

**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 26th day of June, 2015 (the "Settlement Agreement") by and among Defendant Kitchen Pride Mushroom Farms, Inc. ("Kitchen Pride"), and Direct Purchaser Plaintiffs' Lead Counsel pursuant to the authority provided in 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.; M.L. Robert, II, L.L.C.; M. Robert Enterprises, Inc.; Market Fair, Inc.; and Associated Grocers, Inc. (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 the Mushroom Alliance, Inc.,

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, Kitchen Pride, although not a member of the EMMC, was a member of the Mushroom Alliance, Inc.;

WHEREAS, Kitchen Pride 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 Kitchen Pride 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 Kitchen Pride 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 Kitchen Pride, and this Settlement Agreement, including its exhibits, which sets forth all of the terms and conditions of the settlement¹ between Kitchen Pride 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,

¹ This settlement agreement sets forth all of the terms and conditions of the settlement between Kitchen Pride and the Direct Purchaser Plaintiffs with the exception of a side agreement discussed in paragraph [20(a)] pertaining to a termination provision in the event that opt-outs from the class exceed a certain threshold.

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, Kitchen Pride has concluded, despite the belief of Kitchen Pride 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, Kitchen Pride 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, Kitchen Pride and the Direct Purchaser Plaintiffs 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 Kitchen Pride 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 Kitchen Pride, 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 and entities in the non-Western United States who purchased fresh agaricus mushrooms directly from an 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”). 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 subject to the EMMC’s pricing policies: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, 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, and Illinois.

2. **Class Certification.** The Direct Purchaser Plaintiffs shall seek and Kitchen Pride shall not object to Court approval of the certification of the Direct Purchaser Class.

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, 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”), which provides:

- a. the definition of the Class to be certified by the Court pursuant to this Settlement Agreement;
- b. that 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;
- c. for approval of a form of notice of the Settlement;
- d. a schedule for a hearing by the Court after the notice period has expired to approve the Settlement; and
- e. a stay of all proceedings against Kitchen Pride until (i) Kitchen Pride exercises its right to withdraw from the Settlement under paragraph [20] or (ii) the Court renders a final decision regarding the approval of this 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 of this Settlement Agreement becoming Effective (the Effective Date as defined in

Paragraph 8 hereof), Kitchen Pride will pay one hundred twenty five thousand (\$125,000) (the “Settlement Consideration”) to Direct Purchaser Plaintiffs’ Lead Counsel for deposit into an escrow account, held and administered by Garwin Gerstein & Fisher, LLP (the “Settlement Fund”) and provide the cooperation as described in paragraph [17] herein.

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. In the event that the Settlement does not become final in accordance with paragraph [8], the Settlement Consideration, including all accrued interest less any taxes and other expenses, will, subject to the lapse of any time deposit investments, be returned to Kitchen Pride within five (5) business days.

7. **Motion for Court Approval and Entry of Final Judgment.** If the Court enters an order certifying the Direct Purchaser Class 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 paragraph [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 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 all claims by the Direct Purchaser Plaintiffs and the Direct Purchaser Class in the Class Action against Kitchen Pride

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 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 Direct Purchaser 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 not materially different therefrom, Kitchen Pride agrees not to take any appeal from entry of judgment.

8. **Finality of Settlement.** This Settlement shall become final upon the occurrences of all of the following (the “Effective Date”):

- a. the Settlement and this Settlement Agreement are approved by the Court as required by Rule 23(e) of the Federal Rules of Civil Procedure;
- b. the Court enters a Final Order, entering a final judgment of dismissal with prejudice against Plaintiffs and the members of the Direct Purchaser Class who have not timely excluded themselves from the Direct Purchaser Class Action (“Class Members”) as to Kitchen Pride; and
- c. the time for appeal from the Court’s approval of the Final Order has expired or, if the Final Order is appealed, it has been resolved by agreement and withdrawn by the appealing party, or if it has been affirmed by the court of last resort to which an appeal of such Final Order may be taken.

