

**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(ENV)(SLT)
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.	)	

If you bought an eligible Barilla Product in the United States or its territories at any time from July 28, 2010 to June 12, 2018, you may be part of this class action lawsuit.

**READ THIS NOTICE CAREFULLY. YOUR LEGAL RIGHTS ARE AFFECTED WHETHER YOU ACT OR DO NOT ACT. PLEASE CHECK THE SETTLEMENT WEBSITE AT [WWW.BARILLACLASSACTION.COM](http://WWW.BARILLACLASSACTION.COM) REGULARLY FOR UPDATES AND FURTHER DETAILS.**

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

- There is a class action settlement of a lawsuit challenging the non-functional slack-fill in certain specialty pasta boxes. Barilla denies all of the claims made in this lawsuit. The Court did not rule in favor of either party. Instead, the parties agreed to a Settlement in order to avoid the expense and uncertainty of continuing the lawsuit.
- Anyone in the United States (including all U.S. territories) who bought an eligible Barilla specialty pasta referred to as the “Products” and listed below under Question 7, from July 28, 2010 to June 12, 2018 is included in the Settlement

<b>SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>DO NOTHING</b>	Participate in the Settlement and release of the claims against Barilla (see Question 20)
<b>EXCLUDE YOURSELF</b>	If you wish to be participate in any other lawsuit against Barilla about the Released Claims ( <i>see</i> Question 12), you must postmark your letter requesting exclusion from the Class (a “Request for Exclusion”), as described further below (see Question 11) by <b>November 19, 2018</b> .
<b>COMMENT/OBJECT</b>	You can write to the Court by <b>November 19, 2018</b> to explain why you do not agree with any or all aspects of the Settlement ( <i>see</i> Question 15). If you do object, you will still be considered part of the Class.
<b>GO TO A HEARING</b>	You can ask by <b>November 19, 2018</b> to speak in Court about the fairness of the Settlement ( <i>see</i> Question 19).

- These rights and options—**and the deadlines to exercise them**—are explained in this notice. The deadlines may be moved, cancelled, or otherwise modified, so please check the Settlement website at [WWW.BARILLACLASSACTION.COM](http://WWW.BARILLACLASSACTION.COM) regularly for updates and further details.
- If you do not exclude yourself from the Class, the Settlement (if approved) will release certain claims and will affect your rights. The Release is set forth in a Settlement Agreement called the “Class Action Settlement

Agreement,” which is available at [WWW.BARILLACLASSACTION.COM](http://WWW.BARILLACLASSACTION.COM) and has been reprinted in full below (see Question 10).

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## BASIC INFORMATION

### 1. Why was this notice issued?

The Court ordered that this Notice be provided to Class Members because they have the right to know about a Settlement of a class action lawsuit, and about their rights and options, before the Court decides whether to approve the Settlement.

This Notice explains: (1) the lawsuit; (2) the Settlement; and (3) Class Members’ legal rights.

Information about the Settlement is summarized below. The Class Action Settlement Agreement, which is called the “Settlement Agreement,” is available on the Settlement website, [WWW.BARILLACLASSACTION.COM](http://WWW.BARILLACLASSACTION.COM), and provides greater detail on the rights and duties of the parties and Class Members.

The persons who sued are called the “Plaintiffs.” Barilla America Inc. d/b/a Barilla USA (“Barilla”) is the “Defendant”.

## **2. What is this lawsuit about?**

This lawsuit involves claims that Barilla violated certain consumer protection statutes and state common law through the use of non-functional slack-fill in their specialty pasta boxes (collectively, the “Products” listed in response to Question 7). Specifically, the lawsuit maintains that consumers were not aware of the amount of the pasta contained in the boxes. Barilla denies each of Plaintiffs’ claims in the lawsuit. Barilla contends that it has complied with all applicable statutes.

The Court in charge of this lawsuit is the United States District Court for the Eastern District of New York. United States Magistrate Judge Steven L. Tiscione is the judge presiding over this class action.

Information about the Settlement is summarized in this notice. More detail is provided in the Settlement Agreement and other documents, including the Amended Consolidated Complaint, all of which are available at [WWW.BARILLACLASSACTION.COM](http://WWW.BARILLACLASSACTION.COM).

## **3. Why is this a class action?**

In a class action, one or more people called “Class Representatives” (in this case Plaintiffs Alessandro Berni, Giuseppe Santochirico, Massimo Simioli, and Domenico Salvati) sue on behalf of themselves and other people who have similar claims. Together, all of these people are “Class Members” and form a “Class.” One Court resolves the issues for all Class Members in a class action, except for those who exclude themselves from the Class.

