

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X

Judyann Fiorelli

Index No.:

Plaintiff,

SUMMONS

-against-

Ben and Jerry's Homemade, Inc.

Defendant (s),

-----X

TO THE ABOVE NAMED DEFENDANT (s):

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer on the plaintiff's attorney at the address indicated below within twenty (20) days after the service of this Summons, exclusive of the day of service of this summons, or within thirty (30) days after service is complete if the Summons is not delivered personally to you within the State of New York.

YOU ARE HEREBY NOTIFIED THAT should you fail to answer, a judgment will be taken against you by default for the relief demanded in the complaint, together with the interest, costs, and/or disbursements of this action.

By: _____
Sachin Gadh, Esq.
Attorney for Plaintiff
117 East 11th Street, Ste# 2D
New York, NY 10003
(631) 514-9067

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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Judyann Fiorelli

Index No.:

Plaintiff,

VERIFIED COMPLAINT

-against-

Ben and Jerry's Homemade, Inc.

Defendant (s),

-----X

TO THE ABOVE NAMED DEFENDANT (s):

Plaintiff respectfully shows and alleges the following:

1. At all times herein mentioned, Plaintiff has resided at 315 Atlantic Avenue, Apt. 3K, East Rockaway, NY 11518.

PARTIES, JURISDICTION AND VENUE:

2. Defendant, Ben and Jerry's Homemade, Inc. is a corporation registered to conduct business in New York with its principal place of business registered to receive process at CT Corporation System, 111 Eighth Avenue, New York, NY 10011.
3. The negligence alleged in this cause of action occurred in Queens County, New York.
4. This Court has personal and subject matter jurisdiction over this matter as the incident occurred in the County of Queens and the damages alleged exceed \$25,000.

FACTUAL ALLEGATIONS TO SUPPORT THE CAUSES OF ACTION

5. On August 31, 2015, Plaintiff purchased a carton of Ben and Jerry's espresso chocolate Buzz Buzz Buzz ice cream.
6. On September 1, 2015, Plaintiff consumed the carton of ice cream.
7. On September 1, 2015, Plaintiff went to the South Nassau Hospital as a result of consuming the ice cream.

8. On September 2, 2015, Plaintiff returned to the hospital due to oral discomfort and was treated with Lidocaine viscous solution.
9. On September 3, 2015, Plaintiff reported the issue to Ben and Jerry's during a phone call.
10. On September 3, 2015, Defendant drafted letter to Plaintiff acknowledging the complaint and issued a check for \$5.50 as a refund.
11. On September 4, 2015, Plaintiff saw Dr. David Klein as a result of the oral discomfort.
12. On September 11, 2015, Plaintiff returned to Dr. Klein who diagnosed a large white sore on her upper lip.
13. Over the next two months, Plaintiff continued to treat with her dentist and primary care doctor in an effort to diagnose and control the problem.
14. Over the next two months, Plaintiff visited with oral surgeons and allergists in an effort to diagnose and control the problem.
15. Over the next 4 months, Plaintiff experienced pain, discomfort and burning due to the oral diagnosis.
16. On December 3, 2015, Plaintiff underwent surgery to remove the large white tissue located in her mouth.
17. Plaintiff was diagnosed with patchy lichenoid inflammation with stromal fibrosis and lichenoid mucositis.
18. Plaintiff saw the following doctors as a result of her consumption of the Defendant's ice cream: Dr. Neil Hammerman: Dr Mridulgkumar: Dr. David Klein: Dr. Shabtai: Dr. Lionel Abitbol: Dr. Annette Fiorello Quinn: Dr. Ciro Ciccarelli: Dr. Nora Odingo: Dr. Alex Gekht: Dr. Jeffrey Stahl

FIRST CAUSE OF ACTION: NEGLIGENCE

19. Defendant was negligent in selling a defective carton of ice cream.
20. Defendant had a duty to keep the carton in a safe and non-hazardous condition.

21. Defendant failed to keep the property in a safe condition.
22. Defendant failed to exercise reasonable care in making their product which they sold to Plaintiff.
23. The negligence of the defendant is the direct cause of the harm sustained by the Plaintiff.

SECOND CAUSE OF ACTION: STRICT PRODUCT LIABILITY

24. Defendant manufactured a product that was defective and did not warn Plaintiff about the possibility of developing an oral sore by consuming the ice cream.
25. Defendant's design of the Buzz Buzz Buzz ice cream was improper.

THIRD CAUSE OF ACTION: BREACH OF WARRANTY

26. Defendant violated the implied warranty of merchantability as the ice cream was not suitable for sale.
27. Defendant sold ice cream that was filled with harmful contaminants that resulted in harm to Plaintiff.
28. Defendant manufactured and sold ice cream that caused significant harm to Plaintiff.

WHEREFORE, it is respectfully requested that the Court grant judgment in an amount exceeding the jurisdiction limits of all lower Courts and to Plaintiff as follows:

- (a) On the FIRST Cause of Action: Judgment in the amount of \$500,000 dollars in compensatory damages.
- (b) On the SECOND Cause of Action: Judgment in the amount of \$500,000 dollars in compensatory damages.
- (c) On the THIRD Cause of Action: Judgment in the amount of \$500,000 dollars in compensatory damages.

- (d) On all causes of action, providing for such other and further relief as the Court may deem just, proper, and equitable including interest, costs and disbursements of this action.

Dated: December 7, 2016
New York, NY

By: _____
Sachin Gadh, Esq.
Attorney for Plaintiff
117 East 11th Street, Suite 2D
New York, NY 10003
(631) 514-9067

ATTORNEY VERIFICATION

STATE OF NEW YORK)
 : ss.
COUNTY OF NEW YORK)

I, Sachin Gadh, an attorney duly admitted to practice law in the State of New York, make the following affirmation under the penalties of perjury:

I have read the foregoing COMPLAINT and know the contents thereof; the same is true to my own knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters, I believe them to be true.

This verification is made by affirmant and not by plaintiff because plaintiff does not reside in the County of New York, which is the County where your affirmant maintains offices.

The grounds of affirmant's belief as to all matters not stated upon affirmant's knowledge are correspondence had with the said plaintiff, information contained in the said plaintiff's file, which is in affirmant's possession, and other pertinent data relating thereto.

Dated: New York, NY
December 7, 2016

Sachin Gadh, Esq.