

# **EXHIBIT 3**

EXECUTION VERSION

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

---

IN RE MUSHROOM DIRECT  
PURCHASER ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

CASE NO. 06-cv-0620

---

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made by and between Defendant Franklin Organic Mushroom Farms, Inc., formerly known as Franklin Farms, Inc. (“Franklin”) and the Direct Purchaser Class Plaintiffs’ counsel on behalf of Plaintiffs Wm. Rosenstein & Sons Co.; M.L. Robert II, LLC; M. Robert Enterprises, Inc.; Market Fare, Inc.; and Associated Grocers, Inc. on their own behalf and as representatives of the Direct Purchaser Plaintiff Class (defined below) (collectively “Direct Purchaser Class Plaintiffs”) (Franklin and the Direct Purchaser Class Plaintiffs collectively, the “Parties”) in the consolidated Direct Purchaser Class Action in In Re Mushroom Direct Purchaser Antitrust Litigation, 06-cv-0620, pending in the United States District Court of the Eastern District of Pennsylvania (the “Class Action”). The plaintiffs in the consolidated individual actions in In Re Mushroom Direct Purchaser Antitrust Litigation, 06-cv-0620, E.D.Pa. are not parties to this Settlement Agreement.

WHEREAS, Direct Purchaser Class Plaintiffs have alleged, among other things, that Franklin entered into an agreement to restrain trade with the Eastern Mushroom Marketing Cooperative (“EMMC”) and certain of its members in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§1, 2, and Section 7 of the Clayton Act, 15 U.S.C. § 18, and caused Direct Purchaser Class Plaintiffs to incur significant damages;

WHEREAS, Direct Purchaser Class Plaintiffs have alleged that Franklin participated, either directly or indirectly as a member of the defendant Mushroom Alliance, in the alleged unlawful conduct;

WHEREAS, Franklin denies Direct Purchaser Class Plaintiffs’ allegations of unlawful conduct and characterizations thereof and has asserted defenses to Direct Purchaser Class Plaintiffs’ claims;

WHEREAS, Direct Purchaser Class Plaintiffs and Franklin agree that this Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Franklin or of the truth of any of the claims or allegations alleged in the Class Action or actions consolidated therein;

WHEREAS, arm's length settlement negotiations have taken place between counsel for Direct Purchaser Class Plaintiffs and counsel for Franklin, and this Settlement Agreement, which sets forth all of the terms and conditions of the settlement between Franklin and Direct Purchaser Class Plaintiffs, both individually and on behalf of the Direct Purchaser Class, has been reached, subject to the final approval of the Court;

WHEREAS, Direct Purchaser Class Plaintiffs' counsel have concluded, after extensive discovery and investigation of the facts, and careful consideration of those facts and the applicable law, that it would be in the best interests of the Direct Purchaser Class to enter into this Settlement Agreement in order to avoid the uncertainties of litigation against Franklin, and to assure a benefit to the Direct Purchaser Class and further, that Direct Purchaser Class Plaintiffs' counsel consider the settlement set forth herein (the "Settlement") to be fair, reasonable, and adequate and in the best interests of the Direct Purchaser Class; and

WHEREAS, Franklin has concluded, despite its belief that it is not liable for the claims asserted against it and has good defenses thereto, that it will enter into this Settlement Agreement solely to avoid the further expense, inconvenience and burden of this protracted litigation, and thereby to put to rest this controversy, and to avoid the risks inherent in uncertain complex litigation;

NOW THEREFORE, it is agreed by the undersigned, on behalf of Franklin and the Direct Purchaser Class Plaintiffs, that the Class Action and all claims of the Direct Purchaser Class Plaintiffs be settled, compromised and dismissed on the merits and with prejudice as to the Released Party (defined below) and, except as hereinafter provided, without costs as to Direct Purchaser Class Plaintiffs or Franklin, subject to the approval of the Court, on the following terms and conditions:

1. Definitions. The following terms, as used in this Settlement Agreement, have the following meanings:

a. "Direct Purchaser Class Plaintiffs' Counsel" shall refer to the law firm of Garwin Gerstein & Fisher LLP.

b. "Direct Purchaser Class" or "Class" shall mean 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 alleged co-conspirators or its owned or controlled affiliates, agents, or subsidiaries at any time between February 4, 2001 and August 8, 2005. 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 non-Western United States refers to the following states which were in the six regions of the country which Direct Purchaser Class Plaintiffs claim were subject to the EMMC's pricing policies: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Tennessee, Alabama, Mississippi, Arkansas, Louisiana, Wisconsin, Minnesota, Iowa, Kansas, Nebraska, Colorado, Oklahoma, Texas, Ohio, Missouri, Michigan, Indiana, Kentucky, West Virginia, Illinois and the District of Columbia.

c. "Class Period" shall mean the period from February 4, 2001 through August 8, 2005.

2. Counsel for the undersigned agree to recommend approval of this Settlement Agreement by the Court and to undertake their best efforts, including all actions and efforts contemplated by this Settlement Agreement and any other actions and efforts that may be necessary or appropriate, by order of the Court or otherwise, to carry out the terms of this Settlement Agreement. The Settlement is conditioned on its approval by the Court.

3. Following execution of this Settlement Agreement, the Direct Purchaser Class Plaintiffs shall file with the Court a motion for preliminary approval of the Settlement. The motion for preliminary approval shall request the entry of a preliminary approval order consistent with the terms of this Settlement Agreement. In the event that the Court preliminarily approves the Settlement, Direct Purchaser Class Plaintiffs shall provide Direct Purchaser Class members with notice of the Settlement by means of first class mail and publication notice pursuant to Rule 23 of the Federal Rules of Civil Procedure and any order of the Court governing notice.

4. If the Court approves this Settlement Agreement, the Parties hereto shall jointly seek entry of an order and final judgment:

a. as to the Class Action and each action consolidated therein, approving finally this settlement and its terms as being a fair, reasonable and adequate settlement as to Direct Purchaser Class Plaintiffs and the Direct Purchaser Class of claims against Franklin within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation pursuant to its terms;

b. directing that, as to Franklin, the Class Action and each action consolidated therein be dismissed with prejudice and, except as provided for herein, without costs;

c. reserving exclusive jurisdiction over the Settlement and this Settlement Agreement, including the administration and consummation of this Settlement; and

d. determining pursuant to Fed.R.Civ.P. 54(b) that there is no just reason for delay and directing that the judgment of dismissal shall be final and appealable.

5. This Settlement Agreement shall become final and effective ("the Effective Date") upon the occurrence of all of the following three events:

(i) the Court finally approves it as required by Rule 23(e) of the Federal Rules of Civil Procedure,

(ii) the Court enters a final judgment of dismissal with prejudice as to Franklin against all Direct Purchaser Class Plaintiffs and other members of the Direct Purchaser Class who have not timely excluded themselves from the Class Action, and

(iii) the time for appeal from the Court's approval of this Settlement Agreement as described in (i) hereof and entry of a final judgment as described in (ii) hereof has expired or, if appealed, approval of this Settlement Agreement and the final judgment have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

6. Settlement Payment to Direct Purchaser Class. Subject to the provisions herein, and in full, complete and final settlement of the Class Action, within 10 business days of the Court granting Preliminary Approval of this Settlement Agreement, Franklin shall pay \$975,000 in settlement of the claims of the Direct Purchaser Class Plaintiffs and the Direct Purchaser Class that they represent (the "Settlement Fund"). The money shall be paid to an escrow account that will be established by Direct Purchaser Class Plaintiffs' counsel, where it will remain until the Effective Date as defined in paragraph 5, and all interest earned will stay with the principal.

7. In the event that this Settlement Agreement does not become final pursuant to paragraph 5, the Settlement Fund, including any and all income earned thereon, shall be returned to Franklin, and any release or covenant not to sue pursuant to paragraph 11 below shall be of no force or effect.

