

# **EXHIBIT A**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

Paul Toomey, Nanette Langone, and Randall May on behalf of the estate of Martin May, individually and as representatives of a class of similarly situated persons, and on behalf of the Demoulas (Restated) Profit Sharing Plan and Trust,

*Plaintiffs,*

v.

Demoulas Super Markets, Inc., Arthur T. Demoulas, William F. Marsden, and William J. Shea,

*Defendants.*

Case No. 1:19-cv-11633-LTS

**CLASS ACTION  
SETTLEMENT AGREEMENT**

This Class Action Settlement Agreement (“Settlement Agreement”) is entered into between and among the Class Representatives, all Class Members, and the Defendants, as defined herein.

**1. ARTICLE 1 – RECITALS**

**1.1** On July 30, 2019, the initial Class Representative, Paul Toomey, filed a Class Action Complaint (*ECF No. 1*) in the United States District Court for the District of Massachusetts, asserting claims against Defendants under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), in relation to the management of the Demoulas (Restated) Profit Sharing Plan and Trust (“the Plan”).

**1.2** On September 27, 2019, Demoulas Super Markets, Inc. (“DSM”) and the other defendants filed a motion to dismiss the Complaint. On April 16, 2020, the Court issued an Opinion and Order denying the motion to dismiss as to both counts. *ECF No. 42*.

**1.3** On September 24, 2020, Plaintiffs filed an Amended Complaint, adding Nanette Langone and Randall May as additional Class Representatives. *See ECF No. 67*.

**1.4** During the course of the Action, the Settling Parties engaged in substantial discovery, including the production of over 35,000 pages of documents by Defendants. As a result of this discovery, the Settling Parties' negotiations were well-informed.

**1.5** On September 30, 2020, the Settling Parties engaged in private mediation with a jointly-selected Mediator. The Settling Parties did not reach a settlement during the mediation, but continued conversations with the Mediator throughout the following week. After extensive arm's length negotiations supervised by the Mediator, the Settling Parties reached a settlement in principle. The entire terms of the Settling Parties' settlement are memorialized in this Settlement Agreement.

**1.6** The Class Representatives and Class Counsel consider it desirable and in the Class Members' best interests that the claims against Defendants be settled on the terms set forth below, and they have concluded that such terms are fair, reasonable, and adequate and that this settlement will result in significant benefits to the Class.

**1.7** Defendants deny all liability to the Class Representatives, deny all of the claims made in the Action, deny all allegations of wrongdoing made in any of the complaints in this Action, and deny that the Class Representatives, the Plan, or any of the Plan's current or former participants suffered any losses. Defendants further maintain that they acted prudently at all times when acting in any fiduciary capacity with respect to the Plan. This Settlement Agreement, and the discussions between the Settling Parties preceding it, shall in no event be construed as, or be deemed to be evidence of, an admission or concession on Defendants' part (or on the part of any officers or employees of Defendants with responsibility for the Plan's investment or administrative functions) of any fault or liability whatsoever.

**1.8** To avoid the risks and uncertainty of further litigation, and after consulting with counsel and considering the facts and applicable law, the Settling Parties wish to fully and finally resolve this Action upon the terms and conditions set forth in this Settlement Agreement.

**1.9** Therefore, the Settling Parties, in consideration of the promises, covenants, and agreements herein described, acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree to the terms of this Settlement Agreement.

## **2. ARTICLE 2 – DEFINITIONS**

As used in this Settlement Agreement and the Exhibits hereto (as listed in Paragraph 13.15), unless otherwise defined, the following terms have the meanings specified below:

**2.1** “Action” means the action captioned *Paul Toomey, et al. v. Demoulas Super Markets, Inc., et al.*, No. 1:19-cv-11633-LTS in the United States District Court for the District of Massachusetts.

**2.2** “Active Account” means an individual investment account in the Plan with a balance greater than \$0.00.

**2.3** “Administrative Expenses” means expenses incurred in the administration of this Settlement Agreement, including (a) all fees, expenses, and costs associated with providing the Settlement Notices to the Class; (b) related tax expenses (including taxes and tax expenses as described in Paragraph 5.3); (c) all expenses and costs associated with the calculations pursuant to the Plan of Allocation; (d) all fees and expenses associated with the Settlement Website and telephone support line described in Article 12; and (e) all other fees and expenses of the Settlement Administrator, Independent Fiduciary, and the Escrow Agent. Excluded from Administrative Expenses are DSM’s internal expenses and the Settling Parties’ respective legal expenses. Administrative Expenses shall be paid from the Gross Settlement Amount.

**2.4** “Alternate Payee” means a person other than a Current Participant, Former Participant, or Beneficiary in the Plan who is entitled to a benefit under the Plan as a result of a Qualified Domestic Relations Order (“QDRO”), where the QDRO relates to a Current Participant’s or Former Participant’s balance during the Class Period, and the relevant Current Participant’s or Former Participant’s account had an Active Account in the Plan during the Class Period.

**2.5** “Attorneys’ Fees and Costs” means the amount awarded by the Court as compensation for the services provided by Class Counsel and the expenses incurred by Class Counsel in connection with the Action, which shall be recovered from the Gross Settlement Amount.

**2.6** “Beneficiary” means a person who is entitled to receive a benefit under the Plan that is derivative of a deceased Current Participant’s or Former Participant’s interest in the Plan, other than an Alternate Payee. A Beneficiary includes, but is not limited to, a spouse, surviving spouse, domestic partner, child or other individual or trust designated by the Current Participant or Former Participant as determined under the terms of the Plan who currently is entitled to a benefit.

**2.7** “Business Days” refers to the days between Monday and Friday of each week and excludes the “Legal Holidays” specified in Federal Rule of Civil Procedure 6(a)(6).

**2.8** “CAFA” means the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1711–1715.

**2.9** “Class Counsel” means Nichols Kaster, PLLP and Block & Leviton LLP.

**2.10** “Class Members” means each individual in the Settlement Class.

**2.11** “Class Period” means the period from July 30, 2013 through (and including) November 20, 2020.

**2.12** “Class Representatives” means Paul Toomey, Nanette Langone, and Randall May.

**2.13** “Class Representatives’ Compensation” means the amount awarded by the Court as compensation for the services provided by the Class Representatives in the Action and the risks assumed by the Class Representatives in the Action.

**2.14** “Trustees” means the Plan’s trustees, including defendants Arthur T. Demoulas, William F. Marsden, and William J. Shea, and any other persons who served as trustees of the Plan during the Class Period.

**2.15** “Confidentiality Order” means the Stipulation and Protective Order entered in the Action on May 13, 2020. *See ECF No. 50.*

**2.16** “Court” means the United States District Court for the District of Massachusetts.

**2.17** “Court of Appeals” means the United States Court of Appeals for the First Circuit.

**2.18** “Current Participant” means a Class Member who has an Active Account in the Plan as of November 20, 2020.

**2.19** “Defendants” means all defendants named in the Amended Complaint, including DSM, Arthur T. Demoulas, William F. Marsden, and William J. Shea.

**2.20** “Defense Counsel” means counsel for Defendants, McDermott Will & Emery LLP.

**2.21** “Effective Approval Order” means the Final Approval Order once it becomes Effective.

**2.22** “Effective” means with respect to any judicial ruling, order, or judgment that the period for any motions for reconsideration, motions for rehearing, appeals, petitions for

certiorari, or the like (“Review Proceeding”) has expired without the initiation of a Review Proceeding, or, if a Review Proceeding has been timely initiated, that it has been fully and finally resolved, either by court action or by voluntary action of any party, without any possibility of a reversal, vacatur, or modification of any judicial ruling, order, or judgment, including the exhaustion of all proceedings in any remand or subsequent appeal and remand. The Settling Parties agree that absent an appeal or other attempted Review Proceeding, the Final Approval Order becomes Effective thirty-one (31) calendar days after its entry.

**2.23** “Escrow Agent” means Alerus Financial Corporation, or another entity agreed to by the Settling Parties.

**2.24** “Fairness Hearing” means the hearing scheduled by the Court to consider (a) whether to finally approve the Settlement pursuant to Fed. R. Civ. P. 23; (b) any objections from Class Members to the Settlement Agreement; and (c) any requested Attorneys’ Fees and Costs, Administrative Expenses, or Class Representatives’ Compensation.

**2.25** “Final Approval” means the entry of the Final Approval Order.

**2.26** “Final Approval Order” means the order granting final approval of the Settlement Agreement, and dismissing the Class Action with prejudice, to be proposed by the Settling Parties for approval by the Court, in substantially the form attached as Exhibit 5 hereto.

**2.27** “Former Participant” means a Class Member who participated in the Plan during the Class Period but did not have an Active Account as of November 20, 2020.

**2.28** “Former Participant Rollover Form” means the form described generally in Paragraph 3.3.2 and substantially in the form attached as Exhibit 3.

**2.29** “Gross Settlement Amount” means the sum of seventeen million, five hundred thousand dollars (\$17,500,000), contributed to the Qualified Settlement Fund pursuant to Article

5. The Gross Settlement Amount shall be the full and sole monetary payment to the Settlement Class, Class Representatives, and Class Counsel made on behalf of Defendants in connection with the settlement effectuated through this Settlement Agreement, pursuant to Paragraph 5.6.

**2.30** “Independent Fiduciary” means the person or entity selected by DSM to serve as an independent fiduciary to the Plan with respect to the Settlement Agreement for the purpose of rendering the determination described in Article 3 herein.

**2.31** “Mediator” means Hunter Hughes, Esq., Alternative Dispute Resolution, 1075 Peachtree St. Suite 2550, Atlanta, GA 30309.

**2.32** “DSM” means Demoulas Super Markets, Inc.

**2.33** “Net Settlement Amount” means the Gross Settlement Amount minus: (a) all Attorneys’ Fees and Costs approved by the Court; (b) all Class Representatives’ Compensation approved by the Court; (c) all Administrative Expenses approved by the Court; and (d) any contingency reserve not to exceed an amount to be mutually agreed upon by the Settling Parties and approved by the Court that is set aside by the Settlement Administrator for: (1) Administrative Expenses incurred before the Settlement Effective Date but not yet paid, and (2) Administrative Expenses estimated to be incurred after the Settlement Effective Date but before the end of the Settlement Period.

**2.34** “The Plan” means the Demoulas (Restated) Profit Sharing Plan and Trust.

**2.35** “Plan of Allocation” means the methodology for allocating and distributing the Net Settlement Amount pursuant to Article 6 herein.

**2.36** “Preliminary Approval Order” means the order proposed by the Settling Parties and approved by the Court in connection with the Motion for Preliminary Approval of the



Settlement, as described in Paragraph 3.2 and in substantially the form attached hereto as Exhibit 4.

**2.37** “Qualified Settlement Fund” or “Settlement Fund” means the interest-bearing, settlement fund account to be established and maintained by the Escrow Agent pursuant to Article 5 herein as the Qualified Settlement Fund (within the meaning of Treas. Reg. § 1.468B-1).

**2.38** “Released Parties” means (a) each Defendant; (b) any Trustees not named as Defendants; (c) the Plan and any of its administrators, fiduciaries, investment managers, or parties in interest; and (d) with respect to (a) through (c) above, any of their affiliates, subsidiaries, divisions, predecessors-in-interest, successors-in-interest, assigns, administrators, committees, officers, directors, partners, agents, managers, members, employees, representatives, attorneys, insurers, co-insurers, reinsurers, accountants, auditors, advisors, personal representatives, heirs, executors, administrators, associates, and all persons acting under, by, through, or in concert with any of them..

**2.39** “Released Claims” means any and all claims, actions, demands, rights, obligations, liabilities, damages, attorneys’ fees, expenses, costs, and causes of action, including both known and unknown claims, whether class, derivative, or individual in nature against any of the Released Parties:

**2.39.1** That were asserted in the Action (including any assertion set forth in the Complaint or the Amended Complaint, or any other submission made by the Class Representatives, Class Members, or Class Counsel in connection with the Action) or that are based on the same factual predicate, including but not limited to those that arise out of, relate to, are based on, or have any connection with: (1) the overall structure,

management, or monitoring of the Plan; (2) the selection, monitoring, oversight, retention, fees, expenses, or performance of the Plan's investments; (3) fees, costs, or expenses associated with the Plan's investments, and/or (4) any allegations with respect to any fiduciaries of the Plan (or the selection or monitoring of those fiduciaries) in connection with the foregoing;

**2.39.2** That would be barred by res judicata based on entry by the Court of the Final Approval Order;

**2.39.3** That relate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the Net Settlement Fund pursuant to the Plan of Allocation; or

**2.39.4** That relate to the approval by the Independent Fiduciary of the Settlement Agreement.

Nothing in this Settlement Agreement shall be construed to release any individual employment discrimination claims unrelated to the Plan.

**2.40** "Settlement" or "Settlement Agreement" refers to the agreement embodied in this agreement and its exhibits.

**2.41** "Settlement Administrator" means Analytics Consulting LLC, or any other independent contractor retained by Class Counsel and approved by the Court for purposes of sending the Settlement Notices to the Class, establishing the Settlement Website and telephone support line, and administering the Settlement as provided in this Settlement Agreement.

**2.42** "Settlement Agreement Execution Date" means that date on which the final signature is affixed to this Settlement Agreement.

**2.43** "Settlement Class" means the following class to be certified by the Court:

All participants and beneficiaries of the Demoulas (Restated) Profit Sharing Plan and Trust at any time from July 30, 2013 through November 20, 2020, excluding Defendants, the Plan's Trustees, any other employees with responsibility for the Plan's investment or administrative functions, and current and former members of Defendants' Board of Directors.

**2.44** "Settlement Effective Date" means the date on which the Final Approval Order becomes Effective, provided that by such date the Settlement has not been terminated pursuant to Article 11.

**2.45** "Settlement Notices" means the Notices of Class Action Settlement and Fairness Hearing to be mailed by first class mail by the Settlement Administrator to Class Members following the Court's issuance of the Preliminary Approval Order, in substantially the form attached hereto as Exhibits 1 and 2, including the Notice of Class Action Settlement and Fairness Hearing to Current Participants, and the Notice of Class Action Settlement and Fairness Hearing to Former Participants, respectively. The Settlement Notices shall inform Class Members of all information required by Rule of Civil Procedure 23 and due process, including their right to object to the Settlement and to attend the Fairness Hearing to be held before the Court, on a date to be determined by the Court, at which any Class Member satisfying the conditions set forth in the Preliminary Approval Order and the Settlement Notices may be heard regarding: (a) the terms of the Settlement Agreement; (b) Class Counsel's request for an award of Attorneys' Fees and Costs and Administrative Expenses; and (c) any requested Class Representatives' Compensation. The Settlement Notices also shall inform Former Participants of the deadline by which they must submit a completed Former Participant Rollover Form to the Settlement Administrator in order to receive their distribution in the form of a rollover pursuant to the Plan of Allocation.

