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16 **IN THE UNITED STATES DISTRICT COURT**  
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

18 CHANEE THURSTON, and TANASHA  
19 DENMON-CLARK on behalf of themselves and  
20 all others similarly situated,

21 Plaintiffs,

22 v.

23 CONOPCO, INC. d/b/a UNILEVER (formerly  
24 d/b/a GOOD HUMOR-BREYERS) d/b/a  
25 BREYERS,

26 Defendant.

Case No. 10-cv-04937-PJH

**NOTICE OF MOTION, PLAINTIFFS’  
UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF  
SETTLEMENTS, AND SUPPORTING  
MEMORANDUM**

Hon. Phyllis J. Hamilton

Date: March 28, 2012

Time: 9:00 a.m.

Location: Courtroom 3, Oakland Courthouse

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<p>ROSS CORRIETTE and JAMES WALDRON on behalf of themselves and all others similarly situated,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>UNILEVER d/b/a BREYERS,</p> <p style="text-align: center;">Defendant.</p>	<p><b>RELATED CASE</b></p> <p>Case No. 11-cv-01811-PJH</p>
<p>SKYE ASTIANA on behalf of herself and all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>BEN &amp; JERRY’S HOMEMADE, INC.,</p> <p style="text-align: center;">Defendant.</p>	<p><b>RELATED CASE</b></p> <p>Case No. 10-cv-04387-PJH</p>

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**MOTION**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, at the date, time, and location as set forth above, Plaintiffs Thurston, Denmon-Clark, Corriette, and Waldron (the “*Thurston/Corriette* Plaintiffs”) and Plaintiff Skye Astiana (collectively, “Plaintiffs”) will and hereby do, move the Court to grant preliminary approval of two class action settlements as set forth in the Settlement Agreements and exhibits attached herewith.<sup>1</sup>

For the reasons set forth in the accompanying memoranda of law filed in support of this Motion, Plaintiffs move this Court to preliminarily approve the two class action settlements (the “Settlements”) set forth in the accompanying Settlement Agreements, to conditionally certify two classes for settlement purposes, to appoint counsel for the *Thurston/Corriette* Plaintiffs as class counsel for the Breyer’s settlement class and counsel for Plaintiff Astiana as class counsel for the Ben & Jerry’s settlement class, respectively, and to approve the proposed form and manner of giving notice to settlement class members of the settlements and advising them of their rights to participate and receive settlement benefits, to exclude themselves, or object.

Plaintiffs also move the Court to enter the following schedule regarding approval of the proposed settlement:

Hearing on Motion for Preliminary Approval of the Settlement	<b><i>March 28, 2012</i></b>
Deadline to complete notice (“Notice Date”) to settlement class members by	<b><i>July 1, 2012</i></b> (No more than 95 days after preliminary

<sup>1</sup> A copy of the Settlement Agreement entered into between Plaintiffs Chanee Thurston, Tanasha Denmon-Clark, Ross Corriette and James Waldron and defendant CONOPCO, INC. d/b/a UNILEVER d/b/a BREYERS (hereinafter, the “Breyers Settlement Agreement”) is attached hereto as Exhibit A. Supporting exhibits are attached as Exhibits A1-A6.

A copy of the Settlement Agreement entered into between Plaintiff Skye Astiana and Ben & Jerry’s Homemade, Inc. (hereinafter, the “B&J Settlement Agreement”) is attached hereto as Exhibit B. Supporting exhibits are attached as Exhibits B1-B6.

The Breyers Settlement Agreement and the B&J Settlement Agreement are referred to collectively herein as the “Settlement Agreements.”

1	mail and publication	approval -- Proposed Prelim. App. Orders at ¶ 6)
2		
3	Deadline for filing of motion for final approval of proposed settlement	<b>July 18, 2012</b> (28 days before Objection date -- Proposed Prelim. App. Orders, p.5 at ¶ 8)
4		
5	Deadline for filing of application by Class Counsel for attorney's fees, reimbursement of litigation costs and expenses, and incentive payment to Class Representative	<b>July 25, 2012</b> (21 days before Objection Date -- Proposed Prelim. App. Orders, p. 2 at ¶ 7 and p.5 at ¶ 9)
6		
7		
8		
9	Deadline for settlement class members to object to ("Objection Date") or opt out ("Opt-Out Date") of the proposed settlement	<b>August 15, 2012</b> (No more than 45 days after the Notice Date -- Proposed Prelim. App. Orders, p.3 at ¶¶ 11-12, p. 6 at ¶ 13(a)
10		
11		
12	Deadline for filing supplemental papers in support of Final Approval and addressing any objections	<b>August 29, 2012</b> (14 days before Final Approval Hearing - -Proposed Prelim. App. Orders, p. 5 at ¶ 10)
13		
14		
15	Deadline for settlement class members to submit claims forms ("Claim Deadline")	<b>August 30, 2012</b> (60 days after Notice Date -- Proposed Prelim. App. Orders, p. 6 at ¶ 12)
16		
17	Proposed Final Approval Hearing	<b>September 12, 2012</b> (Proposed Prelim. App. Orders, p.6 at ¶ 13)
18		
19		

20

21 Plaintiffs have calculated the above dates for the schedule in bold italics, using March 28,

22 2012 as an estimated entry date for the Preliminary Approval Orders. If preliminary approval is

23 instead entered at a later date for either or both Settlements, Plaintiffs respectfully ask that the

24 proposed dates in the above chart be pushed back accordingly. A proposed order has been submitted

25 separately for each of the class action settlements.

26 At the Final Approval Hearing, the Court will have the opportunity to determine whether to

27 grant final approval to the class action settlements, the settlement classes and the requested

28 attorneys' fees and expenses, as well as to evaluate any objections thereto that may have been filed.

1 See Fed. R. Civ. P. 23(e)(2) (directing that class action settlement that purports to bind absent class  
2 members may only be entered after hearing held by the court).

3 **MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL**

4 **SUMMARY OF THE ARGUMENT**

5 After a day-long, in-person mediation session on September 14, 2011, and through more than  
6 five weeks of subsequent, extensive negotiations between the parties with the mediator's continued  
7 assistance, settlements in principle were reached to resolve the claims asserted in the related cases,  
8 *Thurston et al v. Conopco, Inc.*, Case No. 10-04937-PJH (the "*Thurston* Action"), *Corriette, et al. v.*  
9 *Unilever*, Case No. 11-1811-PJH (the "*Corriette* Action"), and *Astiana v. Ben & Jerry Homemade*  
10 *Inc.*, Case No. 10-4387-PJH (the "*Astiana* Action") (collectively, the "Actions"), against Conopco,  
11 Inc. d/b/a Unilever (formerly d/b/a Good Humor-Breyers) d/b/a Breyers ("Unilever"), and its  
12 wholly-owned subsidiary, Ben & Jerry's Homemade, Inc. ("B&J") (collectively "Defendants"). The  
13 parties' agreement to resolve the claims asserted in the *Thurston* and *Corriette* Actions against  
14 Unilever based upon its sales of Breyers Ice Cream Products is set forth in the Breyers Settlement  
15 Agreement attached hereto as Exhibit A.<sup>2</sup> The parties' agreement to resolve the claims asserted in  
16 the *Astiana* Action against Defendant B&J based upon its sales of B&J Ice Cream Products is set  
17 forth in the B&J Settlement Agreement attached hereto as Exhibit B. As detailed below, preliminary  
18 approval of both Settlements should be granted.

19 The Settlements reached are unquestionably fair – they provide class members with  
20 meaningful monetary relief to compensate them for the claims that were pled in the Actions and call  
21 for Defendants to cease the offending practices. The gravamen of the allegations in each of the three  
22 Actions is that Defendants' Ice Cream Products were falsely and misleadingly labeled as "All  
23 Natural" when in fact those Ice Cream Products contained cocoa alkalized with potassium carbonate,  
24 a man-made, synthetic substance. *Thurston*, Doc. 21 at ¶¶ 1-2; *Corriette*, Doc. 1 at ¶¶ 2, 6; *Astiana*,  
25 Doc. 20 at ¶¶ 1-2. The Settlement Agreements redress these allegations by providing that B&J and

26  
27 <sup>2</sup> "The Ice Cream Products" at issue include B&J and Breyers ice cream flavors containing alkalized  
28 cocoa, as identified in footnote 3, *infra*; Exhibit A (Breyers Settlement Agreement) at Section II, ¶  
20; and in Exhibit B (B&J Settlement Agreement) at Section II, ¶ 20.

1 Unilever will discontinue use of the term “All Natural” on their Ice Cream Products, and reimburse  
2 each B&J and Breyers Settlement Class Member who certifies that he or she purchased B&J or  
3 Breyer Ice Cream Products, \$2.00 per package for each Ice Cream Product purchased, for up to ten  
4 packages. No proof of purchase is required for the first three packages claimed. If Breyers Class  
5 Members’ claims are less than \$2,500,000.00 in total, then the difference between the amount paid  
6 to Breyers Class Members and \$2,500,000 will be donated to not-for-profit charities and/or causes of  
7 Unilever’s choice related to food or nutrition in the United States through *cy pres*. Similarly, for  
8 B&J, which had approximately double the sales volume of Ice Cream Products as did Unilever, a  
9 \$5,000,000.00 restitution fund has been created. If B&J Class Members’ claims are less than  
10 \$5,000,000.00 in total, then the difference between the amount paid to B&J Class Members and  
11 \$5,000,000.00 will be donated to not-for-profit charities and/or causes of B&J’s choice related to  
12 food or nutrition in the United States through *cy pres*. Defendants have also agreed not to use the  
13 disputed “All Natural” claims on all other ice creams, yogurts, and sorbets containing alkalized  
14 cocoa in the future, thereby providing meaningful injunctive relief to Breyers and B&J Settlement  
15 Class Members. In addition, the Settlement Agreements require B&J and Unilever to bear the cost  
16 of the settlement logistics, including the costs of notice, claims administration, and awarded  
17 attorneys’ fees and expenses. By any objective standard, the Settlements warrant preliminary  
18 approval.

19 The notices of the proposed Settlements also fully comply with Fed. R. Civ. P. 23 and due  
20 process, as they fully advise Settlement Class Members of their rights under the Settlements and are  
21 tailored to provide the best notice practicable under the circumstances. *See* Exhibits A3, A4, B3, and  
22 B4 (proposed Short-form and Long-form notices). Further, the proposed Settlement Classes should  
23 be conditionally certified for settlement purposes since, as detailed below, all of the prerequisites for  
24 certification under Federal Rule of Civil Procedure 23 are satisfied. Thus, certification of both  
25 Settlement Classes is proper.

26 At bottom, the terms of the proposed Settlements are fair, reasonable, and not the subject of  
27 any collusion or unfair dealing. Indeed, under the proposed Settlements, Settlement Class Members  
28 have the opportunity to recover a substantial portion of the retail price for the B&J and/or Breyers

1 Ice Cream Products they purchased, and the allegedly unlawful and misleading product labeling has  
2 been discontinued. At this *preliminary* stage, approval should be granted. Doing so will allow  
3 notice of the proposed Settlements to be sent to the Settlement Classes and, in turn, will allow the  
4 Court to gauge the reaction of the Settlement Class Members to the proposed Settlements.

## 5 ARGUMENT

### 6 **I. FACTUAL BACKGROUND**

#### 7 **A. Nature Of The Actions**

8 On September 29, 2010, Plaintiff Skye Astiana filed a Complaint for Damages, Equitable,  
9 Declaratory and Injunctive Relief against Defendant B&J in the Northern District of California. *See*  
10 *Astiana*, Doc. 1 at 1. The *Astiana* Action asserted claims for common law fraud, consumer fraud  
11 (*i.e.*, violation of the UCL and FAL), and unjust enrichment on behalf of a nationwide class and a  
12 California sub-class of consumers who purchased B&J's "All Natural" ice creams, yogurts, and  
13 sorbets containing alkalized cocoa, and alleged that B&J had falsely and misleadingly packaged,  
14 marketed and sold its B&J "All Natural" premium ice creams, yogurts, and sorbets as being "All  
15 Natural" despite the fact that they contained alkalized cocoa processed with a non-natural, man-  
16 made, synthetic ingredient – potassium carbonate. *Id.* at ¶¶ 1-2 and n.1.

17 Thereafter, on November 1, 2010, Plaintiffs Thurston and Denmon-Clark filed a Complaint  
18 for Damages, Equitable, Declaratory and Injunctive Relief against Defendant Unilever in the  
19 Northern District of California. *See Thurston*, Doc. 1 at 1. The *Thurston* Action asserted claims for  
20 common law fraud, consumer fraud (*i.e.*, violation of UCL/FAL), and unjust enrichment on behalf of  
21 a nationwide class and a California sub-class of consumers who purchased Breyers "All Natural"  
22 original ice creams, yogurts and sorbets or Breyers Smooth & Dreamy ½ Fat "All Natural" ice  
23 creams, yogurts and sorbets which contained alkalized cocoa, and alleged that Unilever had falsely  
24 and misleadingly packaged, marketed and sold its Breyers brand Original and Smooth & Dreamy ½  
25 Fat ice creams, yogurts, and sorbets as "All Natural" despite the fact that they contained alkalized  
26 cocoa processed with a non-natural, man-made, synthetic ingredient – potassium carbonate. *Id.* at ¶¶  
27 1-2 and n.1.

1 On November 4, 2010, Plaintiffs Corriette and Waldron (along with a third Plaintiff who has  
2 since withdrawn), filed a Class Action Complaint against Defendant Unilever in the District of New  
3 Jersey. *See Corriette*, Doc. 1. The *Corriette* Action asserted claims for consumer fraud, breach of  
4 express and implied warranties, and unjust enrichment on behalf of a nationwide class and a New  
5 Jersey sub-class of consumers who purchased Breyers All Natural Original Ice Cream and Breyers  
6 Smooth & Creamy ½ Fat All Natural Ice Cream containing alkalized cocoa, and alleged that these  
7 Ice Cream Products were not all natural because they contained alkalized cocoa. *Id.* at ¶¶1-2, 6.

8 The *Thurston* Action was initially assigned to Judge Richard Seeborg, but, given the  
9 common issues of law and fact, as well as the overlapping corporate ownership of B&J and  
10 Unilever, on January 19, 2011 this Court entered an order relating the *Astiana* and *Thurston* Actions.  
11 *See Astiana*, Doc. 34. After Judge William H. Walls ordered the *Corriette* action to be transferred  
12 from the District of New Jersey to the Northern District of California on March 28, 2011, the parties  
13 to the Actions filed a stipulation advising this Court that the *Corriette* Action should be related to the  
14 *Astiana* and *Thurston* Actions as it arose from similar events, involved related defendants, and called  
15 for a determination of substantially similar questions of law and fact. *See Astiana*, Doc. 55 at 2. By  
16 Order entered May 3, 2011, the Actions were related. *See Astiana*, Doc. 58.

17 **B. Litigation And Discovery**

18 Subsequent to the filing of the *Astiana* and *Thurston* Actions, the parties to these two actions  
19 participated in a joint 26(f) conference. Defendants advised that they intended to file motions to  
20 dismiss and strike, and on November 24, 2010 and December 6, 2010, filed those motions in the  
21 *Astiana* and *Thurston* Actions, respectively. *See Astiana*, Doc. 16; *Thurston*, Doc. 17. Defendants'  
22 briefs included an exhaustive array of arguments and defenses, including federal preemption,  
23 abstention, and a Fed.R.Civ.P. 9(b) challenge.

24 In response to Defendants' motions, Plaintiffs *Astiana*, *Thurston*, and *Denmon-Clark* filed  
25 Amended Complaints. *See Astiana*, Doc. 20; *Thurston*, Doc. 21. Thereafter, on December 20, 2010,  
26 Defendants renewed their motions to dismiss and strike, once again vigorously contesting Plaintiffs'  
27 claims. Plaintiffs responded with lengthy, rigorously-argued briefing on the panoply of arguments  
28 set forth by Defendants. *See Astiana*, Docs. 38, 39; *Thurston*, Docs. 34, 35.

1 During this time, Defendant also filed a motion to dismiss the *Corriette* Action, which was  
2 pending in the District of New Jersey. See *Corriette*, Doc. 13. The *Corriette* Plaintiffs opposed  
3 Defendant's motion to dismiss on January 24, 2011, see *id.*, Doc.15, and on March 28, 2011, Judge  
4 William H. Walls denied Defendant's motion to dismiss and ruled that the *Corriette* Plaintiffs'  
5 claims were to be transferred to the Northern District of California, where the *Astiana* and *Thurston*  
6 actions were pending. *Id.*, Doc. 19. Judge Walls further ruled that if the motion to dismiss that was  
7 pending in the *Astiana* and *Thurston* actions was granted for certain, specified reasons, the *Corriette*  
8 Plaintiffs could return to the District of New Jersey to litigate their claims. *Id.*, Doc. 18 at 11.

9 After extensive briefing submitted by the parties, as well as a zealously argued hearing  
10 before the Court on the *Astiana* and *Thurston* motions to dismiss, on May 26, 2011 the Court entered  
11 a 22-page order denying Defendants' motions to dismiss and strike in their entirety. See *Astiana*,  
12 Doc. 62. Subsequent to the Court's May 26, 2011 order, Plaintiffs engaged in discovery, serving  
13 document requests and interrogatories. The parties also agreed to engage in settlement discussions.  
14 See *infra*. Even after the parties agreed in principle to settle this matter, the Plaintiffs continued to  
15 engage in confirmatory discovery regarding Defendants' profits and sales, merits issues, and class  
16 certification issues, including thorough Fed.R.Civ.P. 30(b)(6) depositions of Unilever and B&J on  
17 February 23, 2012 and February 24, 2012, respectively.

### 18 C. Settlement Discussions

19 After a series of preliminary discussions, the parties agreed to mediate on September 14,  
20 2011 before David A. Rotman, Esq., of Gregorio, Haldeman, Piazza & Rotman. During that  
21 mediation, including break-out sessions for the separate cases, and with the assistance of the  
22 mediator, the parties were able to reach agreement on certain key terms of the Settlements, and  
23 agreed to continue negotiating remaining terms thereafter. After approximately five weeks of  
24 continued negotiations involving the mediator, the parties reached agreements in principle to settle  
25 the three Actions, which are reflected in the Settlements presently before the Court.

26 The parties have diligently worked on the Settlements, which are the product of months of  
27 hard fought, arms-length negotiation. Plaintiffs believe the terms of the Settlements are incredibly  
28 favorable to the Settlement Classes, providing substantial remuneration (*i.e.*, \$2.00 per package of



1 B&J or Breyers Ice Cream Products). Settlement Class Members may claim up to three packages of  
2 Ice Cream Products with a sworn attestation of purchase and claim up to 10 packages with the  
3 submission of adequate proofs of purchase. If the claims by the Breyers Settlement Class are less  
4 than \$2,500,000 of purchases, the difference between what has been claimed and \$2,500,000 will be  
5 donated to not-for-profit charities and/or causes of Unilever's choice related to food or nutrition in  
6 the United States as *cy pres*. Likewise, if the claims by the B&J Settlement Class are less than  
7 \$5,000,000.00 of purchases, the difference between what has been claimed and \$5,000,000.00 will  
8 be donated to not-for-profit charities and/or causes of B&J's choice related to food or nutrition in the  
9 United States as *cy pres*. In addition to the monetary compensation, the Settlements also provide for  
10 injunctive relief to the Settlement Classes as B&J and Unilever agree in the future not to use the "All  
11 Natural" claims on products containing alkalized cocoa. This injunctive relief not only provides a  
12 future benefit to the Classes, but also represents a substantial cost to Defendants, since it will cost  
13 \$7,500 per flavor to change Defendants' Ice Cream Products labels. The cost of this change for the  
14 23 flavors of B&J Ice Cream Products and 35 flavors of Breyers Ice Cream Products will be  
15 upwards of \$435,000. Defendants must also bear the costs of the settlement logistics, including the  
16 costs of notice, claims administration, and awarded attorneys' fees and expenses.

17 As demonstrated below, the Notice Plans contemplated by the terms of the Settlement  
18 Agreements provide for both publication notice and direct mail notice where possible, and constitute  
19 the best notice practicable under the circumstances, comporting both with Fed.R.Civ.P. 23 and due  
20 process.

## 21 **II. THE SETTLEMENTS SHOULD BE PRELIMINARILY APPROVED**

### 22 **A. The Settlement Classes Should Be Conditionally Certified**

23 The Actions are class actions and, as such, the proposed Settlement Agreements call for  
24 certification of classes for settlement purposes only. *See* Exhibit A (Breyers Settlement Agreement)  
25 at Section III(A)(2) and III(B)(1); Exhibit B (B&J Settlement Agreement) at Section III(A)(2) and  
26 III(B)(1). The use of such settlement classes is common and proper in the resolution of class action  
27 litigation. *See, e.g., Gribble v. Cool Transports, Inc.*, 2008 WL 5281665, at \* 3 (C.D. Cal. Dec. 15,  
28 2008) (approving settlement class as part of final approval of class action settlement); *In re*



1 *Connecticut General Life Ins. Co.*, 1997 WL 910387, at \*1 ¶ 2 (C.D. Cal. Feb. 13, 1997) (certifying  
 2 “for purposes of settlement, the Settlement Class defined in Section II and Exhibit E of the  
 3 Settlement Agreement”); *In re Coordinated Pretrial Proceedings in Petroleum Products Antitrust*  
 4 *Litig.*, 1993 WL 39306, at \*2 ¶2 (C.D. Cal. Jan. 12, 1993) (granting preliminary approval and  
 5 certifying “for purposes of this settlement only, Temporary Settlement Classes as defined in the  
 6 Settlement Agreement.”).

7 Here, the Breyers Settlement Class is defined as:

8 all persons in the United States who purchased Breyers’ Unilever Ice Cream Products  
 9 from November 4, 2004 through the date of Preliminary Approval of Settlement.  
 10 Excluded from the Settlement Class are: (i) Unilever and its employees, principals,  
 11 affiliated entities, legal representatives, successors and assigns; (ii) any person who  
 files a valid, timely Request for Exclusion; and (iii) the Judges to whom these Actions  
 are assigned and any members of their immediate families.

12 Exhibit A (Breyers Settlement Agreement) at Section III.A.2. Similarly, the B&J Settlement Class is  
 13 defined as:

14 all persons in the United States who purchased Ben & Jerry’s Unilever Ice Cream  
 15 Products from September 28, 2006 through the date of Preliminary Approval of the  
 16 Settlement. Excluded from the Settlement Class are: (i) Unilever and its employees,  
 17 principals, affiliated entities, legal representatives, successors and assigns; (ii) any  
 person who files a valid, timely Request for Exclusion; and (iii) the Judges to whom  
 this Action is assigned and any members of their immediate families.

