

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

_____)	
ALESSANDRO BERNI, GIUISEPPE)	
SANTOCHIRICO, MASSIMO SIMIOLI, and)	
DOMENICO SALVATI, on behalf of themselves)	Case No. 1:16-cv-04196
and all others similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	
)	
BARILLA G. e R. FRATELLI, S.p.A., and)	
BARILLA AMERICA INC. d/b/a BARILLA)	
USA,)	
)	
Defendants.)	
_____)	

**NOTICE OF MOTION
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

PLEASE TAKE NOTICE THAT, upon the accompanying Memorandum of Law in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, the Joint Declaration of Daniella Quitt and Ronen Sarraf (and the exhibits attached thereto, including the Settlement Agreement¹), Plaintiffs will move this Court before the Honorable Steven L. Tiscione, United States District Court, Eastern District of New York, 225 Cadman Plaza East, Brooklyn, NY 11201, on December 17, 2018, at 2 p.m., or at such date and time as the Court may direct, for an Order pursuant to Fed. R. Civ. P. 23, in the form substantially similar to Exhibit E to the Settlement Agreement, that: (1) grants final approval of the Settlement as fair, reasonable, and adequate; (2) confirms certification of the Class for the purpose of the Settlement and continuing the appointment of Plaintiffs as representatives of the Class and their counsel as

¹ Unless otherwise set forth, all capitalized terms used herein have the meanings ascribed to them in the Class Action Settlement Agreement, filed with the Court on April 25, 2018 (the “Settlement Agreement”), Docket Entry (“DE”) 55-1.

Class Counsel; and, (3) approves the fee and expense award, as well as the Case Contribution Awards to the Plaintiffs.

The Parties' proposed Order (previously filed as Exhibit E to the Settlement Agreement) is being filed concurrently herewith.

Dated: November 2, 2018

Respectfully submitted,

GLANCY PRONGAY & MURRAY LLP

/s/ Daniella Quitt

Robert I. Harwood

Daniella Quitt

712 Fifth Avenue, 31st Floor

New York, New York 10019

Tel.: (212) 935-7400

Fax: (212) 753-3630

SARRAF GENTILE LLP

Ronen Sarraf

Joseph Gentile

14 Bond Street, Suite 212

Great Neck, New York 11021

Tel: (516) 699-8890

Fax: (516) 699-8968

Counsel for Plaintiffs

3. Jurisdiction. For purposes of the Settlement of the Litigation, the Court has subject matter and personal jurisdiction over the Parties, including all Class Members, and venue is proper. The Court retains exclusive and continuing jurisdiction over the Class Action Administrator, the Settling Parties, and their counsel for all matters relating to the Settlement, including the administration, interpretation, effectuation or enforcement of the Settlement. The Class Action Administrator, the Settling Parties and their counsel submit to the jurisdiction of the Court for purposes of the Settlement.

4. Class Certification for Settlement Purposes Only. The Court finds and concludes that, for the purposes of approving this Settlement only and for no other purpose and with no effect on the Litigation should the Effective Date not occur, the proposed Rule 23(b)(2) settlement class meets the requirements for certification under Rule 23 of the Federal Rules of Civil Procedure: (a) the Class is so numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to the Class; (c) the claims or defenses of the Class Representatives are typical of the claims or defenses of the Class; (d) the Class Representatives and Class Counsel will fairly and adequately protect the interests of the Class; and (e) the Defendant has acted on grounds that apply generally to the Class, so that final injunctive relief is appropriate respecting the Class as a whole. The Court certifies, for settlement purposes only, a Class consisting of all consumers in the United States and U.S. territories (including, but not limited to, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the other territories and possessions of the United States), who purchased one or more of the Products, in the United States or U.S. territories during the period July 28, 2010 through [INSERT PRELIMINARY APPROVAL DATE]. Excluded from the Class are persons who timely and properly exclude themselves from the Class. The “Products” in the Settlement include:

(a) All pasta products sold or marketed by Barilla containing less than one pound (16 ounces) of pasta including but not limited to Specialty Pastas which include all Gluten Free, Whole Grain, ProteinPlus, and White Fiber products or products described as Better For You.

(b) Any new varieties of these specific product lines yet to be sold or marketed.

