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	

MIDWEST CLASS PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR APPROVAL OF PLAN OF DISTRIBUTION TO THE CHAMPAIGN NON-ARBITRATION CLASS AND PARTIAL REIMBURSEMENT OF EXPENSES

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I. INTRODUCTION

Midwest Plaintiffs, through Plaintiff D&G, Inc. d/b/a Gary's Foods, individually and on behalf of the Champaign DC Non-Arbitration Class (the "Settlement Class"),[1] respectfully request that the Court: (1) approve the claims process and plan of distribution described herein to distribute the Net Settlement Fund to qualified members of the Settlement Class; and (2) approve Co-Lead Counsel's request for $1.5 million as partial reimbursement of costs and litigation expenses that they reasonably and necessarily incurred in prosecuting and resolving the Action to date.

II. BACKGROUND

For nearly nine years, Plaintiffs have litigated this antitrust case on behalf of Midwest retail grocery stores against Defendants SuperValu Inc. and C&S Wholesale Grocers Inc., ECF Nos. 22, 65, the two largest full-line grocery wholesalers in the United States. *See* Second Consol. Am. Class Action Compl., ECF No. 99, February 9, 2011 ("Second Am. Compl.") ¶ 1. Plaintiffs allege Defendants successfully conspired to allocate customers and territories in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, in connection with their 2003 Asset Exchange Agreement ("AEA"), and that Defendants' conspiracy allowed them to charge retailers supra-competitive prices. *See id.* ¶¶ 34-44, 77-83. Plaintiff D&G and their counsel have prosecuted the case through multiple motions to dismiss, two discovery periods, multiple class certification motions,

[1] Unless otherwise noted, capitalized terms have the meanings set out in the Settlement Agreement dated July 21, 2017, attached as Exhibit 1 to the Declaration of Elizabeth R. Odette, filed at ECF No. 823-1.

three trips to the Eighth Circuit Court of Appeals, one trip to the United States Supreme Court, extensive expert testimony, and multiple sets of dispositive motion practice.

While the parties and Court are familiar with the history of this litigation, a summary is provided for context for this motion. Plaintiffs filed their initial class-action complaint on December 31, 2008. ECF No. 65. On July 7, 2010, the Court denied Defendants' first motion to dismiss and Plaintiffs' motion for partial summary judgment. *Id*. In doing so, the Court held that the continuing violations doctrine allowed Plaintiffs to assert claims for injuries caused by supra-competitive prices charged within the four years immediately preceding the original filing date of the complaints. *Id*.

Four of the original six class representatives had arbitration agreements with one of the Defendants (the "Arbitration Plaintiffs") and accordingly brought claims only against the other Defendant, who Plaintiffs allege are jointly and severally liable under the antitrust laws. Second Am. Compl. ¶¶ 5-10, 67, 71, & Count I. Defendants moved to dismiss or stay under the Federal Arbitration Act and the parties briefed the issue. In July 2011 the District Court dismissed these Plaintiffs' claims, finding that the doctrine of equitable estoppel required Plaintiffs who had an arbitration agreement with one Defendant to arbitrate with both that Defendant and the non-signatory Defendant, ECF No. 141. On February 13, 2013 the Court of Appeals reversed, remanding only consideration of a successor-in-interest argument that the District Court had not addressed. The Arbitration Plaintiffs' claims were reinstated. *In re Wholesale Grocery Prods. Antitrust Litig.*, 707 F.3d 917 (8th Cir. 2013) (also ECF No. 437).

Meanwhile, the two class representatives without arbitration agreements with either Defendant had proceeded in the District Court while the arbitration-related appeals were pending. The parties negotiated a protective order and conducted discovery. ECF No. 160. Plaintiffs' counsel reviewed and analyzed approximately 267,000 documents spanning 1.1 million pages produced by Supervalu, and approximately 169,355 documents totaling 635,149 pages produced by C&S. *See* ECF No. 822 at 7-8. The parties deposed 24 fact witnesses under Fed. R. Civ. P. 30(b)(1) and 30(b)(6). *See* Declaration of W. Joseph Bruckner ("Bruckner Decl.") ¶ 2, filed herewith. Plaintiff D&G was deposed and responded to extensive written discovery. Approximately nine depositions were taken of expert witnesses. Plaintiffs reviewed privilege logs totaling 860 pages and 7,709 entries for SuperValu, and 731 pages and 7,358 entries for C&S, and the parties met and conferred about the proper scope of Defendants' privilege logs. Plaintiffs then reviewed Defendants' revised privilege logs. *See* Bruckner Decl., ¶ 3.

