IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BRIAN WALLACE, Individually and on Behalf of All Others Similarly Situated, Plaintiff, v. SUPERVALU, INC., DONALD R. CHAPPEL, IRWIN S. COHEN, PHILIP L. FRANCIS, MARK GROSS, ERIC G. JOHNSON, MATHEW M. PENDO, FRANCESCA RUIZ DE LUZURIAGA, FRANK A. SAVAGE, and MARY A. WINSTON, Defendants.	)	Case No. **CLASS ACTION COMPLAINT FOR VIOLATIONS OF SECTIONS 14(a) AND 20(a) OF THE SECURITIES EXCHANGE ACT OF 1934** **JURY TRIAL DEMANDED**

Plaintiff Brian Wallace ("Plaintiff"), by his undersigned attorneys, alleges upon personal knowledge with respect to himself, 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 is brought as a class action by Plaintiff on behalf of himself and the other public holders of the common stock of SUPERVALU, Inc. ("SUPERVALU" or the "Company") against the Company and the members of the Company's board of directors (collectively, the "Board" or "Individual Defendants," and, together with SUPERVALU, the "Defendants") for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78n(a), 78t(a), SEC Rule 14a-9, 17 C.F.R. 240.14a-9, and Regulation G, 17 C.F.R. § 244.100, in connection with the proposed merger (the "Proposed

Merger") between SUPERVALU and Jedi Merger Sub, Inc. ("Merger Sub"), a wholly owned subsidiary of United Natural Foods, Inc. (collectively, "UNFI").

2. On July 25, 2018, the Board caused the Company to enter into an agreement and plan of merger ("Merger Agreement"), pursuant to which SUPERVALU's stockholders will receive $32.50 in cash for each share of SUPERVALU common stock they hold (the "Merger Consideration").

3. On August 21, 2018, in order to convince SUPERVALU shareholders to vote in favor of the Proposed Merger, the Board authorized the filing of a materially incomplete and misleading Proxy Statement on Schedule 14A (the "Proxy") with the Securities and Exchange Commission ("SEC"), in violation of Sections 14(a) and 20(a) of the Exchange Act. The date of the shareholder meeting is scheduled for September 6, 2018.

4. While Defendants are touting the fairness of the Merger Consideration to the Company's shareholders in the Proxy, they have failed to disclose certain material information that is necessary for shareholders to properly assess the fairness of the Proposed Merger, thereby rendering certain statements in the Proxy false and/or misleading.

5. In particular, the Proxy contains materially incomplete and misleading information concerning: (i) the financial projections for the Company; and (ii) potential conflicts of interests with the Company's financial advisors, Barclays Capital Inc. ("Barclays") and Lazard Freres & Co. LLC ("Lazard") (collectively, the "Financial Advisors").

6. It is imperative that the material information that has been omitted from the Proxy is disclosed to the Company's shareholders prior to the forthcoming shareholder vote, so that they can properly exercise their corporate suffrage rights.

7. For these reasons, and as set forth in detail herein, Plaintiff asserts claims against

Defendants for contraventions of: (i) Rule 14a-9; and (ii) Regulation G, 17 C.F.R. § 244.100, in violation of Sections 14(a) and 20(a) of the Exchange Act. Plaintiff seeks to enjoin Defendants from holding the shareholder vote on the Proposed Merger and taking any steps to consummate the Proposed Merger unless, and until, the material information discussed below is disclosed to SUPERVALU shareholders sufficiently in advance of the vote on the Proposed Merger or, in the event the Proposed Merger is consummated, to recover damages resulting from the Defendants' violations of the Exchange Act.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges violations of Section 14(a) and 20(a) of the Exchange Act.

9. Personal jurisdiction exists over each Defendant either because the Defendant conducts business in or maintains operations in this District, or is an individual who is either present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction over Defendant by this Court permissible under traditional notions of fair play and substantial justice.

10. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as under 28 U.S.C. § 1391, because SUPERVALU is incorporated in this District.

PARTIES

11. Plaintiff is, and at all relevant times has been, a SUPERVALU shareholder.

12. 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."

13. Individual Defendant Donald R. Chappel has been a director of the Company since 2010 and has served as Chairman of the Board since 2013.

