



Direct Purchaser Class Plaintiffs’ Lead Counsel acting pursuant to the authority provided by the Court’s Order dated June 5, 2006 (ECF No. 45), on behalf of Class Representative Plaintiffs Wm. Rosenstein & Sons Co., Associated Grocers, Inc., M. Robert Enterprises, Inc., M.L. Robert, II, LLC, and Market Fare, LLC (collectively “Plaintiffs”), and on behalf of the Direct Purchaser Class certified by order dated November 28, 2016 (ECF No.782);

It is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. This Final Judgment and Order hereby incorporates by reference the definitions in the separate Settlement Agreements between the Direct Purchaser Class and each of the Settling Defendants, and all capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Settlement Agreements.

2. This Court certified the following class on November 22, 2016 (ECF. No. 780) (“Direct Purchaser Class”):<sup>2</sup>

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

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<sup>2</sup> In connection with the Court’s approval of Class Plaintiffs’ settlement Defendants Giorgi Mushroom Co. and Giorgio Foods, Inc. (together, “Giorgi”) (ECF No. 877), the Court adopted the following definition of the Giorgi settlement class from the Giorgi settlement agreement:

All persons or entities who purchased Agaricus mushrooms directly from an EMMC member or one of its co-conspirators or its owned or controlled affiliates, agents or subsidiaries at any times during the period January 1, 2001 through December 31, 2008. The term “Agaricus mushrooms” shall mean all varieties and strains of the species *Agaricus bisporus*, including, among others, both brown and white varieties. The Direct Purchaser Class excludes the EMMC, its members and their parents, subsidiaries and affiliates. The Class also excludes Giant Eagle and Publix Super Markets, Inc. and their parents, subsidiaries and affiliates.

3. The Court has appointed Wm. Rosenstein & Sons Co., Associated Grocers, Inc., M. Robert Enterprises, Inc., M.L. Robert, II, LLC, and Market Fare, LLC as representatives of the Direct Purchaser Class (the “Class Representatives”). The Court found that Lead Counsel and Liaison Counsel (“Class Counsel”) fairly and adequately represented the interests of the Direct Purchaser Class and satisfied the requirements of Fed. R. Civ. P. 23(g).

4. The Court has jurisdiction over these actions, each of the parties, and all members of the Direct Purchaser Class for all manifestations of this case, including these Settlements.

5. The notice of settlement substantially in the form presented to this Court as Exhibits A and B to ECF No. 1044 (the “Notice”) constituted the best notice practicable under the circumstances. In making this determination, the Court finds that the Notice provided for individual notice to all members of the Direct Purchaser Class who were identified through reasonable efforts. Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, the Court hereby finds that the Notice provided Direct Purchaser Class members due and adequate notice of the Settlements, the Settlement Agreements, these proceedings, and the rights of Class members to opt-out of the Direct Purchaser Class and/or object to the Settlements.

6. Due and adequate notice of the proceedings having been given to the Direct Purchaser Class and a full opportunity having been offered to the Direct Purchaser Class to participate in the January 8, 2020 Fairness Hearing, but no class member having given notice of an intent to appear and present an objection at that hearing, it is hereby determined that all Direct Purchaser Class members are bound by this Final Judgment and Order.

7. In determining that the Settlements should be given final approval, the Court makes the following findings of fact and conclusions of law.

8. The Court has fully considered the *Girsch* factors and the *Prudential* factors and finds that, considered together, the factors overwhelmingly favor approval of the Settlements.

*See Girsch v. Jepson*, 521 F.2d 153 (3d Cir. 1975); *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283 (3d Cir. 1998).

9. No class member has objected to the Settlements in whole or in part. The positive reaction of the class, which is a *Girsch* factor that is important to the Court's fairness analysis, supports the Court's conclusion that the Settlements are fair, reasonable, and adequate.

10. The amount of the Settlements, plus accrued interest earned while the amounts were held in escrow, confers a substantial monetary benefit on the Direct Purchaser Class.

