

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**

BETSY C. MANIFOLD (182450)
RACHELE R. RICKERT (190634)
BRITTANY N. DEJONG (258766)
750 B Street, Suite 2770
San Diego, CA 92101
Telephone: 619-239-4599
Facsimile: 619-234-4599
manifold@whafh.com
rickert@whafh.com
dejong@whafh.com

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**

JANINE L. POLLACK
MATTHEW M. GUINEY
MICHAEL M. LISKOW (243899)
270 Madison Avenue
New York, NY 10016
Telephone: 212/545-4600
Facsimile: 212/545-4677
pollack@whafh.com
guiney@whafh.com
liskow@whafh.com

Counsel for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DANIEL GOLDMAN, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

BAYER AG, BAYER CORPORATION, and
BAYER HEALTHCARE, LLC,

Defendants.

) Case No.:

) **CLASS ACTION COMPLAINT**

) **JURY TRIAL DEMANDED**

1 8. Because the principal display panel causes consumers to believe that each bottle
2 contains precisely twice as many days' worth of vitamins as is actually provided, the label is
3 illegal and deceptive and reasonable consumers are likely to be deceived.


4 **JURISDICTION AND VENUE**

5 9. This Court has jurisdiction over the subject matter of this action pursuant to the
6 Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), and 28 U.S.C. § 1332(a), because the
7 aggregate amount in controversy exceeds \$5,000,000 and there is diversity between plaintiff and
8 a defendant.


9 10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b). Defendant
10 conducts substantial business in this District, has significant contacts with this District, and
11 otherwise purposely avails itself of the markets in this District, through the promotion, sale and
12 marketing of its products in this district.

13 **PARTIES**

14 ***Plaintiff***

15 11. Plaintiff Daniel Goldman is an individual residing in Oakland, California. On or
16 about December 19, 2016, during the class period (as defined below), Plaintiff purchased ONE A
17 DAY VitaCraves from one or more retailers in California, including CVS, for personal, family or
18 household purposes. The principal display panel on the bottle of ONE A DAY VitaCraves
19 purchased by Plaintiff prominently advertised "ONE A DAY" at the top of the label along with
20  "1" prominently displayed behind the phrase "ONE A DAY" as follows:
21 The principal display panel also prominently indicated that the bottle contained
22 "70 Gummies" in total. Plaintiff read these representations – namely, that the bottle contained
23 70 days' worth of vitamins – and relied upon them when purchasing ONE A DAY VitaCraves.
24 Plaintiff was injured as a consequence of the misleading and deceptive principal display panel
25 because the bottle contained only half of the number of days' worth of vitamins as advertised.

26 12. On or about December 1, 2016, during the class period (as defined below),
27 Plaintiff Goldman purchased ONE A DAY VitaCraves from one or more retailers in New York,
28 including CVS, for personal, family or household purposes. The principal display panel on the

1 bottle of ONE A DAY VitaCraves purchased by Plaintiff prominently advertised “ONE A DAY”
2 at the top of the label  e numeral “1” prominently displayed behind the phrase “ONE
3 A DAY” as follows: The principal display panel also prominently indicated that
4 the bottle contained “70 Gummies” in total. Plaintiff read these representations – namely, that
5 the bottle contained 70 days’ worth of vitamins – and relied upon them when purchasing ONE A
6 DAY VitaCraves. Plaintiff was injured as a consequence of the misleading and deceptive
7 principal display panel because the bottle contained only half of the number of days’ worth of
8 vitamins as advertised.

9 ***Defendants***

10 13. Defendant Bayer AG is a German multinational chemical and pharmaceutical
11 company headquartered in Leverkusen, Germany.

12 14. Defendant Bayer Corporation is an Indiana corporation and is wholly owned by
13 Bayer AG and maintains its principle place of business at 100 Bayer Road, Pittsburgh, PA
14 15205.

15 15. Defendant Bayer HealthCare, LLC is a Delaware limited liability company and
16 wholly owned by Bayer Corporation. Bayer HealthCare, LLC’s registered agent is located at
17 2711 Centerville Road, Suite 400, Wilmington, DE. Bayer HealthCare, LLC is responsible for
18 the marketing, distribution, and sale of ONE A DAY VitaCraves to millions of consumers
19 throughout the United States. Bayer HealthCare, LLC owns the trademark for both “ONE A
20 DAY” and “VitaCraves” marks.

