Christopher V. Langone
Attorney For Plaintiff, Colleen Tobin
207 Texas Lane
Ithaca, NY 14850
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
NEWARK DIVISION

COLLEEN TOBIN,	)
	)
Plaintiffs, Individually, and on behalf all others similarly situated,	)
	)
v.	)
	)
CONOPCO, INC. and BEN & JERRY'S HOMEMADE, INC.	)
	)
	)
Defendants.	)

CLASS ACTION COMPLAINT

Plaintiff Colleen Tobin (hereinafter, "Plaintiff"), brings this class action complaint against Defendant Conopco, Inc., doing business as Unilever, and Ben & Jerry's Homemade, Inc. (hereinafter "Unilever" or "Defendants") individually and on behalf of a class of all others similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure, who purchased Defendants' "All Natural Ben & Jerry's Ice Cream" at any time since September 14, 2006 (the "Class Period").

JURISDICTION AND VENUE

1. This case seeks monetary and equitable relief against Defendants for selling a "credence good" known as "All Natural Ben & Jerry's Ice Cream" that was

falsely labeled as "All Natural". This Court has jurisdiction over this class action under 28 U.S.C. §1332(d), which, under the provisions of the Class Action Fairness Act ("CAFA"), provides federal courts original jurisdiction over any class action in which any member of a class is a citizen of a state different from any defendant, and in which the matter in controversy exceeds in the aggregate the sum of $5 million, exclusive of interest and costs. Plaintiff seeks certification of a class of all persons who purchased "All Natural Ben & Jerry's Ice Cream" since September 14, 2006. Such persons reside in the 50 United States and the District of Columbia. Defendant Unilever is a citizen of New Jersey. The amount in controversy, exclusive of interest and costs, exceeds $5 million.

2. The Court has personal jurisdiction over Defendants because Unilever is headquartered in New Jersey and thus has sufficient minimum contacts with this District and New Jersey. Additionally, jurisdiction is also appropriate as Defendants otherwise intentionally avail themselves of the New Jersey market through its marketing and sales of the products in the state of New Jersey and/or by having such other contacts with New Jersey so as to render the exercise of jurisdiction over it by the New Jersey courts consistent with traditional notions of fair play and substantial justice.

3. Venue is proper pursuant to 28 U.S.C. §1391(a) because Unilever is headquartered in this District and its headquarters are located in this District and because the Court has personal jurisdiction over Defendants.

4. No other forum would be more convenient for the parties and witnesses to litigate this action.

5. New Jersey law applies to all claims set forth in this Complaint as Unilever is a New Jersey citizen and resident and their headquarter offices are located in this District, a substantial part of the development of the supply, distribution and/or marketing giving rise to the claims occurred in this District and all of the misconduct alleged herein was contrived, implemented, and has a shared nexus within New Jersey.

PARTIES

6. Plaintiff Tobin is a citizen of Illinois.

7. During the Class Period, Plaintiff purchased "All Natural Ben & Jerry's Ice Cream" products on multiple occasions in multiple locations and suffered an ascertainable loss in that she paid money for a mislabeled credence good. Prior to purchasing, Plaintiff viewed and specifically relied upon the "All Natural Ben & Jerry's Ice Cream" label in selecting the product for purchase.

8. Defendant Unilever is organized and existing under the laws of New York, with its corporate headquarters and principal place of business located in Englewood Cliffs, New Jersey. Unilever is a citizen of New Jersey. Unilever owns Ben & Jerry's Homemade, Inc. that has operations in Vermont.

FACTS IN SUPPORT OF CAUSE OF ACTION

9. Unilever is a New Jersey-based "brand" corporation that markets numerous household goods and foods in U.S. supermarkets and stores including Ice

Creams. For decades, Ben & Jerry's was a privately owned ice cream company owned by Grateful Dead fans Ben Cohen and Jerry Greenfield from Vermont.

10. In 1987, a "Deadhead" from Portland, Maine suggested that Ben & Jerry's Ice Cream name a flavor after the band's lead guitarist Jerry Garcia. "All Natural" Cherry Garcia® became the No. 1-selling flavor for Ben & Jerry's. Tens of millions of consumers including millions of "Deadheads" collectively spent hundreds of millions of dollars on Ben & Jerry's "All Natural" Ice Creams including its number one flavor "All Natural Cherry Garcia" ice cream.

