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Food & Consumer Packaged Goods Litigation

## **Class Certification Denied in Ben & Jerry's "All Natural" Ice Cream Case**

*Astiana v. Ben & Jerry's Homemade*, No. 10-cv4387 (N.D. Cal.): The court denied plaintiff's motion for class certification, finding that plaintiff had failed to establish ascertainability or commonality under Rule 23(a) and predominance under Rule 23(b). The *Astiana* case involves ice cream labeled "all natural," which plaintiff alleged contain "synthetic" alkalized chocolate. In denying class certification, the court explained that plaintiff offered no way to determine which products contained "synthetic" as opposed to natural alkali, and further offered no way to show that other class members shared her concern over "synthetic" alkali. The court therefore found that plaintiff had not established her claims were typical, in large part because she had not identified an ascertainable class. The court further held that the plaintiff had failed to satisfy the predominance requirement of Rule 23(b)(3), explaining plaintiff had failed to establish a classwide manner of awarding damages based on her price-inflation theory, which would have required evidence that consumers paid more for products containing "natural" alkalized cocoa. [Order](#).

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