14. Individual Defendant Irwin S. Cohen has been a director of the Company since 2003.

15. Individual Defendant Philip L. Francis has been a director of the Company since 2006.

16. Individual Defendant Mark Gross has served as the President, Chief Executive Officer ("CEO") and a director of the Company since 2016.

17. Individual Defendant Eric G. Johnson has been a director of the Company since 2013.

18. Individual Defendant Mathew M. Pendo has been a director of the Company since 2014.

19. Individual Defendant Francesca Ruiz de Luzuriaga has been a director of the Company since 2015.

20. Individual Defendant Frank A. Savage has been a director of the Company since 2014.

21. Individual Defendant Mary A. Winston has been a director of the Company since 2016.

22. The Individual Defendants and SUPERVALU may collectively be referred to as "Defendants." Each of the Individual Defendants herein is sued individually as well as in his or her capacity as an officer and/or trustee of the Company, and the liability of each arises from the fact that he or she has engaged in all or part of the unlawful acts, plans, schemes, or transactions complained of herein.

CLASS ACTION ALLEGATIONS

23. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23 on behalf of himself and the other public shareholders 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.

24. This action is properly maintainable as a class action because:

a. The Class is so numerous that joinder of all members is impracticable. As of August 16, 2018, there were approximately 38,688,967 shares of SUPERVALU common stock outstanding, held by hundreds to thousands of individuals and entities scattered throughout the country. The actual number of public shareholders of SUPERVALU will be ascertained through discovery;

b. There are questions of law and fact that are common to the Class that predominate over any questions affecting only individual members, including the following:

i) whether Defendants disclosed material information that includes non-GAAP financial measures without a presentation and reconciliation of the same non-GAAP financial measures to their most directly comparable GAAP equivalent in violation of Section 14(a) of the Exchange Act;

ii) whether Defendants have misrepresented or omitted material information concerning the Proposed Merger in the Proxy in violation of Section 14(a) of the Exchange Act;

iii) whether the Individual Defendants have violated Section 20(a) of the Exchange Act; and

iv) whether Plaintiff and other members of the Class will suffer irreparable harm if compelled to vote their shares regarding the Proposed Merger based on the materially incomplete and misleading Proxy.

c. Plaintiff is an adequate representative of the Class, has retained competent counsel experienced in litigation of this nature, and will fairly and adequately protect the interests of the Class;

d. Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff does not have any interests adverse to the Class;

e. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for the party opposing the Class;

f. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole; and

g. A class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

SUBSTANTIVE ALLEGATIONS

25. SUPERVALU operates a chain of supermarkets and pharmacies as well as provides supply chain services throughout the United States.

26. On July 26, 2018, the Company and UNFI jointly announced the Proposed Merger in a press release which states, in pertinent part:

> PROVIDENCE, R.I. and MINNEAPOLIS, July 26, 2018 /PRNewswire/ -- 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.
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> "This transaction accelerates UNFI's "Build out the Store" growth strategy by immediately enhancing our product range, equipping us to bring an attractive, comprehensive product portfolio to an expanded universe of customers," said Steve Spinner, UNFI's Chief Executive Officer and Chairman. "Combining our leading position in natural and organic foods with SUPERVALU's presence in fast-turning products makes us the partner of choice for a broader range of customers. Together, we can provide our "better for you" products as well as other high-growth segments, improving customers' competitive advantages in a dynamic marketplace. These benefits, plus our increased efficiency and productivity, will enable us to create value for our shareholders, enhance opportunities for our suppliers, provide a broader assortment for our customers and create new prospects for our associates over the long term."
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> "The combination of UNFI and SUPERVALU provides a substantial premium and delivers certainty of value to our stockholders, meaningful benefits to our customers, expanded opportunities for our employees, and the ability for us and our vendors to efficiently serve a varied customer base," said Mark Gross, SUPERVALU's Chief Executive Officer. "We have been executing an ambitious strategic transformation for over two years. We believe that this transaction is the best and natural next step for our stockholders, customers and employees. I am very proud of the unwavering commitment and focus of our employees in driving our strategic transformation and serving our customers. I am confident that, together, SUPERVALU and UNFI will be well positioned to succeed – and to help our customers succeed – in today's grocery landscape."
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> **Compelling Strategic and Financial Benefits**
>
> - **Diversifies customer base:** The transaction will greatly expand UNFI's customer base and exposure across channels, including those where demand for "better for you" products is increasing and UNFI is under-represented. It will also unlock new opportunities through a comprehensive product portfolio.
>
> - **Enables cross-selling opportunities:** UNFI will benefit from its ability to deliver comprehensive and expanded offerings, including the addition of high-growth perimeter categories such as meat and produce to UNFI's natural and organic products.

