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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BEN & JERRY'S FRANCHISING,  
INC., et al.,

Plaintiffs,

v.

MPA GROUP, INC. and MEHRDAD  
PORGHAVAMI,

Defendants.

MEHRDAD PORGHAVAMI, et al.,  
Cross-Complainants,

v.

BEN & JERRY'S FRANCHISING INC.,  
BEN & JERRY'S HOMEMADE INC.,  
BEN & JERRY'S OF CALIFORNIA,  
INC. and WONDER ICE CREAM, LLC,

Cross-Defendants.

No. 2:07-cv-02599 JAM KJM  
ORDER GRANTING MOTION TO STRIKE  
DEMAND FOR JURY TRIAL

This matter comes before the Court on Ben & Jerry's  
Franchising Inc. and Ben & Jerry's Homemade Inc. (collectively  
"Ben & Jerry's") Motion to Strike Mehrdad Porghavami's  
("Porghavami's") Demand for Jury Trial. Porghavami opposes the

1 motion. For the reasons set forth below, Ben and Jerry's Motion  
2 is GRANTED with respect to claims against it.<sup>1</sup>

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4 BACKGROUND

5 On or about October 31, 2002, December 18, 2003, and  
6 August 29, 2005, Ben & Jerry's, Ben & Jerry's of California  
7 ("BJCA"), and Wonder Ice Cream, LLC entered into three separate  
8 franchise agreements with MPA Group, Inc. and Porghavami, each  
9 for the operation of a Ben & Jerry's Scoop Shop (hereinafter  
10 "the Franchise Agreements"). The Franchise Agreements contained  
11 the exact same jury waiver clause: "Ben & Jerry's and MPA  
12 irrevocably waive trial by jury in any action, proceeding or  
13 counterclaim, whether at law or in equity, brought by either of  
14 them against the other." See Mtn. to Strike, Exs. A-C, Docket  
15 at 132. Ben & Jerry's subsequently brought action against  
16 Defendants for, *inter alia*, breach of the franchise agreements.  
17 On October 2, 2008, Defendant Mehrdad Porghavami filed a Second  
18 Amended Cross-Complaint against Ben & Jerry's for Damages,  
19 Declaratory Relief and Demand for Jury Trial. Docket at 73. On  
20 June 29, 2009 Ben & Jerry's filed a Motion to Strike  
21 Porghavami's demand for a jury trial on the grounds that it was  
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28 <sup>1</sup> Because oral argument will not be of material assistance,  
the court orders this matter submitted on the briefs. E.D. Cal.  
L.R. 78-230(h).

1 prohibited by the jury waiver clauses in the franchise  
2 agreements.

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4 OPINION

5 The right to a jury trial in a civil case is a fundamental  
6 right expressly protected by the Seventh Amendment to the United  
7 States Constitution. Aetna, Inc. v. Kennedy, 301 U.S. 389,  
8 393(1937); see also Simler v. Conner, 372 U.S. 221 (1963).

9 However, "While the right to [a] civil jury trial is  
10 fundamental... it may be waived by a contract knowingly and  
11 voluntarily executed." Okura & Co. v. Careau Group, 783 F.Supp.  
12 482 (C.D. Cal. 1991); see also Brookhart v. Janis, 384 U.S. 1  
13 (1966) (holding that "to be valid, a jury waiver must be made  
14 knowingly and voluntarily based on the facts of the case");  
15 accord Palmer v. Valdez, 560 F.3d 965, 968 (9th Cir. 2009).

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18 Here, Porghavami knowingly and voluntarily executed three  
19 separate franchise agreements, each containing the exact same  
20 jury waiver clause. Decl. of John J. Dwyer, Ex. 4 at 42:9-22;  
21 49:24-51:1. In each agreement, the jury waiver clause was  
22 written in the same size font, using the same clear, standard  
23 language and appeared in generally the same place in each of the  
24 three agreements. There is no evidence that the jury waiver  
25 clauses were latent, masked, buried or written in small-type  
26 font.  
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1           Porghavami, the prior owner of two California businesses,  
2 had at least a month between the times he received each  
3 agreement to the times each agreement was signed, providing him  
4 sufficient time to read over the Franchise Agreements and raise  
5 any outstanding questions. Porghavami testified that he did not  
6 feel that it was necessary to have a lawyer review the materials  
7 because he had read the Franchise Agreements, thought it was  
8 "pretty much straight forward" and there was nothing in the  
9 Franchise Agreements that he did not understand. Decl. of John  
10 J. Dwyer, Ex. 4, 42:15-43:5. Porghavami also specifically  
11 testified that he understood what waiver of jury trial clause  
12 meant. Decl. of John J. Dwyer, Ex. 4, 49:16-23. These facts  
13 support a finding that Porghavami knowingly and voluntarily  
14 contracted to waive his right to a jury trial.  
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18           Porghavami also argues that because he did not sign an  
19 agreement waiving right to a jury trial with Wonder Ice Cream,  
20 LLC, his jury trial demand should not be stricken. However, Ben  
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1 and Jerry's brought this Motion separately. Accordingly, an  
2 order striking the jury demand only applies to claims made  
3 against Ben & Jerry's.  
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5 ORDER

6 For the reasons stated above, Ben & Jerry's Motion to  
7 Strike Porghavami's demand for jury trial is GRANTED with  
8 respect to claims against Ben & Jerry's.  
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11 IT IS SO ORDERED.

12 Dated: August 25, 2009

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15 JOHN A. MENDEZ,  
16 UNITED STATES DISTRICT JUDGE  
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