18 Exhibit B (B&J Settlement Agreement) at Section III.A.2.<sup>3</sup>

19 Each of the two Settlement Class definitions sets forth an identifiable class, and each tracks  
 20 the putative class definitions pled by Plaintiffs. *See Astiana*, Doc. 20 at ¶¶ 25, 27 (alleging class  
 21 definition); *Thurston*, Doc. 21 at ¶¶ 25, 27 (same); *Corriette*, Doc. 1 at ¶¶ 1, 15 (same). Because, as  
 22  
 23

---

24 <sup>3</sup> Although both class definitions refer to “Unilever Ice Cream Products,” this term is defined  
 25 differently for the B&J Settlement Class and Unilever Settlement Class. Under the B&J Settlement  
 26 Agreement, “Unilever Ice Cream Products” is defined to mean “Ben & Jerry’s All Natural premium  
 27 ice creams, yogurts, and sorbets containing alkalized cocoa,” (Exhibit B at Section II, ¶ 20), while  
 28 under the Unilever Settlement Agreement, “Unilever Ice Cream Products” is defined to mean  
 “Breyers All Natural Original Ice Cream containing alkalized cocoa or Breyers Smooth & Dreamy  
 ½ Fat All Natural Ice Cream containing alkalized cocoa,” (Exhibit A at Section II, ¶ 20).

1 shown below, the Settlement Classes meet all the requirements of Rule 23, each should be certified  
2 for settlement purposes.

3 **1. The Settlement Classes Satisfy The Numerosity Requirement.**

4 Rule 23(a)(1) requires that “the class [be] so numerous that joinder of all members is  
5 impracticable.” Fed. R. Civ. P. 23(a)(1). It is undisputed that the Actions meet the numerosity  
6 requirement. Further, B&J and Unilever are among the largest ice cream manufacturers in the  
7 United States, and Plaintiffs have alleged, and discovery has confirmed, that hundreds of thousands  
8 of packages of the Ice Cream Products were sold nationwide by both B&J and Unilever during the  
9 approximately four-year class periods for the B&J and Breyers Settlement Classes. Unquestionably,  
10 although Plaintiffs do not know the precise numbers of Settlement Class Members in each of the two  
11 Settlement Classes, the overall number in each Settlement Class satisfies the numerosity requirement  
12 for class certification. *See, e.g., Ikonen v. Hartz Mountain Corp.*, 122 F.R.D. 258, 262 (S.D. Cal.  
13 1998) (indicating 40 or more members generally sufficient). *See also In re Badger Mountain Irr.*  
14 *Dist. Sec. Litig.*, 143 F.R.D. 693, 696 (W.D. Wash. 7 1992) (indicating a plaintiff may satisfy Rule  
15 23(a)(1)'s numerosity requirement by providing “[a] reasonable estimate of the limited number of  
16 purported class members”).

17 **2. The Settlement Classes Satisfy The Commonality Requirement.**

18 Rule 23(a)(2) requires that “there [be] questions of law or fact common to the class.” Fed. R.  
19 Civ. P. 23(a)(2). “To establish commonality, ‘[t]he existence of shared legal issues with divergent  
20 factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal  
21 remedies.’” *Parra v. Bashas, Inc.*, 536 F.3d 975, 978 (9th Cir. 2008) (quoting *Hanlon v. Chrysler*  
22 *Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998)). This requirement is easily satisfied.

23 Here, the commonality requirement is met for each of the Settlement Classes because the  
24 claims of all absent Settlement Class Members in each Settlement Class arise from the same  
25 allegations, namely, that B&J and Unilever misleadingly labeled their Ice Cream Products as “All  
26 Natural” even though they contained a synthetic, man-made substance. Thus, common questions for  
27 both the Breyers Settlement Class and the B&J Settlement Class include: (1) whether the Ice Cream  
28 Products labeled as “All Natural” were in fact “All Natural”; and (2) whether Defendants uniformly

1 misrepresented through materially identical labels that their Ice Cream Products containing alkalized  
2 cocoa with potassium carbonate were “All Natural.”

3 Each of the Settlement Classes shares the commonality requirement in that all Settlement  
4 Class Members in each Settlement Class have claims which depend upon the answers to this set of  
5 common questions. Additionally, the Settlement Classes share the commonality requirement in that  
6 all Settlement Class Members who purchased any of the “All Natural” Breyers Ice Cream Products  
7 as defined in the Settlement Agreements during the class periods are entitled to claim under the  
8 terms of the Settlements.

### 9 **3. The Settlement Classes Satisfy The Typicality Requirement.**

10 Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical of  
11 the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). This requirement is also met here.

12 Courts consistently find that the typicality requirement is satisfied if the claims arise from a  
13 common course of conduct. As stated by Professor Newberg:

14 Typicality determines whether a sufficient relationship exists between the injury to  
15 the named plaintiff and the conduct affecting the class, so that the court may properly  
16 attribute a collective nature to the challenged conduct. In other words, when such a  
17 relationship is shown, a plaintiff’s injury arises from or is directly related to a wrong  
18 to a class, and that wrong includes the wrong to the plaintiff. Thus, a plaintiff’s  
claims is typical if it arises from the same event or practice or course of conduct that  
gives rise to the claims of other class members, and if his or her claims are based on  
the same legal theory

19 1 Herbert Newberg & Alba Conte, *Newberg on Class Actions*, § 3-13, at 3-76 (3d ed. 1992).  
20 Typicality does not require the claims to be substantially identical. *Hanlon*, 150 F.3d at 1020.  
21 Rather, the Ninth Circuit has found typicality if the requisite claims “‘share a common issue of law  
22 or fact’ ... and are ‘sufficiently parallel to insure a vigorous and full presentation of all claims for  
23 relief.’” *Cal. Rural Legal Assistance, Inc. v. Legal Servs. Corp.*, 917 F.2d 1171, 1175 (9th Cir. 1990)  
24 (citations omitted), amended, 937 F.2d 465 (9th Cir. 1991).

25 Plaintiffs Thurston, Denmon-Clark, Corriette and Waldron, like other absent Breyers  
26 Settlement Class Members, purchased Unilever’s “All Natural” Breyers ice creams based upon  
27 identical written representations prominently displayed on the packages that the ice creams were  
28 “All Natural”. Similarly, Plaintiff Astiana, like other absent B&J Settlement Class Members,

1 purchased B&J Ice Cream Products based upon identical written representations prominently  
2 displayed on the packages that the ice creams were “All Natural.” Because Plaintiffs are members  
3 of the proposed Settlement Classes, and assert claims for common law fraud, consumer fraud, and  
4 unjust enrichment on behalf of themselves and all absent Settlement Class Members based upon  
5 Defendants’ respective uniform courses of conduct and series of identical misrepresentations, their  
6 claims are typical of Settlement Class Members’ claims.

#### 7 **4. The Settlement Class Satisfies The Adequacy Requirement.**

8 Rule 24(a)(4) requires that “the representative parties will fairly and adequately protect the  
9 interests of the class.” Fed. R. Civ. P. 23(a)(4). “Resolution of two questions determines legal  
10 adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other  
11 class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on  
12 behalf of the class?” *Hanlon*, 150 F.3d at 1020. There are no conflicts of interest alleged or that  
13 could possibly exist here. Plaintiffs seek the exact same remedy as all class members: namely, relief  
14 to address the claims that Defendants misrepresented and misbranded their Ice Cream Products in  
15 order to entice individuals to purchase these products when in fact the Ice Cream Products had  
16 synthetic, man-made substances that rendered them non-natural. Plaintiffs’ interests, therefore, are  
17 perfectly aligned with the interests of the Settlement Classes.

18 The adequacy of Plaintiffs and their counsel is evidenced by the Settlements negotiated with  
19 Defendants, which yield meaningful relief to the Settlement Classes. Further, counsel for Plaintiffs  
20 are highly experienced in class action litigation, and have been involved in many class action  
21 settlements and actions. *See* Declaration of Joseph N. Kravec, Jr. (“Kravec Decl.”) filed herewith at  
22 Exs. 1-4 (attaching resumes of class counsels’ law firms).

#### 23 **5. The Settlement Class Satisfies The Necessary Criteria Of Rule 23(b).**

24 In addition to meeting all the class certification requirements enumerated in Rule 23(a), a  
25 movant must also satisfy at least one of the requirements of Rule 23(b). Fed. R. Civ. P. 23(b). Here,  
26 the Settlement Classes’ claims may be appropriately certified under Rule 23(b)(3), which provides  
27 that class certification is appropriate if the criteria of Rule 23(a) are met, and if:  
28

1 [T]he court finds that the questions of law or fact common to class members  
2 predominate over any questions affecting only individual members, and that a class  
3 action is superior to other available methods for fairly and efficiently adjudicating the  
controversy.

4 Fed. R. Civ. P. 23(b)(3). These so-called “predominance” and “superiority” requirements of Rule  
5 23(b)(3) are readily met in this case.

6 **a. Common Questions of Law and Fact Predominate.**

7 “To establish predominance of common issues, a party seeking class certification is not  
8 required to show that the legal and factual issues raised by the claims of each class member are  
9 identical. Rather, the predominance inquiry focuses on whether the proposed class is ‘sufficiently  
10 cohesive to warrant adjudication by representation.’” *Friedman v. 24 Hour Fitness USA Inc.*, 2009  
11 WL 2711956, at \*6 (C.D. Cal. Aug. 6, 2009) (quoting *Local Joint Executive Bd. of*  
12 *Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001)).  
13 Here, for each of the two Settlement Classes, this cohesiveness assuredly exists because the  
14 overarching inquiry and interest of all putative class members is whether the members of the  
15 Settlement Classes are entitled to relief for their purchases of Defendants’ misbranded and  
16 misleadingly-labeled Ice Cream Products. This evidence, and proof as to the existence of a legally  
17 cognizable claim to obtain such relief, therefore, would predominate over any individual issues in  
18 adjudicating this case.

19 Professor Newberg summarized the issue by stating that:

20 A single common issue may be the overriding one in the litigation, despite the fact  
21 that the suit also entails numerous remaining individual questions .... In finding that  
22 common questions predominate over individual ones in particular cases, courts have  
23 pointed to such issues that possess the common nucleus of fact for all related  
questions, have spoken of a common issue as the central, or overriding question, or  
have used similar articulations.

24 1 Newberg & Conte, *supra*, § 4.25 at 4-85 to 4-86 (internal citations omitted). Similarly, the Court  
25 of Appeals for the Ninth Circuit has explained that the requirement of predominance may be  
26 satisfied by showing that the litigation is dominated by a “common nucleus of facts and potential  
27 legal remedies.” *Hanlon*, 150 F.3d at 1022; *see also Klay v. Humana, Inc.*, 382 F.3d 1241, 1255  
28 (11th Cir. 2004)(citation omitted) (“Common issues of fact and law predominate if they ‘ha[ve] a

1 direct impact on every class member’s effort to establish liability and on every class member’s  
2 entitlement to injunctive and monetary relief.”). “[O]ne methodology is to determine whether the  
3 addition or subtraction of any class member would have “a substantial effect on the substance or  
4 quantity of the evidence offered.” *Id.* at 1255 (quoting *Alabama v. Blue Bird Body Co., Inc.*, 573  
5 F.2d 309, 322 (5th Cir. 1978)). If manipulation of the proposed class members does not affect “the  
6 quantum of evidence introduced by the plaintiffs as a whole,” then “common issues are likely to  
7 predominate.” *Id.* Plaintiffs can satisfy Rule 23(b)(3) predominance by showing that “the issues in  
8 the class action that are subject to generalized proof, and thus applicable to the class as a whole, ...  
9 predominate over those issues that are subject only to individualized proof.” *Rutstein v. Avis Rent-*  
10 *A-Car Sys., Inc.*, 211 F.3d 1228, 1233 (11th Cir. 2000).

11 In cases such as the *Astiana*, *Thurston* and *Corriette* Actions, where claims are based on a  
12 single defendant’s (either Unilever in the case of the *Thurston* and *Corriette* Actions, or B&J in the  
13 case of the *Astiana* Action) common course of standardized misconduct, predominance of common  
14 questions is easily satisfied. *See, e.g., Hanrahan v. Britt*, 174 F.R.D. 356, 365 (E.D.Pa. 1997)  
15 (finding predominance in allegations that “defendants’ systematic course of conduct misled class  
16 members and concealed material information from putative class”).

17 Here, Plaintiffs maintain, and discovery has confirmed, that labels bearing identical material  
18 “All Natural” claims were made on Ice Cream Products sold nationwide by B&J and Unilever.  
19 Plaintiffs’ common law fraud, consumer fraud, and unjust enrichment claims are all based on the  
20 language of the labels themselves, which are identical with respect to the alleged misrepresentation  
21 that the Ice Cream Products were “All Natural.” Every package of Ice Cream Products purchased by  
22 Plaintiffs and the Settlement Classes included an identical alleged misrepresentation that the Ice  
23 Cream Products were “All Natural” when they in fact contained a synthetic, man-made substance,  
24 namely alkalized cocoa processed with potassium carbonate. This was a material misstatement with  
25 respect to each label. Whether B&J misrepresented that its Ice Cream Products were “All Natural”  
26 is the core predominant issue in every B&J Settlement Class Member’s claim, and, whether Unilever  
27 misrepresented its Ice Cream Products as “All Natural” is the core predominant issue in every  
28 Breyers Settlement Class Member’s claim. For both Settlement Classes, all Class Members’ claims



1 are dependent upon the same factual and legal issues. None of the Settlement Class Members'  
2 claims will require case-specific inquiries into the facts surrounding each alleged class member's  
3 purchases of the Ice Cream Products to establish liability on behalf of either B&J or Unilever. It is  
4 not necessary for the Court to parse through individual fact scenarios to determine whether B&J and  
5 Unilever misrepresented the nature of the products they were offering for sale to consumers. The  
6 answer would be the same for all Settlement Class Members. As such, common issues clearly  
7 predominate and it is fair to say that these related cases are designed precisely for class action  
8 treatment.

9 **b. Differences in State Law Do Not Defeat Predominance.**

10 Consistent with the above, differences in state laws do not predominate in this case. Each of  
11 the claims asserted on behalf of the Settlement Classes is routinely certified on behalf of national  
12 classes, and the elements of these claims are sufficiently similar across the country that they do not  
13 present an obstacle to certification.

14 Specifically, numerous courts have certified claims for common law fraud claims on behalf  
15 of national classes where those fraud claims are based upon identical, material written  
16 misrepresentations. *See, e.g., Chavez v. Blue Sky Natural Beverage Co.*, 268 F.R.D. 365, 376-380  
17 (N.D. Cal. 2010) (certifying common law fraud claims on behalf of national class); *Plascencia v.*  
18 *Lending 1st Mortgage*, 259 F.R.D. 437 (N.D. Cal. 2009); *Carder Buick-Olds Co., Inc. v. Reynolds &*  
19 *Reynolds, Inc.*, 148 Ohio App.3d 635, 775 N.E.2d 531 (Ohio App. 2 Dist., 2002) (certifying  
20 common law fraud claim on behalf of national class; stating "when courts are faced with common-  
21 law state claims such as fraud ... they have expressed doubts that differences in state laws are so  
22 great as to preclude class treatment ... We also doubt that the elements of a common-law fraud claim  
23 could vary greatly from state to state."). *See also, Collins v. Gamestop Corp.*, 2010 WL 3077671,  
24 \*3-4 (N.D. Cal. Aug. 6, 2010) (refusing to strike allegations of national common law fraud class).

25 Moreover, while defendants opposing class certification have frequently argued that the  
26 element of reliance introduces individual issues that require individualized proof, numerous courts  
27 have explained that, while reliance is a requirement of common law fraud, "[i]n claims of fraud  
28 based upon written representations, the reliance element may sometimes be presumed." *Liberty*

1 *Lending Serv. v. Canada*, 293 Ga.App. 731, 741 (Ga. Ct. App. 2008) (concluding class-wide reliance  
2 could be inferred based upon “fact that similar written representations were common to all the  
3 security agreements at issue”; certifying class claims for common law fraud). *See also Vasquez v.*  
4 *Superior Court of San Joaquin County*, 94 Cal.Rptr. 796, 484 P.2d 964, 973 (1971) citing Williston  
5 on Contracts § 1515 (3d ed. 1970) (“where action is taken in response to material representations,  
6 “in the absence of evidence showing the contrary, it will be presumed that the representations were  
7 relied on”); *Arenson v. Whitehall Convalescent & Nursing Home, Inc.*, 164 F.R.D. 659, 666 (N.D.Ill.  
8 1996) (“Even for the common law fraud claim, which requires proof of reliance, it is well  
9 established that individual issues of reliance do not thwart class actions.”) (citations omitted);  
10 *Gruber v. Price Waterhouse*, 117 F.R.D. 75, 81 (E.D.Pa.1987) (“[T]he existence of individual  
11 questions of reliance does not defeat class certification ....”).

12 For instance, in *Chavez* – a similar case dealing with misrepresentations on beverage labels –  
13 Chief Judge Walker recently explicitly rejected arguments that individual issues of reliance would  
14 predominate and prevent certification of a common law fraud claim on behalf of a national class of  
15 “consumers who purchased a Blue Sky beverage bearing the allegedly misleading labels in violation  
16 of state [labeling] laws.” 268 F.R.D. at 377. As Chief Judge Walker explained in certifying a  
17 national litigation class, “a presumption, or at least an inference, of reliance arises wherever there is  
18 a showing that a misrepresentation was material [that is] if ‘a reasonable man would attach  
19 importance to its existence or nonexistence.’” *Id.*, citing *In re Tobacco II Cases*, 46 Cal.4th at 327,  
20 93 Cal.Rptr.3d 559, 207 P.3d 20 (Cal. 2009).

21 Here, as in *Chavez*, the alleged misrepresentations on the labels violated applicable product  
22 labeling laws – which is strong evidence of materiality and, *ipso facto*, of reliance. Thus, common  
23 issues clearly predominate with respect to Plaintiffs’ common law fraud claims.

24 In addition, settlement certification of Plaintiffs’ consumer fraud and unjust enrichment  
25 claims is also appropriate. Plaintiffs recognize that the Ninth Circuit Court of Appeals recently held  
26 in *Mazza v. American Honda Motor Co., Inc.* (“*Mazza*”), --- F.3d ---, 2012 WL 89176 (9th Cir. Jan  
27 12, 2012), that certification of a nationwide class of consumers for the purpose of *litigation* under  
28 California’s consumer protection and unjust enrichment laws was inappropriate where the plaintiffs



1 alleged non-uniform misrepresentations and omissions of material facts about an automobile  
2 manufacturer's breaking system. *Mazza*, 2012 WL at \* 12. However, it is undersigned counsel's  
3 understanding that the plaintiffs in *Mazza* is seeking *en banc* review of the ruling. Moreover, to the  
4 extent *Mazza* evades or survives *en banc* review, it should not impact grant of a ***settlement-only***  
5 class certification here.

6 Specifically, *Mazza* holds that in the context of certifying a *litigation* class under Rule 23,  
7 predominance is not met when the court must look to the consumer protection and unjust enrichment  
8 laws of each state. *Id.* at \*12. This ruling is inapplicable here as Plaintiffs seek nationwide class  
9 certification for the purpose of *settlement*, not litigation.

10 Where a settlement class was concerned, the Supreme Court recognized in *Amchem Prods.*  
11 *Inc. v. Windsor* ("*Amchem*"), 521 U.S. 591, 625 (1997), that "predominance is a test readily met in  
12 certain cases alleging consumer or securities fraud..." The Supreme Court explained that  
13 predominance "tests whether proposed classes are sufficiently cohesive to warrant adjudication by  
14 representation." *Id.* at 623. Accordingly when "[c]onfronted with a request for settlement-only class  
15 certification, a district court need not inquire whether the case, if tried, would present intractable  
16 management problems." *Id.* at 620.

17 Relying heavily on *Amchem*, an *en banc* panel of the Third Circuit Court of Appeals,  
18 reviewing a nationwide class certification of consumer fraud and unjust enrichment claims in the  
19 settlement context, recently held that Rule 23's predominance requirement does not preclude  
20 nationwide *settlement-only* class certification of claims brought under the consumer protection and  
21 unjust enrichment laws of all 50 states. *See Sullivan v. DB Investments, Inc.*, --- F.3d ---, 2011 WL  
22 6367740 (3d Cir. Dec. 20, 2011).

23 In *Sullivan*, the parties entered into an agreement to settle claims for antitrust violations on  
24 behalf of a class of indirect purchasers nationwide for claims brought under state antitrust, consumer  
25 protection, and unjust enrichment laws of all 50 states. *Id.* at \*4. In response to the settlement,  
26 objectors attacked predominance arguing settlement class certification was inappropriate due to  
27 differences among various states' consumer protection and unjust enrichment laws, specifically  
28 because many states prohibited indirect purchasers from recovering damages for antitrust injuries.

1 *Id.* at 5. The Third Circuit disagreed. Relying on the Supreme Court’s decision in *Amchem*, the  
2 Third Circuit held that “*in the settlement context, variations in state antitrust, consumer protection*  
3 *and unjust enrichment laws did not present the types of insuperable obstacles that could render*  
4 *class litigation unmanageable.*” *Id.* at \*16 (emphasis added, internal quotation and citation  
5 omitted).

6 Moreover, the Third Circuit found that for the purposes of certifying a nationwide class for  
7 settlement purposes, the Court need not find that each absent class member has a valid claim as this  
8 would inappropriately introduce the requirements of Rule 12(b)(6) into Rule 23. *Id.* at \*17-18 (“a  
9 court may inquire whether the elements of asserted claims are capable of proof through common  
10 evidence, but lacks authority to adjudge the legal validity or soundness of the substantive elements  
11 of asserted claims”). The requirements of Rule 23 are to “assess[]whether a class action ‘would  
12 achieve economies of time, effort, and expense, and promote uniformity of decision as to persons  
13 similarly situated.’” *Id.* at \*11 (quoting Fed. R. Civ. P. 23(b)(3) advisory committee’s note to 1966  
14 amendment).

