

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SUMMARY NOTICE OF PROPOSED ADDITIONAL SETTLEMENTS AND HEARING REGARDING SETTLEMENTS

TO: 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 its owned or controlled affiliates, agents, or subsidiaries at any time between January 1, 2001 and December 31, 2008, YOUR RIGHTS COULD BE AFFECTED BY A CLASS ACTION LAWSUIT.

You were previously notified through a notice sent to you by first class mail and/or by publication in Progressive Grocer that Direct Purchasers of fresh agaricus mushrooms have filed a lawsuit against the Eastern Mushroom Marketing Cooperative (EMMC); Robert A. Ferranto trading as Bella Mushroom Farms¹; 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 LLC²; 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.³; Monterey Mushrooms, Inc.; Masha & Toto, Inc., trading as M&T Mushrooms⁴; W&P Mushroom, Inc.; Mushroom Alliance, Inc.; Creekside Mushrooms Ltd.; Kitchen Pride Mushroom Farms, Inc.; J-M Farms, Inc.; United Mushroom Farms Cooperative, Inc.; and John Pia (collectively, the "Defendants")⁵ alleging that they violated the antitrust laws by fixing the prices, and restricting the supply, of fresh agaricus mushrooms. The lawsuit was certified as a class action by Judge Thomas N. O'Neill of the United States District Court for the Eastern District of Pennsylvania and is known as *In re Mushroom Direct Purchaser Antitrust Litigation*, No. 06-620. Defendants denied Plaintiffs' allegations, but have agreed to settle all of Plaintiffs' claims on the terms described in this Notice. That notice also informed you of three settlements with the defendants Giorgi Mushroom Company and Giorgio Foods, Inc. (collectively referred to as "Giorgi"), Kitchen Pride Mushroom Farms, Inc. ("Kitchen Pride"), and Creekside Mushrooms Ltd. ("Creekside"). Following that notice, the Court approved these three settlements.

The Class certified is: All persons or 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 its owned 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 non-Western United States refers to the following states which were in the six regions of the country which 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.

As you were previously notified, the Class previously entered into a settlement with Giorgi, dated April 27, 2011, before the Court certified the class identified above.⁶ The settlement with Giorgi defined a class similar to the one described above except for the time period which begins on January 1, 2001 (as opposed to February 4, 2001) and ends on December 31, 2008 (as opposed to August 8, 2005). The difference in these class definitions resulted from developments in the case following execution of the Giorgi settlement, including counsel's continued development and evaluation of the discovery record, legal rulings issued by the Court, and opinions of Class Plaintiffs' economic expert. In approving the Giorgi Settlement, the Court certified a separate Giorgi Settlement Class using the time period in the Giorgi settlement agreement.

Only purchases in the non-Western United States of fresh agaricus mushrooms directly from one or more of the Defendants, their co-conspirators, and/or owned or controlled affiliated distributors are covered by this lawsuit. If you are located outside the non-Western United States, you are *not* a member of the Class or the Giorgi Settlement Class. If you only bought fresh agaricus mushrooms from a source other than any of the Defendants, their co-conspirators, and/or owned or controlled affiliated distributors, you are *not* a member of the Class or the Giorgi Settlement Class. If the Court approves these settlements, there will be no determination by the Court as to the co-conspirators and owned or controlled affiliated distributors. For purposes of the distribution of the settlements, you will be considered to be a direct purchaser if you purchased from one of the Defendants or any of the following affiliates of a Defendant: Buona Foods, Inc., Manfredini Enterprises, Inc., Basciani Foods, Inc., and/or Robert Masha Sales, Inc. If you do not meet these requirements or are not a member of the Class or the Giorgi Settlement Class, this Notice does not apply to you.

The purpose of this notice is to inform you that seven additional settlements have been reached that, if approved, would fully resolve this case. The Class has entered proposed settlements with Defendants Cardile Mushrooms, Inc. and Cardile Brothers Mushroom Packaging, Inc. (collectively referred to as "CMI"), J-M Farms, Inc. ("J-M"), Mushroom Alliance, Inc. ("the 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 a group of Defendants identified as "Certain Defendants."⁷

Subject to the terms and conditions of the settlement agreement with CMI, which is on file with the Court as Exhibit 1 of Class Plaintiffs' April 16, 2019 Motion for Preliminary Approval, and is also available at www.garwingerstein.com, CMI has agreed to pay \$100,000 in cash for the benefit of the Class upon final Court approval of the settlement. CMI does not admit any wrongdoing or liability on its part.

Subject to the terms and conditions of the settlement agreement with J-M, which is on file with the Court as Exhibit 1 of Class Plaintiffs' July 11, 2019 Motion for Preliminary Approval, and which is also available at www.garwingerstein.com, J-M has agreed to pay \$200,000 in cash for the benefit of the Class upon final Court approval of the settlement. J-M does not admit any wrongdoing or liability on its part.