- **Expands market reach and scale:** The wider geographic reach and greater scale of the combined entity is expected to increase efficiencies and effectiveness.

- **Enhances technology, capacity and systems:** The combined entity plans to leverage scalable systems to streamline its processes, more efficiently meet the needs of its customers and reduce future capital expenditures.

- **Delivers significant synergies:** Through this combination, UNFI will be positioned to realize run rate cost synergies of more than $175 million by year 3.

- **Accelerating growth:** After year one, the transaction is projected to be accretive to Adjusted EPS in year 1 with double-digit Adjusted EPS growth after year 1, excluding one-time costs.

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.

27. The Merger Consideration appears inadequate in light of the Company's current financial performance. Indeed, the Company appears to have been successful in its turnaround

efforts, having reported double-digit sales growth, net income growth, and EBITDA growth for the 2017 fiscal year. Most recently, the Company reported double-digit EBITDA growth for the fiscal quarter ended June 30, 2018.

28. In sum, it appears that SUPERVALU is well-positioned for financial growth, and that the Merger Consideration fails to adequately compensate the Company's shareholders. It is imperative that Defendants disclose the material information they have omitted from the Proxy, discussed in detail below, so that the Company's shareholders can properly assess the fairness of the Merger Consideration for themselves and make an informed decision concerning whether or not to vote in favor of the Proposed Merger.

The Materially Incomplete and Misleading Proxy

29. On August 21, 2018, Defendants caused the Proxy to be filed with the SEC in connection with the Proposed Merger. The Proxy solicits the Company's shareholders to vote in favor of the Proposed Merger. Defendants were obligated to carefully review the Proxy before it was filed with the SEC and disseminated to the Company's shareholders to ensure that it did not contain any material misrepresentations or omissions. However, the Proxy misrepresents and/or omits both required and material information that is necessary for the Company's shareholders to make an informed decision concerning whether to vote in favor of the Proposed Merger, in violation of Sections 14(a) and 20(a) of the Exchange Act.

The Materiality of Financial Projections

30. A company's financial projections are material information a board relies on to determine whether to approve a merger transaction and recommend that shareholders vote to approve the transaction. Here, the financial forecasts were relied on to approve the Merger Agreement and recommend the Proposed Merger to shareholders as the Proxy discloses that the

financial projections above were prepared by the Company's management and provided to the Company's Board "[f]or purposes of considering, analyzing and evaluating the Company's strategic and financial alternatives, including the merger[.]" Proxy at 37.

31. When soliciting proxies from shareholders, a company must furnish the information found in Schedule 14A (codified as 17 C.F.R. § 240.14a-101). Item 14 of Schedule 14A sets forth the information a company must disclose when soliciting proxies regarding mergers and acquisitions. In regards to financial information, companies are required to disclose "financial information required by Article 11 of Regulation S-X[,]" which includes Item 10 of Regulation S-K. *See* Item 14(7)(b)(11) of 17 C.F.R. § 240.14a-101.

32. Under Item 10 of Regulation S-K, companies are encouraged to disclose "management's projections of future economic performance that have a reasonable basis and are presented in an appropriate format." 17 C.F.R. § 229.10(b). Although the SEC recognizes the usefulness of disclosing projected financial metrics, the SEC cautions companies to "take care to assure that the choice of items projected is not susceptible of misleading inferences through selective projection of only favorable items." *Id.*

33. In order to facilitate investor understanding of the Company's financial projections, the SEC provides companies with certain factors "to be considered in formulating and disclosing such projections[,]" including:

