

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE MUSHROOM DIRECT	:	
PURCHASER ANTITRUST	:	CIVIL ACTION
LITIGATION	:	
	:	
THIS DOCUMENT RELATES TO:	:	Master File No. 06-0620
ALL ACTIONS	:	

ORDER

AND NOW, this 19th day of **August 2019**, upon consideration of Class Plaintiffs’ Motions for Preliminary Approval of Settlements and Approval of the Form and Manner of Notice to the Class, it is **ORDERED** that the motions (Document Nos. 983, 1044) are **GRANTED** as follows:

1. The proposed settlements with defendants Cardile Mushrooms, Inc. and Cardile Brothers Mushroom Packaging, Inc. (collectively, “CMI”); J-M Farms, Inc. (“J-M”); Mushroom Alliance, Inc. (“Mushroom Alliance”); Franklin Organic Mushroom Farms, Inc., formerly known as Franklin Farms, Inc. (“Franklin”); Mario Cutone Mushroom Co., Inc. (“Cutone”); M.D. Basciani & Sons, Inc. (“Basciani”); and Certain Defendants¹ (collectively, “Settling Defendants”) are on behalf of:

All persons and entities in the non-Western United States who purchased fresh *agaricus* mushrooms directly from an Eastern

¹ “Certain Defendants” are: Eastern Mushroom Marketing Cooperative, Inc. (“EMMC”); Robert A. Ferranto, Jr. t/a Bella Mushroom Farms; Brownstone Mushroom Farms, Inc.; To-Jo Fresh Mushrooms, Inc.; Country Fresh Mushroom Co.; Gino Gaspari & Sons, Inc.; Gaspari Mushroom Co., Inc.; Kaolin Mushroom Farms, Inc.; South Mill Mushroom Sales, Inc.; Modern Mushroom Farms, Inc.; Sher-Rockee Mushroom Farm, LLC; C&C Carriage Mushroom Co.; Phillips Mushroom Farms, Inc.; Louis M. Marson, Jr., Inc.; Monterey Mushrooms, Inc.; Forest Mushroom, Inc.; Harvest Fresh Farms, Inc.; Leone Pizzini and Son, Inc.; LRP-M Mushrooms LLC; United Farm Cooperative, Inc.; Masha & Toto, Inc., trading as M&T Mushrooms; Oakshire Mushroom Farm, Inc.; W&P Mushroom, Inc.; and John Pia.

Mushroom Marketing Cooperative (“EMMC”) member or one of its co-conspirators or controlled affiliates, agents, or subsidiaries at any time between February 4, 2001 and August 8, 2005 (the “Class Period”). For group buying organizations and their members, direct purchasers are either (1) members who have a significant ownership interest in or functional control over their organizations; or (2) if no member has such interest or control, the organizations themselves. The class excludes the EMMC, its members and their parents, subsidiaries, and affiliates.

The settlement class defined in the settlement agreements of Settling Defendants is identical to the litigation class that the Court previously found meets the requirements of Rule 23 of the Federal Rules of Civil Procedure.²