Subject to the terms and conditions of the settlement agreement with the Mushroom Alliance, which is on file with the Court as Exhibit 2 of Class Plaintiffs' July 11, 2019 Motion for Preliminary Approval, and which is also available at www.garwingerstein.com, the Mushroom Alliance has agreed to pay \$50,000 in cash for the benefit of the Class upon final Court approval of the settlement. The Mushroom Alliance does not admit any wrongdoing or liability on its part.

Subject to the terms and conditions of the settlement agreement with Franklin, which is on file with the Court as Exhibit 3 of Class Plaintiffs' July 11, 2019 Motion for Preliminary Approval, and which is also available at www.garwingerstein.com, Franklin has agreed to pay \$975,000 in cash for the benefit of the Class upon final Court approval of the settlement. Franklin does not admit any wrongdoing or liability on its part.

¹ Buona Foods, Inc., not a defendant in this litigation, is its affiliated distributor for purposes of the settlements only.

² Manfredini Enterprises, Inc., not a defendant in this litigation, is its affiliated distributor for purposes of the settlements only.

³ Basciani Foods, Inc., not a defendant in this litigation, is its affiliated distributor for purposes of the settlements only.

⁴ Robert Masha Sales, Inc., not a defendant in this litigation, is its affiliated distributor for purposes of the settlements only.

⁵ 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.

⁶ The Giorgi settlement referenced below is on behalf of a class that is defined as follows:

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 (the "Giorgi Settlement Class").

⁷ "Certain Defendants" are Eastern Mushroom Marketing Cooperative, Inc. ("EMMC"); Robert A. Ferranto, Jr. /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.

Subject to the terms and conditions of the settlement agreement with Cutone, which is on file with the Court as Exhibit 4 of Class Plaintiffs' July 11, 2019 Motion for Preliminary Approval, and which is also available at www.garwingerstein.com, Cutone has agreed to pay \$375,000 in cash for the benefit of the Class upon final Court approval of the settlement. Cutone does not admit any wrongdoing or liability on its part.

Subject to the terms and conditions of the settlement agreement with Basciani, which is on file with the Court as Exhibit 5 of Class Plaintiffs' July 11, 2019 Motion for Preliminary Approval, and which is also available at www.garwingerstein.com, Basciani has agreed to pay \$4,000,000 in cash in three installments over the course of two calendar years for the benefit of the Class upon final Court approval of the settlement. Under the terms of the agreement, the second and third installments will include any interest at the post-judgment interest rate and will be secured in a manner not subject to creditor claims in bankruptcy. The Court will determine the adequacy of the security as part of its final approval of the settlement. Basciani does not admit any wrongdoing or liability on its part.

Subject to the terms and conditions of the settlement agreement with Certain Defendants, which is on file with the Court as Exhibit 6 of Class Plaintiffs' July 11, 2019 Motion for Preliminary Approval, and which is also available at www.garwingerstein.com, Certain Defendants have agreed to pay \$28,000,000 in cash in three installments over the course of two calendar years for the benefit of the Class upon final Court approval of the settlement. Under the terms of the agreement, the second and third installments will be secured in a manner not subject to creditor claims in bankruptcy. The Court will determine the adequacy of the security as part of its final approval of the settlement. Certain Defendants do not admit any wrongdoing or liability on their part.

If the Settlements are approved by the Court, CMI, J-M, the Mushroom Alliance, Franklin, Cutone, Basciani, and Certain Defendants and their respective present and former parents, subsidiaries, divisions, affiliates, stockholders, officers, directors, employees, agents and any of their legal representatives (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing) (the "Released Parties") shall be released and forever discharged from liability for all claims that were or could have been brought by Class Plaintiffs and members of the Class in this case (the "Released Claims"). Each member of the Class covenants and agrees that it shall not seek to establish liability against any Released Party based, in whole or in part, upon any of the Released Claims. Any disputes arising under or relating to the Settlement Agreement, including, but not limited to, the releases in the Settlement Agreements, will be resolved in the U.S. District Court for the Eastern District of Pennsylvania.

The foregoing text is only a summary of the settlements with CMI, J-M, the Mushroom Alliance, Franklin, Cutone, Basciani and Certain Defendants. Full copies of the Settlement Agreements, including their respective releases, are attached as Exhibit 1 of Class Plaintiffs' April 16, 2019 Motion for Preliminary Approval and as Exhibits 1, 2, 3, 4, 5 and 6 of Class Plaintiffs' July 11, 2019 Motion for Preliminary Approval on public file with the Eastern District of Pennsylvania, 601 Market Street, Philadelphia, PA 19106. Class Counsel have also made copies readily available at www.garwingerstein.com.

