

1 **KAPLAN FOX & KILSHEIMER LLP**  
Laurence D. King (SBN 206423)  
2 lking@kaplanfox.com  
Linda M. Fong (SBN 124232)  
3 lfong@kaplanfox.com  
350 Sansome Street, Suite 400  
4 San Francisco, California 94104  
Telephone: (415) 772-4700  
5 Facsimile: (415) 772-4707

**CENTER FOR SCIENCE IN THE PUBLIC INTEREST**  
Amanda Howell (admitted *pro hac vice*)  
ahowell@cspinet.org  
5646 Milton Street, Suite 714  
Dallas, Texas 75206  
Telephone: (214) 827-2774  
Facsimile: (214) 827-2787

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- and -

7 **KAPLAN FOX & KILSHEIMER LLP**  
Robert N. Kaplan (admitted *pro hac vice*)  
8 rkaplan@kaplanfox.com  
Lauren I. Dubick (admitted *pro hac vice*)  
9 ldubick@kaplanfox.com  
850 Third Avenue, 14th Floor  
10 New York, New York 10022  
Telephone: (212) 687-1980  
11 Facsimile: (212) 687-7714

**STANLEY LAW GROUP**  
Marc R. Stanley (pending *pro hac vice*)  
marcstanley@mac.com  
Martin Woodward (pending *pro hac vice*)  
mwoodward@stanleylawgroup.com  
Stephen Gardner (admitted *pro hac vice*)  
steve@consumerhelper.com  
3100 Monticello Avenue, Suite 770  
Dallas, Texas 75205  
Telephone: (214) 443-4300  
Facsimile: (214) 443-0358

12 *Counsel for Plaintiffs*

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

16 COLLEEN GALLAGHER, ILANA  
FARAR, ANDREA LOPEZ, JOANN  
17 CORDARO, and ROSANNE  
COSGROVE, on behalf of themselves  
18 and all others similarly situated,

19 Plaintiffs,

20 v.

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

22 Defendants.

CASE NO. 3:14-cv-04601-WHO

**AMENDED CLASS ACTION COMPLAINT**

1. Unlawful, Unfair, and Fraudulent Business Acts and Practices (Cal. Bus. & Prof. Code. §§ 17200 *et seq.*)
2. Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750, *et seq.*)
3. Untrue or Misleading Advertising (Cal. Bus. & Prof. Code. §§ 17500 *et seq.*)
4. Unfair or Deceptive Practices (Fla. Stat. §§ 501.201 *et seq.*)
5. Misleading Advertising (Fla. Stat. § 817.41)
6. Deceptive Acts and Practices (N.Y. Gen. Bus. Law § 349)
7. False Advertising (N.Y. Gen. Bus. Law § 350)
8. Restitution Based On Unjust Enrichment/Quasi-Contract

**Demand for Jury Trial**

1 Plaintiffs Colleen Gallagher, Ilana Farar, Andrea Lopez, JoAnn Cordaro, and  
 2 Rosanne Cosgrove (“Plaintiffs”), individually and on behalf of all others similarly  
 3 situated, bring this action against Bayer AG, Bayer Corporation, and Bayer HealthCare,  
 4 LLC (collectively, “Bayer” or “Defendants”), demanding a trial by jury, and allege as  
 5 follows:

## 6 NATURE OF THE CASE

7 1. This is a proposed class action on behalf of a nationwide class and  
 8 California, Florida, and New York subclasses seeking redress for Bayer’s deceptive  
 9 practices<sup>1</sup> in misrepresenting the health benefits of varieties of its One A Day  
 10 multivitamin/multimineral supplements (“Supplement(s)”) <sup>2</sup> in violation of various state  
 11 consumer protection laws and common law.

12 2. Consumers are increasingly health-conscious. In an effort to improve their  
 13 health, many consumers take dietary supplements such as multivitamin/multimineral  
 14 supplements. Some consumers believe they can prevent or treat specific illnesses and  
 15 disease by taking these supplements.

16 3. State and federal dietary guidelines and nutrition science experts all agree  
 17 that (a) nutrient needs should be met primarily by consuming foods,<sup>3</sup> (b) most

18 <sup>1</sup> The terms “deceptive,” “deceptively,” and “deception” encompass other descriptive  
 19 terms, including various forms of the words: mislead, misrepresent, untrue, unfair, false,  
 20 disparage, and unlawful. All of these terms are referenced in California’s Civil Code  
 and California’s Health and Safety Code.