11. In 2000, Ben & Jerry's agreed to be acquired by Unilever, who also owns the Breyer's brand, for about $326 million in cash.

12. "While I would have preferred for Ben & Jerry's to remain independent, I'm excited about this next chapter," Founder Ben Cohen said in a statement, which included the lyric from the Grateful Dead song 'Scarlet Begonias', "Once in a while you get shown the light in the strangest of places if you look at it right."

13. Unilever continued to market Ben & Jerry's as an "All Natural" Ice Cream and utilize "values-driven" marketing as a sales tool.

14. For example, in 2003, Unilever announced that Ben & Jerry's introduced a new line of ice cream called "Organic Ben & Jerry's" in select stores in Boston and San Francisco. As part of the campaign, Ben & Jerry's says "your body will thank you" for "ice cream made without use of conventional pesticides or growth hormones."

See: http://www.foxnews.com/story/0,2933,91062,00.html#ixzz26JeOTOf6

15. Unilever also did not buy milk from vendors who used recombinant bovine somatotropin, or rBST, also known as recombinant bovine growth hormone, or rBGH for use in Ben & Jerry's "All Natural" Ice Cream and disclosed the information on the Ben & Jerry's label.

16. Defendants sold Ben & Jerry's "All Natural" Ice Cream at a premium price above the price for Ice Creams that were not marketed as "All Natural".

17. Ben & Jerry's "All Natural" Ice Cream was a "credence good" that is known only through the "All Natural" benefits promised by the product's manufacturer and distributor at the time of purchase. See *Lee v. Carter-Reed Co., L.L.C.*, 203 N.J. 496 (N.J. 2010).

18. The "All Natural Ben & Jerry's Ice Cream" label was a material representation and an express warranty about the food product that was the basis of the bargain for purchasers of Ben & Jerry's Ice Cream including Plaintiff.

19. Unfortunately for all, the label was false because the ice cream product is not "All Natural Benny & Jerry's Ice Cream". For years, Defendants were selling a mislabeled credence good and Plaintiff and the class members were buying a mislabeled credence good.

20. On August 12, 2010, the Center for Science in the Public Interest (CSPI) announced that, "At least 48 out of 53 flavors of Ben & Jerry's "All Natural" ice cream and frozen yogurt contain alkalized cocoa, corn syrup, partially hydrogenated soybean oil, or other ingredients that either don't exist in nature or

that have been chemically modified. Calling products with unnatural ingredients "natural" is a false and misleading use of the term, according to the Center for Science in the Public Interest."

21. CSPI also wrote a letter to Mr. Paul Polman dated August 12, 2010. The letter stated in part that "Ben & Jerry's, which has cultivated an image of integrity over the past several decades markets a wide range of frozen deserts including 53 bearing a prominent "All Natural" Claim on their principal display panels.... These violations cause the products to be misbranded within the meaning of Section 403(a) of the Federal, Food Drug and Cosmetic Act, 21 U.S.C. 343(a)."

22. Jostein Solheim, a longtime Unilever executive, responded to CSPI in September 2010 and announced that Unilever would no longer label the food as "All Natural Ben & Jerry's Ice Cream".

23. Solheim has been with Unilever for over 19 years. Solheim worked on a so-called "rejuvenation" of Unilever's North American ice cream business with brands such as Breyers, Klondike, Popsicle and Good Humor. Solheim once stated, "I bring two scoops worth of ice cream experience, a global business perspective, a working understanding of how Unilever operates, and a passion for Ben & Jerry's to be a visionary, cutting-edge, values led business."

24. In addition to the claims made by CSPI, the "All Natural Ben & Jerry's" label was false because the food also likely included products made with Genetically Modified Organism (GMO) food ingredients.

25. According the to World Health Organization, "Genetically modified organisms (GMOs) can be defined as organisms in which the genetic material (DNA) has been **altered in a way that does not occur naturally**. The technology is often called "modern biotechnology" or "gene technology", sometimes also "recombinant DNA technology" or "genetic engineering". It allows selected individual genes to be transferred from one organism into another, also between non-related species. Such methods are used to create GM plants – which are then used to grow GM food crops" (emphasis added). As such foods containing GMO food products are not "All Natural".

26. Defendants have admitted that they cannot be sure or not if GMO products are in the ice cream. Defendants stated on an Internet site:

> "With regard to GMOs, we support the establishment of a coordinated regulatory framework within the U.S. government that allows for full consideration of the ecological and human health implications of GMO crops, as well as for meaningful public input. We have found that it is virtually impossible to secure GMO free assurances from suppliers. There is no regulatory framework in the United States to guide the definition of GMO-free. Due to some reformulation of ingredients, the products that we export meet the definition of GMO-free in the international markets where they are sold. Our goal is to be GMO-free in both our domestic and international products. Some of the issues we are confronting at the present time are the availability of a non-GMO supply of ingredient alternatives such as corn

syrup and add-ins such as candies, and certification of those supplies. Currently we cannot obtain secure GMO free assurances from all of our suppliers."

See benjerry.custhelp.com/app/.../a.../genetically-modified-ingredients.

27. The presence of man-made chemicals identified by CSPI and the likely presence of GMO ingredients render the "All Natural Ben & Jerry's" label as false and make Ben & Jerry's Ice Cream mislabeled "credence good".

28. Despite the fact that Unilever stopped selling the product with the false "All Natural Ben & Jerry's" credence good label, Unilever did not offer any voluntary refund program for consumers who bought the mislabeled "All Natural Ben & Jerry's Ice Cream" credence good.

29. Plaintiff was unaware that Ben & Jerry's was not in fact an "All Natural Ice Cream" until she learned about a proposed class action in a California lawsuit in *Astiana v. Ben & Jerry's.*

30. In *Astiana v. Ben & Jerry's*, Astiana's Counsel and Defendant worked together in an attempt to push through a collusive class action settlement that sought to limit consumers damages to $2 to $20 on a claims-made basis, coupled with a non-aggressive notice campaign (including not notifying entities like topclassactions.com), such that the total claims were less than $100,000/ Meanwhile, the Unilever Foundation, Defendant's "charitable" arm used to leverage the type "value-driven" marketing discussed above by Solheim, would receive over

$7,000,000. For this collusive deal, Defendants had agreed to pay Astiana's lawyers $1.25 million.

31. Plaintiff has not bought any Ben & Jerry's Ice Cream since she learned about the *Astiana* lawsuit in July of 2012.

32. Plaintiff Tobin objected to the unfair proposed settlement; subsequently, approval of the proposed class action settlement was denied in *Astiana* on September 12, 2012.

33. Plaintiff is not a nutritionist, food expert, or food scientist; Plaintiff is a lay consumer who did not (and does not) possess the specialized knowledge Defendants possess and which otherwise would have enabled Plaintiff to know that Defendants' credence-good, "All Natural Ben & Jerry's Ice Cream," was a mislabeled credence good.

34. Plaintiff, in the exercise of reasonable diligence, could not have discovered Defendants' mislabeling earlier because, like nearly all consumers, Plaintiff does not read scholarly publications or other published materials about "All Natural" food-labeling issues.

35. Plaintiff purchased Defendants' food products believing that mislabeled good was in fact "All Natural Ben & Jerry's Ice Cream." Plaintiff was unable to ascertain that the product was not if fact "All Natural Ben & Jerry's Ice Cream" but was an ice cream containing unnatural ingredients.

36. "All Natural Ben & Jerry's Ice Cream" cost more than similar products without misleading labels, and would have cost less absent the false "All Natural" label which consisted of decades of "All Natural" false labeling.

37. Ben & Jerry's "All Natural" Ice Cream was worth less than what Plaintiff and members of the Class paid for it. A mislabeled credence good is always worth less than its price.

38. Plaintiff and members of the Class were induced by Defendants and did purchase the mislabeled credence good known as Ben & Jerry's "All Natural" Ice Cream at a premium price instead buying properly labeled lower price competing products.

39. Plaintiff and members of the Class suffered an ascertainable loss of money as a result of Defendant's conduct in that they were sold a mislabeled credence good known as "Ben & Jerry's All Natural Ice Cream".

40. Defendant's acquisition of Plaintiff's and the class members' money by selling a mislabeled credence good was unfair and unconscionable.

CLASS ALLEGATIONS

41. Plaintiff brings claims pursuant to Federal Rule of Civil Procedure 23 individually and on behalf of the following nationwide consumer class (the "Class"): All purchasers of Ben and Jerry's "All Natural" Ice Cream since September 14, 2006. Specifically excluded from this Class are Defendant; the officers, directors or employees of Defendant; any entity in which Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of Plaintiff or

Defendant; also excluded are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

42. The Class is sufficiently numerous, as it includes thousands of persons who have purchased Ben & Jerry's products. Thus, joinder of such persons in a single action or bringing all members of the Class before the Court is impracticable for purposes of Rule 23(a)(1) of the Federal Rules of Civil Procedure. The disposition of the Class members' claims in this class action will substantially benefit both the parties and the Court.

43. There are questions of law and fact common to the Class for purposes of Federal Rule of Civil Procedure 23(a)(2). Defendant's labeling was supplied uniformly to all members of the Class over decades, so that the questions of law and fact are common to all members of the Class. All Class members were and are similarly affected by having purchased the "credence good" of "All Natural" ice cream for their intended and foreseeable purpose as labeled by Defendant as set forth in detail herein, and the relief sought herein is for the benefit of Plaintiff and other members of the Class.

44. Plaintiff asserts claims that are typical of the claims of the entire Class for purposes of Federal Rule of Civil Procedure 23(a)(3). Plaintiff and all Class members have been subjected to the same wrongful conduct because they have purchased a falsely labeled "credence good" that does not possess the "All Natural"

qualities that Defendants represented on the label. Plaintiff and the Class have thus all suffered an ascertainable loss.

45. Plaintiff will fairly and adequately represent and protect the interests of the other Class members for purposes of Federal Rule of Civil Procedure 23(a)(4). Plaintiff has no interests antagonistic to those of other Class members. Plaintiff is committed to the vigorous prosecution of this action and has retained counsel experienced in litigation of this nature to represent her. Plaintiff anticipates no difficulty in the management of this litigation as a class action. Plaintiff has demonstrated her mutually aligned interests with the class and her adequacy by retaining experienced class action counsel to successfully object to the unfair proposed settlement advanced by Defendants and Astiana's lawyers in the California case of *Astiana v. Ben & Jerry's Homemade, Inc.*

46. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(2) because Defendant has acted on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole. Defendant's labeling was supplied uniformly over decades to all members of the Class.

47. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact substantially predominate over any questions that may affect only individual members of the Class. Among these common questions of law and fact are:

(a) whether Defendant falsely labeled a credence good known as "All Natural Ben & Jerry Ice Cream";

(b) whether Defendant's acts and practices in connection with the labeling and sale of "All Natural Ben & Jerry's Ice Cream" violated the New Jersey Consumer Fraud Act;

(c) Whether Defendants' failure to offer a voluntary refund program for selling a mislabeled credence good over decades and then Defendants' subsequent efforts to collude with Plaintiffs in *Astiana* to create and structure a settlement that would pay money to the Unilever Foundation rather than class members constitute unfair conduct or unlawful conduct or unconscionable commercial practice warranting punitive damages in addition to restitution for Plaintiff and the class; and

(d) Whether Defendant's acts of false labeling and sale of "All Natural Ben & Jerry's Ice Cream" breached express warranties to Plaintiff and the Class actionable under the Magnuson-Moss Warranty Act.

48. ` Proceeding as a class action provides substantial benefits to both the parties and the Court because this is the most efficient method for the fair and efficient adjudication of the controversy. Class members have suffered and will suffer irreparable harm and damages as a result of Defendant's wrongful conduct. Because of the nature of the individual Class members' claims, few, if any, could or

would otherwise afford to seek legal redress against Defendant for the wrongs complained of herein, and a representative class action is therefore appropriate, the superior method of proceeding, and essential to the interests of justice insofar as the resolution of Class members' claims is concerned. Absent a representative class action, Class members would continue to suffer losses for which they would have no remedy, and Defendant would unjustly retain the proceeds of its ill-gotten gains. Even if separate actions could be brought by individual members of the Class, the resulting multiplicity of lawsuits would cause undue hardship, burden and expense for the Court and the litigants, as well as create a risk of inconsistent rulings which might be dispositive of the interests of the other Class members who are not parties to the adjudications and/or may substantially impede their ability to protect their interests.

CLAIMS FOR RELIEF

FIRST CLAM FOR RELIEF
Violations of the New Jersey Consumer Fraud Act

49. Plaintiff realleges and incorporates allegations 1-48, above, as if set forth in full herein.

50. Unilever is and has been a corporate citizen of the state of New Jersey at all relevant times during the Class Period. Defendants' conducts a significant amount of trade and commerce in New Jersey.

51. Ben & Jerry's Ice Cream is "merchandise" within the meaning of the Consumer Fraud Act.

52. As described herein, Defendant's labeling of its food product resulted in the purchase and use of the products primarily for personal, family, or household purposes, and violated the New Jersey Consumer Fraud Act, which prohibits, in connection with the sale of merchandise, the act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact.

53. Defendant's unfair, false and unconscionable conduct described herein consisted of falsely labeling the "All Natural Ben & Jerry's Ice Cream" credence good.

54. Defendant intended that Plaintiff and the Class rely on the false label so that Plaintiff and the other Class members would purchase "All Natural Ben & Jerry's Ice Cream".

55. Defendants, as detailed herein, proximately caused Plaintiff and other members of the Class to suffer an ascertainable loss in the form of monies spent to purchase a falsely labeled credence good that they otherwise would not have purchased and they are entitled to recover restitution, punitive damages, attorneys' fees and costs of suit.

SECOND CLAM FOR RELIEF
Breach of Express Written Warranty
Magnuson-Moss Warranty Act

56. Plaintiff realleges and incorporates allegations 1-48, above, as if set forth in full herein.

57. Defendant made the express warranty on the label that the food product "All Natural Ben & Jerry's Ice Cream" was "All Natural" and that warranty constituted a basis of the bargain for this credence good.

58. However, Defendant breached the express warranty in that the goods were in fact not "All Natural"

59. As a proximate result of this breach of warranty by Defendant, Plaintiff and other consumers have been damaged in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, and the general public, prays for judgment against Defendants as follows;

A. An order declaring this action to be a proper class action, appointing Plaintiff class representative and her counsel class counsel, and requiring Defendants to bear the cost of class notice;

B. An order requiring Defendants to disgorge or return all monies, revenues, and profits obtained by means of any wrongful act or practice.

C. An order requiring Defendants to pay restitution to restore all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice, untrue or misleading labeling, or a violation of the New Jersey Consumer Fraud Act, plus pre-and post-judgment interest thereon.

D. Costs, expenses, and reasonable attorneys' fees.

E. For damages in an amount to be determined at trial.

F. For appropriate declaratory, injunctive and equitable relief.

G. For all such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all causes of action so triable.

Respectfully Submitted,

s/ Christopher V. Langone

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Colleen Tobin

(b) County of Residence of First Listed Plaintiff Cook County, IL
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Chris Langone, 207 Texas Lane, Ithaca, NY 14850

DEFENDANTS

Conopco, Inc. d/b/a Unilever and Ben and Jerry's Homemade, Inc.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

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

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☒ 4
Citizen of Another State	☒ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

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

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

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

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

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

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☑ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $ 5,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☑ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 9/13/12

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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NEWARK DIVISION

COLLEEN TOBIN, Plaintiffs, Individually, and on behalf all others similarly situated, v. CONOPCO, INC. and BEN & JERRY'S HOMEMADE, INC. Defendants.	)	LOCAL RULE 11.2 CERTIFICATION

Affiant, CHRISTOPHER V. LANGONE, hereby certifies in accordance with Local Rule 11.2 that, as alleged in the complaint, a portion of the claims asserted (as to the alkalized cocoa, but not GMO and credence good theories) are asserted in *Astiana v. Ben & Jerry's Homemade, Inc.*, 10-4387, pending in the Northern District of California.

s/ Christopher V. Langone

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Attorney For Plaintiff, Colleen Tobin
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