

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

ALESSANDRO BERNI, GIUSEPPE)
SANTOCHIRICO, MASSIMO SIMIOLI, and)
DOMENICO SALVATI, on behalf of themselves) Case No. _____
and all others similarly situated,)
)
Plaintiffs,)
)
v.)
)
BARILLA S.p.A., BARILLA AMERICA INC.,) CLASS ACTION COMPLAINT
and BARILLA USA,)
)
Defendants.) JURY TRIAL DEMANDED
)

)

Plaintiffs Alessandro Berni, Giuseppe Santochirico, Massimo Simioli, and Domenico Salvati (“Plaintiffs”), by and through their undersigned attorneys, bring this class action complaint on behalf of themselves and all others similarly situated (the “Class”) alleging facts related to their own purchases based on personal knowledge and all other facts based upon the investigation of counsel.

PRELIMINARY STATEMENT

1. Barilla S.p.A., and its subsidiaries, Barilla America, Inc., and Barilla USA (collectively, “Barilla” or the “Company”), produce and market various kinds of pasta worldwide. The Company is the largest pasta manufacturer in the world and Barilla’s pasta accounts for approximately one-quarter of all pasta sold in the United States. In addition to being sold in restaurants, Barilla’s pastas are widely sold directly to consumers in an iconic blue box that can be found at supermarkets and retail outlets throughout New York and the United States.

2. For most of Barilla’s history, the Company’s pastas, while sold in different shapes, were marketed as an “enriched macaroni product” made using semolina flour and durum wheat

flour. In recent years, Barilla has attempted to maintain market share in the face of Americans' changing tastes and dietary habits by introducing pastas that purport to be more health-conscious. These specialized products include pastas that are labeled "Gluten Free," "Whole Grain," "ProteinPLUS," and "White Fiber," among others.

3. Barilla packages these specialized pastas in same-sized boxes, and boxes that appear to be same-sized, but fills them with less pasta. For example, the standard, "enriched macaroni product" version of elbow pasta is sold one-pound (454 grams) per box. However, ProteinPLUS elbows are sold 14.5 ounces (411 grams) per box and the Whole Grain elbows are sold 13.25 ounces (375 grams) per box.



4. Deceptively, however, Barilla continues to sell all three types of elbow pasta in boxes that appear to be the same size when displayed on the shelf of a supermarket. The box used for the standard elbows and the Whole Grain elbows are identical, while the ProteinPlus elbows

are sold in a box that appears to be the same size but is actually thicker (as seen in the above visual comparison). As a result, rather than reduce the size of the box for the Whole Grain or ProteinPlus pastas, Barilla substantially under-fills the boxes in which these pastas are sold. Barilla also uses this practice when selling other shapes of pasta, such as spaghetti, penne, and shells, among others. Additional visual examples are below.





5. By using the traditional-sized boxes that have been recognized in the consumer marketplace for many years, but under-filling them, Barilla deceptively misleads consumers into thinking that they are purchasing the same quantities of pasta as they had historically when they purchased the standard “enriched macaroni product” version. While the boxes do identify the new reduced net weight in small print at the bottom of the box, consumers are not otherwise informed of this material change in the quantity of pasta inside, or that the boxes are substantially under-filled. Barilla relies on consumers’ familiarity with the box size and appearance, known due to decades of marketing, to mislead consumers into thinking they are purchasing the same quantity of pasta when, in reality, the Company is filling the boxes with materially less pasta. By misleading consumers in this manner, Barilla is able to capitalize on the market for gluten-free, whole wheat, protein plus, and white fiber, while preserving and/or increasing its margins and conveying a favorable appearance relative to its own products and those of their competitors.

6. This is a consumer protection action arising out of deceptive and otherwise improper business practices that Barilla engaged in with respect to the packaging of certain of its pasta products, detailed below, which are packaged in boxes and regularly sold at supermarkets, grocery stores, convenience stores, and pharmacies.

JURISDICTION AND VENUE

7. This Court has original jurisdiction over the claims asserted herein individually and on behalf of the Class pursuant to 28 U.S.C. §1332(d). Subject matter jurisdiction is proper because: (1) the amount in controversy in this class action exceeds five million dollars, exclusive of interest and costs; and (2) the named Plaintiffs and defendants are citizens of different states. 28 U.S.C. §1332(d)(2)(A).

8. Venue is proper in this district pursuant to 28 U.S.C § 1391(a) because a substantial part of the events giving rise to Plaintiffs' claims occurred in this district, and defendants are subject to personal jurisdiction in this district. Defendants marketed and sold the products at issue in this action within this judicial district and do business within this judicial district.