² “Preliminary approval is not simply a judicial ‘rubber stamp’ of the parties’ agreement[s].” *In re Nat’l Football League Players’ Concussion Injury Litig.*, 961 F. Supp. 2d 708, 714 (E.D. Pa. 2014). In their motion for preliminary approval, Class Plaintiffs effectively propose to define the settlement class more broadly than the class previously certified by asking the Court to make Diversified Foods and Seasonings, Inc. (“Diversified”) as well as any other entities “with purchases from Kaolin’s affiliated distribution centers (South Mill New Orleans, South Mill Atlanta, South Mill Dallas and South Mill Houston)” eligible for inclusion in the distribution of settlement proceeds. (*See* Pls.’ Mem. of Law in Supp. of Mot. for Prelim. Approval of Settlements and Approval of the Form and Manner of Notice to the Class and Class Plaintiffs’ Proposed Schedule for Final Approval [Pls.’ Br.] at 1, n.1.) The Court declines to do so. In its class certification decision, the Court held that Diversified lacked antitrust standing and, therefore, granted summary judgment in Defendants’ favor as to Diversified’s claims. Specifically, the Court found that Diversified was an indirect purchaser because it purchased mushrooms from South Mill New Orleans, an entity that was neither named as a defendant nor owned or controlled by Kaolin, such that either of those exceptions to the *Illinois Brick* direct purchaser rule might apply. *In re Mushroom Direct Purchaser Antitrust Litig.*, 319 F.R.D. 158, 183-84 (E.D. Pa. 2016). While Class Plaintiffs may “believe that this ruling was erroneous,” they have not pointed the Court to anything within the negotiated settlement agreements or otherwise that entitles Diversified or other purchasers of mushrooms from South Mill New Orleans, South Mill Atlanta, South Mill Dallas, and South Mill Houston to bypass that decision and recover from the settlement funds. (*See* Pls.’ Br. at 1, n.1.) The Court evaluates class action settlements “as a fiduciary for absent class members . . . to ensure that other unrepresented parties (absent class members) and the public interest are fairly treated by the settlement[s] reached between the class representatives and the defendants.” *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594 (3d Cir. 2010). Absent further explanation, the apparent releases of Diversified’s claims in the Basciani and Certain Defendants settlement agreements are not enough to permit Diversified or others “in its position” to circumvent the Court’s prior summary judgment ruling, potentially reducing the recovery available to members of the settlement class.

2. The CMI settlement agreement has a monetary value to the settlement class of \$100,000. This settlement agreement also requires the cooperation of CMI with the Class Plaintiffs' prosecution of this litigation. The J-M settlement agreement has a monetary value to the settlement class of \$200,000. The Mushroom Alliance settlement agreement has a monetary value to the settlement class of \$50,000. The Franklin settlement agreement has a monetary value to the settlement class of \$975,000. The Cutone settlement agreement has a monetary value to the settlement class of \$375,000. The Basciani settlement agreement has a monetary value to the settlement class of \$4,000,000 (to be paid in installments of \$1,500,000, \$1,500,000, and \$1,000,000 over two years). The Certain Defendants settlement agreement has a monetary value to the settlement class of \$28,000,000 (to be paid in installments of \$18,000,000, \$7,000,000, and \$3,000,000 over two years). Upon review of the record and for the purposes of preliminary approval, the Court accepts the good faith representations of counsel that the proposed settlements were reached after sufficient discovery and arm's-length negotiations by experienced counsel, are within the range of fairness, and are in the best interest of the members of the settlement class. Accordingly, the Court preliminarily approves the terms of each settlement subject to further consideration at a hearing on final settlement approval ("Fairness Hearing").³
3. Lead Counsel shall retain First State Trust Company to serve as escrow agent for the Class's settlements with Basciani and Certain Defendants.

³ "The preliminary approval decision is not a commitment to approve the final settlement; rather it is a determination that there are no obvious deficiencies and the settlement falls within the range of reason." *Gates v. Rohn & Haas Co.*, 248 F.R.D. 434, 438 (E.D. Pa. 2008).

4. Lead Counsel shall make the following changes to the proposed form of notice to the Class:

- a. In the Notice of Proposed Additional Settlements and Hearing Regarding Settlements (“Long Form Notice”) and Summary Notice of Proposed Additional Settlements and Hearing Regarding Settlements (“Summary Notice”), define the defendants⁴ that have been sued as follows (including the footnoted language):

