

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

GAIL COLLINS, DEAN DeVITO, MICHAEL LAMOUREUX,
AND SCOTT LOBDELL INDIVIDUALLY, ON BEHALF OF THE
NORTHEAST GROCERY, INC. 401(K) SAVINGS PLAN AND
ON BEHALF OF ALL SIMILARLY SITUATED PARTICIPANTS
AND BENEFICIARIES OF THE PLAN,

PLAINTIFFS,

v.

CASE NUMBER:
5:24-cv-00080 (AJB/MJK)

NORTHEAST GROCERY, INC.; THE ADMINISTRATIVE
COMMITTEE OF THE NORTHEAST GROCERY, INC. 401(K)
SAVINGS PLAN; JOHN AND JANE DOES 1-30 IN THEIR
CAPACITIES AS MEMBERS OF THE ADMINISTRATIVE
COMMITTEE,

DEFENDANTS.

**ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT, APPROVAL OF FORM AND MANNER OF
SETTLEMENT NOTICE, AND SCHEDULING OF A FAIRNESS HEARING**

This Action¹ involves claims for alleged violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.* (“ERISA”), with respect to the Northeast Grocery 401(k) Plan, the Tops Markets, LLC 401(k) Savings Plan for Union Associates, the Tops Markets, LLC 401(k) Retirement Savings Plan, and the Price Chopper Associate 401(k) Plan (the “Plans”).² The terms of the Settlement are set out in the Settlement Agreement, fully executed as of July 20, 2026, by counsel on behalf of Named Plaintiffs Gail Collins, Dean DeVito, Michael Lamoureux, and Scott Lobdell (“Named Plaintiffs” or “Class Representatives”), all Class Members, and Defendants, respectively.

Pursuant to Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement, Approval of Form and Manner of Settlement Notice, and Scheduling of a Fairness Hearing filed on July 20, 2026 the Court preliminarily considered the Settlement to determine, among other things, whether the Settlement is sufficient to warrant the issuance of notice to members of the proposed Settlement Class. Upon reviewing the Settlement Agreement and attendant motion papers, it is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

1. **Preliminary Certification of the Settlement Class.** In accordance with the Settlement Agreement, and pursuant to Rules 23(a) and (b)(1) of the Federal Rules of Civil Procedure, this Court hereby conditionally certifies the following class (“Settlement Class”):

¹ All capitalized terms not otherwise defined in this Order shall have the same meaning as ascribed to them in the Settlement Agreement.

² The Northeast Grocery 401(k) Plan was the result of the merger of the Price Chopper Associate 401(k) Plan into the Tops Markets, LLC 401(k) Retirement Savings Plan, effective January 1, 2023.

2. All persons who participated in the Plans at any time between January 1, 2018 through the date the Preliminary Approval Order is entered by the Court (the “Class Period”), including any Beneficiary of a deceased Person who participated in the Plans at any time during the Class Period, and any Alternate Payee of a Person subject to a QDRO who participated in the Plans at any time during the Class Period. Pursuant to the Settlement Agreement, and for settlement purposes only, the Court preliminarily finds that:

- i. as required by Federal Rule of Civil Procedure 23(a)(1), the Settlement Class is ascertainable from records kept with respect to the Plans and from other objective criteria, and the Settlement Class is so numerous that joinder of all members is impracticable.
- ii. as required by Federal Rule of Civil Procedure 23(a)(2), there are one or more questions of law and/or fact common to the Settlement Class.
- iii. as required by Federal Rule of Civil Procedure 23(a)(3), the claims of the Class Representatives are typical of the claims of the Settlement Class that the Class Representatives seek to certify.
- iv. as required by Federal Rule of Civil Procedure 23(a)(4), the Class Representatives will fairly and adequately protect the interests of the Settlement Class in that: (i) the interests of the Class Representatives and the nature of the alleged claims are consistent with those of the Settlement Class members; and (ii) there appear to be no conflicts between the Class Representatives and the Settlement Class.
- v. as required by Federal Rule of Civil Procedure 23(b)(1), the prosecution of separate actions by individual members of the Settlement Class would

create a risk of: (i) inconsistent or varying adjudications as to individual Settlement Class members that would establish incompatible standards of conduct for the parties opposing the claims asserted in this Action; or (ii) adjudications as to individual Settlement Class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications, or substantially impair or impede the ability of such persons to protect their interests.

