

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the United States Small Business Administration (collectively, the “United States”), La Baguette, LLC (“La Baguette”), Scott Brunello, and Bryan Quesenberry (“Quesenberry” or “Relator”) (collectively referred to as “the Parties”) through their authorized representatives.

RECITALS

A. La Baguette is a corporation organized under the laws of California and located at 170 Stanford Shopping Center, Palo Alto, CA 94304. La Baguette operates a French bakery. Scott Brunello is the majority-owner of La Baguette.

B. On September 7, 2020, Bryan Quesenberry filed a *qui tam* action in the United States District Court for the Northern District of California captioned *U.S. ex rel. Quesenberry v. Bay Wire, Inc., et al.*, No. 20-cv-6451, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”). Relator alleges that La Baguette unlawfully applied for and received two loans under the Paycheck Protection Program (“PPP”) prior to December 31, 2020 and falsely certified, in the submitted applications for the PPP loans, that it would receive only one PPP loan prior to December 31, 2020.

C. The PPP was established pursuant to the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act. The CARES Act, which was enacted in March 2020, was designed to provide emergency financial assistance to millions of Americans suffering economic effects caused by the COVID-19 pandemic. One source of relief provided by the CARES Act was the authorization of forgivable loans to small businesses for employee payroll and certain other expenses, through the PPP. To obtain a PPP loan, a qualifying business was required to submit a

PPP loan application, which is signed by an authorized representative of the business. The loan application requires the business—through its authorized representative—to acknowledge the program rules and make certain affirmative certifications regarding its eligibility to obtain the PPP loan. PPP loan applications were processed by participating lenders, which received processing fees from SBA. Following the approvals of loan applications, the participating lenders funded the loan, which were 100% guaranteed by the SBA.

D. The United States contends that it has certain civil claims against La Baguette and Scott Brunello for engaging in the following conduct, hereinafter referred to as the “Covered Conduct”:

The United States contends that, in April 2020, La Baguette, through Brunello, submitted an application for a PPP loan to “Lender 1.” In that application, La Baguette certified that “[d]uring the period beginning on February 15, 2020 and ending on December 31, 2020, the Applicant has not and will not receive another loan under the [PPP].” Subsequently, La Baguette entered into a promissory note by which Lender 1 agreed to lend \$214,700 to La Baguette pursuant to the PPP (the “Lender 1 PPP Loan”), and La Baguette received the Lender 1 PPP Loan proceeds by electronic transfer.

The United States further contends that, in April 2020, while La Baguette’s loan application to Lender 1 was still pending, La Baguette submitted an application for a PPP loan to “Lender 2.” In that application, La Baguette stated that “[d]uring the period beginning on February 15, 2020 and ending on December 31, 2020, the Applicant has not and will not receive another loan under the [PPP].” Subsequently, La Baguette entered into a promissory note by which Lender 2 agreed to lend \$215,000 to La Baguette pursuant to the PPP (the “Lender 2 PPP Loan”), and La Baguette received the Lender 2 PPP Loan funds by electronic transfer.

The United States contends that, after receiving both the Lender 1 PPP Loan funds and the Lender 2 PPP Loan funds, La Baguette knowingly and improperly retained the funds obtained from both loans, contrary to the express certifications that La Baguette made that La Baguette would not receive more than one PPP loan prior to December 31, 2020. The United States further contends that, despite knowing that it should not have received more than one PPP loan prior to December 31, 2020, La Baguette applied for and received forgiveness of both loans from SBA.

E. The United States contends that it has certain civil claims against La Baguette for violations of the False Claims Act, 31 U.S.C. § 3729-3733 (“FCA”).

F. Relator claims entitlement to a share of the proceeds of this Settlement Agreement under 31 U.S.C. § 3730(d).

G. This Settlement Agreement is neither an admission of liability by La Baguette or Scott Brunello nor a concession by the United States that its claims are not well founded.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. La Baguette and Scott Brunello shall pay to the United States \$430,000 (“Settlement Amount”), of which \$215,000 is restitution. La Baguette and Scott Brunello agree that they are jointly and severally liable for the Settlement Amount, which shall be paid by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney’s Office for the Northern District of California as follows:

- a. \$130,000 no later than 30 days after the date of this Agreement;
- b. \$100,000 no later than 60 days after the date of this Agreement;
- c. \$100,000 no later than 90 days after the date of this Agreement; and
- d. \$100,000 no later than 120 days after the date of this Agreement.

