

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

**IN RE: MUSHROOM ANTITRUST
DIRECT PURCHASER LITIGATION**

THIS DOCUMENT RELATES TO

All Actions

Master File No.
06-cv-0620 (TON)

Nos. 06-0638; 06-0657;
06-0677; 06-0861;
06-0932; 06-1464;
06-1854

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is made and entered into as of this 27th day of April 2011 (the "Settlement Agreement") by and among Defendants Giorgi Mushroom Co. and Giorgio Foods, Inc. (together, "Giorgi"), and Direct Purchaser Plaintiffs' Lead Counsel pursuant to the authority provided in the Pre-Trial Orders dated June 5, 2006 (DE #45) and June 27, 2006 (DE #50), on behalf of Plaintiffs Wm. Rosenstein & Sons Co.; Diversified Foods and Seasonings, Inc.; Robert Altman, As Trustee for the Bankruptcy Estate of Stephen Lee McCue d/b/a John Manning Co.; Meijer, Inc. and Meijer Distribution, Inc.; M.L. Robert, II, L.L.C.; M. Robert Enterprises, Inc.; Market Fair, Inc.; Associated Grocers, Inc.; Theodore J. Katsiroubas and Sons, Inc. d/b/a Katsiroubas Brothers Wholesale Fruit and Produce; and Native Maine Produce and Specialty Foods, LLC (together, the "Direct Purchaser Plaintiffs"), and the Direct Purchaser Class (as defined below in paragraph 1) (collectively, the "Parties") in the consolidated Direct Purchaser Class Action *In re Mushroom Direct Purchaser Antitrust Litigation*, Case No. 06-cv-620 (TON) (the "Class Action") pending in the United States District Court for the Eastern District of Pennsylvania (the "Court").

WHEREAS, the Direct Purchaser Plaintiffs have alleged, among other things, that the pricing and sales practices of the Eastern Mushroom Marketing Cooperative (“EMMC”) and its members, including Giorgi Mushroom Co., violated the Sherman Act and Clayton Act, and caused the Direct Purchaser Plaintiffs and members of the proposed Direct Purchaser Class to incur damages;

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

WHEREAS, the Direct Purchaser Plaintiffs and Giorgi 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 Giorgi or of the truth of any of the claims or allegations alleged in the Class Action;

WHEREAS, arm’s-length settlement negotiations have taken place between counsel for the Direct Purchaser Plaintiffs and Giorgi, and this Settlement Agreement, including its exhibits, which sets forth all of the terms and conditions of the settlement between Giorgi and the Direct Purchaser Plaintiffs, on behalf of the Direct Purchaser Class, has been reached, subject to approval of the Court;

WHEREAS, the 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, and after extensive mediation, 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, particularly in a complex litigation such as this, and to assure a benefit to the Direct Purchaser Class and

further, that the 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;

WHEREAS, Giorgi has concluded, despite the belief of Giorgi 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 the distraction and diversion of its personnel and resources, and thereby to put to rest this controversy, and to avoid the risks inherent in uncertain complex litigation;

WHEREAS, Giorgi and the Direct Purchaser Plaintiffs desire to settle all of the claims based on the conduct alleged in the Revised Consolidated Amended Class Action Complaint filed in this matter on November 13, 2007 (DE #185) (the "Complaint"), subject to the terms and conditions set forth below; and

WHEREAS, Giorgi and the Direct Purchaser Plaintiffs' counsel have each had a full opportunity to examine the facts and circumstances surrounding their respective decisions to accept the terms of the Settlement Agreement and have not relied upon any representations (or the lack thereof) made by the other concerning the circumstances leading to this agreement, not set forth in the Settlement Agreement itself;

NOW THEREFORE, it is agreed by and among the undersigned, on behalf of Giorgi and the Direct Purchaser Plaintiffs, that the Class Action and all claims of the Direct Purchaser Class be settled, compromised and dismissed on the merits and with prejudice and, except as hereinafter provided, without costs as to the Direct

Purchaser Plaintiffs or Giorgi, subject to the approval of the Court, on the following terms and conditions:

1. **Direct Purchaser Class.** For purposes of this Settlement Agreement, the “Direct Purchaser Class” shall be 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.

2. **Class Certification.** The Direct Purchaser Plaintiffs shall seek Court approval of the certification of the Direct Purchaser Class.

- a. Giorgi will not contest the Direct Purchaser Plaintiffs’ efforts to seek Court approval of the Direct Purchaser Class.
- b. Subject to paragraph 2(d) below, the Settlement is conditioned on entry of a final order (the “Final Order”) certifying a class that is (a) applicable to all MFN defendants in this litigation if such order certifies a class in connection with settlement(s) with the MFN defendants (as defined in paragraph 21); or (b) applicable to substantially all defendants if such order certifies a class in connection with a contested motion for class certification. In order to be considered a Final Order, the order must no longer be subject to a Rule 23(f) petition.
- c. If the Court denies a motion for an order certifying the Direct Purchaser Class and does not enter a Final Order certifying any other class of plaintiffs, this Settlement Agreement shall be of no force and effect.
- d. If the Court denies a motion for an order certifying the Direct Purchaser Class but does enter a Final Order certifying a class that Giorgi believes is materially different than the Direct Purchaser Class and will materially prejudice Giorgi, then Giorgi

may elect to petition the Court to withdraw from the Settlement pursuant to paragraph 20(b), and Giorgi will be permitted to withdraw from the Settlement if the Court agrees that the class that is certified will materially prejudice Giorgi.

- e. The Parties retain all of their respective objections, arguments and/or defenses with respect to class certification in the event that there is no Settlement of the Class Action, if Giorgi withdraws from the Settlement, or if the Settlement does not become final pursuant to the terms of paragraph 8 hereof.

3. **Reasonable Best Efforts to Effectuate This Settlement.** Undersigned Counsel agree to recommend approval of this Settlement Agreement by the Court and to undertake their reasonable 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.