**2.46** “Settlement Period” shall be from the Settlement Effective Date and continuing for a period of nine months thereafter.

**2.47** “Settlement Website” means the internet website established pursuant to Paragraph 12.1.

**2.48** “Settling Parties” means Defendants and the Class Representatives, on behalf of themselves and each of the Class Members.

**3. ARTICLE 3 – REVIEW AND APPROVAL BY INDEPENDENT FIDUCIARY, PRELIMINARY SETTLEMENT APPROVAL, AND NOTICE TO THE CLASS**

**3.1** The Independent Fiduciary shall be retained by DSM, on behalf of the Plan, to determine whether to approve and authorize the settlement of the Released Claims on behalf of the Plan.

**3.1.1** The Independent Fiduciary shall comply with all relevant conditions set forth in Prohibited Transaction Exemption 2003-39, “Release of Claims and Extensions of Credit in Connection with Litigation,” issued December 31, 2003, by the United States Department of Labor, 68 Fed. Reg. 75,632, as amended (“PTE 2003-39”), in its evaluation for the purpose of DSM’s reliance on PTE 2003-39.

**3.1.2** The Independent Fiduciary shall notify DSM of its evaluation in writing and in accordance with PTE 2003-39, which notification shall be delivered no later than thirty (30) calendar days before the Fairness Hearing.

**3.1.3** All fees and expenses associated with the Independent Fiduciary’s retention and evaluation will constitute Administrative Expenses to be deducted from the Gross Settlement Amount.

**3.1.4** DSM, Defense Counsel, and Class Counsel shall provide the Independent Fiduciary with sufficient information so that the Independent Fiduciary can review and evaluate the Settlement Agreement.

**3.2** On or before November 20, 2020, the Class Representatives, through Class Counsel, shall file with the Court motions seeking preliminary approval of this Settlement Agreement, and for entry of the Preliminary Approval Order in substantially the form attached hereto as Exhibit 4. The Preliminary Approval Order to be presented to the Court, as to the Action, shall, among other things:

**3.2.1** Approve the text of the Settlement Notices for mailing to Class Members and the Former Participant Rollover Form for mailing to Former Participants;

**3.2.2** Order the Settlement Administrator to mail by first class mail a Settlement Notice to each Class Member and a Former Participant Rollover Form to each Former Participant identified by the Settlement Administrator based upon the data provided by the Plan's recordkeeper;

**3.2.3** Find that mailing the Settlement Notices constitutes the best notice practicable under the circumstances, provides due and sufficient notice of the Fairness Hearing and of the rights of all Class Members, and complies fully with the requirements of Fed. R. Civ. P. 23 and applicable law;

**3.2.4** Preliminarily enjoin each Class Member and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, agents, attorneys, predecessors, successors, and assigns, from suing Defendants, the Plan, or the Released Parties in any action or proceeding alleging any of the Released Claims, even if any Class Member may thereafter discover facts in addition to or different from those

which the Class Members or Class Counsel now know or believe to be true with respect to the Action and the Released Claims;

**3.2.5** Provide that, pending final determination of whether the Settlement Agreement should be approved, no Class Member may directly, through representatives, or in any other capacity, commence any action or proceeding in any court or tribunal asserting any of the Released Claims against the Defendants, the Released Parties, or the Plan;

**3.2.6** Set the Fairness Hearing for no sooner than one hundred thirty (130) calendar days after the date of the Preliminary Approval Order, in order to determine whether (i) the Court should approve the Settlement as fair, reasonable, and adequate, (ii) the Court should enter the Final Approval Order, and (iii) the Court should approve the requested Attorneys' Fees and Costs, Administrative Expenses, and Class Representatives' Compensation;

**3.2.7** Provide that any objections to any aspect of the Settlement Agreement shall be heard, and any papers submitted in support of said objections shall be considered, by the Court at the Fairness Hearing if they have been timely sent to Class Counsel and Defense Counsel. To be timely sent, the objection and any supporting documents must be sent to Class Counsel and Defense Counsel at least twenty-eight (28) calendar days prior to the scheduled Fairness Hearing;

**3.2.8** Provide that any party may file a response to an objection by a Class Member at least fourteen (14) calendar days before the Fairness Hearing;

**3.2.9** Set a deadline of no later than ten (10) calendar days before the Fairness Hearing by which each Former Participant must submit a Former Participant Rollover

Form to the Settlement Administrator in order to receive their distribution in the form of a rollover pursuant to the Plan of Allocation; and

**3.2.10** Provide that the Fairness Hearing may, without further direct notice to the Class Members, other than by notice to Class Counsel, be adjourned or continued by order of the Court.

**3.3** Within forty-two (42) calendar days of the Preliminary Approval Order, or by such other deadline as specified by the Court, the Settlement Administrator shall:

**3.3.1** Cause to be mailed to each Class Member a Settlement Notice in the form and manner to be approved by the Court, which shall be in substantially the form attached hereto as Exhibits 1 and 2, to Current Participants and Former Participants, respectively, or a form subsequently agreed to by the Settling Parties and the Court. The Settlement Notice shall be sent by first-class mail, postage prepaid, to the last known address of each Class Member provided by the Plan's recordkeeper (or its designee), unless an updated address is obtained by the Settlement Administrator through its efforts to verify the last known addresses provided by the Plan's recordkeeper (or its designee). The Settlement Administrator also shall post a copy of the Settlement Notice on the Settlement Website. The Settlement Administrator shall use commercially reasonable efforts to locate any Class Member whose Settlement Notice is returned and re-mail such documents one additional time.

**3.3.2** Cause the Former Participant Rollover Form, which shall be in substantially the form attached as Exhibit 3, or a form subsequently agreed to by the Settling Parties and the Court, to be included with the Settlement Notice that is mailed to the Former Participants.

**3.4** The Settlement Administrator shall also, within ten (10) calendar days of Class Representatives' filing of the Settlement Agreement and proposed Preliminary Approval Order, have prepared and provided CAFA notices to the Attorney General of the United States and the Attorneys General of all states in which members of the Class reside, as specified by 28 U.S.C. § 1715. The costs of such notice shall be paid from the Qualified Settlement Fund and shall be considered Administrative Expenses. The Settlement Administrator shall provide the Settling Parties with notice in writing upon completion of the provision of CAFA notices to the above-referenced entities and/or persons.

**3.5** The Plan's recordkeeper or its designee(s) will provide the Settlement Administrator with all information necessary to send the Settlement Notices and carry out the Plan of Allocation no later than ten (10) Business Days before the Settlement Notices are to be distributed.

**3.5.1** The Settlement Administrator shall be bound by the Confidentiality Order and any further non-disclosure or security protocol jointly required by the Settling Parties, set forth in writing to the Settlement Administrator.

**3.5.2** The Settlement Administrator shall use the data provided by DSM and the Plan's recordkeeper solely for the purpose of meeting its obligations as Settlement Administrator, and for no other purpose.

#### **4. ARTICLE 4 – FINAL SETTLEMENT APPROVAL**

**4.1** No later than fourteen (14) calendar days before the Fairness Hearing, Class Counsel shall submit to the Court a motion for entry of the Final Approval Order (Exhibit 5), which shall request approval by the Court of the terms of this Settlement Agreement and entry of the Final Approval Order in accordance with this Settlement Agreement. The Final Approval



Order as proposed by the Settling Parties shall provide for the following, among other things, as necessary to carry out the Settlement consistent with applicable law and the Plan's governing documents:

**4.1.1** For approval of the Settlement and the release of the Released Claims covered by this Settlement Agreement, adjudging the terms of the Settlement Agreement to be fair, reasonable, and adequate to the Plan and the Class Members, and directing the Settling Parties to take all necessary steps to effectuate the terms of the Settlement Agreement;

**4.1.2** For a determination that mailing the Settlement Notices constituted the best notice practicable under the circumstances and that due and sufficient notice of the Fairness Hearing and the rights of all Class Members was provided, consistent with Federal Rule of Civil Procedure 23 and the requirements of due process;

**4.1.3** For dismissal with prejudice of the Action and all Released Claims asserted therein whether asserted by the Class Representatives on their own behalf or on behalf of the Class Members, or derivatively to secure relief for the Plan, without costs to any of the Settling Parties other than as provided for in this Settlement Agreement;

**4.1.4** That the Class Representatives and each Class Member and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, agents, attorneys, predecessors, successors, and assigns, shall as of the Effective date of the Settlement be (i) conclusively deemed to have, and by operation of the Effective Approval Order shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged Defendants, the Plan, and the Released Parties from all Released Claims, and (ii) barred and enjoined from suing Defendants, the Plan, or the

Released Parties in any action or proceeding alleging any of the Released Claims, even if any Class Member may thereafter discover facts in addition to or different from those which the Class Member or Class Counsel now know or believe to be true with respect to the Action and the Released Claims, whether or not such Class Members have executed and delivered a Former Participant Rollover Form, whether or not such Class Members have filed an objection to the Settlement, and whether or not the objections or claims for distribution of such Class Members have been approved or allowed;

**4.1.5** That the Plan shall as of the Effective date of the Settlement be (i) conclusively deemed to have, and by operation of the Effective Approval Order shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged Defendants and the Released Parties from all Released Claims, and (ii) barred and enjoined from suing Defendants or the Released Parties in any action or proceeding alleging any of the Released Claims, even if the Plan or any Class Member on behalf of the Plan may thereafter discover facts in addition to or different from those which the Plan or any Class Member now knows or believes to be true with respect to the Action and the Released Claims;

**4.1.6** That the Class Representatives and each Class Member shall release Defendants, Defense Counsel, Class Counsel, the Released Parties, and the Plan from any claims, liabilities, and attorneys' fees and expenses arising from the allocation of the Gross Settlement Amount or Net Settlement Amount and for all tax liability and associated penalties and interest as well as related attorneys' fees and expenses;

**4.1.7** That all applicable CAFA requirements have been satisfied;

**4.1.8** That the Settlement Administrator shall have final authority to determine the share of the Net Settlement Amount to be allocated to each Current Participant and each Former Participant pursuant to the Plan of Allocation approved by the Court;

**4.1.9** That within twenty-eight (28) calendar days following the issuance of all settlement payments to Class Members as provided by the Plan of Allocation approved by the Court, the Settlement Administrator shall prepare and provide to Class Counsel and Defense Counsel a list of each person who received a settlement payment or contribution from the Qualified Settlement Fund and the amount of such payment or contribution; and

**4.1.10** That the Court shall retain jurisdiction to enforce and interpret the Settlement Agreement.

**4.2** The Final Approval Order entered by the Court approving the Settlement Agreement shall provide that upon becoming Effective, all Settling Parties, the Settlement Class, and the Plan shall be bound by the Settlement Agreement and by the Final Approval Order.

## **5. ARTICLE 5 – ESTABLISHMENT OF QUALIFIED SETTLEMENT FUND**

**5.1** No later than ten (10) Business Days after entry of the Preliminary Approval Order, the Escrow Agent shall establish an escrow account. The Settling Parties agree that the escrow account is intended to be, and will be, an interest-bearing Qualified Settlement Fund within the meaning of Treas. Reg. § 1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph 5.1, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to prepare and

deliver, in a timely and proper manner, the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

**5.2** For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent, or the Settlement Administrator on its behalf, shall timely and properly cause to be filed all informational and other tax returns necessary or advisable with respect to the Gross Settlement Amount (including without limitation applying for a Taxpayer Identification Number for the Settlement Fund and filing the returns described in Treas. Reg. § 1.468B-2(k)). Such returns as well as the election described in Paragraph 5.1 shall be consistent with this Article 5 and, in all events, shall reflect that all taxes (as defined in Paragraph 5.3 below) (including any estimated taxes, interest, or penalties) on the income earned by the Gross Settlement Amount shall be deducted and paid from the Gross Settlement Amount as provided in Paragraph 5.3 hereof.

**5.3** Taxes and tax expenses are Administrative Expenses to be deducted and paid from the Gross Settlement Amount, including but not limited to: (1) all taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the Gross Settlement Amount, including any taxes or tax detriments that may be imposed upon Defendants or Defense Counsel with respect to any income earned by the Gross Settlement Amount for any period during which the Gross Settlement Amount does not qualify as a “qualified settlement fund” for federal or state income tax purposes, and (2) all tax expenses and costs incurred in connection with the operation and implementation of this Article 5 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Article 5). Such taxes and tax

expenses shall be Administrative Expenses and shall be paid timely by the Escrow Agent out of the Gross Settlement Amount without prior order from the Court. The Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any Class Member any funds necessary to pay such amounts, including the establishment of adequate reserves for any taxes and tax expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)); neither Defendants, Defense Counsel, nor Class Counsel are responsible nor shall they have any liability therefor. The Settling Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Article 5.

**5.4** Within twenty (20) Business Days after the later of (a) the date the Preliminary Approval Order is entered, or (b) the escrow account described in Paragraph 5.1 is established and the Escrow Agent shall have furnished to DSM in writing the escrow account name, IRS W-9 Form, and all necessary wiring instructions, DSM shall deposit or cause its insurer(s) to deposit fifty percent of the Gross Settlement Amount (\$8,750,000) into the Qualified Settlement Fund.

**5.5** Within ten (10) Business Days after the Settlement Effective Date, DSM shall deposit or cause its insurer(s) to deposit the remainder of the Gross Settlement Amount (\$8,750,000) into the Qualified Settlement Fund.

**5.6** Notwithstanding anything to the contrary in this Settlement Agreement, in no event shall DSM, its insurers, or any of the Defendants be required to make payments or incur any expenses in excess of the Gross Settlement Amount. The Gross Settlement Amount shall be the only amount paid by DSM or its insurer(s) under this Settlement Agreement, and DSM and its insurer(s) shall not be obligated to make any other payments under this Settlement Agreement or in connection with this Settlement including but not limited to any payments that any of the

Class Representatives or Class Members may claim they are entitled to under the Plan as a result of this Settlement or any Class Representatives' or Class Members' recovery under this Settlement.

