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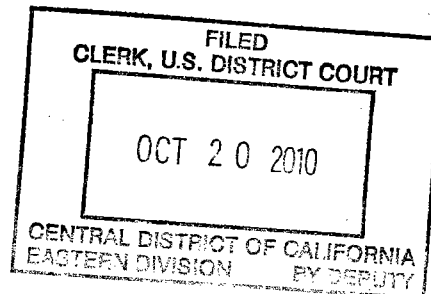
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17 **IN THE UNITED STATES DISTRICT COURT**
18 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
19 **EASTERN DIVISION**

20 TANASHA DENMON-CLARK on behalf of
21 herself and all others similarly situated,

22 Plaintiff,

23 v.

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

27 Defendant.

28 **CASE NO.:** CV10-7898 VBF (DRX)

CLASS ACTION

**COMPLAINT FOR DAMAGES,
EQUITABLE, DECLARATORY AND
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiff, by her attorneys, brings this class action against Defendant Conopco, Inc. d/b/a
2 Unilever (formerly d/b/a Good Humor-Breyers) d/b/a Breyers (“Breyers” or “Defendant”), on her
3 own behalf and on behalf of all others similarly situated, and alleges as follows based upon the
4 investigation of her counsel:

5 **INTRODUCTION**

6 1. This is a class action on behalf of a California class of consumers who purchased
7 Breyers All Natural Original Ice Cream products or Breyers Smooth & Creamy ½ Fat All Natural
8 Ice Cream products which contained alkalized cocoa beginning October 18, 2006 through the
9 present (“Class Period”). Since at least 2006, Breyers has packaged, marketed and sold its Ice
10 Cream products as being “all natural” despite the fact they contain alkalized cocoa - a non-natural
11 processed ingredient that additionally contains potassium carbonate, a man made, synthetic
12 ingredient.¹

13 2. Throughout the Class Period, Breyers prominently displayed the moniker “all
14 natural” on the labels of its Ice Cream products, cultivating a perception that its ice creams were
15 more wholesome than those that were not natural, in an effort to promote the sale of these products.
16 Indeed, as a result of this false and misleading labeling, Breyers was able to sell these products to
17 thousands of consumers in California and throughout the United States and to profit handsomely
18 from these transactions.

19 3. Plaintiff alleges Breyers’ conduct violates the unlawful, unfair and fraudulent prongs
20 of California’s Business and Professions Code section 17200, *et. seq.* (the “UCL”), and California
21 Business & Professions Code 17500, *et. seq.* (the “FAA”). Plaintiff also alleges that Breyers’
22 conduct is grounds for restitution on the basis of quasi-contract/unjust enrichment.

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27 ¹ As used throughout this Complaint, “Ice Cream” products includes BREYERS’s “all natural”
28 premium Ice Creams, yogurts and sorbets identified in paragraph 18 of this Complaint.

PARTIES

1
2 4. Plaintiff Tanasha Denmon-Clark has been a resident of Highland, San Bernardino
3 County, California since April 2004. Since at least October 2006, Ms. Denmon-Clark purchased
4 Breyers All Natural Chocolate Ice Cream a minimum of 4 times per year, and occasionally
5 purchased other of Breyers Ice Cream products at grocery stores in California near her residence in
6 Highland, San Bernardino County, California. Ms. Denmon-Clark believed the Ice Cream she
7 purchased was all natural and relied on this representation in making the purchase. Upon
8 information and belief, the Ice Cream Ms. Denmon-Clark purchased contained cocoa processed with
9 alkali - a non-natural processed ingredient that additionally contains potassium carbonate, a man
10 made, synthetic ingredient.

