

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

IN RE MUSHROOM DIRECT	x	
PURCHASER ANTITRUST	:	Master File No. 06-0620
LITIGATION	:	
	:	
THIS DOCUMENT RELATES TO:	:	
	:	
Direct Purchaser Class Action	:	
	:	
	x	

**DECLARATION OF BRUCE E. GERSTEIN IN SUPPORT OF DIRECT PURCHASER
CLASS PLAINTIFFS’ MOTION FOR PRELIMINARY APPROVAL OF
PROPOSED SETTLEMENTS AND APPROVAL OF THE FORM AND
MANNER OF NOTICE TO THE CLASS AND CLASS PLAINTIFFS’
PROPOSED SCHEDULE FOR FINAL APPROVAL**

I, Bruce E. Gerstein, declare as follows:

1. I am the managing partner of the law firm of Garwin Gerstein & Fisher, LLP, Lead Counsel for the Direct Purchaser Class Plaintiffs (“Plaintiffs” or “Class Plaintiffs”).¹ I am submitting this declaration in support of Class Plaintiffs’ Motion for Preliminary Approval of Settlements and Approval of the Form and Manner of Notice to the Class and Class Plaintiffs’ Proposed Settlement Schedule.

2. The Class Plaintiffs have settled with all remaining defendants against which they had claims -- Defendants J-M Farms, Inc. (“J-M”), Mushroom Alliance, Inc. (“the Mushroom Alliance”), Franklin Organic Mushroom Farms, Inc., formerly known as Franklin Farms, Inc.

¹ The Court certified the Class in an Order dated November 22, 2016 (D.E. 780). The Order defines the Class.

(“Franklin”), Mario Cutone Mushroom Co., Inc. (“Cutone”), M.D. Basciani and Sons, Inc. (“Basciani”), and a group of Defendants identified as “Certain Defendants”² (collectively “Settling Defendants”). The settlements provide for J-M to pay \$200,000, the Mushroom Alliance to pay \$50,000, Franklin to pay \$975,000, Cutone to pay \$375,000, Basciani to pay \$4,000,000 (in installments of \$1,500,000, \$1,500,000, and \$1,000,000 over two years), and Certain Defendants to pay \$28,000,000 (in installments of \$18,000,000, \$7,000,000, and \$3,000,000 over two years). The settlements are subject to Rule 23(e) of the Federal Rules of Civil Procedure and Court approval.

3. All settlement payments will be held in escrow. In exchange for the cash payments, Plaintiffs have agreed to the dismissal of this litigation with prejudice against the Settling Defendants, and a release set forth in the Settlement Agreements. The Settlement Agreements are attached as Exhibits 1, 2, 3, 4, 5 and 6 to this Declaration.

4. As set out more fully in the accompanying memorandum of law, the proposed Settlements satisfy all of the factors required for preliminary approval of a class action settlement under Rule 23 of the Federal Rules of Civil Procedure. The Settlements should therefore be preliminarily approved, and notification of the Settlements’ terms should be provided to the Class as set forth in Class Plaintiffs’ motion.

² “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.

5. The Settlement with Certain Defendants is explicitly conditioned on the Court finding one or more exceptions to the “Most Favored Nation” provision (“MFN”) of the Class’ settlement agreement with Giorgi Mushroom Co. and Giorgio Foods, Inc. (together, “Giorgi”), which was approved by the Court on December 17, 2018. ECF No. 917. Five of Certain Defendants are subject to that MFN (the “MFN Defendants”). Counsel for Class Plaintiffs have concurrently filed a separate Petition pursuant to paragraph 22 of the Giorgi settlement agreement asking the Court to find an exception to the MFN because: (1) the MFN Defendants were each unable to pay the MFN amount specified by the Giorgi settlement; and/or (2) a material adverse change in the legal position of Class Plaintiffs’ case occurred that materially altered the negotiating position of Class Plaintiffs’ counsel. Since Plaintiffs’ settlement with Certain Defendants will be null and void if the Court does not find an exception to the MFN, Plaintiffs respectfully request that the Court rule on their Petition prior to addressing this motion. By the terms of this Court’s Order of June 24, 2019 (ECF No. 1039), Giorgi has until July 25, 2019, to oppose Plaintiffs’ petition. By the terms of the Giorgi Settlement Agreement, this Court’s ruling on the petition is final and unappealable. ECF No. 852-2, Giorgi Settlement Agreement § 22(d).

6. Plaintiffs also submit for the Court’s approval a proposed Order granting Plaintiffs’ motion to Preliminarily Approve the Settlements, attached as Exhibit 7 to this Declaration, and the proposed forms of notice attached as Exhibit 8 to this Declaration,³ which

³ Class Plaintiffs’ Proposed Order proposes the same process and schedule for preliminary approval as Class Plaintiffs’ motion for preliminary approval of the settlement with Defendants Cardile Mushrooms, Inc. and Cardile Brothers Mushroom Packaging, Inc. (“CMI”). *See* ECF No. 983. Class Plaintiffs respectfully suggest that a single, consolidated process for approval and notice of all the settlements will promote judicial economy and avoid the confusion and expense of multiple notices. Accordingly, the proposed forms of notice provide notice of the settlements with CMI and the Settling Defendants.

provide for notice by direct mail and publication. For reasons more fully set forth in the accompanying memorandum of law, this form and manner of notice satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

7. Plaintiffs propose that Rust Consulting LLP (“Rust”) be appointed as the settlement administrator. Rust is well-reputed within the legal, accounting and financial service fields, and frequently handles notice and claims administration in the settlement of large, complex antitrust cases, including the dissemination of notice in this case of Plaintiffs’ settlement with Giorgi, Kitchen Pride Mushroom Farms, Inc., and Creekside Mushrooms, Ltd.. Rust’s resume is attached hereto as Exhibit 9.

8. Plaintiffs propose that First State Trust Company be appointed as escrow agent for Plaintiffs’ settlements with Basciani and Certain Defendants. Basciani and Certain Defendants have approved this selection.

9. Plaintiffs propose the following schedule for final approval of the settlements:

Settling Defendants to serve notice pursuant to the Class Action Fairness Act of 2005	Within 10 days from the date of Plaintiffs’ filing for preliminary approval
Dissemination of Notice to the Class in the form and manner proposed	To be completed within 30 days of entry of the Court’s Preliminary Approval Order
Deadline for Class Members to object to the Settlements	Within 60 days of the entry of the Court’s Preliminary Approval Order
Filing of Plaintiffs’ motion for final approval of the Settlements and Class Counsel’s application for attorneys’ fees, expenses, and incentive awards for Class Representatives	Within 7 days from the expiration of deadline for Class members to object to the Settlements
Deadline for any Notice of Intention to Appear and Summary Statement of Objections to Settlements	No later than 30 days prior to the Fairness Hearing
Fairness Hearing	To Be Determined By the Court, but no less than 115 days following preliminary approval

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Date: July 11, 2019

/s/ Bruce E. Gerstein
Bruce E. Gerstein