## **4. Why is there a Settlement?**

The Court has not decided in favor of either the Plaintiffs or Barilla. Instead, both sides, with the assistance of United States Magistrate Judge Steven L. Tiscione, have agreed to the Settlement. By agreeing to the Settlement, and if the Settlement is approved by the Court, both sides avoid the costs and uncertainty of further case proceedings, potentially including a trial; and Class Members receive the benefits described in this notice, in exchange for a release of claims in this case. The Settlement does not mean that any law was broken or that Barilla did anything wrong; nor does it mean that the Plaintiffs and the Class would or would not win their case if it were to go to trial. Class Counsel believe that the Settlement is fair, reasonable, and adequate; will provide substantial benefits to the Class; and is best for the Class.

### **WHO IS PART OF THE SETTLEMENT?**

## **5. Who is included in the Settlement?**

Except as noted below under Question 6, the Class includes all consumers in the United States and its 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 bought one or more of the Products (*see* Question 7) from July 28, 2010 through June 12, 2018.

## **6. Are there exceptions to being included?**

The Class does not include persons who timely and properly exclude themselves from the Class as provided in the Settlement Agreement (see Question 11).

## **7. Which products are included?**

The following Barilla products (the “Products”) are included the Settlement:

All pasta products sold or marketed by Barilla containing less than one pound (16 ounces) of pasta including without limitation all Gluten Free, Whole Grain, ProteinPlus, and White Fiber products or products described as Better For You.

Also covered by the Settlement are any new flavors or versions of these product lines yet to be sold or marketed.

**8. What if I'm still not sure whether I'm included?**

If you are not sure whether you are a Class Member, or have any other questions about the Settlement, you should visit the website, [WWW.BARILLACLASSACTION.COM](http://WWW.BARILLACLASSACTION.COM), or call **1.877.659.9728**.

**THE SETTLEMENT BENEFITS**

**9. What does the Settlement provide?**

Barilla has agreed to modify its labeling for the Products to contain a minimum fill line.

These changes will take effect within eighteen months of final approval of any settlement (including all appeals) and were made in response to this litigation.

See Section 4 (Settlement Consideration) of the Settlement Agreement for a complete description of the injunctive relief provided by the Settlement.

**10. What am I giving up in exchange for the Settlement benefits?**

Unless you exclude yourself, you are staying in the Class, and that means that, upon the "Effective Date," you will release all "Released Claims" (as defined below) against the "Released Persons" (as defined below).

The "Effective Date" will occur when an Order entered by the Court approving the Settlement becomes Final and not subject to appeal.

If you remain a member of the Class, all of the Court's orders will apply to you and legally bind you.

The release sections from the Settlement Agreement is provided below:

"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.

"Released Persons" means Barilla and all of its predecessors, successors, parents, subsidiaries, affiliates, assigns, agents, and current and former directors, officers, and employees.

Upon the Effective Date, the Plaintiffs and each of the Class Members will be deemed to have, and by operation of the Final Judgment and Order will have, fully, finally, and forever released, relinquished, and discharged the Released Persons from all Released Claims.

Upon the Effective Date, Barilla (on behalf of itself and the Released Persons) will be deemed to have, and by operation of the Final Judgment and Order will have, fully, finally, and forever released, relinquished, and discharged the Plaintiffs, the Class and Class Counsel and other counsel representing plaintiffs in the Litigation for all claims that were or could have been asserted relating to the institution, prosecution, or settlement of the Litigation.

After entering into this Settlement Agreement, the Settling Parties may discover facts other than, different from, or in addition to, those that they know or believe to be true with respect to the claims released by this Settlement, but they intend to release fully, finally and forever the claims released by this Settlement, and in furtherance of such intention, the releases will remain in effect notwithstanding the discovery or existence of any such additional or different facts. Plaintiffs (on behalf of themselves and the Class Members), through their counsel, and Barilla (on behalf of itself and the Released Persons) expressly knowingly, and voluntarily waive the provisions of Section 1542 of the California Civil Code (and any similar State laws). California Civil Code § 1542 provides:

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.

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.

Upon the final approval of the Settlement, and by operation of the Final Judgment and Order, the Action will be dismissed with prejudice.

Upon the Effective Date: (a) this Settlement shall be the exclusive remedy for any and all Released Claims of Plaintiffs and Class Members; and (b) 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.