PARTIES

9. Plaintiff Alessandro Berni ("Berni") is a citizen of the state of New York and resides in Bronx County. On at least one occasion during 2016, plaintiff Berni purchased, for his own consumption, a 12 ounce (340 gram) box of Gluten Free penne, a 13.24 ounce (375 gram) box of Whole Grain rotini, a 13.25 ounce (375 gram) box of Whole Grain medium shells, a 13.25 ounce (375 gram) box of Whole Grain linguine, and a 13.25 ounce (375 gram) box of Whole Grain spaghetti in Bronx, New York. Plaintiff Berni reasonably expected that these boxes were full of pasta and did not know that, in fact, the box of Gluten Free pasta contained approximately 25% less pasta, and the boxes of Whole Grain pasta contained 17% less pasta than they were designed

to hold, and was actually deceived. As a result of Barilla's deceptive packaging, plaintiff Berni was overcharged, did not receive the benefit of the bargain, and/or suffered out-of-pocket loss.

10. Plaintiff Domenico Salvati ("Salvati") is a citizen of the state of New York and resides in Kings County. On at least one occasion during 2016, plaintiff Salvati purchased, for his own consumption, one 13.25 ounce (375 gram) box of Barilla Whole Grain medium shells in Brooklyn, New York. Plaintiff Salvati reasonably expected that the box was full of pasta and did not know that, in fact, the box contained approximately 17% less pasta than it was designed to hold, and was actually deceived. As a result of Barilla's deceptive packaging, plaintiff Salvati was overcharged, did not receive the benefit of the bargain, and/or suffered out-of-pocket loss.

11. Plaintiff Mossimo Simioli ("Simioli") is a citizen of the state of New York and resides in Kings County. On at least one occasion during 2016, plaintiff Simioli purchased, for his own consumption, a 14.5 ounce (411 gram) box of Protein Plus spaghetti and a 14.5 ounce (411 gram) box of Protein Plus penne in Brooklyn, New York. Plaintiff Simioli reasonably expected that the boxes were full of pasta and did not know that, in fact, the boxes contained more than 10% less pasta than they were designed to hold, and was actually deceived. As a result of Barilla's deceptive packaging, plaintiff Simioli was overcharged, did not receive the benefit of the bargain, and/or suffered out-of-pocket loss.

12. Plaintiff Giuseppe Santochirico ("Santochirico") is a citizen of the state of New York and resides in Queens County. On at least one occasion during 2016, plaintiff Santochirico purchased, for his own consumption, a 14.5 ounce (411 gram) box of ProteinPLUS spaghetti in Queens, New York. Plaintiff Santochirico reasonably expected that the boxes were full of pasta and did not know that, in fact, they contained approximately 10% less pasta than they were designed to hold, and was actually deceived. As a result of Barilla's deceptive packaging, plaintiff

Santochirico was overcharged, did not receive the benefit of the bargain, and/or suffered out-of-pocket loss.

13. Defendant Barilla S.p.A. is an entity organized under the laws of Italy and headquartered at Parma, Italy. Defendant Barilla S.p.A is the parent company and owner of defendants Barilla USA and Barilla America, Inc. (“Barilla America”). Barilla S.p.A, through its subsidiaries, manufactures, packages, advertises, markets, distributes, and/or sells pasta products in the United States.

14. Defendant Barilla America is an entity organized under the laws of Illinois and headquartered at 1200 Lakeside Drive, Bannockburn, Illinois, 60015. Defendant Barilla America manufactures, packages, advertises, markets, distributes, and/or sells pasta products in the United States in packaging that contains non-functional slack-fill.

15. Defendant Barilla USA is, upon information and belief, a d/b/a for either Barilla S.p.A. or Barilla America and is headquartered at 885 Sunset Ridge Road, Northbrook, IL 60062. Defendant Barilla USA manufactures, packages, advertises, markets, distributes, and/or sells pasta products in the United States.

FACTUAL ALLEGATIONS

16. For decades, Barilla has sold pasta in non-transparent cardboard boxes that contain an oval transparent window. These blue Barilla boxes are so iconic as to have become an industry norm. They are sold predominantly in the following sizes: 4-3/4 inches wide and 7-1/4 long and 10-5/8 inch x 2-3/4 inch x 1-1/4 inch.