The Eastern Mushroom Marketing Cooperative (EMMC); Robert A. Ferranto trading as Bella Mushroom Farms;⁵ Brownstone Mushroom Farms; To-Jo Fresh Mushrooms, Inc.; Cardile Mushrooms, Inc.; Cardile Brothers Mushroom Packaging, Inc.; Country Fresh Mushroom Co.; Forest Mushroom Inc.; Franklin Organic Mushroom Farms, Inc., formerly known as Franklin Farms, Inc.; Gino Gaspari & Sons, Inc.; Giorgi Mushroom Company; Giorgio Foods, Inc.; Kaolin Mushroom Farms, Inc.; South Mill Mushroom Sales, Inc.; Leone Pizzini and Son, Inc.; LRP-M Mushrooms LLC;⁶ Modern Mushroom Farms; Sher-Rockee Mushroom Farm; C&C Carriage Mushroom Co.; Oakshire Mushroom Farm, Inc.; Phillips Mushroom Farms, Inc.; Harvest Fresh Farms, Inc.; Louis M. Marson, Jr. Inc.; Mario Cutone Mushroom Co., Inc.; M.D. Basciani & Sons, Inc.;⁷ Monterey Mushrooms, Inc.; Masha & Toto, Inc., trading as M&T Mushrooms;⁸ W&P Mushroom, Inc.; Mushroom Alliance, Inc.;

⁴ In the Long Form Notice, Defendants are identified on pages 1, 2, 5, and 6. In the Summary Notice, Defendants are identified on page 1.

⁵ Buona Foods, Inc., not a defendant in this litigation, is its affiliated distributor for purposes of the settlements only.

⁶ Manfredini Enterprises, Inc., not a defendant in this litigation, is its affiliated distributor for purposes of the settlements only.

⁷ Basciani Foods, Inc., not a defendant in this litigation, is its affiliated distributor for purposes of the settlements only.

⁸ Robert Masha Sales, Inc., not a defendant in this litigation, is its affiliated distributor for purposes of the settlements only.

Creekside Mushrooms Ltd.; Kitchen Pride Mushroom Farms, Inc.; J-M Farms, Inc.; United Mushroom Farms Cooperative, Inc.; and John Pia (collectively, the “Defendants”).⁹

- b. Remove “South Mill Distribution Dallas, South Mill Distribution New Orleans, South Mill Distribution Atlanta, South Mill Distribution Houston” from the list of distributors on page 8 of the Long Form Notice and on page 3 of the Summary Notice.
- c. Insert all relevant dates as specified in this Order.
- d. Insert the contact information of the Notice Administrator.

With these changes, the form of notice to the Class attached as an exhibit to Plaintiffs’ Motion for Preliminary Approval consisting of written notice for mailing to all known Class members and a summary notice for publication in Progressive Grocer satisfies the requirements of Rule 23(e) of the Federal Rules of Civil Procedure and due process, is otherwise fair and reasonable, and is thus approved for dissemination to the Class.

- 5. Lead Counsel shall retain Rust Consulting LLC (“Rust”) as notice and claims administrator to assist in providing notice to the Class regarding the Settlements and communicating with Class members. All expenses incurred by Rust must be reasonable, are subject to Court approval, are subject to the provisions of Plaintiffs’

⁹ The Court has not made a determination as to whether non-Defendants Buona Foods, Inc., Manfredini Enterprises, Inc., Basciani Foods, Inc., and/or Robert Masha Sales, Inc. are, in fact, owned or controlled affiliates of any Defendant in this litigation. However, and **ONLY** for the purpose of distributing the settlements, all persons and entities who purchased from these distributors during the Class Period and who otherwise meet the class definition will be considered to be direct purchasers from a “controlled affiliate[,], agent, or subsidiary” of an EMMC member, and therefore, members of the settlement class.

Escrow Agreements with Basciani and Certain Defendants, and shall be payable solely from the Settlement Fund.

6. Class Plaintiffs shall cause Rust to complete mailing of the Long-Form Notice to the Class and submission of Summary Notice for publication by **Friday, September 20, 2019**.
7. Class Members shall have until **Friday, October 25, 2019** to object to the settlements.
8. A Fairness Hearing is scheduled for **Wednesday, January 8, 2020 at 10:30 a.m.** in Courtroom 13B at the United States District Court for the Eastern District of Pennsylvania, James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106. At the Fairness Hearing, the Court will consider, *inter alia*, (a) the fairness, reasonableness, and adequacy of the settlements; (b) whether the Court should approve Class Counsel's application for an award of attorneys' fees, reimbursement of expenses, and incentive awards for Class Representatives; (c) the adequacy of the security provided by those defendants making their settlement payments over time; and (d) whether the Court should enter a Final Judgment and Order terminating this litigation as to the Settling Defendants. The Court may approve each of these settlements with only such material modifications (if any) as may be agreed to in a writing signed by all of the parties to such settlement, if appropriate, without further notice to the Class.
9. Plaintiffs shall file a motion for final approval of the settlements by **Friday, November 1, 2019**. All briefs and materials relevant to final approval of the settlements, Class counsel's application for an award of attorneys' fees,