**5.7** The Escrow Agent shall invest the Qualified Settlement Fund in short-term United States Agency or Treasury Securities or other instruments backed by the Full Faith and Credit of the United States Government or an Agency thereof, or fully insured by the United States Government or an Agency thereof, and shall reinvest the proceeds of these investments as they mature in similar instruments at their then-current market rates.

**5.8** The Escrow Agent shall not disburse the Qualified Settlement Fund or any portion except as provided in this Settlement Agreement, in an order of the Court, or in a subsequent written stipulation between Class Counsel and Defense Counsel. Subject to the orders of the Court, the Escrow Agent is authorized to execute such transactions as are consistent with the terms of this Settlement Agreement.

**5.9** After the Settlement Effective Date, the Gross Settlement Amount will be distributed from the Qualified Settlement Fund as follows: First, within five (5) Business Days of the Settlement Effective Date, all Administrative Expenses approved by the Court shall be paid. Second, within sixty (60) calendar days of the Settlement Effective Date, (a) any Class Representatives' Compensation approved by the Court shall be paid; (b) all Attorneys' Fees and Costs approved by the Court shall be paid to Class Counsel; and (c) the Net Settlement Amount will be distributed pursuant to the Plan of Allocation. Pending final distribution of the Net Settlement Amount in accordance with the Plan of Allocation, the Escrow Agent will maintain the Qualified Settlement Fund. A contingency reserve not to exceed an amount to be mutually agreed upon by the Settling Parties and approved by the Court may be set aside by the Settlement

Administrator for: (1) Administrative Expenses incurred before the Settlement Effective Date but not yet paid, (2) Administrative Expenses estimated to be incurred after the Settlement Effective Date but before the end of the Settlement Period.

**5.10** The Escrow Agent, or the Settlement Administrator on its behalf, shall be responsible for making provision for the payment from the Qualified Settlement Fund of all taxes and tax expenses, if any, owed with respect to the Qualified Settlement Fund and for all tax reporting, remittance, and/or withholding obligations, if any, for amounts distributed from it. Defendants, Defense Counsel, and Class Counsel have no responsibility or any liability for any taxes or tax expenses owed by, or any tax reporting or withholding obligations, if any, of the Qualified Settlement Fund.

**5.11** No later than February 15 of the year following the calendar year in which DSM, its insurers, or agents make a transfer to the Qualified Settlement Fund pursuant to the terms of this Article 5, DSM, its insurers, or agents shall timely furnish a statement to the Escrow Agent, or the Settlement Administrator on its behalf, that complies with Treas. Reg. § 1.468B-3(e)(2), which may be a combined statement under Treas. Reg. § 1.468B3(e)(2)(ii), and shall attach a copy of the statement to their federal income tax returns filed for the taxable year in which DSM, its insurers, or agents make a transfer to the Qualified Settlement Fund.

## **6. ARTICLE 6 – PLAN OF ALLOCATION**

**6.1** After the Settlement Effective Date, the Settlement Administrator shall cause the Net Settlement Amount to be allocated and distributed to the Former Participants as set forth in Paragraph 6.6 below, and to the Plan for distribution to the accounts of Current Participants as set forth in Paragraph 6.5 below, both in accordance with the Plan of Allocation set forth in this Article 6 and as ordered by the Court.

**6.2** To be eligible for a distribution from the Net Settlement Amount, a person must be a Current Participant or a Former Participant, or a Beneficiary or Alternate Payee of such a person. Current Participants shall receive their settlement payments as an addition to their account(s) in the Plan, as provided for in Paragraph 6.5 below, unless, as of the date of their settlement payments, they no longer have an Active Account in the Plan, in which case they shall be treated as Former Participants. Former Participants shall receive their settlement payments in the form of tax-qualified rollovers to an individual retirement account or other eligible employer plan or in the form of checks, as provided in Paragraph 6.6 below.

**6.3** Beneficiaries will receive settlement payments as described in this Article 6 in amounts corresponding to their entitlement as beneficiaries of the Current Participant or of the Former Participant with respect to which the payment is made. This includes settlement payments to Beneficiaries determined by the Current Participant's or Former Participant's accounts in the Plan during the Class Period and/or by the Beneficiary's own accounts in the Plan during the Class Period if an account was created in the Plan for the Current Participant's or Former Participant's Beneficiary. Alternate Payees will receive settlement payments if and to the extent they are entitled to receive a portion of a Current Participant's or Former Participant's allocation under this Article 6 pursuant to the terms of the applicable Qualified Domestic Relations Order. Beneficiaries and Alternate Payees with Active Accounts as of the date of the Motion for Preliminary Approval will receive payments by the method described in this Article 6 for Current Participants. Beneficiaries and Alternate Payees who do not have Active Accounts as of the date of the Motion for Preliminary Approval will receive payments by the method described in this Article 6 for Former Participants. The Settlement Administrator shall have sole



and final discretion to determine the amounts to be paid to Beneficiaries and Alternate Payees in accordance with the Plan of Allocation set forth in this Article 6 and as ordered by the Court.

**6.4 Calculation of Settlement Payments.** Payments to Former Participants and Current Participants (including Beneficiaries and Alternate Payees) shall be calculated by the Settlement Administrator pursuant to the Plan of Allocation as follows:

**6.4.1.** In order to perform the calculations required under this Settlement Agreement, and pursuant to Paragraph 3.4, the Settlement Administrator shall obtain from the Plan's recordkeeper the annual account balances for all Class Members during the Class Period. For each Former Participant and Current Participant, the Settlement Administrator shall determine an Average Account Balance, as follows:

Each participant's average, aggregate year-ending account balance invested in the Plan for the period of July 30, 2013 to December 31, 2020.<sup>1</sup>

**6.4.2.** The Settlement Administrator shall determine the total settlement payment available to each Former Participant and Current Participant by calculating each such Former Participant's and Current Participant's pro-rata share of the Net Settlement Fund based on his or her Average Account Balance compared to the sum of the Average Account Balances for all Former Participants and Current Participants. If the dollar amount of the settlement payment to a Former Participant is calculated by the Settlement Administrator to be less than \$10.00, then that Former Participant's pro-rata share shall be zero for all purposes.

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<sup>1</sup> Mathematically stated, the *Average Account Balance* shall be calculated as follows:  
 (2013 Account Balance \* 153/365) + (2014 Account Balance) + (2015 Account Balance) + (2016 Account Balance)  
 + (2017 Account Balance) + (2018 Account Balance) + (2019 Account Balance) + (2020 Account Balance)  
 Divided by  
 7.42 years during the Class Period.

**6.4.3.** The Settlement Administrator shall utilize the calculations required to be performed herein for (a) making the required payments to Former Participants under Paragraph 6.6 of the Settlement Agreement; and (b) instructing the Plan's recordkeeper as to the amount of the Net Settlement Fund to be allocated to Current Participants under Paragraph 6.5 of the Settlement Agreement and calculating the total amount to deposit in the Plan to fulfill this instruction.

**6.4.4.** The total amount of all tax-qualified rollovers or checks to be written by the Settlement Administrator for Former Participants, plus the total amount of all allocations that the Plan's recordkeeper is instructed to make to Current Participants may not exceed the Net Settlement Amount. In the event that the Settlement Administrator determines that the Plan of Allocation total would otherwise exceed the Net Settlement Amount, the Settlement Administrator is authorized to make such pro-rata changes as are necessary to the Plan of Allocation such that said totals do not exceed the Net Settlement Amount.

**6.5 Payments to Current Participants.** Current Participants will automatically receive a settlement payment to their Plan account..

**6.5.1** Within five (5) Business Days after the Settlement Administrator has completed all payment calculations for all Current Participants, the Settlement Administrator will provide DSM (or its designee) and the Plan's recordkeeper, in a format and via a delivery method mutually agreed upon by the Settlement Administrator and DSM, with an Excel spreadsheet containing the name, the amount of the settlement payment for each of the Current Participants, and any other information requested by DSM or the Plan's recordkeeper as necessary to effectuate this provision.

**6.5.2** Thereafter, upon giving five (5) Business Days' written notice to DSM (or its designee, i.e., the Plan's recordkeeper), the Settlement Administrator shall effect a transfer from the Qualified Settlement Fund to the Plan of the aggregate amount of all settlement payments payable to Current Participants, as reflected in a spreadsheet provided by the Settlement Administrator. The Plan's recordkeeper shall therefore credit the individual Active Account(s) of each Current Participant in an amount equal to that stated on the spreadsheet provided by the Settlement Administrator in relation to such Current Participant.

**6.5.3** The Plan may be amended, to the extent necessary, to reflect the settlement allocation to Current Participants' Active Account(s) in accordance with this Article 6.

**6.5.4** If, as of the date when distributions pursuant to this Settlement Agreement are made, a Current Participant no longer has an Active Account, he or she will be treated as a Former Participant for purposes of the settlement distribution only and will receive his or her payment from the Settlement Administrator in the form of a check as described in Paragraph 6.6. A Current Participant who no longer has an Active Account on the date of his or her Settlement distribution need not complete a Former Participant Rollover Form.

**6.6 Payments to Former Participants.** Former Participants will be required to submit a Former Participant Rollover Form in order to receive a settlement payment via rollover. Each Former Participant that does not submit a Former Participant Rollover Form will receive his or her settlement payment via check as specified in paragraph 6.6.3.

**6.6.1** Each Former Participant (or the Beneficiaries or Alternate Payees of Former Participants) will have the opportunity to elect a tax-qualified rollover of his or her pro-rata share of the Net Settlement Amount to an individual retirement account or other eligible employment plan, which he or she has identified on the Former Participant Rollover Form, provided that the Former Participant supplies adequate information to the Settlement Administrator to effect the rollover.

**6.6.2** For each Former Participant who has supplied adequate information for the Settlement Administrator to effect a rollover, upon completing the calculation of each Class Member's pro-rata share of the Net Settlement Amount and no later than sixty (60) calendar days following the Settlement Effective Date, the Settlement Administrator shall effect a rollover from the Qualified Settlement Fund to the individual retirement account or other eligible employer plan elected by each such Former Participant in his or her Former Participant Rollover Form (if the conditions for such rollover are satisfied) and any associated paperwork necessary to effect the rollover. If the Settlement Administrator is unable to effectuate the rollover instructions of any Former Participant as provided in his or her Former Participant Rollover Form, he or she will receive his or her settlement payment via check as specified in paragraph 6.6.3.

**6.6.3** For each Former Participant who has elected to receive a check, has not submitted a Former Participant Rollover Form, or has submitted a Former Participant Rollover Form but has not provided adequate information for the Settlement Administrator to effect a rollover, upon completing the calculation of each Class Member's pro-rata share of the Net Settlement Amount and no later than sixty (60) calendar days following the Settlement Effective Date, the Settlement Administrator shall

issue a check from the Qualified Settlement Fund to each such Former Participant in the amount equaling his or her pro-rata share of the Net Settlement Amount.

**6.7** This Plan of Allocation is based upon preliminary data regarding the Class Members who may be entitled to settlement payments. If the Settlement Administrator concludes that it is impracticable to implement any provision of this Plan of Allocation, the Settling Parties will promptly modify the terms of this Plan of Allocation and present such modified terms to the Court for its approval. Direct mailed notice to Class Members of such proposed modification of the Plan of Allocation shall not be required. However, notice of such proposed modification shall be posted by the Settlement Administrator on the Settlement Website. The Settlement Administrator shall be solely responsible for performing any calculations required by this Plan of Allocation.

**6.8** Within ten (10) Business Days of completing all aspects of this Plan of Allocation, the Settlement Administrator shall send to Class Counsel, Defense Counsel, and DSM one or more affidavits stating the following: (a) the name of each Class Member to whom the Settlement Administrator sent the Settlement Notice (and the Former Participant Rollover Form, if applicable) and the address of such mailing; (b) the date(s) upon which the Settlement Administrator sent the Settlement Notice (and the Former Participant Rollover Form, if applicable); (c) the name of each Class Member whose Settlement Notice and/or Former Participant Rollover Form was returned as undeliverable; (d) the efforts made by the Settlement Administrator to find the correct address and to deliver the Settlement Notice and/or Former Participant Rollover Form for each such Class Member; (e) the name of each Class Member who submitted a Former Participant Rollover Form on or before the applicable deadline; and (f) the name of each Class Member to whom the Settlement Administrator made a distribution from the

Net Settlement Amount, together with the amount and form of the distribution, the name of the payee, the date of distribution, the amount of tax withholdings, if applicable, and the date of remittance of tax withholdings to the appropriate tax authority, if applicable.

**6.9** The Settling Parties acknowledge that any payments to Class Members or their attorneys may be subject to applicable tax laws. DSM, Defense Counsel, Class Counsel, and the Class Representatives will provide no tax advice to the Class Members and make no representation regarding the tax consequences of any of the settlement payments described in this Settlement Agreement. To the extent that any portion of any settlement payment is subject to income or other tax, the recipient of the payment shall be responsible for payment of such tax. Deductions will be made, and reporting will be performed by the Settlement Administrator, as required by law in respect of all payments made under the Settlement Agreement.

**6.10** Each Class Member who receives a payment under this Settlement Agreement shall be fully and ultimately responsible for payment of any and all federal, state, or local taxes resulting from or attributable to the payment received by such person. Each Class Member shall hold Defendants, the Released Parties, Defense Counsel, Class Counsel, the Class Representatives, and the Settlement Administrator harmless from any tax liability, including penalties and interest, related in any way to payments under the Settlement Agreement, and shall hold Defendants, the Released Parties, Defense Counsel, Class Counsel, the Class Representatives, and the Settlement Administrator harmless from the costs (including, for example, attorneys' fees and disbursements) of any proceedings (including, for example, investigation and suit), related to such tax liability.

**6.11** All checks issued pursuant to this Plan of Allocation shall expire one hundred twenty (120) calendar days after their issue date. All checks that are undelivered or are not cashed before their expiration date shall revert to the Qualified Settlement Fund.

**6.12** No sooner than thirty (30) calendar days following the end of the Settlement Period, any Net Settlement Amount remaining in the Qualified Settlement Fund after distributions, including costs and taxes, shall be paid to the Plan for the purpose of defraying administrative fees and expenses of the Plan.

**6.13** The Net Settlement Amount to be allocated and distributed to Former Participants and to the Plan for distribution to the Current Participants in accordance with the Plan of Allocation shall constitute “restorative payments” within the meaning of Revenue Ruling 2002-45 for all purposes.