21 <sup>2</sup> Including without limitation Bayer One A Day Women’s Formula, One A Day Men’s  
 22 Health Formula, Women’s One A Day 50+ Healthy Advantage, Men’s One A Day 50+  
 23 Healthy Advantage, Men’s One A Day Pro Edge Multivitamin, Women’s One A Day Pro  
 24 Edge, Women’s One A Day Active Metabolism, Women’s One A Day Menopause  
 25 Formula, Women’s One A Day Active Mind & Body, Women’s One A Day Plus Healthy  
 Skin Support, One A Day Women’s Petites, One A Day Teen Advantage for Her, One A  
 Day Teen Advantage for Him, One A Day Essential, One A Day Energy, One A Day  
 Women’s VitaCraves Gummies, One A Day Men’s VitaCraves Gummies, One A Day  
 VitaCraves Gummies Plus Immunity Support, One A Day VitaCraves Gummies  
 Regular, and One A Day VitaCraves Sour Gummies.

26 <sup>3</sup> *E.g.*, CALIFORNIA FOOD GUIDE, CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES AND  
 CALIFORNIA DEPARTMENT OF PUBLIC HEALTH (2008) *available at*  
 27 <http://www.cafoodguide.ca.gov> (“Pills, powders, or supplements cannot replicate the  
 28 combined effects of the vitamins, minerals, fiber, and phytochemicals found in fruit and  
 vegetables . . .”); U.S. DEP’T OF AGRICULTURE, U.S. DEP’T OF HEALTH & HUMAN SERVS,  
 DIETARY GUIDELINES FOR AMERICANS 2010 at ix, 5, *available at* [www.dietaryguidelines.gov](http://www.dietaryguidelines.gov).

*Footnote continued on next page*

1 Americans are not vitamin or mineral deficient and consume adequate amounts of  
 2 vitamins and minerals,<sup>4</sup> and (c) for the most part, only those suffering from vitamin or  
 3 mineral deficiencies (usually due to diet or health issues) benefit from vitamin or  
 4 mineral supplements.<sup>5</sup>

5 4. These authorities also agree that multivitamin/multimineral supplements  
 6 are not effective for preventing or treating diseases.

7 5. Consumers' health concerns motivate the purchase and consumption of  
 8 One A Day Supplements, from which Bayer significantly profits. Bayer persuades  
 9 consumers to buy its One A Day Supplements by promoting falsely claimed health  
 10 benefits and by selling many varieties of Supplements targeted at different segments of  
 11 the population based on age, gender, and even health concerns. Despite these many  
 12 varieties, all of Bayer's One A Day Supplements are essentially the same product.

13 6. Bayer markets<sup>6</sup> its Supplements with a variety of claims—including that  
 14 they support (a) "heart health," (b) "immunity," and (c) "physical energy" (collectively,  
 15 "Disease Prevention and Energy Claims").

16 *Footnote continued from previous page*

17 Nat'l Inst. of Health, Office of Dietary Supplements, Health Professional Factsheet:  
 18 Vitamin C ("Fruits and vegetables are the best sources of vitamin C."); Manuela Blasa *et*  
 19 *al.*, *Fruit and Vegetable Antioxidants in Health*, in *Bioactive Foods Promoting Health: Fruits*  
 20 *and Vegetables* 37, 37-58 (Ronald Ross & Victor R. Preedy eds., 2010) ("The synergy  
 21 among phytochemicals is one of the reasons that nutritional guidelines insist on varying  
 22 the foods in one's diet, particularly fruits and vegetables.").

23 <sup>4</sup> See, e.g., Nat'l Inst. of Health, Office of Dietary Supplements, Health Professional  
 24 Factsheet: Vitamin B12 ("Most children and adults in the United States consume  
 25 recommended amounts of vitamin B12"); Nat'l Inst. of Health, Office of Dietary  
 26 Supplements, Health Professional Factsheet: Vitamin B6 ("Most children, adolescents,  
 27 and adults in the United States consume the recommended amounts of vitamin B6");  
 28 Nat'l Inst. of Health, Office of Dietary Supplements, Health Professional Factsheet:  
 Calcium ("frank calcium deficiency is uncommon"); Nat'l Inst. of Health, Office of  
 Dietary Supplements, Health Professional Factsheet: Vitamin C ("vitamin C deficiency  
 and scurvy are rare in developed countries.") Nat'l Inst. of Health, Office of Dietary  
 Supplements, Health Professional Factsheet: Vitamin E ("mean intakes of vitamin E  
 among healthy adults are probably higher than the RDA").