4. **Motion for Preliminary Approval.** Following execution of this Settlement Agreement and either class certification in accordance with paragraph 2 or a settlement with the other MFN defendants in accordance with paragraph 2, 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 (the "Preliminary Approval Order"), that includes the following provisions:

- a. the preliminary approval of the Settlement set forth in this Settlement Agreement is fair, reasonable and adequate and in the best interests of the Direct Purchaser Class, and within a range that responsible and experienced attorneys could accept considering all relevant risks and factors of litigation;
- b. approval of the notice of the Settlement; and
- c. a schedule for a hearing by the Court after the notice period has expired to approve the Settlement

In the event that the Court preliminarily approves the Settlement, the Direct Purchaser Plaintiffs shall, in accord with the Preliminary Approval Order, provide Direct Purchaser Class members with notice of the Settlement pursuant to Fed. R. Civ. P. 23. The Direct Purchaser Plaintiffs' Lead Counsel will recommend notice to the Direct Purchaser Class by means of (i) direct mail and (ii) publication in an industry trade publication.

5. **Settlement Consideration.** Subject to the provisions hereof, and in full, complete and final settlement of the Class Action, within five (5) business days of the date this Settlement Agreement is signed, Giorgi will pay eleven million five hundred thousand dollars (\$11,500,000) (the "Settlement Consideration") into an escrow account, held and administered by Joshua Sarner, Esq. of Sarner & Associates P.C. (the "Settlement Fund"). The Settlement Fund shall be established and administered pursuant to an Escrow Agreement in the form attached hereto as Exhibit A. It is intended that the escrow account be treated as a "qualified settlement fund" for federal income tax purposes pursuant to Treas. Reg. § 1.46B and that any taxes due as a result of income earned by the Settlement Fund will be paid from the Settlement Fund. While in the escrow account, the settlement consideration will be invested in United States Treasury Bills or other similar United States government obligations or federally insured bank certificates of deposit. All interest earned will stay with the principal and be paid out as described in paragraph 6.

6. **Distribution of Settlement Consideration.** In the event the Settlement becomes final in accordance with paragraph 8, the Settlement Consideration will accrue interest for the benefit of the Direct Purchaser Class and any distributions will be subject to order of the Court. Prior to the Settlement becoming final in accordance with

paragraph 8, authorized disbursements may be made in accordance with paragraph 4 of the Escrow Agreement, the form of which is attached hereto as Exhibit A. In the event that the Settlement does not become final in accordance with paragraph 8, the Settlement Consideration, including all accrued interest less any authorized disbursements provided for in paragraph 4 of the Escrow Agreement, will, subject to the lapse of any time deposit investments, be returned to Giorgi within five (5) business days.

7. **Motion for Court Approval and Entry of Final Judgment.** If the Court enters an order granting class certification in accordance with paragraph 2, Lead Counsel for the Direct Purchaser Plaintiffs shall submit a motion for approval of this Settlement Agreement by the Court, after appropriate notice to the Direct Purchaser Class pursuant to paragraphs 4 and 18, and shall seek entry of an order and final judgment:

- a. approving this Settlement Agreement and its terms as being a fair, reasonable and adequate settlement as to the Direct Purchaser Plaintiffs and the certified 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 all claims by the Direct Purchaser Plaintiffs and the certified class in the Class Action against Giorgi be dismissed with prejudice and, except as provided for herein, without costs;
- c. reserving exclusive jurisdiction to the United States District Court for the Eastern District of Pennsylvania over the Settlement and this Settlement Agreement, including the administration and consummation of the Settlement;
- d. determining pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal shall be final and appealable; and
- e. ordering dismissal with prejudice against the Direct Purchaser Plaintiffs and the members of the certified class who have not timely excluded themselves from the Class Action pursuant to paragraph 18.

If this Settlement Agreement is finally approved by the Court in its current form, or in a form that does not differ materially therefrom, Giorgi agrees not to take any appeal from entry of judgment.

8. **Finality of Settlement.** This Settlement shall become final unless any of the following occurs:

- a. the Court enters an order denying certification of any class which order is no longer subject to a Rule 23(f) petition;
- b. the Court enters an order granting certification of a class but the order does not become a Final Order in accordance with paragraph 2(b);
- c. the Court enters an order granting certification of a class that differs materially from the Direct Purchaser Class and which will materially prejudice Giorgi, and the Court permits Giorgi to withdraw from the Settlement pursuant to paragraphs 2 and 20;
- d. the Court enters an order denying preliminary approval of the Settlement in accordance with paragraph 4, and that order is no longer subject to appeal;
- e. the Court enters an order denying final approval of the Settlement in accordance with paragraph 7, and that order is no longer subject to appeal;
- f. the Court refuses to enter, as provided for in paragraph 7, a final judgment of dismissal with prejudice of the claims brought against Giorgi by the Direct Purchaser Plaintiffs and all members of the certified class who have not timely excluded themselves from the Class Action;
- g. The Released Parties, as defined in paragraph 14, do not obtain the full release set forth in paragraph 14 from the certified class;
- h. Giorgi avails itself of its right to cancel, withdraw from or terminate the Settlement Agreement pursuant to paragraph 20;
- i. the Court's approval of this Settlement Agreement is timely appealed and, on appeal, approval of this Settlement Agreement and the final judgment is not affirmed in its entirety by the Court of last resort to which such appeal has been taken; or

- j. Direct Purchaser Plaintiffs indicate to Giorgi in writing that they have determined not to proceed with a class certification motion or approval of the Settlement.

9. **Effect of Settlement Not Becoming Final.** In the event that the Settlement does not become final in accordance with paragraph 8, then the Settlement Agreement shall be of no force or effect, and Giorgi shall be entitled to the return of the entire amount held in the Settlement Fund, including accrued interest, less Settlement Fund administration and notice fees and costs incurred. Such amount shall be returned to Giorgi within five (5) business days of written notice by a Party of the occurrence of any event that forecloses the Settlement from becoming final pursuant to paragraph 8, provided in accordance with the Escrow Agreement between the Parties, the form of which is attached hereto as Exhibit A. Whether or not the Settlement shall become final, this Settlement Agreement 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 law or any liability or wrongdoing by Giorgi or an acknowledgement of defenses by the Direct Purchaser Plaintiffs or 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, by any Party or any third party, in any way, whether in the Class Action or in any other action or proceeding. The Parties expressly reserve all of their rights if the Settlement does not become final in accordance with the terms of this Settlement Agreement.