17. At an unknown time, Barilla began to intentionally ship thousands, if not millions, of these same-sized boxes, and boxes that appeared to be the same size when placed on a shelf, with materially less pasta inside. Rather than change the size of the boxes from the traditional size

to a new size that reflected the reduced fill, Barilla deceptively and misleadingly continued to use the same traditional-sized boxes that had been used for decades, giving the false impression that premium, “healthy,” versions of its pasta were being sold in the same quantity per box as the original “enriched macaroni product.”

A. Whole Grain Pastas

18. Each of the Barilla Whole Grain pastas is a different shaped version of the same product. Each contains the same ingredient: whole grain durum wheat flour. Each is also marketed in boxes under-filled by the same amount.

19. Barilla’s non-transparent boxes of Whole Grain pasta, including, but not limited to spaghetti, medium shells, elbows, and linguine, are sold approximately 17% empty, which constitutes non-functional “slack-fill” of 2.75 ounces, or 78 grams.

20. Barilla fails to disclose that, in fact, the Whole Grain pasta boxes contain a significant void. Rather, the Whole Grain pasta boxes falsely appear to contain the same amount of pasta as the original box.

B. White Fiber Pastas

21. Each of the Barilla White Fiber pastas is a different shaped version of the same product. Each contains the same ingredients: semolina, durum wheat flour, whole durum wheat flour, corn starch, niacin, iron, thiamine mononitrate, riboflavin, and folic acid. Each is also marketed in boxes under-filled by the same amount.

22. Barilla’s non-transparent boxes of White Fiber pasta, including, but not limited to spaghetti, are sold approximately 25% empty, which constitutes non-functional “slack-fill” of 4 ounces, or 113 grams.

23. Barilla fails to disclose that, in fact, the White Fiber boxes contain a significant void. Rather, the White Fiber boxes falsely appear to contain the same amount of pasta as the original box.

C. ProteinPLUS Pastas

24. Each of the Barilla ProteinPLUS pastas is a different shaped version of the same product. Each contains the same ingredients: semolina, grain and legume flour blend, durum wheat flour, niacin, iron, thiamine mononitrate, riboflavin, and folic acid. Each is also all marketed in boxes under-filled by the same amount.

25. Barilla's non-transparent boxes of ProteinPLUS pasta, including, but not limited to spaghetti, penne, and elbows, are sold approximately 10% empty, which constitutes non-functional "slack-fill" of 1.5 ounces, or 42 grams.

26. Barilla fails to disclose that, in fact, the ProteinPLUS boxes contain a significant void. Rather, the ProteinPLUS boxes falsely appear to contain the same amount of pasta as the original box.

D. Gluten Free Pastas

27. Each of the Barilla Gluten Free pastas is a different shaped version of the same product. Each contains the same ingredients: corn flour, rice flour, and mono and diglycerides. Each is also marketed in boxes under-filled by the same amount

28. Barilla's non-transparent boxes of Gluten Free pasta, including, but not limited to penne and rotini, are sold approximately 25% empty, which constitutes non-functional "slack-fill" of 4 ounces, or 113 grams.

29. Barilla fails to disclose that, in fact, the Gluten Free boxes contain a significant void. Rather, the Gluten Free boxes falsely appear to contain the same amount of pasta as the original box.

E. Non-Functional Slack-Fill

30. Barilla's deceptive practice described above is known as "slack-fill." Regulations under the Federal Food, Drug, and Cosmetic Act ("FDCA") prohibit non-functional slack-fill as set forth in 21 C.F.R. 100.100:

In accordance with section 403(d) of the act, a food shall be deemed to be misbranded if its container is so made, formed, or filled as to be misleading.

(a) A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack-fill. Slack-fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack-fill is the empty space in a package that is filled to less than its capacity for reasons other than:

- (1) Protection of the contents of the package;
- (2) The requirements of the machines used for enclosing the contents in such package;
- (3) Unavoidable product settling during shipping and handling;
- (4) The need for the package to perform a specific function (e.g., where packaging plays a role in the preparation or consumption of a food), where such function is inherent to the nature of the food and is clearly communicated to consumers;
- (5) The fact that the product consists of a food packaged in a reusable container where the container is part of the presentation of the food and has value which is both significant in proportion to the value of the product and independent of its function to hold the food, e.g., a gift product consisting of a food or foods combined with a container that is intended for further use after the food is consumed; or durable commemorative or promotional packages; or
- (6) Inability to increase level of fill or to further reduce the size of the package (e.g., where some minimum package size is necessary to accommodate required food labeling (excluding any vignettes or other nonmandatory designs or label information), discourage pilfering, facilitate handling, or accommodate tamper-resistant devices).

