

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

VLADIMIR GUSINSKY REV. TRUST,
Individually and On Behalf of All Others
Similarly Situated,

Plaintiff,

V.

SUPERVALU INC., DONALD R. CHAPPEL,
IRWIN COHEN, PHILIP L. FRANCIS, MARK
GROSS, ERIC JOHNSON, MATHEW M.
PENDO, FRANCESCA RUIZ DE
LUZURIAGA, FRANK A. SAVAGE, and
MARY WINSTON,

Defendants.

Case No. _____

CLASS ACTION

JURY TRIAL DEMANDED

COMPLAINT FOR VIOLATION OF THE SECURITIES EXCHANGE ACT OF 1934

Plaintiff, by its undersigned attorneys, for this complaint against defendants, alleges upon personal knowledge with respect to itself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. This action stems from a proposed transaction announced on July 26, 2018 (the “Proposed Transaction”), pursuant to which Supervalu Inc. (“Supervalu” or the “Company”) will be acquired by United Natural Foods, Inc. and its wholly-owned subsidiary, Jedi Merger sub, Inc. (together, “United Natural”).

2. On July 25, 2018, Supervalu’s Board of Directors (the “Board” or “Individual Defendants”) caused the Company to enter into an agreement and plan of merger (the “Merger Agreement”) with United Natural. Pursuant to the terms of the Merger Agreement, if the Proposed Transaction is approved by Supervalu’s shareholders and completed, Supervalu’s stockholders

will receive \$32.50 in cash for each share of the Supervalu common stock they hold.

3. On August 21, 2018, defendants filed a preliminary proxy statement (the “Proxy Statement”) with the United States Securities and Exchange Commission (the “SEC”) in connection with the Proposed Transaction.

4. The Proxy Statement omits material information with respect to the Proposed Transaction, which renders the Proxy Statement false and misleading. Accordingly, plaintiff alleges herein that defendants violated Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the “1934 Act”) in connection with the Proxy Statement.

JURISDICTION AND VENUE

5. This Court has jurisdiction over all claims asserted herein pursuant to Section 27 of the 1934 Act because the claims asserted herein arise under Sections 14(a) and 20(a) of the 1934 Act and Rule 14a-9.

6. This Court has jurisdiction over defendants because each defendant is either a corporation that conducts business in and maintains operations within this District, or is an individual with sufficient minimum contacts with this District so as to make the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

7. Venue is proper under 28 U.S.C. § 1391 because a substantial portion of the transactions and wrongs complained of herein occurred in this District.

PARTIES

8. Plaintiff is, and has been continuously throughout all times relevant hereto, the owner of Supervalu common stock.

9. Defendant Supervalu is a Delaware corporation and maintains its principal executive offices at 11840 Valley View Road, Eden Prairie, Minnesota 55344. Supervalu’s

common stock is traded on the NYSE under the ticker symbol “SVU.” Supervalu is a party to the Merger Agreement.

10. Defendant Donald R. Chappel (“Chappel”) is Chairman of the Board of Supervalu.

11. Defendant Irwin Cohen (“Cohen”) is a director of Supervalu.

12. Defendant Philip L. Francis (“Francis”) is a director of Supervalu.

13. Defendant Mark Gross (“Gross”) is President, Chief Executive Officer (“CEO”), and a director of Supervalu.

14. Defendant Eric Johnson (“Johnson”) is a director of Supervalu.

15. Defendant Mathew M. Pendo (“Pendo”) is a director of Supervalu.

16. Defendant Francesca Ruiz De Luzuriaga (“Luzuriaga”) is a director of Supervalu.

17. Defendant Frank A. Savage (“Savage”) is a director of Supervalu.

18. Defendant Mary Winston (“Winston”) is a director of Supervalu.

19. The defendants identified in paragraphs 10 through 18 are collectively referred to herein as the “Individual Defendants.”

CLASS ACTION ALLEGATIONS

20. Plaintiff brings this action as a class action on behalf of itself and the other public stockholders of Supervalu (the “Class”). Excluded from the Class are defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any defendant.

21. This action is properly maintainable as a class action.

22. The Class is so numerous that joinder of all members is impracticable. As of July 25, 2018, there were 38,623,859 shares of Supervalu common stock outstanding, held by hundreds, if not thousands, of individuals and entities scattered throughout the country.

23. Questions of law and fact are common to the Class, including, among others,

whether defendants violated the 1934 Act and whether defendants will irreparably harm plaintiff and the other members of the Class if defendants' conduct complained of herein continues.

24. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class and plaintiff has the same interests as the other members of the Class. Accordingly, plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

25. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for defendants, or adjudications that would, as a practical matter, be dispositive of the interests of individual members of the Class who are not parties to the adjudications or would substantially impair or impede those non-party Class members' ability to protect their interests.