## **7. ARTICLE 7 – PROSPECTIVE RELIEF**

**7.1** DSM agrees that the following procedures shall apply to the management of the Plan:

**7.1.1** Defendants shall not keep more than 10% of Plan assets, measured quarterly, in cash or cash equivalent accounts. This does not include the annual contribution to the Plan, made in December. Defendants will have 60 days after such contribution to prudently invest those funds; and

**7.1.2** Defendants shall modify the Plan’s Investment Policy Statement to increase the Plan’s annual return target by 100 basis points.

## **8. ARTICLE 8 – ATTORNEYS’ FEES AND COSTS, ADMINISTRATIVE EXPENSES, AND CLASS REPRESENTATIVES’ COMPENSATION**

**8.1** Class Counsel may file a motion for an award of Attorneys’ Fees and Costs, and Administrative Expenses, at least thirty (30) days before the deadline set in the Preliminary

Approval Order for objections to the proposed settlement, which may be supplemented thereafter. At the same time, the Class Representatives may also seek an award of Class Representatives' Compensation. Any such awards shall be paid from the Gross Settlement Amount. Defendants shall have no independent responsibility or liability for any amounts awarded by the Court.

**8.2** The appropriate amount of any such awards shall be determined by the Court in its discretion. This Settlement Agreement does not purport to establish a presumptively reasonable amount, and Defendants will take no position with the Court regarding the requested Attorneys' Fees and Costs, Administrative Expenses, or Class Representatives' Compensation, so long as the requested Attorneys' Fees do not exceed one-third of the Gross Settlement Fund (\$5,833,333) and the requested Class Representative Compensation does not exceed \$10,000 per Class Representative.

## **9. ARTICLE 9 – RELEASE AND COVENANT NOT TO SUE**

**9.1** As of the Settlement Effective Date, the Plan and all Class Members (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, agents, attorneys, predecessors, successors, and assigns) shall be deemed to have fully, finally, and forever settled, released, relinquished, waived, and discharged Defendants, the Plan, and all Released Parties from the Released Claims, whether or not such Class Members have executed and delivered a Former Participant Rollover Form, whether or not such Class Members have filed an objection to the Settlement or to any application by Class Counsel for an award of Attorneys' Fees and Costs, and whether or not the objections or claims for distribution of such Class Members have been approved or allowed.



**9.2** As of the Settlement Effective Date, the Class Members and the Plan acting individually or together, or in combination with others, shall not sue or seek to institute, maintain, prosecute, argue, or assert in any action or proceeding (including but not limited to an IRS determination letter proceeding, a Department of Labor proceeding, an arbitration, or a proceeding before any state insurance or other department or commission), any cause of action, demand, or claim adverse to the Released Parties on the basis of, connected with, or arising out of any of the Released Claims. Nothing herein shall preclude any action to enforce the terms of this Settlement Agreement pursuant to the procedures set forth in this Settlement Agreement.

**9.3** The Class Representatives, Class Counsel, the Plan, or the Class Members may hereafter discover facts in addition to or different from those that they know or believe to be true with respect to the Released Claims. Such facts, if known by them, might have affected the decision to settle with Defendants, the Plan, and the Released Parties, or the decision to release, relinquish, waive, and discharge the Released Claims, or the decision of a Class Member not to object to the Settlement. Notwithstanding the foregoing, each Class Member and the Plan shall expressly, upon the Effective date of the Final Approval Order, be deemed to have, and by operation of the Final Approval Order, shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged any and all Released Claims. The Class Members and the Plan acknowledge and shall be deemed by operation of the Effective Approval Order to have acknowledged that the foregoing waiver was bargained for separately and is a key element of the Settlement embodied in this Settlement Agreement of which this release is a part.

**9.4** Upon the Effective date of the Final Approval Order, the Class Representatives, Class Members, and the Plan shall be conclusively deemed to, and by operation of the Effective Approval Order shall, settle, release, relinquish, waive and discharge any and all rights or

benefits they may now have, or in the future may have, under any law relating to the releases of unknown claims including specifically to Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her would have materially affected his or her settlement with the debtor or released party.

Also, the Class Representatives and Class Members with respect to the Released Claims shall, upon the Effective Approval Order, waive any and all provisions, rights and benefits conferred by any law or of any State or territory within the United States or any foreign country, or any principle of common law, which is similar, comparable or equivalent in substance to Section 1542 of the California Civil Code.

## **10. ARTICLE 10 – REPRESENTATIONS AND WARRANTIES**

### **10.1 The Settling Parties represent:**

**10.1.1** That they are voluntarily entering into this Settlement Agreement as a result of arm's length negotiations, and that in executing this Settlement Agreement they are relying solely upon their own judgment, belief, and knowledge, and upon the advice and recommendations of their own counsel, concerning the nature, extent, and duration of their rights and claims hereunder and regarding all matters that relate in any way to the subject matter hereof;

**10.1.2** That they assume the risk of mistake as to facts or law;

**10.1.3** That they recognize that additional evidence may have come to light, but that they nevertheless desire to avoid the expense and uncertainty of litigation by entering into the Settlement;

**10.1.4** That they have read carefully the contents of this Settlement Agreement, and this Settlement Agreement is signed freely by each individual executing this Settlement Agreement on behalf of each of the Settling Parties; and

**10.1.5** That they have made such investigation of the facts pertaining to the Settlement and all matters pertaining thereto, as they deem necessary.

Each individual executing this Settlement Agreement on behalf of a Settling Party does hereby personally represent and warrant to the other Settling Parties that he/she has the authority to execute this Settlement Agreement on behalf of, and fully bind, each principal that each such individual represents or purports to represent.

**11. ARTICLE 11 – TERMINATION, CONDITIONS OF SETTLEMENT, AND EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION**

**11.1** The Settlement Agreement shall automatically terminate, and thereby become null and void with no further force or effect if:

**11.1.1** Pursuant to Paragraph 3.1, (1) either the Independent Fiduciary does not approve the release or the Settlement Agreement, or disapproves the release or the Settlement Agreement for any reason whatsoever, or DSM reasonably concludes that the Independent Fiduciary's approval does not include the determinations required by PTE 2003-39; and (2) the Settling Parties do not mutually agree to modify the terms of the Settlement Agreement to facilitate an approval by the Independent Fiduciary or the Independent Fiduciary's determinations required by PTE 2003-39;

**11.1.2** This Settlement Agreement is disapproved by the Court or fails to become Effective for any reason whatsoever;

**11.1.3** The Preliminary Approval Order and the Final Approval Order are not entered by the Court in substantially the form submitted by the Settling Parties or in a form which is otherwise agreed to by the Settling Parties; or

**11.1.4** The Preliminary Approval Order or Final Approval Order is finally reversed on appeal, or is materially modified on appeal, and the Settling Parties do not mutually agree to any such material modifications;

**11.2** If the Settlement Agreement is terminated, deemed null and void, or has no further force or effect, the Action and the Released Claims asserted by the Class Representatives and Class Members shall for all purposes revert to their status as of November 20, 2020, as though the Settling Parties never executed the Settlement Agreement. All funds deposited in the Qualified Settlement Fund, and any interest earned thereon, shall be returned to DSM, its agents, or insurers pro rata based on their contributions to the Qualified Settlement Fund within thirty (30) calendar days after the Settlement Agreement is finally terminated or deemed null and void, except as provided for in Paragraph 11.4.

**11.3** It shall not be deemed a failure to approve the Settlement Agreement if the Court denies, in whole or in part, Class Counsel's request for Attorneys' Fees and Costs and/or Class Representatives' Compensation.

**11.4** In the event that the Settlement Agreement is terminated, Administrative Expenses incurred prior to the termination shall be paid first from the interest earned, if any, on the Qualified Settlement Fund. Administrative Expenses in excess of the interest earned on the Qualified Settlement Fund shall be split evenly and paid by Class Counsel, on the one hand and DSM, on the other hand.

**12. ARTICLE 12 – SETTLEMENT WEBSITE AND OTHER COMMUNICATIONS RELATED TO THE SETTLEMENT**

**12.1** On or before the date that the Settlement Notices are mailed, the Settlement Administrator will establish a Settlement Website on which it will post the following documents or links to the following documents: the Amended Complaint, Settlement Agreement and Exhibits thereto, Settlement Notices, Former Participant Rollover Form, Preliminary Approval Order and any other Court orders related to the Settlement, and any other documents or information mutually-agreed upon by the Settling Parties (“Settlement Website Information”) in writing. When filed, the Settlement Administrator will also post or include links to the Motion for Attorneys’ Fees and Costs, Administrative Expenses, and Class Representatives’ Compensation (and any documents submitted in support). No other information or documents will be posted on the Settlement Website unless agreed to in advance by the Settling Parties in writing. The Settlement Administrator will take down the Settlement Website at the conclusion of the Settlement Period.

**12.2** On or before the date that the Settlement Notices are mailed, the Settlement Administrator also shall arrange for a toll-free telephone call center facility to be active during the period of time that the Settlement Website is active. The toll-free telephone call facility will employ an interactive voice response system (“IVR system”) to answer calls, and will provide callers the option of speaking with a live operator if necessary.

### **13. ARTICLE 13 – GENERAL PROVISIONS**

**13.1** The undersigned counsel, on behalf of themselves and the Settling Parties, agree to cooperate fully with each other in seeking Court approvals of the Preliminary Approval Order and the Final Approval Order, and to do all things as may reasonably be required to effectuate preliminary and final approval and the implementation of this Settlement Agreement according to its terms.

**13.2** Plaintiffs and their counsel shall make no statements to the press or make any other public statements describing the Plan, or the Settlement that disparage Defendants or accuse any Defendants of wrongdoing. Defendants' and their counsel shall make no statements to the press or make any other public statements describing this Action or the Settlement that disparage any Plaintiffs or Class Counsel or accuse any Plaintiffs or Class Counsel of wrongdoing.

**13.3** Within ninety (90) calendar days after the Settlement Effective Date, the Settling Parties shall either return to the producing parties, or destroy, all documents, communications, or things produced in discovery under a claim of confidentiality pursuant to the Confidentiality Order entered in the Action, including but not limited to documents, communications, or things produced under a claim of privilege. Each Settling Party shall serve a written notice to each producing party certifying that the Settling Party has carried out the obligations imposed by this Paragraph 13.3. The Settling Parties, Class Counsel, and Defense Counsel agree that at all times they will honor the requirements of the Protective Order, notwithstanding the settlement of the Action.

**13.4** The Class Representatives, Class Counsel, and the Class Members agree that this Settlement Agreement, whether or not consummated, and any related negotiations or proceedings, are not, and shall not be construed as, deemed to be, or offered or received as evidence of an admission by or on the part of Defendants of any wrongdoing, fault, or liability whatsoever by any of Defendants, or give rise to any inference of any wrongdoing, fault, or liability or admission of any wrongdoing, fault, or liability in the Action or any other proceeding, and Defendants admit no wrongdoing or liability with respect to any of the allegations or claims in the Action. The Class Representatives, Class Counsel, and the Class Members agree that this

Settlement Agreement, whether or not consummated, and any related negotiations or proceedings, shall not constitute admissions of any liability of any kind, whether legal or factual.

**13.5** Neither the Defendants, the Released Parties, the Class Representatives, Class Counsel, nor Defense Counsel shall have any responsibility for or liability whatsoever with respect to (i) any act, omission, or determination of the Settlement Administrator, or any of its respective designees or agents, in connection with the administration of the Gross Settlement Amount or otherwise; (ii) the engagement and determination of the Independent Fiduciary; (iii) the management, investment, or distribution of the Qualified Settlement Fund; (iv) the Plan of Allocation as approved by the Court; (v) the determination, administration, calculation, or payment of any claims asserted against the Qualified Settlement Fund; (vi) any losses suffered by, or fluctuations in the value of, the Qualified Settlement Fund; or (vii) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Qualified Settlement Fund or tax reporting, or the filing of any returns.

**13.6** Class Counsel, Defense Counsel, and the Settling Parties agree that any and all disputes concerning compliance with the Settlement Agreement shall be exclusively resolved as follows:

**13.6.1** If Class Counsel, Defense Counsel, or a Settling Party has reason to believe that a legitimate dispute exists concerning the Settlement Agreement, the party raising the dispute shall first promptly give written notice under the Settlement Agreement to the other party including in such notice: (a) a reference to all specific provisions of the Settlement Agreement that are involved; (b) a statement of the alleged non-compliance; (c) a statement of the remedial action sought; and (d) a brief statement of the specific

facts, circumstances, and any other arguments supporting the position of the party raising the dispute;

**13.6.2** Within ten (10) business days after receiving the notice described in Paragraph 13.6.1, the receiving party shall respond in writing with its position and the facts and arguments it relies on in support of its position;

**13.6.3** For a period of not more than ten (10) business days following mailing of the response described in Paragraph 13.6.2, the Settling Parties shall undertake good-faith negotiations, which may include meeting in person or conferring by telephone, to attempt to resolve the dispute;

**13.6.4** If the dispute is not resolved during the period described in Paragraph 13.6.3, either party may request that the Court resolve the dispute;

**13.6.5** In connection with any disputes concerning compliance with the Settlement Agreement, the Settling Parties agree that each party shall bear its own fees and costs unless the Court orders otherwise.

**13.7** The Settling Parties agree that the Court has personal jurisdiction over the Class Representatives, Class Members, and Defendants, and shall retain that jurisdiction for purposes of enforcing the Settlement Agreement, resolving any disputes concerning compliance with the Settlement Agreement, and enforcing the Confidentiality Order.

**13.8** The Settlement Agreement may be executed by exchange of executed signature pages, and any signature transmitted by facsimile or e-mail attachment of scanned signature pages for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement. The Settlement Agreement may be



executed in any number of counterparts, and each of such counterparts shall for all purposes be deemed an original, and all such counterparts shall together constitute the same instrument.

**13.9** Each Settling Party to this Settlement Agreement hereby acknowledges that they have consulted with and obtained the advice of counsel prior to executing this Settlement Agreement and that this Settlement Agreement has been explained to that party by their counsel.

**13.10** Any headings included in this Settlement Agreement are for convenience only and do not in any way limit, alter, or affect the matters contained in this Settlement Agreement or the Articles or Paragraphs they caption. References to a person are also to the person's permitted successors and assigns, except as otherwise provided herein. Whenever the words "include," "includes" or "including" are used in this Settlement Agreement, they shall not be limiting but shall be deemed to be followed by the words "without limitation."