10. **Full Satisfaction: Limitation of Interest and Liability.** Members of the certified class who have not timely excluded themselves from the Class Action pursuant

to paragraph 18 shall look solely to the Settlement Fund for settlement and satisfaction against Giorgi of all claims that are released hereunder.

11. **Reimbursement of Costs, Fees and Expenses.** The Direct Purchaser Plaintiffs and their counsel will be reimbursed and indemnified solely out of the Settlement Fund for expenses relating to the costs of notice of this settlement to certified class members and administration of the Settlement Fund. Giorgi shall not be liable for any costs, fees or expenses of any member of the certified class or the Direct Purchaser Plaintiffs, or of any member of the certified class' or the Direct Purchaser Plaintiffs' attorneys, experts, consultants, advisors, agents or representatives. Any such costs, fees and expenses as approved by the Court, and as provided for in paragraph 4 of the Escrow Agreement, the form of which is attached hereto as Exhibit A, shall be paid out of the Settlement Fund.

12. **Use of Settlement Fund.** If this Settlement becomes final pursuant to the terms of this Settlement Agreement, the Direct Purchaser Plaintiffs may seek to use the Settlement Fund to pay expenses for the prosecution of this action. The Direct Purchaser Plaintiffs may not use the Settlement Fund for any purpose prior to this Settlement becoming final pursuant to the terms of this Settlement Agreement, except for disbursements provided for by the Escrow Agreement between the Parties, the form of which is attached hereto as Exhibit A. In addition, if this Settlement becomes final pursuant to the terms of this Settlement Agreement, disbursements for the costs and expenses of notice, distribution and administration of the Settlement Fund, together with other reasonable expenses awarded by the Court, shall be made from the Settlement

Fund. Giorgi will not oppose such use or disbursements of the monies in the Settlement Fund.

13. **Attorneys' Fees, Expenses and Costs.** Counsel for the Direct Purchaser Class intend to seek, solely from the Settlement Fund, attorneys' fees totaling no greater than 1/3 of the Settlement Fund plus the reimbursement of reasonable costs and expenses incurred in the prosecution of this action plus interest thereon, and incentive awards to be paid to Direct Purchaser Plaintiffs in the Class Action for the named Plaintiffs. Giorgi agrees to take no position with respect to the application by Counsel for the Direct Purchaser Class for the attorneys' fees, expense payments and incentive awards set forth above. Giorgi agrees that any attorneys' fees, costs and expenses awarded by the Court shall be disbursed only to Garwin Gerstein & Fisher LLP for allocation among the various counsel which have participated in this litigation. Giorgi also agrees that Garwin Gerstein & Fisher LLP shall disburse any incentive award awarded by the Court among the various Plaintiffs which have participated in this litigation. Giorgi agrees, subject to any order of the Court, that Direct Purchaser Class counsel will be paid any Court-approved attorneys' fees and expenses and any Court-approved incentive award within five (5) business days after this Settlement becomes final pursuant to paragraph 8 of this Settlement Agreement. Any attorneys' fees, expenses, costs and incentive awards approved by the Court shall be payable solely out of the Settlement Fund, and the Direct Purchaser Plaintiffs, members of the Direct Purchaser Class, and their respective counsel shall not seek payment of any attorneys' fees, expenses, costs or incentive awards from any source other than the Settlement Fund. The Released Parties (as defined in paragraph 14 hereof) shall have no responsibility for, and no liability whatsoever with respect to, any payment or disbursement of attorneys'

fees, expenses, costs or incentive awards, any allocation of attorneys' fees, expenses, costs or incentive awards among Direct Purchaser Class counsel and/or Plaintiffs, 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.

14. **Releases.** Subject to paragraph 17 ("Reservation of Claims"), upon this Settlement becoming final in accord with its terms, the Direct Purchaser Plaintiffs and the certified class shall release and forever discharge Giorgi Mushroom Co., Giorgio Foods, Inc., Giorgio Fresh Co., and each of their present and former direct or indirect parents, subsidiaries, divisions, departments, affiliates (whether through whole or partial ownership, and including without limitation any direct or indirect, wholly owned or partially owned subsidiary of any present or former ultimate parent), 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) (collectively, the "Released Parties") from any and all claims, rights, demands, obligations, damages, actions or causes of action, or liabilities whatsoever, known or unknown, fixed or contingent, in law or in equity, (i) arising under 15 U.S.C. §§ 1, 2 and 14 concerning the direct purchase by Direct Purchaser Class members of Agaricus mushrooms from the beginning of time through the date of this Settlement Agreement; or (ii) that have been or could have been asserted by the Direct Purchaser Plaintiffs or any member of the Direct Purchaser Class either in the Class Action in this Court or in any other action or proceeding in this Court or any other court or forum arising out of, or based upon, the conduct alleged in the Complaint or in any other complaint or pleading filed in the Class Action, whether based on federal, state, local,

statutory, or common law, or any other law, rule, or regulation; or (iii) arising from or related in any way to the administration, allocation, or distribution of the Settlement Fund (collectively, the “Released Claims”). Upon this Settlement becoming final in accord with its terms, the Direct Purchaser Plaintiffs and the certified class will be deemed to have covenanted and agreed that they shall not, hereafter, seek to establish liability against any Released Party based, in whole or in part, upon any of the Released Claims.

15. **Additional Waiver.** In addition to the provisions of paragraph 14 of this Settlement Agreement, the members of the certified class hereby expressly waive and release, upon this Agreement becoming final, any and all provisions, rights and benefits conferred by § 1542 of the California Civil Code, which states:

Section 1542. Certain Claims Not Affected by General Release. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

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 § 1542 of the California Civil Code. Each member of the certified class may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the claims which are the subject matter of the provisions of paragraph 14 of this Agreement, but each member of the certified class hereby expressly waives and fully, finally and forever settles and releases, upon this Settlement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim as provided in paragraph 14 of this Agreement, whether or not concealed or hidden; without regard to the subsequent discovery or existence of such different or additional facts.