> (i) When management chooses to include its projections in a Commission filing, *the disclosures accompanying the projections should facilitate investor understanding of the basis for and limitations of projections.* In this regard investors should be cautioned against attributing undue certainty to management's assessment, and the Commission believes that investors would be aided by a statement indicating management's intention regarding the furnishing of updated projections. *The Commission also believes that investor understanding would be enhanced by disclosure of the assumptions which in management's opinion are most significant to the projections or are the key factors upon which the financial*

> *results of the enterprise depend and encourages disclosure of assumptions in a manner that will provide a framework for analysis of the projection.*
>
> (ii) Management also should consider whether disclosure of the accuracy or inaccuracy of previous projections would provide investors with important insights into the limitations of projections. In this regard, *consideration should be given to presenting the projections in a format that will facilitate subsequent analysis of the reasons for differences between actual and forecast results.* An important benefit may arise from the systematic analysis of variances between projected and actual results on a continuing basis, since such disclosure may highlight for investors the most significant risk and profit-sensitive areas in a business operation.

17 C.F.R. § 229.10(b)(3) (emphasis added).

34. Here, SUPERVALU's shareholders would clearly find complete and non-misleading financial projections material in deciding how to vote, considering in making its recommendation that shareholders vote in favor of the Proposed Merger, the Board determined that:

> the merger consideration was more favorable to SUPERVALU's stockholders than the potential value that would reasonably be expected to result from other alternatives reasonably available to SUPERVALU, including the continued operation of SUPERVALU on a stand-alone basis . . . . .

Proxy at 34.

35. Moreover, the Proxy discloses that the projections were provided to both of the Company's "financial advisors in connection with the merger." Proxy at 37.

36. As discussed further below, the financial projections here do not provide SUPERVALU's shareholders with a materially complete understanding of the assumptions and key factors considered in developing the financial projections.

The Financial Projections are Materially Incomplete

37. The Proxy discloses two sets of financial projections, Scenario A and Scenario B, for the Company on pages 37-40. However, the Proxy fails to provide material information concerning the projections, which were developed by the Company's management and relied upon

in recommending that shareholders vote in favor of the Proposed Merger.

38. Specifically, the Proxy provides values for non-GAAP measures: (1) Adjusted EBITDA; and (2) Unlevered Free Cash Flow ("UFCF"), but fails to provide the line items used in their respective calculation or a reconciliation of these non-GAAP measures to their respective most comparable GAAP measures. *Id.* at 38.

39. Notably, it appears that the Company has different definitions for Adjusted EBITDA for Scenario A and Scenario B.

40. More specifically, the Proxy discloses that for Scenario A, Adjusted EBITDA is defined as "a non-GAAP measure consisting of Net (loss) earnings from continuing operations, plus Interest expense, net, Net periodic benefit income, excluding service cost, and Income tax (benefit) provision, less Net earnings attributable to non-controlling interests calculated in accordance with GAAP, plus adjustments for Depreciation and amortization, Stock-based compensation, LIFO charge (credit) and certain adjustment items, as determined by SUPERVALU management." *Id.*

41. In regards to Scenario B, Adjusted EBITDA is defined as "a non-GAAP measure defined as adjusted earnings before interest, income taxes and depreciation and amortization consisting of Net (loss) earnings from continuing operations, plus Interest expense, net, and Income tax (benefit) provision, less Net earnings attributable to non-controlling interests calculated in accordance with GAAP, plus adjustments for Depreciation and amortization, LIFO charge (credit) and certain adjustment items, as determined by SUPERVALU management." *Id.*

42. The Proxy also discloses that UFCF was "calculated by taking adjusted earnings before interest after tax, adding back depreciation and amortization, subtracting capital expenditures, adjusting for changes in working capital, subtracting the cost of company-owned life

insurance, stock-based compensation, merger and integration costs, labor buyout and severance costs (after tax), and adding back proceeds from the divestitures contemplated in the Scenario A projections, capital leases to be assumed by buyers related to such divestitures, and the projected proceeds from the sale of certain distribution centers." *Id.*

43. Moreover, the Proxy further discloses that UFCF did "not take into account certain line items — including 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 — which were not projected to continue in perpetuity." *Id.*

44. As the definitions above reveal, numerous adjustments were made to the financial metrics that the Board relied upon in making its recommendation. Nevertheless, the Proxy only discloses one line item, Capital Expenditures ("CapEx"). *Id.*

45. Despite acknowledging that the adjustments to Adjusted EBITDA were "determined by SUPERVALU management," *Id.*, and that UFCF was "calculated using the Scenario A projections and other inputs provided by SUPERVALU management," *Id.*, the Proxy provides an incomplete and materially misleading understanding of the Company's future financial prospects and the inputs and assumptions for which those prospects are based.