21 16. Bayer AG, Bayer Corporation and Bayer HealthCare, LLC are collectively
22 referred to herein as “Bayer.”

23 **GENERAL ALLEGATIONS**

24 17. Bayer markets and sells numerous multivitamin products under the “ONE A
25 DAY” brand name.

26 18. Bayer’s website explains that ONE A DAY multivitamins are designed
27 specifically for men, women, children, the elderly and pregnant women.

1 19. Bayer's ONE A DAY brand multivitamins come in a variety of forms (pill, small
2 pill, gummy, chocolate-flavored chew or fruit-flavored chew) and purportedly provide a variety
3 of health supports (eye health, heart health, bone health, immune health, physical energy, skin
4 health, metabolism and prenatal).

5 20. One particular line of ONE A DAY multivitamins is Bayer's VitaCraves line of
6 multivitamins.

7 21. As Bayer's website explains, "You're always looking for new ways to enjoy a
8 healthy lifestyle. ONE A DAY® VitaCraves® give you the nutritional support of a complete
9 multivitamin in either a fruity, tasty gummy or ChewyBites, a hard-shelled, chocolatey, chewy
10 bite. There's a flavor and a formula for everyone. Find the VitaCraves® multivitamin that's
11 right for you." *One A Day VitaCraves Multivitamins*, ONEADAY.COM,
12 <https://www.oneaday.com/products-vitacraves> (last visited Feb. 7, 2017).

13 22. Bayer sells at least ten different ONE A DAY VitaCraves products including:
14 ONE A DAY Women's VitaCraves Gummies; ONE A DAY Men's VitaCraves Gummies; ONE
15 A DAY VitaCraves Gummies With Healthy Metabolism Support; ONE A DAY Teen for Her
16 VitaCraves Gummies; ONE A DAY Teen for Him VitaCraves Gummies; ONE A DAY
17 VitaCraves Gummies with Immunity Support; ONE A DAY VitaCraves Gummies With Omega-
18 3 DHA; ONE A DAY VitaCraves Regular Gummies; ONE A DAY VitaCraves Gummies with
19 Energy Support; and ONE A DAY VitaCraves ChewyBites.

20 23. Bayer markets each of these ONE A DAY VitaCraves by prominently displaying
21 the phrase "ONE A DAY" with the numeral "1" behind the "ONE A DAY" phrase on the
22 principal display panel of each bottle.

23 24. Bayer also displays the number of gummies contained in each bottle prominently
24 on the bottom right corner of the principal display panel.

25 25. An example is below:

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



26. The principal display panel on each product line of ONE A DAY VitaCraves is identical to the multivitamin purchased by Plaintiff because each multivitamin line prominently bears the identical “ONE A DAY” direction and also prominently displays the number of gummies or chews contained in each bottle in precisely the same manner.

27. Attached hereto as Exhibits A - J are the principal display panels for each type of ONE A DAY VitaCraves.

28. Reasonable consumers purchasing a bottle of ONE A DAY VitaCraves understand that they should take *one* ONE A DAY VitaCraves gummy *per day*, and, consequently, that each bottle contains the number of days’ worth of vitamins equal to the number of gummies in each bottle.

1 29. Reasonable consumers purchasing a bottle of ONE A DAY VitaCraves containing
2 70 gummies, for example, understand that the bottle contains 70 days' worth of vitamins.
3 Specifically, reasonable consumers understand that there are 70 days' worth of gummies in each
4 bottle by virtue of taking *one* ONE A DAY *per day* for 70 days.

5 30. In fact, contrary to the prominent representation on the front principal display
6 panel on each bottle of ONE A DAY VitaCraves vitamins, consumers must take *two* ONE A
7 DAY VitaCraves multivitamins per day to receive a single daily serving of vitamins.

8 31. A bottle of ONE A DAY VitaCraves vitamins containing 70 gummies provides
9 just 35 days' worth of vitamins because the serving size is *two* gummies or chews per day for
10 *each* ONE A DAY VitaCraves product line.