### **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you want to keep the right to sue or continue to sue Barilla or the other Released Persons on your own about the legal issues in this case, then you must take steps to exclude yourself from this Settlement. This is called “opting out” of the Class.

#### **11. How can I get out of the Settlement?**

To exclude yourself from the Class, you must send, by U.S. mail, a letter or written request to the Class Action Administrator. You cannot ask to be excluded over the phone or through the Internet or by electronic mail. Your Request for Exclusion must include all of the following:

- (1) Your full name and current address;
- (2) A clear statement that you wish to be excluded from the Class together with proof of membership in the Class, including receipts showing purchase and where the purchases were made;
- (3) The case name and case number (*Berni v. Barilla*, etc. (E.D.N.Y.)); and
- (4) Your signature (you must personally sign the letter).

Your Request for Exclusion must be postmarked no later than **November 19, 2018** and addressed as follows:

**Barilla Class Action Administrator  
P.O. Box 404020  
Louisville, KY 40233-4020**

“Mass” or “Class” opt-outs are not permitted.

#### **12. If I don’t exclude myself, can I sue Barilla and the other Released Persons for the same thing later?**

No. If the Court approves the Settlement Agreement and you do not exclude yourself from the Class, you give up any rights to sue Barilla and the other Released Persons for any and all Released Claims, as set forth above in response to Question 10.

### **THE LAWYERS REPRESENTING THE CLASS**

#### **13. Do I have a lawyer in this case?**

The Court has appointed the following lawyers to represent the Class as Class Counsel. You will not be separately charged for the services of these lawyers. The Court will determine the amount of Class Counsel’s fees and expenses, which will be paid by Barilla.

You may contact Class Counsel by writing them as follows:

Robert I. Harwood  
Daniella Quitt  
Harwood Feffer LLP  
712 Fifth Avenue  
New York, New York 10019

Ronen Sarraf  
Joseph Gentile  
Sarraf Gentile LLP  
14 Bond Street, Suite 212  
Great Neck, New York 11021

You have the right to retain your own lawyer to represent you in this case, but you are not obligated to do so. If you do hire your own lawyer, you will have to pay his or her fees and expenses. You also have the right to represent yourself before the Court without a lawyer.

#### **14. How will the lawyers be paid?**

Class Counsel, on behalf of themselves and other lawyers who have worked on this case, will ask the Court for attorneys' fees and reimbursement of expenses (including notice costs) not to exceed \$450,000. These amounts are less than the fees and expenses accrued by Plaintiffs' Counsel in this litigation. The fees and expenses would pay for investigating the facts, litigating the case, and negotiating the settlement. Class Counsel will also ask for case contribution awards not to exceed \$1,500 for each plaintiff for acting on behalf of the entire Class as Class Representatives. The Court must approve any attorneys' fees and expenses or case contribution awards to the Class Representatives. Any fees, expenses, or awards as may be approved by the Court will be paid by Barilla in accordance with the Stipulation of Settlement. Class Members are not personally liable for any such fees, expenses, or awards. Barilla has agreed not to oppose an award of fees, expenses, or awards up to these amounts.

Class Counsel will file their papers in support of final approval of the Settlement and their application for attorneys' fees and expenses, and for case contribution awards to the Class Representatives, by no later than November 5, 2018. These papers will also be posted on the settlement website once filed at **WWW.BARILLACLASSACTION.COM**.

### **OBJECTING TO THE SETTLEMENT**

You have the right to tell the Court that you do not agree with Settlement Agreement or any or all of its terms.

#### **15. How can I tell the Court if I do not like the Settlement?**

If you are a Class Member, you have the right to object to any part of the Settlement. The Court will consider your views.

To object, you must file a timely, written objection with the Court no later than, and also send the written objection by U S mail to Class Counsel and Defense Counsel postmarked no later than, November 19, 2018. Members of the Class who fail to file and serve timely written objections as described here and in the Settlement Agreement shall be deemed to have waived all objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

Your written objection must include:

- (1) your full name, address, and telephone number;
- (2) the name, address, and telephone number of your lawyer, if you have one;
- (3) the factual and legal grounds for your objection(s);
- (4) evidence of your membership in the Class, *i.e.*, a receipt for your Product purchase(s) and location(s) of your purchase(s) of the Products;
- (5) your signature;
- (6) the signature of your lawyer, if you have one;
- (7) the case name and case number (*Berni v. Barilla*, 16-cv-04196 (E.D.N.Y.)); and
- (8) a specific list of any other objection you or your lawyer have made to any class action settlement submitted to any court in the United States in the previous five years.