8. Direct Purchaser Class Plaintiffs and the other members of the Direct Purchaser Class who have not timely excluded themselves from the Class Action shall look solely to the Settlement Fund for settlement and satisfaction against Franklin of all claims that are released hereunder.

9. The Direct Purchaser Class Plaintiffs and their counsel may be reimbursed and indemnified solely out of the Settlement Fund for litigation expenses related to the costs of notice of this Settlement to Direct Purchaser Class members and the administration of the Settlement Fund. Franklin shall not be liable for any costs, or fees or expenses of any of Direct Purchaser Class Plaintiffs' respective attorneys, experts, advisors, agents and representatives, but such costs, fees and expenses as approved by the Court shall be paid out of the Settlement Fund. In no event shall Franklin have any liability with respect to the giving of notice of this Settlement to Direct Purchaser Class members, including, but not limited to, the expenses and cost of such notice.

10. After this Settlement Agreement becomes final pursuant to the provisions of paragraph 5 herein, counsel for Direct Purchaser Class Plaintiffs may seek approval from the Court to use the Settlement Fund to pay expenses and/or fees. Disbursements for litigation costs

and expenses of distribution and administration of the Settlement Fund may be made from the Settlement Fund from time to time with approval of the Court. In no event shall Franklin have any liability or responsibility with respect to the distribution and administration of the Settlement Fund, including, but not limited to, the costs and expenses of such distribution and administration.

11. Release. In return for the consideration described in paragraph 6 above, upon this Settlement Agreement becoming final, Franklin and its present and former parents, principals, limited and general partners, affiliates, subsidiaries, divisions, stockholders, officers, directors, employees, agents, attorneys and any of their legal representatives (and the present and former limited and general partners, parents, affiliates, subsidiaries, divisions, employees, officers, directors, 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") 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 Direct Purchaser 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 any action by any plaintiff consolidated in In Re Mushroom Direct Purchaser Antitrust Litigation, 06-cv-0620, E.D.Pa. relating to the purchase of mushrooms, prior to the date hereof (the "Released Claims"). In addition, the Released Party shall be released from any claims that any member of the Direct Purchaser class has or could have asserted against the Released Party in any action consolidated in In Re Mushroom Direct Purchaser Antitrust Litigation, 06-cv-0620, E.D.Pa based upon or arising from Released Party's membership in the Mushroom Alliance.

Specifically excluded from the release are (1) the Mushroom Alliance or any of its other members or their present and former stockholders, officers, directors, employees, agents, attorneys and any of their legal representatives (and their predecessors, heirs, executors, administrators, successors and assigns), and (2) any other Defendant in this action or its present and former stockholders, officers, directors, employees, agents, attorneys and any of their legal representatives (and their predecessors, heirs, executors, administrators, successors and assign).

The Released Party covenants and agrees that hereafter, it shall not assert the release described herein to eliminate claims, if any, by a purchaser for conduct that is 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., that may have arisen, arose or may arise in the normal course of business (e.g. claims related to the quality of mushrooms purchased).

The Releasing Party (the Direct Purchaser Class) reserves all its remaining claims against the Mushroom Alliance, its other members or their present and former stockholders, officers, directors, employees, agents, attorneys and any of their legal representatives (and their predecessors, heirs, executors, administrators, successors and assigns), with the exception of the Released Party (hereinafter collectively referred to as "Non-Settling Mushroom Alliance



Defendants"). In the event the Mushroom Alliance is adjudged liable for monetary damages or fees or later settles with Direct Purchaser Class Plaintiffs for any reason whatsoever, the Release in this Settlement Agreement shall operate as satisfaction of the Released Party's share, if any, of the Mushroom Alliance's monetary liability. Direct Purchaser Class Plaintiffs agree that they will hold harmless the Released Party from any current or future obligations to them or any other Direct Purchaser Class members that may arise as a result of Mushroom Alliance's obligations to them or any other Direct Purchaser Class members. Should the Direct Purchaser Class Plaintiffs obtain a judgment against or settlement from the Mushroom Alliance, Direct Purchaser Class Plaintiffs will not attempt to enforce any such judgment against Franklin or receive any payments or consideration from Franklin in excess of the \$975,000 payment contemplated under paragraph 6 above.