- vi. as required by Federal Rule of Civil Procedure 23(g), Class Counsel are capable of fairly and adequately representing the interests of the Settlement Class, and Class Counsel: (i) have done appropriate work identifying or investigating potential claims in the Action; (ii) are experienced in handling class actions; and (iii) have committed the necessary resources to represent the Settlement Class.

3. The Court hereby appoints Plaintiffs Gail Collins, Dean DeVito, Michael Lamoureux, and Scott Lobdell as Class Representatives for the Settlement Class and The Sharman Law Firm LLC as Class Counsel for the Settlement Class.

4. **Preliminary Approval of Proposed Settlement** — The Settlement Agreement is hereby preliminarily approved as fair, reasonable, and adequate. This Court preliminarily finds that:

- a) The Settlement was negotiated vigorously and at arm's-length by Defense Counsel, on the one hand, and the Class Representatives and Class Counsel on behalf of the Settlement Class, on the other hand, with the assistance of an experienced mediator;

- b) The Class Representatives and Class Counsel had sufficient information to evaluate the settlement value of the Action and have concluded that the Settlement is fair, reasonable, and adequate;
- c) If the Settlement had not been achieved, the Class Representatives and the Settlement Class faced the expense, risk, and uncertainty of protracted litigation;
- d) The Gross Settlement Amount of two-hundred-twenty-five thousand dollars (\$225,000.00) is fair, reasonable, and adequate, taking into account the costs, risks, and delay of continued litigation, trial, and appeal. The method of distributing the Net Settlement Amount is efficient and does not require the filing of claims. The Settlement terms related to attorneys' fees do not raise any questions concerning fairness of the Settlement, and there are no agreements, apart from the Settlement, required to be considered under Federal Rule of Civil Procedure 23(e)(2)(C)(iv);
- e) At all times, the Class Representatives and Class Counsel have acted independently of the Defendants and in the interest of the Settlement Class; and
- f) The proposed Plan of Allocation is fair, reasonable, and adequate.

5. **Establishment of Qualified Settlement Fund** — A common fund is agreed to by the Settling Parties in the Settlement Agreement and is hereby established and shall be known as the “Qualified Settlement Fund.” The Qualified Settlement Fund shall be a “qualified settlement fund” within the meaning of Treasury Regulations § 1.468-1(a) promulgated under Section 468B of the Internal Revenue Code. The Qualified Settlement Fund shall be funded and administered in accordance with the terms of the Settlement. Defendants shall have no withholding, reporting, or tax reporting responsibilities with regard to the Qualified Settlement Fund or its distribution, except as otherwise specifically identified in the Settlement Agreement. Moreover, Defendants

shall have no liability, obligation, or responsibility for administration of the Qualified Settlement Fund or the disbursement of any monies from the Qualified Settlement Fund except for: (1) their obligation to cause the Gross Settlement Amount to be paid; and (2) their agreement to cooperate in providing information that is necessary for settlement administration set forth in the Settlement Agreement. The Settlement Administrator may make disbursements out of the Qualified Settlement Fund only in accordance with this Order or any additional Orders issued by the Court. The Qualified Settlement Fund shall expire after the Settlement Administrator distributes all of the assets of the Qualified Settlement Fund in accordance with the Settlement Agreement, provided, however, that the Qualified Settlement Fund shall not terminate until its liability for any and all government fees, fines, taxes, charges and excises of any kind, including income taxes, and any interest, penalties or additions to such amounts, are, in the Settlement Administrator's sole discretion, finally determined and all such amounts have been paid by the Qualified Settlement Fund. The Court and the Settlement Administrator recognize that there will be tax payments, withholding and reporting requirements in connection with the administration of the Qualified Settlement Fund. The Settlement Administrator shall, in accordance with the Settlement Agreement, determine, withhold, and pay over to the appropriate taxing authorities any taxes due with respect to any distribution from the Qualified Settlement Fund and shall make and file with the appropriate taxing authorities any reports or returns due with respect to any distributions from the Qualified Settlement Fund. The Settlement Administrator also shall determine and pay any income taxes owing with respect to the income earned by the Qualified Settlement Fund. Additionally, the Settlement Administrator shall file returns and reports with the appropriate taxing authorities with respect to the payment and withholding of taxes. The Settlement Administrator, in its discretion, may request expedited review and decision by the IRS or the applicable state or