16. **Claim Form Release.** Each claim form will contain the release set forth in paragraphs 14 and 15 and must be signed by each member of the certified class or its authorized representative as a precondition to receiving any part of the Settlement Fund.

17. **Reservation of Claims.** The members of the certified class intend by this Settlement Agreement to settle with and release only the Released Parties that such members of the certified class have released pursuant to paragraphs 14 and 15, and the Parties do not intend this Settlement Agreement, any part hereof or any other aspect of the proposed settlement or release, to release or otherwise affect in any way any rights a Direct Purchaser Class member has or may have with respect to products other than Agaricus mushrooms, or against any other Party or entity whatsoever other than the Released Parties pursuant to paragraphs 14 and 15. Furthermore, the Parties do not intend by this Settlement Agreement to settle and release any claims any Party may have other than the Released Claims, including, *inter alia*, any claims that arise in the ordinary course of business between Direct Purchaser Class members and Giorgi concerning product liability, breach of warranty, breach of contract (other than breach of contract based in whole or in part on any conduct challenged by any plaintiff in this action), personal or bodily injury, or any claim of any sort that does not relate to Agaricus mushrooms.

18. **Requests for Exclusion from the Certified Class.** Subject to Court approval, any notice to putative class members will provide that every member of the certified class who requests exclusion from the class must (a) request the exclusion in a signed writing; (b) state and provide documentation showing the date and dollar value of its purchases of Agaricus mushrooms from any and all defendants named in the Class

Action from February 1, 2001 to December 31, 2008 (“Purchase Data”); and (c) send the written request for exclusion and sales documentation by first class mail, overnight delivery to the designated claims administrator. To the extent that any member of the certified class requesting exclusion provides inadequate Purchase Data, Lead Counsel and Counsel for Giorgi shall, if either Party so requests, jointly move the Court to compel production of more complete Purchase Data from the class member.

19. **Provision of Opt-Out Data.** Within fourteen (14) business days after the end of the period to request exclusion from the certified class established by the Court and set forth in any notice, Lead Counsel for the Direct Purchaser Plaintiffs shall provide Counsel for Giorgi with a written list of all potential members of the certified class who have timely exercised their rights to be excluded from the class (the “Opt-Outs”). Lead Counsel for the Direct Purchaser Plaintiffs and Counsel for Giorgi will attempt to ascertain the total dollar amount of Agaricus mushrooms sold by all Defendants named in the Class Action from February 1, 2001 to December 31, 2008, and the total dollar amount of all Agaricus mushrooms purchased from February 1, 2001 to December 31, 2008 by the Opt-Outs (the “Exclusion Amount”).

20. **Giorgi’s Rights of Withdrawal.** Giorgi may withdraw from the Settlement under the following circumstances:

- a. If the Exclusion Amount is equal to or greater than the amount set forth in a separate letter agreement between Lead Counsel and Counsel for Giorgi (the “Opt-Out Agreement”), then Giorgi shall have the right to withdraw from the Settlement by providing written notice to Lead Counsel for the Direct Purchaser Plaintiffs within fourteen (14) days after receipt of the list of Opt-Outs or within ten (10) business days after ascertaining with Direct Purchaser Plaintiffs’ Lead Counsel the Exclusion Amount, whichever is later. In order to allow Giorgi a reasonable opportunity to exercise its option to withdraw under

this paragraph, the Direct Purchaser Plaintiffs' Counsel shall promptly notify Giorgi's Counsel in writing upon the receipt of any request for exclusion and shall provide Giorgi's Counsel with copies of any such requests. In the event the Parties are unable to agree upon the Exclusion Amount, the Parties shall submit the dispute to the Court for decision, and the Court's decision shall be final, binding and not appealable. The Opt-Out Agreement will not be filed with the Court unless ordered by the Court or until a dispute among the Parties concerning its interpretation or application arises, in which event Lead Counsel for the Direct Purchaser Plaintiffs and Counsel for Giorgi shall seek leave from the Court to file and maintain the Opt-Out Agreement in Court under seal. Direct Purchaser Plaintiffs may attempt to obtain rescission of any decision by a member of the certified class to request exclusion prior to Giorgi invoking its rights under this provision, and if Direct Purchaser Plaintiffs provide Giorgi with written rescission of one or more requests for exclusion that lowers the Exclusion Amount below the threshold necessary to trigger Giorgi's right to withdraw, then Giorgi may not withdraw pursuant to this provision. Neither Direct Purchaser Plaintiffs nor Giorgi shall solicit or counsel class members to request exclusion from the certified class.

- b. If the Court does not grant class certification of the Direct Purchaser Class but does grant certification of a class that Giorgi believes is materially different than the Direct Purchaser Class and will materially prejudice Giorgi, then Giorgi may elect to petition the Court to withdraw from the Settlement by providing written notice to Lead Counsel for the Direct Purchaser Plaintiffs within fourteen (14) days after entry of the Court's order granting class certification. Giorgi will be permitted to withdraw from the Settlement if the Court agrees that the class that is certified will materially prejudice Giorgi.

21. **Most Favored Nation.** Giorgi will receive "most favored nation" status with respect to any settlement of claims in the Class Action entered into by the Direct Purchaser Plaintiffs on behalf of the Direct Purchaser Class (or the certified class, if different) with any of the following defendants named in the Class Action: Cardile Mushrooms, Kaolin Mushroom Farms / South Mill Mushroom Sales, Modern Mushroom Farms, Monterey Mushrooms, Phillips Mushroom Farms, and Tojo Foods / Brownstone

Mushroom Farms (the “MFN defendants”), in accordance with the provisions of this paragraph:

- a. Lead Counsel for the Direct Purchaser Plaintiffs and Counsel for Giorgi will agree upon a schedule (the “Schedule”) setting forth with respect to Giorgi and each MFN defendant the estimated pounds and/or dollar sales of Agaricus mushrooms to the Direct Purchaser Class from February 1, 2001 to December 31, 2008 (the “Agreed-to Class Sales for Purposes of MFN”).
- b. The Schedule will also set forth Giorgi’s “Settlement Percentage.” For purposes of this Settlement Agreement, the “Settlement Percentage” is the percentage resulting when the settlement consideration paid by any defendant in settling the Class Action is divided by that defendant’s Agreed-to Class Sales for Purposes of MFN. For purposes of determining the settlement consideration for any MFN defendant when settlement payments are made over time, the present value of settlement consideration paid over time by an MFN defendant will be determined using an appropriate discount rate that will be submitted to the Court for approval.
- c. If Direct Purchaser Plaintiffs enter into a settlement with any MFN defendant subsequent to this Settlement that results in that MFN defendant’s Settlement Percentage being less than Giorgi’s Settlement Percentage, or in the event of a settlement with multiple defendants that include more than one MFN defendant, the combined MFN defendants’ Settlement Percentage being less than Giorgi’s Settlement Percentage, then, Direct Purchaser Plaintiffs must reduce Giorgi’s settlement obligation by an amount (the “Settlement Reduction”) sufficient to lower Giorgi’s Settlement Percentage so that it is equal to the subsequently settling MFN defendant’s Settlement Percentage.
- d. In the event that a subsequent settlement by an MFN defendant results in the reduction of Giorgi’s settlement obligation before the Settlement Consideration is released from escrow, the Settlement Reduction plus interest earned on that amount will be released from escrow and paid to Giorgi within ten (10) business days of notice of the final approval of that MFN defendant’s settlement, provided in accordance with the Escrow Agreement between the Parties, the form of which is attached hereto as Exhibit A.
- e. In the event that a subsequent settlement by an MFN defendant results in the reduction of Giorgi’s settlement obligation after the

Settlement Consideration is released from escrow, if the settlement with the MFN defendant is greater than or equal to the reduction of Giorgi's settlement obligation, then within ten (10) business days of the settlement with that MFN defendant becoming final, the dollar value of the reduction shall be returned to Giorgi.

- f. The Schedule may be adjusted where it has been demonstrated to the satisfaction of Lead Counsel for the Direct Purchaser Plaintiffs and Giorgi's Counsel that an MFN defendant was engaged in materially less or more growing/selling of Agaricus mushrooms than determined for purposes of the Schedule such that it would render the application of the MFN Schedule amounts unfair to either Party. If Lead Counsel for Direct Purchaser Plaintiffs and Counsel for Giorgi are unable to agree upon applicability of this provision, any dispute with respect to the interpretation of this provision will be subject to the Court's finding that such an adjustment is warranted.
- g. The Schedule referred to in paragraph 21(a) will not be filed with the Court unless ordered by the Court or until a dispute arises among the Parties concerning the interpretation of the Schedule, in which event Lead Counsel for the Direct Purchaser Plaintiffs and Counsel for Giorgi shall seek leave from the Court to file and maintain the Schedule in Court under seal.

22. **Most Favored Nation: Exceptions.**

- a. Any settlement agreement with an MFN defendant will be contingent upon Lead Counsel for the Direct Purchaser Plaintiffs petitioning to the Court, and the Court entering an order finding any of the following: (i) the MFN provisions in Paragraph 21 have been satisfied; (ii) Giorgi has agreed in writing to waive the provisions of Paragraph 21 as to that MFN defendant; or (iii) an exception to the MFN provisions in Paragraph 21, as defined below in Paragraph 22(c), applies.
- b. A petition seeking a finding from the Court that an exception to the provisions of Paragraph 21 applies may be filed only in accordance with the following procedure:
 - i. Lead Counsel for the Direct Purchaser Plaintiffs will provide to Giorgi at least ten (10) business days in advance of filing its petition: (1) written notice of the grounds of its petition; and (2) any and all facts and information, including documents and other materials, relevant to its petition; and

- ii. Giorgi will have ten (10) business days from the filing of the petition to oppose the petition on the grounds that the petition fails to establish that an exception to the MFN provisions of Paragraph 21 is applicable.
- c. An exception to the MFN provisions of Paragraph 21, within the meaning of Paragraph 22(a)(iii), may be found only if the Court, upon reviewing the submissions by the parties, finds that the Direct Purchaser Plaintiffs have proven that:
 - i. an MFN defendant is unable to pay a settlement amount based on the Settlement Percentage defined in Paragraph 21 due to its inability to pay such amount, including inability to pay over time; or
 - ii. a material adverse change in the legal position of the Direct Purchaser Plaintiffs' case has occurred that materially alters the negotiating position of Direct Purchaser Plaintiffs' counsel.
- d. The Parties may not appeal from the finding of the Court under this Paragraph 22, which shall be final.

23. **Confidentiality.** The Parties and their counsel shall keep confidential the terms of this Settlement Agreement until the filing of the motion for preliminary approval pursuant to Paragraph 4 hereof or the notice to the certified class provided for in paragraph 4 hereof, except for the fact of the Settlement, the dollar amount of the Settlement, the existence of the Most Favored Nations provision—and, to the extent necessary to permit Direct Purchaser Plaintiffs' Lead Counsel the ability to negotiate with other MFN defendants, the MFN Settlement Amount agreed to in the Schedule provided for in paragraph 21(a) herein—and any such other information as may be agreed to by the Parties to the Settlement Agreement. Further, any confidential information imparted to Counsel for the Direct Purchaser Plaintiffs in connection with this Settlement Agreement shall be kept confidential and shall not be disclosed to any person other than Counsel for the Direct Purchaser Plaintiffs. Should Counsel for the Direct Purchaser Plaintiffs determine that disclosure to other parties or to the public of such confidential information

is required by court order or by law, Counsel for the Direct Purchaser Plaintiffs shall provide reasonable notice to Counsel for Giorgi and shall join with Giorgi, at Giorgi's option, in seeking a superseding court order preventing such disclosure.

24. **Binding Effect.** 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 Parties. Without limiting the generality of the foregoing, each and every covenant and agreement herein by the Direct Purchaser Plaintiffs and their counsel shall be binding upon all members of the Direct Purchaser Class (or the certified class, if different), and their respective successors and assigns.