26. Defendants have acted, or refused to act, on grounds generally applicable to the Class as a whole, and are causing injury to the entire Class. Therefore, final injunctive relief on behalf of the Class is appropriate.

SUBSTANTIVE ALLEGATIONS

Background of the Company and the Proposed Transaction

27. Supervalu is one of the largest grocery wholesalers and retailers in the United States with fiscal 2018 annual sales of approximately \$14 billion.

28. The Company serves customers across the United States through a network of 3,437 stores comprised of 3,323 wholesale primary stores operated by customers serviced by the Company's food distribution business and 114 traditional retail grocery stores in continuing operations operated under three retail banners in three geographic regions.

29. The Company has approximately 23,000 employees in continuing operations.

30. On July 25, 2018, Supervalu's Board caused the Company to enter into the Merger Agreement with United Natural.

31. Pursuant to the terms of the Merger Agreement, if the Proposed Transaction is approved by Supervalu's shareholders and completed, Supervalu's stockholders will receive \$32.50 in cash for each share of the Supervalu common stock they hold.

32. According to the press release announcing the Proposed Transaction:

United Natural Foods, Inc. (NASDAQ: UNFI) and SUPERVALU INC. (NYSE: SVU) today announced that they have entered into a definitive agreement under which UNFI will acquire SUPERVALU for \$32.50 per share in cash, or approximately \$2.9 billion, including the assumption of outstanding debt and liabilities. . . .

Governance

UNFI Chief Executive Officer and Chairman Steven Spinner will lead the combined entity. Sean Griffin, UNFI Chief Operating Officer, will lead the SUPERVALU integration efforts, post close and lead an integration committee comprised of executives from both companies to drive the implementation of best practices from each company and the delivery of important synergies and a rapid and smooth integration.

Transaction Details

- UNFI expects to finance the transaction substantially with debt and Goldman Sachs provided committed financing in the transaction.

- Over time, UNFI plans to divest SUPERVALU retail assets in a thoughtful and economic manner.

- Upon closing, UNFI's net debt-to-EBITDA ratio is expected to be high. With strong cash flows, proceeds from divestitures and commitment to reducing debt, the company anticipates reducing leverage by at least two full turns in the first three years.

- The transaction has been approved by the boards of directors of both companies and is subject to antitrust approvals, SUPERVALU shareholder approval and other customary closing conditions, and is expected to close in the fourth quarter of calendar year 2018.

The Proxy Statement Omits Material Information, Rendering It False and Misleading

33. Defendants filed the Proxy Statement with the SEC in connection with the Proposed Transaction. As set forth below, the Proxy Statement omits material information with respect to the Proposed Transaction.

34. The Proxy Statement omits material information regarding the Company's financial projections, as well as the analyses performed by the Company's financial advisors in connection with the Proposed Transaction, Barclays Capital Inc. ("Barclays") and Lazard Freres & Co. LLC ("Lazard").

35. With respect to the Company's financial projections, the Proxy Statement fails to disclose: (i) the line items used to calculate Adjusted EBITDA; (ii) the line items used to calculate unlevered free cash flow; and (iii) a reconciliation of all non-GAAP to GAAP metrics.

36. With respect to Barclays' Discounted Cash Flow Analysis, the Proxy Statement fails to disclose: (i) the terminal value of the Company; (ii) the inputs and assumptions underlying the discount rates used by Barclays in the analysis; (iii) the estimated net debt of the Company; (iv) the value of the after-tax pension payments, multi-employer pension plan liability payments, and dark store carry costs related to the divestitures contemplated in the Scenario A projections; and (v) the fully diluted number of shares of Company common stock outstanding.

37. With respect to Barclays' Selected Comparable Company Analysis, the Proxy Statement fails to disclose the individual multiples and financial metrics for the companies observed by Barclays in the analysis.

38. With respect to Barclays' Selected Precedent Transaction Analysis, the Proxy Statement fails to disclose the individual multiples and financial metrics for the transactions observed by Barclays in the analysis.

39. With respect to Lazard's Discounted Cash Flow Analysis, the Proxy Statement fails to disclose: (i) the terminal value of the Company; (ii) the inputs and assumptions underlying the discount rates and terminal year growth rates used by Lazard in the analysis; (iii) net debt (cash); (iv) the value of after-tax pension payments, multi-employer pension plan liability payments, and dark store carry costs related to the divestitures contemplated in the Scenario A projections; and (v) the number of fully diluted shares of Company common stock outstanding.

40. With respect to Lazard's Selected Public Company Analysis, the Proxy Statement fails to disclose the individual multiples and financial metrics for the companies observed by Lazard in the analysis.

41. With respect to Lazard's Selected Precedent Transactions Multiple Analysis, the Proxy Statement fails to disclose the individual multiples and financial metrics for the transactions observed by Lazard in the analysis.