31. As a result of Barilla's misleading and deceptive use of traditional-sized, non-transparent boxes with unlawful slack-fill, Plaintiffs and the Class have purchased boxes of pasta that contain substantially less pasta than Plaintiffs and the Class expected and had previously received when purchasing the original type of Barilla pasta.

32. By this conduct, defendants violated New York law prohibiting the misbranding of food in language identical to that found in regulations promulgated pursuant to the FDCA, 21 U.S.C. §§ 343 *et seq.* Pursuant to N.Y. Agric. & Mkts. Law § 201, “[f]ood shall be deemed to be misbranded: 1. If its labeling is false or misleading in any particular. . . . 4. If its container is so made, formed, colored or filled as to be misleading.”

33. Further, defendants have also violated the Rules of the City of New York which provides that foods are deemed misbranded “in accordance with the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 343) or the New York State Agriculture and Markets Law (§ 201) under circumstances including, but not limited to, any of the following: (1) If its labeling is false or misleading in any particular. . . (4) If its container is so made, formed, colored or filled as to be misleading. . . .” See 24 R.C.N.Y. Health Code § 71.05(d).

34. Plaintiffs and the Class have been damaged by Barilla's violations of the foregoing laws, rules, and regulations.

CLASS ACTION ALLEGATIONS

35. Plaintiffs bring this class action pursuant to Federal Rule of Civil Procedure 23 on behalf of themselves and the Class defined as follows:

All purchasers of Barilla “Gluten Free,” “Whole Grain,” “ProteinPLUS,” and “White Fiber” pastas who purchased the products for personal, family, or household use due to Barilla's deceptive practice of slack-filling, and did not resell them.

Excluded from the Class are defendants; the officers, directors or employees of defendants; any entity in which the defendants have a controlling interest; and any affiliate, legal

representative, heir or assign of defendants. Also excluded are the judge to whom this case is assigned and any member of the judge's immediate family.

36. The Class is sufficiently numerous because the pastas at issue are sold in thousands of stores and thousands of people have purchased them during the relevant period. As a result, joinder of all purchasers is impractical.

37. There are questions of law and fact common to the Class and these questions predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to:

- Whether defendants labeled, packaged, marketed, advertised, and/or sold products using false, misleading and/or deceptive packaging and labeling;
- Whether defendants' actions constitute violations of 21 U.S.C. § 343(d);
- Whether defendants' actions constitute violations of misbranding laws in New York;
- Whether defendants' actions constitute deceptive and unfair practices and/or violations of consumer protection laws in New York;
- Whether defendants omitted and/or misrepresented material facts in connection with the labeling, packaging, marketing, advertising, and/or sale of Barilla pasta;
- Whether defendants' labeling, packaging, marketing, advertising, and/or selling of products constituted an unfair, unlawful or fraudulent practice;
- Whether the packaging of the pastas during the relevant statutory period constituted unlawful non-functional slack-fill;
- Whether the members of the Class have sustained damages as a result of defendants' wrongful conduct;
- Whether defendants were unjustly enriched;
- The appropriate measure of damages and/or other relief; and

- Whether defendants should be enjoined from continuing their unlawful practices.

38. Plaintiffs will fairly and adequately represent the Class and have retained counsel experienced and competent in the prosecution of consumer and class action litigation. Plaintiffs have no interests antagonistic to those of other members of the Class. Plaintiffs are committed to the vigorous prosecution of this action and have retained counsel experienced in litigation of this nature to represent them. Plaintiffs anticipate no difficulty in the management of this litigation as a class action.

39. Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by defendants' wrongful conduct.

40. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Because of the amount of the individual Class members' claims relative to the complexity of the litigation and the financial resources of the defendants, few, if any, members of the Class would seek legal redress individually for the wrongs complained of herein. Absent a class action, Class members will continue to suffer damages and defendants' misconduct will proceed without remedy.

CAUSES OF ACTION

COUNT I **VIOLATIONS OF N.Y. GEN. BUS. LAW § 349**

32. Plaintiffs, on behalf of themselves and the Class, incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein. Defendants violated N.Y. Gen. Bus. Law § 349 by engaging in unfair, misleading, deceptive, and/or unlawful acts and practices.

33. Plaintiffs and the members of the Class are “persons” within the meaning of N.Y. Gen. Bus. Law § 349(h). Plaintiffs and the members of the Class are consumers.