46. The misleading nature of the disclosed financial information is further exacerbated by the Proxy's disclosure that "SUPERVALU management directed Barclays and Lazard to use the Scenario A projections for purposes of rendering their respective fairness opinions to the SUPERVALU board and in performing the related analyses . . . ." Proxy at 37.

47. Although the Proxy goes on to discuss the reasons for directing the Financial Advisors to use Scenario A in a general manner, shareholders are unable to understand how these qualitative reasons, in fact, changed the Company's future outlook due to the failure to disclose

the line items above or provide a reconciliation.

48. As a result of the Company's incomplete disclosures surrounding the calculation of the above referenced financial metrics, the Proxy is materially misleading as shareholders are provided an incomplete and materially misleading understanding of the Company's future prospects, despite the information being readily available and the Company's acknowledgement that the "projections provided were considered in good faith by SUPERVALU management to be reasonable, based on the best available information at the time . . . ." *Id.* at 39.

49. As such, this information must be disclosed in order to cure the materially misleading disclosures regarding both the financial projections developed by the Company as well as the projections relied upon by the Company's financial advisors.

The Financial Projections Violate Regulation G

50. The SEC has acknowledged that potential "misleading inferences" are exacerbated when the disclosed information contains non-GAAP financial measures[1] and adopted Regulation G[2] "to ensure that investors and others are not misled by the use of non-GAAP financial measures."[3] More specifically, the company must disclose the most directly comparable GAAP financial measure and a reconciliation (by schedule or other clearly understandable method) of the differences between the non-GAAP financial measure disclosed or released with the most comparable financial measure or measures calculated and presented in accordance with GAAP.

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[1] Non-GAAP financial measures are numerical measures of future financial performance that exclude amounts or are adjusted to effectively exclude amounts that are included in the most directly comparable GAAP measure. 17 C.F.R. § 244.101(a)(1).

[2] Item 10 of Regulations S-K and S-B were amended to reflect the requirements of Regulation G.

[3] United States Securities and Exchange Commission, *Final Rule: Conditions for Use of Non-GAAP Financial Measures* (2002), *available at* https://www.sec.gov/rules/final/33-8176.htm (last visited August 8, 2018) ("SEC, *Final Rule*").

17 C.F.R. § 244.100. This is because the SEC believes "this reconciliation will help investors . . . to better evaluate the non-GAAP financial measures . . . [and] more accurately evaluate companies' securities and, in turn, result in a more accurate pricing of securities."[4]

51. Moreover, the SEC has publicly stated that the use of non-GAAP financial measures can be misleading.[5] Former SEC Chairwoman Mary Jo White has stated that the frequent use by publicly traded companies of unique company-specific non-GAAP financial measures (as SUPERVALU included in the Proxy here), implicates the centerpiece of the SEC's disclosures regime:

> In too many cases, the non-GAAP information, which is meant to supplement the GAAP information, has become the key message to investors, crowding out and effectively supplanting the GAAP presentation. Jim Schnurr, our Chief Accountant, Mark Kronforst, our Chief Accountant in the Division of Corporation Finance and I, along with other members of the staff, have spoken out frequently about our concerns to raise the awareness of boards, management and investors. And last month, the staff issued guidance addressing a number of troublesome practices *which can make non-GAAP disclosures misleading*: the lack of equal or greater prominence for GAAP measures; exclusion of normal, recurring cash operating expenses; individually tailored non-GAAP revenues; lack of consistency; cherry-picking; and the use of cash per share data. I strongly urge companies to carefully consider this guidance and revisit their approach to non-GAAP disclosures. I also urge again, as I did last December, that appropriate controls be considered and that audit committees carefully oversee their company's use of non-GAAP measures and disclosures.

