

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 by defendant Creekside Mushrooms Ltd. (“Creekside”) and the Direct Purchaser Plaintiffs’ counsel on behalf of Plaintiffs Wm. Rosenstein & Sons Co.; Diversified Foods and Seasonings, Inc.; M.L. Robert II, LLC; M. Robert Enterprises, Inc.; Market Fair, Inc.; and Associated Grocers, Inc. (collectively “Direct Purchaser Plaintiffs”), and the Direct Purchaser Plaintiff Class (as defined below) (collectively, the “Parties”) in 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 individual actions consolidated in In Re Mushroom Direct Purchaser Antitrust Litigation, 06-cv-0620, E.D.Pa. are not parties to this Settlement Agreement;

WHEREAS, Direct Purchaser Plaintiffs have alleged, among other things, that Creekside 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 Plaintiffs to incur significant damages;

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

WHEREAS, Creekside denies each and every one of Direct Purchaser Plaintiffs’ allegations of unlawful conduct and characterizations thereof and has asserted a number of defenses to Direct Purchaser Plaintiffs’ claims;

WHEREAS, Direct Purchaser Plaintiffs and Creekside 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 Creekside 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 Plaintiffs and counsel for Creekside, and this Settlement Agreement, including its exhibits, which sets forth all of the terms and conditions of the settlement between Creekside and Direct Purchaser 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 Plaintiffs' counsel have concluded, after extensive discovery and investigation of the facts, and after carefully considering the circumstances of the Class Action 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 Creekside, and to assure a benefit to the Direct Purchaser Class and further, that Direct Purchaser 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, Creekside has concluded, despite the belief of Creekside 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 with valued business customers, and to avoid the risks inherent in uncertain complex litigation;

NOW THEREFORE, it is agreed by the undersigned, on behalf of Creekside and Direct Purchaser Plaintiffs, that the Class Action and all claims of the Direct Purchaser 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 Plaintiffs or Creekside, 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 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 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 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 and 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 steps and efforts contemplated by this Settlement Agreement and any other steps 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 Court approval of a class settlement.

3. Following execution of this Settlement Agreement, the Direct Purchaser 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 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, then 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 Plaintiffs and the Direct Purchaser Class 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 Creekside, 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;

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; and

e. directing that, for a period of five years, the Clerk of the Court shall maintain the record of those members of the Direct Purchaser Class who have timely

excluded themselves from the Direct Purchaser Class and that a certified copy of such records shall be provided to Creekside, at its expense.

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

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

(ii) entry is made of the final judgment (Exhibit A hereto) of dismissal with prejudice as to Creekside against all Direct Purchaser 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, Creekside shall pay \$250,000 in settlement of the claims of the Direct Purchaser Plaintiffs and the Direct Purchase Class that they represent (the “Settlement Fund”). The money shall be paid to an escrow account that will be established by Direct Purchaser 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. Cooperation. Creekside has provided Direct Purchaser Plaintiffs’ counsel with affidavits under penalty of perjury from Roger Claypoole and Jonathan Alder dated December 20, 2007 (the “December 20, 2007 Affidavits”). Creekside also agrees to cooperate by having Mr. Claypoole and, by using its reasonable efforts, to have Mr. Alder available at Direct Purchaser Plaintiffs’ reasonable request to provide additional written testimony and to provide deposition and trial testimony in accordance with the Federal Rules of Civil Procedure and any scheduling, discovery and case management orders entered in the Class Action. Creekside also agrees to make Mr. Claypoole available, and to exercise reasonable efforts to make Mr. Alder available, to Direct Purchaser Plaintiffs to discuss the conduct alleged in their complaint, defendants’ defenses thereto and the facts described in the December 20, 2007 Affidavits. In accordance with the Federal Rules of Civil Procedure and any scheduling, discovery and case management orders entered in this Class Action Creekside will use its best efforts to voluntarily produce additional witnesses at Direct Purchaser Plaintiffs’ reasonable request (with the exception of Dan Lucovich) with relevant information to provide written testimony and trial testimony. Notwithstanding the above, Creekside will not be expected to waive the attorney-client privilege, the work product protection or to disclose any information learned exclusively through efforts or communications subject to the joint defense or common interest privilege.