**13.11** This Settlement Agreement may be modified or amended only by written agreement signed by or on behalf of all Settling Parties.

**13.12** This Settlement Agreement and the exhibits attached hereto constitute the entire agreement among the Settling Parties and no representations, warranties, or inducements have been made to any party concerning the Settlement other than those contained in this Settlement Agreement and the exhibits thereto.

**13.13** The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving party and specifically waiving such provisions. The waiver of any breach of this Settlement Agreement by any Settling Party shall not be deemed to be or construed as a waiver of any other breach or waiver by any other party, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

**13.14** Each of the Settling Parties agrees, without further consideration, and as part of finalizing the Settlement hereunder, that it will in good faith execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate this Settlement Agreement.

**13.15** All of the exhibits attached hereto are incorporated by reference as though fully set forth herein. The exhibits shall be: Exhibit 1 – Notice of Class Action Settlement and Fairness Hearing to Current Participants; Exhibit 2 – Notice of Class Action Settlement and Fairness Hearing to Former Participants; Exhibit 3 – Former Participant Rollover Form; Exhibit 4 – Preliminary Approval Order; Exhibit 5 – Final Approval Order.

**13.16** No provision of the Settlement Agreement or of the exhibits attached hereto shall be construed against or interpreted to the disadvantage of any party to the Settlement Agreement because that party is deemed to have prepared, structured, drafted, or requested the provision.

**13.17** Any notice, demand, or other communication under this Settlement Agreement (other than the Settlement Notices, or other notices given at the direction of the Court) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail postage prepaid, or delivered by reputable express overnight courier as follows:

IF TO THE CLASS REPRESENTATIVES:

Kai Richter (krichter@nka.com)  
Paul Lukas (Lukas@nka.com)  
NICHOLS KASTER, PLLP  
4700 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402

IF TO DEFENDANTS:

Margaret H. Warner (mwarner@mwe.com)  
Jennifer B. Routh (jrouth@mwe.com)  
MCDERMOTT WILL & EMERY LLP  
500 North Capitol Street, NW  
Washington, DC 20001

\* \* \*

SIGNED ON BEHALF OF CLASS REPRESENTATIVES, Individually and as Representatives  
of the Class:

Dated: November 20, 2020



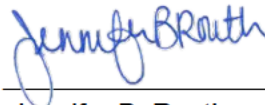
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Telephone: (612) 256-3200  
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*Attorney for the Class  
Representatives and the Class*

SIGNED ON BEHALF OF ALL DEFENDANTS:

Dated: November 20, 2020



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Jennifer B. Routh  
Margaret H. Warner  
MCDERMOTT WILL & EMERY  
LLP 500 North Capitol Street, NW  
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Telephone: (202) 756-8000  
Facsimile: (202) 756-8087

*Attorney for Defendants*

# **EXHIBIT 1**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Paul Toomey, *et al.*,

Plaintiffs,

v.

Demoulas Super Markets, Inc., *et al.*,

Defendants.

CASE NO. 1:19-CV-11633-LTS

**NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING**

**This is a notice of a proposed class action settlement in the above-referenced lawsuit.**

**Your legal rights may be affected if you are a member of the following class:**

All participants and beneficiaries of the Demoulas (Restated) Profit Sharing Plan and Trust (the "Plan") from the period July 30, 2013 through November 20, 2020 (the "Class Period"), excluding Defendants, the Plan's Trustees, or any other employees with responsibility for the Plan's investment or administrative functions, and members of Defendants' Board of Directors.

**PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.**

- The Court has given its preliminary approval to a proposed settlement (the "Settlement") for the Plan as a result of a class action lawsuit brought by certain current and former participants and beneficiaries of the Plan against Demoulas Super Markets, Inc. ("DSM") and other alleged fiduciaries of the Plan (collectively, "Defendants"), alleging violations of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Defendants deny all claims, and nothing in the Settlement is an admission or concession on Defendants' part of any fault or liability whatsoever.
- The Settlement will provide, among other things, for the allocation of monies to Class Members. Class Members with one or more accounts with a positive balance (an "Active Account") in the Plan as of November 20, 2020 (referred to herein as "Current Participants") will automatically receive allocations directly to their accounts so long as they maintain a positive balance through the time Settlement monies are distributed. Class Members who did not have an Active Account as November 20, 2020 (referred to herein as "Former Participants") may receive their allocation in the form of a check or a rollover. Current Participants who have an Active Account as of November 20, 2020, but who are determined to no longer have an Active Account will be treated as "Former Participants" and will receive an allocation by check.
- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated November 20, 2020. Capitalized terms used in this Settlement Notice but not defined in



this Settlement Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at [www.settlementwebsite.com](http://www.settlementwebsite.com). Certain other documents also will be posted on that website. You should visit that website if you would like more information about the Settlement or the lawsuit. All papers filed in this lawsuit are also available for review via the Public Access to Court Electronic Records System (PACER), at <http://www.pacer.gov>, and can also be reviewed in person during regular business hours at the Office of the Clerk of the United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, MA 02210.

- Your rights and the choices available to you — and the applicable deadlines to act — are explained in this Settlement Notice. Please note that neither DSM nor any employees or representatives of DSM may advise you as to what the best choice is for you or how you should proceed.
- The Court still has to decide whether to give its final approval to the Settlement. Payments under the Settlement will be made only if the Court finally approves the Settlement and that final approval is upheld in the event of any appeal.
- A Fairness Hearing will take place on [\[DATE\]](#), at [\[TIME\]](#), before the United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, MA 02210, in [Courtroom 12, 5th Floor](#), to determine whether to grant final approval of the Settlement and approve the requested Attorneys' Fees and Costs, Administrative Expenses, and Class Representatives' Compensation. If the Fairness Hearing is rescheduled, or if it is held electronically, a notice will be posted on the Settlement Website at [www.settlementwebsite.com](http://www.settlementwebsite.com).
- Any objections to the Settlement, or to the requested Attorneys' Fees and Costs, Administrative Expenses, or Class Representatives' Compensation, must be served in writing on Class Counsel and Defendants' Counsel, as identified on page 7 of this Settlement Notice.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:	
<p><b>OUR RECORDS INDICATE YOU ARE A CURRENT PARTICIPANT. YOU WILL NEED TO CONTACT THE SETTLEMENT ADMINISTRATOR IF THIS IS NOT CORRECT.</b></p>	<p>Our records indicate that you are a Current Participant. You do not need to do anything to receive your share of the Net Settlement Amount. If, however, you are a "Former Participant" who did not have an Active Account in the Plan as of November 20, 2020, or are the beneficiary or alternate payee of a Former Participant, then you may submit a Former Participant Rollover Form postmarked on or before <a href="#">[DATE]</a> to receive a share of the Net Settlement Amount via rollover. If you are a Former Participant, and you do not mail the Former Participant Rollover Form by the above deadline, you will receive your share of the Net Settlement Amount via check. If you believe you are a Former Participant, a rollover form may be obtained by calling the Settlement Administrator at <a href="#">[telephone number]</a> or by accessing <a href="http://www.settlementwebsite.com">www.settlementwebsite.com</a>.</p>
<p><b>YOU CAN OBJECT (NO LATER THAN <a href="#">[DATE]</a>)</b></p>	<p>If you wish to object to any part of the Settlement, or to the requested Attorneys' Fees and Costs, Administrative Expenses, or Class Representatives' Compensation, you must write to Class</p>



	Counsel and Defendants' counsel (as identified on page 7 below) about why you object.
<b>YOU CAN ATTEND A HEARING ON [DATE]</b>	You may also attend the Fairness Hearing and speak at the Fairness Hearing on [DATE]. You may attend the hearing and speak at the hearing without filing a notice of your intention to appear, but you will not be permitted to make an objection if you do not comply with the requirements for making objections.

### **The Class Action**

The case is called *Toomey, et al. v. Demoulas Super Markets, Inc., et al.*, Case No. 1:19-CV-11633-LTS (D.Mass.) (the "Class Action" or "lawsuit"). It has been pending since July 30, 2019. The Court supervising the case is the United States District Court for the District of Massachusetts. The individuals who brought this lawsuit are called Class Representatives, and the persons they sued are called Defendants. Each of the Class Representatives, Paul Toomey, Nanette Langone, and Randall May, are current or former participants or beneficiaries in the Plan. The Defendants are DSM and three of the Plan's Trustees. The Class Representatives' claims are described below, and additional information about them is available at [\[www.settlementwebsite.com\]](http://www.settlementwebsite.com).

### **The Settlement**

Following mediation with a neutral party, a Settlement has been reached. As part of the Settlement, a Qualified Settlement Fund of \$17,500,000 will be established to resolve the Class Action. The Net Settlement Amount is \$17,500,000 minus any Administrative Expenses (including taxes and tax expenses), Court-approved Attorneys' Fees and Costs, and Class Representatives' Compensation. The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court.

### **Statement of Attorneys' Fees and Costs, Administrative Expenses, and Class Representatives' Compensation Sought in the Class Action**

Class Counsel has devoted many hours to investigating the facts, prosecuting the lawsuit, reviewing documents obtained from Defendants, and negotiating the Settlement. During that time, they also have advanced costs necessary to pursue the case. Class Counsel took the risk of litigation and have not been paid for any of their time or for any of these costs throughout the time this case has been pending.

Class Counsel will apply to the Court for payment of Attorneys' Fees for their work in the case. The amount of fees that Class Counsel will request will not exceed one-third of the Qualified Settlement Fund (\$5,833,333). In addition, Class Counsel will also seek to recover the costs and administrative expenses associated with the Settlement. Any Attorneys' Fees and Costs and Administrative Expenses awarded by the Court will be paid from the Qualified Settlement Fund.

Class Counsel also will ask the Court to approve payments, not to exceed \$10,000, for each of the Class Representatives who took on the risk of litigation and committed to spend the time necessary to bring the case to conclusion. Their activities also included assisting in the factual investigation of the case by Class Counsel and giving overall support to the case. Any Class Representatives' Compensation awarded by the Court will be paid from the Qualified Settlement Fund.



A full and formal application for Attorneys' Fees and Costs, Administrative Expenses, and Class Representatives' Compensation will be filed with the Court on or before [DATE]. This application will be made available at [www.settlementwebsite.com]. You may also obtain a copy of this application through the Public Access to Court Electronic Records System (PACER) at <http://www.pacer.gov>, or by appearing in person during regular business hours at the Office of the Clerk of the United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, MA 02210.

### **1. Why Did I Receive This Settlement Notice?**

The Court caused this Settlement Notice to be sent to you because our records indicate that you may be a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

### **2. What Is The Class Action About?**

In the Class Action, the Class Representatives claim that Defendants failed to prudently manage the Plan in the best interest of participants and beneficiaries and failed to prudently monitor the Plan's performance. The Defendants deny all claims and assert that they have always acted prudently and in the best interests of participants and beneficiaries.

### **3. Why Is There A Settlement?**

The Court has not reached a final decision as to the Class Representatives' claims. Instead, the Class Representatives and the Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between the Class Representatives, Defendants, and their counsel, who were assisted in their negotiations by a neutral private mediator. The parties to the Settlement have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel believe that the Settlement is best for all Class Members. Nothing in the Settlement Agreement is an admission or concession on Defendants' part of any fault or liability whatsoever, but has been entered into to avoid the uncertainty, expense, and burden of additional litigation.

### **4. What Does The Settlement Provide?**

Under the Settlement, DSM or its insurers will pay \$17,500,000 into a Qualified Settlement Fund to resolve the claims of the Class. The Net Settlement Amount (after deduction of any Court-approved Attorneys' Fees and Costs, Administrative Expenses, and Class Representatives' Compensation) will be allocated to Class Members according to a Plan of Allocation to be approved by the Court (as explained further on pages 5 and 6 below). Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will be made into their existing accounts in the Plan. Former Participants who are entitled to a distribution may receive their distribution as a check or, if available and they elect, as a rollover to a qualified retirement account.



In addition, the Settlement provides that prospectively: (1) Defendants shall not keep more than 10% of Plan assets, measured quarterly, in cash or cash equivalent accounts. (This does not include the annual contribution to the Plan, made typically in December. Defendants will have 60 days after such contribution to prudently invest those funds); and (2) Defendants shall modify the Plan's Investment Policy Statement to increase the Plan's annual return target by 100 basis points.

All Class Members and anyone claiming through them will fully release the Plan as well as Defendants and the Released Parties from the Released Claims. The Released Parties include each Defendant; any Trustees not named as Defendants; the Plan and any of its administrators, fiduciaries, investment managers, or parties in interest; and any of their affiliates, subsidiaries, divisions, predecessors-in-interest, successors-in-interest, assigns, administrators, committees, officers, directors, partners, agents, managers, members, employees, representatives, attorneys, insurers, co-insurers, reinsurers, accountants, auditors, advisors, personal representatives, heirs, executors, administrators, associates, and all persons acting under, by, through, or in concert with any of them. The Released Claims include, but are not limited to, all claims that were asserted in the Action or that are based on the same factual predicate, including but not limited to those that arise out of, relate to, are based on, or have any connection with: (1) the overall structure, management, or monitoring of the Plan; (2) the selection, monitoring, oversight, retention, fees, expenses, or performance of the Plan's investments; (3) fees, costs, or expenses associated with the Plan's investments, and/or (4) any allegations with respect to any fiduciaries of the Plan (or the selection or monitoring of those fiduciaries) in connection with the foregoing. The Released Claims also include those that relate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the Net Settlement Fund pursuant to the Plan of Allocation and/or that relate to the approval by the Independent Fiduciary of the Settlement Agreement, unless brought against the Independent Fiduciary alone.

This is *only* a summary of the Released Parties and Released Claims, and is not a binding description of either. The governing releases are found within the Settlement Agreement at [\[www.settlementwebsite.com\]](http://www.settlementwebsite.com). Generally, the release means that Class Members will not have the right to sue the Plan, Defendants, or related parties for conduct during the Class Period arising out of or relating to the allegations in the lawsuit. The entire Settlement Agreement is available at [\[www.settlementwebsite.com\]](http://www.settlementwebsite.com).

#### **5. How Much Will My Distribution Be?**

The amount, if any, that will be allocated to you will be based upon records maintained by the Plan's recordkeeper. Calculations regarding the individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To receive a distribution from the Net Settlement Amount, you must either be a (1) "Current Participant" as defined on page 1; or (2) a "Former Participant" as defined on page 1; or (3) a Beneficiary or Alternate Payee of persons identified in (1) or (2).