(emphasis added) (footnotes omitted).[6]

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4 SEC, *Final Rule.*

5 *See, e.g.*, Nicolas Grabar and Sandra Flow, *Non-GAAP Financial Measures: The SEC's Evolving Views*, Harvard Law School Forum on Corporate Governance and Financial Regulation (June 24, 2016), *available at* https://corpgov.law.harvard.edu/2016/06/24/non-gaap-financial-measures-the-secs-evolving-views/ (last visited August 8, 2018); Gretchen Morgenson, *Fantasy Math Is Helping Companies Spin Losses Into Profits*, N.Y. Times, Apr. 22, 2016, *available at* http://www.nytimes.com/2016/04/24/business/fantasy-math-is-helping-companies-spin-losses-into-profits.html?_r=0 (last visited August 8, 2018).

6 Mary Jo White, *Keynote Address, International Corporate Governance Network Annual Conference: Focusing the Lens of Disclosure to Set the Path Forward on Board Diversity, Non-GAAP, and Sustainability* (June 27, 2016), *available at* https://www.sec.gov/news/speech/chair-white-icgn-speech.html (last visited August 8, 2018).

52. Compliance with Regulation G is mandatory under Section 14(a), and non-compliance constitutes a violation of Section 14(a). Thus, in order to bring the Proxy into compliance with Regulation G, Defendants must provide a reconciliation of the non-GAAP financial measures to their respective most comparable GAAP financial measures.

The Financial Projections are Materially Misleading and Violate SEC Rule 14a-9

53. In addition to the Proxy's violation of Regulation G, the lack of reconciliation, or at the very least, the line items utilized in calculating the non-GAAP measures renders the financial projections disclosed materially misleading, as shareholders are unable to understand the differences between the non-GAAP measures and their respective most comparable GAAP financial measures.

54. Such projections are necessary to make the non-GAAP projections included in the Proxy not misleading. Indeed, Defendants acknowledge the misleading nature of non-GAAP projections, as SUPERVALU shareholders are cautioned that the "projections reflect subjective judgment in many respects and thus are susceptible to multiple interpretations . . . ." Proxy at 39.

55. As such, in order to cure the materially misleading nature of the projections under SEC Rule 14a-9 as a result of the omitted information on pages 37-40, Defendants must provide a reconciliation table of the non-GAAP financial measures to the most comparable GAAP measures.

Material Omissions Concerning the Financial Advisors' Potential Conflicts of Interest

56. The Proxy also omits material information related to prior engagements between the Company and its financial advisors. Without this information, shareholders are unable to determine whether their respective fairness opinions are truly free of bias.

57. Moreover, Item 1015(b) of Regulation M-A requires the Company to "[d]escribe any material relationship that existed during the past two years or is mutually understood to be

contemplated and any compensation received or to be received as a result of the relationship . . . ." 17 C.F.R. § 229.1015(b). Nevertheless, the Proxy fails to disclose certain compensation received by both Barclays and Lazard for prior work.

58. More specifically, the Proxy discloses that "in the past two years, Barclays has performed the following investment banking and financial services for SUPERVALU: (i) provided M&A advisory services and (ii) acted as a lender under certain of SUPERVALU's existing lending facilities." Proxy at 46. Nevertheless, the Proxy fails to provide the actual amount of compensation that Barclays received for these services as required by Item 1015(b). Considering that Barclays is set to earn $17,940,000 if the Proposed Merger is consummated, shareholders would clearly find it material to know how much Barclays has earned for its previous engagements.

59. In regard to Lazard, while the Proxy does disclose that a Senior Advisor at Lazard, Individual Defendant Savage, currently sits on the SUPERVALU Board, the Proxy fails to disclose whether Lazard has also been engaged by SUPERVALU previously. Proxy at 52. This omission is particularly material and misleading considering that it is disclosed that Lazard has not been engaged by UNFI in the past two years. *Id.* In light of the inherent conflict that is disclosed regarding Defendant Savage and considering the $17,940,000 fee that Lazard is set to receive here if the deal is consummated, shareholders would clearly find it material to know what services Lazard has provided to the Company, if any, and how much Lazard has earned from the Company as a result of those prior engagements.