11 32. Consequently, *each* bottle of ONE A DAY VitaCraves vitamins advertising a
12 particular number of days' worth of vitamins in fact contains only *one half that number* of days'
13 worth of vitamins.

14 33. ONE A DAY VitaCraves vitamins *do not* prominently display the actual days'
15 worth of vitamins per container on the front-facing principal display panel. Rather, each bottle
16 of ONE A DAY VitaCraves vitamins advertises that it contains precisely *double* the actual days'
17 worth of vitamins as a consequence of the deceptive and misleading ONE A DAY terminology
18 prominently displayed on the front-facing principal display panel facing customers on the
19 shelves of a store.

20 34. Bayer only discloses the number of days' worth of vitamins in each bottle of ONE
21 A DAY VitaCraves vitamins on the supplemental facts panel on the *back* of the bottle – the part
22 of the label that consumers *do not* see when viewing ONE A DAY VitaCraves on the shelves of
23 a store.

24 35. But reasonable customers should not be expected to look behind the misleading
25 representations on the *front* of the bottle to discern the truth from the nutritional panel in small
26 print on the *back* of the bottle.

27 36. Because the principal display panel causes consumers to believe that each bottle
28 of ONE A DAY VitaCraves contains precisely twice as many days' worth of vitamins as is

1 actually provided, the label is illegal and deceptive and reasonable consumers are likely to be
2 deceived.

3 37. For example, an article on *Business Insider* recounted one consumer's experience:
4 "A reader noticed that the bottle of One A Day VitaCraves (for adults) gummies that he bought
5 actually instruct you to take *two* each day. There are 50 total gummies in a bottle, so it lasts for
6 less than a month if used as instructed. He felt like he was completely misled." Kim Bhasin,
7 '*One A Day' Vitamin Gummies Instruct You to Take Two A Day*, BUSINESS INSIDER (Sep. 6,
8 2012), <http://www.businessinsider.com/one-a-day-vitamin-gummies-2012-9> (last visited Feb. 7,
9 2017) (emphasis in original).

10 38. Consequently, ONE A DAY VitaCraves front-facing principal display panels are
11 false, misleading, unfair and deceptive because they advertise the number of gummies in each
12 bottle along with the direction to take "ONE A DAY."

13 39. To the best of Plaintiff's knowledge, *every other line* of ONE A DAY vitamins
14 requires consumers to take just one vitamin pill or capsule per day to receive the recommended
15 daily allowance of vitamins.

16 40. As a consequence of the front-facing principal display panels that misleadingly
17 disclosed to buyers they needed to take just *one* gummy per day to receive a full serving size,
18 Plaintiff and the Class paid, at the very least, precisely twice as much for the product in reliance
19 on the misrepresentations about the quantity of product being purchased.

20 41. Indeed, Bayer's ONE A DAY VitaCraves gummy vitamins cost between \$0.26
21 and \$0.34 *per serving* whereas Bayer's other vitamin products, such as ONE A DAY Women's
22 and ONE A DAY Men's Health Formula cost approximately \$0.09 *per serving*.

23 42. The principal display panel causes consumers to believe that they are purchasing a
24 number of days' worth of vitamins equal to the number of gummies enclosed in each bottle. In
25 fact, consumers are purchasing only *half* of that amount. Consequently, Bayer's claims are
26 illegal and deceptive and reasonable consumers are likely to be deceived.

27 43. Plaintiff and the class incurred a financial injury upon purchasing ONE A DAY
28 VitaCraves vitamins based upon Bayer's deceptive statements.

1 44. Plaintiff and the class personally viewed the misrepresentations on the front-
2 facing principal display panel of each bottle of ONE A DAY VitaCraves gummy vitamins, were
3 deceived by them, and were financially damaged as a result.

4 45. The Plaintiff and the Class would not have otherwise purchased ONE A DAY
5 VitaCraves gummy vitamins absent the false and misleading representations or, at the very least,
6 would not have paid as much as they did.

7 46. Bayer continues to advertise, distribute, label, manufacture market and sell ONE
8 A DAY VitaCraves gummy vitamins in the false, misleading unfair and deceptive manner
9 described herein.

