph 64 constitute legal conclusions to which no responsive pleading is required or appropriate and therefore denies the same.

65. SuperValu denies the allegations of Paragraph 65, and expressly denies without limitation the validity of the purported market definition and barriers to

entry. SuperValu denies that the terms and characterizations used in Paragraph 65 are accurate and complete. SuperValu states that the allegations of Paragraph 65 constitute legal conclusions to which no responsive pleading is required or appropriate and therefore denies the same.

66. SuperValu admits that since the 1990s, the grocery wholesale industry has experienced consolidation and that SuperValu, C&S, and other grocery wholesalers have acquired other wholesale businesses in regions of the United States. SuperValu denies the remaining allegations of Paragraph 66.

As to the Class Action Allegations

67. SuperValu admits that Plaintiffs purport to bring this action as a class action under Rule 23 of the Federal Rules of Civil Procedure. SuperValu states that the remaining allegations of Paragraph 67 constitute legal conclusions to which no responsive pleading is required or appropriate, and it therefore denies the same. To the extent further answer is deemed required, SuperValu denies the remainder of the allegations of Paragraph 67. SuperValu denies that the putative classes and subclasses are certifiable under Rule 23.

68. SuperValu states that the allegations of Paragraph 68 constitute legal conclusions to which no responsive pleading is required or appropriate, and it therefore denies the same. SuperValu denies that the putative classes and subclasses are certifiable under Rule 23.

69. SuperValu denies the allegations of Paragraph 69, and states that to the extent the allegations of Paragraph 69 constitute legal conclusions, no responsive pleading is required or appropriate and SuperValu therefore denies the same. SuperValu denies that the putative classes and subclasses are certifiable under Rule 23.

70. SuperValu denies the allegations of Paragraph 70, and states that to the extent the allegations of Paragraph 70 constitute legal conclusions, no responsive pleading is required or appropriate and SuperValu therefore denies the same. SuperValu denies that the putative classes and subclasses are certifiable under Rule 23.

71. SuperValu denies the allegations of Paragraph 71, and states that to the extent the allegations of Paragraph 71 constitute legal conclusions, no responsive pleading is required or appropriate and SuperValu therefore denies the same. SuperValu denies that the putative classes and subclasses are certifiable under Rule 23.

72. SuperValu denies the allegations of Paragraph 72, and states that to the extent the allegations of Paragraph 72 constitute legal conclusions, no responsive pleading is required or appropriate and SuperValu therefore denies the same. SuperValu denies that the putative classes and subclasses are certifiable under Rule 23.

73. SuperValu denies the allegations of Paragraph 73, and states that to the extent the allegations of Paragraph 73 constitute legal conclusions, no responsive pleading is required or appropriate and SuperValu therefore denies the same. SuperValu denies that the putative classes and subclasses are certifiable under Rule 23.

74. SuperValu denies the allegations of Paragraph 74, and states that to the extent the allegations of Paragraph 74 constitute legal conclusions, no responsive pleading is required or appropriate and SuperValu therefore denies the same. SuperValu denies that the putative classes and subclasses are certifiable under Rule 23.

75. SuperValu denies the allegations of Paragraph 75, and states that to the extent the allegations of Paragraph 75 constitute legal conclusions, no responsive pleading is required or appropriate and SuperValu therefore denies the same. SuperValu denies that the putative classes and subclasses are certifiable under Rule 23.

As to the Cause of Action Alleged

As to Count I

The Complaint contains an unnumbered paragraph that differentiates Plaintiffs according to their entrance into arbitration agreements against one or more Defendants. SuperValu denies the allegations of that paragraph and states that to the extent those allegations constitute legal conclusions, no responsive pleading is required or appropriate and SuperValu therefore denies the same. SuperValu denies that the putative classes and subclasses are certifiable under Rule 23.

76. SuperValu restates and incorporates by reference its answers to Paragraphs 1 to 75 herein.

77. SuperValu denies the allegations of Paragraph 77.

78. SuperValu denies the allegations of Paragraph 78.

79. SuperValu denies the allegations of Paragraph 79.

80. SuperValu denies the allegations of Paragraph 80.

81. SuperValu denies the allegations of Paragraph 81.

82. SuperValu denies the allegations of Paragraph 82.

83. SuperValu denies the allegations of Paragraph 83.

General Denial

SuperValu denies all of the allegations in the Complaint except those expressly admitted above.

Affirmative Defenses

Without assuming any burdens not ascribed to it under applicable law and without waiving any available defense, SuperValu asserts the following defenses and reserves the right to assert additional defenses if and when deemed appropriate as the case progresses.

1. The Complaint fails to state a claim upon which relief may be granted.
2. The claims of Plaintiffs and/or members of the putative classes and subclasses are barred, in whole or in part, by the statute of limitations.
3. The claims of Plaintiffs and/or members of the putative classes and subclasses are barred, in whole or in part, by the doctrine of laches.
4. Plaintiffs and/or members of the putative classes and subclasses lack standing to bring claims for antitrust violations because, among other reasons, they cannot show a direct and proximate causal connection between the challenged conduct and their alleged injury and because Plaintiffs have not suffered antitrust injury.
5. The claims of Plaintiffs and/or members of the putative classes and subclasses are barred, in whole or in part, because the Asset Exchange Agreement constituted a lawful, pro-competitive, and bona fide business acquisition transaction, and its non-competition and non-solicitation provisions are lawful ancillary restraints.

6. The claims of Plaintiffs and/or members of the putative classes and subclasses are barred, in whole or in part, because Plaintiffs have failed to define a proper geographic and/or product market for their claims.

7. The claims of Plaintiffs and/or members of the putative classes or subclasses are barred, in whole or in part, because there has been no injury to competition either in fact or as alleged in the Complaint.

8. The claims of Plaintiffs and/or members of the putative classes and subclasses are barred, in whole or in part, by their failure to mitigate damages.

9. The claims of certain members of the putative classes and subclasses are barred, in whole or part, by settlement and release.

10. The claims of Plaintiffs and/or members of the putative classes and subclasses are barred, in whole or part, by the doctrines of *res judicata* and/or collateral estoppel.

11. The claims of Plaintiffs and/or members of the putative classes and subclasses are barred, in whole or in part, by the Supplemental Order Designating SuperValu as a Third Party Purchaser and Approving Assumption and Assignment of Certain Executory Contracts, License Agreements and Unexpired Leases to SuperValu, entered by the U.S. Bankruptcy Court for the District of Delaware, dated September 9, 2003, in the case *In re Fleming Cos., Inc.*, Case No. 03-10945 (Bankr. D. Del.).

12. The claims of Plaintiffs Blue Goose Super Market, Inc., King Cole Foods, Inc., Millennium Operations, Inc., MFJ Market, Inc., and JFM Market Inc. and/or members of the putative classes and subclasses are subject to mandatory arbitration agreements.

Prayer for Relief

WHEREFORE, SuperValu respectfully requests that this Court enter judgment in its favor and award relief including, but not limited to, the following:

1. Dismissal of all Plaintiffs' claims against SuperValu with prejudice;
2. An award to SuperValu of its attorneys' fees, costs, and disbursements as allowed by law; and
3. Such other and further relief as this Court may deem just and proper.

February 23, 2011

Respectfully submitted,

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