2. In the event that La Baguette and Scott Brunello fail to complete the payments set forth in Paragraph 1 by the dates upon which they are due, La Baguette and Scott Brunello shall be in Default of their payment obligations (“Default”). Upon Default, the United States will provide La Baguette and Scott Brunello, through their legal counsel or other representative

previously designated by La Baguette and Scott Brunello, by electronic mail a written Notice of Default, and La Baguette and Scott Brunello shall have an opportunity to cure such Default within ten business days from the date the Notice of Default is sent by counsel for the United States. If La Baguette and Scott Brunello fail to cure the Default within ten business days from the date the Notice of Default is sent by the United States and in the absence of an agreement with the United States to a modified payment schedule, the difference between the amount paid by La Baguette and Scott Brunello under Paragraph 1 and \$430,000 shall become immediately due and payable, and interest on such amount shall accrue at the rate of 10 percent per annum, compounded daily from the date of Default.

3. Upon execution of this Settlement Agreement, La Baguette and Scott Brunello shall enter into a Consent Judgment with the United States in the form attached as Attachment A. The United States shall not file the Consent Judgment unless La Baguette and Scott Brunello are in uncured Default as defined above. La Baguette and Scott Brunello agree not to contest any Consent Judgment and/or collection action undertaken by the United States pursuant to this Paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States. At its sole option, in the event of uncured Default as defined above, the United States alternatively may rescind this Agreement as to La Baguette and Scott Brunello and bring any civil and/or administrative claim, action, or proceeding against La Baguette and Scott Brunello for the claims that would otherwise be covered by the releases provided herein. If the United States opts to rescind this Agreement in the event of uncured Default as defined above, La Baguette and Scott Brunello agree not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that are (a) filed by the United States against La Baguette and Scott

Brunello, within 180 days of written notification to La Baguette and Scott Brunello that this Agreement has been rescinded, and (b) relate to the Covered Conduct, except to the extent these defenses were available on the particular date when the Civil Action referenced in Recital Paragraph D was filed.

4. Conditioned upon the United States receiving the payment set forth in Paragraph 1, the United States shall pay to Relator \$64,500 by electronic funds transfer (“Relator’s Share”). No other relator share payments shall be made under this Agreement.

5. Subject to the exceptions in Paragraph 8 (concerning reserved claims) below, and upon the United States’ receipt of the Settlement Amount, the United States releases La Baguette and Scott Brunello from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, and fraud.

6. Subject to the exceptions in Paragraph 8 below, and upon the United States’ receipt of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases La Baguette and Scott Brunello from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729–3733.

7. Notwithstanding the releases given in Paragraph 6 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;

- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement; and
- f. Any liability of individuals, except Scott Brunello.

8. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the Relator's Share, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

9. Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases Scott Brunello, La Baguette, and its officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorneys' fees and costs.

10. La Baguette and Scott Brunello waive and shall not assert any defenses La Baguette and Scott Brunello may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive

Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

11. La Baguette and Scott Brunello fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that La Baguette and Scott Brunello have asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct or the United States' investigation or prosecution thereof.

12. La Baguette and Scott Brunello fully and finally release the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that La Baguette and Scott Brunello have asserted, could have asserted, or may assert in the future against the Relator, related to the Covered Conduct and the Relator's investigation and prosecution thereof.

13. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of La Baguette, Scott Brunello, and La Baguette's present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) La Baguette and Scott Brunello's investigation, defense, and corrective actions undertaken in response to the United States'

audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);

- (4) the negotiation and performance of this Agreement; and
- (5) the payment La Baguette and Scott Brunello make to the United States pursuant to this Agreement and any payments that La Baguette and Scott Brunello may make to Relator, including costs and attorney's fees,

are unallowable costs for government contracting purposes (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by La Baguette and Scott Brunello, and La Baguette and Scott Brunello shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, La Baguette and Scott Brunello shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by La Baguette or any of its subsidiaries or affiliates, and Scott Brunello, from the United States. La Baguette and Scott Brunello agree that the United States, at a minimum, shall be entitled to recoup from La Baguette and Scott Brunello any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine La Baguette and Scott Brunello's books and records and to disagree with any

calculations submitted by La Baguette or any of its subsidiaries or affiliates, and Scott Brunello, regarding any Unallowable Costs included in payments previously sought by La Baguette and Scott Brunello, or the effect of any such Unallowable Costs on the amount of such payments.

14. This Agreement is intended to be for the benefit of the Parties only.

15. Upon receipt of the payment described in Paragraph 1, above, Relator and the United States shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of all claims against La Baguette in the Civil Action pursuant to Rule 41(a)(1)(A). Such dismissal shall be: (a) with prejudice to the Relator as to all claims against all named defendants in the Civil Action; (b) with prejudice to the United States as to the Covered Conduct; and (c) without prejudice to the United States as to all other claims or allegations in the Civil Action.

16. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

17. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

18. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Northern District of California. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

19. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

20. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

21. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

22. This Agreement is binding on La Baguette’s successors, transferees, heirs, and assigns, and Scott Brunello.

23. This Agreement is binding on Relator’s successors, transferees, heirs, and assigns.

24. All parties consent to the United States’ disclosure of this Agreement, and information about this Agreement, to the public.

25. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

Dated: the 27 day of January, 2023

By: Jared S. Wiesner
Jared Wiesner
Trial Attorney
Commercial Litigation Branch
Civil Division
United States Department of Justice

Dated: the 27 day of January, 2023

By: Michael T. Pyle
Michael T. Pyle
Assistant United States Attorney
United States Attorney’s Office for the
Northern District of California

Attorneys for United States of America

LA BAGUETTE, LLC

Dated: the 27 day of January, 2023

By: 
Carly Bittman
Ed Swanson
Swanson & McNamara LLP

Attorneys for La Baguette, LLC

Dated: the 27 day of January, 2023

By: 
Scott Brunello

Owner, La Baguette, LLC


SCOTT BRUNELLO

Dated: the 27 day of January, 2023

By: 
Scott Brunello

RELATOR – BRYAN QUESENBERRY

Dated: the 27 day of January, 2023

By: 
Bryan Quesenberry, Esq.
Relator

Attachment A

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA)	
<i>ex rel.</i> BRYAN QUESENBERRY)	
)	
Plaintiff/Relator,)	
)	No.: 20-cv-6451
v.)	
)	
LA BAGUETTE, LLC; and)	
SCOTT BRUNELLO)	
Defendants.)	

CONSENT JUDGMENT

Plaintiff United States of America (the “United States”); Defendant La Baguette, LLC; and Defendant Scott Brunello (collectively referred as the “Parties”), hereby stipulate, agree and consent to the entry of this judgment based upon the following uncontested allegations:

1. This Court has jurisdiction over this case under 28 U.S.C. §§ 1331, 1345, 1367(a). La Baguette, LLC and Scott Brunello consent to the jurisdiction of the United States District Court for the Northern District of California for the resolution of this dispute.
2. On the [27](#) day of January, 2023, Defendants La Baguette, LLC and Scott Brunello entered into a Settlement Agreement with Plaintiff United States for the purpose of resolving a dispute (the “Settlement Agreement”). A copy of the Settlement Agreement is attached hereto as Exhibit 1 and incorporated by reference herein.
3. Under the terms of the Settlement Agreement, La Baguette, LLC and Scott Brunello agreed to pay to the United States the sum of \$430,000 (“Settlement Amount”).

La Baguette and Scott Brunello further agreed that they are jointly and severally liable for the Settlement Amount.

4. Also under the terms of the Settlement Agreement, La Baguette, LLC and Scott Brunello agreed that in the event they defaulted and failed to pay the Settlement Amount, within ten (10) business days of the date the Notice of Default is sent by counsel for the United States, the United States may file a Consent Judgment against La Baguette, LLC and Scott Brunello, jointly and severally, in the amount of the unpaid balance of the Settlement Amount.

5. La Baguette, LLC, and Scott Brunello now failed to make payment in accordance with the Settlement Agreement, and therefore are in default under the terms of the Settlement Agreement.

6. Unless it has already done so, within a reasonable time after the filing of this Consent Judgment, the United States will file a statement of debt showing the amount due and owing under the Settlement Agreement as of the date of default.

7. The United States has given La Baguette, LLC and Scott Brunello written notice of default under the terms of the Settlement Agreement, and demanded that La Baguette, LLC and Scott Brunello cure that default by tendering payment in full on the cure amount under the terms of the Settlement Agreement. The United States has given La Baguette, LLC and Scott Brunello ten (10) business days to cure the default, as provided in the Settlement Agreement, but La Baguette, LLC and Scott Brunello failed to respond or to make arrangements to comply with the terms of the Settlement Agreement.

ACCORDINGLY, THIS COURT enters judgment for the United States against Defendant La Baguette, LLC and Scott Brunello, jointly and severally, in the amount of \$ _____, plus interest at the post-judgment interest at the rate of 10% per annum, compounded daily from the date this Consent Judgment is entered until it is satisfied. This Court retains jurisdiction over this action.

DONE AND ORDERED in the Northern District of California this ____ day of _____, 202_.

UNITED STATES DISTRICT JUDGE

Consent to File

Carly Bittman and Ed Swanson, counsel for La Baguette, LLC and Scott Brunello, have consented to the undersigned Assistant United States Attorney's electronic filing of this Consent Judgement.

The parties hereby stipulate and agree to the entry of this Consent Judgment.

Dated: the 27 day of January, 2023

By: Michael T. Pyle
Michael T. Pyle
Assistant United States Attorney
United States Attorney's Office for the
Northern District of California

Attorneys for United States of America

Dated: the 27 day of January, 2023

By: Carly Bittman
Carly Bittman
Ed Swanson
Counsel for La Baguette, LLC, and Scott Brunello