15 It is under these same guiding principles that the Ninth Circuit has upheld *settlement-only*  
16 class certification in nationwide settlements. *See, e.g., Hanlon*, 150 F.3d at 1022 (finding  
17 predominance met for the purpose of certifying a nationwide settlement class alleging individual  
18 states’ breach of express and implied warranties and “lemon laws”). Similarly, in reliance on  
19 *Sullivan*, Judge Jeffrey S. White of this District also granted preliminary approval of settlement post-  
20 *American Honda* to a national class of walnut purchasers asserting claims under the UCL, FAL and  
21 for unjust enrichment. *See Zeisel v. Diamond Foods, Inc.*, Case No. 3:10-cv-01192 (N.D.Cal.), at  
22 Docs. 210 (granting preliminary approval of nationwide settlement) and 212 (granting plaintiff leave  
23 to file supplemental brief on *American Honda* and *Sullivan*), attached as Kravec Decl. Exs. 5 and 6.

24 In sum, Plaintiffs have met their burden at this preliminary stage of demonstrating that the  
25 Settlement Classes’ claims are based on substantially uniform principles of law, and that common  
26 issues of law and fact remain the predominant focus of the Actions.

1 **c. A Class Action Is Superior To Other Methods Of Adjudication.**

2 The “superiority” requirement of Rule 23(b)(3) is also easily met in this case. Rule 23(b)(3)  
3 identifies four factors relevant to a superiority inquiry: (1) the class members' interests in  
4 individually prosecuting separate actions; (2) whether any litigation concerning the controversy has  
5 already been brought by class members; (3) the desirability of concentrating the litigation of the  
6 claims in the particular forum; and (4) the likely difficulties in managing a class action. *See* Fed. R.  
7 Civ. P. 23(b)(3)(a)-(d). “[T]he purpose of the superiority requirement is to assure that the class  
8 action is the most efficient and effective means of resolving the controversy.” *Wolin v. Jaguar Land*  
9 *Rover North America, LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (citing 7AA Charles Wright,  
10 Arthur Miller & Mary Kay Kane, *Federal Practice and Procedure*, § 1779 at 174 (3d ed.2005).

11 Here, each of the Rule 23(b)(3) “superiority” factors clearly militates in favor of class  
12 certification. First, there is no interest by Settlement Class Members to individually litigate. Where  
13 damages suffered by each putative class member are small compared to the cost of litigating, this  
14 factor weighs in favor of certifying a class action. *See Wolin*, 617 F.3d at 1175. Although the  
15 damage resulting from Defendants’ alleged misrepresentations to the Settlement Classes are real and  
16 significant, the cost of individually litigating such a case against Unilever or B&J would easily  
17 exceed the value of any relief that could be obtained by any one purchaser. This, alone, warrants a  
18 finding that a class action is a superior method of adjudication. *See Tchoboian v. Parking Concepts,*  
19 *Inc.*, 2009 WL 2169883, at \*7 (C.D. Cal. Jul. 16, 2009) (granting motion for class certification and  
20 noting that “[t]his superiority inquiry requires a comparative evaluation of alternative mechanisms of  
21 dispute resolution.”); *Baghdasarian v. Amazon.com, Inc.*, 2009 WL 2263581, at \*7 (C.D. Cal., Jul.  
22 7, 2009) (granting motion for class certification and noting that the superiority inquiry is geared to  
23 address “the problem that small recoveries do not provide the incentive for any individual to bring a  
24 solo action prosecuting his or her rights.”). A class action is the superior method to adjudicate class  
25 claims when it will protect the rights of class members who may lack the financial resources to bring  
26 the alleged wrongdoers into court. *Amchem Prods., Inc.*, 521 U.S. at 617. A class action is the  
27 superior method for managing litigation if no realistic alternative exists. *Valentino v. Carter-*  
28 *Wallace, Inc.*, 97 F.3d 1227, 1234 -1235 (9th Cir. 1996).

1 The other factors also each weigh in favor of certification. Regarding the second factor,  
2 there is no evidence of any other litigation involving the claims asserted in the present case. The  
3 third factor also favors certification because efficiency makes it desirable to litigate similar, related  
4 claims in one forum. The fourth factor points to the superiority of a class approach because there is  
5 nothing before the Court to suggest difficulty in managing this case as a settlement class action. On  
6 the contrary, litigating all claims together avoids the risk of inconsistent results for Defendants and  
7 for all Settlement Class Members. In short, a class action here promotes judicial efficiency, avoids  
8 inconsistency, and provides a single forum to resolve numerous common claims.

9 Because each of the proposed Settlement Classes meets all the applicable requirements for  
10 certification under Federal Rule of Civil Procedure 23, the Breyers Settlement Class and the B&J  
11 Settlement Class should be conditionally certified from purposes of settlement. At the Fairness  
12 Hearing, the Court will have the further opportunity to revisit this conditional certification in  
13 deciding whether to grant Final Approval to the Settlement Agreements.

14 **B. The Substantive Terms Of The Settlements Are Fair, And Should Be Granted**  
15 **Preliminary Approval**

16 **1. The Proposed Settlements Are Within The Range Of Possible Approval**  
17 **As Fair, Reasonable, And Adequate**

18 Preliminary approval should also be granted to the Settlements because their terms are fair  
19 and reasonable. Ultimately, the decision as to whether to grant preliminary approval to a settlement  
20 of a class action is a matter left to the discretion of the trial court. *See Castro v. Zenith Acquisition*  
21 *Corp.*, 2007 WL 81905, \*1 (N.D. Cal. Jan. 9, 2007). In exercising that discretion, however, the  
22 Court should bear in mind that “there is an overriding public interest in settling and quieting  
23 litigation,” and this is “particularly true in class action suits.” *Van Bronkhorst v. Safeco Corp.*, 529  
24 F.2d 943, 950 (9th Cir. 1976). Recognizing that a settlement represents an exercise of judgment by  
25 the negotiating parties, *see Torrasi v. Tucson Elec. Power*, 8 F.3d 1370, 1375-1376 (9th Cir. 1993),  
26 the Ninth Circuit has held that “the court’s intrusion upon what is otherwise a private consensual  
27 agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to  
28 reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or

1 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,  
2 reasonable and adequate to all concerned.” *Officers for Justice v. Civil Service Comm’n*, 688 F.2d  
3 615, 625 (9th Cir. 1982).

4 The general standard by which courts are guided when deciding whether to grant preliminary  
5 approval to a class action settlement is whether the proposed settlement falls within the range of  
6 what could be “fair, adequate, and reasonable,” so that notice may be given to the proposed class,  
7 and a hearing for final approval may be scheduled. *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276  
8 (9th Cir. 1992); *see also Gattreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7<sup>th</sup> Cir. 1982) (If the court finds  
9 that the proposed settlement is “within the range of possible approval” and that notice should be  
10 given, “the next step is the fairness hearing.”).

11 The proposed Settlements assuredly satisfy the foregoing criteria. The terms of the  
12 Settlement Agreements provide B&J and Breyers Settlement Class Members with meaningful relief  
13 that addresses the precise legal injury that was alleged in the *Astiana*, *Thurston* and *Corriette*  
14 Actions. The recovery offered is real and substantial. In addition to the injunctive relief secured by  
15 the Settlements, each qualifying Settlement Class Member is entitled to receive \$2.00 per package of  
16 Ice Cream Products purchased. Exhibit A (Breyers Settlement Agreement) at Section III(C)(1)(b);  
17 Exhibit B (B&J Settlement Agreement) at Section III(C)(1)(b). Class Members may claim up to  
18 three packages with a sworn attestation of purchase and claim up to ten packages with submission of  
19 adequate proofs of purchase. *Id.* The amounts payable to Settlement Class Members under the  
20 Settlements reasonably approximate the amounts that could have been recovered at trial on a price  
21 premium theory or through restitutionary disgorgement of profits. Indeed, the \$2.00 per package  
22 amount is about 60% of the average retail price paid by Settlement Class Members. Of course,  
23 Defendants’ wholesale price (*i.e.*, revenue) and ultimate profit per package after deduction of costs is  
24 lower than the retail price. By any measure, the Settlements’ terms are fair and reasonable.

25 The Settlements’ terms are also fair and reasonable when considered in light of the uncertain  
26 prospects and risks faced by Plaintiffs and the putative classes. Defendants vigorously denied  
27 liability (and still do) and voiced their intention to vigorously contest not only the ultimate liability  
28 but also the amount of damages. Although the *Thurston/Corriette* Plaintiffs and Plaintiff *Astiana*

1 remained confident of the merits of their cases, the results were not predictable with any degree of  
2 certainty. Further, even if judgment were entered against either or both Defendants, they could still  
3 appeal. Such an appeal to the Ninth Circuit would likely take years to resolve, such that, even if  
4 successful, ultimate relief to the Settlement Classes would likely be years down the road.

## 5 **2. The Settlement Was A Product Of Adversarial Arms'-Length Negotiation**

6 The discussions and negotiations leading up to the Settlements were conducted in vigorous,  
7 adversarial, and arms-length fashion, which provides added indicia of the fairness of the Settlements.

8 Here, it is undeniable that the settlement negotiations were non-collusive and adversarial in  
9 nature. Before engaging in any settlement talks, the parties vigorously litigated Defendants' motions  
10 to dismiss and motions to strike, which raised exhaustive challenges to Plaintiffs' claims. Further, it  
11 was only after Plaintiffs demonstrated the strength of their claims by overcoming Defendants'  
12 motions to dismiss and strike that Defendants were willing to consider the possibility of mediation.  
13 Thus, it was only in September 2011, after months of litigation and discovery, that the agreements in  
14 principle to settle the three Actions were reached. The settlement negotiations were then presided  
15 over by a professional mediator, including a one-day, in person, session followed by five weeks of  
16 continued negotiations conducted by the mediator.

17 Moreover, the Settlement Agreements were reached at a time when uncertainties lay ahead  
18 for each party. All parties faced the prospect of a protracted and costly discovery process. In  
19 addition, at the Case Management Conference, Defendants indicated that they intended to file a  
20 motion for summary judgment, *see Astiana*, Doc. 66 at 3, the outcome of which, like any other  
21 adversarial motion in litigation, was uncertain. If the motion were granted, then, subject to any  
22 appeal, Defendants' exposure would decrease, potentially completely. On the other hand, even if the  
23 motion were denied, Plaintiffs faced the prospect of arduous preparations for a trial on the merits,  
24 which could go either way. Thus, the chronology of the proceedings made it particularly reasonable  
25 for the parties to explore a settlement at the time that they did, if doing so could be done on a fair  
26 and reasonable basis.

### 3. The Proposed Settlement Is Recommended By Class Counsel

The recommendations of class counsel are entitled to a presumption of reasonableness. *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D.Cal. 1979). Here, class counsel, and with the well-informed support of Plaintiffs Thurston, Denmon-Clark, Corriette, Waldron, and Astiana, believe strongly that the Settlements offer broad and valuable relief to the Breyers Settlement Class and B&J Settlement Class, and are in the best interest of the Settlement Classes.

### 4. Summary

The factors to consider in determining the fairness of a proposed settlement must be analyzed in the context of the settlement as a whole. *Staton v. Boeing*, 327 F.3d 938, 959, 961 (9th Cir. 2003). Here, all pertinent factors indicate that the Breyers and B&J Settlements are “within the range” of being fair, reasonable, and adequate. *See, e.g., In re Tableware Antitrust Litig.*, 484 F.Supp. 2d 1078, 1079-80 (N.D. Cal. 2007); *Ross v. Trex Co., Inc.*, 2009 WL 2365865, \*3 (N.D. Cal. July 30, 2009). Because the proposed Settlements amount to a reasonable means of resolving the Actions, and because the risks and expenses inherent in continuing to litigate these matters are significant and uncertain, the proposed Settlements should be preliminarily approved.

#### C. The Notice Plan Should Be Approved.

Rule 23 and due process concerns call for notice to be provided to absent Settlement Class Members in order to inform them of the proposed Settlements, and grant them the opportunity to opt-out or object. *See Fed. R. Civ. P. 23(c)(2)*. The notice and means of disseminating it must be the “best notice practicable” under the circumstances. *See Mullane v. Central Hanover Trust*, 339 U.S. 306, 314-315, 317 (1950). That test is clearly satisfied by the parties’ proposed notice.

Here, the parties propose to disseminate notice of the proposed class action settlements by: (1) U.S. Mail for putative class members whose names and addresses are known; (2) by publication as set forth in the Notice Plans for the remainder of the putative classes whose names and address cannot be determined; (3) Website provided by the class action claims administrator and the posting of notices and other settlement papers on class counsel’s websites. Exhibit A (Breyers Settlement Agreement) at Section V(1) and Exhibit A6 (Decl. of Mark Rapazzini setting forth Breyers Notice Plan); Exhibit B (B&J Settlement Agreement) at Section V(1) and Exhibit B6 (Decl. of Mark



1 Rapazzini setting forth B&J Notice Plan). With respect to the publication notice component, the  
2 parties propose to disseminate notice of each of the Settlements through the websites and publication  
3 in four national circulation periodicals in which Defendants' have historically advertised their Ice  
4 Cream Products, namely Cooking Light, Country Living, Entertainment Weekly (print and e-  
5 versions), and Rolling Stone (print and e-versions).<sup>4</sup> Kravec Decl. Ex. 7 (Unilever 30(b)(6)  
6 testimony) at 46; Kravec Decl. Ex. 8 (B&J 30(b)(6) testimony) at 6. These publications have a  
7 collective readership of over 45 million people. *See* Exhibit A6 (Rapazzini Decl. on Breyers Notice  
8 Plan) at attachment B thereto; Exhibit B6 (Rapazzini Decl. on B&J Notice Plan) at attachment B  
9 thereto. The proposed Notice Plans are tailored to the demographics of consumers of B&J and  
10 Breyers Ice Cream Products, as well as to those magazines in which Defendants have historically  
11 published, and are appropriate to reach members of the Classes. *See Id.* at ¶ 2 and Ex. 1 thereto;  
12 Kravec Decl. Ex. 7 (Unilever 30(b)(6) testimony) at 45-46; Kravec Decl. Ex. 8 (B&J 30(b)(6)  
13 testimony) at 5-9. *See also Zeisel v. Diamond*, Case No. 3:10-cv-01192 (N.D.Cal.), Doc. 194 at 2  
14 (approving similar proposed plan of notice in litigation context where notice was tailored to reach  
15 consumers), attached as Kravec Decl. Exhibit 9.

16 The Notice Plans constitute the "best notice practicable" under the circumstances and in  
17 similar circumstances has been approved by courts. *See, e.g., Jenson v. First Trust Corp.*, 2008 U.S.  
18 Dist. LEXIS 45078 (C.D. Cal. June 9, 2008) (mail notice to all members who could be identified  
19 through reasonable effort and by publication, provided the best notice practicable); *In re Portal*  
20 *Software Sec. Litig.*, 2007 U.S. Dist. LEXIS 51794, 18-19 (N.D. Cal. June 30, 2007) (notice by mail  
21 and publication was the "best notice practicable under the circumstances"); *In re Domestic Air*  
22 *Transp Antitrust Litig.*, 141 FRD 534, 550-51 (N.D. Ga. 1992) (providing notice by mail to those  
23 class members who could be identified and by publication only to those who could not be identified

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24  
25 <sup>4</sup> The parties propose to publish the Breyers Short-form Notice in Country Living and Cooking Light  
26 magazines, and the B&J Short-form Notice in Rolling Stone and Entertainment Weekly. *See* Exhibit  
27 A6 (Rapazzini Decl. on Breyers Notice Plan) at ¶¶ 2-3; Exhibit B6 (Rapazzini Decl. on B&J Notice  
28 Plan at ¶¶ 2-3). However, the Breyers Short-form Notice and the B&J Short-form Notice both  
appraise Settlement Class Members of both Settlements. *See* Exhibit A4 (Breyers Short-form  
Notice); Exhibit B4 (B&J Short-form Notice).



1 satisfies due process); *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal.  
 2 2007)(“because defendants do not have a list of potential class members [] the court agrees with  
 3 plaintiffs that notice by publication is the only reasonable method of informing class members of the  
 4 pending class action and []settlement); Manual for Complex Litigation (4th Ed. 2004) § 21.311  
 5 (“Publication in magazines, newspapers, or trade journals may be necessary if class members are not  
 6 identifiable after reasonable effort”); *Bellows v. NCO Fin. Sys.*, 2008 U.S. Dist. LEXIS 114451, 6-7  
 7 (S.D. Cal. Sept. 5, 2008) (summary notice in USA Today, with national distribution further directing  
 8 class members to a dedicated website was the best notice practicable under the circumstances).

9 In addition, the proposed forms of notice also comply with due process requirements and  
 10 Rule 23. The proposed forms of notice are attached as Exhibits 3 and 4 to the Breyers Settlement  
 11 Agreement, and as Exhibits 3 and 4 to the B&J Settlement Agreement. See Exhibits A3, A4, B3, B4  
 12 attached hereto. The proposed forms follow the guidelines developed by the Federal Judiciary  
 13 Center, [www.fjc.gov](http://www.fjc.gov), use simple and concise language, and effectively inform absent Settlement  
 14 Class Members as to the terms of the Settlements, as well as their right to avail themselves of the  
 15 Settlements, opt-out, or object. See Exhibits A3, A4, B3, and B4.

16 The forms of notice and plan of dissemination should, therefore, be approved.

### 17 **CONCLUSION**

18 For all the foregoing reasons, the Plaintiff’s Unopposed Motion for Preliminary Approval of  
 19 Class Action Settlements should be GRANTED.

20 Dated: February 24, 2012

21 STEMBER FEINSTEIN DOYLE  
 22 PAYNE & KRAVEC, LLC

GARDY & NOTIS, LLP

23 By: s/Joseph N. Kravec, Jr.  
 24 Joseph N. Kravec, Jr.  
 (admitted *pro hac vice*)

By: s/Kelly A. Noto  
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28

**EXHIBIT B**  
**TO MOTION FOR**  
**PRELIMINARY APPROVAL**

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8 *Attorneys for Plaintiff Astiana*

9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 SKYE ASTIANA on behalf of herself and all  
others similarly situated,

12 Plaintiff,

13 v.

14 BEN & JERRY'S HOMEMADE, INC.,

15 Defendant.

Case No. 4:10-cv-04387-PJH

**SETTLEMENT AGREEMENT**

Hon. Phyllis J. Hamilton

1 The undersigned parties (collectively, the “Parties,” and each separately a “Party”) to the  
2 above-captioned action (the “Action”), by and through their attorneys, have entered into the  
3 following Stipulation of Class Action Settlement (the “Agreement”), subject to the approval of this  
4 Court.

5 **I. RECITALS**

6 This Agreement, including its attached Exhibits, is entered into by and among Plaintiff  
7 SKYE ASTIANA (“Plaintiff”), on behalf of herself and on behalf of each of the Settlement Class  
8 Members, and defendant BEN & JERRY’S HOMEMADE, INC. (“Unilever” or “Defendant”).  
9 Capitalized terms used herein are defined in Section II of this Agreement or indicated in parentheses  
10 elsewhere in this Agreement. Subject to Court approval as required by applicable Federal Rules of  
11 Civil Procedure, and as provided herein, the Parties hereby stipulate and agree that, in consideration  
12 for the promises and covenants set forth in the Agreement and upon the entry by the Court of a  
13 Final Judgment and Order Approving Settlement and the occurrence of the Effective Date, the  
14 Action shall be settled and compromised upon the terms and conditions contained herein.

15 WHEREAS on September 29, 2010, plaintiff Skye Astiana filed a class action complaint  
16 against Unilever in the United States District Court for the Northern District of California  
17 captioned, *Astiana, et al. v. Ben & Jerry’s Homemade, Inc.*, No. 4:10-cv-04387-PJH (N.D. Cal.)  
18 (the “Astiana Action”), on behalf of herself and other consumers who, on or after September 28,  
19 2006, purchased in the State of California Ben & Jerry’s Ice Cream products that were labeled “All  
20 Natural” but contained alkalized cocoa; and

21 WHEREAS, the complaint generally alleges that Ben & Jerry’s packaged, marketed and  
22 sold its ice cream products as being “All Natural” despite the fact they contain alkalized cocoa—a  
23 non-natural, processed ingredient that additionally contains man-made, synthetic ingredients  
24 including potassium carbonate; and

25 WHEREAS on November 24, 2010, Defendant filed a motion to dismiss the Action, on  
26 December 8, 2011, plaintiff Astiana filed an amended class action complaint against Unilever, and  
27 on December 20, 2010, Defendant filed a motion to dismiss the Action; and

1 WHEREAS on May 3, 2011, the Honorable Phyllis J. Hamilton entered a Related Case  
2 Order relating *Catanese, et al. v. UNILEVER d/b/a BREYERS*, No. 11-CV-01811-PJH (N.D. Cal.)  
3 to the Thurston Action and *Astiana v. Ben & Jerry's Homemade, Inc.*, No. 4:10-cv-04387-PJH  
4 (N.D. Cal.); and

5 WHEREAS, on May 26, 2011, the Honorable Phyllis J. Hamilton entered an order Denying  
6 Defendants' Motions to Dismiss and Motions to Strike [Docket No. 62]; and

7 WHEREAS on August 22, 2011, Ben & Jerry's began producing to Plaintiffs' counsel  
8 internal, non-public documents pertaining to the Action in response to Plaintiff's requests for  
9 discovery; and

10 WHEREAS the parties agreed to engage the services of a private mediator to explore the  
11 possibility of a settlement of the Action, and between September 14, 2011, and October 25, 2011,  
12 following the exchange of mediation position statements, the parties engaged in mediation and  
13 thereafter held extensive arm's-length discussions with respect to a potential settlement of the  
14 Action; and

15 WHEREAS counsel for all parties to the Action have reached an agreement in principle set  
16 forth in this Agreement, providing for, among other things, the settlement of the Action between  
17 and among Plaintiff, on behalf of herself and the Settlement Class, and Unilever, on the terms and  
18 subject to the conditions set forth below; and

19 WHEREAS Plaintiffs' counsel have determined that a settlement of the Action on the terms  
20 reflected in this Agreement is fair, reasonable, adequate, and in the best interests of Plaintiff and the  
21 Settlement Class; and

22 WHEREAS Unilever, to avoid the costs, disruption and distraction of further litigation, and  
23 without admitting the validity of any allegations made in the Action, or any liability with respect  
24 thereto, has concluded that it is desirable that the claims against it be settled and dismissed on the  
25 terms reflected in this Agreement;

26 NOW, THEREFORE, this Agreement is entered into by and among the Parties, by and  
27 through their respective counsel and representatives, and the Parties agree that: (a) upon the  
28

1 Effective Date, the Action and all Released Claims shall be settled and compromised as between  
2 Plaintiff and the Settlement Class on the one hand, and Unilever on the other hand; and (b) upon  
3 Final Approval of the Agreement, the Final Judgment and Order Approving Settlement,  
4 substantially in the form attached as Exhibit 1 hereto, shall be entered dismissing the Action with  
5 prejudice and releasing all Released Claims against Plaintiff, Unilever and all Released Parties, all  
6 on the following terms and conditions:

7 **II. DEFINITIONS**

8 As used in the Agreement and the Exhibits hereto, in addition to any definitions elsewhere  
9 in the Agreement, the following terms shall have the meanings set forth herein:

10 1. "Action" or "Complaint" means *Astiana, et al. v. Ben & Jerry's, Homemade, Inc.*,  
11 No. 4:10-cv-04387-PJH (N.D. Cal.).