5. Adequacy of Representation. The Court reaffirms the appointment of Plaintiffs as Class Representatives, and finds that these Plaintiffs have adequately represented the Class for purposes of entering into and implementing the Settlement Agreement. The Court reaffirms the appointment of Harwood Feffer LLP and Sarraf Gentile LLP as Class Counsel and finds that Class Counsel has adequately represented the Class.

6. Class Notice. The Court finds that the dissemination of the Notice to Class Members in accordance with the terms of the Settlement Agreement and this Court's Preliminary Approval Order constituted the best notice practicable under the circumstances and fully met the requirements of Due Process. The Class Members have received proper notice of: (i) the pendency of this class action; (ii) the terms of the proposed Settlement, including the Release; (iii) their rights under the proposed Settlement; (iv) their right to exclude themselves from the Class and the proposed Settlement; (v) their right to object to any aspect of the proposed Settlement; (vi) their right to appear at the Fairness Hearing; (vii) information concerning attorneys' fees and expenses and case contribution awards that would be applied for at the Fairness Hearing, including how to review those applications in advance of the deadlines to object or request exclusion; and (viii) the binding effect of the Final Judgment and Order in this Litigation.

7. CAFA Notice. The Court finds that Defendant provided notice of the proposed Settlement to the appropriate state and federal government officials pursuant to 28 U.S.C. § 1715.

8. Requests for Exclusion. Attached hereto as Exhibit 1 is the list of persons who submitted valid Requests for Exclusion from the Class. The Court finds that only those persons listed in Exhibit 1 are excluded from the Class. All other Class Members are bound by the Settlement.

9. Final Settlement Approval. The terms and provisions of the Settlement Agreement have been entered into in good faith and are hereby fully and finally approved as fair, reasonable, and adequate as to, and in the best interests of, the Plaintiffs and the Class Members, and in full compliance with all applicable requirements of the Federal Rules of Civil Procedure, CAFA, the United States Constitution (including the Due Process Clause of the Fifth and Fourteenth Amendments), and any other applicable law. The Court finds that the Settlement is fair, adequate and reasonable based on the following factors, among other things:

(a) There is no fraud or collusion underlying this settlement, and it was reached as a result of extensive arm's-length negotiations, occurring over the course of several months warranting a presumption in favor of approval.

(b) The complexity, expense and likely duration of the litigation favor settlement—which provides substantial benefits on a much shorter time frame than otherwise possible—on behalf of the Class.

(c) The support of Class Counsel, who are highly skilled in class action litigation such as this, and the Plaintiffs, who have participated in this litigation and evaluated the Settlement, also favor final approval.

(d) The Settlement provides meaningful injunctive relief to the Class and falls within the range of reasonable recoveries by the Class.

The Settlement is approved and all objections to the Settlement are overruled.

10. Binding Effect. The terms of the Settlement Agreement and of this Final Order shall be forever binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties.

11. Settlement Consideration. Defendant will provide the Class with injunctive relief by way of the modification of its labeling policies and practices for the Products as set forth in the Settlement Agreement and hereby expressly incorporated into this Final Order.

12. Releases.

(a) Plaintiffs and each of the Class Members, by operation of this Final Judgment and Order, are deemed to have fully, finally, and forever released, relinquished, and discharged the Released Persons from all Released Claims. “Released Persons” means Barilla America Inc. and all of its predecessors, successors, parents, subsidiaries, affiliates, assigns, agents, and current and former directors, officers, and employees..

(b) “Released Claims” means all causes of action, claims, suits, debts, damages, judgments, liabilities, demands and controversies whatsoever—whether matured or unmatured, now known or unknown, liquidated or unliquidated, at law or in equity, whether before a local, state or federal court, or state or federal administrative agency, commission, arbitrator(s) or otherwise—that the class members now have or may have, and for all times up to and including the date of final approval of the settlement, for all claims that were asserted or could have been asserted in the Action relating to the amount of pasta contained in a package of pasta and the packaging of the Products.

(c) The Parties acknowledge, and the Settling Parties by operation of law shall be deemed to have acknowledged, that the waiver of the provisions of Section 1542 of

the California Civil Code (and any similar State laws) with respect to the claims released by this Settlement was separately bargained for and was a key element of the Settlement.

(d) Upon the Effective Date: (i) this Settlement shall be the exclusive remedy for any and all Released Claims of Plaintiffs and Class Members; and (ii) Plaintiffs and Class Members stipulate to be and shall be permanently barred and enjoined by Court order from initiating, asserting, or prosecuting against the Released Persons in any federal or state court or tribunal any and all Released Claims.