42. The disclosure of projected financial information is material because it provides stockholders with a basis to project the future financial performance of a company, and allows stockholders to better understand the financial analyses performed by the company's financial advisor in support of its fairness opinion. Moreover, when a banker's endorsement of the fairness of a transaction is touted to shareholders, the valuation methods used to arrive at that opinion as well as the key inputs and range of ultimate values generated by those analyses must also be fairly disclosed.

43. The Proxy Statement also omits material information regarding potential conflicts of interest of Barclays and Lazard.

44. For example, the Proxy Statement fails to disclose the amount of compensation Barclays received for the past services it provided to Supervalu.

45. The Proxy Statement fails to disclose the nature of the past services Barclays provided to United Natural.

46. The Proxy Statement further fails to disclose whether Lazard has performed past services for the Company or its affiliates, and if so, the timing and nature of such services and the amount of compensation received for such services.

47. Full disclosure of investment banker compensation and all potential conflicts is required due to the central role played by investment banks in the evaluation, exploration, selection, and implementation of strategic alternatives.

48. The omission of the above-referenced material information renders the Proxy Statement false and misleading, including, *inter alia*, the following sections of the Proxy Statement: (i) Background of the Merger; (ii) Reasons for the Merger; Recommendation of the SUPERVALU Board of Directors; (iii) Certain SUPERVALU Unaudited Prospective Financial Information; and (iv) Summary of Material Financial Analyses.

49. The omitted information, if disclosed, would significantly alter the total mix of information available to the Company's stockholders.

COUNT I

Claim for Violation of Section 14(a) of the 1934 Act and Rule 14a-9 Promulgated Thereunder Against the Individual Defendants and Supervalu

50. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

51. The Individual Defendants disseminated the false and misleading Proxy Statement, which contained statements that, in violation of Section 14(a) of the 1934 Act and Rule 14a-9, in light of the circumstances under which they were made, omitted to state material facts necessary to make the statements therein not materially false or misleading. Supervalu is liable as the issuer of these statements.

52. The Proxy Statement was prepared, reviewed, and/or disseminated by the Individual Defendants. By virtue of their positions within the Company, the Individual Defendants were aware of this information and their duty to disclose this information in the Proxy Statement.

53. The Individual Defendants were at least negligent in filing the Proxy Statement with these materially false and misleading statements.

54. The omissions and false and misleading statements in the Proxy Statement are material in that a reasonable stockholder will consider them important in deciding how to vote on the Proposed Transaction. In addition, a reasonable investor will view a full and accurate disclosure as significantly altering the total mix of information made available in the Proxy Statement and in other information reasonably available to stockholders.

55. The Proxy Statement is an essential link in causing plaintiff and the Company's stockholders to approve the Proposed Transaction.

56. By reason of the foregoing, defendants violated Section 14(a) of the 1934 Act and Rule 14a-9 promulgated thereunder.

57. Because of the false and misleading statements in the Proxy Statement, plaintiff and the Class are threatened with irreparable harm.

COUNT II

Claim for Violation of Section 20(a) of the 1934 Act Against the Individual Defendants

58. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

59. The Individual Defendants acted as controlling persons of Supervalu within the meaning of Section 20(a) of the 1934 Act as alleged herein. By virtue of their positions as officers and/or directors of Supervalu and participation in and/or awareness of the Company's operations and/or intimate knowledge of the false statements contained in the Proxy Statement, they had the

power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements that plaintiff contends are false and misleading.

60. Each of the Individual Defendants was provided with or had unlimited access to copies of the Proxy Statement alleged by plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause them to be corrected.

61. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control and influence the particular transactions giving rise to the violations as alleged herein, and exercised the same. The Proxy Statement contains the unanimous recommendation of the Individual Defendants to approve the Proposed Transaction. They were thus directly involved in the making of the Proxy Statement.

62. By virtue of the foregoing, the Individual Defendants violated Section 20(a) of the 1934 Act.

63. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Section 14(a) of the 1934 Act and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the 1934 Act. As a direct and proximate result of defendants' conduct, plaintiff and the Class are threatened with irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment and relief as follows:

- A. Enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction;
- B. In the event defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding rescissory damages;
- C. Directing the Individual Defendants to file a Proxy Statement that does not contain any untrue statements of material fact and that states all material facts required in it or necessary to make the statements contained therein not misleading;
- D. Declaring that defendants violated Sections 14(a) and/or 20(a) of the 1934 Act, as well as Rule 14a-9 promulgated thereunder;
- E. Awarding plaintiff the costs of this action, including reasonable allowance for plaintiff's attorneys' and experts' fees; and
- F. Granting such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: August 24, 2018

RIGRODSKY & LONG, P.A.

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