12 2. "Administrative Costs" means all costs incurred by the Claims Administrator,  
13 excluding Notice Expenses.

14 3. "Agreement" means this Settlement Agreement (including all Exhibits attached  
15 hereto).

16 4. "Award" means the monetary relief obtained by Settlement Class Members  
17 pursuant to Section III.C.1. and Section IV of this Agreement.

18 5. "Attorneys' Fees and Expenses" means such funds as may be awarded by the  
19 Court to Co-Lead Counsel based on the stipulation described herein to compensate them and all  
20 other Plaintiffs' Counsel in this Action for their fees and expenses in connection therewith, as  
21 described more particularly in Section VIII of this Agreement.

22 6. "Authorized Claimant" means any member of the Settlement Class who timely  
23 submits a valid Claim Form and confirms on that form the information required.

24 7. "Claim" means a request for relief pursuant to Sections III.C.1. and IV of this  
25 Agreement submitted by a Settlement Class Member on a Claim Form filed with the Claims  
26 Administrator in accordance with the terms of the Agreement.

27 8. "Claim Form" means the form to be used by a Settlement Class Member to file a  
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1 Claim with the Claims Administrator. The proposed Claim Form is subject to Court approval and  
2 attached hereto as Exhibit 2.

3 9. “Claims Administration Expenses” means the expenses incurred by the Claims  
4 Administrator in administering the Notice Program (as described in Section V, below) and  
5 processing all Claims made by Settlement Class Members, including all Notice Expenses.

6 10. “Claims Administrator” means Rust Consulting, Inc.

7 11. “Claims Deadline” means the date by which all Claim Forms must be postmarked  
8 or received by the Claims Administrator to be considered timely. The Claims Deadline shall be  
9 clearly set forth in the Court Orders granting Preliminary and Final Approval of the Settlement,  
10 the Class Notice, the Claims Administrator's dedicated website, and the front page of the Claim  
11 Form, and shall be 60 days after the Notice Date.

12 12. “Class Notice” or “Notice” means the forms of notice to be disseminated to  
13 Settlement Class Members informing them about the Settlement. Copies of each of the proposed  
14 Notices are attached respectively in the form of Exhibits 3 and 4.

15 13. “Class Representative” means plaintiff Skye Astiana.

16 14. “Co-Lead Counsel” means the Law Offices of Janet Lindner Spielberg, the Braun  
17 Law Group, P.C., and Stember Feinstein Doyle Payne & Kravec, LLC.

18 15. “Court” means the United States District Court for the Northern District of  
19 California, the Honorable Phyllis J. Hamilton presiding.

20 16. “Defendant” means BEN & JERRY’S, HOMEMADE, INC. (“Unilever”) and  
21 includes, without limitation, all related entities including but not limited to parents, subsidiaries,  
22 agents, employees and assigns, predecessors, successors and affiliates.

23 17. “Effective Date” means either: (a) the date thirty-five (35) days after the entry of  
24 the Final Judgment and Order Approving Settlement, if no timely motions for reconsideration  
25 and/or no appeals or other efforts to obtain review have been filed; or (b) in the event that an  
26 appeal or other effort to obtain review has been initiated, the date thirty-five (35) days after such  
27 appeal or other review has been finally concluded and is no longer subject to review, whether by  
28



1 appeal, petitions for rehearing, petitions for rehearing en banc, petitions for writ of certiorari, or  
2 otherwise.

3 18. “Final Approval Hearing” means the hearing to be conducted by the Court on such  
4 date as the Court may order to determine of the fairness, adequacy, and reasonableness of the  
5 Settlement in accordance with applicable jurisprudence.

6 19. “Final Judgment and Order Approving Settlement” means the Final Judgment and  
7 Order Approving Settlement to be entered by the Court, substantially in the form of Exhibit 1 and  
8 conforming to Section IX herein, approving the Settlement, as fair, adequate, and reasonable,  
9 confirming the certification of the Settlement Class for purposes of the Settlement only, and  
10 issuing such other findings and determinations as the Court and/or the Parties deem necessary and  
11 appropriate to implement the Settlement.

12 20. “Ice Cream Product” or “Unilever Ice Cream Product” or “Ben & Jerry’s Ice  
13 Cream” means Ben & Jerry’s All Natural premium ice creams, yogurts, and sorbets containing  
14 alkalized cocoa including: (a) the following All Natural ice cream flavors: Banana Split, Boston  
15 Cream Pie, Brownie Batter, Cake Batter, Cheesecake Brownie, Cherry Garcia, Chocolate,  
16 Chocolate Chip Cookie Dough, Chocolate Fudge Brownie, Chocolate Macadamia, Chubby  
17 Hubby, Chunky Monkey, Dublin Mudslide, Fossil Fuel, Half Baked, Imagine Whirled Peace,  
18 Karamel Sutra, Milk & Cookies, Mint Chocolate Cookie, Mud Pie, Neapolitan Dynamite, New  
19 York Super Fudge Chunk, Oatmeal Cookie Chunk, Peanut Butter Cup, Phish Food, S’ mores,  
20 Triple Caramel Chunk, Turtle Soup, and Vanilla Caramel Fudge; AND (b) the following All  
21 Natural frozen yogurt flavors: Froyo Cherry Garcia, Froyo Chocolate Fudge Brownie, Froyo  
22 Half-Baked; AND (c) the following All Natural popsicle flavors: Cherry Garcia, Fudgy  
23 Brownies, and Half Baked.

24 21. “Motion for Preliminary Approval of Settlement” means the motion, to be filed by  
25 Plaintiff, for Preliminary Approval of this Agreement and includes all supporting papers.

26 22. “Notice Expenses” means the reasonable costs and expenses incurred in  
27 connection with preparing, printing, mailing, disseminating, posting, emailing, internet hosting  
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1 and publishing the Class Notice.

2 23. "Notice Date" means the date by which the Claims Administrator shall cause the  
3 Class Notice to be disseminated to potential Settlement Class Members as provided in the  
4 Agreement and shall be no later than 95 days after the Court enters an order granting Preliminary  
5 Approval of this Settlement. Notice shall be made in accordance with the Notice Program  
6 described in Section V, below.

7 24. "Opt Out Date" means the date, to be set by the Court, by which a Request For  
8 Exclusion must be filed with the Claims Administrator in order for a Settlement Class Member to  
9 be excluded from the Settlement Class.

10 25. "Objection Date" means the date by which Settlement Class Members must file  
11 objections, if any, to the Settlement in accordance with Section VI.1. herein.

12 26. "Plaintiff" means plaintiff Skye Astiana.

13 27. "Plaintiffs' Counsel" includes all attorneys representing Plaintiff or any Settlement  
14 Class Member.

15 28. "Preliminary Approval" means the order to be entered by the Court, substantially  
16 in the form of Exhibit 5 and conforming to Sections III.A. and III.B. herein, conditionally  
17 certifying the Settlement Class, preliminarily approving the Settlement, setting the date of the  
18 Final Approval Hearing, appointing Co-Lead Counsel as Counsel for the Settlement Class,  
19 approving the Notice Program (described in Section V, below), Class Notice, and Claim Form,  
20 and setting dates for the Claims Deadline, Opt Out Date, Objection Date, and Notice Date.

21 29. "Proof of Purchase" means documentation from a third-party commercial source  
22 reasonably establishing the fact of purchase of a Unilever Ice Cream Product including, but not  
23 limited to, receipts for the purchase of Ice Cream Products and/or UPC codes from containers of  
24 Ice Cream Products.

25 30. "Request For Exclusion" means the written communication that must be filed with  
26 the Claims Administrator and postmarked on or before the Opt Out Date and Objection Date by a  
27 Settlement Class Member who wishes to be excluded from the Settlement Class (as described in  
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1 Section VI.2, below).

2 31. “Residual Restitution” or “Donation Amount” means the amount calculated by  
3 subtracting from five million dollars (\$5,000,000) the total Restitution paid to Settlement Class  
4 Members in satisfaction of validly submitted Claims.

5 32. “Restitution” means the total compensation paid to Settlement Class Members in  
6 satisfaction of validly submitted Claims.

7 33. “Settlement” means the terms and conditions of this Agreement.

8 34. “Settlement Class” and “Settlement Class Member(s)” each means all consumers  
9 who purchased Ben & Jerry’s Ice Cream Products from September 28, 2006 through the date of  
10 Preliminary Approval. Excluded from the Settlement Class are: (i) Unilever and its employees,  
11 principals, affiliated entities, legal representatives, successors and assigns; (ii) any person who  
12 files a valid, timely Request for Exclusion; and (iii) the Judge(s) to whom this Action is assigned  
13 and any members of their immediate families.

14 35. “Settlement Consideration” means the consideration exchanged by and between  
15 Unilever and the Settlement Class, as set forth in this Agreement.

16 **III. TERMS AND CONDITIONS**

17 **A. CONDITIONAL CLASS CERTIFICATION FOR SETTLEMENT**  
18 **PURPOSES ONLY**

19 1. This Agreement is for settlement purposes only, and neither the fact of, nor any  
20 provision contained in this Agreement or its Exhibits, nor any action taken hereunder, shall  
21 constitute, be construed as, or be admissible in evidence as an admission of: (a) the validity of  
22 any claim or allegation by Plaintiff, or of any defense asserted by Defendant, in the Action or any  
23 other action or proceeding; or (b) any wrongdoing, fault, violation of law, or liability of any kind  
24 on the part of any Party, Released Party, Settlement Class Member, or their respective counsel.

25 2. As part of her Motion for Preliminary Approval of Settlement, Plaintiff seeks  
26 certification of the Settlement Class. Plaintiff seeks to certify the Settlement Class for settlement  
27 purposes only. The Settlement Class shall be defined as: all persons in the United States who  
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1 purchased Ben & Jerry's Unilever Ice Cream Products from September 28, 2006 through the date  
2 of Preliminary Approval of the Settlement. Excluded from the Settlement Class are: (i) Unilever  
3 and its employees, principals, affiliated entities, legal representatives, successors and assigns; (ii)  
4 any person who files a valid, timely Request for Exclusion; and (iii) the Judges to whom this  
5 Action is assigned and any members of their immediate families.

6 3. Subject to Preliminary Approval and for settlement purposes only, Plaintiff Skye  
7 Astiana is appointed Class Representative of the Settlement Class and her counsel, Janet Lindner  
8 Spielberg of the Law Offices of Janet Lindner Spielberg, Michael D. Braun, of the Braun Law  
9 Group, P.C., and Joseph N. Kravec, Jr., of Stember Feinstein Doyle Payne & Kravec, LLC, are  
10 appointed Co-Lead Counsel for the Settlement Class.

11 4. This Agreement is without prejudice to the rights of each Releasing Party and each  
12 Released Party (as defined below) to: (a) seek or oppose class certification of the Settlement  
13 Class in this Action should the Final Judgment and Order Approving Settlement not be approved  
14 or implemented for any reason; or (b) seek or oppose class certification in any other action  
15 (unless barred by the Releases).

16 **B. REQUIRED EVENTS AND COOPERATION BY THE PARTIES**

17 1. Preliminary Approval: The Settling Parties and their respective counsel agree that  
18 Plaintiff shall seek Preliminary Approval and Final Approval of the Settlement as described  
19 herein. As soon as reasonably practicable after execution of the Agreement, Plaintiff shall submit  
20 a Motion for Preliminary Approval of Settlement, including this Agreement and all Exhibits, and  
21 shall seek an order of Preliminary Approval from the Court, substantially in the form of Exhibit 5  
22 hereto, which, by its terms shall:

23 a. Determine preliminarily that this Agreement and the Settlement set forth  
24 herein fall within the range of reasonableness meriting possible entry of the Final Judgment and  
25 Order Approving Settlement and dissemination of Notice to the Settlement Class;

26 b. Determine preliminarily that the Class Representative is a member of the  
27 Settlement Class and that, for purposes of the Settlement, satisfies the requirements of typicality,  
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1 and that she adequately represents the interests of the Settlement Class Members, and appoint her as  
2 the representative of the Settlement Class;

3 c. Determine preliminarily that the Settlement Class meets all applicable  
4 requirements of Fed. R. Civ. P. 23 (“Rule 23”), and conditionally certify the Settlement Class for  
5 purposes of the Agreement under Rule 23 for settlement purposes only;

6 d. Appoint Co-Lead Counsel as counsel for the Settlement Class pursuant to  
7 Rule 23(g).

8 e. Schedule the Final Approval Hearing to: (i) determine finally whether the  
9 Settlement Class satisfies the applicable requirements of Rule 23 and should be finally certified for  
10 settlement purposes only; (ii) review objections, if any, regarding the Agreement; (iii) consider the  
11 fairness, reasonableness and adequacy of the Settlement; (iv) consider Co-Lead Counsel's  
12 application for an award of attorneys' fees and reimbursement of expenses consistent with the  
13 Agreement of the parties set forth herein; (v) determine the validity of Requests for Exclusion and  
14 exclude from the Settlement Class those persons who validly and timely opt out by the Opt Out  
15 Date; and (vi) consider whether the Court shall issue the Final Judgment and Order Approving  
16 Settlement approving the Settlement and dismissing the Action with prejudice;

17 f. Set a briefing schedule for the Final Approval Hearing;

18 g. Approve the proposed Class Notice and Notice Program (as described  
19 below);

20 h. Approve the designation of Rust Consulting, Inc. as the Claims  
21 Administrator;

22 i. Direct Unilever, the Claims Administrator, or their designee(s) to cause the  
23 Class Notice to be disseminated in the manner set forth in the Notice Program (as described below)  
24 on or before the Notice Date;

25 j. Determine that the Class Notice and the Notice Program (as described  
26 below): (i) meets the requirements of Rule 23(c)(3) and due process; (ii) is the best practicable  
27 notice under the circumstances; (iii) is reasonably calculated, under the circumstances, to apprise  
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1 Settlement Class Members of the pendency of the Actions and their right to object to the proposed  
2 Settlement or opt out of the Settlement Class; and (iv) is reasonable and constitutes due, adequate  
3 and sufficient notice to all those entitled to receive notice;

4 k. Require each Settlement Class Member who wishes to opt out of the  
5 Settlement Class to submit a timely written Request for Exclusion, on or before the Opt Out Date  
6 and the Objection Date, as specified in Section VI.2. herein;

7 l. Rule that any Settlement Class Member who does not submit a timely written  
8 Request for Exclusion will be bound by all proceedings, orders and judgments in the Action;

9 m. Require any Settlement Class Member who wishes to object to the fairness,  
10 reasonableness or adequacy of the Agreement or to the award of attorneys' fees, costs and expenses,  
11 to deliver to Co-Lead Counsel and Unilever's Counsel and to file with the Court, by the Opt Out  
12 Date and the Objection Date, a statement containing the information specified in Section VI.1. of  
13 this Agreement, including a statement of his or her membership in the Class including all of the  
14 information required by the Claim Form in paragraph IV.2.a of this Agreement, a statement of his  
15 or her objection, as well as the specific reason, if any, for each objection, including any legal  
16 support the Settlement Class Member wishes to bring to the Court's attention and any evidence the  
17 Settlement Class Member wishes to introduce in support of his or her objection, and to state  
18 whether the Settlement Class Member and/or his or her counsel wishes to make an appearance at  
19 the Final Approval Hearing, or be forever barred from separately objecting; and

20 n. Require that any Settlement Class Member who wishes to submit a Claim  
21 pursuant to Sections III.C.1 and/or IV herein, submit such Claim in writing on or before the Claims  
22 Deadline in the manner set forth in Section IV herein, or forever be barred from submitting a Claim  
23 under this Agreement.

24 2. Cooperation: The Parties acknowledge that each intends to implement the  
25 Settlement. The Parties shall, in good faith, cooperate and assist with and undertake all  
26 reasonable actions and steps in order to accomplish all required events on the schedule set by the  
27 Court, and shall use their best efforts to implement all terms and conditions of the Agreement.

1           **C.     SETTLEMENT CONSIDERATION**

2           1.     Monetary Relief

3           a.     Unilever will establish and fully fund a “Unilever Restitution Fund” of five  
4 million dollars (\$5,000,000). This fund does not include Plaintiff’s attorneys’ fees and costs.  
5 There will be no reversion. Any amount not paid out as Restitution to the Settlement Class will  
6 be donated to charity as follows:

7                     Through the Unilever Foundation, Ben & Jerry’s Foundation, or any other  
8                     affiliated Unilever charitable foundation, Unilever shall commit to donating to the  
9                     not-for-profit charities and/or causes of its choice related to food or nutrition in the  
10                    United States, which may include but are not limited to such charities as Oxfam  
11                    International, Population Services International (PSI), Save the Children,  
12                    UNICEF, and World Food Programme (WFP), a sum up to \$5 million over a  
13                    three-year period commencing on the Effective Date (the “Donation Amount”).  
14                    This Donation Amount represents the balance after subtracting Claims made and  
15                    paid under the “Unilever Restitution Fund.” Selection criteria for these donations  
16                    shall be solely within the discretion of Unilever. Unilever will certify in writing to  
17                    Co-Lead Counsel that it has fulfilled this commitment within 60 days after the  
18                    third anniversary of the Effective Date.

19           b.     Consumers who purchased Ben & Jerry’s Ice Cream Products labeled “All  
20 Natural” during the class action period of September 28, 2006 through the date of Preliminary  
21 Approval of the Settlement that contained Dutch (i.e., alkalized) cocoa as a listed ingredient will  
22 be allowed to make a Claim against the Unilever Restitution Fund at the rate of \$2.00 per unit.  
23 Any Claim for reimbursement shall be made under penalty of perjury. No documentation is  
24 required for the first 3 (three) units on any individual Claim beyond the statement made under  
25 penalty of perjury. Any individual Claim for reimbursement for more than three units shall also  
26 require documentation in the form of an authentic Proof of Purchase such as receipts or UPC  
27 codes. All Claims shall be submitted via regular mail, and there shall be a maximum of 10 units  
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1 (\$20.00) claimed per household.

2 c. If Unilever rejects any Proof of Purchase, it shall notify Co-Lead Counsel  
3 of how many Claims it has rejected, the names of the rejected Settlement Class Members, and the  
4 reason(s) for rejection no later than 35 days after the Effective Date. Co-Lead Counsel shall  
5 notify Unilever within fifteen (15) days of Co-Lead Counsel's receipt of written notification  
6 identifying the Claims rejected and reasons therefore if Co-Lead Counsel believes some or all of  
7 the rejected Claims should be honored, such notice to be in writing and to identify which Claims  
8 Co-Lead Counsel believes included satisfactory Proof of Purchase and the reason Co-Lead  
9 Counsel believes the Proof of Purchase to be satisfactory.

10 d. In the event Unilever and Co-Lead Counsel are unable to agree on the  
11 handling of rejected Claims, the Parties agree to submit such rejected claims to the Court for final  
12 resolution. Materials submitted to the Court shall be limited to no more than fifteen (15) pages  
13 total briefing per side, and the Court shall resolve such rejected Claims without live hearing  
14 unless otherwise agreed by the Parties or required by the Court. In the Court's discretion, a  
15 telephonic hearing not to exceed ninety (90) minutes may be called.

16 2. Equitable Relief

17 a. Unilever will, as equitable relief pursuant to this Settlement, cease the use  
18 of the term "All Natural" in relation to Ben & Jerry's Ice Cream flavors that contain alkalized  
19 cocoa, including the Ice Cream Products. Unilever has represented that the cost of that equitable  
20 relief amounts to approximately \$7,500 per SKU (i.e., per flavor) just for direct costs of  
21 redesigning and implementing the label changes. This does not include the substantial costs  
22 incurred by Unilever employees and third party vendors in overseeing and implementing the label  
23 change, advertising, and rolling out the label change nationwide. However, the parties have  
24 agreed that this amount shall not be used in valuing the overall Settlement for the purposes of  
25 obtaining a particular percent as an attorneys' fee award, although it may otherwise be used to  
26 support a motion for Attorneys' Fees and Expenses. This change in labeling is only for new  
27 labels printed after the Effective Date of the settlement. Unilever shall be permitted to sell off  
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1 existing Ben & Jerry's Ice Cream inventory with the former labels.

2           b.       Unilever shall provide 60 days written notice to Co-Lead Counsel at the  
3 addresses written below of its intention to reinstate the use of the term "All Natural" in  
4 connection with any Ben & Jerry's Ice Cream flavor or Ice Cream Product that contains alkalized  
5 cocoa.

6           3.       Residual Restitution / Donation Amount

7           a.       Once all proper Settlement Class Member Claims are paid, and any  
8 disputes concerning the validity of Claims have been resolved in accordance with Section  
9 III.C.1.d, above, any Residual Restitution will be considered cy pres which Unilever will donate  
10 to non-interested third party non-profit organization(s) or food bank(s) in the form of food  
11 products as described above in Section III.C.1.a. Unilever will certify in writing that it has  
12 fulfilled this commitment within 60 days after the third anniversary of the Effective Date.

13           4.       Miscellaneous

14           a.       No Restitution shall be paid to Settlement Class Members on Claims  
15 submitted until the Effective Date. All checks issued under this Paragraph shall state that they  
16 must be cashed within 120 days from the date issued or they will become stale. The amount of  
17 any checks under this Paragraph that are not cashed within 120 days from the date issued or that  
18 are returned to the Claims Administrator as undeliverable after mailing to the Settlement Class  
19 Member at the address provided by the Settlement Class Member on the Claim Form, will cease  
20 to be the property of those Settlement Class Members, and shall be added to the Residual  
21 Restitution. The Claims Administrator shall provide Unilever's Counsel and Co-Lead Counsel  
22 with an identification of the checks returned as undeliverable or not cashed within 120 days of the  
23 date issued and of the amounts of those checks to be added to the Residual Restitution.