10 **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

11 47. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
12 Procedure (“Fed. R. Civ. P.”) 23. Plaintiff seeks to represent the following classes:

13 a. National: All persons in the United States who purchased Bayer’s
14 ONE A DAY VitaCraves vitamins at any time during the applicable limitations period (the
15 “National Class” or “Class” during the “National Class Period”). Excluded from the Class are
16 Defendants’ officers and directors and the immediate families of Defendants’ officers and
17 directors. Also excluded from the National Class are the Defendants and their subsidiaries,
18 parents, affiliates, joint venturers, and any entity in which Defendants have or have had a
19 controlling interest.

20 b. California: All persons who purchased Bayer ONE A DAY
21 VitaCraves vitamins in the state of California within four years of the date of the filing of this
22 complaint (the “California Class”). Excluded from the California Class are Defendants’ officers
23 and directors and the immediate families of Defendants’ officers and directors. Also excluded
24 from the California Class are the Defendants and their subsidiaries, parents, affiliates, joint
25 venturers, and any entity in which Defendants have or have had a controlling interest.

26 c. New York: All persons who purchased Bayer ONE A DAY
27 VitaCraves vitamins in the state of New York within three years of the date of filing of this
28

1 complaint (the “New York Class”). Excluded from the New York Class are Defendants’ officers
2 and directors and the immediate families of Defendants’ officers and directors. Also excluded
3 from the New York Class are the Defendants and their subsidiaries, parents, affiliates, joint
4 venturers, and any entity in which Defendants have or have had a controlling interest.

5 48. For purposes of the complaint, the term “Class” refers collectively to the National,
6 New York and California Classes, the phrase “Class Members” refers to all members of the
7 Class, including the named Plaintiff, and the term “Class Periods” refers collectively to the
8 National, New York and California Class Periods.

9 49. This action has been brought and may properly be maintained as a class action
10 against Bayer pursuant to the provisions of Fed. R. Civ. P. 23 because there is a well-defined
11 community of interest in the litigation and there is an administratively feasible way to identify
12 Class members.

13 50. Numerosity: Plaintiff does not know the exact size of the Class, but given the
14 nature of the claims and Bayer’s sales of ONE A DAY VitaCraves vitamins nationally, Plaintiff
15 believes that Class Members are so numerous that joinder of all members of the Class is
16 impracticable as Bayer sold hundreds of millions of dollars’ worth of ONE A DAY VitaCraves
17 vitamins during the Class Period.

18 51. Common Questions Predominate: This action involves common questions of law
19 and fact because each Class Member’s claim derives from the same deceptive practices. The
20 common questions of law and fact involved predominate over questions that affect only Plaintiff
21 or individual Class Members. Thus, proof of a common or single set of facts will establish the
22 right of each member of the Class to recover. Among the questions of law and fact common to
23 the Class are:

24 a. Whether Bayer marketed and sold ONE A DAY VitaCraves vitamins
25 to Plaintiff, and those similarly situated, using deceptive statements or representations;

26 b. Whether Bayer omitted or misrepresented material facts in connection
27 with the marketing and sale of ONE A DAY VitaCraves vitamins;

1 c. Whether Bayer engaged in a common course of conduct as described
2 in this Complaint;

3 d. Whether Bayer's marketing and sales of ONE A DAY VitaCraves
4 vitamins constitutes a deceptive practice; and

5 e. Whether, and to what extent, injunctive relief should be imposed on
6 Bayer to prevent such conduct in the future.

7 52. Typicality: Plaintiff's claims are typical of the Class because all Class Members
8 purchased products bearing Bayer's deceptive claims. Bayer's deceptive actions concern the
9 same business practices described in this Complaint, irrespective of where they occurred or were
10 received. The injuries and damages of each Class Member were caused directly by Bayer's
11 illegal conduct as alleged in this Complaint.

12 53. Adequacy: Plaintiff will fairly and adequately protect the interests of all Class
13 Members because it is in their best interests to prosecute the claims alleged in this Complaint to
14 obtain full compensation they are due for Bayer's illegal conduct.