Other Settlements Previously Approved by the Court. The Court previously approved three settlements in the total amount of \$11,875,000. Those settlements were with Giorgi (for \$11,500,000), Kitchen Pride (for \$125,000), and Creekside (for \$250,000). As indicated above, the Court certified a Giorgi Settlement Class with a different class definition than applies to all other aspects of this case. The Giorgi Settlement Class period is longer and includes class members with purchases during the time periods January 1, 2001 through February 3, 2001 and/or August 9, 2005 through December 31, 2008. The Proposed Plan of Allocation for the Settlement Funds below describes how members of the Giorgi Settlement Class who only have purchases during the January 1, 2001 through February 3, 2001 and/or August 9, 2005 through December 31, 2008 time periods will be compensated.

Mailed Notice. If you believe you are a member of the Class but have not yet received the more detailed Notice of Proposed Additional Settlements ("Mailed Notice"), you may obtain a copy of the Mailed Notice (that includes additional information regarding objections to the settlement as well as deadlines for asserting those objections, if any), by contacting the Notice Administrator at: Mushrooms Direct Notice Administrator, c/o Rust Consulting, Inc. - 6647, P.O. Box 44, Minneapolis, MN 55440-0044.

Objecting to the Settlements. If you object to all or any part of the proposed settlements, write to the Court about why you do not like the proposed settlements. If you previously excluded yourself from the Direct Purchaser Class, however, you cannot object to the proposed Settlements. Class members who wish to object to the Proposed Settlements must do so no later than **Friday, October 25, 2019** and any Notice of Intention to Appear and Summary Statement of Objections to the proposed settlements filed by a Class member must be postmarked no later than **Friday, December 6, 2019**, 30 days prior to the Fairness Hearing, which will be held on **Wednesday, January 8, 2020 at 10:30 a.m.**, before The Honorable Berle M. Schiller, United States District Judge of the U.S. District Court of the Eastern District of Pennsylvania, in Courtroom 13B at United States Courthouse, 601 Market Street, Philadelphia, PA 19106.

If You Do Nothing. You will share in recovery from the proposed settlements.

Although not required, you may also hire your own attorney at your own expense and enter an appearance in the case through your own lawyer, if you so desire.

In the event the proposed settlements are approved by the Court and become final, the Settlement Funds⁸ will be distributed in accord with a Plan of Allocation approved by the Court. The Proposed Plan of Allocation will provide for the distribution of the Settlement Funds after payment of all fees, expenses, and incentive payments to named class representatives (the "net Settlement Funds"). The Proposed Plan of Allocation will provide that each Class member filing a claim will receive its proportionate share of the net Settlement Funds based on its estimated damages as a share of the total estimated damages for all class members filing claims.

For purposes of this allocation, the damages of members of the approved class who submit claims will be determined by multiplying their purchases during the class period (February 4, 2001 to August 8, 2005) by the overcharge percentage of 7.178427% determined by Class Plaintiffs' expert. The damages of members of the Giorgi Settlement Class who submit claims and do not have damages during the approved class period will be determined by multiplying their purchases during the additional time periods in the Giorgi Settlement Class (January 1, 2001 through February 3, 2001 and/or August 9, 2005 through December 31, 2008) by 1%.

The purchases of class members will be determined based on the class member's submission of acceptable records of purchases of fresh agaricus mushrooms from Defendants during the period February 4, 2001 to August 8, 2005 or from records of Defendants' sales produced to Plaintiffs during this case to the extent such records were produced and can be used for this purpose.

As the terms of the settlement agreements with Basciani and Certain Defendants provide for a portion of the funds from those settlements to be paid to the Class in installments, the allocation plan will provide for the proceeds from those settlements to be distributed to Class members in two installments, one as soon as possible following final approval, and a second as soon as possible following the final payments of both Basciani and Certain Defendants.

Class counsel intends to submit an application to the Court for (a) attorneys' fees of no more than 40 percent of the recovery from these settlements and the previously approved settlements, (b) reimbursement of Class Counsel's litigation expenses totaling approximately \$4,500,000 and (c) incentive awards for Class Representatives who aided Class counsel in the prosecution of the case and in achieving these Settlements as follows: \$100,000 for Wm. Rosenberg & Sons Co., \$100,000 for Associated Grocers, Inc., and \$100,000 for M. Robert Enterprises, Inc., M.L. Rothenstein, II, LLC, and Market Fare, LLC (collectively "the Robert Entities"). If the Court grants Class Counsel's requests, fees and expenses would be deducted from any money obtained for the Class. Members of the Class will not have to pay any attorney's fees or expenses.

Getting More Information. If you have questions, need additional information, or want to receive the Mailed Notice, please contact the Notice Administrator Rust Consulting, Inc., as set forth above. You may also get additional information by visiting www.garwingerstein.com.

PLEASE DO NOT WRITE OR CALL THE COURT OR THE CLERK'S OFFICE FOR INFORMATION.

DATE: August 19, 2019

BY THE COURT
Honorable Berle M. Schiller, United States District Judge

⁸ In addition to the settlement agreements disclosed in this notice, the Settlement Funds include the previously approved settlements with Giorgi, Kitchen Pride, and Creekside totaling \$11,875,000.