<sup>5</sup> See, e.g., Nat'l Inst. of Health, Office of Dietary Supplements, Health Professional  
 Factsheet: Vitamin B6; Nat'l Inst. of Health, Office of Dietary Supplements, Health  
 Professional Factsheet: Vitamin C; Nat'l Inst. of Health, Office of Dietary Supplements,  
 Health Professional Factsheet: Vitamin E.

<sup>6</sup> "Marketing" includes all forms of advertising in all forms of media, including without  
 limitation print advertisements, television and radio commercials, packaging and

*Footnote continued on next page*

1           7.       Bayer makes its Disease Prevention and Energy Claims in the same  
2 manner on each Supplement making such claims (regardless of the variety of  
3 Supplement for which the claims are made), and all of Bayer's Disease Prevention and  
4 Energy Claims are based on the same 11 vitamins and minerals found in every One A  
5 Day variety.<sup>7</sup>

6           8.       In its marketing campaign, Bayer deceptively claims that various One A  
7 Day Supplements possess certain characteristics, uses, or benefits that they do not have.

8           9.       In the labeling and marketing of its One A Day Supplements, Bayer does  
9 not state that the Disease Prevention and Energy Claims on such products only benefit  
10 consumers suffering from a vitamin or mineral deficiency.

11          10.       All supplements are what economists call "credence goods."<sup>8</sup> A credence  
12 good is a good whose qualities consumers are not perfectly able to judge, even after they  
13 consume it, due to both the nature of the product as well as unequal access to  
14 information.<sup>9</sup> In other words, consumers are unable to fully evaluate credence attributes  
15 or credence goods—"includ[ing] the therapeutic value of a medicine" —*even after*  
16 *purchase*.<sup>10</sup> This means that consumers are not able to determine the efficacy of Bayer One  
17 A Day Supplements even after purchase and use.

18  
19  
20  
21 \_\_\_\_\_  
22 *Footnote continued from previous page*  
23 product labels, viral marketing, incentives, and websites.

24 <sup>7</sup> Bayer's Disease Prevention and Energy Claims are based on vitamin A, vitamin B6,  
25 vitamin B12, vitamin C, vitamin D, vitamin E, folic acid (vitamin B9), thiamin, riboflavin,  
26 niacin (vitamin B3), and (with the exception of One A Day Essentials and One A Day  
27 Prenatal) selenium.

28 <sup>8</sup> Matthew G. Nagler *et al.*, *How Do Consumers Value a Credence Good?*, available at  
www.cide.info/conf/2009/iceee2009\_submission\_39.pdf ("Medications conform well to  
the credence good model.").

<sup>9</sup> See Phillip Nelson, *Information and Consumer Behavior*, 78 J. POLITICAL ECON. 311(1970).

<sup>10</sup> See, e.g., Richard Craswell, *Interpreting Deceptive Advertising*, 65 B.U. L. REV. 657 (July  
1985) (citing Darby & Karni, *Free Competition and the Optimal Amount of Fraud*, 16 J.L. &  
ECON. 67, 72-77 (1973)).

1 11. Bayer deceives consumers about One A Day Supplements—bombarding  
 2 consumers with messages of purported health benefits and even using scare tactics to  
 3 convince consumers that they need Bayer’s Supplements.<sup>11</sup>

4 12. Bayer’s marketing and labeling also draws consumer attention away from  
 5 the fact that very little difference exists among varieties of Bayer One A Day  
 6 Supplements.

7 13. Even though Plaintiffs and other reasonable consumers should not be  
 8 forced to look beyond the deceptive representations on Bayer One A Day Supplements’  
 9 labeling and marketing materials to discover the truth about these Supplements, due to  
 10 the nature of all supplements, the majority of consumers could not even discover the  
 11 truth without a nutrition science degree.

12 14. Thus, even if consumers review Bayer One A Day Supplements’ nutrition  
 13 panels and ingredients lists, they will not be able to determine whether they will actually  
 14 experience Bayer’s promised health benefits. Thus, Plaintiffs and other reasonable  
 15 consumers are misled into believing Bayer’s deceptive claims about its One A Day  
 16 Supplements.

17 **JURISDICTION AND VENUE**

18 15. This court has jurisdiction over all causes of action asserted herein,  
 19 pursuant to 28 U.S.C. § 1332(a) and (d) because the aggregate claims of the Class exceed  
 20 the sum or value of \$5,000,000 and there is diversity of citizenship between proposed  
 21 class members and Bayer.

22 16. Venue is appropriate in the Northern District of California pursuant to  
 23 28 U.S.C. § 1391(b)(2) because substantial acts in furtherance of the alleged improper  
 24 conduct, including the dissemination of deceptive information regarding the benefits of  
 25 Bayer One A Day Supplements, occurred within this District, and Plaintiff Colleen  
 26 Gallagher resides in the District.