24 **IV. CLAIM DEADLINES, CLAIM FORMS, AND ADMINISTRATION**

25           1.       The Claim Deadline is 60 days after the Notice Date. All Claims must be  
26 submitted with a Claim Form and received by the Claims Administrator or postmarked by the  
27 Claims Deadline. The Claims Deadline shall be clearly set forth in the Settlement Class Notice,  
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1 the websites of the Claims Administrator, and on the Claim Form. Settlement Class Members  
2 who do not timely submit a completed Claim Form shall not be eligible for an Award.

3           2. Claim Forms must be signed by the Class Member by hand under penalty of  
4 perjury. Claim Forms will be made available by mail and for downloading from the Settlement  
5 Website maintained by the Claims Administrator and may be made available on the websites of  
6 Co-Lead Counsel. Such Claim Form shall be approved by the Court and substantially in the form  
7 attached hereto as Exhibit 2 and must include the following information and/or affirmations:

8           a. The following information relating to purchase:

9           i. The Settlement Class Member's name, address, email address and  
10 telephone number; and

11           ii. Identification of the quantity of Unilever Ice Cream Products for  
12 which the Claim is made;

13           3. Class Members may submit completed and signed Claim Forms to the Claims  
14 Administrator by mail or private courier postmarked or sent on or before the Claims Deadline.  
15 Claims submitted for more than three (3) units of Unilever Ice Cream Products shall include  
16 Proof of Purchase, and the Claim Form shall conspicuously notify Settlement Class Members that  
17 failure to include Proof of Purchase for such Claims or submission of false or fraudulent Claims  
18 may result in the Claim being rejected in its entirety or for units in excess of three.

19           4. The Parties agree that the Claims Administrator shall be approved by the Court,  
20 shall be an agent of the Court, and shall be subject to the Court's supervision and direction as  
21 circumstances may require. The Claims Administrator will administer the Notice Program and  
22 Claims process, and oversee the distribution of Awards to Settlement Class Members in  
23 accordance with the terms of the Settlement and orders of the Court. Unilever will pay all Claims  
24 Administration Expenses, including the costs of the Claims Administrator, Notice Program and  
25 related website, and Claims process, whether or not the Final Judgment and Order Approving  
26 Settlement is entered.

27           5. The Claims Administrator shall administer the monetary relief for Settlement  
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1 Class Members provided by the Agreement by resolving Claims in a cost effective and timely  
2 manner consistent with the terms of this Agreement and the orders of the Court. The Claims  
3 Administrator shall maintain records of all Claims submitted until at least 180 days after the last  
4 of the Claims payment checks to Settlement Class Members is issued, and such records will be  
5 made available upon request to Co-Lead Counsel and Unilever's Counsel. Upon request by  
6 counsel for Unilever or Co-Lead Counsel, the Claims Administrator shall provide reports totaling:  
7 number of Claims submitted; number of units claimed; number of Claims for more than three (3)  
8 units; and such other information as reasonably required for Unilever or Co-Lead Counsel to  
9 exercise the rights under this Agreement. Claim Forms and supporting documentation will be  
10 kept confidential by the Claims Administrator and will be provided only to the Court upon  
11 request and to Co-Lead Counsel and counsel for Unilever to the extent necessary to resolve issues  
12 relating to this Agreement. The Claims Administrator also shall provide such reports and such  
13 other information to the Court as it may require.

14           6.       The Claims Administrator shall cause a website to be created containing Claims  
15 information and relevant documents, including but not limited to, all applicable deadlines, the  
16 Class Notice, a downloadable Claim Form, orders of the Court pertaining to the Settlement, this  
17 Agreement, a toll-free telephone number and addresses to contact the Claims Administrator by e-  
18 mail and U.S. mail. Unilever shall pay the cost of creating and maintaining this website. The  
19 website shall be rendered inactive after the Final Approval Hearing has passed. The Parties shall  
20 agree on all information and documents to be posted on this website.

21 **V.       NOTICE TO THE SETTLEMENT CLASS**

22           1.       No later than 95 days after the entry by the Court of an order granting Preliminary  
23 Approval, the Claims Administrator shall cause the Class Notice to be disseminated to potential  
24 Settlement Class Members as provided herein ("Notice Date"). The Parties agree that notice by a  
25 combination of national publication and direct mail/e-mail is the best means under the  
26 circumstances of this case to effect notice to the class and that the Notice Program outlined in  
27 Exhibit 7 comports with the requirements of due process. Notice shall be disseminated pursuant  
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1 to the Notice Program set forth in Exhibit 7 on or before the Notice Date. Copies of the proposed  
2 forms of Class Notice and the Notice Program are attached as Exhibits 3, 4 and 7.

3 2. Notice Program

4 a. Long-form Notice: The Class Notice shall be in substantially the form of  
5 Exhibit 3, attached hereto and shall be posted on the website created by the Claims Administrator.

6 At a minimum, the Class Notice shall:

7 i. include a short, plain statement of the background of the Action and  
8 the proposed Settlement;

9 ii. describe the proposed Settlement relief as set forth in this  
10 Agreement;

11 iii. inform Settlement Class Members that, if they do not exclude  
12 themselves from the Settlement Class, they may be eligible to receive relief;

13 iv. describe the procedures for participating in the Settlement including  
14 all applicable deadlines and advise Settlement Class Members of their rights, including their right  
15 to file a Claim to receive an Award under the Settlement, to opt out of the Settlement, or to object  
16 thereto;

17 v. explain the scope of the Release and Covenant Not To Sue, and the  
18 impact of the proposed Settlement on any existing litigation, arbitration or other proceeding;

19 vi. state that any Award to Settlement Class Members under the  
20 Settlement is contingent on the Court's final approval of the proposed Settlement;

21 vii. state the identity of Co-Lead Counsel and the amount sought in  
22 attorneys' fees and costs;

23 viii. explain that neither counsel for the Parties, nor the Claims  
24 Administrator may advise on the tax consequences of participating or not participating in the  
25 Settlement;

26 ix. explain the procedures for opting out of the Settlement including  
27 the applicable deadline for opting out as well as the consequences of opting out, and specifying  
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1 that so-called “mass” or “class” opt outs shall not be allowed; and

2 x. explain the procedures for objecting to the Settlement including  
3 applicable deadlines, including that any papers submitted in support of said objection will be  
4 considered only if the Settlement Class Member making an objection has filed timely notice of  
5 his or her intention to do so, with the grounds for the objection and a statement of his or her  
6 membership in the Class including all of the information required by the Claim Form in  
7 paragraph IV.2.a of this Agreement, and has filed copies of such papers he or she proposes to  
8 submit at the Final Approval Hearing with the Clerk of the Court and served copies of such  
9 papers on Co-Lead Counsel and Unilever’s Counsel on or before the Opt Out Date and the  
10 Objection Date, as approved by the Court and specified in the Class Notice.

11 b. Short-form Notice: The Claims Administrator shall cause to be published  
12 in accordance with the terms set forth below, a short form of the Class Notice. The short form  
13 shall be in substantially the form attached hereto as Exhibit 4 and shall at a minimum, include the  
14 web address of the Settlement website and a telephone number for the Claims Administrator, the  
15 class definition, a brief description of relief available to the Settlement Class Members and the  
16 right to object and/or opt-out of the Class.

17 c. Direct Mail Notice: The Claims Administrator shall mail the Long-form  
18 Notice to those Settlement Class Members who made complaints or directed inquiries to Unilever  
19 about the “All Natural” label and for whom Unilever can provide either a U.S. postal address or  
20 an e-mail address.

21 d. Publication: The Short-form Notice shall be published in accordance with  
22 the Notice Plan set forth in Exhibit 7 no later than 95 days from an Order of Preliminary  
23 Approval, approving the Settlement and Notice Program.

24 e. The Claims Administrator shall provide the Court with documentation  
25 showing, and an affidavit attesting, that Notice was disseminated pursuant to the Notice Program.

26 **VI. OBJECTIONS AND REQUESTS FOR EXCLUSION**

27 1. Objections

1           a.       Any Settlement Class Member who intends to object to the fairness of the  
2 Settlement must do so no later than 45 days after the Notice Date (the Objection Date). In order  
3 to object, the Settlement Class Member must file with the Court, and provide a copy to Co-Lead  
4 Counsel and Unilever’s Counsel a document that includes the following: (a) a heading which  
5 refers to the Action; (b) the objector's name, address, telephone number and e-mail address and, if  
6 represented by counsel, of his/her counsel; (c) a statement that the objector purchased Ben &  
7 Jerry’s Ice Cream Products at issue in the lawsuit; the number of packages purchased, the date(s)  
8 of purchase and the location(s) of the purchase(s); (d) a statement whether the objector intends to  
9 appear at the Final Approval Hearing, either in person or through counsel, and, if through  
10 counsel, identifying counsel by name, address, and phone number; (e) a statement of the objection  
11 and the grounds supporting the objection; (f) a list of all persons who will be called to testify in  
12 support of the objection; (g) a list of other cases in which the objector or objector’s counsel have  
13 appeared either as settlement objectors or as counsel for objectors during the preceding five (5)  
14 years; (h) copies of any papers, briefs, or other documents upon which the objection is based; and  
15 (i) the objector’s signature. Any Settlement Class Member who fails to file and serve timely a  
16 written objection and notice of his or her intent to appear at the Final Approval Hearing pursuant  
17 to this Section shall not be permitted to object to the approval of the Settlement at the Final  
18 Approval Hearing and shall be foreclosed from seeking any review of the Settlement or the terms  
19 of the Agreement by appeal or other means, unless given special permission by the Court.

20           2.       Requests for Exclusion

21           a.       Any member of the Settlement Class may request to be excluded (or “opt  
22 out”) from the Settlement Class. A Settlement Class Member who wishes to opt out of the  
23 Settlement Class must do so no later than 45 days after the Notice Date (the “Opt Out Date”). In  
24 order to opt out, a Settlement Class Member must complete and send to the Claims Administrator a  
25 Request For Exclusion that is post-marked no later than the Opt Out Date and the Objection Date.  
26 The Request for Exclusion must be personally signed by the Settlement Class Member requesting  
27 exclusion and contain a statement that indicates a desire to be excluded from the Settlement Class.  
28

1 So-called “mass” or “class” opt-outs shall not be allowed.

2           b.       Except for those Settlement Class Members who timely and properly file a  
3 Request for Exclusion, all other Settlement Class Members will be deemed to be Settlement Class  
4 Members for all purposes under the Agreement, and upon the Effective Date, will be bound by its  
5 terms, regardless of whether they file a Claim or receive any monetary relief.

6           c.       Any Settlement Class Member who properly requests to be excluded from the  
7 Settlement Class shall not: (a) be bound by any orders or judgments entered in the Action relating  
8 to the Settlement; (b) be entitled to relief under, or be affected by, the Agreement; (c) gain any  
9 rights by virtue of the Agreement; or (d) be entitled to object to any aspect of the Settlement.

10           d.       The Claims Administrator shall provide Co-Lead Counsel and Unilever’s  
11 Counsel with a final list of all timely Requests For Exclusion within five (5) business days after the  
12 Opt Out and Objection Date.

13 **VII.   RELEASES**

14           The Agreement shall be the sole and exclusive remedy for any and all Released Claims of  
15 all Releasing Parties against all Released Parties. No Released Party shall be subject to liability or  
16 expense of any kind to any Releasing Party with respect to any Released Claim. Upon entry of the  
17 Final Judgment and Order Approving Settlement, each and every Releasing Party shall be  
18 permanently barred and enjoined from initiating, asserting and/or prosecuting any Released Claim  
19 against any Released Party in any court or any forum.

20           1.       The following terms have the meanings set forth herein:

21           a.       “Released Claim” means any individual, class, representative, group or  
22 collective claim, liability, right, demand, suit, matter, obligation, damage, loss, action or cause of  
23 action, of every kind and description that a Releasing Party has or may have, including assigned  
24 claims, whether known or Unknown (as defined below), asserted or un-asserted, latent or patent,  
25 that is, has been, could reasonably have been or in the future might reasonably be asserted under  
26 any body of law by the Releasing Party either in a court or any other judicial or other forum,  
27 regardless of legal theory or relief claimed, and regardless of the type of relief or amount of  
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1 damages claimed, against any of the Released Parties arising from, or in any way relating to use of  
2 synthetic ingredients in the sales, marketing, or advertising, of any Unilever Ice Cream Products,  
3 including but not limited to any claim that the product labeling, advertising, and/or marketing was  
4 mislabeled as “All Natural.” For purposes of this Agreement, the term “Unknown Claim” means  
5 any and all Released Claims that any member of the Settlement Class, or anyone acting on behalf of  
6 or in their interest, does not know or suspect to exist against any of the Released Parties which, if  
7 known, might have affected his or her decision regarding the Settlement of this Action. The  
8 members of the Settlement Class further acknowledge that they may hereafter discover facts in  
9 addition to or different from those that they now know or believe to be true concerning the subject  
10 matter of this release, but nevertheless fully, finally and forever settle and release all Released  
11 Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, which now  
12 exist, may hereafter exist, or heretofore have existed based upon actions, conduct, events or  
13 transactions occurring on or before the date of this Agreement, without regard to subsequent  
14 discovery or the existence of such different or additional facts concerning each of the Released  
15 Parties. Notwithstanding the above, the release does not include claims for personal injury related  
16 to the use of Unilever Ice Cream Products.

17           b.       “Released Party” means Unilever and any entity that manufactured, tested,  
18 inspected, audited, certified, purchased, distributed, licensed, transported, marketed, labeled,  
19 advertised, donated, promoted, sold or offered for sale at wholesale or retail any Ice Cream  
20 Products, or any label, packaging, ingredient or component thereof, including all of their respective  
21 predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and affiliates, and  
22 any and all of their past, present and future officers, directors, employees, stock-holders, partners,  
23 agents, servants, successors, attorneys, insurers, representatives, licensees, licensors, customers,  
24 subrogees and assigns. It is expressly understood that, to the extent a Released Party is not a Party  
25 to the Agreement, all such Released Parties are intended third party beneficiaries of the Agreement.

26           c.       “Releasing Party” means each Plaintiff, Plaintiffs’ Counsel, and each  
27 Settlement Class Member and any Person claiming by or through each Settlement Class Member,  
28



1 including but not limited to, spouses, children, wards, heirs, devisees, legatees, invitees, employees,  
 2 associates, co-owners, attorneys, agents, administrators, predecessors, successors, assignees,  
 3 representatives of any kind, shareholders, partners, directors, or affiliates.

4       2.       Upon entry of the Final Judgment and Order Approving Settlement each Releasing  
 5 Party shall be deemed to have released and forever discharged each Released Party of and from any  
 6 and all liability for any and all Released Claims.

7       3.       With respect to any and all Released Claims, and upon entry of the Final Judgment  
 8 and Order Approving Settlement without further action, for good and valuable consideration,  
 9 Plaintiff, on behalf of herself and the Settlement Class and as the representative of the Settlement  
 10 Class, shall expressly, and Releasing Parties shall be deemed to, and by operation of the Final  
 11 Judgment and Order Approving Settlement shall, to the fullest extent permitted by law, fully,  
 12 finally, and forever expressly waive and relinquish with respect to the Released Claims, any and all  
 13 provisions, rights, and benefits of Section 1542 of the California Civil Code and any and all similar  
 14 provisions, rights, and benefits conferred by any law of any state or territory of the United States or  
 15 principle of common law that is similar, comparable, or equivalent to Section 1542 of the California  
 16 Civil Code, which provides:

17                   **“A general release does not extend to claims which the creditor does  
 18 not know or suspect to exist in his or her favor at the time of executing  
 19 the release, which if known by him or her must have materially  
 affected his or her settlement with the debtor.”**

20       4.       Additional Mutual Releases

21       a.       On and after the Effective Date, each of the Released Parties shall be deemed  
 22 to have fully, finally, and forever released, relinquished and discharged each and all of the Plaintiff  
 23 and Settlement Class Members, and their respective present and former parents, subsidiaries,  
 24 divisions, and affiliates, the present and former partners, employees, officers and directors of each  
 25 of them, the present and former attorneys, accountants, experts, consultants, insurers, and agents of  
 26 each of them, each of the foregoing solely in their capacity as such, and the predecessors,  
 27 successors, heirs, and assigns of each, from all claims of every nature and description, known and  
 28

1 unknown, relating to the initiation, assertion, prosecution, non-prosecution, settlement, and/or  
2 resolution of the Action or the Released Claims.

3           b.       On and after the Effective Date, each of the Releasing Parties shall be  
4 deemed to have fully, finally, and forever released, relinquished and discharged the Released  
5 Parties, its present and former parents, subsidiaries, divisions, affiliates, partners, employees,  
6 officers and directors, attorneys, accountants, experts, consultants, insurers, agents, predecessors,  
7 successors, heirs, and assigns, from all claims of every nature and description, including Unknown  
8 claims, relating to the defense, settlement and/or resolution of the Action or the Released Claims.

9           c.       Except as to the rights and obligations provided for under this Agreement,  
10 Unilever and its attorneys and all of their respective past, present and future predecessors,  
11 successors, assigns, devisees, relatives, heirs, legatees, and agents, including their respective past,  
12 present and future predecessors, successors, assigns, devisees, relatives, heirs, legatees, and agents,  
13 hereby release and forever discharge Plaintiff and Plaintiffs' Counsel from any and all charges,  
14 complaints, claims, debts, liabilities, demands, obligations, costs, expenses, actions and causes of  
15 action of every nature, character, and description, whether known or unknown, asserted or un-  
16 asserted, suspected or unsuspected, fixed or contingent, which Unilever may now have, own or hold  
17 or which Unilever at any time may have, own, or hold, against the Plaintiff, her attorneys (including  
18 Co-Lead Counsel, or Plaintiffs' Counsel) by reason of any matter, cause or thing whatsoever  
19 occurred, done, omitted or suffered from the beginning of time to the date of this Agreement.

20           5.       The Parties agree that the Court shall retain exclusive and continuing jurisdiction  
21 over the Parties, Settlement Class Members, and the Claims Administrator to interpret and enforce  
22 the terms, conditions, and obligations under the Agreement.

## 23 **VIII. COUNSEL FEES AND COSTS**

24           1.       Co-Lead Counsel agree to make, and Unilever agrees not to oppose, an application  
25 for an award of Attorneys' Fees and Expenses in this Action in the amount of \$1,250,000, in  
26 addition to reasonable expenses, to be paid by Unilever in addition to the Unilever Restitution  
27 Fund.

1           2.       Co-Lead Counsel agree to make, and Unilever agrees not to oppose, an application  
2 by Co-Lead Counsel for an incentive award of up to \$1,500 for the Representative Plaintiff to be  
3 paid from the Attorneys' Fees and Expenses awarded to Co-Lead Counsel in this Action.

4           3.       If the Court approves the motion, such fees, expenses, and incentive award will be  
5 paid by Unilever as follows:

6               a.       Unilever shall issue to Co-Lead Counsel an IRS Form 1099 for the award  
7 of attorneys' fees and costs. Unilever shall pay any fees and litigation expenses approved by the  
8 Court to an account jointly held by Co-Lead Counsel in an amount that does not exceed  
9 \$1,250,000 (One Million Two Hundred Fifty Thousand Dollars) within thirty (30) days of the  
10 later of: (1) the Effective Date; or (2) receipt by counsel for Unilever of Co-Lead Counsel's  
11 completed W-9 forms. If the Court reduces the amount of fees and expenses, Unilever shall pay  
12 the reduced amount within thirty (30) days of the Effective Date.

13               b.       Unilever shall issue to Plaintiff an IRS Form 1099 for the incentive award.  
14 Unilever shall pay any incentive award approved by the Court in an amount that does not exceed  
15 \$1,500 within thirty (30) days of the later of: (1) the Effective Date; or (2) receipt by counsel for  
16 Unilever of Plaintiff's completed W-9 forms. If the Court reduces the amount of incentive,  
17 Unilever shall pay the reduced amount within thirty (30) days of the Effective Date.

18           4.       Co-Lead Counsel, in their sole discretion, shall allocate and distribute this award  
19 of Attorneys' Fees and Expenses among Plaintiffs' Counsel. Upon payment of the fees ordered  
20 by the Court as set forth above, Unilever's obligations regarding fees and expenses shall be fully  
21 and forever discharged and no Plaintiff, Settlement Class Member or Plaintiffs' Counsel shall be  
22 entitled to seek or recover any further payment of fees or expenses from Unilever. Co-Lead  
23 Counsel agree to indemnify and hold harmless Unilever and its Released Parties from any and all  
24 claims for payment of attorneys' fees and/or expenses to Plaintiffs' Counsel other than as set forth  
25 in paragraph 1 above, except that Co-Lead Counsel shall not be responsible to indemnify and  
26 hold harmless Unilever and its Released Parties for any attorneys' fees and/or expenses claimed  
27 by or awarded to counsel for any objector to the Settlement.