11 5. Defendant Conopco, Inc. d/b/a Unilever (formerly d/b/a Good Humor-Breyers) d/b/a
12 Breyers is a New York corporation that currently maintains its headquarters at 700 Sylvan Avenue,
13 Englewood Cliffs, New Jersey 07632. Breyers' Ice Cream products are distributed nationwide,
14 including California, in supermarkets, grocery stores, convenience stores, restaurants and other
15 venues. From its inception in 1866 to the present day, Breyers claims to produce a variety of special
16 Ice Cream products made with the finest all natural ingredients. In 1993, Breyers was acquired by
17 Unilever, one of the world's largest consumer products companies, and changed its name to Gold
18 Bond-Good Humor Ice Cream Company and then to Good Humor-Breyers Ice Cream Company.
19 Today, Conopco, Inc. d/b/a Unilever continues to own and manage Breyers and is based in
20 Englewood Cliffs, New Jersey. Conopco, Inc. is wholly owned by Unilever United States, Inc.

21
22 **JURISDICTION AND VENUE**

23 6. Jurisdiction of this Court is proper under 28 U.S.C. §1332, as complete diversity
24 between the parties exists. Representative Plaintiff Tanasha Denmon-Clark was a California
25 resident at the time she purchased Defendant's products at issue in this litigation. Defendant is a
26 New York corporation with its principle place of business in New Jersey.

27 7. Upon information and belief, the amount in controversy exceeds \$5,000,000 for
28 Representative Plaintiff and Class members collectively, exclusive of interest and costs, by virtue of

1 the combined purchase prices paid by Plaintiff and the Class, and the profit reaped by Defendant
2 from its transactions with Plaintiff and the Class, as a direct and proximate result of the wrongful
3 conduct alleged herein, and by virtue of the injunctive and equitable relief sought.

4 8. Venue is proper within this judicial district pursuant to 28 U.S.C. § 1391(b) and (c).
5 Defendant maintains offices and has agents, transacts business or is found within this judicial
6 district. Moreover, a substantial portion of the underlying transactions and events complained of
7 herein occurred, and affected persons and entities, in this judicial district, and Defendant has
8 received substantial compensation from such transactions and business activity in this judicial
9 district, including as the result of purchases of Defendant's Ice Cream products from retail locations
10 herein. Finally, Defendant inhabits and/or may be found in this judicial district, and the interstate
11 trade and commerce described herein is and has been carried out in part within this judicial district.

12
13 **BACKGROUND**

14 9. The cocoa bean is a seed that grows on trees native to South America. The fermented
15 and dried cocoa seed is the basic ingredient in chocolate. Chocolate is a name given to products that
16 are derived from cacao which are then mixed with some sort of fat (e.g. cocoa butter, oil) and finely
17 powdered sugar to produce a solid edible product.

18 10. To make chocolate, the beans are processed, roasted, cracked and shelled. The
19 resulting pieces called nibs are further processed into a chocolate liquor, butter or powder. The
20 cocoa powder is typically used in the flavoring of Ice Creams.

21 11. Unsweetened baking cocoa powder is typically rendered in one of two forms: a
22 natural cocoa or a non-natural version known as Dutch-process cocoa. Both are made by pulverizing
23 partially defatted chocolate liquor and removing nearly all the cocoa butter. Natural cocoa is light in
24 color and somewhat acidic with a strong chocolate flavor. Non-natural dutch-process cocoa is
25 processed with alkali to neutralize its natural acidity. Dutch cocoa is slightly milder in taste, with a
26 deeper and warmer color than natural cocoa. Dutch-process cocoa is frequently used when the
27 product calls for the blending of cacao with liquids. Unfortunately, Dutch processing destroys most
28

1 of the flavonols present in cocoa -- the water-soluble plant pigments that are believed to give dark
2 chocolate health benefits in the form of antioxidant, anti-inflammatory and antiviral properties.

3
4 **ALKALIZED COCOA IS UNNATURAL**

5 12. Although the FDA does not directly regulate the term "natural," the FDA has
6 established a policy defining the outer boundaries of the use of that term by clarifying that a product
7 is not natural if it contains color, artificial flavors, or synthetic substances.