15 54. Plaintiff also has no interests that conflict with or are antagonistic to the interests
16 of Class Members. Plaintiff has retained highly competent and experienced class action
17 attorneys to represent their interests and that of the Class. No conflict of interest exists between
18 Plaintiff and Class Members because all questions of law and fact regarding liability of Bayer are
19 common to Class Members and predominate over the individual issues that may exist, such that
20 by prevailing on their own claims, Plaintiff necessarily will establish Bayer's liability to all Class
21 Members. Plaintiff and his counsel have the necessary financial resources to adequately and
22 vigorously litigate this class action, and Plaintiff and counsel are aware of their fiduciary
23 responsibilities to the Class Members and are determined to diligently discharge those duties
24 seeking the maximum possible recovery for the Class Members.

25 55. Superiority: There is no plain, speedy, or adequate remedy other than by
26 maintenance of this class action. The prosecution of individual remedies by members of the
27 Class will tend to establish inconsistent standards of conduct for Bayer and result in the
28 impairment of Class Members' rights and disposition of their interests through actions to which

1 they were not parties. Class action treatment will permit a large number of similarly situated
2 persons to prosecute their common claims in a single forum simultaneously, efficiently, and
3 without the unnecessary duplication of effort and expense that numerous individual actions
4 would engender. Furthermore, as the damages suffered by each individual member of the Class
5 may be relatively small, the expenses and the burden of individual litigation would make it
6 difficult or impossible for individual members of the Class to redress the wrongs done to them,
7 while an important public interest will be served by addressing the matter as a class action.

8 56. The prerequisites to maintaining a class action for injunctive or equitable relief
9 pursuant to Fed. R. Civ. P. 23(b)(2) are met as Bayer has acted or refused to act on grounds
10 generally applicable to the Class, thereby making appropriate final injunctive or equitable relief
11 with respect to the Class as a whole.

12 57. The prerequisites to maintaining a class action for damages pursuant to Fed. R.
13 Civ. P 23(b)(3) are met as the questions of law or fact common to class members predominate
14 over any questions affecting only individual members and a class action is superior to other
15 available methods for fairly and efficiently adjudicating the controversy.

16 58. Plaintiff is unaware of any difficulties that are likely to be encountered in the
17 management of this action that would preclude its maintenance as a class action.

18 **FIRST CAUSE OF ACTION**

19 **Violations of California's Consumer Legal Remedies Act,**
20 **California Civil Code § 1750, *et seq.***
21 **(On Behalf of the California Class)**

22 59. Plaintiff incorporates and re-alleges the allegations set forth in paragraphs 1
23 through 58 above.

24 60. Plaintiff brings this claim individually and on behalf of the other members of the
25 California Class.

26 61. This cause of action is brought pursuant to the California Consumers Legal
27 Remedies Act, Cal. Civ. Code § 1750, *et seq.* (the "CLRA").

28 ///

///

1 62. Bayer's actions, representations and conduct have violated, and continue to
2 violate, the CLRA because they extend to transactions that are intended to result, or which have
3 resulted, in the sale or lease of goods or services to consumers.

4 63. Plaintiff and the other California Class Members are "consumers" as that term is
5 defined by the CLRA in California Civil Code section 1761(d).

6 64. The products that Plaintiff and other members of the California Class purchased
7 from Defendant were "goods" within the meaning of California Civil Code section 1761(a).

8 65. Bayer intended to sell the product to, *inter alia*, Plaintiff and the members of the
9 California Class.

10 66. Bayer has made and continues to make deceptive, false and misleading statements
11 concerning the number of servings of ONE A DAY VitaCraves vitamins in each bottle.

12 67. Bayer violated the CLRA in at least the following respects:

13 a. In violation of section 1770(a)(5), in that Bayer represented that each
14 bottle of ONE A DAY VitaCraves has quantities which they do not have; and

15 b. In violation of section 1770(a)(9), in that Bayer advertised ONE A DAY
16 VitaCraves with intent not to sell them as advertised.

17 68. The acts and omissions of Bayer constitute unfair, deceptive and misleading
18 business practices in violation of California Civil Code section 1770(a).