1 **IX. FINAL JUDGMENT AND ORDER APPROVING SETTLEMENT**

2 1. This Agreement is subject to and conditioned upon the issuance by the Court of  
3 the Final Judgment and Order Approving Settlement that finally certifies the Settlement Class for  
4 the purposes of settlement only, grants final approval of the Settlement, and provides the relief  
5 specified herein, which relief shall be subject to the terms and conditions of the Agreement and  
6 the Parties' performance of their continuing rights and obligations hereunder. Such Final  
7 Judgment and Order Approving Settlement shall be in substantially the form attached hereto as  
8 Exhibit 1 and shall:

9 a. Confirm the final certification, for settlement purposes only, of the  
10 Settlement Class;

11 b. Confirm the compliance of the Settlement Class with all requirements of  
12 Rule 23, including confirmation of the adequacy of the representation of the Class Representative  
13 as a representative of the Settlement Class;

14 c. Confirm that the Notice Program complied in all respects with the  
15 requirements of due process and Rule 23 by providing due, adequate, and sufficient notice to the  
16 Settlement Class;

17 d. Determine that the Agreement is entered into in good faith, is reasonable,  
18 fair and adequate, and is in the best interest of the Settlement Class;

19 e. Dismiss the Action with prejudice as to the Released Parties and without  
20 cost;

21 f. Release each Released Party from the Released Claims that any Releasing  
22 Party has, had, or may have in the future, against each Released Party and provide that the  
23 Covenant Not To Sue has been given by each Settlement Class Member in favor of each Released  
24 Party and that all Settlement Class Members are bound thereby;

25 g. Bar and enjoin all Releasing Parties from asserting against any Released  
26 Party any Released Claim and bar and enjoin all Settlement Class Members from initiating or  
27 pursuing any claim or action barred by the Covenant Not To Sue;

1           h.       Release each Releasing Party and Settlement Class Member, and their  
2 respective present and former parents, subsidiaries, divisions and affiliates, the present and former  
3 partners, employees, officers and directors of each of them, the present and former attorneys,  
4 accountants, experts, consultants and insurers, and agents of each of them, each of the foregoing  
5 solely in their capacity as such, and the predecessors, successors, heirs and assigns of each of  
6 them, from all claims of every nature and description, known and unknown, that any Released  
7 Party has had, or may in the future have relating to the initiation, assertion, prosecution, non-  
8 prosecution, settlement and/or resolution of the Action or the Released Claims, and bar and enjoin  
9 all Released Parties from asserting the same;

10           i.       Release each Defendant and their respective present and former parents,  
11 subsidiaries, divisions and affiliates, the present and former partners, employees, officers, and  
12 directors of each of them, the present and former attorneys, accountants, experts, consultants,  
13 insurers and agents of them, and the predecessors, successors, heirs and assigns of each of them  
14 from all claims of every nature and description, known and unknown, that any Releasing Party  
15 has, had or may in the future have relating to the defense, settlement and/or resolution of the  
16 Action or the Released Claims, and bar and enjoin all Releasing Parties from asserting the same;

17           j.       Release the Plaintiff and Settlement Class Members, and their respective  
18 present and former parents, subsidiaries, divisions, and affiliates, the present and former partners,  
19 employees, officers and directors of each of them, the present and former attorneys, accountants,  
20 experts, consultants, insurers, and agents of each of them, each of the foregoing solely in their  
21 capacity as such, and the predecessors, successors, heirs, and assigns of each, from all claims of  
22 every nature and description, known and unknown, relating to the initiation, assertion,  
23 prosecution, non-prosecution, Settlement, and/or resolution of the Action or the Released Claims;  
24 and

25           k.       Retain the Court's continuing and exclusive jurisdiction over the Parties to  
26 the Agreement, including all Settlement Class Members, to construe and enforce the Agreement  
27 in accordance with its terms for the mutual benefit of the Parties.

1 **X. REPRESENTATIONS AND WARRANTIES**

2 1. Unilever represents and warrants: (a) that it has the requisite corporate power and  
3 authority to execute, deliver and perform the Agreement and to consummate the transactions  
4 contemplated hereby; (b) that the execution, delivery and performance of the Agreement and the  
5 consummation by it of the actions contemplated herein have been duly authorized by necessary  
6 corporate action on the part of Unilever; and (c) that the Agreement has been duly and validly  
7 executed and delivered by Unilever and constitutes its legal, valid and binding obligation.

8 2. Plaintiff represents and warrants that she is entering into the Agreement on behalf  
9 of herself individually and as representative of the Settlement Class Members and the Releasing  
10 Parties, of her own free will and without the receipt of any consideration other than what is  
11 provided in the Agreement or disclosed to, and authorized by, the Court. Plaintiff represents and  
12 warrants that she has reviewed the terms of the Settlement in consultation with Co-Lead Counsel  
13 and believes them to be fair and reasonable, and covenants that she will not file a Request for  
14 Exclusion from the Settlement Class or object to the Settlement. Co-Lead Counsel represent and  
15 warrant that they are fully authorized to execute the Agreement on behalf of the Plaintiff,  
16 individually and as representative of the Settlement Class Members and Releasing Parties.

17 3. The Parties warrant and represent that no promise, inducement or consideration for  
18 the Settlement has been made, except those set forth herein. No consideration, amount or sum  
19 paid, accredited, offered or expended by Unilever in its performance of this Agreement and the  
20 Settlement constitutes a fine, penalty, punitive damages or other form of assessment for any claim  
21 against it.

22 **XI. NO ADMISSIONS; NO USE**

23 The Agreement and every stipulation and term contained in it is conditioned upon final  
24 approval of the Court and is made for settlement purposes only. Whether or not consummated,  
25 this Agreement shall not be: (a) construed as, offered in evidence as, received in evidence as,  
26 and/or deemed to be, evidence of a presumption, concession or an admission by Plaintiff,  
27 Unilever, any Settlement Class Member or Releasing or Released Party, of the truth of any fact  
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1 alleged or the validity of any claim or defense that has been, could have been, or in the future  
2 might be asserted in any litigation or the deficiency of any claim or defense that has been, could  
3 have been, or in the future might be asserted in any litigation, or of any liability, fault,  
4 wrongdoing or otherwise of such Party; or (b) construed as, offered in evidence as, received in  
5 evidence as, and/or deemed to be, evidence of a presumption, concession or an admission of any  
6 liability, fault or wrongdoing, or in any way referred to for any other reason, by Plaintiff,  
7 Unilever, any Releasing Party or Released Party in the Action or in any other civil, criminal or  
8 administrative action or proceeding other than such proceedings as may be necessary to effectuate  
9 the provisions of the Agreement.

## 10 **XII. TERMINATION OF THIS AGREEMENT**

11 1. Any Party may terminate this Agreement by providing written notice to the other  
12 Parties hereto within ten (10) days of any of the following events:

13 a. The Court does not ultimately enter an order granting Preliminary  
14 Approval that conforms in all material respects to Sections III.A. and III.B. herein and Exhibit 5  
15 hereof;

16 b. The Court does not conditionally and finally certify the Settlement Class as  
17 defined herein or the Court's order certifying the Settlement Class is reversed, vacated, or  
18 modified in any material respect by another court; or

19 c. The Court does not ultimately enter a Final Judgment and Order Approving  
20 Settlement conforming in all material respects to Section IX herein and Exhibit 1, or if entered,  
21 such Final Judgment and Order Approving Settlement is reversed, vacated, or modified in any  
22 material respect by another court.

23 2. In the event of termination, the terminating Party shall cause the Claims  
24 Administrator to post information regarding the termination on the website established for the  
25 Settlement and to e-mail such information to those Settlement Class Members who provided an e-  
26 mail address to the Claims Administrator. It is expressly agreed that neither the failure of the  
27 Court to award Attorneys' Fees and Expenses to Co-Lead Counsel, nor the amount of such  
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1 Attorney's Fees and Expenses or Incentive Award that may be finally determined and awarded,  
2 shall provide a basis for termination of this Agreement.

3 3. In addition to the provisions regarding termination set forth above and elsewhere  
4 in this Agreement, this Agreement is voidable at the option of Unilever up to five days prior to  
5 the Final Approval Hearing if Administrative Costs exceed \$562,000. In such an event, Unilever  
6 may terminate this Agreement by serving written notice upon Co-Lead Counsel within five (5)  
7 business days of receiving notice that administrative costs exceeded \$562,000, but in no event  
8 shall written notice be served, and shall Unilever terminate this Settlement Agreement pursuant to  
9 this provision, less than five days prior to the Final Approval Hearing. In the event that Unilever  
10 terminates the Agreement pursuant to this provision, it shall cause the Claims Administrator to  
11 post information regarding the termination and the reason therefore on the website established for  
12 the Settlement and to e-mail such information to those Settlement Class Members who provided  
13 an e-mail address to the Claims Administrator.

14 4. In the event that this Agreement terminates for any reason, all Parties shall be  
15 restored to their respective positions as of immediately prior to the date of execution of this  
16 Agreement. Upon termination, Sections III.A.1., III.A.4., XI, XII.2., XII.3., XIII.2., XIII.4.,  
17 XIII.5. and XIII.6. herein shall survive and be binding on the Parties, but this Agreement shall  
18 otherwise be null and void.

### 19 **XIII. MISCELLANEOUS PROVISIONS**

20 1. Entire Agreement: The Agreement, including all Exhibits hereto, shall constitute  
21 the entire Agreement among the Parties with regard to the Settlement and shall supersede any  
22 previous agreements, representations, communications and understandings among the Parties  
23 with respect to the subject matter of the Settlement. The Agreement may not be changed,  
24 modified, or amended except in a writing signed by all Parties and, if required, approved by the  
25 Court. The Parties contemplate that certain of the Exhibits to the Agreement relating to Class  
26 Notice may be modified by subsequent agreement of Unilever and Co-Lead Counsel, or by the  
27 Court prior to dissemination to the Settlement Class.



1           2.     Governing Law: The Agreement shall be construed under and governed by the laws  
2 of the State of California, applied without regard to laws applicable to choice of law.

3           3.     Execution in Counterparts: The Agreement may be executed by the Parties in one or  
4 more counterparts, each of which shall be deemed an original but all of which together shall  
5 constitute one and the same instrument. Facsimile signatures or signatures sent by e-mail shall be  
6 treated as original signatures and shall be binding.

7           4.     Notices: Any notice, instruction, application for Court approval or application for  
8 Court orders sought in connection with the Settlement and the Agreement or other document to be  
9 given by any Party to any other Party shall be in writing and delivered personally, by UPS, FedEx  
10 or similar service next business day delivery, or sent by registered or certified mail, postage prepaid,  
11 if to Unilever to the attention of Unilever's Counsel, and if to Settlement Class Members to the  
12 attention of Co-Lead Counsel on their behalf. All notices to the Parties or counsel required by the  
13 Agreement shall be communicated to the following addresses:

14           a.     If to Plaintiff or Co-Lead Counsel:

15                             Joseph N. Kravec, Jr., Esq.  
16                             STEMBER FEINSTEIN DOYLE PAYNE & KRAVEC, LLC  
17                             429 Forbes Avenue 17th Floor  
18                             Pittsburgh, Pennsylvania 15219  
19                             Tel: 412-281-8400  
20                             Fax: 412-281-1007

21           b.     If to Unilever or Unilever's Counsel:

22                             William L. Stern  
23                             MORRISON & FOERSTER LLP  
24                             425 Market Street  
25                             San Francisco, California 94105-2482  
26                             Tel: 415-268-7000  
27                             Fax: 415-268-7522

28           5.     Publicity: Unilever, the Plaintiffs, and Co-Lead Counsel shall not cause any aspect  
of the Action or the terms of this Settlement Agreement not available in the public record to be  
reported to the media or news reporting services, except to respond that "the case has settled" and to  
confine any comments specifically to what is required by the provisions of this Settlement

1 Agreement. To the extent Unilever, Plaintiff, or Co-Lead Counsel make any public statements  
2 regarding the Settlement of this Action, any such statements shall be limited to what is available in  
3 the public record. Notwithstanding the foregoing, Unilever may make such disclosures regarding  
4 the terms of this Settlement as it deems necessary to its auditors or as otherwise required by state or  
5 federal law.

6       6.     Good Faith: The Parties agree that they will act in good faith and will not engage in  
7 any conduct that will or may frustrate the purpose of this Agreement, including but not limited to,  
8 soliciting or otherwise encouraging, directly or indirectly, Settlement Class Members to request  
9 exclusion from the Settlement Class, object to the Settlement or appeal the final judgment. The  
10 Parties further agree, subject to Court approval, to reasonable extensions of time to carry out any of  
11 the provisions of the Agreement.

12       7.     Protective Orders: All orders, agreements and designations regarding the  
13 confidentiality of documents and information (“Protective Orders”) remain in effect, and all Parties  
14 and counsel remain bound to comply with the Protective Orders. Within thirty (30) days of the  
15 Effective Date, the Parties will certify in writing that they have used their best efforts to destroy or  
16 return to the producing party all documents and information produced in the Action that were  
17 designated as “Confidential” or “Attorneys’ Eyes Only” pursuant to the Protective Order previously  
18 entered in the Action. Notwithstanding this provision, Unilever’s Counsel and Co-Lead Counsel  
19 may retain copies of all deposition transcripts and exhibits and all documents submitted to the  
20 Court, but those documents must be kept confidential, and will continue to be subject to the  
21 Protective Order.

22       8.     Binding on Successors: The Agreement shall be binding upon, and inure to the  
23 benefit of, the heirs, successors, assigns, executors and legal representatives of the Parties to the  
24 Agreement and all Defendants and Released Parties.

25       9.     Arms Length Negotiations: The determination of the terms and conditions contained  
26 herein and the drafting of the provisions of this Agreement has been by mutual understanding after  
27 negotiation, with consideration by, and participation of, the Parties hereto and their counsel. This  
28

1 Agreement shall not be construed against any Party on the basis that the Party was the drafter or  
2 participated in the drafting.

3 10. Waiver: The waiver by one Party of any provision or breach of the Agreement shall  
4 not be deemed a waiver of any other provision or breach of the Agreement.

5 11. Variance: In the event of any variance between the terms of this Agreement and any  
6 of the Exhibits hereto, the terms of this Agreement shall control and supersede the Exhibit(s).

7 12. Exhibits: All Exhibits to this Agreement are material and integral parts hereof, and  
8 are incorporated by reference as if fully rewritten herein.

9 13. Taxes: No opinion concerning the tax consequences of the Settlement to any  
10 Settlement Class Member is given or will be given by Unilever, Unilever's Counsel, Co-Lead  
11 Counsel, or Plaintiffs' Counsel; nor is any Party or their counsel providing any representation or  
12 guarantee respecting the tax consequences of the Settlement as to any Settlement Class Member.  
13 The Class Notice will direct Settlement Class Members to consult their own tax advisors regarding  
14 the tax consequences of the Settlement and any tax reporting obligations with respect thereto. Each  
15 Settlement Class Member is responsible for his/her tax reporting and other obligations respecting  
16 the Settlement, if any.

17 14. Modification in Writing Only: This Agreement and any and all parts of it, may be  
18 amended, modified, changed or waived only by an express instrument in writing and signed by the  
19 Parties. The Parties recognize and agree that all modifications are subject to Court approval.

20 15. Integration: This Agreement represents the entire understanding and agreement  
21 among the Parties and supersedes all prior proposals, negotiations, agreements, and understandings  
22 related to the subject matter of this Agreement. The Parties acknowledge, stipulate and agree that  
23 no covenant, obligation, condition, representation, warranty, inducement, negotiation or undertaking  
24 concerning any part or all of the subject matter of this Agreement has been made or relied upon  
25 except as set forth expressly herein.

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IN WITNESS WHEREOF, each of the Parties hereto has caused the Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

Stipulated and agreed to this 23 day of February, 2012.

By: \_\_\_\_\_  
BEN & JERRY'S, HOMEMADE, INC.



By: \_\_\_\_\_  
SKYE ASTIANA

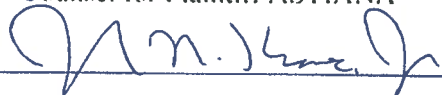
By: \_\_\_\_\_

William L. Stern  
Counsel for BEN & JERRY'S  
HOMEMADE, INC.



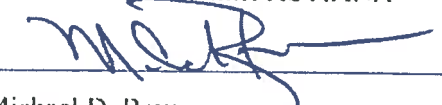
By: \_\_\_\_\_

Janet Lindner Spielberg  
Counsel for Plaintiff ASTIANA



By: \_\_\_\_\_

Joseph N. Kravec, Jr.  
Counsel for Plaintiff ASTIANA



By: \_\_\_\_\_

Michael D. Braun  
Counsel for Plaintiff ASTIANA

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IN WITNESS WHEREOF, each of the Parties hereto has caused the Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

Stipulated and agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

By: *Brian S. Avlin*  
BEN & JERRY'S, HOMEMADE, INC.

By: *WLS* / LAB  
William L. Stern  
Counsel for BEN & JERRY'S  
HOMEMADE, INC.

By: \_\_\_\_\_  
SKYE ASTIANA

By: \_\_\_\_\_  
Janet Lindner Spielberg  
Counsel for Plaintiff ASTIANA

By: \_\_\_\_\_  
Joseph N. Kravec, Jr.  
Counsel for Plaintiff ASTIANA

By: \_\_\_\_\_  
Michael D. Braun  
Counsel for Plaintiff ASTIANA

**EXHIBIT B-1**  
**TO MOTION FOR**  
**PRELIMINARY APPROVAL**  
**(EXHIBIT 1 TO SETTLEMENT AGREEMENT)**

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

SKYE ASTIANA on behalf of herself and all  
others similarly situated,

Plaintiff,

v.

BEN & JERRY'S HOMEMADE, INC.,

Defendant.

Case No. 4:10-cv-04387-PJH

**[PROPOSED] ORDER GRANTING  
FINAL APPROVAL OF  
SETTLEMENT AND JUDGMENT**

Hon. Phyllis J. Hamilton

Court:

1  
2 This matter came on for hearing upon the joint application of the Parties for approval  
3 of the settlement set forth in the Class Action Settlement Agreement and Release, dated  
4 February 24, 2012 (“Settlement Agreement”).

5 Due and adequate notice having been given to the Class, and the Court having  
6 considered the Settlement Agreement, all papers filed and proceedings had herein, and all oral  
7 and written comments received regarding the proposed settlement, and having reviewed the  
8 record in this Action, and good cause appearing,

9 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

10 1. The Court, for purposes of this Judgment and Order of Dismissal  
11 (“Judgment”), adopts all defined terms as set forth in the Settlement Agreement.

12 2. The Court has jurisdiction over the subject matter of this Action, the Class  
13 Representative, the other Members of the Settlement Class, and the Defendant, and venue is  
14 proper.

15 3. For settlement purposes only, the Court certifies this action under  
16 Rule 23(a), and 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure. The certified  
17 Settlement Class is defined as follows:

18 All persons in the United States who purchased Ben &  
19 Jerry’s Unilever Ice Cream Products from September 28,  
2006 through the date of Preliminary Approval of the  
20 Settlement.

21 4. The Court reaffirms the appointment of Janet Lindner Spielberg of the Law  
22 Offices of Janet Lindner Spielberg, Michael D. Braun, of the Braun Law Group, P.C., and Joseph  
23 N. Kravec, Jr., of Stember Feinstein Doyle Payne & Kravec, LLC, as Class Counsel, and  
24 reaffirms the appointment of Skye Astiana as Class Representative.

25 5. The Court concludes that, for the purposes of approving this settlement  
26 only, the Settlement Class, Class Counsel, and the Class Representative satisfy the requirements  
27 of Rule 23(a), 23(b)(2), 23(b)(3), and Rule 23(g) of the Federal Rules of Civil Procedure.  
28 Specifically, the Court finds: (a) the proposed Settlement Class is ascertainable and so numerous  
that joinder of all Members of the Settlement Class is impracticable; (b) there are questions of law



1  
2 or fact common to the proposed Settlement Class, and there is a well-defined community of  
3 interest among members of the proposed Settlement Class with respect to the subject matter of the  
4 Actions; (c) the claims of Plaintiff Skye Astiana are typical of the claims of the members of the  
5 proposed Settlement Class; (d) Plaintiff Skye Astiana and the Class Counsel will fairly and  
6 adequately protect the interests of the Members of the Settlement Class; (e) Unilever has engaged  
7 in a pattern of behavior subject to injunctive relief; (f) for purposes of the Rule 23(b)(2)  
8 certification, injunctive relief predominates over monetary damages; and (g) Class Counsel will  
9 fairly and adequately represent the interests of the Settlement Class.

10           6.       The Court finds that the distribution of the Notice to Class Members as  
11 provided for in the Order Granting Preliminary Approval for the Settlement constituted the best  
12 notice practicable under the circumstances to all Persons within the definition of the Class, and  
13 fully met the requirements of due process under the United States Constitution. The Members of  
14 the Settlement Class have received proper notice of: (a) the Settlement Agreement; (b) the Final  
15 Approval Hearing; (c) Class Counsel's intention to seek Attorneys' Fees and Expenses and  
16 Incentive Awards for the Plaintiffs; (d) each Class Member's right to exclude himself/herself  
17 from the Settlement Class; and (e) each Class Member's right to object to the proposed settlement  
18 and to Class Counsel's application for Attorneys' Fees and Expenses and Incentive Awards for  
19 Plaintiffs.

20           7.       Based on evidence and other material submitted in conjunction with the  
21 Final Approval Hearing, the notice to the class was adequate.

22           8.       The Court finds in favor of settlement approval.

23           9.       The Court approves the settlement of the above-captioned action, as set  
24 forth in the Settlement Agreement, each of the releases, and other terms as fair, just, reasonable,  
25 and adequate as to the Parties. The Parties are directed to perform in accordance with the terms  
26 set forth in the Settlement Agreement.

27           10.      The Court reaffirms its finding that proper and timely notice has been  
28 provided under 28 U.S.C. § 1715.

11.      The Court finds that the requirements set forth in *In re Mercury Interactive*

1  
2 *Corp. Sec. Litig.*, 618 F.3d 988 (9th Cir. 2010), have been satisfied with regard to Class Counsel's  
3 application for attorney's fees and expenses.

4           12. Except as to any individual claim of those persons (identified in  
5 Attachment A hereto) who have validly and timely requested exclusion from the Class, all of the  
6 Released Claims are dismissed with prejudice as to the Class Representative and the other  
7 Members of the Class. The Parties are to bear their own attorneys' fees and costs, except as  
8 otherwise provided in the Settlement Agreement.

9           13. Solely for purposes of effectuating this settlement, this Court has certified a  
10 class of all Members of the Settlement Class, as that term is defined in and by the terms of the  
11 Settlement Agreement.

12           14. By this Judgment, the Class Representative shall release, relinquish, and  
13 discharge, and each of the Settlement Class Members shall be deemed to have, and by operation  
14 of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all  
15 Released Claims and Unknown Claims, as described in Section VII of the Settlement Agreement.<sup>5</sup>

16           15. Neither the Settlement Agreement, nor any act performed or document  
17 executed pursuant to or in furtherance of the settlement may be: (a) construed as, offered in  
18 evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession  
19 or an admission by Plaintiff, Unilever, any Settlement Class Member or Releasing or Released  
20 Party, of the truth of any fact alleged or the validity of any claim or defense that has been, could  
21 have been, or in the future might be asserted in any litigation or the deficiency of any claim or  
22 defense that has been, could have been, or in the future might be asserted in any litigation, or of  
23 any liability, fault, wrongdoing or otherwise of such Party; or (b) construed as, offered in  
24 evidence as, received in evidence as, and/or deemed to be, evidence of a presumption, concession  
25 or an admission of any liability, fault or wrongdoing, or in any way referred to for any other  
26 reason, by Plaintiff, Unilever, any Releasing Party or Released Party in the Actions or in any  
27 other civil, criminal or administrative action or proceeding other than such proceedings as may be  
28 necessary to effectuate the provisions of the Agreement.