25. **Integrated Agreement.** 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.

26. **Headings.** The headings used in this Settlement Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

27. **No Party is the Drafter.** 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.

28. **Choice of Law.** All terms of this Settlement Agreement shall be governed by and interpreted according to the substantive laws of the state of Pennsylvania without regard to its choice of law or conflict of laws principles.

29. **Consent to Jurisdiction.** Giorgi and each member of the Direct Purchaser 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.

30. **No Admission.** Giorgi has denied, and continues to deny, any wrongdoing or legal liability arising from any of the facts or conduct alleged in this Class Action and related actions. Neither this Settlement Agreement nor any other settlement-related document is an admission that any claim which was brought or could have been brought against Giorgi has any merit whatsoever, and neither shall be construed as an admission by Giorgi, or used against Giorgi, in any action or proceeding of any kind whatsoever, civil, criminal or otherwise, before any court, administrative agency, regulatory body or any other body or authority, present or future, including, without limitation, an admission that Giorgi has engaged in any conduct or practices that violate any antitrust statute or other law.

31. **Intended Beneficiaries.** 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 (or the certified class, if different) and the Released Parties and their counsel.

32. **Execution in Counterparts.** This agreement may be executed in counterparts. Facsimile signatures shall be considered as valid signatures, as of this date, although the original signature pages shall thereafter be appended to this agreement and filed with the Court.

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement on this date.



Counsel for Giorgi Mushroom Co. and Giorgi Foods, Inc.
Paul, Weiss, Rifkind, Wharton & Garrison LLP



Direct Purchaser Plaintiffs' Lead Counsel
Garwin, Gerstein & Fisher, LLP

Exhibit A

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

**IN RE MUSHROOM DIRECT
PURCHASER ANTITRUST
LITIGATION**

**THIS DOCUMENT RELATES TO:
All Actions**

Master File No. 06-0620

**Nos. 06-0638; 06-0657;
06-0677; 06-0861;
06-0932; 06-1464;
06-1854**

ESCROW AGREEMENT

This escrow agreement (the "Escrow Agreement") by and among (a) Defendants Giorgi Mushroom Company and Giorgio Foods, Inc. (collectively "Giorgi" hereinafter) and (b) Direct Purchaser Plaintiffs' Lead Counsel pursuant to the authority provided in Pre-Trial Orders dated June 5, 2006 (DE #45) and June 28, 2006 (DE #50) on behalf of Plaintiffs Wm. Rosenstein & Sons Co.; Diversified Foods and Seasonings, Inc.; Robert Altman, As Trustee for the Bankruptcy Estate of Stephen Lee McCue d/b/a John Manning Co.; Meijer, Inc. and Meijer Distribution, Inc.; M.L. Robert, II, L.L.C.; M. Robert Enterprises, Inc.; Market Fair, Inc.; All American Mushroom, Inc.; Associated Grocers, Inc.; Theodore J. Katsiroubas and Sons, Inc. d/b/a Katsiroubas Brothers Wholesale Fruit and Produce; and Native Maine Produce and Specialty Foods, LLC. (collectively "Plaintiffs" hereinafter), on behalf of themselves and a class in the case *In Re Mushroom Direct Purchaser Antitrust Litigation*, Master File No. 06-0620 (the "Class Action"), pending in the United States District Court for the Eastern District of Pennsylvania (the "Court"), and (c) Joshua Sarner, Esq. of Sarner & Associates P.C., as escrow agent (the "Escrow Agent") is entered into

this 27th day of April, 2011, in connection with the Settlement Agreement dated April 27, 2011 (the "Settlement Agreement"). Capitalized terms not defined shall have the meanings specified in the Settlement Agreement.

WHEREAS, Plaintiffs, on the one hand, and Giorgi on the other hand, by and through their respective counsel, have entered into the Settlement Agreement wherein they agreed, subject to, *inter alia*, the certification of a class of Agaricus mushroom purchasers and/or an agreed to stipulation so ordered by the Court certifying a class of Agaricus mushroom purchasers and final approval of the Court, that the claims asserted by Plaintiffs and the Class against Giorgi in the Class Action be dismissed with prejudice in exchange for, *inter alia*, payment by Giorgi of eleven and one-half million dollars (\$11,500,000); and

WHEREAS, the parties hereto are entering into this Escrow Agreement in order to effectuate certain of the terms of the Settlement Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and considerations herein, the parties agree as follows:

1. Plaintiffs and Giorgi jointly appoint Joshua Sarner, Esq. to act as Escrow Agent in connection with the Settlement Agreement, and Joshua Sarner, Esq. hereby accepts such designation. Plaintiffs acknowledge and recognize that the Escrow Agent is General Counsel for Giorgio, and has entered its appearance for Giorgi in this case, and Plaintiffs consent and agree that Giorgi may continue to retain the services of the Escrow Agent in any matter concerning this litigation, without Plaintiffs having the right to raise any objection by reason of conflict of interest or otherwise.

2. Pursuant to and in accordance with the Settlement Agreement, Giorgi will deposit with the Escrow Agent the sum of eleven and one-half million dollars (\$11,500,000) (the "Settlement Fund").

3. The Escrow Agent shall cause the Settlement Fund to be invested and reinvested in United States Treasury Bills or other similar United States government obligations or federally insured bank certificates of deposit, until the Settlement becomes final on the effective date in accordance with paragraph 8 of the Settlement Agreement (the "Effective Date"). Subsequent to the Effective Date, the Settlement Fund shall be invested as directed in writing by Lead Counsel for the Plaintiffs, Bruce E. Gerstein, Esq., Garwin Gerstein & Fisher LLP, 1501 Broadway, Suite 1416, New York, NY 10036 ("Authorized Plaintiffs' Counsel"). The term of any such investment shall not exceed 90 (ninety) days. All interest earned on the Settlement Fund shall become part of the Settlement Fund. Any losses on the Settlement Fund shall be borne by the Settlement Fund and shall not be recoverable from Giorgi. Giorgi shall have no liability, obligation, or responsibility of any kind in connection with the investment, disbursement, or other oversight of the Settlement Fund.