If you choose to object, in order to be considered by the Court, your written objection(s) must be filed with the Court and sent by U.S. Mail to Class Counsel and Defense Counsel no later than **November 19, 2018**. Objections that are served on the Parties, but not filed with the Court, will not be received or considered by the Court at the Fairness Hearing.

**Filed with Court:**

United States District Court for the  
Eastern District of New York  
United States Courthouse  
225 Cadman Plaza East  
Brooklyn, NY 11201

**Served on Defense Counsel at:**

Steven Blonder  
Much Shelist PC  
191 North Wacker Drive, Ste 1800  
Chicago, Illinois 60606  
sblonder@muchshelist.com

**Served on Class Counsel at:**

Robert I. Harwood  
Daniella Quitt  
Harwood Feffer LLP  
712 Fifth Avenue  
New York, New York 10019  
rharwood@hfsq.com

Ronen Sarraf  
Joseph Gentile  
Sarraf Gentile LLP  
14 Bond Street, Suite 212  
Great Neck, New York 11021  
ronen@sarrafgentile.com

**16. What is the difference between objecting and asking to be excluded?**

Objecting is simply a way of telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. You will also be bound by any subsequent rulings in this case, and (if the Settlement is approved) you will not be able to file or participate in any other lawsuit asserting a Released Claim against a Released Person. If you object to the Settlement, you will remain a Class Member.

In contrast, excluding yourself is telling the Court that you do not want to be a part of the Class. If you exclude yourself, you have no basis to object to the Settlement and/or appear at the Fairness Hearing because it no longer affects you.

**THE COURT’S FAIRNESS HEARING**

The Court will hold a hearing (called a Fairness Hearing) to decide whether to finally approve the Settlement. If you have filed and mailed an objection on time, you may submit a notice to seek permission to speak at the Fairness Hearing. You do not have to speak.

**17. When and where will the Court decide whether to approve the Settlement?**

On December 17, 2018, at 2:00 PM the Court will hold a Fairness Hearing at the United States District Court for the Eastern District of New York, United States Courthouse, 225 Cadman Plaza East, Brooklyn, NY 11201.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them and will listen to people who have asked to speak at the hearing. The Court may also decide whether to award attorneys’ fees and expenses, as well as any case contribution awards to the Class Representatives. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

**18. Do I have to come to the Fairness Hearing?**

No. Class Counsel will answer any questions that the Court may have at the Fairness Hearing. But you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you filed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary. Class Members do not need to appear at the hearing or take any other action to indicate their approval.

**19. May I speak at the Fairness Hearing?**

Yes, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must file a “Notice of Intent to Appear.” If you or your attorney wants to appear and speak at the Fairness Hearing, you (or your attorney) must, in addition to filing a Notice of Intent to Appear with the Court, mail or e-mail copies of the Notice of Intent to Appear to Class Counsel and Defense Counsel, whose addresses are listed above in Question 15. Your Notice of Intent to Appear must be filed and received by the Court, and mailed and/or e-mailed to Defense Counsel and Class Counsel, no later than **November 19, 2018**. Unless otherwise ordered by the Court, you cannot speak at the hearing if you excluded yourself from the Class or if you have not provided Notice of Intention to Appear.

**IF YOU DO NOTHING**

**20. What happens if I do nothing at all?**

If you are a Class Member and do nothing, you will be precluded from starting a lawsuit, continuing with a lawsuit, or being part of any other lawsuit against Barilla and the other Released Persons about the Released Claims in this case. You will be deemed a Class Member subject to the terms of the Settlement.

**GETTING MORE INFORMATION**

**21. How can I get more information?**

This notice summarizes the Settlement Agreement; more details can be found in the Settlement Agreement itself. You may obtain a copy of the Settlement Agreement at [WWW.BARILLACLASSACTION.COM](http://WWW.BARILLACLASSACTION.COM). You also may call **1.877.659.9728**; or write Class Counsel, Robert I. Harwood, Harwood Feffer LLP, 712 Fifth Avenue, New York, New York 10019 and Ronen Sarraf, Sarraf Gentile LLP, 14 Bond Street, Suite 212, Great Neck, New York 11021.

**PLEASE DO NOT CALL THE COURT**

Dated: June 26, 2018

Clerk of the Court  
for the United States District Court  
for the Eastern District of New York