11. Class Counsel fully appreciated the merits of this case at the time each of the Settlements was reached and at the time of the motions for preliminary and final approval. While each Settlement was negotiated independently and executed at different times, each was entered into after the completion of extensive fact discovery and motion practice. Every issue in this highly complex antitrust case has been vigorously litigated for thirteen years. These Settlements were negotiated when the case was on the brink of trial after (a) extensive motions to dismiss; (b) the close of fact and expert discovery; (c) summary judgment motions; (d) various other motions concerning the governing antitrust standard; (e) several attempted appeals to the Third Circuit, including one that was briefed on the merits before being dismissed; (f) *Daubert* motions; (g) class certification; and (f) extensive preparation for trial including motions *in limine* and the submission of pre-trial memoranda to the Court.

12. Class Counsel faced significant risks in taking their claims against the Settling Defendants to trial, including the risk that a jury might not find in their favor on any of a number of issues and that any jury verdict could result in lengthy post-trial motions and appellate challenges. By contrast, the Settlements provide the Direct Purchaser Class with immediate relief without the delay, risk, and uncertainty of continued litigation against the Settling Defendants.

13. The Settlements were not the product of collusion between the Direct Purchaser Class Plaintiffs and the Settling Defendants or their respective counsel, but rather were the result of *bona fide* and arm's-length negotiations conducted in good faith between Direct Purchaser Class Counsel and counsel for the Settling Defendants, and at times included the assistance of various mediators.

14. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby approves the Settlements, and finds that the Settlements are, in all respects, fair, reasonable, and adequate to Direct Purchaser Class members. Accordingly, the Settlements shall be consummated in accordance with the terms and provisions of the Settlement Agreements.

15. The Court hereby finds that the instruments and agreements attached as exhibits 7-14 to ECF No. 1079 and the security instrument attached to Class Plaintiffs' December 30, 2019 filing ECF No. 1084 securing the second and third installment payments of Class Plaintiffs' settlements with Certain Defendants and Basciani are sufficient and satisfactory security for the installment payments. The Court hereby orders that the proposed mortgage agreement between Class Plaintiffs and John and Michael Pia (attached as exhibit 12 to the Gerstein Declaration) and Mortgage and Guaranty agreements between Class Plaintiffs and Basciani (attached as exhibit Nos. 1 & 2 to ECF No. 1084) be executed and finalized. The Court further orders that concurrently with execution of the proposed mortgage agreement, John and Michael Pia and Basciani obtain title insurance on the properties subject to the mortgages offered as security. The cost of the title insurance shall be divided equally between John and Michael Pia and Basciani and Direct Purchaser Class Plaintiffs.

16. The Court hereby approves the Plan of Allocation of the Settlement Fund as proposed by Class Counsel (the "Plan of Allocation"), which was summarized in the Notices of Proposed Settlement and is attached to Direct Purchaser Class Plaintiffs' Motion for Final

Approval of Settlement, and directs Rust Consulting Inc., the firm retained by Direct Purchaser Class Counsel as the Claims Administrator, to provide notice of the claims process and calculate the distributions of the net Settlement Fund and to distribute the net Settlement Fund upon the Court's approval of the distribution calculation as provided in the Plan of Allocation.

17. To allow for the efficient administration of the settlement proceeds, the Court hereby orders that all settlement funds from settlement agreements that the Court has finally approved in this case shall be consolidated into the escrow account presently holding the settlement amounts received from Certain Defendants and Basciani. The Court approved this escrow account in its August 19, 2019 Order (ECF No. 1071) preliminarily approving Class Plaintiffs' settlements with Certain Defendants and Basciani.

18. All claims against the Settling Defendants in *In re Mushroom Direct Purchaser Antitrust Litig.*, No. 06-cv-620-BMS (E.D. Pa.), including those brought by members of the Direct Purchaser Class who have not timely excluded themselves from the Direct Purchaser Class, are hereby dismissed with prejudice, and without costs.