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27  
 28 <sup>11</sup> See Exhibit 1, attached.

1 17. Bayer has sufficient minimum contacts with California and has  
2 intentionally availed itself of the markets in California through the marketing and sale of  
3 One A Day Supplements in California, rendering the exercise of jurisdiction by this  
4 Court permissible under traditional notions of fair play and substantial justice.

5 **THE PARTIES**

6 **Plaintiffs**

7 18. Plaintiff Colleen Gallagher (“Gallagher”) is a resident of California.  
8 During the Class Period (as defined below), in California, she purchased Bayer One A  
9 Day Women’s Supplement from one or more retailers, including Walgreens, for  
10 personal, family, or household purposes. The label on the Supplement stated that it was  
11 formulated to support heart health, immunity, and physical energy. Gallagher read  
12 these representations and has seen similar representations made by Bayer relating to the  
13 Supplement in online, print, or television advertising. Gallagher relied upon Bayer’s  
14 representations when she purchased Bayer One A Day Women’s Supplement.

15 19. Plaintiff Ilana Farar (“Farar”) is a resident of California. During the Class  
16 Period (as defined below), in California, she purchased Bayer One A Day Women’s  
17 Supplement from one or more retailers, including CVS, for personal, family, or  
18 household purposes. The label on the Supplement stated that it was formulated to  
19 support heart health, immunity, and physical energy. Farar read these representations  
20 and has seen similar representations made by Bayer relating to the Supplement in  
21 online, print, or television advertising. Farar relied upon Bayer’s representations when  
22 she purchased Bayer One A Day Women’s Supplement.

23 20. Plaintiff Andrea Lopez (“Lopez”) is a resident of Florida. During the Class  
24 Period (as defined below), in Florida, she purchased Bayer One A Day Women’s  
25 Supplement from one or more retailers, including Costco, for personal, family, or  
26 household purposes. The label on the Supplement stated that it was formulated to  
27 support heart health, immunity, and physical energy. Lopez read these representations  
28 and has seen similar representations made by Bayer relating to the Supplement in

1 online, print, or television advertising. Lopez relied upon Bayer's representations when  
2 she purchased Bayer One A Day Women's Supplement.

3 21. Plaintiff JoAnn Cordaro ("Cordaro") is a resident of New York. During the  
4 Class Period (as defined below), in New York, she purchased Bayer One A Day  
5 Women's Supplement from one or more retailers, including Wal-Mart, for personal,  
6 family, or household purposes. The label on the Supplement stated that it was  
7 formulated to support heart health, immunity, and physical energy. Cordaro read these  
8 representations and has seen similar representations made by Bayer relating to the  
9 Supplement in online, print, or television advertising. Cordaro relied upon Bayer's  
10 representations when she purchased Bayer One A Day Women's Supplement.

11 22. Plaintiff Rosanne Cosgrove ("Cosgrove") is a resident of New York.  
12 During the Class Period (as defined below), in New York, she purchased Bayer One A  
13 Day Women's Supplement from one or more retailers, including Costco, for personal,  
14 family, or household purposes. The label on the Supplement stated that it was  
15 formulated to support heart health, immunity, and physical energy. Cosgrove read these  
16 representations and has seen similar representations made by Bayer relating to the  
17 Supplement in online, print, or television advertising. Cosgrove relied upon Bayer's  
18 representations when she purchased Bayer One A Day Women's Supplement.

19 **Defendants**

20 23. Defendant Bayer AG is a German multinational chemical and  
21 pharmaceutical company.

22 24. Defendant Bayer Corporation is an Indiana corporation and is wholly  
23 owned by Bayer AG.

24 25. Bayer HealthCare LLC is a Delaware limited liability company and wholly  
25 owned by Bayer Corporation. Bayer HealthCare LLC is responsible for the marketing,  
26 distribution, and sale of Bayer One A Day Supplements to millions of consumers  
27 throughout the United States.  
28

1           26. This Amended Class Action Complaint (“Complaint”) jointly refers to all  
2 three defendants as “Bayer,” in the singular, unless the context demands otherwise. In  
3 2013, Bayer reported 176 million Euros (roughly 225 million dollars) in sales attributable  
4 to its One A Day Supplements.<sup>12</sup>

5  
6                                   **GENERAL ALLEGATIONS**

7           27. Throughout the Class Period (as defined below), Bayer engaged in a  
8 widespread marketing campaign to mislead consumers about the nature, composition,  
9 and nutritional and health benefits of its One A Day Supplements in order to make these  
10 Supplements more desirable to consumers, increase sales, and gain market share.