8 <http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm094536.htm> and

9 <http://www.fda.gov/AboutFDA/Transparency/Basics/ucm214868.htm>.

10 13. The FDA also does recognize alkalization as a non-natural process and accordingly
11 requires that "when any optional alkali ingredient is used, the name of the food shall be accompanied
12 by the statement "Processed with alkali", or "Processed with -----", the blank being filled in with
13 the common or usual name of the specific alkali ingredient used in the food."

14 14. In addition, Breyers Ice Cream products containing alkalized cocoa are processed
15 with potassium carbonate which is a recognized synthetic substance.

16
17 **BREYERS' USE OF ALKALIZED COCOA**

18 15. American consumers are health conscious and frequently take nutrition information
19 into consideration in selecting and purchasing food items. Product package labels, including
20 nutrition labels, are vehicles that convey nutrition information to consumers which they can and do
21 use to make purchasing decisions. As noted by Food and Drug Administration Commissioner
22 Margaret Hamburg during an October 2009 media briefing, "[s]tudies show that consumers trust and
23 believe the nutrition facts information and that many consumers use it to help them build a healthy
24 diet."

25 16. The prevalence of claims about nutritional content on food packaging in the United
26 States has increased in recent years as manufacturers have sought to provide consumers with
27 nutrition information and thereby influence their purchasing decisions. The results of the FDA's
28 most recent Food Label and Package Survey found that approximately 4.8 percent of food products

1 sold in the United States had either a health claim or a qualified health claim on the food package,
2 and that more than half (53.2%) of the food products reviewed had nutrient content claims on the
3 packaging.

4 17. Treating cocoa with an alkalizing agent changes the chemical structure, taste, and
5 appearance of cocoa and reduces its acidity and flavonol content. In addition, the alkalized cocoa in
6 Breyers' Ice Cream products was processed with potassium carbonate, a recognized synthetic
7 substance.

8 18. As confirmed by Breyers' Ice Cream labels, cocoa processed with alkali is used as an
9 ingredient in 23 of Breyers' Ice Cream flavors which otherwise claim to be "all natural." Those Ice
10 Cream flavors are:

11 a. **Breyers' All Natural Original Ice Cream Flavors**

- 12 Black Raspberry Chocolate
- 13 Chocolate Chip Cookie Dough
- 14 Chocolate Chip
- 15 Chocolate
- 16 Cookies & Cream
- 17 Extra Creamy Chocolate
- 18 Mint Chocolate Chip
- 19 NASCAR Checkered Flag Vanilla & Chocolate
- 20 Rocky Road
- 21 Triple Chocolate
- 22 Vanilla, Chocolate
- 23 Vanilla Fudge Brownie
- 24 Vanilla Fudge Twirl
- 25 Vanilla, Chocolate, Strawberry

26 b. **Breyers' Smooth & Creamy 1/2 Fat All Natural Ice Cream**

- 27 Caramel Tracks
- 28 Chocolate Chocolate Chip
- Coffee Fudge Brownie
- Cookies & Cream
- Creamy Chocolate
- Dark Chocolate Velvet
- Mint Chocolate Chip
- Rocky Road
- Vanilla Chocolate Strawberry

19. According to Breyers' corporate website, its Ice Cream has been "Naturally Made Since 1866" "with the promise that [its] ice cream was made with the finest natural ingredients."

1 http://www.breyers.com/Our_History.aspx. Breyers' website also touts its All Natural Ice Cream as
2 "real ice cream" and as "Made with rich milk, sweet cream, fine sugar, and other naturally derived
3 ingredients like real fruit and chocolate." [http://www.breyers.com/products/all-natural-ice-](http://www.breyers.com/products/all-natural-ice-cream.aspx)
4 [cream.aspx](http://www.breyers.com/products/all-natural-ice-cream.aspx).

5 20. Labeling products as "all natural" carries implicit health benefits to consumers –
6 benefits that consumers are often willing to pay a premium over comparable products that are not
7 "all natural."