The agreements and representations set forth in this Paragraph constitute a material inducement for Franklin to enter into this Settlement Agreement. This Release is not intended to preclude the Releasing Party from taking further action against the Non-Settling Mushroom Alliance Defendants, except as specifically provided above.

12. If the Court declines to approve this Settlement Agreement, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment in substantially the form described in paragraph 4, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is reversed and the court on remand does not affirm the approval of this Settlement Agreement, then this Settlement Agreement shall be canceled and terminated, and shall become null and void upon the election of any party. A modification or reversal on appeal of any amount of Direct Purchaser Class Plaintiffs' Counsels' fees and expenses awarded by the Court from the Settlement Fund shall not be deemed a modification of all or a part of the terms of this Settlement Agreement or such final judgment.

13. In the event that the Settlement does not become final in accordance with the terms hereof, then this Settlement Agreement shall be of no force or effect and, in any event, the parties hereto agree that this Settlement Agreement whether or not it shall become final, and any and all negotiations, documents and discussions associated with it shall be without prejudice to the rights of any party, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law of any liability or wrongdoing by Franklin or of the truth of any of the claims or allegations contained in the complaint or any other pleading, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the Class Action or in any other action or proceeding. Franklin expressly reserves all of its rights if the Settlement does not become final in accordance with the terms of this Settlement Agreement.

14. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto and to the Released Party to the extent permitted by law. Without limiting the generality of the foregoing, each and every covenant and agreement herein by Direct Purchaser Class Plaintiffs and their counsel shall be binding upon all members of the Direct Purchaser Class and their assigns to the extent permitted by law.

15. This Settlement Agreement contains an entire, complete, and integrated statement of each and every term and provision agreed to by and among the parties. This Settlement Agreement shall not be modified in any respect except by a writing executed by all the parties hereto.

16. None of the parties hereto shall be considered to be the drafter of this Settlement Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

17. All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of the state of New York without regard to its choice of law or conflict of laws principles.

18. Franklin and the Class hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the Eastern District of Pennsylvania, for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement.

19. No Admission. The Parties acknowledge that the Settlement is a compromise of disputed claims and not an admission of liability and that the Settlement and all the documents and all the facts related thereto will not be admissible against the Parties except in connection with any dispute related to enforcement of the Settlement itself.

20. Nothing in this Settlement Agreement shall be deemed to confer any rights or benefits, or impose any obligations, on any person other than the members of the Direct Purchaser Class and Released Party.

21. Counterparts. This Settlement Agreement may be executed in separate counterparts, which together shall be deemed to be one instrument. Signatures transmitted from facsimile or other electronic means shall be considered as valid signatures as of the date hereof.

22. Subject to the provisions of Paragraphs 11 and 12, each member of the Direct Purchaser Class expressly waives and releases, 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.



23. The waiver by any Party of any breach of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Settlement Agreement.

24. This Settlement Agreement constitutes the entire agreement among and between the Parties. This Settlement Agreement shall not be modified in respect except by a writing executed by all the Parties.

By: Bruce Gerstein (AG)  
Bruce E. Gerstein, Esq.  
Jonathan M. Gerstein, Esq.  
Garwin, Gerstein & Fisher, L.L.P.  
88 Pine Street, 10<sup>th</sup> Floor  
New York, NY 10005  
(212) 398-0055  
bgerstein@garwingerstein.com  
jgerstein@garwingerstein.com

Lead Counsel for Class Plaintiffs

By: James J. Rodgers  
James J. Rodgers  
Dilworth Paxson LLP  
1500 Market Street  
Suite 3500E  
Philadelphia, PA 19102  
(215) 575-7143  
jrodgers@dilworthlaw.com

Counsel for Defendant Franklin Organic Mushroom Farms, Inc.