4. The Escrow Agent may withdraw from the Settlement Fund, upon written authorization of the Authorized Plaintiffs' Counsel and Giorgi (either by itself or through its attorneys), (i) disbursements sufficient to pay to the Settlement Administrator (as defined below) the costs of notice to the Class and any administrative costs that are incurred by the Settlement Administrator, except that such withdrawals for notice to the Class and settlement administration may not exceed \$75,000 prior to the Effective Date; (ii) disbursements sufficient to pay Escrow

Expenses (as defined below), except that such withdrawals for Escrow Expenses may not exceed \$50,000 prior to the Effective Date; and (iii) any amount necessary to pay taxes or estimated taxes on income earned on the Settlement Fund. After the Effective Date, if such date occurs, such authorization may be granted by Authorized Plaintiffs' Counsel alone. Authorized Plaintiffs' Counsel is authorized to appoint an administrator (and any successors) for the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3) (the "Settlement Administrator"). Authorized Plaintiffs' Counsel shall be responsible for assuring that the Settlement Administrator qualifies as an "administrator" of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3) and is performing its duties hereunder. Giorgi shall have no responsibility for any fees or the performance of the Settlement Administrator.

5. Provided the Court preliminarily approves the Settlement in accordance with paragraph 4 of the Settlement Agreement, the Settlement Administrator shall, within 30 days after the date thereof, take all steps necessary for qualifying the Settlement Fund as a "Qualified Settlement Fund" within the meaning of Section 1.468B-1 of the Treasury Regulations. These obligations include, without limitation, the following:

(a) The Settlement Administrator will prepare a "Regulation Section 1.468B-3 Statement" pursuant to Treasury Regulation Section 1.468B-3(e) on behalf of Giorgi and provide copies to Giorgi's counsel for review and approval.

(b) The Settlement Administrator will prepare and attach to the Settlement Fund's first income tax return a "Regulation Section 1.468B-1 Relation-Back Election" pursuant to Treasury Regulation Section 1.468B-1(j) for execution by Giorgi and the Settlement

Administrator. The Settlement Administrator will promptly forward a copy of the "Regulation Section 1.468B-1 Relation-Back Election" to counsel for Giorgi within 30 days after the date hereof.

(c) The Settlement Administrator will timely prepare and file on behalf of the Settlement Fund (i) federal tax returns in accordance with Section 1.468B-2 of the Treasury Regulations and the other provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and (ii) all necessary state, local and foreign tax returns.

(d) Notwithstanding any effort, or failure, of the Settlement Administrator and the parties hereto to treat the Settlement Fund as a "Qualified Settlement Fund" within the meaning of Section 1.468B-1 of the Treasury Regulations effective as of the date on which Giorgi deposits with the Escrow Agent the Settlement Fund, any additional tax liability or penalties incurred by Giorgi resulting from income earned by the Settlement Fund (or the receipt of any payment under this paragraph 5(d)) shall be reimbursed from the Settlement Fund in the amount of such additional tax liability or penalties upon Giorgi's written request to the Escrow Agent. The Escrow Agent shall withdraw from the Settlement Fund (i) at the request of the Settlement Administrator, monies to pay all applicable federal, state, local and foreign taxes which the Settlement Fund owes or is estimated to owe, as well as related expenses, and (ii) monies to pay any reimbursements to Giorgi as described in this subparagraph (d).

(e) The Escrow Agent agrees to cooperate with the Settlement Administrator in the Settlement Administrator's fulfillment of its obligations under this Escrow Agreement.

6. With respect to paragraph 3, it is understood that Joshua Sarner, Esq. is not acting as an Investment Advisor, but is acting in his capacity as Escrow Agent.

7. The Escrow Agent may sell or present for redemption any investment described in paragraph 3 above upon written approval of Authorized Plaintiffs' Counsel and, if prior to the Effective Date, Giorgi (either by itself or through its attorneys), whenever it shall be necessary in order to provide funds to meet any payment required pursuant to this Escrow Agreement or the Settlement Agreement.

8. Except as provided in paragraph 4, distributions from the Settlement Fund may be made only upon the Effective Date, and then only as authorized by Court order. In addition, upon the Effective Date, Authorized Plaintiffs' Counsel shall have the authority to appoint a successor escrow agent and direct that all funds be transferred to the successor escrow agent, which successor escrow agent shall not be Giorgi or an affiliate of Giorgi. Upon the Effective Date, Giorgi's interest in the Settlement Fund shall cease in its entirety, except that Giorgi shall remain entitled to reimbursement for additional tax liabilities or penalties incurred by Giorgi, if any, pursuant to paragraph 5(d).

9. In the event that the Settlement does not become final pursuant to paragraph 8 of the Settlement Agreement, the Escrow Agent shall, subject only to the expiration of any time deposit investment(s) not to exceed ninety days, return the remaining Settlement Fund including all interest thereon, less any costs and expenses referred to in paragraphs 4, 5(d) and 17, to Giorgi within five (5) business days of written notice given to the Escrow Agent by the Authorized Plaintiffs' Counsel and Giorgi (either by itself or through its attorneys) of the

occurrence of any event that forecloses the Settlement from becoming final pursuant to paragraph 8 of the Settlement Agreement.

10. In accordance with paragraph 21(d) of the Settlement Agreement, in the event that a subsequent settlement by an MFN defendant results in the reduction of Giorgi's settlement obligation before the Settlement Consideration is released from escrow, the Escrow Agent shall release the Settlement Reduction plus interest earned on that amount from escrow and pay it to Giorgi within ten (10) business days of written notice given to the Escrow Agent by the Authorized Plaintiffs' Counsel and Giorgi (either by itself or through its attorneys) of the final approval of that MFN defendant's settlement.

