Bridget C. Asay
PARTNER

STRIS & MAHER LLP
15 East State Street, Ste 2
Montpelier, VT 05602
www.stris.com

basay@stris.com
802.858.4285

December 18, 2025

Via Electronic Filing

The Honorable P. Kevin Castel
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: **Case 1:24-cv-08641-PKC, *Ben & Jerry's Homemade, Inc., Class I Directors of Ben & Jerry's Independent Board v. Unilever PLC and Conopco, Inc.***

Dear Judge Castel:

I write on behalf of proposed Plaintiff-Intervenor The Ben & Jerry's Foundation, Inc. (the Foundation). In accordance with Your Honor's Individual Practice Rule 3.A., the Foundation submits this pre-motion letter to notify the Court of its intent to file a motion to intervene in this action pursuant to Federal Rule of Civil Procedure 24. Pursuant to Rule 1(A)(iii) of Your Honor's Individual Practices in Civil Cases, we are not aware of any scheduled conferences before the Court.

The Foundation is an independent nonprofit 501(c)(3) organization that has for forty years received funding from Ben & Jerry's Homemade, Inc. (Ben & Jerry's) and has in turn provided substantial and concrete benefits to Ben & Jerry's and its corporate parents. Ongoing funding for the Foundation was part of the Merger Agreement (filed at Doc. 50-7) pursuant to which Unilever acquired Ben & Jerry's in 2000, and annual funding has been provided—under a formula required by Section 6.14(h) of the Merger Agreement—since then. In October 2025, pursuant to the Merger Agreement, the Ben & Jerry's Independent Board approved allocating 100% of the 2025 charitable contributions to the Foundation. But now, as of December 13, 2025, Ben & Jerry's new corporate parent is withholding that funding for reasons the Merger Agreement does not tolerate and ***despite the Independent Board's approval***. As explained below, this and other recent developments give the Foundation a concrete and substantial interest in this dispute. The basis for such motion is set forth below.

I. The Ben & Jerry's Foundation

In 1985, Ben & Jerry's co-founder, Ben Cohen, gifted 50,000 shares of Ben & Jerry's Homemade, Inc. to aid in establishing The Ben & Jerry's Foundation, Inc., a nonprofit dedicated to promoting the same values espoused by the company that he founded with Jerry Greenfield. Mr. Cohen's gift was matched by an unprecedented decision by Ben & Jerry's Board of Directors committing 7.5% of the company's annual pretax profits to philanthropy.

Since 1985, the Foundation has donated over $70 million to nonprofits promoting social justice efforts. The Foundation is currently governed by a team of five trustees, including Anuradha Mittal, who has been a Foundation trustee for eight years and currently serves as Chair of Ben & Jerry's Board of Directors (the Independent Board). Mr. Greenfield, who was the sixth Foundation trustee, previously served for several decades.

The Merger Agreement protects ongoing funding for the Foundation.[1] It created the Independent Board to oversee Ben & Jerry's social mission and brand integrity and to continue the pre-merger Board's commitment to the Foundation. Section 6.14(h) of the Merger Agreement (filed at Doc. 50-7) continues Ben & Jerry's commitment to providing substantial charitable contributions pursuant to a formula based on the volume of ice cream sales. It gives the Independent Board the "responsibility for allocating annual contributions" to the Foundation as long as certain criteria are met, including the Foundation not "significantly" changing its charitable purpose, the trustees not disparaging Ben & Jerry's, and new trustees being "reasonably satisfactory" to Unilever/Conopco. After an initial ten-year period, contributions to the Foundation approved by the Independent Board "shall continue" unless the "activities and performance" of the Foundation "cease to be reasonably acceptable to Unilever," with the Independent Board retaining responsibility for determining distributions.

For two and a half decades, without delay or interruption, the Independent Board approved funding the Foundation and supported the Foundation's work with Ben & Jerry's employees to determine the recipients of the Foundation's philanthropy. At no point since 2000 did Unilever request an audit, challenge the Foundation's governance, or object to any donation recipients, all while disbursing over $68 million to the Foundation. As had been the case since 1985, the funds disbursed to the Foundation were derived from a portion of Ben & Jerry's profits.

For its part, the Foundation has provided concrete and substantial benefits to Ben & Jerry's and its corporate parents. Ben & Jerry's markets itself as a company that seeks to "meet human needs and eliminate injustices in our local, national, and international communities."[2] The Foundation has worked closely with Ben & Jerry's employees to facilitate their community engagement and charitable giving. It matches charitable donations by employees; funds and supports employee community action teams; and provides funding for discretionary contributions by plant managers. The Foundation thus provides direct benefits to Ben & Jerry's employees and its philanthropy supports the company's touted social mission and progressive values.

The Foundation's work did not change, nor did the Independent Board's consistent support for the Foundation. But earlier this year, Ben & Jerry's corporate parent turned on a dime, targeting the Foundation, seeking to curtail its independence, and threatening its funding. On April 9, 2025, Abhijit Bhattacharya—Magnum's current Chief Financial Officer and then-CFO for Unilever Ice Cream—wrote to the Foundation and demanded to audit the Foundation "expeditiously," in order

[1] As a successor to Unilever/Conopco, Magnum is bound by the terms of the Merger Agreement. *See* Doc. 50-7, Section 9.09.

[2] Ben & Jerry's, "Our Progressive Values," https://www.benjerry.com/values/our-progressive-values (last visited Dec. 18, 2025).

to determine whether Unilever/Magnum would "continue to make contributions to the Foundation" pursuant to Section 6.14 of the Merger Agreement. Unilever called the audit "routine," but this was Unilever's first such request since the parties' relationship began in 2000.

The Foundation immediately had serious concerns about the motivation for and intended scope of this audit. The Foundation arranges an independent audit annually, and the results of those audits are publicly available. Unilever had never requested any kind of audit, and now it was demanding an immediate audit led by Forensic Risk Alliance—a firm that operates "purely in the forensic space" and provides expert-witness services in litigation.[3] Unilever's unusual demand followed months of litigation between the Independent Board and Unilever and came just five days after the Independent Board filed its Second Amended Complaint in this case. Two weeks later, Unilever's private letter to the Foundation was leaked to the press, in a *Semafor* story that also disclosed Unilever's motivation: "Unilever executives have privately identified a series of grants to the Oakland Institute [where the Chair of Ben & Jerry's Board serves as executive director], a nonprofit that promotes global aid and is critical of the World Bank and Israel."[4] In connection with its demand for this unprecedented audit, Unilever—again, relying on the Merger Agreement to justify its conduct—withheld funding that was already allocated to the Foundation and had been designated for grants to nonprofits.

The Foundation cooperated with the audit ultimately conducted by a forensic team from Ernst & Young, even though it was evident that inquiry was primarily directed at Ms. Mittal and the process was nothing like a routine financial audit. Unilever told the Foundation repeatedly that it should welcome the audit because of the importance of "transparency" and promised that the completed audit would be provided to the Foundation. But, in another reversal, Unilever and its successor Magnum now refuse to disclose the auditors' report.

As of less than one week ago, Magnum, Ben & Jerry's new corporate parent, announced it is withholding all funding for the Foundation based on its assertion that the undisclosed audit report supposedly identified certain "governance" issues. ***There is no claim by Unilever or Magnum that the "audit" uncovered any wrongdoing, self-dealing, or financial malfeasance.*** The Foundation promptly addressed certain formalities, including formalizing and approving a written conflict of interest and disclosure policy, and formalizing and publishing charters for its grant programs. Many of Magnum's demands, however, appear unrelated to the outcome of a financial audit, including its insistence on a nearly unlimited right to reject any Foundation trustee based on "reputation"; arrogating the right to pre-approve Foundation policies; imposing paperwork requirements on grantees that are inconsistent with the small, general support grants that are the focus of the Foundation's work; and demanding retroactive term limits that would oust the current

[3]Forensic Risk Alliance, "Forensic Accounting," https://www.forensicrisk.com/expertise/forensic-accounting (last visited Dec. 18, 2025).
[4] Liz Hoffman, "Unilever Probes Ben & Jerry's Foundation's Donations," Semafor (Apr. 22, 2025 5:47am PDT), available at https://www.semafor.com/article/04/21/2025/unilever-probes-ben-jerrys-foundations-donations.

trustees. The focus of Unilever and now Magnum's concerns appear to be removing Ms. Mittal as a Foundation trustee.

Again, the funds that Magnum is withholding from the Foundation have already been allocated by the Independent Board. The Foundation seeks to assert and protect its right to receive that funding and to protect its independent governance and mission. As explained below, the Foundation thus has a cognizable interest in this dispute and satisfies the legal standard for intervention.

II. The Foundation is entitled to intervene as of right.

The Foundation has a right to intervene to prevent interference with the Independent Board's allocation of funds to the Foundation and to protect its independent governance and mission. Unilever/Magnum have asserted the Merger Agreement against the Foundation—specifically asserting "rights" under that agreement and Section 6.14(h)—and the Foundation seeks a declaratory judgment concerning Unilever/Magnum's attempts to graft atextual requirements onto Section 6.14(h).

Federal Rule of Civil Procedure 24(a)(2) requires the court, on timely motion, to permit intervention by a party who "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." To establish a right to intervene, "a movant must (1) timely file an application, (2) show an interest in the action, (3) demonstrate that the interest may be impaired by the disposition of the action, and (4) show that the interest is not protected adequately by the parties to the action." *In re N.Y.C. Policing During Summer 2020 Demonstrations*, 27 F.4th 792, 799 (2d Cir. 2022) (cleaned up). "While an applicant must satisfy all four requirements, this test is a flexible and discretionary one, and courts generally look at all four factors as a whole rather than focusing narrowly on any one of the criteria." *Gerschel v. Bank of Am., N.A.*, No. 20-CV-5217, 2021 WL 1614344, at *2 (S.D.N.Y. Apr. 26, 2021) (cleaned up). Because the Foundation meets each of these requirements, the Foundation has a right to intervene.

1. The Foundation's motion would be timely and would not prejudice the existing parties.

"Factors that inform the timeliness determination include: how long the motion to intervene was delayed, whether the existing parties were prejudiced by that delay, whether the movant will be prejudiced if the motion is denied, and unusual circumstances militating either for or against a finding of timeliness." *Butler, Fitzgerald & Potter v. Sequa Corp.*, 250 F.3d 171, 182 (2d Cir. 2001).

The Foundation is acting promptly to assert its rights. Magnum told the Foundation less than a week ago that it would cease the Foundation's funding—including 2025 funding already approved by the Independent Board less than three months ago—unless the Foundation agreed to unsupported demands that would fundamentally change the Foundation's independent governance. Just yesterday, in a pre-motion letter, Plaintiffs in the existing litigation sought permission to

supplement their complaint to add The Magnum Ice Cream Company N.V. ("Magnum") and Ben & Jerry's HoldCo, LLC ("HoldCo") as parties and to add new claims based on Magnum's recent actions. Doc. 64. There is no undue delay. *See Bldg. & Realty Inst. of Westchester & Putnam Ctys., Inc. v. State of New York*, No. 19-CV-11285, 2020 WL 5658703, at *7 (S.D.N.Y. Sept. 23, 2020) (finding a motion to intervene timely where the movant sought permission to intervene three months after the complaint was filed); *S.E.C. v. Credit Bancorp, Ltd.*, No. 99-CV-11395, 2000 WL 1170136, at *2 (S.D.N.Y. Aug. 16, 2000) (explaining that a five-month delay did not render a motion for permissive intervention untimely).

The Foundation's proposed motion also causes no prejudice to the existing parties. Discovery has not yet commenced, Defendants' motion to dismiss and Plaintiffs' pre-motion letter seeking to supplement their complaint are both pending, and there is no trial date set. The Foundation does not seek to "undo any prior matters already resolved in the case" at a "late stage of litigation." *Butler, Fitzgerald & Potter*, 250 F.3d at 182–83. This is the right time for the Foundation to assert its distinct interest and, because that interest is not adequately represented by the existing parties, *see infra* Section II.4, granting the motion is necessary to prevent prejudice to the Foundation. *See Butler, Fitzgerald & Potter*, 250 F.3d at 183. And there are no unusual circumstances that would support a finding of untimeliness.

2. The Foundation has an interest in this action.

In order "for an interest to be cognizable under Rule 24, it must be direct, substantial, and legally protectable." *Floyd v. City of N.Y.*, 770 F.3d 1051, 1060 (2d Cir. 2014) (cleaned up). Here, the Foundation has at least two direct interests: its interest in receiving the funding allocated to it by the Independent Board, and its interest in protecting its independent governance and mission from Unilever/Magnum's overreach. Magnum's threat to withhold the Foundation's approved funding unless it capitulates to Magnum's governance demands give the Foundation standing to seek relief in this case.

3. The Foundation's interests may be impaired by the disposition of the action.

As required for intervention, the Foundation can readily "show that disposition of the action may, as a practical matter, impair or impede its ability to protect that interest." *Garcia v. Berkshire Nursery & Supply Corp.*, 705 F. Supp. 3d 188, 192 (S.D.N.Y. 2023) (cleaned up). Plaintiffs have squarely placed Section 6.14 of the Merger Agreement at issue in this case. *See* Doc. 64 (Plaintiffs' Pre-Motion Letter). Because the Independent Board determines the allocation of funding to the Foundation under Section 6.14—and has already approved that funding for 2025—the Foundation's interests are, as a practical matter, closely tied to the Independent Board's ability to preserve its independence under Section 6.14. If Magnum succeeds in ousting the Independent Board members and asserting control over the Independent Board, the Foundation will lose its funding, have its independence further undermined, and thereby lose the ability to fulfill its mission.

4. The existing parties do not adequately protect the Foundation's distinct interests.

The Foundation's distinct interests here are not adequately represented by the parties to the litigation. This requirement "is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal." *In re N.Y.C. Policing*, 27 F.4th at 803 (quoting *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972)). Here, while the Foundation's interests overlap to some degree with the Independent Board, the Foundation has separate and distinct interests in protecting its funding, mission, and independent governance that are not adequately represented by Plaintiffs.

The Independent Board has already acted to allocate 2025 funding to the Foundation. Defendants and Magnum have stepped in and prevented that allocation from being fulfilled by inserting preconditions not permitted by the Merger Agreement in an attempt to reshape the Foundation's leadership. While the Independent Board has an interest in ensuring it is able to make the allocation, only the Foundation is well-placed to ensure that allocation is honored without pretextual preconditions.

The outcome of this case will determine whether the Foundation continues to exist as it has for the past forty years. If it is forced to accept Magnum's interference, the Foundation will cease to be the independent entity it was always intended to be. Magnum will remove multiple trustees through retroactive term limits and have essential veto power over their replacements under standards as vague as "reputation" and "ethics." If given the power to ignore the Independent Board's funding allocation to the Foundation, Magnum will have succeeded in cutting off funding from the Foundation. As the allocation has been the Foundation's sole funding stream for the past two decades, loss of that funding threatens the Foundation's very existence and leaves its charitable grantees without promised financial resources.

Looking beyond the 2025 funding, even if the 2025 dollars are eventually released, Unilever/Magnum's attempts to drastically alter the Independent Board will affect the Foundation for years to come. Under the Merger Agreement, the Independent Board must annually approve the allocation of the Foundation's funding. If the Board loses its independence, that funding will perpetually be at Magnum's mercy.

III. In the alternative, the Foundation should be granted permissive intervention.

The Foundation also qualifies for permissive intervention. Even if a movant cannot intervene as of right, the court may permit intervention if the movant "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). "It is well-established by district courts in the Second Circuit that the words 'claim or defense' are not read in a technical sense but only require some interest on the part of the applicant." *Bldg. & Realty Inst. of Westchester & Putnam Ctys., Inc. v. State of New York*, No. 19-CV-11285, 2020 WL 5658703, at *9 (S.D.N.Y. Sept. 23, 2020) (cleaned up). In assessing whether to grant a motion for permissive intervention, "relevant factors include [1] the nature and extent of the intervenors' interests, [2] the degree to which those interests are adequately represented by other parties, and [3] whether parties seeking intervention will significantly contribute to the full development of the

underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented." *Delaware Tr. Co. v. Wilmington Tr., N.A.*, 534 B.R. 500, 509 (S.D.N.Y. 2015). Courts should liberally construe Federal Rule of Civil Procedure 24(b)(2) in favor of intervention. *Id.*

Here, the Foundation has significant interests related to this litigation: Magnum is withholding all funds allocated to the Foundation—jeopardizing its ability to fulfill its charitable mission—and threatening the future of the Foundation's independent governance. Plaintiffs cannot adequately represent these interests.[5] *See supra* Section II.4. Although Plaintiffs and the Foundation have some degree of overlap in their interests, because "Rule 24(b) does not list inadequacy of representation as one of the considerations for the court in exercising its discretion under Rule 24(b), . . . it is clearly a minor factor at most." *Hum. Servs. Council of New York v. City of New York*, No. 21-CV-11149, 2022 WL 4585815, at *4 (S.D.N.Y. Sep. 29, 2022) (cleaned up); *see also United States v. New York City Hous. Auth.*, 326 F.R.D. 411, 418 (S.D.N.Y. 2018) ("[W]hile existing adequate representation may militate against allowing permissive intervention, such intervention may still be appropriate if the addition of the intervenors will assist in the just and equitable adjudication of any of the issues between the parties.") (cleaned up). Given this factor's limited importance, "courts in this District routinely grant permissive intervention despite finding that an existing party adequately represents the proposed intervenor's interest." *Hum. Servs. Council of New York*, 2022 WL 4585815, at *4 (collecting cases).

Given the relationship between Unilever/Magnum's conduct aimed at the Independent Board and its actions against the Foundation, the Foundation's participation will significantly contribute to the full development of the underlying factual issues in the suit and to the just and equitable adjudication of this dispute. *See, e.g.,* Doc. 64 at 3–5 (explaining Independent Board's allegations that the audit of the Foundation was aimed at Independent Board Chair Mittal, who is also a Foundation trustee). The Foundation is now enmeshed in this dispute and facing the loss of its funding and attacks on its reputation. The Foundation is the party best suited to counter Magnum's false narrative regarding the audit and the Foundation's practices, and it should be permitted to do so. Permissive intervention is the appropriate path where adding the intervenors would "assist in the just and equitable adjudication of any of the issues between the parties." *New York City Hous. Auth.*, 326 F.R.D. at 418 (cleaned up). That is precisely the case here.

Finally, as with intervention as of right, whether intervention "will unduly delay or prejudice the adjudication of the original parties' rights" is a relevant consideration. Fed. R. Civ. P. 24(b)(3). The Foundation's intervention here would cause neither delay nor prejudice. *See supra* Section II.1.

---

[5] To the extent that Unilever/Magnum asserts that the Foundation cannot exercise any rights flowing from the Merger Agreement in light of Section 9.07's disclaimer against third-party beneficiaries, Unilever/Magnum has asserted "rights" under the Merger Agreement—and specifically Section 6.14—against the Foundation. The Merger Agreement should not be construed to leave the Foundation with no recourse against Unilever/Magnum's efforts to re-write Section 6.14 and make impermissible demands against the Foundation.

IV. Proposed Briefing Schedule

The Foundation is aware of Plaintiffs' request to file a Supplemental Complaint adding Magnum and HoldCo as parties and adding claims related to Magnum's most recent actions against the Independent Board. Doc. 64. The Foundation's proposed grounds for intervention are related to Plaintiffs' proposed claims against Magnum. For that reason, the Foundation proposes that its motion to intervene should be filed and briefed after Plaintiffs file their proposed Supplemental Complaint (if permitted by the Court). The Foundation proposes to supplement this Pre-Motion Letter with a specific proposed briefing schedule after the Court addresses Plaintiffs' request to file a Supplemental Complaint.[6]

Respectfully submitted,

/s/ Bridget Asay

Bridget Asay

Stris & Maher LLP
15 East State St., Suite 2
Montpelier, VT 05602
(802) 858-4285
basay@stris.com

Counsel for Proposed Plaintiff-Intervenor
The Ben & Jerry's Foundation, Inc.

[6] Plaintiffs have represented to the Court that, in the alternative to filing a Supplemental Complaint in this action, they are "prepared to initiate a new litigation" to assert claims against Magnum. Doc. 64 at 1, n.1. If Plaintiffs take that alternative path, the Foundation's interests may be served by seeking to join in that litigation.