The Net Settlement Amount will be divided *pro rata* among Class Members based on each eligible Class Member's average account balance during the Class Period.



There are approximately 18,600 Class Members. Note that if you are an Alternate Payee pursuant to a Qualified Domestic Relations Order, your portion of the Settlement will be distributed pursuant to the terms of that order.

The Net Settlement Amount will also depend on the amount of any Attorneys' Fees and Costs, Administrative Expenses, and Class Representatives' Compensation that are awarded by the Court, as these will be paid out of the gross settlement amount of \$17,500,000. Class Counsel will file a motion for an award of Attorneys' Fees and Costs, Administrative Expenses, and Class Representatives' Compensation at least 30 days prior to the objection deadline. This motion will be considered at the Fairness Hearing. Class Counsel will limit their application for Attorneys' Fees to not more than one-third of the Gross Settlement Amount. Class Counsel also will seek to recover all actual and anticipated litigation costs and administrative expenses associated with the Settlement. In addition, Class Counsel will seek compensation for the Class Representatives of no more than \$10,000 each. The Court will determine the amount of fees, costs, administrative expenses, and Class Representatives' compensation that will be awarded, if any. All papers filed in this action, including Class Counsel's motion for Attorneys' Fees and Costs, Administrative Expenses, and Class Representatives' Compensation, will be available for review via the Public Access to Court Electronic Records System (PACER), available online at <http://www.pacer.gov>.

#### **6. How Can I Receive My Distribution?**

**According to our records, you are a Current Participant. Therefore, you do not need to do anything to receive your share of the Settlement.** If this is not correct, you should contact the Settlement Administrator to obtain a Former Participant Rollover Form. The Former Participant Rollover Form will explain the steps necessary to receive your distribution via rollover. If you are a Former Participant but do not submit a timely, valid Former Participant Rollover Form, you will receive your distribution via check. If you are considered a Current Participant because you had an Active Account as of November 20, 2020, but it is determined that you no longer have an Active Account when the Settlement is distributed to Class Members, the Settlement Administrator will mail you a check for your share of the Net Settlement Amount to your last known address. You may contact the Settlement Administrator to confirm or update your mailing address. The Settlement Administrator may be contacted by phone at [telephone number] or by mail at [mailing address].

#### **7. When Will I Receive My Distribution?**

The timing of the distribution of the Net Settlement Amount is conditioned on several matters, including the Court's final approval of the Settlement and any approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval order may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur within four months of the Court's Final Approval Order.

There will be no payments under the Settlement if the Settlement Agreement is terminated.

#### **8. Can I Get Out Of The Settlement?**



No. The Class has been certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are bound by the Settlement (if it receives final Court approval) and any judgments or orders that are entered in the Class Action. If you wish to object to any part of the Settlement, you may write to counsel about why you object to the Settlement, as discussed below.

#### **9. Do I Have A Lawyer In The Case?**

The Court has appointed the law firms of Nichols Kaster, PLLP in Minneapolis, Minnesota and Block and Leviton, LLP in Boston, Massachusetts as Class Counsel in the Class Action. If you want to be represented by your own lawyer, you may hire one at your own expense.

#### **10. How Will The Lawyers Be Paid?**

Class Counsel will file a motion for an award of Attorneys' Fees and Costs, Administrative Expenses, and Class Representatives' Compensation at least 30 days prior to the objection deadline. This motion will be considered at the Fairness Hearing. Class Counsel will limit their application for Attorneys' Fees to not more than one-third of the Qualified Settlement Fund. Class Counsel also will seek to recover all actual and anticipated litigation costs and administrative expenses associated with the Settlement. In addition, Class Counsel will seek compensation for the Class Representatives of no more than \$10,000 each. The Court will determine the amount of fees, costs, administrative expenses, and Class Representatives' compensation that will be awarded, if any. All papers filed in this action, including Class Counsel's motion for Attorneys' Fees and Costs, Administrative Expenses, and Class Representatives' Compensation, will be available for review via the Public Access to Court Electronic Records System (PACER), available online at <http://www.pacer.gov>.

#### **11. How Do I Tell The Court If I Don't Like The Settlement?**

If you are a Class Member, you can object to the Settlement by mailing a written objection to Class Counsel and to Defendants' counsel at the addresses below. Class Counsel will then file your objection with the court in connection with their motion for final approval. In that filing, Class Counsel will also respond to your objection. Your written objection must be mailed to Class Counsel and Defendants' counsel no later than **[DATE]** to be considered.

<b>CLASS COUNSEL</b>	<b>DEFENDANTS' COUNSEL</b>
NICHOLS KASTER, PLLP Attn: Demoulas Settlement 4700 IDS Center 80 South 8th Street Minneapolis, MN 55402	McDERMOTT WILL & EMERY, LLP Margaret Warner 500 North Capitol Street, NW Washington, DC 20001

#### **12. When And Where Will The Court Decide Whether To Approve The Settlement?**

The Court will hold a Fairness Hearing at **[TIME]** on **[DATE]**, at United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, MA 02210. At the Fairness Hearing,

the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court also will consider the motion for Attorneys' Fees and Costs, Administrative Expenses, and Class Representatives' Compensation. If there are objections, the Court will consider them then. Please note that if the Fairness Hearing is rescheduled, or if it is held electronically, a notice will be posted on the Settlement Website at [\[www.settlementwebsite.com\]](http://www.settlementwebsite.com).

### **13. Do I Have To Attend The Fairness Hearing?**

No, but you are welcome to come at your own expense. You may also make an appearance through an attorney. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it.

### **14. May I Speak At The Fairness Hearing?**

Yes. You do not need to submit a notice of your intention to appear in order to speak at the hearing, but you must comply with the requirements for making an objection (set forth above) if you wish to object.

### **15. What Happens If I Do Nothing At All?**

**If you are a "Current Participant" as defined on page 1, and you do nothing, you will receive your *pro rata* share of the Net Settlement Amount if the Settlement is finally approved.** If you are a "Former Participant" as defined on page 1, and you do nothing, you will receive your *pro rata* share of the Net Settlement Amount via check, if you do not submit a rollover form and the Settlement is finally approved.

### **16. How Do I Get More Information?**

If you have questions regarding the Settlement, you can visit [\[www.settlementwebsite.com\]](http://www.settlementwebsite.com), call [\[phone number\]](#), or write to the Settlement Administrator at [\[mailing address\]](#). All papers filed in this lawsuit are also available for review via the Public Access to Court Electronic Records System (PACER), at <http://www.pacer.gov>, and can be reviewed in person during regular business hours at the Office of the Clerk of the United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, MA 02210.

# **EXHIBIT 2**



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Paul Toomey, *et al.*,

Plaintiffs,

v.

Demoulas Super Markets, Inc., *et al.*,

Defendants.

CASE NO. 1:19-CV-11633-LTS

**NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING**

**This is a notice of a proposed class action settlement in the above-referenced lawsuit.**

**Your legal rights may be affected if you are a member of the following class:**

All participants and beneficiaries of the Demoulas (Restated) Profit Sharing Plan and Trust (the "Plan") from the period July 30, 2013 through November 20, 2020 (the "Class Period"), excluding Defendants, the Plan's Trustees, or any other employees with responsibility for the Plan's investment or administrative functions, and members of Defendants' Board of Directors.

**PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.**

- The Court has given its preliminary approval to a proposed settlement (the "Settlement") for the Plan as a result of a class action lawsuit brought by certain current and former participants in, and beneficiaries of, the Plan against Demoulas Super Markets, Inc. ("DSM") and other alleged fiduciaries of the Plan (collectively, "Defendants"), alleging violations of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Defendants deny all claims, and nothing in the Settlement is an admission or concession on Defendants' part of any fault or liability whatsoever.
- The Settlement will provide, among other things, for the allocation of monies to Class Members. Class Members with one or more accounts with a positive balance (an "Active Account") in the Plan as of November 20, 2020 (referred to herein as "Current Participants") will automatically receive allocations directly to their accounts so long as they maintain a positive balance through the time Settlement monies are distributed. **Class Members who did not have an Active Account as November 20, 2020 (referred to herein as "Former Participants") may receive their allocation in the form of a check or a rollover.** Current Participants who have an Active Account as of November 20, 2020, but who are determined to no longer have an Active Account will be treated as "Former Participants" and will receive an allocation by check.
- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated November 20, 2020. Capitalized terms used in this Settlement Notice but not defined in

this Settlement Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at [www.settlementwebsite.com](http://www.settlementwebsite.com). Certain other documents also will be posted on that website. You should visit that website if you would like more information about the Settlement or the lawsuit. All papers filed in this lawsuit are also available for review via the Public Access to Court Electronic Records System (PACER), at <http://www.pacer.gov>, and can also be reviewed in person during regular business hours at the Office of the Clerk of the United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, MA 02210.

- Your rights and the choices available to you — and the applicable deadlines to act — are explained in this Settlement Notice. Please note that neither DSM nor any employees or representatives of DSM may advise you as to what the best choice is for you or how you should proceed.
- The Court still has to decide whether to give its final approval to the Settlement. Payments under the Settlement will be made only if the Court finally approves the Settlement and that final approval is upheld in the event of any appeal.
- A Fairness Hearing will take place on **[DATE]**, at **[TIME]**, before the United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, MA 02210, in **Courtroom 12, 5th Floor**, to determine whether to grant final approval of the Settlement and approve the requested Attorneys' Fees and Costs, Administrative Expenses, and Class Representatives' Compensation. If the Fairness Hearing is rescheduled, or if it is held electronically, a notice will be posted on the Settlement Website at [www.settlementwebsite.com](http://www.settlementwebsite.com).
- Any objections to the Settlement, or to the requested Attorneys' Fees and Costs, Administrative Expenses, or Class Representatives' Compensation, must be served in writing on Class Counsel and Defendants' Counsel, as identified on page 7 of this Settlement Notice.

<b>YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:</b>	
<b>OUR RECORDS INDICATE YOU ARE A FORMER PARTICIPANT. YOU MUST MAIL A ROLLOVER FORM POSTMARKED ON OR BEFORE <b>[DATE]</b> TO RECEIVE YOUR DISTRIBUTION VIA ROLLOVER INSTEAD OF CHECK</b>	Our records indicate that you are a Former Participant. In order to receive your distribution via rollover into an individual retirement account or other eligible employer retirement plan, you must mail a Former Participant Rollover Form postmarked on or before <b>[DATE]</b> . The Former Participant Rollover Form is included with this Notice. If you do not mail the Former Participant Rollover Form postmarked on or before <b>[DATE]</b> , you will receive your distribution via check.
<b>YOU CAN OBJECT (NO LATER THAN <b>[DATE]</b>)</b>	If you wish to object to any part of the Settlement, or to the requested Attorneys' Fees and Costs, Administrative Expenses, or Class Representatives' Compensation, you must write to Class Counsel and Defendants' counsel (as identified on page 7 below) about why you object.
<b>YOU CAN ATTEND A HEARING ON <b>[DATE]</b></b>	You may also attend the Fairness Hearing and speak at the Fairness Hearing on <b>[DATE]</b> . You may attend the hearing and speak at the hearing without filing a notice of your intention to



	appear, but you will not be permitted to make an objection if you do not comply with the requirements for making objections.
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### **The Class Action**

The case is called *Toomey, et al. v. Demoulas Super Markets, Inc., et al.*, Case No. 1:19-CV-11633-LTS (D.Mass) (the “Class Action” or “lawsuit”). It has been pending since July 30, 2019. The Court supervising the case is the United States District Court for the District of Massachusetts. The individuals who brought this lawsuit are called Class Representatives, and the persons they sued are called Defendants. Each of the Class Representatives, Paul Toomey, Nanette Langone, and Randall May, are current or former participants or beneficiaries in the Plan. The Defendants are DSM and three of the Plan’s Trustees. The Class Representatives’ claims are described below, and additional information about them is available at [www.settlementwebsite.com](http://www.settlementwebsite.com).

### **The Settlement**

Following mediation with a neutral party, a Settlement has been reached. As part of the Settlement, a Qualified Settlement Fund of \$17,500,000 will be established to resolve the Class Action. The Net Settlement Amount is \$17,500,000 minus any Administrative Expenses (including taxes and tax expenses), Court-approved Attorneys’ Fees and Costs, and Class Representatives’ Compensation. The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court.

### **Statement of Attorneys’ Fees and Costs, Administrative Expenses, and Class Representatives’ Compensation Sought in the Class Action**

Class Counsel has devoted many hours to investigating the facts, prosecuting the lawsuit, reviewing documents obtained from Defendants, and negotiating the Settlement. During that time, they also have advanced costs necessary to pursue the case. Class Counsel took the risk of litigation and have not been paid for any of their time or for any of these costs throughout the time this case has been pending.

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A full and formal application for Attorneys’ Fees and Costs, Administrative Expenses, and Class Representatives’ Compensation will be filed with the Court on or before [\[DATE\]](#). This application will be made available at [www.settlementwebsite.com](http://www.settlementwebsite.com). You may also obtain a copy of this application through the Public Access to Court Electronic Records System (PACER) at <http://www.pacer.gov>, or by appearing in person during regular business hours at the Office of the

Clerk of the United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, MA 02210.

### **1. Why Did I Receive This Settlement Notice?**

The Court caused this Settlement Notice to be sent to you because our records indicate that you may be a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

### **2. What Is The Class Action About?**

In the Class Action, the Class Representatives claim that Defendants failed to prudently manage the Plan in the best interest of participants and beneficiaries and failed to prudently monitor the Plan's performance. The Defendants deny all claims and assert that they have always acted prudently and in the best interests of participants and beneficiaries.

### **3. Why Is There A Settlement?**

The Court has not reached a final decision as to the Class Representatives' claims. Instead, the Class Representatives and the Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between the Class Representatives, Defendants, and their counsel, who were assisted in their negotiations by a neutral private mediator. The parties to the Settlement have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel believe that the Settlement is best for all Class Members. Nothing in the Settlement Agreement is an admission or concession on Defendants' part of any fault or liability whatsoever, but has been entered into to avoid the uncertainty, expense, and burden of additional litigation.

### **4. What Does The Settlement Provide?**

Under the Settlement, DSM or its insurers will pay \$17,500,000 into a Qualified Settlement Fund to resolve the claims of the Class. The Net Settlement Amount (after deduction of any Court-approved Attorneys' Fees and Costs, Administrative Expenses, and Class Representatives' Compensation) will be allocated to Class Members according to a Plan of Allocation to be approved by the Court (as explained further on pages 5 and 6 below). Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will be made into their existing accounts in the Plan. Former Participants who are entitled to a distribution may receive their distribution as a check or, if available and they elect, as a rollover to a qualified retirement account.