19 69. On December 29, 2016, Plaintiff sent notice to Bayer in writing, by certified mail,
20 of the violations alleged herein and demanded that Bayer remedy those violations.

21 70. As of February 8, 2017, Bayer has not ceased the challenged conduct or
22 responded to Plaintiff's demand letter.

23 71. As a result, Plaintiff now seeks actual, punitive, and statutory damages pursuant
24 to the CLRA for the California Class.

25 72. The conduct by Bayer was malicious, fraudulent, and wanton in that Bayer
26 intentionally and knowingly provided misleading information to the public.

27 ///

28 ///

SECOND CAUSE OF ACTION

**Violation of California's Business & Professions Code,
§ 17200, *et seq.* - Unlawful, Unfair and Deceptive Business Acts and Practices
(On Behalf of the California Class)**

1
2
3
4 73. Plaintiff incorporates and re-allege the allegations as set forth in paragraphs 1
5 through 72 above.

6 74. Defendants' conduct as set forth herein constitutes unlawful, unfair and deceptive
7 business acts and practices within the meaning of the California Business & Professions Code
8 section 17200, *et seq.*

9 75. Defendants sold the Product in California during the relevant class period
10 applicable to Plaintiff and the members of the California Class.

11 76. Defendants are each a "person" within the meaning of the Sherman Food Drug &
12 Cosmetic Law, California Health & Safety Code section 109875, *et seq.* (the "Sherman Law").

13 77. Defendants' business practices, as described herein, are unlawful, unfair and
14 deceptive under section 17200, *et seq.* by virtue of Defendants' violations of the advertising
15 provisions of Article 3 of the Sherman Law and the misbranded food provisions of Article 6 of
16 the Sherman Law.

17 78. Defendants' business practices are unlawful, unfair and deceptive under section
18 17200, *et seq.* by virtue of Defendants' violations of section 17500, *et seq.*, which forbids untrue
19 and misleading advertising.

20 79. Defendants' business practices are unlawful, unfair and deceptive under section
21 17200, *et seq.* by virtue of Defendants' violations of the Consumers Legal Remedies Act,
22 California Civil Code section 1750, *et seq.*

23 80. Defendants sold Plaintiff and the members of the California class the ONE A
24 DAY VitaCraves, which were worth less than advertised, and Plaintiff and the members of the
25 California Class paid a premium price for the multivitamins.

26 81. As a result of Defendants' illegal, unfair and deceptive business practices,
27 Plaintiff and the members of the California Class, pursuant to California Business and
28 Professions Code section 17203, are entitled to an order enjoining such future conduct and such

1 other orders and judgments which may be necessary to disgorge Defendants' ill-gotten gains and
2 to restore to Plaintiff and members of the California Class any money paid for ONE A DAY
3 VitaCraves.

4 **THIRD CAUSE OF ACTION**

5 **Violations of New York General Business Law § 349**
6 **(On Behalf of the New York Class)**

7 82. Plaintiff incorporates and re-alleges the allegations as set forth in paragraphs 1
8 through 58 above.

9 83. Plaintiff brings this claim individually and on behalf of the other members of the
10 New York Class for violations of New York's Deceptive Acts or Practices Law, Gen. Bus. Law
11 § 349.

12 84. Defendants have made and continue to make deceptive, false and misleading
13 statements concerning the number of days' worth of vitamins in each bottle of ONE A DAY
14 VitaCraves vitamins, namely manufacturing, selling, marketing, packaging and advertising the
15 products with false and misleading statements concerning the number of days' worth of vitamins
16 in each bottle.

17 85. Defendants intend to create consumer confusion by causing purchasers to believe
18 they were purchasing double the number of days' worth of vitamins than they were actually
19 purchasing.

20 86. By the acts and conduct alleged herein, Defendants committed unfair or deceptive
21 acts and practices.

22 87. The foregoing deceptive acts and practices were directed at consumers.

23 88. Plaintiff and the other Class members suffered a loss as a result of Defendants'
24 deceptive and unfair trade acts.

25 **FOURTH CAUSE OF ACTION**

26 **(In the alternative)**
27 **Unjust Enrichment**
28 **(On Behalf of the National Class)**

89. Plaintiff incorporates and re-alleges the allegations set forth in paragraphs 1
through 58 above.

1 bottles actually only one half of the number of days' worth of vitamins in each bottle as
2 advertised.