13. Enforcement of Settlement. Nothing in this Final Order or in the accompanying Final Judgment shall preclude any action to enforce the terms of the Settlement.

14. No Admissions. Neither this Final Order nor the Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the Settlement is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, or of any wrongdoing or liability of Defendant or any other Released Person; or is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of Defendant or any other Released Person in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal. Any party to this Litigation or any other Released Person may file this Settlement Agreement and/or the Judgment in any action that may be brought against it in order to support any defense or counterclaim, including without limitation those based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

15. Dismissal of Litigation. The Litigation is hereby dismissed with prejudice. The Litigation was filed in good faith, was not frivolous, and was in compliance with Rule 11

of the Federal Rules of Civil Procedure. Defendant Barilla G. eR. Fratelli S.p. A is dismissed for lack of jurisdiction.

16. Attorneys' Fees and Expenses and Case Contribution Awards. The Court hereby awards attorneys' fees and expenses to Class Counsel to compensate Class Counsel for their time incurred and expenses advanced. The Court approves Class Counsel's Fee Application and awards to Class Counsel the sum of \$_____ in fees and expenses, which the Court finds to be fair and reasonable. These amounts shall be paid to Class Counsel as provided in the Settlement Agreement. This award shall be allocated among Plaintiffs' Counsel in a fashion which, in the opinion of Class Counsel, reflects the contributions of such counsel to the prosecution and settlement of the Litigation with Defendant.

17. Court Findings on Fees and Expenses. In making this award of attorneys' fees and expenses, the Court has considered and found that:

(a) Class Counsel achieved a favorable result for the Class and created a benefit with a substantial value to the Class by obtaining Defendant's agreement to modify the packaging and labeling challenged in this lawsuit;

(b) After an agreement was reached among the Settling Parties as to all principal terms and conditions of the Settlement, the Settling Parties entered into arm's-length discussions regarding attorneys' fees and expenses for Class Counsel, including extensive discussions through and with the assistance of the Court;

(c) The Settlement created a benefit with a substantial value to the Class;

(d) Notice was disseminated to the Class indicating that Class Counsel were moving for attorneys' fees and reimbursement of expenses in the amount of \$450,000, and for case contribution awards to the Class Representatives and Class Counsel filed and

posted their Fee Application in time for the Class to make a meaningful decision whether to object to the Fee Application, and [_____] objections were filed;

(e) The action involves complex factual and legal issues and was actively prosecuted and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues;

(f) Had Class Counsel not achieved the Settlement there would remain a significant risk that no relief would have been obtained;

(g) Class Counsel have conducted the litigation and achieved the Settlement with skill, perseverance and diligent advocacy;

(h) Class Counsel devoted substantial effort to pre- and post-filing investigation, legal analysis, and litigation;

(i) Class Counsel prosecuted the class claims on a contingent fee basis, investing significant time and accumulating costs with no guarantee that they would receive compensation for their services or recover their expenses;

(j) Class Counsel employed their knowledge of and experience with class action litigation in achieving a valuable settlement for the Class, in spite of Barilla's possible legal defenses and its experienced and capable counsel;

(k) Class Counsel's rates and hours billed are reasonable; and

(l) Class Counsel have devoted over _____ hours, with a lodestar value of \$_____, to achieve the Settlement.

18. Case Contribution Awards. Plaintiffs are hereby awarded \$1,500 each for their contributions to the prosecution of the Litigation and for the time, effort, and risk they undertook as representatives of the Class.

19. Payments. Barilla shall pay the fee and expense awards to Class Counsel and the case contribution awards to the Plaintiffs in accordance with the terms of the Settlement Agreement.

20. Confidential Information. Notwithstanding any other provision in the Settlement Agreement, all proprietary or confidential documents or information that have been previously provided to Class Counsel or Plaintiffs, as of the Effective Date, shall be returned or destroyed, as provided for in that Order, with certification of the return or destruction to be provided to the producing party within sixty (60) days of the Effective Date.

21. Lack of Effective Date. In the event that the Effective Date does not occur, certification of the Class shall be automatically vacated and this Final Order and the accompanying Final Judgment, and all other orders entered and releases delivered in connection herewith, shall be vacated and shall become null and void.

IT IS SO ORDERED.

DATED: _____, 2018

The Honorable Steven L. Tiscione
UNITED STATES MAGISTRATE JUDGE