In addition, the Settlement provides that prospectively: (1) Defendants shall not keep more than 10% of Plan assets, measured quarterly, in cash or cash equivalent accounts. (This does not include the annual contribution to the Plan, made typically in December. Defendants will have 60 days



after such contribution to prudently invest those funds); and (2) Defendants shall modify the Plan's Investment Policy Statement to increase the Plan's annual return target by 100 basis points.

All Class Members and anyone claiming through them will fully release the Plan as well as Defendants and the Released Parties from the Released Claims. The Released Parties include each Defendant; any Trustees not named as Defendants; the Plan and any of its administrators, fiduciaries, investment managers, or parties in interest; and any of their affiliates, subsidiaries, divisions, predecessors-in-interest, successors-in-interest, assigns, administrators, committees, officers, directors, partners, agents, managers, members, employees, representatives, attorneys, insurers, co-insurers, reinsurers, accountants, auditors, advisors, personal representatives, heirs, executors, administrators, associates, and all persons acting under, by, through, or in concert with any of them. The Released Claims include, but are not limited to, all claims that were asserted in the Action or that are based on the same factual predicate, including but not limited to those that arise out of, relate to, are based on, or have any connection with: (1) the overall structure, management, or monitoring of the Plan; (2) the selection, monitoring, oversight, retention, fees, expenses, or performance of the Plan's investments; (3) fees, costs, or expenses associated with the Plan's investments, and/or (4) any allegations with respect to any fiduciaries of the Plan (or the selection or monitoring of those fiduciaries) in connection with the foregoing. The Released Claims also include those that relate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the Net Settlement Fund pursuant to the Plan of Allocation and/or that relate to the approval by the Independent Fiduciary of the Settlement Agreement, unless brought against the Independent Fiduciary alone.

This is *only* a summary of the Released Parties and Released Claims, and is not a binding description of either. The governing releases are found within the Settlement Agreement at [\[www.settlementwebsite.com\]](http://www.settlementwebsite.com). Generally, the release means that Class Members will not have the right to sue the Plan, Defendants, or related parties for conduct during the Class Period arising out of or relating to the allegations in the lawsuit. The entire Settlement Agreement is available at [\[www.settlementwebsite.com\]](http://www.settlementwebsite.com).

## **5. How Much Will My Distribution Be?**

The amount, if any, that will be allocated to you will be based upon records maintained by the Plan's recordkeeper. Calculations regarding the individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To receive a distribution from the Net Settlement Amount, you must either be a (1) "Current Participant" as defined on page 1; or (2) a "Former Participant" as defined on page 1; or (3) a Beneficiary or Alternate Payee of persons identified in (1) or (2).

The Net Settlement Amount will be divided *pro rata* among Class Members based on each eligible Class Member's average account balance during the Class Period.

There are approximately 18,600 Class Members. Note that if you are an Alternate Payee pursuant to a Qualified Domestic Relations Order, your portion of the Settlement will be distributed pursuant to the terms of that order.



The Net Settlement Amount will also depend on the amount of any Attorneys' Fees and Costs, Administrative Expenses, and Class Representatives' Compensation that are awarded by the Court, as these will be paid out of the gross settlement amount of \$17,500,000. Class Counsel will file a motion for an award of Attorneys' Fees and Costs, Administrative Expenses, and Class Representatives' Compensation at least 30 days prior to the objection deadline. This motion will be considered at the Fairness Hearing. Class Counsel will limit their application for Attorneys' Fees to not more than one-third of the Gross Settlement Amount. Class Counsel also will seek to recover all actual and anticipated litigation costs and administrative expenses associated with the Settlement. In addition, Class Counsel will seek compensation for the Class Representatives of no more than \$10,000 each. The Court will determine the amount of fees, costs, administrative expenses, and Class Representatives' compensation that will be awarded, if any. All papers filed in this action, including Class Counsel's motion for Attorneys' Fees and Costs, Administrative Expenses, and Class Representatives' Compensation, will be available for review via the Public Access to Court Electronic Records System (PACER), available online at <http://www.pacer.gov>.

#### **6. How Can I Receive My Distribution?**

According to our records, you are a Former Participant. Therefore, you must submit a valid, timely Former Participant Rollover Form in order to receive your distribution via rollover. If you do not submit a valid, timely Former Participant Rollover Form, you will receive your distribution via check. The Former Participant Claim Form is included with this Notice.

#### **7. When Will I Receive My Distribution?**

The timing of the distribution of the Net Settlement Amount is conditioned on several matters, including the Court's final approval of the Settlement and any approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval order may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur within four months of the Court's Final Approval Order.

There will be no payments under the Settlement if the Settlement Agreement is terminated.

#### **8. Can I Get Out Of The Settlement?**

No. The Class has been certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are bound by the Settlement (if it receives final Court approval) and any judgments or orders that are entered in the Class Action. If you wish to object to any part of the Settlement, you may write to counsel about why you object to the Settlement, as discussed below.

#### **9. Do I Have A Lawyer In The Case?**

The Court has appointed the law firms of Nichols Kaster, PLLP in Minneapolis, Minnesota and Block and Leviton, LLP in Boston, Massachusetts as Class Counsel in the Class Action. If you want to be represented by your own lawyer, you may hire one at your own expense.



### 10. How Will The Lawyers Be Paid?

Class Counsel will file a motion for an award of Attorneys' Fees and Costs, Administrative Expenses, and Class Representatives' Compensation at least 30 days prior to the objection deadline. This motion will be considered at the Fairness Hearing. Class Counsel will limit their application for Attorneys' Fees to not more than one-third of the Qualified Settlement Fund. Class Counsel also will seek to recover all actual and anticipated litigation costs and administrative expenses associated with the Settlement. In addition, Class Counsel will seek compensation for the Class Representatives of no more than \$10,000 each. The Court will determine the amount of fees, costs, administrative expenses, and Class Representatives' compensation that will be awarded, if any. All papers filed in this action, including Class Counsel's motion for Attorneys' Fees and Costs, Administrative Expenses, and Class Representatives' Compensation, will be available for review via the Public Access to Court Electronic Records System (PACER), available online at <http://www.pacer.gov>.

### 11. How Do I Tell The Court If I Don't Like The Settlement?

If you are a Class Member, you can object to the Settlement by mailing a written objection to Class Counsel and to Defendants' counsel at the addresses below. Class Counsel will then file your objection with the court in connection with their motion for final approval. In that filing, Class Counsel will also respond to your objection. Your written objection must be mailed to Class Counsel and Defendants' counsel no later than **[DATE]** to be considered.

CLASS COUNSEL	DEFENDANTS' COUNSEL
NICHOLS KASTER, PLLP Attn: Demoulas Settlement 4700 IDS Center 80 South 8th Street Minneapolis, MN 55402	MCDERMOTT WILL & EMERY, LLP Margaret Warner 500 North Capitol Street, NW Washington, DC 20001

### 12. When And Where Will The Court Decide Whether To Approve The Settlement?

The Court will hold a Fairness Hearing at **[TIME]** on **[DATE]**, at United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, MA 02210. At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court also will consider the motion for Attorneys' Fees and Costs, Administrative Expenses, and Class Representatives' Compensation. If there are objections, the Court will consider them then. Please note that if the Fairness Hearing is rescheduled, or if it is held electronically, a notice will be posted on the Settlement Website at [www.settlementwebsite.com](http://www.settlementwebsite.com).

### 13. Do I Have To Attend The Fairness Hearing?

No, but you are welcome to come at your own expense. You may also make an appearance through an attorney. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it.

**14. May I Speak At The Fairness Hearing?**

Yes. You do not need to submit a notice of your intention to appear in order to speak at the hearing, but you must comply with the requirements for making an objection (set forth above) if you wish to object.

**15. What Happens If I Do Nothing At All?**

If you are a “Former Participant” as defined on page 1, and you do not submit a rollover form, you will receive your *pro rata* share of the Net Settlement Amount via check, if the Settlement is finally approved.

**16. How Do I Get More Information?**

If you have questions regarding the Settlement, you can visit [[www.settlementwebsite.com](http://www.settlementwebsite.com)], call [[phone number](#)], or write to the Settlement Administrator at [[mailing address](#)]. All papers filed in this lawsuit are also available for review via the Public Access to Court Electronic Records System (PACER), at <http://www.pacer.gov>, and can be reviewed in person during regular business hours at the Office of the Clerk of the United States District Court for the District of Massachusetts, 1 Courthouse Way, Boston, MA 02210.

# **EXHIBIT 3**

**Demoulas Profit Sharing Plan Settlement Administrator**

**P.O. Box [number]**

**[City, State, ZIP]**

**[www.settlementwebsite.com]**

**FORMER PARTICIPANT ROLLOVER FORM**

JOHN Q CLASSMEMBER  
123 MAIN ST APT  
1  
ANYTOWN, ST 12345

Rollover Number: 1111111

This Former Participant Rollover Form is **ONLY** for Class Members who are **Former Participants**, or the beneficiaries or alternate payees of Former Participants (all of whom will be treated as Former Participants). A Former Participant is a Class Member who no longer had an Active Account as of November 20, 2020.

This form must be completed, signed and mailed with a postmark on or before **[DATE]** to the Settlement Administrator in order for you receive your share of the Settlement proceeds via rollover. **Former Participants who do not complete and timely return this form will receive their share of the Settlement proceeds via check, subject to any tax withholding.** Please review the instructions below carefully. If you have questions regarding this Rollover Form, you may contact the Settlement Administrator as indicated below.

\*\*\*\*\*

**PART 1: INSTRUCTIONS FOR COMPLETING FORMER PARTICIPANT ROLLOVER FORM**

1. Complete this rollover form and keep a copy of all pages of your Former Participant Rollover Form, including the first page with the address label, for your records.
2. **Mail your completed Former Participant Rollover Form postmarked on or before **[DATE]** to the Settlement Administrator at the following address:**

**Demoulas Profit Sharing Plan Settlement Administrator**

**P.O. Box [number]**

**[City, State, ZIP]**

It is your responsibility to ensure the Settlement Administrator has timely received your Former Participant Rollover Form.

3. Other Reminders:

- You must provide date of birth, signature, and a completed Substitute IRS Form W-9, which is attached as part 5 to this form.
- If you desire to do a rollover and you do not complete in full the rollover information in Part 4, below, payment will be made to you by check.
- If you change your address after sending in your Former Participant Rollover Form, please provide your new address to the Settlement Administrator.
- Timing Of Payments to Eligible Class Members. Please note that Settlement payments are subject to the Settlement Agreement receiving final Court approval. If the Settlement Agreement is approved and if you are entitled to a Settlement payment under the terms of the Settlement, such payments will likely be distributed within four months of the Court's Final Approval Order. Payments may be further delayed if any appeals are filed.

4. **Questions?** If you have any questions about this Former Participant Rollover Form, please call the Settlement Administrator at **[phone number]**. The Settlement Administrator will provide advice only regarding completing this form and will not provide financial, tax or other advice concerning the Settlement. You therefore may want to consult with your financial or tax advisor. Information about the status of the approval of the Settlement, the Settlement administration, and claim processing is available on the settlement website, **[www.settlementwebsite.com]**.



You are eligible to receive a payment from a class action settlement. The court has preliminarily approved the class settlement of *Toomey, et al. v. Demoulas Super Markets, Inc., et al.*, No. 1:19-cv-11633-LTS (D.Mass.). That settlement provides allocation of monies to the individual accounts of persons who participated in the Demoulas (Restated) Profit Sharing Plan and Trust ("Plan") at any time during the period from July 30, 2013 through November 20, 2020 ("Class Members") as defined in the Settlement Agreement. Class Members who are entitled to a distribution but who no longer had Active Accounts as of November 20, 2020 ("Former Participants") will receive their allocations via a rollover if and only if they mail a valid Former Participant Rollover Form postmarked on or before **[DATE]** to the Settlement Administrator. Former Participants who do not mail a valid, timely Former Participant Rollover Form to the Settlement Administrator will receive their allocations via check, subject to any tax withholding. For more information about the settlement, please see [www.settlementwebsite.com](http://www.settlementwebsite.com) or call **[phone number]**.

Because you are a Former Participant in the Plan, you must decide whether you want your payment (1) sent payable to you directly by check or (2) to be rolled over into another eligible retirement plan or into an individual retirement account ("IRA"). To make a payment election, please complete and mail this Former Participant Rollover Form postmarked on or before **[DATE]** to the Settlement Administrator. If you do not indicate a payment election, your payment will be sent to you directly by check.

## PART 2: PARTICIPANT INFORMATION

First Name	Middle	Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>
Mailing Address		
<input type="text"/>		
City	State	Zip Code
<input type="text"/>	<input type="text"/>	<input type="text"/>
Home Phone	Work Phone or Cell Phone	
<input type="text"/>	<input type="text"/>	
Participant's Social Security Number	Participant's Date of Birth	
<input type="text"/>	<input type="text"/>	
Email Address	M M	D D Y Y Y Y
<input type="text"/>	<input type="text"/>	

☐ Check here if you are a Former Participant, but did not receive this Rollover Form in the mail.

## PART 3: BENEFICIARY OR ALTERNATE PAYEE INFORMATION (IF APPLICABLE)

- ☐ Check here if you are the **surviving spouse or other beneficiary** for the Former Participant and the Former Participant is deceased. **Documentation must be provided showing current authority of the representative to file on behalf of the deceased.** Please complete the information below and then continue on to Parts 4 and 5 on the next page.
- ☐ Check here if you are an alternate payee under a qualified domestic relations order (QDRO). The Settlement Administrator may contact you with further instructions. Please complete the information below and then continue on to Parts 4 and 5 on the next page.

Your First Name	Middle	Last Name
<input type="text"/>	<input type="text"/>	<input type="text"/>
Your Social Security Number or Tax ID Number	Your Date of Birth	
<input type="text"/>	<input type="text"/>	
Your Mailing Address		
<input type="text"/>		
City State, ZIP		
<input type="text"/>		

[illegible]

**QUESTIONS? VISIT: [WWW.SETTLEMENTWEBSITE.COM](http://WWW.SETTLEMENTWEBSITE.COM) OR CALL [PHONE NUMBER]**

# **EXHIBIT 4**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

Paul Toomey, Nanette Langone, and Randall May on behalf of the Estate of Martin May, individually and as representatives of a class of similarly situated persons, and on behalf of the Demoulas (Restated) Profit Sharing Plan and Trust,

Plaintiffs,

v.