3 97. As a direct and proximate result of this breach of express warranty by Defendants,
4 each member of the California class has suffered economic loss.

5 **PRAYER FOR RELIEF**

6 THEREFORE, Plaintiff asks the Court to enter the following judgment:

- 7 a. Approving of the Class, certifying Plaintiff as a representative of the Class, and
8 designating his counsel as counsel for the Class;
- 9 b. Declaring that Bayer has committed the violations alleged herein;
- 10 c. Granting damages, restitution, or disgorgement to Plaintiff and the Class;
- 11 d. Granting declaratory and injunctive relief to enjoin Defendant from engaging in
12 the unlawful practices described in this Complaint;
- 13 e. Granting compensatory damages, the amount of which is to be determined at trial;
- 14 f. Granting punitive damages;
- 15 g. Granting pre- and post-judgment interest;
- 16 h. Granting attorneys' fees and costs; and
- 17 i. Granting further relief as this Court may deem proper.

18 **JURY TRIAL DEMANDED**

19 Plaintiff hereby demands a trial by jury pursuant to Rule 38 of the Federal Rules of Civil
20 Procedure.

21 DATED: February 8, 2017

Respectfully Submitted,

22 **WOLF HALDENSTEIN ADLER**
23 **FREEMAN & HERZ LLP**
24 Betsy C. Manifold
Rachele R. Rickert
Brittany N. DeJong

25 /s/ Rachele R. Rickert
26 RACHELE R. RICKERT

27 750 B Street, Suite 2770
28 San Diego, California 92101
Telephone: 619/239-4599
Facsimile: 619/234-4599

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

manifold@whafh.com
rickert@whafh.com
dejong@whafh.com

**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLP**

JANINE L. POLLACK
MATTHEW M. GUINEY
MICHAEL M. LISKOW
270 Madison Avenue
New York, New York 10016
Telephone: 212/545-4600
Facsimile: 212/545-4677
pollack@whafh.com
guiney@whafh.com
liskow@whafh.com