60. Without this information, the Company's shareholders are being misled about the Company's relationship with their financial advisors, and the potential conflicts that could create an incentive for them to support the Proposed Merger. This information is clearly material to shareholders considering that the Board's recommendation, is based in part on:

> *Receipt of Fairness Opinions from Barclays and Lazard.* The SUPERVALU board considered the financial analysis presentation of Barclays and Lazard and (i) the oral opinion of Barclays (which was subsequently confirmed in writing) to the SUPERVALU board that, as of such date and based upon and subject to the qualifications, limitations and assumptions stated in its opinion, the consideration to be offered to the stockholders of SUPERVALU (other than the holders of any dissenting shares or shares to be cancelled in the merger) was fair, from a financial point of view, to such stockholders and (ii) the oral opinion of Lazard, subsequently confirmed in writing, that, as of such date, and based upon and subject to the assumptions, procedures, factors, qualifications and limitations set forth therein, the merger consideration to be paid to holders of SUPERVALU common stock (other than the holders of any dissenting shares or shares to be cancelled in the merger) in the merger was fair, from a financial point of view, to such holders (as described in the sections entitled " — *Opinions of Financial Advisors — Opinion of Barclays*" and "—*Opinions of Financial Advisors — Opinion of Lazard*").

Proxy at 35.

61. In sum, the Proxy independently violates: (i) Regulation G, which requires a presentation and reconciliation of any non-GAAP financial measure to its most directly comparable GAAP equivalent; and (ii) Rule 14a-9, since the material omitted information renders certain statements, discussed above, materially incomplete and misleading. As the Proxy independently contravenes the SEC rules and regulations, Defendants violated Section 14(a) and Section 20(a) of the Exchange Act by filing the Proxy to garner votes in support of the Proposed Merger from SUPERVALU shareholders.

62. Absent disclosure of the foregoing material information prior to the special shareholder meeting, Plaintiff and the other members of the Class will be unable to make a fully-informed decision regarding whether to vote in favor of the Proposed Merger, and are thus threatened with irreparable harm, warranting the injunctive relief sought herein.

COUNT I

(Against All Defendants for Violations of Section 14(a) of the Exchange Act and 17 C.F.R. § 244.100 Promulgated Thereunder)

63. Plaintiff incorporates each and every allegation set forth above as if fully set forth

herein.

64. Section 14(a)(1) of the Exchange Act makes it "unlawful for any person, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security (other than an exempted security) registered pursuant to section 78l of this title." 15 U.S.C. § 78n(a)(1).

65. As set forth above, the Proxy omits information required by SEC Regulation G, 17 C.F.R. § 244.100, which independently violates Section 14(a). SEC Regulation G, among other things, requires an issuer that chooses to disclose a non-GAAP measure to provide a presentation of the "most directly comparable" GAAP measure, and a reconciliation "by schedule or other clearly understandable method" of the non-GAAP measure to the "most directly comparable" GAAP measure. 17 C.F.R. § 244.100(a).

66. The failure to reconcile the numerous non-GAAP financial measures included in the Proxy violates Regulation G and constitutes a violation of Section 14(a).

COUNT II

(Against All Defendants for Violations of Section 14(a) of the Exchange Act and Rule 14a-9 Promulgated Thereunder)

67. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

68. SEC Rule 14a-9 prohibits the solicitation of shareholder votes in Proxy communications that contain "any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to

state any material fact necessary in order to make the statements therein not false or misleading[.]" 17 C.F.R. § 240.14a-9.

69. Regulation G similarly prohibits the solicitation of shareholder votes by "mak[ing] public a non-GAAP financial measure that, taken together with the information accompanying that measure . . . contains an untrue statement of a material fact or *omits to state a material fact necessary in order to make the presentation of the non-GAAP financial measure . . . not misleading*." 17 C.F.R. § 244.100(b) (emphasis added).

70. Defendants have issued the Proxy with the intention of soliciting shareholder support for the Proposed Merger. Each of the Defendants reviewed and authorized the dissemination of the Proxy, which fails to provide critical information regarding, amongst other things, the financial projections for the Company.