local taxing authorities, with regard to the correctness of the returns filed for the Qualified Settlement Fund and shall establish reserves to assure the availability of sufficient funds to meet the obligations of the Qualified Settlement Fund itself and the Settlement Administrator as fiduciaries of the Qualified Settlement Fund. Reserves may be established for taxes on the Qualified Settlement Fund income or on distributions. The Settlement Administrator shall have all the necessary powers, and take all necessary ministerial steps, to effectuate the terms of the Settlement Agreement, including the payment of all distributions. Such powers include investing, allocating, and distributing the Qualified Settlement Fund, and in general supervising the administration of the Settlement Agreement in accordance with its terms and this Order.

6. **Fairness Hearing** — A hearing is scheduled for 12/1/2026 at 1:00 PM [at least 120 days after preliminary approval] IN UTICA to make a final determination, concerning among other things:

- Any objections from Class Members to the Settlement or any aspects of it;
- Whether the Settlement merits final approval as fair, reasonable, and adequate;
- Whether the Action should be dismissed with prejudice pursuant to the terms of the Settlement;
- Whether Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement;
- Whether the proposed Plan of Allocation should be granted final approval; and
- Whether Class Counsel's application(s) for Attorneys' Fees and Costs and Service Awards to the Class Representatives are fair and reasonable, and should be approved.

7. **Settlement Notice** — The Court approves the form of Settlement Notice attached as Exhibits E and F to the Settlement Agreement. The Court finds that such form of notice fairly

and adequately: (a) describes the terms and effects of the Settlement Agreement, the Settlement, and the Plan of Allocation; (b) notifies the Settlement Class that Class Counsel will seek attorneys' fees and litigation costs from the Qualified Settlement Fund, payment of the costs of administering the Settlement out of the Qualified Settlement Fund, and for Service Awards for the Class Representatives for their service in such capacity; (c) gives notice to the Settlement Class of the time and place of the Fairness Hearing; and (d) describes how the recipients of the Settlement Notice may object to any of the relief requested.

8. **Settlement Administrator** — The Court hereby approves the appointment of Analytics Consulting, LLC as the Settlement Administrator for the Settlement. The Court directs that the Settlement Administrator shall:

- By no later than 9/18/2026 (45 calendar days after entry of this Order), cause the short form Exhibit F portion of the Settlement Notice, with such non-substantive modifications thereto as may be agreed upon by the Parties, to be provided by email to Current Participants who have provided personal email addresses to the Recordkeeper to the extent practicable, and to all other Current Participants for whom no electronic delivery is feasible and to Former Participants, by first-class mail, postage prepaid, to the last known address of each member of the Settlement Class who can be identified through reasonable effort.
- The Settlement Administrator shall use commercially reasonable efforts to locate any Class Member whose Exhibit F portion of the Settlement Notice is returned and re-send such document one additional time.
- By no later than 9/18/2026 (45 calendar days after entry of this Order), cause the Exhibit E, long form portion of the Settlement Notice with such non-substantive

modifications thereto as may be agreed upon by the Parties, to be published on the website identified in the Settlement Notice, [website], which will also host and make available copies of all Settlement-related documents, including the Settlement Agreement.

- The Settlement Administrator shall use the data provided by Defendants and the Plans' Recordkeeper(s) solely for the purpose of meeting its obligations as Settlement Administrator, and for no other purpose.
- The Court finds that the contents of the Settlement Notice and the process described herein and in the Settlement are appropriate notice to the class and satisfy the requirements of Rule 23(c) and due process.