34. N.Y. Gen. Bus. Law § 349(a) makes unlawful deceptive acts or practices in the conduct of any business, trade, or commerce or in the furnishing of any service in New York State. Defendants engaged in business, trade, or commerce, or in the furnishing of service in New York.

35. Barilla’s conduct complained of herein consisted of deceptive acts and practices in the form of misrepresentations and omissions during conduct of business in New York in violation of N.Y. Gen. Bus. Law § 349(a): the sale of pasta in misleading packages designed to conceal unlawful, non-functional slack-fill.

36. Barilla knew or should have known that its practices, as discussed herein, were misleading and likely to deceive and mislead Plaintiffs and the Class.

37. Plaintiffs and the Class have been injured as a result of Barilla’s violation of N.Y. Gen. Bus. Law § 349(a).

38. Barilla’s deceptive and misleading acts and practices have directly, foreseeably, and proximately caused damages and injury to Plaintiffs and the Class.

39. Plaintiffs are entitled to pursue claims against Barilla under N.Y. Gen. Bus. Law § 349(h) to redress Barilla’s violation of N.Y. Gen. Bus. Law § 349(a).

COUNT II
UNJUST ENRICHMENT, NATIONWIDE

41. Plaintiffs, on behalf of themselves and the Class, incorporate by reference and reallege each and every allegation set forth above, as though fully set forth herein.

42. As a result of defendants’ deceptive, fraudulent and misleading labeling, packaging, advertising, marketing, and sales of the pastas, defendants were enriched, at the

expense of Plaintiffs and all others similarly situated, through the payment of the purchase price for the pastas.

43. Under the circumstances, it would be against equity and good conscience to permit defendants to retain the ill-gotten benefits that it received from Plaintiffs, and all others similarly situated, in light of the fact that the quantity of pasta purchased by Plaintiffs, and all other similarly situated, was not what defendants purported it to be by its labeling and packaging. Thus, it would be unjust or inequitable for defendants to retain the benefit without restitution to Plaintiffs, and all others similarly situated.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for relief and judgment against defendants as follows:

- (A) An Order certifying the nationwide Class and under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representatives of the Class and Plaintiffs' attorneys as Class Counsel to represent members of the Class;
- (B) An Order declaring defendants' conduct violates the statutes referenced herein;
- (C) An Order finding in favor of Plaintiffs and members of the Class;
- (D) Compensatory and punitive damages in amounts to be determined by the Court and/or jury;
- (E) Prejudgment interest on all amounts awarded;
- (F) An Order of restitution and all other forms of equitable monetary relief;
- (G) Injunctive relief to repackage the pastas without non-functional slack-fill as pleaded or as the Court may deem proper;

(H) An Order awarding Plaintiffs and members of the Class their reasonable attorneys' fees and expenses and costs of suit; and,

(I) Such other and further relief as the Court deems just and proper.

Dated: July 28, 2016

HARWOOD FEFFER LLP

s/ Robert I. Harwood
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Counsel for Plaintiffs

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Alessandro Berni, Giuseppe Santochirico, Massimo Simioli, Domenico Salvati

(b) County of Residence of First Listed Plaintiff Bronx County, NY

(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Barilla S.p.A, Barilla America, Inc., Barilla USA

County of Residence of First Listed Defendant Parma, Italy

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Harwood Feffer LLP
488 Madison Avenue, 8th Floor
New York, NY 10022; (212) 935-7400

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

- | PTF | DEF | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input checked="" type="checkbox"/> 3 | Foreign Nation |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|---|--|---|--|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability PERSONAL PROPERTY <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark |
| REAL PROPERTY | CIVIL RIGHTS | PRISONER PETITIONS | LABOR | SOCIAL SECURITY |
| <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education | Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act | <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) |
| | | | IMMIGRATION | FEDERAL TAX SUITS |
| | | | <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 |
| | | | | |

V. ORIGIN (Place an "X" in One Box Only)

- | | | | | | | |
|---|---|--|---|--|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) | <input type="checkbox"/> 6 Multidistrict Litigation - Transfer | <input type="checkbox"/> 8 Multidistrict Litigation - Direct File |
|---|---|--|---|--|--|---|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC Section 1332(d)

VI. CAUSE OF ACTION

Brief description of cause:

Violation of NY Gen. Bus. Law Section 349; Unjust Enrichment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

07/28/2016

SIGNATURE OF ATTORNEY OF RECORD

s/ Robert I. Harwood

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

CERTIFICATION OF ARBITRATION ELIGIBILITY

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, _____, counsel for _____, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more or its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that “A civil case is “related” to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge.” Rule 50.3.1 (b) provides that “ A civil case shall not be deemed “related” to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties.” Rule 50.3.1 (c) further provides that “Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be “related” unless both cases are still pending before the court.”