71. In so doing, Defendants made untrue statements of fact and/or omitted material facts necessary to make the statements made not misleading. Each of the Individual Defendants, by virtue of their roles as directors, were aware of the omitted information but failed to disclose such information, in violation of Section 14(a). The Individual Defendants were therefore negligent, as they had reasonable grounds to believe material facts existed that were misstated or omitted from the Proxy, but nonetheless failed to obtain and disclose such information to shareholders although they could have done so without extraordinary effort.

72. The Individual Defendants knew or were negligent in not knowing that the Proxy is materially misleading and omits material facts that are necessary to render it not misleading. The Individual Defendants undoubtedly reviewed and relied upon the omitted information identified above in connection with their decision to approve and recommend the Proposed Merger.

73. The Individual Defendants knew or were negligent in not knowing that the material information identified above has been omitted from the Proxy, rendering the sections of the Proxy identified above to be materially incomplete and misleading.

74. The Individual Defendants were, at the very least, negligent in preparing and reviewing the Proxy. The preparation of a Proxy statement by corporate insiders containing materially false or misleading statements or omitting a material fact constitutes negligence. The Individual Defendants were negligent in choosing to omit material information from the Proxy or failing to notice the material omissions in the Proxy upon reviewing it, which they were required to do carefully as the Company's directors. Indeed, the Individual Defendants were intricately involved in the process leading up to the signing of the Merger Agreement and the preparation of the Company's financial projections.

75. SUPERVALU is also deemed negligent as a result of the Individual Defendants' negligence in preparing and reviewing the Proxy.

76. The misrepresentations and omissions in the Proxy are material to Plaintiff and the Class, who will be deprived of their right to cast an informed vote if such misrepresentations and omissions are not corrected prior to the vote on the Proposed Merger.

77. Plaintiff and the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

COUNT III

(Against the Individual Defendants for Violations of Section 20(a) of the Exchange Act)

78. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

79. The Individual Defendants acted as controlling persons of SUPERVALU within the meaning of Section 20(a) of the Exchange 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 incomplete and misleading statements contained in the Proxy filed with the SEC, 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 materially incomplete and misleading.

80. Each of the Individual Defendants was provided with or had unlimited access to copies of the Proxy and other statements 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 the statements to be corrected.

81. 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 or influence the particular transactions giving rise to the Exchange Act violations alleged herein and exercised the same. The Proxy at issue contains the unanimous recommendation of each of the Individual Defendants to approve the Proposed Merger. They were thus directly involved in preparing the Proxy.

82. In addition, as described herein and set forth at length in the Proxy, the Individual Defendants were involved in negotiating, reviewing, and approving the Merger Agreement. The Proxy purports to describe the various issues and information that the Individual Defendants reviewed and considered. The Individual Defendants participated in drafting and/or gave their input on the content of those descriptions.

83. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of the Exchange Act.

84. 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) 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 Exchange Act. As a direct and proximate result of Individual Defendants' conduct, Plaintiff and the Class will be irreparably harmed.

85. Plaintiff and the Class have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected from the immediate and irreparable injury that Defendants' actions threaten to inflict.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief as follows:

A. Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class Representative and his counsel as Class Counsel;

B. Enjoining Defendants and all persons acting in concert with them from proceeding with the shareholder vote on the Proposed Merger or consummating the Proposed Merger, unless and until the Company discloses the material information discussed above which has been omitted from the Proxy;

C. Directing Defendants to account to Plaintiff and the Class for all damages sustained as a result of their wrongdoing;

D. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and expert fees and expenses; and

E. Granting such other and further relief as this Court may deem just and proper.

JURY DEMAND

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

Dated: August 24, 2018

Respectfully submitted,

FARUQI & FARUQI, LLP

By: */s/ Michael Van Gorder*
Michael Van Gorder (#6214)
20 Montchanin Road, Suite 145
Wilmington, DE 19807
Tel.: (302) 482-3182
Email: mvangorder@faruqilaw.com

Counsel for Plaintiff

OF COUNSEL:

FARUQI & FARUQI, LLP
Nadeem Faruqi
James M. Wilson, Jr.
685 Third Ave., 26th Fl.
New York, NY 10017
Telephone: (212) 983-9330
Email: nfaruqi@faruqilaw.com
Email: jwilson@faruqilaw.com

Counsel for Plaintiff