The District Court denied Plaintiffs' first motion for class certification on July 16, 2012. *In re Wholesale Grocery Prods. Antitrust Litig*., No. 09-MD-2090 ADM/AJB, 2012 WL 3031085 (D. Minn. July 25, 2012) (also ECF Nos. 350, 352). Plaintiffs then sought leave to file a renewed class certification motion based on SuperValu's individual Midwest distribution centers, using ABS pricing as described in the Court's order to show classwide impact. ECF Nos. 350-51, 362, 399, 420, 422.

Defendants then moved for summary judgment, while Plaintiffs moved for partial summary judgment.[2] ECF Nos. 353, 365, 370, 375. On January 11, 2013, the District Court granted summary judgment against Plaintiffs D&G and DeLuca's and denied as moot Plaintiffs' request to file a revised class certification motion. *In re Wholesale Grocery Prods. Antitrust Litig.*, No. 09-MD-2090 ADM/AJB, 2013 WL 140285 (D. Minn. Jan. 11, 2013) (also ECF No. 427). Plaintiff D&G appealed. ECF Nos. 428, 429. After an unsuccessful settlement conference before Magistrate Judge Boylan, the Court stayed the case pending the outcome of this appeal. ECF Nos. 473, 474, 477.

On May 21, 2014, the Court of Appeals reversed the grant of summary judgment for Defendants, and requested the District Court to consider whether to certify Plaintiff D&G's proposed narrower class. *In re Wholesale Grocery Prods. Antitrust Litig.*, 752 F.3d 728, 734-36 (8th Cir. 2014) (also ECF No. 478). Defendants petitioned the Supreme Court for a writ of certiorari, which after briefing the Court denied. ECF No. 522. Since then, the parties have resumed a hard-fought litigation, including extensive briefing and a complaint brought by four additional Plaintiffs who purchased from SuperValu's other Midwest distribution centers. The new plaintiffs and additional witnesses were deposed, and the parties served additional discovery requests and responses. *See Elkhorn-Lueptows, Inc., et al. v. C&S Wholesale Grocers, Inc.*, Case No. 0:14-cv-04031; *see also* ECF Nos. 485, 487, 500, 503, 509, 516, 524, & 534. Meanwhile, this Court decided the successor-in-interest arbitration issue in Plaintiffs'

[2] Meanwhile, the Arbitration Plaintiffs' appeal of the order granting Defendants' motion to dismiss their claims was still pending in the Eighth Circuit.

favor, ECF No. 516, and the Eighth Circuit affirmed. *In re Wholesale Grocery Prods. Antitrust Litig.*, 850 F.3d 344 (8th Cir. 2017).

After factual and expert discovery, briefing, and oral argument, the District Court certified the five Midwest classes, including the Champaign DC Non-Arbitration Class (herein the "Settlement Class"). ECF No. 651 at 31-32. The Court also appointed D&G, Inc. d/b/a Gary's Foods as the representative of the Champaign DC Non-Arbitration Class. *Id.* The Eighth Circuit denied Defendants' petition for appellate review under Fed. R. Civ. P. 23(f) on November 7, 2016. ECF Nos. 674, 679. This Court approved a program pursuant to which notice was mailed to members of the certified classes, and a toll-free number and case website were established. The website contains all important documents and up-to-date information on the case. ECF Nos. 727, 743.

At the Court's direction, the parties mediated with Professor Eric Green, a widely respected mediator, in Boston on May 25, 2017. ECF No. 822 at 6. As a result, Midwest Plaintiffs agreed with SuperValu to settle the claims by the Champaign non-arbitration class, the only class to allege claims against SuperValu. Midwest Plaintiffs did not settle with C&S. On August 10, 2017, this Court preliminarily approved the proposed settlement with SuperValu and scheduled a final approval hearing for November 15, 2017. ECF No. 840.

III. THE COURT SHOULD APPROVE THE PROPOSED CLAIMS PROCESS AND PLAN OF DISTRIBUTION FOR THE CHAMPAIGN NON-ARBITRATION CLASS

Assuming the Court grants final approval to the proposed SuperValu settlement, Co-Lead Counsel now proposes a plan to distribute the majority of the SuperValu

settlement fund, $4,574,000 (accounting for necessary reserves for claims administration, taxes, escrow fees, and the proposed reimbursement of expenses and reserve for motion of attorneys' fees and service award as described below) to qualified claimants. Under the plan, all class members who submit a qualifying claim will receive a *pro rata* share of the Net Settlement Fund. *See* ECF No. 822 at 7. The Net Settlement Fund is defined as the settlement amount less (1) approved expenses, and (2) a reserve for attorneys' fees and a service award for Plaintiff D&G to be determined in a later motion, as described *infra*. The *pro rata* share will be determined based on each claimant's total purchases from SuperValu's Champaign DC between December 31, 2004 and September 13, 2008 (the "Class Period"). *See* ECF No. 823-1 at 43. Consistent with the Settlement Agreement, the proposed plan of distribution provides no reversion of the Settlement Fund to SuperValu. ECF No. 822 at 7-8.

Courts evaluate plans of distribution in the larger context of determining whether a class action settlement is "fair, reasonable, and adequate." *Keil v. Lopez*, 862 F.3d 685, 700 (8th Cir. 2017). To approve a plan of distribution, the Court need only find that the plan has a "reasonable, rational basis." *In re Fed. Nat'l Mortg. Ass'n Sec., Derivative, & "ERISA" Litig.*, 4 F. Supp. 3d 94, 108–09 (D.D.C. 2013); *see In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 497 (S.D.N.Y. 2009) ("A Plan of Allocation has been recommended by plaintiffs' counsel, a group of competent and qualified counsel. As such, [the Court] need only review the plan to confirm that it has a reasonable, rational basis."); *see also In re TFT–LCD (Flat Panel) Antitrust Litig.*, No. 3:07-md-1827, 2011 WL 7575004, *4 (N.D. Cal. Dec. 27, 2011) (overruling objection to plan of

allocation where class counsel "provided a rational basis for the proposed plan of allocation"); *In re AOL Time Warner, Inc., Sec. & "Erisa" Litig.*, No. 02 Civ. 5575 (SWK), 2008 WL 2941219, *4 (S.D.N.Y. July 30, 2008) ("An allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel.") (citations and internal quotations omitted).

Here, the plan of distribution is straightforward, reasonable and fair, and recommended by experienced and competent class counsel who have litigated the case zealously for almost nine years. *Accord In re UnitedHealth Grp. Inc. PSLRA Litig.*, 643 F. Supp. 2d 1094, 1101 (D. Minn. 2009) (approving plan of allocation as "reasonable and fair" over objection).

In addition, class members have received full and fair notice and ability to respond to the claims process. First, the essential term of the plan of distribution—a *pro rata* distribution based on each class member's total purchases from the Champaign DC during the Class Period—is contained within the Court-approved long-form notice to class members. *See* ECF Nos. 840 at 3, 823-1 at 43. Specifically, on August 10, 2017, Class Counsel notified all members of the Champaign non-arbitration class of their right to review and, if they chose, object to the proposed settlement. Class Counsel informed class members:

> Supervalu will pay the Settlement Class $8,750,000 (the "Settlement Fund"). The Settlement Fund, less any costs associated with notifying the Settlement Class, claims administration, and Court-awarded attorneys' fees, expenses, and incentive awards to the Class Representative for representing the Settlement Class (the "Net Settlement Fund"), will be divided *pro rata* (based on each class member's total purchases from the Champaign DC

> during the Class Period) among all Settlement Class Members who have a valid and qualifying claim.

ECF No. 823-1, Ex. 2 at 6.

Second, in the near future the Claims Administrator will send all members of the Champaign non-arbitration class a claim form, together with instructions on how to complete and return the claim form and how to object, if they choose, to the plan of distribution. Claim forms will be addressed individually to each class member and will show each class member what SuperValu's transaction data shows as its total purchases during the Class Period. Bruckner Decl., ¶ 5 and Ex. 1 (sample claim form). If the class member agrees with the purchase amount shown in SuperValu's records, it can so indicate. If it disagrees with SuperValu's number and can substantiate a different amount for its total purchases, it can so indicate, supply the necessary information and substantiation, and the Claims Administrator and Class Counsel will consider that alternative amount.

If the SuperValu settlement receives this Court's final approval,[3] once all claims from class members are received and processed, and once this motion is decided so that Class Counsel knows the net amount of settlement proceeds available for distribution to qualified claimants, Class Counsel will move the Court to approve a detailed plan of distribution, recommend specific payment amounts to each qualified claimant based on

[3] The deadline for class members to object to the SuperValu settlement is November 1, 2017, and the Court's final approval hearing is scheduled for November 15, 2017.

its claim,[4] and address any class member objections to the plan of distribution and proposed payments. Although there are still a few unknowns in the schedule, Class Counsel anticipates being able to present this motion to the Court in December 2017 and, once approved, to make distributions to qualified claimants shortly thereafter.

This is consistent with the Plan of Notice approved by the Court. *See* ECF Nos. 727 at 12-13, 840 at 3-4. As a result, the Court should approve Midwest Plaintiffs' proposed claims process and plan of distribution for the Settlement Class.

IV. THE COURT SHOULD AWARD A PARTIAL INTERIM REIMBURSEMENT OF EXPENSES MIDWEST PLAINTIFFS' COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED TO ACHIEVE THE BENEFIT OBTAINED

While Co-Lead Counsel do not request that the Court award attorneys' fees or a service award at this time, Co-Lead Counsel do request that they be partially reimbursed for litigation expenses that were reasonably incurred and necessary to the prosecution of this Action. Litigation expenses that the three Co-Lead Counsel firms[5] have reasonably and necessarily incurred just for expert analysis, expert testimony, database maintenance and computer-assisted legal and factual research total $4,074,579.16. Bruckner Decl., ¶ 9. At this time, Co-Lead Counsel request that they be reimbursed $1.5 million in litigation expenses. Partial reimbursement of Co-Lead Counsel's reasonably incurred expenses will be used by Co-Lead Counsel to fund trial and other litigation expenses as

[4] This recommendation will not disclose the identity of any claimant; each claimant's information will be provided in an anonymized form.

[5] Boies, Schiller & Flexner LLP; Kotchen & Low LLP; and Lockridge Grindal Nauen P.L.L.P.

the case progresses on behalf of the Settlement Class and the other classes, all of whom continue to prosecute their claims against C&S, the remaining Defendant.

An interim award of expenses is within the Court's discretion. Newberg on Class Actions § 16:8 (5th Ed. 2017); *see also Tex. State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 790–92 (1989); *Manual for Complex Litig.* (4th ed. 2004) § 14.222. An interim award serves three purposes: "1) to help enable the provision of legal service to clients in cases that are protracted and would be difficult to fund absent interim assistance; 2) to help a court monitor counsel in an ongoing fashion; and 3) thereby, to help improve the quality of the class's services going forward." Rubenstein, *Newberg on Class Actions* § 16:8 (5th ed. 2017). Such expenses may also be justified in a "common fund case, as something of an advance on the class's expected recovery." *Id.* Here, Co-Lead Counsel respectfully submit that they are entitled to recover expenses reasonably incurred in this common fund case. Allowing an interim and partial reimbursement of expenses incurred will fulfill the purposes of such an award. Co-Lead Counsel have devoted more than nine years of time, energy, and resources to this action, and are fully committed to continuing that commitment through final resolution. An interim award of costs is appropriate to reflect the complex, protracted, and fully litigated nature of the case to date, which has been necessary to achieve the results reflected in the Settlement Agreement.

The requested expenses were advanced by counsel and are therefore properly recovered by counsel. *See Yarrington v. Solvay Pharm., Inc.*, 697 F. Supp. 2d 1057, 1067 (D. Minn. 2010) ("Reasonable costs and expenses incurred by an attorney who creates or

preserves a common fund are reimbursed . . . . The requested costs must be relevant to the litigation and reasonable in amount."). Moreover, they are the types of expenses that are necessarily incurred in litigation and routinely billed to clients billed by the hour. These expenses include, among others, expert fees, costs of maintaining a database for the millions of pages of documents produced in discovery, and computerized legal and factual research. Bruckner Decl., ¶ 9. These expense items are billed separately by each Co-Lead Counsel firm. These charges are not duplicated in the firms' hourly billing rates, and have not been reimbursed by any other source. *Id*.[6] Reimbursement of a portion of these expenses now is fair and reasonable. *See, e.g.*, *Yarrington*, 697 F. Supp. 2d at 1067; *In re Xcel Energy, Inc., Sec., Derivative & "ERISA" Litig.*, 364 F. Supp. 2d 980, 999-1000 (D. Minn. 2005); *In re Charter Comm'ns, Inc., Sec. Litig.*, No. MDL 1506, 4:02-cv-1186-CAS, 2005 WL 4045741, *24 (E.D. Mo. June 30, 2005). This is especially the case here, where Co-Lead Counsel is requesting only a partial reimbursement for expenses already incurred in achieving the Settlement for the Settlement Class.

V. THE REMAINING SETTLEMENT FUNDS SHOULD BE RESERVED TO BE ADDRESSED IN A FUTURE MOTION

Because this multidistrict litigation remains ongoing, Co-Lead Counsel are not requesting attorneys' fees or a service award for Plaintiff D&G at this time. Rather, to facilitate the quickest possible distribution of net settlement proceeds to qualified claimants while preserving counsel's ability to request a fair and reasonable fee at a later time, Class Counsel's proposed plan of distribution reserves 30 percent of the Settlement

[6] Any costs awarded now interim obviously will be accounted for in any later final cost application. *Accord Newberg on Class Actions* § 16:8 (5th ed. 2017).

Fund ($2,625,000) for a future potential award of attorneys' fees, $10,000 for a potential service award to Class Representative D&G, and estimated amounts for claims administration, taxes and escrow fees. In the meantime, these amounts would be kept in the escrow fund created by the Settlement Agreement.

The Court is not required to allocate all settlement funds immediately, but may in its discretion reserve a portion for later distribution. *See In re Endotronics, Inc.*, No. CIV. 4-87-130, 1989 WL 6746, *1 (D. Minn. Jan. 30, 1989); *see also Tex. State Teachers Ass'n*, 489 U.S. at 790–92; Manual for Complex Litig. (4th ed. 2002) § 14.222. *See also Cobell v. Norton*, 407 F. Supp. 2d 140, 144 (D.D.C. 2005). The amount of a reasonable attorney fee awarded from a common fund is committed to the sound discretion of the district court. *See Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1156 (8th Cir. 1999); *Yarrington*, 697 F. Supp. 2d at 1061; *In re Monosodium Glutamate Antitrust Litig.*, No. 00-MDL-1328-PAM, 2003 WL 297276, *1 (D. Minn. Feb. 6, 2003).

Co-Counsel's proposal to hold back from immediate distribution 30 percent of the Settlement Fund for possible future award for attorneys' fees is consistent with the practice in the Eighth Circuit, which has recently noted that "courts have frequently awarded attorney fees between 25 and 36 percent of a common fund in class actions." *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 866 (8th Cir. 2017). At the time they move for attorneys' fees, Co-Lead Counsel will make a full showing consistent with case law regarding the appropriateness of awarding attorneys' fees and evaluating a requested award as reasonable. *See Yarrington*, 697 F. Supp. 2d at 1062 (evaluating "1) the benefit conferred on the class, (2) the risk to which plaintiffs' counsel were exposed, (3) the

difficulty and novelty of the legal and factual issues in the case, (4) the skill of the lawyers, both plaintiffs' and defendants', (5) the time and labor involved, (6) reaction of the class, and (7) the comparison between the requested attorney fee percentage and percentages awarded in similar cases"); *accord Caligiuri*, 855 F.3d at 866. In addition, Co-Lead Counsel will ensure that any award comports with Eighth Circuit precedent regarding both the appropriateness of a percentage under the common fund doctrine and the potential for a lodestar method cross-check. *See, e.g.*, *Petrovic*, 20 F.3d at 1157; *Yarrington*, 697 F. Supp. 2d at 999, 1061.[7]

In addition, it is appropriate to reserve from immediate distribution an amount of $10,000 for a potential service award to D&G, the representative of the Champaign non-arbitration class. While service as a class representative is not a profit-making position, the law recognizes that it is often appropriate to make a payment in recognition of the services that such plaintiffs perform in successful class litigation. *See, e.g.*, *Caligiuri*, 855 F.3d at 867 (8th Cir. 2017) (noting that "service awards to named plaintiffs in class action suits" "of $10,000 or greater" are often granted to "promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits") (internal citation and quotation marks omitted); *Yarrington*, 697 F. Supp. 2d at 1068; *Caligiuri*, 855 F.3d at 867. And, as Class Counsel will demonstrate in a future motion,