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County: _____
- 2.) If you answered “no” above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? _____
 - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? _____

If your answer to question 2 (b) is “No,” does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? _____

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

- Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

- Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: _____

UNITED STATES DISTRICT COURT
for the
Eastern District of New York

| | |
|--|---|
| ALESSANDRO BERNI, GIUSEPPE) SANTOCHIRICO, MASSIMO SIMIOLI, and) DOMENICO SALVATI, on behalf of themselves and) all others similarly situated,) _____ <i>Plaintiff(s)</i>) v.) _____ BARILLA S.p.A., BARILLA AMERICA, INC., and) BARILLA USA,) _____ <i>Defendant(s)</i>) |))))))))))))) |
|--|---|

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (*Defendant's name and address*) Barilla S.p.A.
Via Mantova 166
Parma, Parma 43122
Italy

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Harwood Feffer LLP
488 Madison Avenue, 8th Floor
New York, NY 10022

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for (*name of individual and title, if any*) _____
was received by me on (*date*) _____.

- I personally served the summons on the individual at (*place*) _____
on (*date*) _____; or
- I left the summons at the individual's residence or usual place of abode with (*name*) _____,
a person of suitable age and discretion who resides there,
on (*date*) _____, and mailed a copy to the individual's last known address; or
- I served the summons on (*name of individual*) _____, who is
designated by law to accept service of process on behalf of (*name of organization*) _____
on (*date*) _____; or
- I returned the summons unexecuted because _____; or
- Other (*specify*): _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
for the
Eastern District of New York

| | |
|--|--|
| ALESSANDRO BERNI, GIUSEPPE) SANTOCHIRICO, MASSIMO SIMIOLI, and) DOMENICO SALVATI, on behalf of themselves and) all others similarly situated,) _____ <i>Plaintiff(s)</i>) v.) _____ BARILLA S.p.A., BARILLA AMERICA, INC., and) BARILLA USA,) _____ <i>Defendant(s)</i>) |)))))))))))) |
|--|--|

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (*Defendant's name and address*) Barilla America, Inc.
1200 Lakeside Drive
Bannockburn, IL 60015

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Harwood Feffer LLP
488 Madison Avenue, 8th Floor
New York, NY 10022

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for (*name of individual and title, if any*) _____
was received by me on (*date*) _____.

- I personally served the summons on the individual at (*place*) _____
on (*date*) _____; or
- I left the summons at the individual's residence or usual place of abode with (*name*) _____,
_____, a person of suitable age and discretion who resides there,
on (*date*) _____, and mailed a copy to the individual's last known address; or
- I served the summons on (*name of individual*) _____, who is
designated by law to accept service of process on behalf of (*name of organization*) _____
on (*date*) _____; or
- I returned the summons unexecuted because _____; or
- Other (*specify*): _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

_____ *Printed name and title*

_____ *Server's address*

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
for the
Eastern District of New York

| | |
|--|--|
| ALESSANDRO BERNI, GIUSEPPE) SANTOCHIRICO, MASSIMO SIMIOLI, and) DOMENICO SALVATI, on behalf of themselves and) all others similarly situated,) _____ <i>Plaintiff(s)</i>) v.) _____ BARILLA S.p.A., BARILLA AMERICA, INC., and) BARILLA USA,) _____ <i>Defendant(s)</i>) |)))))))))))) |
|--|--|

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (*Defendant's name and address*) Barilla USA
885 Sunset Ridge Road
Northbrook, IL 60062

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Harwood Feffer LLP
488 Madison Avenue, 8th Floor
New York, NY 10022

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER
CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for (*name of individual and title, if any*) _____
was received by me on (*date*) _____.

- I personally served the summons on the individual at (*place*) _____
on (*date*) _____; or
- I left the summons at the individual's residence or usual place of abode with (*name*) _____,
a person of suitable age and discretion who resides there,
on (*date*) _____, and mailed a copy to the individual's last known address; or
- I served the summons on (*name of individual*) _____, who is
designated by law to accept service of process on behalf of (*name of organization*) _____
on (*date*) _____; or
- I returned the summons unexecuted because _____; or
- Other (*specify*): _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: