UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BEN & JERRY'S HOMEMADE, INC., CLASS I DIRECTORS OF BEN & JERRY'S INDEPENDENT BOARD Plaintiffs, v. UNILEVER PLC AND CONOPCO, INC. Defendants.	)	Case No. 1:24-cv-08641-PKC JURY TRIAL DEMANDED

<u>MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' AND PROPOSED INTERVENOR PLAINTIFF'S JOINT MOTION FOR LEAVE TO FILE THIRD AMENDED COMPLAINT & TO INTERVENE</u>

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I. **INTRODUCTION**

Plaintiffs Ben & Jerry's Homemade, Inc. and the Class I Directors of the Ben & Jerry's Independent Board filed their Second Amended Complaint ("SAC") (Doc. 50) on April 4, 2025, predicated on Unilever's failure to adhere to its contractual obligations vis-a-vis the parties' Merger Agreement, Settlement Agreement, and Settlement Amendment, including through Defendants' censorship of Ben & Jerry's social mission, hasty attempt to remove Ben & Jerry's CEO as a punishment for cooperating with the Independent Board, and overt threats and intimidation tactics directed towards the Independent Board. Plaintiffs also sought declaratory relief that any attempt to eliminate the Independent Board or its directors, substantially alter or diminish the Independent Board's responsibilities and rights over Ben & Jerry's social mission or brand integrity, or restructure the company in a way that would have the same effect, would breach the Merger and Settlement Agreements.

Since the SAC was filed, Defendants Conopco, Inc. ("Conopco") and Unilever PLC ("Unilever")—alongside the newly created The Magnum Ice Cream Company N.V. ("TMICC") and Ben & Jerry's HoldCo, LLC ("HoldCo") (HoldCo and TMICC are collectively "Magnum")—have moved to remove *every* independent director (i.e., *all* the Class I Directors) of Ben & Jerry's Independent Board using a pretextual, mid-litigation audit of the Ben & Jerry's Foundation as the pretense, while concurrently holding Foundation funds hostage. Plaintiffs and The Ben & Jerry's Foundation, Inc. ("the Foundation") (proposed intervenor Plaintiff) jointly and respectfully submit this motion for leave to file the attached Third Amended Complaint ("TAC") and to allow the Foundation to intervene.

II. RELEVANT BACKGROUND

A. After Plaintiffs filed the SAC, Defendants launched a coordinated effort to remove Ben & Jerry's Board Chair Anuradha Mittal and the remaining independent directors, utilizing the Ben & Jerry's Foundation as collateral damage.

Since the SAC was filed, Defendants and Magnum have engaged in a three-step process to oust the independent directors and gain complete control over Ben & Jerry's.

Step 1: Unilever launches a mid-litigation, two-decades-after the fact, exigent "audit" of the independent Ben & Jerry's Foundation, where Chair Mittal serves as a trustee.

On April 9, 2025, *five days after the SAC was filed*, Unilever's Chief Financial Officer for Ice Cream, Abhijit Bhattacharya, demanded an unprecedented, "expeditious" audit of the Ben & Jerry's Foundation, threatening to withhold charitable funds due to the Foundation that had already been approved by the Independent Board. The Foundation—which this year celebrated its forty-year anniversary—has never been the subject of any regulatory scrutiny or accusations of wrongdoing. In fact, Unilever had never requested any such "audit" across the 24 years it had disbursed ***over $68 million*** to the Foundation per a formula outlined in the Merger Agreement. Either Unilever had been asleep at the wheel for more than two decades, or there was an ulterior motive behind its actions.

Given Unilever's threats to withhold millions in charitable funds that had already been allocated by the Independent Board, the audit was initiated—but only after securing a commitment that Unilever would share the audit report. Unilever agreed, representing that disclosure would promote "transparency for all involved." What followed, however, bore no resemblance to a neutral review, as the Foundation trustees quickly recognized the unprecedented, expeditious "audit" for what it was: a pretextual fishing expedition aimed at drumming up allegations against Chair Mittal. The trustees raised several concerns throughout the course of the audit, including that: (i) a *Semafor* article cited Unilever executives' desire to target Chair Mittal; (ii) the audit was launched mid-litigation; (iii) Unilever's litigation counsel engineered the audit; (iv) the timeline was rushed to line up with Magnum's public listing; (v) Unilever had no audit right under the governing agreements; (vi) for 24 years, Unilever's representative on the Independent Board had never objected to contributions to the Foundation or suggested wrongdoing; (vii) by sheer volume and magnitude, both the questions asked and documents requested during the "audit" had one intended target: Chair Mittal; (viii) the auditor, Ernst & Young ("EY"), refused to permit counsel to attend trustee interviews; (ix) EY refused to allow trustees to respond to certain questions in writing; (x) Unilever threatened to withhold funds unless Chair Mittal was removed as a trustee; and, (xi) EY refused to provide its written scope of work (i.e., the directions Unilever provided it)—despite Unilever's public representations that the audit was "routine" and "independent."

Perhaps most glaringly, when EY completed its report on September 2, 2025, Unilever reneged on its transparency commitments, refusing to share the audit report with the Foundation. Unilever now claimed that the allegedly "routine," "independent" audit that would promote "transparency for all involved" was suddenly "privileged" and refused to disclose the firms involved in the audit, the individuals involved in the allegedly privileged communications, or the dates on which the communications were made.

Unilever's refusal to disclose the audit report had one obvious explanation: the audit had not uncovered the dirt against Chair Mittal Unilever had hoped for, and Unilever sought to conceal the involvement of their litigation counsel. Public reporting later confirmed as much, noting that while the audit criticized certain controls processes, sources stated the audit did not find wrongdoing, ethical malpractice, or violations. Rather than accept those exculpatory results and inspired to find a means to remove Chair Mittal—as Plaintiffs foreshadowed in their SAC—Unilever utilized the audit report it refused to disclose to launch an internal "investigation."

Step 2: Unilever launches an "investigation" of Chair Mittal based on the undisclosed audit report. Its self-selected "independent" investigator was one of the law firms that helped design the underlying pretextual audit of the Foundation.

In September 2025, Unilever weaponized the Foundation "audit" by calling for an "integrity investigation" against Chair Mittal based on the audit report Unilever was simultaneously concealing. Unilever initiated the investigation by self-selecting a law firm—that had co-orchestrated the underlying audit and had deep financial ties with Unilever—to serve as the "independent" investigator. The disinterested Class I Directors were not consulted during this selection process.

Despite her well-founded concerns regarding the pretextual nature of Unilever's efforts, Chair Mittal offered to provide information to the "investigator" if it simply confirmed its independence and lack of involvement in the underlying audit: the law firm refused. Instead, Unilever and its "independent" investigator strung together a series of baseless findings to reach their desired conclusion that Chair Mital should be removed and then leveraged that conclusion against Chair Mittal and the Independent Board.

On October 10, 2025, Unilever presented Chair Mittal with an ultimatum: if Chair Mittal resigned and the Independent Board capitulated in its litigation, Unilever would provide Chair Mittal with a prominent position in a multi-million dollar, Unilever-funded nonprofit. If she and the Independent Board refused this offer, Unilever would make public allegations against her in Magnum's forthcoming prospectus. Chair Mittal immediately refused.

On October 14, 2025, Chair Mittal raised the inappropriate offer directly with Unilever's CEO and Board Chair and requested a copy of the audit to debunk Unilever's phantom allegations:

> I was informed last week that should I not resign as a Chair of the Independent Board, Unilever's next prospectus would include allegations against me. Aside from the obvious fact that the relevant E&Y auditor confirmed there was no evidence to support such a claim, this threat underscores the need for Unilever to

> disclose the audit's scope of work and E&Y's findings sans the editorializations of Unilever legal. We have asked four Unilever executives to provide these documents, all of whom have actively concealed them. We are now making the request to you directly to clear the record on these issues and avoid claims of defamation and market manipulation. I would also note that in the same conversation that this threat was made, Unilever offered to allow me to head a multi-million dollar nonprofit should I capitulate.

After Chair Mittal refused Unilever's offer, Defendants presented their "findings" to the disinterested Class I Directors on October 23, 2025, while concurrently continuing to conceal the audit report. Defendants coupled their allegations with the threat that the remaining independent directors would face repercussions if they disagreed with Unilever's "findings."

Even an initial review, however, revealed the infirmity of Unilever's "findings." For example, Unilever's leading allegation—that Chair Mittal had received inappropriate benefits from the Foundation—was originally raised by an online ideological outlet in 2021. In 2021, the remaining Foundation trustees wrote to Unilever's CEO outlining their baseless nature. Unilever responded by "denouncing" the allegations and characterizing them as "extreme personal slander" against Chair Mittal while providing her "unprecedented" security. Unilever's attempt to weaponize slanderous allegations it had previously "denounced" to remove Chair Mittal and the independent directors underscored the pretextual nature of their "audit" and "investigation."

Unilever's other "findings" fared no better and included assertions that Chair Mittal had allegedly breached Unilever's Code of Conduct because the Independent Board filed the SAC challenging Unilever's inappropriate attempt to remove Mr. Stever (Ben & Jerry's former CEO) and had quoted the following seven words from his performance review: "repeatedly acquiesc[ing] to the demands of the Independent Social Mission Board." Unilever also alleged that Chair Mittal had refused to participate in Unilever's pretextual audit and sham investigation, while ignoring the contrived nature of both and omitting that their investigators had disappeared when confronted with straightforward questions regarding their independence.

Despite the facial frivolity of Unilever's assertions, on October 24, 2025, the independent directors put forward a series of questions highlighting the weaknesses of Unilever's assertions and again demanded a copy of the audit report and the scope of work. Unilever dodged the questions and refused to provide the critical documents. Instead, on November 4, 2025, Magnum filed its Form 20-F Registration Statement with the U.S. Securities and Exchange Commission as a precursor to its demerger from Unilever and public listing. In that filing, as Unilever had foreshadowed in its inappropriate offer to Chair Mittal, Magnum mobilized the contrived "integrity" process to attack Chair Mittal on a global stage, stating that "investigations" performed by "external advisers" had concluded that Chair Mittal was unfit to serve in her role. Unilever conveniently omitted that the "advisers" were Unilever's preferred law firms who had orchestrated the underlying audit; that its leading allegations were ones Unilever itself had previously "denounced" as "extreme personal slander"; and that it had offered Chair Mittal the lead role in a multi-million dollar, Unilever-funded nonprofit at the same time it was making these allegations.

While the independent directors were preparing a robust response to Unilever's allegations, Unilever and Magnum were busy preparing the final step of their removal scheme. Unilever's appointed CEO for Ben & Jerry's, Mr. Jochanan Senf, told Ben & Jerry's personnel that the January 2026 Independent Board meeting would not occur, canceled check-ins with the Independent Board, and blew off correspondence from the independent directors.

Meanwhile, on December 3, 2025, the Class I Directors responded to Magnum's allegations against Chair Mittal with a detailed 26-page rebuttal highlighting the severe deficiencies of the investigation and its purported findings, and included the following cover correspondence addressed to Unilever's CEO, Unilever's Board Chair, Magnum's CEO, and Magnum's General Counsel:

> Attached please find our response to your October 23, 2025, correspondence and the allegations contained therein. During the time we have been preparing our thorough response to your serious assertions, we have been informed that Unilever and Magnum (collectively, "Unilever") have been orchestrating a plan to remove us, with Mr. Senf apparently informing Ben & Jerry's employees that our January board meeting will not occur. This maneuvering underscores Unilever's contractual, fiduciary, and securities breaches—already outlined in our previous correspondence—particularly when juxtaposed with yesterday's public revelation that the "audit did not find wrongdoing, ethical malpractice or violations."
>
> This confession further establishes that Unilever has mounted a multi-month, costly, counsel-directed campaign—anchored by a pretextual mid-litigation "audit" and a contrived "integrity" investigation—to manufacture leverage, undermine the Independent Board's authority, threaten the Chair and the undersigned, and inappropriately influence Magnum's public listing. Perhaps most paradoxically, should we *disagree with allegations that Unilever's own executives have previously "denounced" as "extreme" slander*, Unilever will apparently pursue its plot. We will not accede to any intimidation or the misuse of contrived processes to erode our authority and are fully prepared to respond swiftly to any such attempts.

On December 6, 2025, Magnum demerged from Unilever. Two days later, on December 8, 2025, Magnum's General Counsel stated it would respond to the Independent Board's letter in "due course." Magnum never responded. Instead, it launched the final step in its removal scheme.

<u>Step 3</u>: Magnum completes its removal scheme by amending Ben & Jerry's bylaws overnight, removing each of the independent directors, and freezing the Foundation's funding.

On Saturday, December 13, 2025, Magnum informed the Foundation that, "following the audit"—which it was still concealing—it viewed the Foundation's "activities and performance" as not "reasonably acceptable," and then used that assertion to impose conditions on funding that do not appear anywhere in the Merger Agreement, including retroactive trustee term limits; a ban on trustees criticizing Magnum; and a prohibition on Ben & Jerry's directors or management serving as trustees. Magnum also extended a forced-choice ultimatum with a December 16 deadline, warning Magnum would "conclude that the Foundation no longer seeks funding" absent the Foundation's agreement to these extracontractual, two-decades-after the fact conditions. While Magnum publicly proclaimed the need for "term limits," it privately disclosed to the Foundation's President that no further funding would be received unless Chair Mittal was removed as a trustee.

Simultaneous with its threats to the Foundation, Magnum swiftly enacted the final touches of its removal scheme. Specifically, on December 15, 2025, Magnum purported to remove Chair Mittal from the Independent Board "effective immediately"; remove independent directors Jennifer Henderson and Daryn Dodson "effective December 31, 2025," should they not resign; and set up the removal of the remaining Class I Directors through an entirely new, not-bargained-for removal mechanism—labeled an "eligibility" standard—that was adopted late Friday, December 12, 2025, purportedly added to the Ben & Jerry's articles of incorporation on Sunday, December 14, 2025, and executed for the first time on Monday, December 15, 2025. In just three days, Defendants had quickly finalized their removal scheme by enacting: (i) new governance documents designed to automatically "disqualify" every Class I Director upon execution; and (ii) a new ***retroactive*** nine-year term limit. In a series of same-day letters, Defendants informed the independent directors that they had allegedly violated the new code of conduct and term limit provisions rendering all Class I Directors either ineligible or potentially ineligible, thereby triggering their automatic removal from the Independent Board.

In addition to removing the current independent directors, Magnum also attempted to block the appointment of a new independent director, underscoring the machinations behind its removal scheme. Specifically, on December 11, 2025, the Class I Directors wrote to Magnum, informing Magnum that they had nominated Chris Miller—an eighteen-year Ben & Jerry's employee and former Global Social Mission Director—to serve as an independent director. The next day, on

December 12, 2025, Magnum's CEO, Mr. ter Kulve, wrote: "This is excellent news. Welcome to the board the management team will enjoy working with you and driving the mission." Nevertheless, during the December 15, 2025 purge of the independent directors, despite Magnum's CEO having congratulated Mr. Miller on his appointment four days earlier and describing it as "excellent news," Magnum made another flip flop, alleging that Mr. Miller was not properly appointed and that the Class I Directors were required to inform Magnum of the "steps taken to ensure his eligibility" based on the Amended Bylaws that were enacted *following* his appointment and made retroactively effective on December 12, 2025, the same day as Mr. ter Kelve's congratulatory email. Not only was Magnum's extracontractual eligibility verification condition nonexistent in the Merger Agreement, but it was also particularly ludicrous given Mr. Miller's background and service at Ben & Jerry's for *nearly two decades*.

Magnum has not been particularly clandestine in hiding its intentions. Specifically, in its midnight amendments, Magnum attempted to enact two-decades-after the fact quorum changes which now purportedly allow Ben & Jerry's Independent Board meetings to occur ***without the presence of any independent directors***:

> A majority of the number of directors appointed in accordance with Section 3.2 of these bylaws shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, provided that a quorum shall require the presence of at least one Class I director and at least one U director, ***or if there are no eligible Class I directors then at least one Class U director.***

As the final touch of its plan, on December 15, 2025, Magnum utilized the PR Newswire—a paid publicity service—to issue pre-drafted press releases in multiple languages to gloat about its concurrent purge of the independent directors and freezing of the Foundation's charitable funds. On December 17, 2025, within forty-eight hours of receiving Magnum's removal notices and midnight bylaws amendments, the independent directors sought relief. The Foundation sought leave to intervene the next day.

III. LEGAL STANDARDS

A. Standard for Amending a Pleading.

When a party seeks to amend its pleading, "the court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). "This permissive standard is consistent with [the Second Circuit's] strong preference for resolving disputes on the merits." *Williams v. Citigroup Inc.*, 659 F.3d 208, 212–13 (2d Cir. 2011). The "policy behind this rule is that '[l]iberal amendment promotes judicial economy by making it possible to dispose of all contentions between parties in one lawsuit.'" *Kreisler v. P.T.Z. Realty, L.L.C.*, 318 F.R.D. 704, 706 (S.D.N.Y. 2016) (quoting *Bilt–Rite Steel Buck Corp. v. Duncan's Welding & Corr. Equip., Inc*., 1990 WL 129970, at *1 (E.D.N.Y. Aug. 24, 1990)). "Thus, absent evidence of undue delay, bad faith or dilatory motive on the part of the movant, undue prejudice to the opposing party, or futility, Rule 15's mandate must be obeyed." *Monahan v. New York City Dep't of Corrections*, 214 F.3d 275, 283 (2d Cir. 2000) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). The non-movant bears the burden of showing prejudice, bad faith, or futility. *Chapman v. CBS Corp.*, 310 F.R.D. 240, 242 (S.D.N.Y. 2015).

B. Standards for Intervention.

The court must grant a timely motion to intervene where the proposed intervenor "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." Fed. R. Civ. P. 24(a)(2). Additionally, the court may permit intervention, on timely motion, 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).

IV. ARGUMENT

A. Given the significant developments since the SAC, leave to file the TAC should be granted.

Plaintiffs should be granted leave to amend to file the TAC because Plaintiffs have timely brought this motion—within days of implementation of the removal scheme—and resolving all related disputes in one pleading promotes judicial efficiency.

1. Plaintiffs' Motion is Timely.

Plaintiffs did not delay seeking leave to file the TAC, having sought relief within 48 hours of implementation of the removal scheme. The new allegations arise from Defendants' actions occurring after the SAC, including: (i) Defendants' December 15, 2025, removal correspondence; (ii) Magnum's demerger from Unilever; and (iii) Defendants' withholding of Foundation funding and their pretextual, mid-litigation audit used to remove the Independent Board's Chair.

Even if Defendants were to argue that some theories could have been asserted earlier, "[s]imply alleging that the plaintiff could have moved to amend earlier than she did, however, is insufficient to demonstrate undue delay." *Agerbrink v. Model Serv. LLC*, 155 F. Supp. 3d 448, 452 (S.D.N.Y. 2016). Likewise, "the fact that a party may have had evidence to support a proposed amendment earlier in the litigation does not, by itself, give rise to an inference of bad faith." *Randolph Foundation v. Duncan*, 2002 WL 32862, at *3 (S.D.N.Y. Jan. 11, 2002). Here, the TAC addresses post-SAC events[1]—most notably, the removal scheme; Magnum's demerger and

[1] Additionally, the TAC slightly modifies some causes of action asserted in the SAC to bring them up to date. For example, Plaintiffs asserted several causes of action for declaratory judgments in the SAC regarding actions threatened by Defendants. Now that the threats have materialized, Plaintiffs assert those claims in the TAC as breaches of contract and breaches of the duty of good faith and fair dealing.

corresponding silencing efforts; and the funding-withholding tied to the Foundation audit. Plaintiffs sought relief swiftly after these events; specifically, within 48 hours of receiving Magnum's removal correspondence.

2. Plaintiffs' Motion is Brought in Good Faith and Granting Leave is in the Interest of Judicial Efficiency.

Plaintiffs seek to amend in good faith to capture the full scope of ongoing breaches and to align the pleadings with current parties and facts. The TAC consolidates Defendants' coordinated efforts to censor Ben & Jerry's social mission and extinguish the independent directors' rights, including removing Chair Mittal and the independent directors via: a) the pretextual Foundation audit; b) the sham integrity investigation; and c) the midnight bylaws amendments and finalization of the removal scheme, including holding the Independent Board-approved Foundation funds hostage to punish the Foundation trustees for not turning on Chair Mittal.

Addressing these interrelated issues in one pleading will prevent duplicative litigation and promote judicial efficiency. *See Duling v. Gristede's Operating Corp.*, 265 F.R.D. 91, 102 n.5 (S.D.N.Y. 2010) ("Where, as here, the original and proposed claims are interrelated, it also serves judicial efficiency to permit them to be brought in the same action.").

3. There is No Undue Prejudice to Defendants.

Granting leave to file the TAC will not unduly prejudice Defendants because Defendants themselves have already intertwined these issues by ***invoking the Foundation audit as a basis to remove Chair Mittal***. In assessing "prejudice," courts consider whether the amendment would: "(i) require the opponent to expend significant additional resources to conduct discovery and prepare for trial; (ii) significantly delay the resolution of the dispute; or (iii) prevent the plaintiff from bringing a timely action in another jurisdiction." *Monahan*, 214 F.3d at 284 (quoting *Block v. First Blood Assocs.*, 988 F.2d 344, 350 (2d Cir. 1993)). The TAC implicates none of these concerns because the TAC centers on the very same executives, agreements, and conduct previously pled, now supplemented by Defendants' removal scheme and funding-withholding. Given the early procedural posture of the litigation, amendment will not materially delay resolution. *See Hillair Capital Invs., L.P. v. Integrated Freight Corp.*, 963 F. Supp. 2d 336, 339 (S.D.N.Y. 2013) (granting motion to amend under Rule 15(a)(2) and explaining that "at this early stage of the case, there is no concern about delay, bad faith, or prejudice"). Accordingly, there is no prejudice here.

Moreover, Courts routinely allow amendments to add plaintiffs. *See*, *e.g.*, *Cortigiano v. Oceanview Manor Home for Adults*, 227 F.R.D. 194, 202 (E.D.N.Y. 2005) (citing *Abrahamson v. Board of Educ. of The Wappingers Central Sch. Dist.,* 2002 WL 1354711, at *12 (S.D.N.Y. 2002) ("Plaintiffs ask for permission to amend their complaint to add more plaintiffs to the complaint. Since leave to amend should be freely granted when justice so requires, Fed. R. Civ. P. R. 15(a), plaintiff may submit an amended complaint with additional plaintiffs within the next ten (10) business days."); *Smith v. Bowers,* 337 F.Supp.2d 576, 579 n.1 (S.D.N.Y. 2004) (granting leave to amend complaint to add additional plaintiff where "no prejudice would result to Defendants"); *Doe v. Pataki,* 3 F.Supp.2d 456, 473–74 (S.D.N.Y. 1998) (granting leave to amend complaint to add a proposed additional class of plaintiffs where defendants did not establish, among other things, undue delay or prejudice)).

Here, the Foundation's intervention and joinder as a plaintiff aligns with the same nucleus of facts and contracts already at issue—Section 6.14 of the Merger Agreement and the Settlement Agreement—and causes no prejudice. Discovery has not begun, no dispositive motions are pending, and no trial date is set.

4. Plaintiffs' New Claims are Supported by Facts and Law.

A proposed amendment is considered futile only if it has "no merit." *Health-Chem Corp. v. Baker*, 915 F.2d 805, 810 (2d Cir. 1990). In adjudicating futility, courts read the proposed amendments in the light most favorable to plaintiffs and draw all inferences in their favor. *Polanco v. NCO Portfolio Mgmt., Inc.*, 23 F. Supp. 3d 363, 369 (S.D.N.Y. 2014).

The Merger Agreement's removal bar expressly prohibits Defendants from removing *any* Class I Director except "at the written request of at least a majority of the directors of such Class then in office." Without such a request, as the Merger Agreement makes clear, Defendants "***shall not*** otherwise remove any member of the Company Board" (Merger Agreement § 6.14(a)) (Doc. 50-7) (emphasis added). Defendants' removal scheme—including the pretextual audit, sham investigation, two-decades-after the fact bylaws amendments, and ultimate removal of the independent directors—violates the Merger Agreement's removal bar.

Moreover, the Settlement Agreement requires Defendants to "respect and acknowledge the Ben & Jerry's Independent Board's" authority and to work in "good faith" with the Independent Board to ensure Ben & Jerry's social mission and brand integrity is "protected and furthered." (Settlement Agreement § 2(b)) (Doc. 50-2). Removing each of the independent directors and changing quorum rules to allow board meetings to occur with Magnum's representatives only is the anthesis of respecting the Independent Board's authority and working with them in good faith. Accordingly, leave to amend should be granted.

B. The Foundation's motion to intervene should be granted.

The Foundation should be permitted to intervene to assert and protect its interests in receiving the funding approved by the Independent Board and in maintaining its independent governance. The Foundation satisfies Rule 24's standards for both intervention as of right and for permissive intervention.

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

The court, on timely motion, must permit intervention by anyone 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." Fed. R. Civ. P. 24(a)(2). 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 CIV. 5217, 2021 WL 1614344, at *2 (S.D.N.Y. Apr. 26, 2021) (cleaned up).

Because the Foundation meets each of these requirements, it is entitled to intervene as of right.

a. The Foundation timely seeks intervention.

The Foundation moved promptly to assert its interest here once Magnum refused to provide the funding approved by the Independent Board. In their Letter Response dated December 23, 2025, Defendants did not raise any question of delay. *See* Doc. 68. The relevant factors all support the Foundation's timely intervention. *See Butler, Fitzgerald & Potter v. Sequa Corp.*, 250 F.3d 171, 182 (2d Cir. 2001) ("Factors that inform the timeliness determination include: [1] how long the motion to intervene was delayed, [2] whether the existing parties were prejudiced by that delay, [3] whether the movant will be prejudiced if the motion is denied, and [4] unusual circumstances militating either for or against a finding of timeliness.").

First, the Foundation did not delay at all. Magnum told the Foundation on December 13, 2025 that it would cease the Foundation's funding—including 2025 funding 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 five days later, the Foundation filed a pre-motion letter seeking leave to intervene, Doc. 65, and has now timely filed this motion on the schedule set by the Court, *see* Doc. 69, 70. In determining whether an applicant delayed its motion to intervene, "a court should consider . . . 'how long the applicant had notice of the interest before it made the motion to intervene.'" *In re Tribune Co. Fraudulent Conveyance Litig.*, 291 F.R.D. 38, 41 (S.D.N.Y. 2013) (quoting *United States v. Pitney Bowes, Inc.*, 25 F.3d 66, 70 (2d Cir. 1994). Given that courts routinely accept delays of several months, there can be no reasonable dispute that the Foundation acted without delay here. *See, e.g.*, *Bldg. & Realty Inst. of Westchester & Putnam Cntys., Inc. v. New York*, No. 19-CV-11285, 2020 WL 5658703, at *7 (S.D.N.Y. Sep. 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 CIV. 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).

Second, the Foundation's intervention would not cause prejudice to the existing parties. Prejudice against the existing parties is "[t]he most significant criterion" in determining the timeliness of an intervention motion. *Sec. Inv. Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 550 B.R. 241, 248 (Bankr. S.D.N.Y. 2016). To assess whether intervention would cause prejudice to the existing parties, "[p]articular focus must be had on the posture of that litigation at the time the motion to intervene is made." *Pitney Bowes*, 25 F.3d at 72 (finding a motion to intervene untimely where it was filed after the existing parties had been negotiating the terms of a consent decree for several months).

Here, the litigation's posture confirms that the Foundation's intervention would cause no prejudice to the existing parties. Discovery has not yet commenced, Defendants' motion to dismiss is pending, the Plaintiffs are moving to amend to add new claims and parties, and there is no trial date set. And 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 174, 182–83 (finding prejudice to existing parties where the motion to intervene was delayed and made nearly nine years after the commencement of the litigation). Again, Defendants did not claim any prejudice in their Letter Response. *See* Doc. 68.

Third, the Foundation will be prejudiced if intervention is denied. The Foundation's intervention is necessary to prevent Unilever/Magnum from grafting atextual requirements onto Section 6.14(h) of the Merger Agreement and imposing them on the Foundation. If not permitted to intervene, the Foundation will be unable to protect its funding, its independent governance, or its mission in the face of Unilever/Magnum's illicit demands.

Last**,** no unusual circumstances support a finding of untimeliness—and again, Defendants identified none. Doc. 68.

b. The Foundation has cognizable interests 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). But courts have acknowledged that "[t]he 'interest' required by Rule 24(a)(2) has never been defined with particular precision." *Sec. Inv. Prot. Corp.*, 550 B.R. at 249 (quoting *Sec. Ins. Co. of Hartford* *v. Schipporeit, Inc.*, 69 F.3d 1377, 1380 (7th Cir. 1995)). Accordingly, "[a] proposed intervenor does not have to assert a property interest, but rather an interest *relating to the property or transaction* which is the subject of the action." *Id.* (cleaned up) (emphasis added).

Here, the Foundation has at least two cognizable interests: (i) its interest in receiving the funding allocated to it by the Independent Board, and (ii) 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, including a declaratory judgment construing Section 6.14(h) of the Merger Agreement. *See* Ex. 1 (Proposed Third Am. Compl. Count IV).

In their Letter Response, Defendants argue that the Foundation cannot assert rights under the Merger Agreement, citing Section 9.07's disclaimer against third-party beneficiaries. Doc. 68, at 5. Defendants do not dispute, however, that Unilever and Magnum have directed burdensome demands at the Foundation—including demanding the improper audit—and are now withholding the Foundation's funding based on their asserted interpretations of the Merger Agreement. Unilever and Magnum claim that the reasonableness-based standards in Section 6.14(h) of the Merger Agreement suffice to give Magnum virtually unfettered control over selection of Foundation trustees based on vague, subjective standards, and that Magnum can condition the Foundation's funding on new requirements not included in Section 6.14(h). Given Unilever and Magnum's affirmative assertion of the Merger Agreement against the Foundation, the Foundation should be permitted at a minimum to seek a declaratory judgment construing Section 6.14(h) of the Merger Agreement.

Further, the fact that Plaintiffs are pursuing a claim for breach of Section 6.14(h) supports allowing the Foundation to join that claim to assert its own interests and protect its rights. The claim that the Plaintiffs seek to pursue directly implicates the Foundation's interests. *See, e.g., Grumman Flxible Corp. v. Dole*, 102 F.R.D. 36, 38-39 (D.D.C. 1983) (regional transit authority had real stake in dispute warranting intervention, where issue being litigated was validity of defendant's award of funding to that entity). Further, to the extent Plaintiffs and the Foundation seek the same relief, including declaratory relief, the Foundation does not have to separately establish its standing. *See Town of Chester, N.Y. v. Laroe Ests., Inc.*, 581 U.S. 433, 440 (2017) ("intervenor of right must have Article III standing in order to pursue relief that is different from that which is sought by a party with standing").

With the issues joined in this litigation, it makes little sense to shut the courthouse doors to the Foundation.[2] In addition, the Foundation pleads, in the alternative to breach of contract, equitable claims against Defendants based on Defendants' refusal to pay the Foundation the funds that have been allocated for that purpose by the Independent Board. Defendants are liable in unjust enrichment for withholding without justification funds that the Independent Board has authority to allocate.

c. The Foundation's interests may be impaired by the disposition of the Action.

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.*,

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[2] It is the Foundation's position that it can intervene to assert its own economic and other interests that are directly implicated by the contract claims also asserted by Plaintiffs, and that Section 9.07 does not bar intervention for this purpose, particularly given that the relief sought is overlapping and Defendants have affirmatively relied on their claimed interpretation of Section 6.14(h) to make demands and impose an improper audit on the Foundation. To the extent Defendants argue otherwise, the Foundation reserves the right to assert that Section 9.07 violates public policy, at least if applied to prevent the Foundation from seeking to enforce an allocation of funds approved by the Independent Board, and/or that the Merger Agreement's use of the term "parties" is not sufficiently precise to warrant enforcement of Section 9.07 against the Foundation.

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); Ex. 1 (Proposed Third Am. Compl.). And Defendants are not only withholding the Foundation's approved funding; they are leveling a public attack on the Foundation's governance and practices. 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 both to the Independent Board's ability to preserve its independence under Section 6.14 and to any ruling the Court may make regarding the construction of that provision.

In addition, if Magnum succeeds in ousting the Independent Board members and asserting control over the Independent Board, the Foundation stands to lose its funding, have its independence further undermined, and thereby lose the ability to fulfill its mission. The Independent Board has consistently and over many years allocated funding to the Foundation. If Magnum is permitted to take functional control of the Independent Board, it will be able to use the Board to issue ultimatums to the Foundation. If Magnum gains control of the allocation of the charitable funding, the Foundation will have to accede to all of Magnum's demands to survive. Without a truly Independent Board, there can be no truly independent Foundation.

d. The existing parties cannot 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 those of 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. Unilever 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.

Further, Magnum is withholding the Foundation's funding based on its unsupported allegations regarding the Foundation's governance and practices. The Foundation is the proper party to defend itself against these unjustified claims and to show that Magnum's demands are unreasonable and pretextual. That is a distinct and substantial interest not represented by Plaintiffs.

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 and to re-write Section

6.14(h) will affect the Foundation for years to come. If Magnum is free to withhold approved funding from the Foundation on grounds not contemplated by the Merger Agreement, then the Foundation will face the choice of losing the funding that sustains its operations or operating under Magnum's effective control. The Foundation thus has a direct and concrete interest in the interpretation of Section 6.14(h).

2. 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 Cntys., Inc. v. New York*, No. 19-CV-11285, 2020 WL 5658703, at *9 (S.D.N.Y. Sep. 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." *Del. Tr. Co. v. Wilmington Tr., N.A.*, 534 B.R. 500, 509 (S.D.N.Y. 2015) (cleaned up). As with intervention as of right, whether permissive intervention "will unduly delay or prejudice the adjudication of the original parties' rights" is a relevant consideration. Fed. R. Civ. P. 24(b)(3). Courts should liberally construe Federal Rule of Civil Procedure 24(b)(2) in favor of intervention. *Delaware Tr. Co.*, 534 B.R. at 509.

a. The Foundation has substantial, extensive interests in this litigation.

The Foundation has significant interests related to this litigation: Plaintiffs are asserting claims against Magnum that directly implicate the Foundation's interests under Section 6.14(h) of the Merger Agreement. Magnum is re-writing Section 6.14(h) and asserting rights both to disregard the Independent Board's allocation of funds to the Foundation *and* to control the Foundation's policies and trustee selection. Relying on Section 6.14(h), Magnum is withholding all funds allocated to the Foundation by the Independent Board—jeopardizing its ability to fulfill its charitable mission—and threatening the future of the Foundation's independent governance.

For the same reasons discussed above, *see supra* Section IV.B.1.b, the Merger Agreement's disclaimer of third-party beneficiaries in Section 9.07 should not preclude the Foundation's intervention in an ongoing lawsuit brought by the Independent Board to enforce the Merger Agreement. Section 6.14(h) includes specific provisions that govern Unilever and Magnum's obligations to the Foundation and substantially limit their ability to control the Foundation's governance and practices. Unilever and Magnum do not decide the allocation—the Independent Board does—and Unilever and Magnum can only object to funding the Foundation on grounds that are objectively *reasonable*.

The Foundation has concrete and substantial interests in the proper interpretation of the Merger Agreement, including provisions related to the Foundation and in provisions that protect the independence of the Independent Board; in defending itself against Magnum's unsupported claims arising out of the undisclosed audit; in securing its approved funding; and in protecting its independent governance. The Court should allow permissive intervention so that the Foundation can protect these interests.

b. The Foundation's interests are not adequately represented by the existing parties.

As explained above, *see supra* Section IV.B.1.d, Plaintiffs cannot adequately represent the Foundation's distinct interests. The Foundation has its own separate interests in securing its funding, defending its independent governance and defending against Magnum's unsupported claims regarding the Foundation's governance and practices. Indeed, the Foundation is the party best suited to address Magnum's allegations regarding the Foundation.

The fact that the Foundation's interests have some degree of overlap with Plaintiffs' interests is no bar to permissive intervention. "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 N.Y. v. City of N.Y.*, No. 21 CIV. 11149, 2022 WL 4585815, at *4 (S.D.N.Y. Sep. 29, 2022) (cleaned up); *see also United States v. N.Y.C. 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 N.Y.*, 2022 WL 4585815, at *4 (collecting cases).

c. The Foundation's intervention will contribute to the just and equitable adjudication of the issues.

Permissive intervention is appropriate where adding the intervenors would "assist in the just and equitable adjudication of ***any*** of the issues between the parties." *N.Y.C. Hous. Auth.*, 326 F.R.D. at 418 (cleaned up) (emphasis added). That is precisely the case here. 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 Plaintiff's allegations that the audit of the Foundation was aimed at Independent Board Chair Mittal, who is also a Foundation trustee); Ex. 1 (Proposed Third Amended Compl. §VI). 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.

d. The Foundation's Intervention is Timely.

For the reasons explained above, *see supra* Section IV.B.1.a, the Foundation's intervention is timely.

V. CONCLUSION

Plaintiffs and Proposed Intervenor-Plaintiff respectfully request that the Court grant leave to file the proposed Third Amended Complaint and for Proposed Intervenor-Plaintiff to intervene. The Proposed Third Amended Complaint is attached hereto as Exhibit 1 and a document showing in redline how the Third Amended Complaint differs from the Second Amended Complaint is attached hereto as Exhibit 2.

Dated: January 11, 2026

Respectfully submitted,

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WORD COUNT CERTIFICATION

The undersigned hereby certifies pursuant to Local Civil Rule 7.1(c) that, excluding the caption, table of contents, table of authorities, signature block, and required certificates, the total number of words in this memorandum is 7,665.

/s/ *Shahmeer Halepota*
Shahmeer Halepota

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document was filed electronically on January 11, 2026. As such, this document was served on all counsel of record pursuant to the Federal Rules of Civil Procedure.

/s/ *Shahmeer Halepota*
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