8 <http://www.preparedfoods.com/Articles/Column/7ebc022f62788010VgnVCM100000f932a8c0> _____.
9 Over the past 150 years Breyers has cultivated and reinforced a corporate image that has catered to
10 this "all natural" theme and have boldly emblazed this moniker on each and every one of its Ice
11 Cream products, despite the fact it uses a synthetic ingredient in the form of alkalized cocoa.

12 21. Breyers has used the "all natural" label to shape its brand and sell its product. Yet,
13 the existence of alkalized cocoa in its Ice Creams renders the use of the label "all natural," false and
14 misleading. In manufacturing its Ice Cream products, Defendant had a choice between using natural
15 or unnatural processed cocoa. It chose the later, but nonetheless labeled its Ice Cream products as
16 "all natural." As a matter of law, Breyers must now reconcile its labeling with the true content of its
17 products.

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19 **CLASS ACTION ALLEGATIONS**

20 22. Plaintiff brings this action on behalf of herself and on behalf of all other members of
21 the Class ("Class"), defined as all consumers who, on or after October 18, 2006, purchased in the
22 State of California Breyers' Ice Cream products that were labeled all natural but contained alkalized
23 cocoa. Plaintiff brings this Class pursuant to Federal Rule of Civil Procedure 23(a), and (b)(1),
24 23(b)(2) and 23(b)(3).

25 23. Upon information and belief, there are thousands of Class members who are
26 geographically dispersed throughout the State of California. Therefore, individual joinder of all
27 members of the Class would be impracticable.

28

1 24. Common questions of law or fact exist as to all members of the Class. These
2 questions predominate over the questions affecting only individual class members. These common
3 legal or factual questions include:

- 4 a. whether Breyers' labels its Ice Cream products as "all natural;"
- 5 b. whether the alkalized cocoa used in Breyers' Ice Cream
6 products is natural;
- 7 c. whether Breyers' "all natural" labeling of its Ice Cream products
8 is likely to deceive class members or the general public;
- 9 d. whether Breyers' representations are unlawful;
- 10 e. the appropriate measure of resitutionary disgorgement and/or
11 restitution.

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13 25. Plaintiff's claims are typical of the claims of the Class, in that Plaintiff was a
14 consumer who purchased Breyers' "all natural" Ice Cream products that contained alkalized cocoa in
15 California during the Class Period. Plaintiff, therefore, is no different in any relevant respect from
16 any other class member, and the relief sought is common to the Class.

17 26. Plaintiff is an adequate representative of the Class because her interests do not
18 conflict with the interests of the class members she seeks to represent, and she has retained counsel
19 competent and experienced in conducting complex class action litigation. Plaintiff and her counsel
20 will adequately protect the interests of the Class.

21 27. A class action is superior to other available means for the fair and efficient
22 adjudication of this dispute. The damages suffered by each individual class member likely will be
23 relatively small, especially given the burden and expense of individual prosecution of the complex
24 litigation necessitated by Breyers' conduct. Thus, it would be virtually impossible for the class
25 members individually to effectively redress the wrongs done to them. Moreover, even if the class
26 members could afford individual actions, it would still not be preferable to class wide litigation.
27 Individualized actions present the potential for inconsistent or contradictory judgments. By contrast,
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1 a class action presents far fewer management difficulties and provides the benefits of single
2 adjudication, economies of scale, and comprehensive supervision by a single court.

3 28. In the alternative, the Class may be certified because Breyers has acted or refused to
4 act on grounds generally applicable to the Class, thereby making appropriate preliminary and final
5 equitable relief with respect to the Class.

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FIRST CAUSE OF ACTION
(“Unlawful” Business Practices in Violation of
The Unfair Competition Law (“UCL”), Bus. & Prof. Code 17200, *et seq.*)

8

9 29. Plaintiff hereby incorporates the foregoing paragraphs of this Complaint and restates
10 them as if they were fully written herein.

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30. The UCL defines unfair business competition to include any “unlawful, unfair or
fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal.
Bus. Prof. Code 17200.

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31. A business act or practice is “unlawful” if it violates any established state or federal
law.

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32. California’s Sherman Food, Drug, and Cosmetic Law (“Sherman Law”), Article 6,
Section 110660 provides that: “Any food is misbranded if its labeling is false or misleading in any
particular.”

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33. Breyers’ has violated, and continues to violate the Sherman Law, Article 6, Section
110660 and hence has also violated and continues to violate the “unlawful” prong of the UCL
through its use of the term “all natural” associated with products that contain alkalized cocoa. By
committing the acts and practices alleged above, Breyers has engaged, and continues to be engaged,
in unlawful business practices within the meaning of California Business and Professions Code
17200 *et seq.*

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34. Through its unlawful acts and practices, Breyers has obtained, and continues to
unfairly obtain, money from members of the Class. As such, Plaintiff requests that this Court cause
Breyers to restore this money to Plaintiff and all Class members, to disgorge the profits Breyers
made on these transactions, and to enjoin Breyers from continuing to violate the Unfair Competition

1 Law as discussed herein. Otherwise, the Class may be irreparably harmed and/or denied an effective
2 and complete remedy if such an order is not granted.

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SECOND CAUSE OF ACTION
(“Unfair” Business Practices in Violation of
The Unfair Competition Law (“UCL”), Bus. & Prof. Code 17200, *et seq.*)

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35. Plaintiff hereby incorporates the foregoing paragraphs of this Complaint and restates them as if they were fully written herein.

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36. The UCL defines unfair business competition to include any “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal. Bus. Prof. Code 17200.

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37. A business act or practice is “unfair” under the Unfair Competition Law if the reasons, justifications and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims.

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38. Breyers has and continues to violate the “unfair” prong of the UCL through its misleading description of its products as all natural when indeed a main ingredient is not natural. The gravity of the harm to members of the Class resulting from such unfair acts and practices outweighs any conceivable reasons, justifications and/or motives of Breyers for engaging in such deceptive acts and practices. By committing the acts and practices alleged above, Breyers has engaged, and continues to be engaged, in unfair business practices within the meaning of California Business and Professions Code 17200, *et seq.*

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39. Through its unfair acts and practices, Breyers has obtained, and continues to unfairly obtain, money from members of the Class. As such, Plaintiff requests that this Court cause Breyers to restore this money to Plaintiff and all Class members, to disgorge the profits Breyers has made on its Ice Cream products, and to enjoin Breyers from continuing to violate the Unfair Competition Law as discussed herein. Otherwise, the Class may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

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THIRD CAUSE OF ACTION
(“Fraudulent” Business Practices in Violation of
The Unfair Competition Law (“UCL”), Bus. & Prof. Code 17200, et seq.)

40. Plaintiff hereby incorporates the foregoing paragraphs of this Complaint and restates them as if they were fully written herein.

41. The UCL defines unfair business competition to include any “unlawful, unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading” advertising. Cal. Bus. & Prof. Code §17200.

42. A business act or practice is “fraudulent” under the Unfair Competition Law if it actually deceives or is likely to deceive members of the consuming public.

43. Breyers’ acts and practices of mislabeling their products as all natural despite the fact they contained alkalized cocoa that is not natural has the effect of misleading consumers into believing the product something it is not.

44. As a result of the conduct described above, Breyers has been, and will continue to be, unjustly enriched at the expense of Plaintiff and members of the proposed Class. Specifically, Breyers has been unjustly enriched by the profits it has obtained from Plaintiff and the Class from the purchases of Ice Cream products made by them.

45. Through its unfair acts and practices, Breyers has improperly obtained, and continues to improperly obtain, money from members of the Class. As such, Plaintiff requests that this Court cause Breyers to restore this money to Plaintiff and all Class members, to disgorge the profits Breyers has made on its Ice Cream products, and to enjoin Breyers from continuing to violate the Unfair Competition Law as discussed herein. Otherwise, the Class may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

FOURTH CAUSE OF ACTION
(False Advertising in Violation of
California Business & Professions Code 17500, et seq.)

46. Plaintiff hereby incorporates the foregoing paragraphs of this Complaint and restates them as if they were fully written herein.

1 47. Plaintiff hereby incorporates by reference the allegations contained above. This cause
2 of action is brought by Plaintiff on behalf of himself, the Class members, and the general public.’

3 48. Defendant uses advertising on its packaging to sell its Ice Cream products. Defendant
4 is disseminating advertising concerning its goods which by its very nature is deceptive, untrue, or
5 misleading within the meaning of California Business & Professions Code 17500, *et seq.* because
6 those advertising statements contained on its product labels are misleading and likely to deceive, and
7 continue to deceive, members of the putative class and the general public.

8 49. In making and disseminating the statements alleged herein, Defendant knew or should
9 have known that the statements were untrue or misleading, and acted in violation of California
10 Business & Professions Code 17500, *et seq.*

11 50. The misrepresentations and non-disclosures by Defendant of the material facts
12 detailed above constitute false and misleading advertising and therefore constitute a violation of,
13 California Business & Professions Code 17500, *et seq.*

14 51. Through its deceptive acts and practices, Defendant has improperly and illegally
15 obtained money from Plaintiff and members of the putative class. As such, Plaintiff requests that
16 this Court cause Defendant to restore this money to Plaintiff and members of the putative class, and
17 to enjoin Defendant from continuing to violate California Business & Professions Code §17500, *et*
18 *seq.*, as discussed above. Otherwise, Plaintiff and those similarly situated will continue to be harmed
19 by Defendant’s false and/or misleading advertising.

20 52. Pursuant to California Business & Professions Code 17535, Plaintiff seeks an order of
21 this Court ordering Defendant to fully disclose the true nature of its misrepresentations. Plaintiff
22 additionally requests an order requiring Defendant to disgorge its ill-gotten gains and/or award full
23 restitution of all monies wrongfully acquired by Defendant by means of such acts of false
24 advertising, plus interest and attorneys fees so as to restore any and all monies which were acquired
25 and obtained by means of such untrue and misleading advertising, misrepresentations and omissions,
26 and which ill-gotten gains are still retained by Defendant. Plaintiff and the putative Class may be
27 irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.
28

1 53. Such conduct is ongoing and continues to this date. Plaintiff and the putative Class
2 are therefore entitled to the relief described below.

3
4 **FIFTH CAUSE OF ACTION**
5 **(Restitution Based On Quasi-Contract/Unjust Enrichment)**

6 54. Plaintiff hereby incorporates by reference each and every allegation contained in the
7 preceding paragraphs of this Complaint as if fully rewritten herein. Plaintiff pleads this Count in the
8 alternative.

9 55. Breyers' conduct in enticing Plaintiff and the Class to purchase its Ice Cream
10 products through its false and misleading packaging as described throughout this Complaint is
11 unlawful because the statements contained on its product labels are untrue. Breyers took monies
12 from Plaintiff and Class members for a product promised to be "all natural," even though the product
13 it sold is not natural as specified throughout this Complaint. Breyers has been unjustly enriched at
14 the expense of Plaintiff and the Class members as result of its unlawful conduct alleged herein,
15 thereby creating a quasi-contractual obligation on Breyers to restore these ill-gotten gains to Plaintiff
16 and the Class.

17 56. As a direct and proximate result of Breyers' unjust enrichment, Plaintiff and the Class
18 members are entitled to restitution or restitutionary disgorgement in an amount to be proved at trial.

19
20 **PRAYER**

21 WHEREFORE, Plaintiff, on behalf of herself and on behalf of the other members of the
22 Class, requests award and relief as follows:

23 A. An order certifying that this action is properly brought and may be maintained as a
24 class action, that Plaintiff be appointed Class Representative and Plaintiff's counsel be appointed
25 Class Counsel.

26 B. Restitution in such amount that Plaintiff and all Class members paid to purchase Ice
27 Cream products, or the profits Breyers obtained from those transactions.

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1 C. An order enjoining Breyers from advertising its products misleadingly, in violation of
2 California's Sherman Food, Drug and Cosmetic Law and regulations.

3 D. An order awarding Plaintiff his costs of suit, including reasonable attorneys' fees and
4 pre and post-judgment interest.

5 E. An order requiring an accounting for, and imposition of a constructive trust upon, all
6 monies received by Breyers as a result of the unfair, misleading, fraudulent and unlawful conduct
7 alleged herein.

8 F. Such other and further relief as may be deemed necessary or appropriate.
9

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands a trial by jury on all causes of action and/or issues so triable.

12
13 Dated: October 18, 2010

By: 

Michael D. Braun

14
15 **BRAUN LAW GROUP, P.C.**
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16 Los Angeles, CA 90064

17 Janet Lindner Spielberg
18 **LAW OFFICE OF JANET LINDNER**
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19 Los Angeles, California 90025

20 Joseph N. Kravec, Jr.
21 Ellen M. Doyle
22 **STEMBER FEINSTEIN DOYLE**
PAYNE & CORDES LLC
23 Allegheny Building, 17th Floor
429 Forbes Avenue
24 Pittsburgh, PA 15219

25 **ATTORNEYS FOR PLAINTIFF**
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Valerie Baker Fairbank and the assigned discovery Magistrate Judge is Oswald Parada.

The case number on all documents filed with the Court should read as follows:

CV10- 7898 VBF (OPx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge



NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Michael D. Braun (Bar No. 167416)
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

TANASHA DENMON-CLARK, a California citizen,
on behalf of herself and all others similarly situated,
PLAINTIFF(S)

v.

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

DEFENDANT(S).

CASE NUMBER

CV10-7898 VBF (OPX)

SUMMONS

TO: DEFENDANT(S): Conopco Inc., d/b/a Unilever (formerly d/b/a Good Humor-Breyers) d/b/a Breyers

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint _____ amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Michael D. Braun, Esq., whose address is Braun Law Group, P.C., 10680 W. Pico Blvd., Suite 280, Los Angeles, CA 90064. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

TERRY NAFISI

Clerk, U.S. District Court

OCT 20 2010

MARGO MEAD

Dated: _____

By: _____

Deputy Clerk

(Seal of the Court)



[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) TANASHA DENMON-CLARK, a California citizen, on behalf of herself and all others similarly situated,	DEFENDANTS CONOPCO, INC. d/b/a UNILEVER (formerly d/b/a GOOD HUMOR-BREYERS) d/b/a BREYERS
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Michael D. Braun (Bar No. 167416), BRAUN LAW GROUP, P.C. 10680 W. Pico Blvd., Suite 280, Los Angeles, CA 90064	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;">Citizen of This State</td> <td style="width:10%;">PTF <input checked="" type="checkbox"/> 1</td> <td style="width:10%;">DEF <input type="checkbox"/> 1</td> <td style="width:40%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%;">PTF <input type="checkbox"/> 4</td> <td style="width:10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4														
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

IV. 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 Multi-District Litigation
 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT:** \$ unknown at this time

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 Bus. & Prof. Code 17200, et seq.; Bus. & Prof. Code 17500, et seq.; Restitution Based On Quasi-Contract/Unjust Enrichment

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) (405(g)) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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CV10-7898 VBF (OP)

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
 If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
 If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
San Bernardino County	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
New Jersey	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
San Bernardino County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties
Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date 10-19-10

Notice to Counsel/Parties: The CV-71 (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. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))