16. Class Counsel shall receive an award of \$ \_\_\_\_\_ [up to \$1,250,000] for

1  
2 all attorneys' fees and expenses. Class Counsel shall allocate and distribute this award among  
3 Plaintiffs' Counsel. Class Counsel's receipt of \$ \_\_\_\_\_ in total shall constitute full  
4 satisfaction of any claim for fees and/or costs. The Court finds that this arrangement is fair and  
5 reasonable.

6           17. The Class Representative is hereby awarded the following amount for her  
7 time and costs incurred in serving as Class Representative: Skye Astiana – \$ \_\_\_\_ [not to exceed  
8 \$1,500].

9           18. The Court reaffirms its previous order regarding the Parties'  
10 communication concerning the settlement, and directs the Parties to the Settlement Agreement  
11 and their counsel shall not make any public statements regarding the settlement, unless as  
12 otherwise allowed for in the Settlement Agreement.

13           19. The Court reserves exclusive and continuing jurisdiction over the Action,  
14 the Class Representative, the Settlement Class, and Defendant for the purposes of supervising the  
15 implementation, enforcement, construction, administration, and interpretation of the Settlement  
16 Agreement and this Judgment and to resolve any and all disputes that may arise thereunder.

17           20. If the settlement is terminated for any reason, this Judgment shall become  
18 null and void and shall be without prejudice to the rights of the Parties to the Settlement  
19 Agreement, all of whom shall be restored to their previous positions in accord with Section XII.4.  
20 of the Settlement Agreement.

21           21. This Order shall not be construed or used as an admission, concession, or  
22 declaration by or against Defendant of any finding of fault, wrongdoing, or liability. This Order  
23 shall not be construed or used as a waiver or admission as to any arguments or defenses that  
24 might be available to Defendant, including objections to class certification in the event that the  
25 Settlement Agreement is terminated.

26           22. This document shall constitute a judgment for purposes of Rule 58 of the  
27 Federal Rules of Civil Procedure. Final Judgment in this action is hereby entered. All claims  
28 asserted by Plaintiffs in this Action are dismissed on the merits with prejudice.

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DATED: \_\_\_\_\_

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HONORABLE PHYLLIS J. HAMILTON  
United States District Court Judge

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**ATTACHMENT A**

- 1.
- 2.

**EXHIBIT B-2**  
**TO MOTION FOR**  
**PRELIMINARY APPROVAL**  
**(EXHIBIT 2 TO SETTLEMENT AGREEMENT)**

**CLAIM FORM**

**Page 1**

**Claims Administrator**

*Astiana, et al. v. Ben & Jerry's, Homemade, Inc., No. 4:10-cv-04387-PJH (N.D. Cal.)*

Toll Free: (888) \_\_\_\_\_

www.\_\_\_\_\_.com

**FOR YOUR CLAIM TO BE TIMELY AND VALID, YOU MUST COMPLETE, SIGN AND RETURN THIS FORM, WHICH MUST BE POSTMARKED NO LATER THAN \_\_\_\_\_, 2012.**

**FAILURE TO SUBMIT YOUR COMPLETED CLAIM FORM BY THIS DEADLINE OR TO PROVIDE THE REQUIRED INFORMATION REQUESTED BELOW MAY RESULT IN THE REJECTION OF YOUR CLAIM.**

**PLEASE SUBMIT YOUR COMPLETED FORM AND MAIL IT TO:**

**[ADD ADDRESS]**

1) Print Your Name:

2) E-mail:

3) Street Address:

City, State and Zip Code:

4) Phone Number: (    )

5) Please state the number of units of Ben & Jerry's Ice Cream products that you purchased between September 28, 2006 and ((the date of preliminary approval)).

1  2  3  Other:

**CLAIM FORM**

**Page 2**

6) If you are claiming more than three (3) units of Ice Cream Products you must attach proof(s) of purchase, such as a receipt or container label. **Failure to include Proof of Purchase for Claims in excess of three units or submission of false or fraudulent claims may result in the Claim being rejected in its entirety.**

I hereby certify in connection with this federal action, that I purchased the above-referenced number of Ben & Jerry's Ice Cream Products stated above.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature of Claimant

**QUESTIONS? CALL \_\_\_\_\_ OR VISIT [www.\\_\\_\\_\\_\\_.com](http://www._____.com)**



**EXHIBIT B-3**  
**TO MOTION FOR**  
**PRELIMINARY APPROVAL**  
**(EXHIBIT 3 TO SETTLEMENT AGREEMENT)**

*Astiana, et al. v. Ben & Jerry's Homemade, Inc.,*  
 Case No. 4:10-CV-04387-PJH (N.D. Cal.)

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

**NOTICE OF PENDENCY OF PROPOSED CLASS ACTION SETTLEMENT AND HEARING DATE FOR COURT APPROVAL**

**If you purchased Ben & Jerry's All Natural Ice Cream containing alkalized cocoa ("Ben & Jerry's Ice Cream") between September 28, 2006 and [DATE], you could get a payment from a class action settlement**

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

This notice (the "Notice") informs you of a proposed settlement of class action claims against *Ben & Jerry's, Homemade, Inc.* ("Unilever") and describes your rights as a potential settlement class member. Unilever has agreed, under the terms of the settlement, to provide you with the opportunity to submit a valid and timely claim form through which you may be eligible to receive monetary compensation as discussed below.

***Your legal rights are affected whether you act, or don't act. Read this notice carefully.***

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT</b>	
<b>EVENT</b>	<b>DATE</b>
<b>SUBMIT A CLAIM:</b> The last date that your claim form must be postmarked if you wish to be eligible to possibly receive a payment under the terms of the settlement.	
<b>EXCLUDE YOURSELF:</b> The last date to submit your written request to be excluded from the settlement if you are not willing to be bound by it and do not want to be eligible to receive a payment.	
<b>OBJECT:</b> The last date to write to the Court about why you don't like the settlement.	
<b>GO TO A HEARING:</b> Ask to speak in Court about the fairness of the settlement.	
<b>DO NOTHING:</b> Get no payment. Give up rights.	

- **Any questions? Read on and visit [WEBSITE] or Call 1-800-XXX-XXXX**

## WHAT THIS NOTICE CONTAINS

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## BASIC INFORMATION

### 1. Why has this notice been publicized?

This Notice, given pursuant to an order of the Court dated \_\_\_\_\_, describes a proposed settlement of a class action against *Unilever Foods, Inc.* in a lawsuit entitled, *Astiana, et al. v. Ben & Jerry's Homemade, Inc., No. 4:10-cv-04387-PJH (N.D. Cal.)*.

This Notice provides a summary of the terms of the proposed settlement. It also explains the lawsuit, your potential legal rights under the settlement, what benefits may be available to you under the settlement, and how to get them. **If you are a class member, your legal rights are affected whether you act or do not act so read this Notice carefully.**

### 2. What is this lawsuit about?

These lawsuits were brought on behalf of consumers who purchased Ben & Jerry's All Natural Ice Cream products (collectively, the "Ice Cream Products"), which contained alkalized cocoa. The lawsuit alleges that Unilever has misrepresented its Ben & Jerry's brand Ice Cream products as being "all natural" despite the fact they contain alkalized cocoa - a non-natural processed ingredient that additionally contains potassium carbonate, a man made, synthetic ingredient. Unilever denies it did anything wrong, and asserts its product labels and marketing of its Ice Cream Products were truthful and consistent with applicable laws.

The named plaintiff is Skye Astiana, and the Defendant is Ben & Jerry's, Homemade, Inc. ("Unilever" or "Defendant").

### 3. What is a class action and who is involved?

In a class action, one or more people called Class Representatives (in this case Skye Astiana), sue on behalf of people who have similar claims. All individuals with similar claims are a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. United States District Court Judge Phyllis J. Hamilton is in charge of this class action.

### 4. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or Defendants. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial, and the people affected will get compensation. The Class Representative and the attorneys think the settlement is best for everyone who was a member of the Class.

## **Who Is in the Settlement?**

To see if you will get money from this settlement, you first have to decide if you are a Class Member.

### **5. How do I know if I am part of the settlement?**

You are a member of the proposed Settlement Class if you live in the United States and purchased Unilever Ice Cream Products between September 28, 2006 and (DATE). "Ice Cream Product" means Ben & Jerry's All Natural premium ice creams, yogurts, and sorbets containing alkalized cocoa including: (a) the following All Natural ice cream flavors: Banana Split, Boston Cream Pie, Brownie Batter, Cake Batter, Cheesecake Brownie, Cherry Garcia, Chocolate, Chocolate Chip Cookie Dough, Chocolate Fudge Brownie, Chocolate Macadamia, Chubby Hubby, Chunky Monkey, Dublin Mudslide, Fossil Fuel, Half Baked, Imagine Whirled Peace, Karamel Sutra, Milk & Cookies, Mint Chocolate Cookie, Mud Pie, Neapolitan Dynamite, New York Super Fudge Chunk, Oatmeal Cookie Chunk, Peanut Butter Cup, Phish Food, S'mores, Triple Caramel Chunk, Turtle Soup, and Vanilla Caramel Fudge; AND (b) the following All Natural frozen yogurt flavors: Froyo Cherry Garcia, Froyo Chocolate Fudge Brownie, Froyo Half-Baked; AND (c) the following All Natural popsicle flavors: Cherry Garcia, Fudgy Brownies, and Half Baked.

### **6. I'm still not sure if I am included.**

If you are still not sure whether you are included, you can get free help at 800-XXX-XXXX or by visiting [WEBSITE], or by writing to the class counsel in this case, at the address listed in question 11.

## **THE PROPOSED SETTLEMENT**

### **7. What is the Proposed Settlement?**

Since filing the action, the Plaintiff, through class counsel, has conducted an investigation and taken discovery of the facts and has analyzed the relevant legal and factual issues. Class counsel obtained substantial information about the challenged practices through this process.

The Parties have agreed to enter into a settlement agreement after an extensive exchange of information, a vigorous arms-length negotiation and a mediation before David Rotman, Esq., a professional mediator. If approved by the Court, the settlement agreement will result in dismissal of

this case and final resolution of all claims raised. Such dismissal will release Unilever from liability for the acts and practices that Plaintiff challenged in the lawsuit. The settlement terms are described in full in a document called the Settlement Agreement (hereinafter "Agreement" or "Settlement"). The Agreement is available for your inspection at the clerk's office of the United States District Court for the Northern District of California. It is also available at [www. .com](http://www. .com). The terms of the settlement, in summary form, are as follows:

1. The Settlement creates a settlement restitution of \$5,000,000. Under the Settlement, an eligible Class member who purchased up to and including three (3) units of Ben & Jerry's Ice Cream Products shall be entitled to receive compensation from the settlement restitution in the amount of two dollars (\$2.00) per unit.

Class members who claim more than three (3) units of Ice Cream Products must submit proof of purchase, such as a receipt or container label. If you are an eligible Class member and wish to receive this benefit, you must timely submit a completed Claim Form to the claims administrator as described below. The claims administrator will determine the validity of all claims, subject to review by the Court. The Claim Form is attached to this Notice.

All claims shall be submitted via regular mail, and there shall be a maximum of \$20.00 claimed per household.

2. Unilever will cease the use of the term "All Natural" in relation to Ben & Jerry's Ice Cream Products that contain alkalized cocoa. This change in labeling applies to new labels printed after the Effective Date of the settlement.

3. Any amount remaining from the settlement restitution, after subtracting claims made and paid, will be distributed through the Ben & Jerry's Foundation, the Unilever Foundation, or another affiliated Unilever charitable foundation, over a three-year period commencing on final approval.

## **YOUR RIGHTS AND OPTIONS**

You have to decide whether to stay in the Class or ask to be excluded, and you have to decide this now.

### **8. Do I Have to do Anything?**

If you are an eligible Class member and you wish to receive monetary compensation for Unilever Ice Cream Products that you purchased, you need to complete and submit an authenticated claim form in a timely manner. This form is necessary to ensure that only eligible Class members receive a monetary benefit. The claim form is available at the Settlement Website at [www. .com](http://www. .com).

The fully completed certified claim form must be submitted via U.S. Mail to the claims administrator at \_\_\_\_\_, P.O. Box \_\_\_\_\_.

The deadline for submission of the claim form is [\_\_\_\_\_]. The claim form must be submitted by mail and postmarked on or before \_\_\_\_\_ to be timely.

## **9. When Will I Receive Payment?**

The Court will hold a final approved hearing on \_\_\_\_\_ during which it will decide whether it will finally approve all terms of the Settlement. If the Court approves the Settlement, there may be appeals or other challenges. Checks will be mailed 35 days after the Court enters an order finally approving the settlement and all appeals (if any) are resolved. The progress of approval process and expected dates of payment will be updated periodically on the website and can also be obtained by calling the claims administrator's toll free number. The entire process could take more than a year, so please be patient.

## **10. What am I Giving up by Participating in the Settlement?**

Unless you exclude yourself, you are staying in the Class, and that means that you can't sue, continue to sue, or be part of any other lawsuit against Unilever regarding the legal issues raised in this case. It also means that all of the Court's orders will apply to you and legally bind you. If you sign the claim form, you will agree to release claims generally described below.

The Settlement provides that once the Court enters an order finding the proposed Settlement fair, adequate, and reasonable and all appeals have been resolved or all appeals periods have expired, those Class members who have not timely requested exclusion from these actions shall be deemed to have and by operation of the final judgment shall have fully, finally and forever released, relinquished, and discharged all released claims as set forth below.

Specifically, the Settlement is intended to settle any and all known and unknown claims against Unilever associated with the sale and marketing of its Ice Cream Products as "all natural."

The release will extend to Unilever and its past or present directors, officers, employees, partners, principals, agents, predecessors, successors, assigns, parents, affiliated and sister corporations, subsidiaries, licensees, divisions, and related or affiliated entities.

If the Settlement is approved by the Court and not otherwise terminated, the Court will dismiss the action with prejudice, and bar the named Plaintiff and each Class member from prosecuting the released claims. As a result, once the judgment of the Court in accordance with this Settlement has become final, each of the Class members and their legal successors-in-interest shall be deemed to have forever given up any released claims against Unilever and the other released parties. If you do not elect



to exclude yourself from the Class, you will be deemed to have entered into this release and to have released the above-described claims. If the Settlement is not approved by the Court or does not become final for some other reason, the litigation will continue.

## THE LAWYERS REPRESENTING YOU

### 11. Who are Class Counsel and Who Do They Represent?

Class Counsel represent the Plaintiff and all persons who are members of the Class as it pertains to the claims alleged in this lawsuit. Class Counsel are:

Joseph N. Kravec, Jr. <b>STEMBER FEINSTEIN DOYLE PAYNE &amp; KRAVEC, LLC</b> 429 Forbes Avenue, 17 <sup>th</sup> Floor Pittsburgh, PA 15219	Janet Lindner Spielberg <b>LAW OFFICE OF JANET LINDNER SPIELBERG</b> 12400 Wilshire Blvd., Ste 400 Los Angeles, CA 90025
Michael D. Braun <b>BRAUN LAW GROUP, P.C.</b> 10680 W. Pico Blvd., Suite 280 Los Angeles, CA 90064	

### 12. Should I Get My Own Lawyer?

If you do not exclude yourself from the Class, you do not need to hire your own lawyer because Class Counsel is working on your behalf. But, if you want your own lawyer, you will have to pay that lawyer. For example, you can ask him or her to appear in Court for you if you want someone other than Class Counsel to speak for you.

### 13. Attorney's Fees and Class Representative Compensation

Counsel for the Class have pursued the Action on a contingent basis and have paid all costs of the Action. These attorneys have not yet been paid or recovered any of their expenses associated with the Action. As part of the Settlement, Class counsel will request that the Court award them attorneys' fees and expenses. They intend to request \$1,250,000 in attorneys' fees and reasonable costs. This amount is on top of the fund created to benefit the class and accordingly is non-dilutive of monies going to the Class. Class counsel's petition for fees and expenses will be filed with the court no later than \_\_\_\_\_, and may be reviewed by any interested party. The petition will be available at [www.\\_\\_\\_\\_\\_.com](http://www._____.com).

The petition will also request the payment of \$1,500 to compensate the Plaintiff for her efforts in the litigation, to be paid from the awarded attorneys' fees and expenses. The Court will determine the reasonableness of the attorneys' fee and expense request as well as the proposed Class Representative award at the fairness hearing.

#### **14. Why are Class Counsel Recommending This Settlement?**

Relative to the risks and costs of continuing the litigation, Class counsel believe this Settlement provides a favorable recovery which is in the best interest of the Class. Class counsel's collective evaluation in this regard is based on the extensive investigation and discovery they have undertaken, and upon their experience prosecuting similar cases.

Absent Settlement, the Plaintiff would have to survive a motion for summary judgment and if successful, still have the burden of establishing liability and the amount of damages at trial. The action involves many unresolved factual and legal issues, some of which could be decided against Plaintiff at or before trial, and which could jeopardize Plaintiff's ability to obtain a favorable judgment.

Moreover, even if a favorable judgment were obtained at trial, it could well produce less net recovery to the Class members than the present Settlement.

### **WHAT IF I DO NOT WISH TO PARTICIPATE IN THE SETTLEMENT**

#### **15. Your Right to Exclude Yourself From the Settlement**

If you are a Class member, you may elect to exclude yourself from the Class settlement. You may need to be excluded from the Class if you already have your own lawsuit against Unilever for misbranding its Ice Cream Products and want to continue with it, or if you want to preserve the right to sue Unilever on your own for Unilever's misbranding its Ice Cream Products. If you exclude yourself from the Class – which also means to remove yourself from the Class, and is sometimes called "opting-out" of the Class – you will not get any money or benefits from this lawsuit even if the Plaintiffs obtain it as a result of the trial or from any settlement that may or may not be reached between Unilever and the Plaintiff. However, you may then be able to sue or continue to sue Unilever for misbranding its Ice Cream Products. If you exclude yourself, you will not be legally bound by the Court's judgments in this class action.

If you start your own lawsuit against Unilever after you exclude yourself, you will have to hire and pay your own lawyer for that lawsuit, and you will have to prove your claims. If you do exclude yourself so you can start your own lawsuit against Unilever, you should talk to your own lawyer soon because your claims may be subject to a statute of limitations.

#### **16. How do I exclude myself from the Settlement?**

If you wish to be excluded from the Settlement Class, you must send a completed Request for Exclusion Form to the claims administrator via U.S. Mail to: [address] in a timely manner. The Request for Exclusion Form must be postmarked on or before \_\_\_\_\_ to be effective. The Request for Exclusion must be personally signed by the Settlement Class Member requesting exclusion and contain a statement that indicates a desire to be excluded from the Settlement Class. Exclusions can only be filed individually—not on behalf of a group or class. If you exclude yourself from the Class and the proposed Settlement is finally approved, you will not be entitled to receive any benefits of the Settlement and will remain free to pursue any legal rights you may have against Unilever at your own expense, but the representative Plaintiff and her lawyers will not represent you as to any claims against Unilever.

## **YOUR RIGHT TO OBJECT TO THE PROPOSED SETTLEMENT AND APPEAR AT THE FINAL APPROVAL HEARING**

### **17. What is the difference between objecting and excluding?**

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

### **18. How Can I Object to the Settlement?**

If you're a Class Member, you can object to the Settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter with the following information: (a) a heading which refers to the Action; (b) the objector's name, address, telephone number and e-mail address, and if represented by counsel, of your counsel; (c) a statement that the objector purchased Ben & Jerry's Ice Cream Products at issue in the lawsuit; the number of packages purchased, the date(s) of purchase and the location(s) of the purchase(s); (d) a statement whether the objector intends to appear at the Final Approval Hearing, either in person or through counsel, and, if through counsel, identifying counsel by name, address, and phone number; (e) a statement of the objection and the grounds supporting the objection; (f) a list of all persons who will be called to testify in support of the objection; (g) a list of other cases in which you or your counsel have appeared either as settlement objectors or as counsel for objectors during the preceding five (5) years; (h) copies of any papers, briefs, or other documents upon which the objection is based; and (i) your signature, even if you are also represented by counsel.

Mail the objection to the following three places, postmarked no later than \_\_\_\_\_:

OFFICE OF THE CLERK	UNILEVER'S COUNSEL	PLAINTIFFS' CLASS COUNSEL
United States District Court Northern District of California Clerk's Office 450 Golden Gate Avenue San Francisco, CA 94102	William L. Stern <b>MORRISON &amp; FOERSTER LLP</b> 425 Market Street San Francisco, CA 94105	Joseph N. Kravec, Jr. <b>STEMBER FEINSTEIN DOYLE            PAYNE &amp; KRAVEC, LLC</b> 429 Forbes Avenue, 17th Floor Pittsburgh, PA 15219

### 19. When and where will the Court decide whether to approve the settlement?

The court will conduct a "Final Approval Hearing" at the United States District Court for the Northern District of California, located at the Oakland Courthouse, Courtroom 3 - 3rd Floor 1301 Clay Street, Oakland, CA 94612 on \_\_\_\_\_ at \_\_\_\_\_ a.m. (or at the dates and times to which the Court may, without further notice, reschedule the hearing). The purpose of the Final Approval Hearing will be to determine whether the proposed Settlement is fair, adequate, and proper and whether the Court should enter judgments approving the Settlement, awarding attorneys' fees and expenses, and dismissing the class action.

### 20. Can I Appear at the Final Settlement Approval Hearing?

You may attend the Final Approval Hearing, but your attendance is not required nor will it affect your eligibility to submit the claim form. You do not need to appear in Court, and you do not need to hire your own attorney to represent you in this case, although you are free to do so. Any Class member may appear at the Final Approval Hearing (also known as the "Fairness Hearing") in person or by a duly appointed authorized attorney and show cause, if any, why the Settlement should not be approved; provided that (except by special permission of the Court) no Class member shall be heard unless, on or before, \_\_\_\_\_, the Class member files with the Court a written "Notice of Intent to Appear" to the clerk's address above, setting forth all of the Class member's objections to the Settlement, and mails copies of all such papers to Plaintiffs' and Unilever's counsel at the addresses specified in Paragraph 18.

## IF YOU DO NOTHING

### 21. What if I do nothing?

If you do nothing, you'll get no money from this settlement. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Unilever about the legal issues in this case, ever again.

## GETTING MORE INFORMATION

### 22. Are there any more details available?

Yes. You can call 1-800-000-0000 toll free; write to \_\_\_\_\_ or visit the Settlement website at [www.\\_\\_\\_\\_\\_.com](http://www._____.com), where you will find answers to common questions about the Settlement, a claim form, plus other information to help you determine whether you are a Class Member and whether you are eligible for a payment.