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 Kitchen Pride 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 Kitchen Pride within five (5) business days of written notice of the occurrence of any event that forecloses the Settlement from becoming final pursuant to paragraph [8]. 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 Kitchen Pride 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 Direct Purchaser Class who have not timely excluded themselves from the Class Action shall look solely to the Settlement Fund for settlement and satisfaction against Kitchen Pride 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 Direct Purchaser Class members and administration of the Settlement Fund. Kitchen Pride shall not be liable for any costs, fees or expenses of any member of the Direct Purchaser Class

or the Direct Purchaser Plaintiffs or the Direct Purchaser Plaintiffs' attorneys, experts, consultants, advisors, agents or representatives. Any such costs, fees and expenses as approved by the Court shall be paid out of the Settlement Fund.

12. **Use of Settlement Fund.** If this Settlement becomes final pursuant to paragraph [8] of this Settlement Agreement, the Direct Purchaser Plaintiffs may seek to use the Settlement Fund to pay expenses for the continued prosecution of this action against other defendants. In addition, if this Settlement becomes final pursuant to paragraph [8] 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. Kitchen Pride 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 may seek, solely from the Settlement Fund, attorneys' fees 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. Kitchen Pride 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. Kitchen Pride 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. Kitchen Pride 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. Kitchen Pride 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 Released Parties (as defined in paragraph [14] hereof) other than as specifically provided herein. 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 Plaintiff's counsel, Direct Purchaser Class counsel, Direct Purchaser Plaintiffs and/or any member of the Direct Purchaser Class, 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. **Release.** Upon this Settlement becoming final pursuant to paragraph [8] of this settlement agreement, the Direct Purchaser Plaintiffs and each member of the Direct Purchaser Class shall be deemed to have released and forever discharged Kitchen Pride 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 and sale by Kitchen Pride or any Released Party 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, except as provided for in paragraph 16 herein (collectively, the “Released Claims”). Upon this Settlement becoming final in accord with its terms, each member of the Direct Purchaser Class will be deemed to have covenanted and agreed that it shall not, hereafter, seek to establish liability against any Released Party based, in whole or in part, upon any of the Released Claims.

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

of the Released Party and (2) any other Defendant in this action or their present and former stockholders, officers, directors, employees, agents, attorneys and any of their legal representatives (and their predecessors, heirs, executors, administrators, successors and assign).

15. **Additional Waiver.** In addition to the provisions of paragraph [14] of this Settlement Agreement, the Direct Purchaser Class members 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 Direct Purchaser Class member 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 Direct Purchaser Class member 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. **Reservation of Claims.** The Direct Purchaser Class members intend by this Settlement Agreement to settle with and release only the Released Parties that such

Direct Purchaser Class members have released pursuant to paragraph [14], 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 paragraph [14]. 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 Kitchen Pride arising under Article 2 of the Uniform Commercial Code (pertaining to sales), the laws of negligence or 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 Kitchen Pride Agaricus mushrooms.

17. **Cooperation and Representations.** Kitchen Pride agrees to make a witness available at Plaintiffs' reasonable request to provide written testimony and/or 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. Kitchen Pride agrees to make a witness available for one (1) eight hour day for preparations in advance of trial. Kitchen Pride also agrees to exercise reasonable efforts to make a witness available to Plaintiffs for at least one (1), but not more than two (2), eight hour days to discuss the conduct alleged in the Complaint and defendants' purported defenses thereto. The Kitchen Pride witness shall be fully acquainted with all

facts in possession of Kitchen Pride and shall act in good faith at all times, and truthfully disclose all relevant evidence in Kitchen Pride's knowledge and possession. Kitchen Pride will not assert work product or attorney client privilege with respect to any facts, including but not limited to the formation of the EMMC. Notwithstanding the aforementioned, Kitchen Pride does not waive any privilege as to work-product or attorney advice offered in furtherance of Kitchen Pride's defense in this action by Kitchen Pride's prior counsel, Kitchen Pride's present counsel, or information learned exclusively through efforts or communications subject to the joint defenses or common interest privilege. Kitchen Pride makes the following representations: 1) Kitchen Pride has never sought nor received advice or communications from or talked to legal counsel retained by the EMMC in connection with the formation or operation of the EMMC or EMMCGA; 2) Kitchen Pride has never sought nor received advice from or had a discussion with any lawyers, whatsoever, regarding the formation or operation of the EMMC or EMMCGA at any time prior to the initiation of this lawsuit; and 3) Kitchen Pride has never sought nor received advice from, nor had any discussion with any lawyers regarding whether the EMMC is a proper agricultural cooperative and is immune from antitrust law at any time prior to the initiation of this lawsuit. If the Court finds lack of cooperation, the Direct Purchaser Plaintiffs may seek immediate relief from the Court including the nullification of this Settlement. In the event that Plaintiffs determine to use any documents produced by Kitchen Pride at trial, Plaintiffs reserve the right to obtain a declaration and/or certification as to the authenticity of those documents. In accordance with the Federal Rules of Civil Procedure and any scheduling, discovery and case management orders entered in this litigation, Kitchen Pride 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 defenses or common interest privilege.