[7] Under the lodestar cross-check method, the court multiplies the number of hours each attorney spent on the case by each attorneys' reasonable hourly rate, and then adjusts that lodestar figure (by applying a multiplier) to reflect such factors as the risk and contingent nature of the litigation, the result obtained, and the quality of the attorneys' work. *See Jorstad v. IDS Realty Trust*, 643 F.2d 1305, 1312-14 (8th Cir. 1981). That lodestar number then is used as a reasonableness check on the amount of fees to be awarded as a percentage of plaintiffs' recovery.

D&G's services in this case will support a future request for a $10,000 service award. By its stalwart representation throughout this lengthy litigation, D&G has been a catalyst to achieving this result for the Settlement Class. In this case, as in *Yarrington*, D&G "participated in numerous lengthy interviews by Settlement Class Counsel; assisted in responding to multiple discovery requests; [and was] deposed by [Defendants]." Bruckner Decl., ¶ 10. In addition, D&G has participated in numerous conferences and meetings with its attorneys, has stayed informed of significant developments in the case, and has participated in settlement conferences. *Id*. These actions, in addition to D&G's ongoing commitment to the class and the litigation, have materially benefited the Settlement Class. *Accord Yarrington*, 697 F. Supp. 2d at 1069.

VI. CLASS MEMBERS HAVE BEEN NOTIFIED OF THE RELIEF SOUGHT IN THIS MOTION AND HAVE AN OPPORTUNITY TO OBJECT.

The long-form notice to class members informed Settlement Class Members that Co-Lead Counsel would apply for reimbursement of litigation expenses, which include the reasonable costs and expenses of Co-Lead Counsel directly related to their representation of the Class. *See* ECF No. 823-1 at 46. The Notice also informed Class members that when Class Counsel do request reimbursement of expenses, "their request will be posted on the litigation website, www.WholesaleGroceryProductsClassAction.com, and you may learn of such requests in that manner. Please consult the website regularly for updates."

In addition, on September 25, Co-Lead Counsel sent a postcard via U.S. mail to all affected class members notifying them of this motion, outlining this motion to reserve

attorneys' fees and a service award from the Settlement Fund and allowing for objections to be heard at the Final Approval (Final Fairness) Hearing, and informing class members that the motion would be posted on the case website once filed. The postcard notice also informed class members that they have until November 1, 2017 to object to this motion, and the case website and the long-form notice inform class members how objections are to be made, including that they must be in writing. Specifically, in the postcard notice Class Counsel informed the class:

> By October 1, 2017, Class Counsel will ask the Court to reimburse certain case-related expenses, to grant a service award to class representative, Plaintiff D&G, Inc. d/b/a Gary's Foods, and to reserve a portion of the settlement funds for consideration of a future motion for an award of attorneys' fees.
>
> Plaintiff's motion containing these requests will be posted on the litigation website www.WholesaleGroceryProductsClassAction.com by October 2, 2017, along with any other important documents. You can find all details of plaintiff's motion on this website; please consult it regularly for updates.
>
> You will have until November 1, 2017 to object to the motion, if you choose to. Plaintiff will ask the Court to hear the motion on November 15, 2017, at the same time as the Final Fairness hearing on Plaintiffs' motion for final approval of the proposed settlement with Supervalu.

Bruckner Decl., Ex. 2. This is consistent with the Plan of Notice approved by the Court. *See* ECF Nos. 727 at 12-13, 840 at 3-4.

VII. CONCLUSION

For the reasons stated herein, the Court should approve the plan of distribution and the interim award of expenses, and permit the reservation for a potential future award of attorneys' fees and service award. If the Court grants this motion, the Net Settlement Fund available for distribution to the Settlement Class would be $4,574,000 (accounting

for necessary reserve for claims administration, taxes, escrow fees, and the proposed reimbursement of expenses and reserve for motion of attorneys' fees and service award as described herein).

Dated: September 29, 2017

Respectfully submitted,

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

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