19. Upon the Settlement Agreements becoming final in accordance with their terms and this Final Judgment and Order, Class Plaintiffs and the Direct Purchaser Class shall fully and finally release and forever discharge Defendants Giorgi Mushroom Co. and Giorgio Foods, Inc.; Kitchen Pride Mushroom Farms, Inc.; Creekside Mushrooms Ltd.; Cardile Mushrooms, Inc. and Cardile Brothers Mushroom Packaging, Inc.; J-M Farms, Inc.; Mushroom Alliance, Inc.; Franklin Organic Mushroom Farms, Inc., formerly known as Franklin Farms, Inc.; Mario Cutone Mushroom Co., Inc.; M.D. Basciani & Sons, Inc.; 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.; John Pia and their present and former parents, principals, partners, limited and general partners, affiliates, subsidiaries, divisions, stockholders, officers, directors, employees, representatives, agents, attorneys and any of its legal representatives (and the present and former partners, limited and general partners, parents, principals, affiliates, subsidiaries, divisions, stockholders, employees, officers, directors, representatives, attorneys, agents and legal representatives of each of the foregoing) and the predecessors, heirs, executors, administrators, successors and assigns of each such entity or individual (the “Released Party” or “Released Parties”) shall be released and forever discharged from all manner of claims, demands, actions, suits, causes of action, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties and attorneys’ fees, known or unknown, suspected or unsuspected, in law or equity, that any Plaintiff or any other member or members of the Class who have not timely excluded themselves from the Class Action against the Released Party, ever had, now has, or hereafter can, shall or may have, directly, representatively, derivatively or in any other capacity, arising out of any conduct alleged or which could have been alleged in the Class Action relating to the purchase of mushrooms, prior to the date hereof, with the exception of any claims based on purchases of mushrooms that may have arisen, arose or may arise in the ordinary course of business (the “Released Claims”).

20. In addition, Class Plaintiffs and the Direct Purchaser Class hereby expressly waive and release, upon the Settlement Agreement becoming final, any and all provisions, rights and benefits conferred by California Civil Code Section 1542, which reads:

Section 1542. General Release; extent. A general release does not extend to claims that 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

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code Section 1542.

21. Excluded from the release are any claims unrelated to the conduct alleged in any of the complaints consolidated in *In re Mushroom Direct Purchaser Antitrust Litigation*, 06-cv-0620, E.D. Pa., or that have arisen, arose, or may arise in the ordinary course of transacting business with the Released Parties.

22. Class Counsel for the Direct Purchaser Class have moved for an award of attorneys' fees, reimbursement of expenses and incentive awards for the class representatives. Class Counsel request an award of attorneys' fees of 40% of the Settlement (plus the interest accrued thereon), reimbursement of the reasonable costs and expenses incurred in the prosecution of this action in the amount of \$4,253,008.27, and incentive awards of \$100,000.00 for each of the three named plaintiffs, and such motion has been on the docket and otherwise publicly available since July 11, 2019.

23. In awarding attorneys' fees, reimbursement of expenses and incentive awards for the class representatives, the Court makes the following findings of fact and conclusions of law.

24. The "percentage of the fund" method is the proper method for calculating attorneys' fees in common fund class actions in this Circuit. *See, e.g., In re Rite Aid Sec. Litig.*, 396 F. 3d 294, 305 (3d Cir. 2005).

25. The Court has fully considered the *Gunter* factors and the *Prudential* factors and finds that, considered together, the factors overwhelmingly favor granting Class Counsel's requested attorneys' fee, reimbursement of expenses and incentive awards for the class



representatives. *See Gunter v. Ridgewood Energy Corp.*, 223 F. 2d 193 (2d Cir. 2000); *In re Prudential, supra*.

26. No class members have objected to any part of Class Counsel's requested 40% fee award. The absence of objections and overall positive reaction of the class, which is a *Gunter* factor, supports the Court's conclusion to grant Class Counsel's requested fee.

27. As noted above, the Settlements have conferred a substantial monetary benefit on the Direct Purchaser Class.

28. The Settlements here are directly attributable to the skill and efforts of Class Counsel, who are highly experienced in prosecuting these types of cases.

29. In prosecuting this action, Class Counsel have expended more than 42,000 hours of uncompensated time, and incurred substantial out of pocket expenses, with no guarantee of recovery. Class Counsel's hours were reasonably expended in this highly complex case that was vigorously litigated for more than thirteen years, and their time was expended at significant risk of non-payment.