9. **Petition for Attorneys' Fees, Litigation Costs and Service Awards** — Any petition by Class Counsel for attorneys' fees, litigation costs and Service Awards to the Class Representatives, and all briefs in support thereof, shall be filed no later than 10/27/2026 (35 calendar days before the Fairness Hearing).

10. **Briefs in Support of Final Approval of the Settlement** — Briefs and other documents in support of final approval of the Settlement shall be filed no later than 10/12/2026 (50 calendar days before the Fairness Hearing).

11. **Objections to Settlement** — Any member of the Settlement Class or authorized recipient of any CAFA Notice may file an objection to the fairness, reasonableness, or adequacy of the Settlement, to any term of the Settlement Agreement, to the Plan of Allocation, to the proposed award of attorneys' fees and litigation costs, to the payment of costs of administering the Settlement out of the Qualified Settlement Fund, or to the request for Service Awards for the Class Representatives. An objector must file with the Court a statement of his, her, their, or its

objection(s), specifying the reason(s), if any, for each such objection made, including any legal support and/or evidence that the objector wishes to bring to the Court's attention or introduce in support of the objection(s). The address for filing objections with the Court is as follows:

Clerk of the Court
U.S. District Court
Northern District of New York
P.O. Box 7367
Syracuse, NY 13261

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The objector or his, her, their, or its counsel (if any) must file the objection(s) and supporting materials with the Court and provide a copy of the objection(s) and supporting materials to Class Counsel and Defense Counsel at the addresses in the Settlement Notice no later than 11/17/2026 (14 calendar days before the Fairness Hearing). If an objector hires an attorney to represent him, her, their, or it for the purposes of making an objection pursuant to this paragraph, the attorney must also file a notice of appearance with the Court no later than 11/17/2026 (14 calendar days before the Fairness Hearing). Any member of the Settlement Class or other Person who does not timely file a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising any objection to the Settlement, and any untimely objection shall be barred. Any responses to objections shall be filed with the Court prior to the Fairness Hearing. There shall be no reply briefs.

12. **Appearance at Final Approval Hearing** — Any objector who files a timely, written objection in accordance with paragraph 11 above may also appear at the Fairness Hearing either in person or through qualified counsel retained at the objector's expense. Objectors or their attorneys intending to appear at the Fairness Hearing must file a notice of intention to appear (and, if applicable, the name, address, and telephone number of the objector's attorney) with the Court by no later than 11/17/2026 (14 calendar days before the date of Fairness Hearing).

Any objectors, or their counsel, who does not timely file a notice of intention to appear in accordance with this paragraph shall not be permitted to speak at the Fairness Hearing, except for good cause shown.

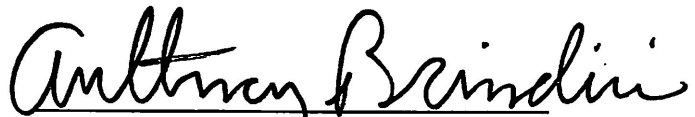
13. **Notice Expenses** — The expenses of printing, mailing, and publishing the Settlement Notice required herein shall be paid exclusively from the Qualified Settlement Fund.

14. **Parallel Proceedings** — Pending final determination of whether the Settlement Agreement should be approved, the Class Representatives, every Class Member, and the Plans are prohibited and enjoined from directly, through representatives, or in any other capacity, commencing any action or proceeding in any court or tribunal asserting any of the Released Claims against the Released Parties, including Defendants.

15. **Class Action Fairness Act Notice** — The form of notice under the Class Action Fairness Act of 2005 (“CAFA”) submitted as Exhibit A to the Settlement Agreement complies with the requirements of CAFA and will, upon mailing, discharge Defendants’ obligations pursuant to CAFA.

16. **Continuance of Final Approval Hearing** — The Court reserves the right to continue the Fairness Hearing without further written notice to the Class Members and also may schedule the hearing to be done by telephone or video conference.

SO ORDERED this 5th day of August, 2026.


Anthony J. Brindisi
U.S. District Judge