Counsel for Plaintiff

BAYER23668v2

EXHIBIT A



EXHIBIT B



EXHIBIT C



EXHIBIT D



EXHIBIT E



EXHIBIT F



EXHIBIT G

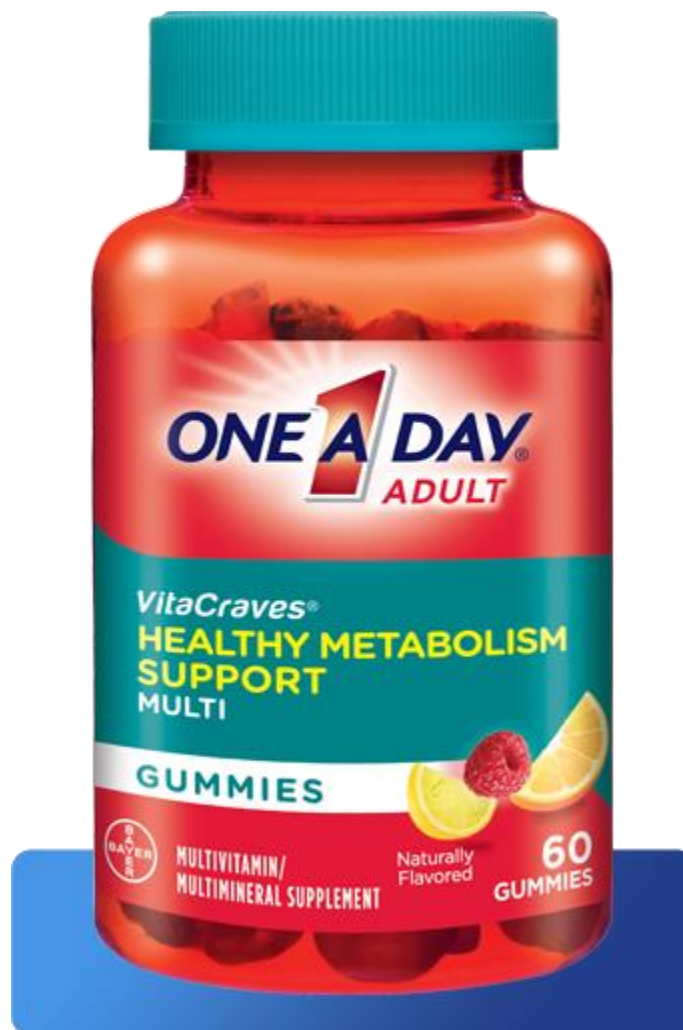


EXHIBIT H



EXHIBIT I

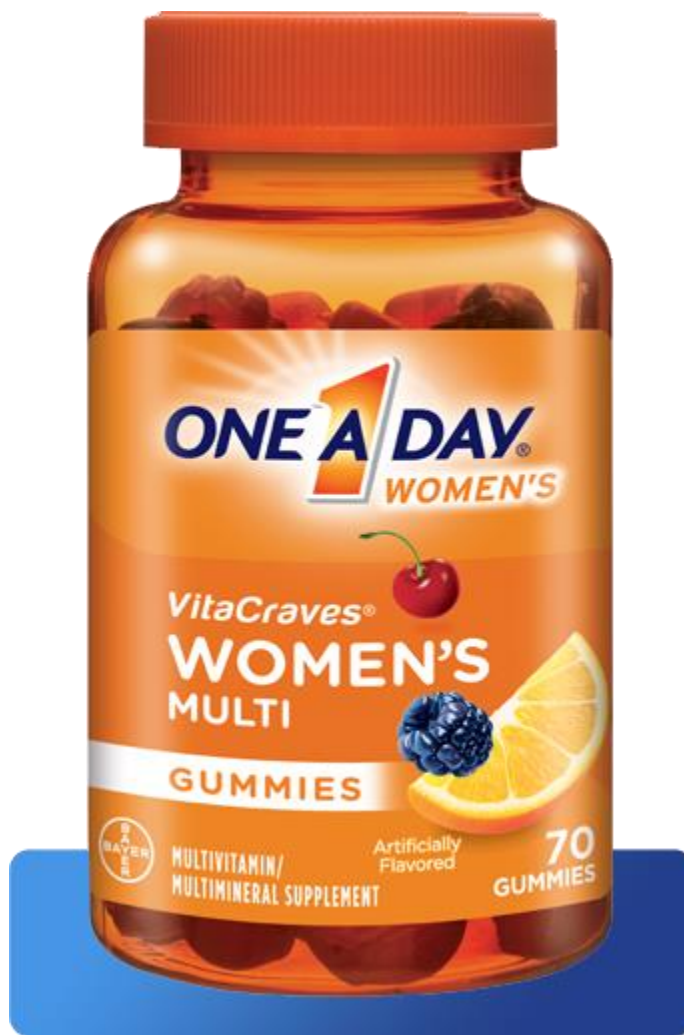


EXHIBIT J



CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Daniel Goldman, on behalf of himself and all others similarly situated
(b) County of Residence of First Listed Plaintiff Alameda
(c) Attorneys (Firm Name, Address, and Telephone Number)
Rachele R. Rickert (190634)
WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP
750 B Street, Suite 2770, San Diego, CA 92101
Tel: 619/239-4599; Fax: 619/234-4599

DEFENDANTS
Bayer AG, Bayer Corporation, and Bayer HealthCare, LLC
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status.

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Grid with categories: CONTRACT, REAL PROPERTY, PERSONAL INJURY, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:
Violations of: CA's Consumer Legal Remedies Act; Unlawful Business Acts and Practices; NY Deceptive Acts or Practices Law; Unjust Enrichment; Breach of Express Warranty

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.
DEMAND \$
CHECK YES only if demanded in complaint:
JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S), IF ANY (See instructions):
JUDGE
DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
(Place an "X" in One Box Only)
[X] SAN FRANCISCO/OAKLAND [] SAN JOSE [] EUREKA-MCKINLEYVILLE

DATE: 02/08/2017
SIGNATURE OF ATTORNEY OF RECORD: /s/ Rachele R. Rickert

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.