reimbursement of expenses, and incentive awards for Class Representatives, and entry of the final judgment proposed by the parties to the settlements shall be filed with the Court and served on the following counsel:

On behalf of Class Counsel, Plaintiffs, and the Class:

Bruce E. Gerstein
Garwin Gerstein & Fisher LLP
88 Pine Street, 10th Floor
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Lead Counsel, Direct Purchaser Class

On behalf of CMI:

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McCarthy Weilder P.C.
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Counsel for Defendants CMI

On behalf of J-M:

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On behalf of Mushroom Alliance:

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On behalf of Franklin:

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On behalf of Cutone:

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On behalf of Basciani:

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On behalf of Certain Defendants:

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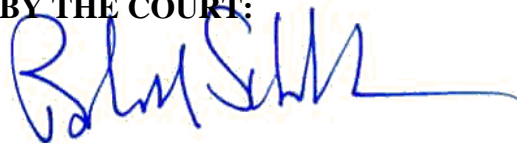
Except as herein provided, no person or entity shall be entitled to object to the terms of the proposed settlements. To be valid, any Notice of Intention to Appear and Summary Statement of Objections to the proposed settlements filed by a Class member must be postmarked by **Friday, December 6, 2019**. All persons and entities who fail to file a Notice of Intention to Appear as well as a Summary Statement of Objections as provided above shall be deemed to have waived any such objection to the settlements by appeal, collateral attack or otherwise and will not be heard in person at the Fairness Hearing.

10. All proceedings in the Direct Purchaser Class Action against Settling Defendants are hereby **STAYED** until such time as the Court renders a final decision regarding the approval of each settlement and, if the Court approves the settlements, enters final judgment as and in the form provided in the settlements and dismisses these actions with prejudice. This Order shall not act as a stay to any other continuing proceedings in *In re Mushroom Direct Purchaser Mushroom Antitrust Litigation*.
11. In the event any of these settlements do not become final pursuant to the settlement agreements, then litigation of this action will resume in a reasonable manner consistent with the terms of the applicable settlement agreement(s), to be approved by the Court upon joint application by the parties thereto.
12. In the event that any of these settlement agreement(s) is/are terminated in accordance with the provisions of that/those settlement agreement(s), then the applicable

settlement agreement(s), the applicable settlement(s), and all related proceedings shall, except as expressly provided to the contrary in the applicable settlement agreement(s), become null and void, shall have no further force and effect, and Plaintiffs shall retain full rights to assert any and all causes of action against the applicable Settling Defendant(s) and any applicable released party, and the applicable Settling Defendant(s) and the applicable released parties shall retain any defenses and counterclaims thereto. These actions shall thereupon revert forthwith to their respective procedural and substantive status prior to the date of filing of the Motion for Preliminary Approval and shall proceed as if the applicable settlement agreement(s) and all other related orders and papers had not been executed; and upon application of counsel for the applicable Settling Defendant(s) and Lead Counsel for the Class, this Court shall enter an order authorizing the parties to resume and complete these actions.

13. Neither this Order nor any of the settlement agreements nor any other settlement-related document nor anything contained herein or therein or contemplated hereby or thereby nor any proceedings undertaken in accordance with the terms set forth in any of the settlement agreements shall constitute, be construed as, or be deemed to be evidence of or an admission or concession by any of the Settling Defendants as to the validity of any claim that has been or could have been asserted against any or all of them as to any liability by any or all of them as to any matter set forth in this Order.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "Berle M. Schiller", written over a horizontal line.

Berle M. Schiller, J.