30. In prosecuting this action over a period of thirteen years, Class Counsel have incurred substantial out-of-pocket expenses, with no guarantee of recovery and at significant risk of non-payment.

31. A 40% fee award would equate to a lodestar multiplier of approximately .80. Such a multiplier is lower than the range frequently awarded in common fund cases.

32. Upon consideration of Class Counsel's petition for fees, costs and expenses, Class Counsel are hereby awarded attorneys' fees totaling \$18,230,000 (representing 40% of the Settlement Fund) and costs and expenses totaling \$4,253,008.27, together with a proportionate share of the interest thereon from the date the funds are deposited in the Settlement Escrow Account until payment of such attorneys' fees, costs and expenses, at the rate earned by the

Settlement Fund, to be paid solely from the Settlement Fund and only if and after the Settlement becomes final. Upon consideration of Class counsel's petition for incentive payments for Direct Purchaser Class Representatives, each of (1) Wm. Rosenstein & Sons Co., (2) Associated Grocers, and (3) M. Robert Enterprises, Inc., M.L. Robert, II, LLC, and Market Fare, LLC (collectively "the Robert Entities") are hereby awarded \$100,000.00, to be paid solely from the Settlement Fund and only if and after the Settlements become final. Garwin Gerstein & Fisher LLP shall allocate and distribute such attorneys' fees, costs and expenses among the various Class Counsel which have participated in this litigation. Garwin Gerstein & Fisher LLP shall allocate and distribute such incentive awards among the various Direct Purchaser Class Representatives which have participated in this litigation. The Released Parties shall have no responsibility for, and no liability whatsoever with respect to, any payment or disbursement of attorneys' fees, expenses, costs or incentive awards among Class Counsel and/or Class Representatives, nor with respect to any allocation of attorneys' fees, expenses, costs or incentive awards to any other person or entity who may assert any claim thereto. The attorneys' fees, costs and expenses, and incentive awards authorized and approved by Final Judgment and Order shall be paid to Garwin Gerstein & Fisher LLP within five (5) business days after this Settlement becomes final or as soon thereafter as is practical and in accordance with the terms of the Settlement Agreements and the Escrow Agreement. The attorneys' fees, costs and expenses, and incentive award authorized and approved by this Final Judgment and Order shall constitute full and final satisfaction of any and all claims that Plaintiffs and any Direct Purchaser Class member, and their respective counsel, may have or assert for reimbursement of fees, costs, and expenses, and incentive awards, and Plaintiffs and members of the Direct Purchaser Class, and their respective counsel, shall not seek or demand payment of any fees and/or costs and/or expenses and/or incentive awards from any source other than the Settlement Fund, including Defendants.

33. The Court retains exclusive jurisdiction over the Settlements and the Settlement Agreements as described therein, including the administration and consummation of the Settlements, and over this Final Judgment and Order. Class Counsel may periodically apply to the Court for reimbursement of future expenses incurred in administering the settlement fund

34. The Court finds that this Final Judgment and Order adjudicates all of the claims, rights and liabilities of the parties to the Settlement Agreements (including the members of the Direct Purchaser Class), and is final and shall be immediately appealable. None of this Final Judgment and Order, the Settlement Agreements, nor any other Settlement-related document shall constitute any evidence or admission by the Settling Defendants or any other Released Party on liability, any merits issue, or any class certification issue (including but not limited to whether a class can be certified for purposes of litigation or trial) in this or any other matter or proceeding, nor shall any of the Settlement Agreements, this Order, or any other Settlement-related document be offered in evidence or used for any other purpose in this or any other matter or proceeding except as may be necessary to consummate or enforce the Settlement Agreements, the terms of this Final Judgment and Order, or if offered by any released Party in responding to any action purporting to assert Released Claims.

IT IS SO ORDERED.

Dated: January 9, 2020

**BY THE COURT:**

A handwritten signature in blue ink, appearing to read "Berle M. Schiller", with a long horizontal flourish extending to the right.

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**Berle M. Schiller, J.**