PLEASE DO NOT TELEPHONE THE COURT OR THE CLERK OF THE COURT OR  
COUNSEL FOR UNILEVER FOR INFORMATION

**EXHIBIT B-4**  
**TO MOTION FOR**  
**PRELIMINARY APPROVAL**  
**(EXHIBIT 4 TO SETTLEMENT AGREEMENT)**

**LEGAL NOTICE**

**If you purchased ice cream containing alkalized cocoa labeled Ben & Jerry's All Natural between September 28, 2006 and [DATE], or Breyers All Natural or Breyers Smooth & Creamy 1/2 Fat All Natural between November 4, 2004 and [DATE] you could get a payment from a class action settlement**

*Para una notificación en Español, llamar o visitar nuestro website.*

Two settlements have been proposed in class action lawsuits alleging that Ben & Jerry's Homemade, Inc. and Conopco, Inc. d/b/a UNILEVER, GOOD HUMOR-BREYERS, and BREYERS ("Unilever") mislabeled their ice cream products as "all natural" when they contained synthetic ingredients.

The United States District Court for the Northern District of California authorized this notice. Before any money is paid, the Court will have a hearing to decide whether to approve the settlements.

**WHO IS INCLUDED ?**

All consumers who purchased ice cream containing alkalized cocoa labeled Ben & Jerry's All Natural between September 28, 2006 and (DATE), or Breyers All Natural or Breyers Smooth & Creamy 1/2 Fat All Natural between November 4, 2004 and (DATE).

**WHAT IS THIS ABOUT?**

The lawsuits claim that, Ben & Jerry's and Breyers have represented their Ice Cream products as being "all natural" despite the fact that they contain alkalized cocoa - a non-natural processed ingredient that contains potassium carbonate, a man made, synthetic ingredient.

**WHAT DO THE SETTLEMENTS PROVIDE?**

The Settlements provide restitution of \$5,000,000 for Ben & Jerry's Class Members and \$2,500,000 for Breyers Class Members. Class Members who timely submit valid Claim Forms are entitled to receive a cash payment of

two dollars (\$2.00) per unit of Ben & Jerry's or Breyers Ice Cream purchased. Class members who claim for more than three (3) units of ice cream must submit proof of purchase.

The details of the Settlements are set forth fully in the Settlement agreements, which are available for review at [www.-----.com](http://www.-----.com).

**WHO REPRESENTS YOU?**

The Court appointed the law firms Stember Feinstein Doyle Payne & Kravec, LLC, Braun Law Group, P.C., the Law Offices of Janet Lindner Spielberg and Gardy & Notis, LLP to represent you as "Class Counsel."

**WHAT ARE YOUR OPTIONS?**

If you don't want to be legally bound by the Settlements, you must exclude yourself by \_\_\_\_\_, or you won't be able to sue, or continue to sue, Unilever or related parties about the legal claims in this case. If you exclude yourself, you can't get money from these settlements.

If you stay in either Settlement, you may object to it by \_\_\_\_\_. The detailed notice explains how to exclude yourself or object.

The Court will hold a hearing at \_\_\_\_ a.m. on [date] at the United States District Court for the Northern District of California, located at the Oakland Courthouse, 1301 Clay Street, Oakland, CA 94612 before the Honorable Phyllis J. Hamilton in Courtroom 3, 3rd Floor. The Court will consider whether to approve the Settlements

**LEGAL NOTICE**

and whether to grant Co-Lead Counsel's request for attorneys' fees and costs of \$1,250,000 for the Ben & Jerry's Settlement and \$625,000 for the Breyers Settlement. You do not need to retain an attorney or attend the hearing, although you have the right to do so.

**HOW CAN I GET MORE INFORMATION?**

You can get a detailed notice and other information by calling toll free 1-800-XXX-XXXX, visiting [www.-----.com](http://www.-----.com), or writing to

\_\_\_\_\_.

CLAIM FORMS MUST BE POSTMARKED  
OR SUBMITTED ONLINE BY: DATE



**EXHIBIT B-5**  
**TO MOTION FOR**  
**PRELIMINARY APPROVAL**  
**(EXHIBIT 5 TO SETTLEMENT AGREEMENT)**

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

SKYE ASTIANA on behalf of herself and all  
others similarly situated,

Plaintiff,

v.

BEN & JERRY'S HOMEMADE, INC.,

Defendant.

Case No. 4:10-cv-04387-PJH

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF  
PROPOSED CLASS ACTION  
SETTLEMENT, DIRECTING THE  
DISSEMINATION OF NOTICE  
AND SCHEDULING A FINAL  
SETTLEMENT HEARING**

Hon. Phyllis J. Hamilton

Court:

1  
2 The Court has considered the Class Action Settlement Agreement and Release, dated  
3 February 24, 2012 (“Settlement Agreement”), the joint motion for order preliminarily approving a  
4 class action settlement, directing the dissemination of notice, and setting a final settlement  
5 hearing, and all other papers filed in this action. The Court conducted a hearing on March 28,  
6 2012, with regard to the proposed settlement of this action, and has fully considered the record of  
7 these proceedings, the representations, arguments, and recommendations of counsel for the  
8 moving parties, and the requirements of law. The matter having been submitted and good cause  
9 appearing therefore:

10 The Court finds as follows:

- 11 1. All defined terms contained herein shall have the same meanings as set forth in  
12 the Settlement Agreement executed by Plaintiff and Defendants and filed with this Court.
- 13 2. For purposes of settlement of the Action, the Court has subject matter and  
14 personal jurisdiction over the Parties, including all Settlement Class Members, and venue is  
15 proper.
- 16 3. The Plaintiff and Defendant, through their counsel of record in the Action, have  
17 reached an agreement to settle all claims in the Action.
- 18 4. The Settlement Agreement was entered into at arm’s-length by experienced  
19 counsel and after extensive negotiations spanning over one year. The Settlement Agreement is  
20 not the result of collusion.
- 21 5. The Court preliminarily approves the Settlement as being within the realm of  
22 reasonableness to the Settlement Class, subject to further consideration at the Final Approval  
23 Hearing described below, defined as:

24 All persons in the United States who purchased Ben &  
25 Jerry’s Unilever Ice Cream Products from September 28,  
26 2006 through the date of Preliminary Approval of the  
27 Settlement.

28 Excluded from the Settlement Class are: (i) Unilever and its employees, principals, affiliated  
entities, legal representatives, successors and assigns; (ii) any person who files a valid, timely

1  
2 Request for Exclusion; and (iii) the Judges to whom the Action is assigned and any members  
3 of their immediate families.

4           6.       The Court preliminarily concludes that, for the purposes of approving this  
5 settlement only and for no other purpose and with no other effect on the Action, should the  
6 proposed Settlement Agreement not ultimately be approved or should the Effective Date not  
7 occur, the proposed Rule 23(b)(2) and 23(b)(3) Settlement Class meets the requirements for  
8 certification under Rule 23 of the Federal Rules of Civil Procedure: (a) the proposed  
9 Settlement Class is ascertainable and so numerous that joinder of all members of the  
10 Settlement Class is impracticable; (b) there are questions of law or fact common to the  
11 proposed Settlement Class, and there is a well-defined community of interest among members  
12 of the proposed Settlement Class with respect to the subject matter of the Action; (c) the  
13 claims of Plaintiff Skye Astiana are typical of the claims of the members of the proposed  
14 Settlement Class; (d) Plaintiff Skye Astiana and the Class Counsel will fairly and adequately  
15 protect the interests of the members of the Settlement Class; (e) Unilever has engaged in a  
16 pattern of behavior subject to injunctive relief; and (f) for purposes of the Rule 23(b)(2)  
17 certification, injunctive relief predominates over monetary damages.

18           7.       Class Counsel may apply to the District Court for an award of attorneys' fees  
19 and for reimbursement of expenses to be paid by Defendant. Class Counsel agrees to file its  
20 application for attorneys' fees and expenses and incentive award with the District Court a  
21 minimum of twenty-one days (21) prior to the deadline for objections as contemplated by  
22 Section VI.1.a of the Settlement Agreement in compliance with *In re Mercury Interactive*  
23 *Corp. Sec. Litig.*, 618 F.3d 988 (9th Cir. 2010), to provide class members with sufficient time  
24 to file any objection they might have to the application.

25           8.       Plaintiff Skye Astiana is hereby appointed as Class Representative. Janet  
26 Lindner Spielberg of the Law Offices of Janet Lindner Spielberg, Michael D. Braun, of the  
27 Braun Law Group, P.C., and Joseph N. Kravec, Jr., of Stember Feinstein Doyle Payne &  
28 Kravec, LLC are hereby appointed Class Counsel.

1  
2           9.       The Court also approves of the Parties' selection of Rust Consulting, Inc. to  
3 serve as the Claims Administrator for purposes of the settlement.

4           10.       The Court approves the form and content of the Class Notice (attached hereto  
5 as Exhibit A). The Court finds that the publication of the Class Notice in the manner, timing,  
6 and form set forth in the Agreement satisfies due process. The foregoing is the best notice  
7 practicable under the circumstances and shall constitute due and sufficient notice to all Class  
8 Members entitled to such Class Notice. The Court authorizes the Parties to make non-material  
9 modifications to the Class Notice prior to publication if the Parties jointly agree that any such  
10 changes are necessary under the circumstances.

11           11.       If Settlement Class Members do not wish to participate in the Settlement, they  
12 may exclude themselves. In order to opt out, Settlement Class Members must complete and  
13 send via United States mail to the Claims Administrator, at (an address supplied by the Claims  
14 Administrator), a Request for Exclusion that is post-marked no later than 45 days after the  
15 Notice Date (the "Opt Out Date"). The Request for Exclusion must be personally signed by  
16 the Settlement Class Member requesting exclusion and contain a statement that indicates a  
17 desire to be excluded from the Settlement Class. So-called "mass" or "class" opt-outs shall  
18 not be allowed. Any Class Member who does not opt out of the settlement in the manner just  
19 described shall be deemed to be part of the Settlement Class.

20           12.       Any potential Settlement Class Member who does not opt out may object to the  
21 settlement. Those who wish to object to the settlement must do so in writing no later than the  
22 Objection Date (the date forty-five (45) days after the Notice Date). In order to object, the  
23 Settlement Class Member must file with the Court, and provide a copy to Co-Lead Counsel  
24 and Unilever's Counsel a document that includes the following: (a) a heading which refers to  
25 the Action; (b) the objector's name, address, and telephone number; (c) a statement that the  
26 objector purchased Ben & Jerry's Ice Cream Products at issue in the lawsuit; the number of  
27 packages purchased, the date(s) of purchase and the location(s) of the purchase(s); (d) a  
28 statement whether the objector intends to appear at the Final Approval Hearing, either in

person or through counsel, and, if through counsel, identifying counsel by name, address, and  
[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION  
CASE NO. 4:10-CV-04387-PJH

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2 phone number; (e) a statement of the grounds supporting the objection; (f) a list of all persons  
3 who will be called to testify in support of the objection; (g) a list of other cases in which the  
4 objector or objector's counsel have appeared either as settlement objectors or as counsel for  
5 objectors during the preceding five (5) years; (h) copies of any papers, briefs, or other  
6 documents upon which the objection is based; and (i) the objector's signature, even if he/she is  
7 represented by counsel. Any Class Member who does not object to the Settlement in the  
8 manner just described shall be deemed to have waived such objection and shall forever be  
9 foreclosed from making any objection to the fairness, adequacy, or reasonableness of the  
10 proposed Settlement or any provision of the Agreement.

11           13. Any objecting Class Member may appear, in person or by counsel, at the Final  
12 Approval Hearing held by the Court, to show cause why the proposed Settlement should not  
13 be approved as fair, adequate, and reasonable, or object to any petitions for Attorneys' Fees  
14 and Expenses or Incentive Award. The objecting Class Member must file with the Clerk's  
15 Office of the Court, at 450 Golden Gate Avenue, San Francisco, CA 94102, a written notice of  
16 intent to appear at the Final Approval Hearing ("Notice of Intent to Appear") no later than the  
17 Objection Date or on such other date that may be set forth in the Class Notice. The Class  
18 Member must also mail copies of such papers to Plaintiffs' and Unilever's counsel. The  
19 Notice of Intent to Appear must include copies of any papers, exhibits, or other evidence that  
20 the objecting Class Member (or his/her/its counsel) will present to the Court in connection  
21 with the Final Approval Hearing. Any Class Member who does not provide a Notice of Intent  
22 to Appear in complete accordance with the deadlines and other specifications set forth in the  
23 Class Notice, shall be barred from speaking or otherwise presenting any views at the Final  
24 Approval Hearing. The agreed-upon procedures and requirements for filing objections in  
25 connection with the Final Approval Hearing are intended to ensure the efficient administration  
26 of justice and the orderly presentation of any Class Member's objection to the Settlement, in  
27 accordance with such Class Member's due process rights.  
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Good cause appearing therefore, IT IS HEREBY ORDERED that:

1. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Class Action Settlement Agreement is preliminarily approved.

2. A Class, defined as follows, is hereby certified for purposes of preliminary approval:

All persons in the United States who purchased Ben & Jerry's Unilever Ice Cream Products from September 28, 2006 through the date of Preliminary Approval of the Settlement.

3. Janet Lindner Spielberg of the Law Offices of Janet Lindner Spielberg, Michael D. Braun, of the Braun Law Group, P.C., and Joseph N. Kravec, Jr., of Stember Feinstein Doyle Payne & Kravec, LLC are hereby appointed as Class Counsel.

4. Plaintiff Skye Astiana is hereby appointed as Class Representative.

5. The Court appoints Rust Consulting, Inc. to serve as the Claims Administrator for purposes of the settlement.

6. Notice of the settlement and the rights of Class Members to opt out of the settlement shall be given by issuance of publication notice and posting of a webpage consistent with the terms of the Settlement Agreement by the Notice Date (ninety-five days after the Preliminary Approval Date).

7. Pursuant to Section XIII.5. of the Settlement Agreement, the Parties to the Settlement Agreement and their counsel shall not make any public statements regarding the settlement describing information unavailable in the public record, unless as otherwise allowed for in the Settlement Agreement.

8. The parties shall file their motion for final approval of the classwide settlement on or by \_\_\_\_\_, 2012.

9. Plaintiff shall file any motion for approval of attorneys' fees, expenses and an incentive award on or by \_\_\_\_\_, 2012.

10. The parties shall file supplemental briefing including responses to any objections to the settlement on or by \_\_\_\_\_, 2012.

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11. The deadline for Class Members to opt-out of the Settlement is \_\_\_\_\_, 2012.

12. All Class Members wishing to submit a Claim Form post-marked and mailed to the Claims Administrator at an address selected by the Claims Administrator on or by \_\_\_\_\_, 2012.

13. A hearing shall be held before this Court on \_\_\_\_\_, 2012 at \_\_\_\_\_.m. to consider whether the settlement should be given final approval by the Court:

(a) Written objections by Class Members to the proposed settlement will be considered if received by the Court on or before the Objection Date, which is \_\_\_\_\_, 2012;

(b) At the Settlement Hearing, Class Members may be heard orally in support of or, if they have timely submitted written objections, in opposition to the settlement; and

(c) Class Counsel should be prepared at the hearing to respond to objections filed by Class Members and to provide other information as appropriate, bearing on whether or not the settlement should be granted final approval.

14. In the event that the Effective Date occurs, all Class Members will be deemed to have forever released and discharged the Released Claims. In the event that the Effective Date does not occur for any reason whatsoever, the Settlement Agreement shall be deemed null and void, except that Sections III.A.1., III.A.4., XI, XII.2., XII.3., XIII.2., XIII.4., XIII.5. and XIII.6. of the Settlement Agreement shall survive and be binding on the Parties, as described in Section XII.4 of the Agreement.

15. This Order shall not be construed or used as an admission, concession, or declaration by or against Defendant of any finding of fault, wrongdoing, or liability. This Order shall not be construed or used as a waiver or admission as to any arguments or defenses that might be available to Defendant, including objections to class certification in the event that the Settlement Agreement is terminated.

16. The Court shall retain jurisdiction for the purposes of implementing the provisions of this Order, and reserves the right to enter additional orders to effectuate the fair [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION  
CASE NO. 4:10-CV-04387-PJH



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and orderly administration and consummation of the settlement and to resolve any and all disputes that may arise thereunder.

DATED: \_\_\_\_\_, 2012

\_\_\_\_\_  
HONORABLE PHYLLIS J. HAMILTON  
United States District Court Judge

**EXHIBIT B-6**  
**TO MOTION FOR**  
**PRELIMINARY APPROVAL**  
**(EXHIBIT 6 TO SETTLEMENT AGREEMENT)**

1 Michael D. Braun (167416)  
BRAUN LAW GROUP, P.C.  
2 10680 West Pico Blvd., Suite 280  
Los Angeles, CA 90064  
3 Telephone: (310) 836-6000  
Facsimile: (310) 836-6010

Janet Lindner Spielberg (221926)  
LAW OFFICES OF JANET  
LINDER SPIELBERG  
12400 Wilshire Blvd., Suite 400  
Los Angeles, CA 90025  
Telephone: (310) 392-8801  
Facsimile: (310) 278-5938

4 Joseph N. Kravec, Jr. (admitted *Pro Hac Vice*)  
STEMBER FEINSTEIN DOYLE  
5 PAYNE & KRAVEC, LLC  
429 Forbes Avenue 17th Floor  
6 Pittsburgh, PA 15219  
Telephone: (412) 281-8400  
7 Facsimile: (412) 281-1007

8 *Attorneys for Plaintiff Astiana*

9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 SKYE ASTIANA on behalf of herself and all  
12 others similarly situated,

Plaintiff,

13 v.

14 BEN & JERRY'S HOMEMADE, INC.,

Defendant.

Case No. 4:10-cv-04387-PJH

**DECLARATION OF MARK RAPAZZINI**

1 I, Mark Rapazzini, declare the following of my own personal knowledge:

2  
3 1. I am a Senior Vice President with Rust Consulting, Inc. ("Rust"), a company that  
4 handles the administration of class action settlements, class action notice processes, FSLA notice  
5 processes, claims administration, mass tort settlements, bankruptcy administrations, settlement  
6 administrations and distributions in the public sector, and other large complex matters requiring  
7 significant telephone support and data management processes, such as product recalls and data  
8 breaches. My business address is Rust Consulting, Inc., Steuart Tower, One Market Plaza, Suite  
9 1275, San Francisco, California 94105.

10 2. On January 26, 2012, I was informed by Unilever's counsel that a notice publication  
11 plan was needed for the Breyer's and Ben & Jerry's settlements. At that time, I was provided with  
12 three possible magazines for Breyer's and three different possible magazines for Ben & Jerry's.  
13 The notice publication estimates I provided to Unilever's counsel in this matter include the two  
14 highest circulation magazines from the three Breyer's magazines (*Cooking Light* and *Country*  
15 *Living*), and the two highest circulation magazines from the three Ben & Jerry's magazines  
16 (*Entertainment Weekly* and *Rolling Stone*).

17 3. Attached as Exhibit A is a Notice Program Schedule that assumes Preliminary  
18 Approval occurs on or around March 28, 2012, and further assumes the Notice materials will be  
19 approved by the parties by April 2, 2012. The Notice will be published one time in each of the four  
20 magazines. The goal of the Notice Program Schedule is to have all media run as close together as  
21 possible, which provides a better impact if individuals can see the Notice in multiple publications  
22 within a shorter timeframe. The lead time is the final day a publication will accept reservations for  
23 the upcoming issue. For each of the individual publications, the lead time is as follows: *Cooking*  
24 *Light* – 46 days; *Country Living* – 51 days; *Entertainment Weekly* – 19 days; and *Rolling Stone* – 21  
25 days. *Cooking Light* and *Country Living* are monthly publications and have longer leads times.  
26 Based on a March 28, 2012 hearing date, the earliest *Cooking Light* issue in which the Notice could  
27 be placed is July, 2012, which would go on sale to the public on June 15, 2012. The other three  
28

1 publications are scheduled around *Cooking Light's* July, 2012 issue to ensure that the remaining  
2 Notices would appear within a four week timeframe with the other three publications going on sale  
3 to the public between May 22, 2012 and June 8, 2012.

4 4. Attached hereto as Exhibit B is demographic information for each of the four  
5 magazines listed above. The source of the demographic information contained in Exhibit B is GfK  
6 MRI's *Survey of the American Consumer*.

7 I declare under the penalty of perjury under the laws of the United States of America that the  
8 foregoing is true and correct.

9 Executed on February 23, 2012 in Los Gatos, California.

10   
11 \_\_\_\_\_  
12 Mark Rapazzini

# **ATTACHMENT A**

## Notice Program Schedule

### *Unilever Settlement*

2/23/2012



### **Paid Media Components**

#### **Print Media**

<b>Magazine(s)</b>	<b>Issue Date</b>	<b>Mail/On-sale Date</b>
<i>Cooking Light</i>	July 2012	June 15, 2012
<i>Country Living</i>	June 2012	May 22, 2012
<i>Entertainment Weekly</i>	June 15, 2012	June 8, 2012
<i>Rolling Stone</i>	June 7, 2012	May 25, 2012

### **Approval Timing**

Rust/KM requires formal engagement and payment in order to reserve any advertising space.

In order to comply with this schedule, Rust/KM must receive approval of notice materials by 04/02/12 .



# **ATTACHMENT B**



## Unilever Settlement – Magazine Demographics

	<b>Cooking Light</b>	<b>Country Living</b>	<b>Entertainment Weekly</b>	<b>Rolling Stone</b>
<b>Circulation</b>	1,783,808	1,625,196	1,797,384	1,467,739
<b>Readership*</b>	11,172,000	11,139,000	10,889,000	11,895,000
<b>Men/Women</b>	16%/84%	23%/77%	42%/58%	60%/40%
<b>Median Age</b>	49.2	51.3	37.4	33.5
<b>Median Household Income</b>	\$74,700	\$57,500	\$63,500	\$64,800
<b>Married</b>	65.5%	64.2%	44.3%	35.1%
<b>Attended/Graduated from College</b>	49.6%	49.6%	55.3%	55.9%
<b>White</b>	82%	88%	67%	75%
<b>African-American</b>	10%	7%	19%	12%
<b>Hispanic Descent</b>	9%	5%	16%	17%

\*Readership: a magazine's circulation multiplied by the average number of people who read each copy.