Demoulas Super Markets, Inc., Arthur T. Demoulas, William F. Marsden, William J. Shea,

Defendants.

Case No. 1:19-cv-11633-LTS

**[PROPOSED] ORDER ON  
PLAINTIFFS' MOTION FOR  
PRELIMINARY APPROVAL  
OF CLASS ACTION  
SETTLEMENT**

This Action arose out of claims involving alleged breaches of fiduciary duty in violation of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, against Demoulas Super Markets, Inc. ("DSM"), Arthur T. Demoulas, William F. Marsden, and William J. Shea (collectively, "Defendants").

Presented to the Court for preliminary approval is a settlement of the Action as against all Defendants. The terms of the Settlement are set out in a Class Action Settlement Agreement dated November 20, 2020 (the "Settlement Agreement"), executed by the Settling Parties' respective counsel. Except as otherwise defined herein, all capitalized terms used herein shall have the same meaning as ascribed to them in the Settlement Agreement.

Upon reviewing the Settlement Agreement and the motion papers submitted in connection with the Motion for Preliminary Approval, and good cause appearing therefore,

**It is hereby ORDERED as follows:**

**1. Preliminary Findings Regarding Proposed Settlement:** The Court preliminarily finds that:

A. The proposed settlement resulted from arm's-length negotiations by experienced and competent counsel overseen by a neutral mediator;

B. The Settlement was negotiated only after Class Counsel had conducted discovery and received pertinent information and documents from Defendants;

C. Class Counsel and the Class Representatives have submitted declarations in support of the Settlement; and

D. Considering the relevant First Circuit factors, the Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the Settlement to the Settlement Class.

**2. Fairness Hearing:** A hearing (the "Fairness Hearing") will be held on [a date no sooner than one hundred thirty (130) calendar days after the date the Preliminary Order is filed] \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_.m., in Courtroom \_\_\_\_ of the United States District Court for the District of Massachusetts, before the undersigned District Judge, to determine, among other issues:

A. Whether the Settlement Agreement should be finally approved as fair, reasonable, and adequate;

B. Whether the Court should enter the Final Approval Order; and

C. Whether the Court should approve any motion for Attorneys' Fees, Costs, Administrative Expenses, and Class Representatives' Compensation.

**3. Settlement Administrator:** The Court approves and orders that Analytics Consulting LLC shall be the Settlement Administrator responsible for carrying out the responsibilities set forth in the Settlement Agreement.

**4. Class Certification:** Solely for settlement purposes, the Court finds that each element required for certification of the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure has been met: (a) the members of the Class are so numerous that their joinder in the

Action is impracticable; (b) there are questions of law and fact common to the members of the Class that predominate over any questions affecting only individual members of the Class; (c) Plaintiffs' claims are typical of the claims of the Class; and (d) Plaintiffs and Class Counsel have fairly and adequately represented and protected the interests of the Settlement Class. Solely for settlement purposes, the Court further finds that the requirements of Rule 23(b)(1) have been met. Prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications as to individual Settlement Class Member(s) that would establish incompatible standards of conduct for the parties opposing the claims asserted in this Action, and adjudications with respect to individual Class members, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

5. The following Settlement Class is preliminarily certified for settlement purposes pursuant to Fed. R. Civ. P. 23(b)(1):

All participants and beneficiaries of the Demoulas (Restated) Profit Sharing Plan and Trust at any time from July 30, 2013 through November 20, 2020, excluding Defendants, the Plan's Trustees, or any other employees with responsibility for the Plan's investment or administrative functions, and members of Defendants' Board of Directors.

The Court appoints Nichols Kaster, PLLP and Block & Leviton LLP as counsel for the Settlement Class. Further, the Court appoints Paul Toomey, Nanette Langone, and Randall May as Class Representatives for the Settlement Class.

6. **Class Notice:** The Settling Parties have presented to the Court proposed forms of notice regarding the settlement for mailing to Class Members ("Settlement Notices") and the proposed Former Participant Rollover Form to Former Participants.

A. The Court approves the proposed forms and finds that the proposed forms

and content therein fairly and adequately:

- i. Summarize the claims asserted;
- ii. Describe the terms and effect of the Settlement;
- iii. Notify the Settlement Class that Class Counsel will seek compensation from the Qualified Settlement Fund for Attorneys' Fees, Costs, Administrative Expenses, and Class Representatives' Compensation;
- iv. Give notice to the Settlement Class of the time and place of the Fairness Hearing, and Class Members' right to appear; and
- v. Describe how the recipients of the Class Notice may object to the Settlement, or any requested Attorneys' Fees, Costs, Administrative Expenses, or Class Representatives' Compensation.

B. The Settlement Administrator shall send by first class mail the appropriate Settlement Notice to each Class Member and the Former Participant Rollover Form to each Former Participant within forty-two (42) calendar days of the date of this Order, as specified in the Settlement Agreement. Former participants must submit a Former Participant Rollover Form to the Settlement Administrator postmarked by no later than ten (10) calendar days before the Fairness Hearing in order to receive their distribution in the form of a rollover pursuant to the Plan of Allocation.

C. On or before the date that notice is sent to the Settlement Class, the Settlement Administrator shall establish a Settlement Website and telephone support line as provided by the Settlement Agreement.

D. Pursuant to Rules 23(c)(2) and (e) of the Federal Rules of Civil Procedure,



the contents of the Settlement Notices and mailing the Settlement Notices constitutes the best notice practicable under the circumstances, provides due and sufficient notice of the Fairness Hearing and of the rights of all Class Members, and complies fully with the requirements of Fed. R. Civ. P. 23 and applicable law.

**6. Preliminary Injunction:** Each Class Member and his or her respective heirs, beneficiaries, executors, administrators, estates, past and present partners, agents, attorneys, predecessors, successors, and assigns, is preliminarily enjoined from suing Defendants, the Plan, or the Released Parties in any action or proceeding alleging any of the Released Claims, even if any Class Member may thereafter discover facts in addition to or different from those which the Class Members or Class Counsel now know or believe to be true with respect to the Action and the Released Claims. Further, pending final determination of whether the Settlement Agreement should be approved, no Class Member may directly, through representatives, or in any other capacity, commence any action or proceeding in any court or tribunal asserting any of the Released Claims against the Defendants, the Released Parties, or the Plan.

**7. Objections to Settlement:** Any objections to the fairness, reasonableness or adequacy of the Settlement, to any term of the Settlement Agreement, or to the proposed Attorneys' Fees, Costs, Administrative Expenses, or Class Representatives' Compensation, shall be considered by the Court at the Fairness Hearing, if they have been timely sent to Class Counsel and Defendants' counsel. To be timely, the objection and any supporting documents must be sent to Class Counsel and Defendants' counsel at least twenty-eight (28) calendar days prior to the scheduled Fairness Hearing.

**8. Responses to Objections and Final Approval Motion:** Any party may file a response to an objection by a Class Member at least fourteen (14) calendar days before the Fairness



Hearing, and Plaintiffs shall file their Final Approval Motion at least fourteen (14) calendar days before the Fairness Hearing.

**9. Continuance of Hearing:** The Court may adjourn, modify, or continue the Fairness Hearing without further direct notice to the Class Members, other than by notice to Class Counsel. In such event, notice of the same shall be provided through the Settlement Website.

**IT IS SO ORDERED.**

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

\_\_\_\_\_  
Hon. Leo T. Sorokin  
United States District Judge

# **EXHIBIT 5**

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

Paul Toomey, Nanette Langone, and Randall May on behalf of the Estate of Martin May, individually and as representatives of a class of similarly situated persons, and on behalf of the Demoulas (Restated) Profit Sharing Plan and Trust,

Plaintiffs,

v.

Demoulas Super Markets, Inc., Arthur T. Demoulas, William F. Marsden, William J. Shea,

Defendants.

Case No. 1:19-cv-11633-LTS

**[PROPOSED] ORDER ON  
PLAINTIFFS' MOTION FOR  
FINAL APPROVAL OF  
CLASS ACTION  
SETTLEMENT**

Wherefore, this \_\_\_\_ day of \_\_\_, 20 \_\_\_, upon consideration of Plaintiffs' Motion for Final Approval of the Class Action Settlement Agreement dated November 20, 2020 (herein the "Settlement Agreement" or "Settlement") in the above matter, the Court hereby order and adjudges as follows:

**1.** For purposes of this Final Approval Order, except as otherwise defined herein, all capitalized terms used herein shall have the same meaning as are ascribed to them in the Settlement Agreement.

**2.** The following Settlement Class is certified under Rule 23(b)(1) of the Federal Rules of Civil Procedure for the purposes of the Settlement:

All participants and beneficiaries of the Demoulas (Restated) Profit Sharing Plan and Trust at any time from July 30, 2013 through November 20, 2020, excluding Defendants, the Trustees, or any other employees with responsibility for the Plan's investment or administrative functions, and current and former members of Defendants' Board of Directors.

The Court finds that this Settlement Class meets all of the requirements of Rule 23(a) and 23(b)(1).

3. Pursuant to Federal Rule of Civil Procedure 23(e)(1), the Court hereby approves the Settlement and the terms therein as being a fair, reasonable, and adequate settlement and compromise of the claims asserted in the Action.

4. In accordance with the Court's Orders, and as reflected in the information from the Settlement Administrator, Analytics Consulting LLC, Settlement Notices were timely distributed by first-class mail to all Class Members who could be identified with reasonable effort. The Settlement Administrator searched for updated address information for those returned as undeliverable, and re-mailed notices to those Class Members. In addition, pursuant to the Class Action Fairness Act, 29 U.S.C. § 1711, *et seq.*, notice was provided to the Attorneys General for each of the states in which a Class Member resides and the Attorney General of the United States.

5. The form and methods of notifying the Class Members of the terms and conditions of the proposed Settlement Agreement met the requirements of Rules 23(c)(2) and (e), and due process, and constituted the best notice practicable under the circumstances; and due and sufficient notices of the Fairness Hearing and the rights of all Class Members have been provided to all people, powers and entities entitled thereto, consistent with Rule 23 and applicable law.

6. The Court finds that the Settlement is fair, reasonable, and adequate, based on the following findings of fact, conclusions of law, and determinations of mixed fact/law questions:

A. The Settlement resulted from arm's length negotiations by experienced and competent counsel overseen by a neutral mediator;

B. The Settlement was negotiated only after Class Counsel had conducted discovery and received pertinent information and documents from Defendants;

C. The Settling Parties were well positioned to evaluate the value of the Class Action;

D. If the Settlement had not been achieved, both Plaintiffs and Defendants faced the expense, risk, and uncertainty of extended litigation;

E. The amount of the Settlement (\$17,500,000) is fair, reasonable, and adequate. The Settlement amount is within the range of reasonable settlements that would have been appropriate in this case, based on the nature of the claims, the potential recovery, the risks of litigation, and settlements that have been approved in other similar cases;

F. The Class Representatives and Class Counsel have concluded that the Settlement Agreement is fair, reasonable and adequate;

G. Class Members had the opportunity to be heard on all issues regarding the resolution and release of their claims by submitting objections to the Settlement Agreement to the Court; and

H. There were [no objections to the Settlement] [redacted] objections to the Settlement. The Court has considered those objections, and overrules them with prejudice].

**7.** The Motion for Final Approval of the Settlement Agreement is hereby GRANTED, the settlement of the Class Action is APPROVED as fair, reasonable, and adequate to the Plan and the Settlement Class, and the Settling Parties are hereby directed to take all necessary steps to effectuate the terms of the Settlement Agreement.

**8.** The Amended Complaint and all Released Claims asserted therein, whether asserted by the Class Representatives on their own behalf or on behalf of the Class Members, or derivatively to secure relief for the Plan, are dismissed with prejudice, without costs to any of the Settling Parties other than as provided for in the Settlement Agreement.

**9.** The Class Representatives and each Class Member and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, agents, attorneys,

predecessors, successors, and assigns, shall as of the Effective date of the Settlement be (i) conclusively deemed to have, and by operation of the Effective Approval Order shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged Defendants, the Plan, and the Released Parties from all Released Claims, and (ii) barred and enjoined from suing Defendants, the Plan, or the Released Parties in any action or proceeding alleging any of the Released Claims, even if any Class Members of Class Counsel now know or believe to be true with respect to the Action and the Released Claims, whether or not such Class Members have executed and delivered a Former Participant Rollover Form, whether or not such Class Members have filed an objection to the Settlement, and whether or not the objections or claims for distribution of such Class Member have been approved or allowed.

**10.** The Plan as of the Effective date of the Settlement shall be (i) conclusively deemed to have, and by operation of the Effective Approval Order shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged Defendants and the Released Parties from all Released Claims, and (ii) barred and enjoined from suing Defendants or the Released Parties in any action or proceeding alleging that any of the Related Claims by the Plan or any Class Members on behalf of the Plan may thereafter discover facts in addition to or different from those which the Plan or Class Member now knows or believes to be true with respect to the Action and the Released Claims.

**11.** Each Class Member shall release Defendants, Defense Counsel, Class Counsel, the Released Parties, and the Plan from any and all claims, liabilities, and attorney's fees and expenses arising from the allocation of the Gross Settlement Amount or Net Settlement Amount and for all tax liability and associated penalties and interest as well as related attorneys' fees and expenses.

**12.** The Court finds that all applicable CAFA requirements have been satisfied.

**13.** The Settlement Administrator shall have final authority to determine the share of the Net Settlement Amount to be allocated to each Current Participant and each Former Participant pursuant to the Plan of Allocation approved by the Court.

**14.** Within twenty-eight (28) calendar days following the issuance of all settlement payments to Class Members as provided by the Plan of Allocation approved by the Court, the Settlement Administrator shall prepare and provide to Class Counsel and Defense Counsel a list of each person who received a settlement payment or contribution.

**15.** Upon the Effective Date of this Order under the Settlement Agreement, all Settling Parties, the Settlement Class, and the Plan shall be bound by the Settlement Agreement and by this Final Approval Order.

**16.** The Court finds that it has subject matter jurisdiction over the claims herein, and expressly retains that jurisdiction for purposes of enforcing this Final Approval Order and/or the Settlement Agreement.

**IT IS SO ORDERED.**

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

\_\_\_\_\_  
Hon. Leo T. Sorokin  
United States District Judge