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 Kitchen Pride shall, if either party so requests, jointly move the Court to compel production of complete Purchase Data from the class member.

19. **Provision of Opt-Out Data.** Within fourteen (14) business days after the later of (1) the end of the period to request exclusion from the certified class established by the Court and set forth in any notice, or (2) the production of complete Purchase Data by all members of the certified class seeking exclusion, Lead Counsel for the Direct Purchaser Plaintiffs shall provide Counsel for Kitchen Pride 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 Kitchen Pride 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. **Kitchen Pride’s Rights of Withdrawal.** Kitchen Pride 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 Kitchen Pride (the “Opt-Out Agreement”), then Kitchen Pride 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 Kitchen Pride a reasonable opportunity to exercise its option to withdraw under this paragraph, the Direct Purchaser Plaintiffs’ Counsel shall promptly notify Kitchen Pride’s Counsel in writing upon the receipt of any request for exclusion and shall provide Kitchen Pride’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 Kitchen Pride 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 Kitchen Pride invoking its rights under this provision, and if Direct Purchaser Plaintiffs provide Kitchen Pride with written rescission of one or more requests for exclusion that lowers the Exclusion Amount below the threshold necessary to trigger Kitchen Pride’s right to withdraw, then Kitchen Pride may not withdraw pursuant to this provision. Neither Direct Purchaser Plaintiffs nor Kitchen Pride 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 Kitchen Pride believes is materially different than the Direct

Purchaser Class, and will materially prejudice Kitchen Pride, then Kitchen Pride 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. Kitchen Pride will be permitted to withdraw from the Settlement if the Court agrees that the class that is certified will materially prejudice Kitchen Pride.

21. **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. Further, any confidential information imparted to Counsel for the Direct Purchaser Class 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 Class. Should Counsel for the Direct Purchaser Class 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 Class shall provide reasonable notice to Counsel for Kitchen Pride and shall join with Kitchen Pride, at Kitchen Pride's option, in seeking a superseding court order preventing such disclosure.

22. **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, and their respective successors and assigns.

23. **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.

24. **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.

25. **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.

26. **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.

27. **Consent to Jurisdiction.** Kitchen Pride 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 all manifestations of this case, including any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement.

28. **No Admission.** Kitchen Pride 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 Kitchen Pride has any merit whatsoever, and neither shall be construed as an admission by Kitchen Pride, or used against Kitchen Pride, 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 Kitchen Pride has engaged in any conduct or practices that violate any antitrust statute or other law.

29. **Resumption of Litigation.** The parties agree that in the event that Kitchen Pride withdraws from the Settlement, or the Settlement does not become final pursuant to its terms, litigation of the Class Action will resume in a reasonable manner to be approved by the Court upon joint application of the parties hereto.

30. **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 and the Released Parties and their counsel.

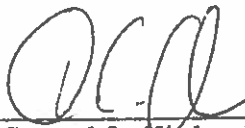
31. **Execution in Counterparts.** This agreement may be executed in counterparts. Facsimile signatures shall be considered as valid signatures, as of this date, although the original signature pages shall thereafter be appended to this agreement and filed with the Court.

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




Kitchen Pride Mushroom Farms, Inc.

By: _____



Counsel for Kitchen Pride Mushroom Farms, Inc.
Kevin Kerns
Cozen O' Connor
1900 Market Street
Philadelphia, PA 19103
(215) 665-7274
(215) 701-2023 (fax)
kkerns@cozen.com -



Direct Purchaser Plaintiffs' Lead Counsel
Bruce E. Gerstein
Garwin, Gerstein & Fisher, LLP
88 Pine Street, 10th Floor
New York, NY 10005
(212) 398-0055
(212) 764-6620 (fax)
bgerstein@garwingerstein.com