11. The Escrow Agent may rely upon any notice, certificate, instrument, request, paper or other documents reasonably believed by it to be genuine and to have been made, sent or signed by Authorized Plaintiffs' Counsel or Giorgi (either by itself or through its attorneys) in accordance with this Escrow Agreement, and shall not be liable for any action taken or omitted by it, consistent with the terms hereof, in connection with the performance by it of its duties pursuant to the provisions of this Escrow Agreement, except for its own default, negligence or breach of the terms of this Escrow Agreement. The Escrow Agent will grant any Settlement Fund disbursement requests only upon written authorization of Authorized Plaintiffs' Counsel and Giorgi (either by itself or through its attorneys) until the Effective Date. After the Effective Date, such authorization may be granted only by Authorized Plaintiffs' Counsel.

12. The Escrow Agent's acceptance and administration of the Settlement Fund shall constitute the submission of the Escrow Agent to the jurisdiction of the Court in the above-

described litigation for the purpose of carrying out this Escrow Agreement pursuant to the Settlement Agreement.

13. The Escrow Agent has been appointed in compliance with the Settlement Agreement and is subject to the orders of the Court.

14. This Escrow Agreement shall be governed by and interpreted according to the substantive laws of the State of Pennsylvania, without reference to choice-of-law principles.

15. The Escrow Agent hereby agrees to submit to the jurisdiction and venue of the Court with respect to issues relating to the Settlement Fund for purposes of enforcement, clarification, or amendment of the provisions of this Escrow Agreement, and to comply with all directions given by the Court.

16. The Escrow Agent may be removed from this Escrow Agreement at any time and thereby become discharged from the obligations hereby created subsequent to the date of discharge, by notice in writing given to the Escrow Agent not less than thirty (30) days before such removal is to take effect. Prior to the Effective Date, such notice must be given by Authorized Plaintiffs' Counsel and counsel for Giorgi acting jointly; after the Effective Date, such notice may be given by Authorized Plaintiffs' Counsel alone. Upon approval of the Court, and subject to arrangements being made for a replacement Escrow Agent as specified in the next sentence, the Escrow Agent may terminate this Escrow Agreement, by notice in writing given to the undersigned counsel not less than thirty (30) days before such termination is to take effect, and thereby become discharged from the obligations hereby created subsequent to the date of termination. In the event that the Escrow Agent is removed or terminates this Escrow

Agreement, arrangements shall be made for a replacement Escrow Agent, who shall assume the Escrow Agent's duties hereunder as of the date and time that the replacement is to take effect. Prior to the Effective Date, such arrangements must be made by Authorized Plaintiffs' Counsel and Giorgi (either by itself or through its attorneys) acting jointly; after the Effective Date, such arrangements may be made by Authorized Plaintiffs' Counsel alone.

17. The Escrow Agent shall be reimbursed for all its reasonable out-of-pocket expenses, including attorneys' fees, travel expenses, telephone and facsimile transmission costs, postage (including express mail and overnight delivery charges), copying charges and the like ("Escrow Expenses"), subject to the approval by Authorized Plaintiffs' Counsel and Giorgi (either by itself or through its attorneys) prior to the Effective Date, which approval shall not be unreasonably withheld; as of the Effective Date, such approval need be provided only by Authorized Plaintiffs' Counsel, which approval shall not be unreasonably withheld. All Escrow Expenses shall constitute a direct charge against the Settlement Fund and shall be payable only from the Settlement Fund, and in no event shall Giorgi be liable for Escrow Expenses. The Escrow Agent shall not incur expenses or charge fees, including expenses and fees in connection with the Settlement Administrator's preparation of tax returns, that exceed the interest earned on the Settlement Fund. Subject to paragraph 4 and the required approval as set forth in this paragraph, the Escrow Agent is authorized to, and may, disburse to itself, from the Settlement Fund, from time to time, the amount of reimbursement of out-of-pocket expenses due and payable hereunder. The Escrow Agent shall notify the undersigned counsel of any disbursement from the Settlement Fund to itself and shall furnish Authorized Plaintiffs' Counsel and Giorgi

copies of all related invoices and other statements. After the Effective Date, such notification need be provided only to Authorized Plaintiffs' Counsel.

18. Copies of all notices and correspondence sent pursuant to this Escrow Agreement shall be served by mail upon all undersigned counsel and the Escrow Agent. After the Effective Date, such notices and correspondence need only be provided to Authorized Plaintiffs' Counsel.

19. The Escrow Agent shall, upon request of any party, advise counsel for the parties of any maturities, conversion privileges, and other matters of a like manner concerning the investments held in accordance with this Escrow Agreement.

20. The Escrow Agent shall, upon request of any party, furnish to counsel for the parties statements of transactions which statements shall be certified by the Escrow Agent.

21. The parties reserve the right to modify this Escrow Agreement upon written agreement of all parties other than the Escrow Agent, except any modification which shall affect the duties or responsibilities of the Escrow Agent may be made only upon agreement of all parties including the Escrow Agent.

22. The Escrow Agent shall treat the fact of the settlement and Settlement Agreement referred to herein, as well as all facts or other information pertaining to the settlement and the Settlement Agreement, as confidential and shall not disclose or use such information in any way other than as necessary to fulfill his role as Escrow Agent.

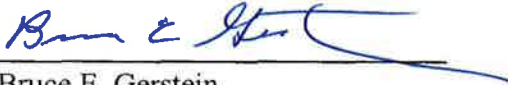
23. This Escrow Agreement, and the Settlement Agreement to which it is attached, contain an entire, complete, and integrated statement of each and every term and

provision agreed to by and among the parties. This Escrow Agreement shall not be modified in any respect except by a writing executed by all the parties.

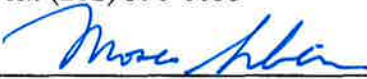
24. This Escrow Agreement may be signed by all parties on separate copies, including facsimile copies, and shall have full force and effect when all parties have signed one of the copies.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Escrow

Agreement as of the date first written above.

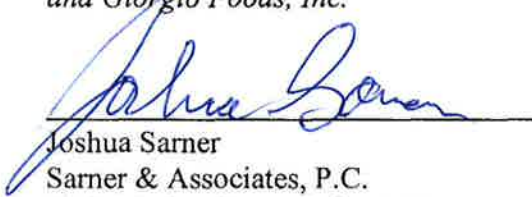


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