11           28. Each of Bayer’s Disease Prevention and Energy Claims has been proven  
12 false by numerous scientific studies. It is not uncommon for such studies to contain a  
13 discussion section where the authors discuss the results of previous studies by other  
14 scientists, some of which may have yielded differing results based upon different  
15 subjects or methodology. Ultimately, however, the authors will state a conclusion based  
16 upon the totality of data presented. A disease or energy claim is false if it contradicts  
17 these conclusions.

18           29. Each type of Bayer One A Day Supplement is substantially similar to the  
19 Supplements purchased by Plaintiffs because each Supplement prominently bears the  
20 One A Day logo, makes one or more of the same unlawful Disease Prevention and  
21 Energy Claims, and provides an essentially identical combination of relevant vitamins  
22 and minerals.<sup>13</sup>

23           30. Bayer deceptively markets its One A Day Supplements using the following  
24 unlawful claims:

25                   **Heart Health**

26           31. Bayer claims that many of its One A Day Supplements “support heart  
27 health.”

28  

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29 <sup>12</sup> Bayer AG, 2013 Annual Report 110 (2014).

<sup>13</sup> See *supra* note 7.



1           32. Bayer claims that taking One A Day Supplements can prevent  
2 cardiovascular disease. That claim is false and deceives consumers.

3           33. Bayer makes its heart health claims based on its products' vitamin B6, B12,  
4 C, E, and folic acid (vitamin B9) content.

5           34. Scientists have examined whether supplementation with these vitamins  
6 prevents heart disease, and studies have shown that they do not. For instance, the  
7 National Institutes of Health and the American Heart Association confirm that  
8 supplementation with these vitamins does not help reduce the risk or severity of heart  
9 disease.<sup>14</sup>

10           35. Bayer makes deceptive blood pressure and heart health claims for many of  
11 its One A Day Supplements, including One A Day Men's 50+, One A Day Men's Health  
12 Formula, One A Day Women's 50+, One A Day Menopause Formula, One A Day  
13 Women's Formula, One A Day Essential, One A Day VitaCraves, One A Day Men's  
14 VitaCraves, One A Day VitaCraves Sour Gummies, and One A Day Energy.

15           36. Bayer's claims are false because scientific evidence confirms that  
16 supplementation with vitamin B6, B12, C, E, and folic acid does not prevent heart  
17 disease.

18           37. Bayer makes deceptive heart health claims for these products on its One A  
19 Day website, on product packaging, and in print and television advertisements.

20           38. For example, one television advertisement for One A Day Men's Health  
21 Formula shows a man working on a car engine saying, "One way I take care of my  
22 engine is with One A Day Men's. A complete multivitamin *with nutrients to help*  
23 *support heart health.*"<sup>15</sup>

24 \_\_\_\_\_  
25 <sup>14</sup> See, e.g., Nat'l Inst. of Health, Office of Dietary Supplements, Health Professional  
26 Factsheet: Vitamin B6; American Heart Association Nutrition Committee, A.H.  
27 Lichtenstein *et al.*, *Diet and lifestyle recommendations revision 2006: a scientific statement from*  
28 *the American Heart Association Nutrition Committee*, 114 CIRCULATION 82-96 (2006); Nat'l  
Inst. of Health, Office of Dietary Supplements, Health Professional Factsheet: Vitamin E;  
Nat'l Inst. of Health, Office of Dietary Supplements, Health Professional Factsheet:  
Vitamin C.

<sup>15</sup> Available at <http://www.ispot.tv/ad/7ojR/one-a-day-mens-health-formula-engine-care>  
Footnote continued on next page

1 39. Another television advertisement for One A Day Men’s 50+ claims that the  
2 product is “a complete multivitamin designed for men’s health concerns as we age.”  
3 During the commercial, the claim “[s]upports heart and eye health”<sup>16</sup> appears  
4 prominently on the screen while a voice-over mentions that the Supplement is  
5 “designed for men’s health concerns as we age.” The juxtaposition of the claim and the  
6 voice-over leads a consumer to believe that taking Bayer One A Day Men’s 50+ will, *inter*  
7 *alia*, help prevent heart disease.

8 **One A Day Men’s 50+ television commercial**



21  
22 40. Bayer’s website for the One A Day Men’s Health Formula is pictured  
23 below, with Bayer’s heart health claims highlighted.<sup>17</sup>  
24  
25

26 *Footnote continued from previous page*  
(emphasis added).

27 <sup>16</sup> Available at <http://www.ispot.tv/ad/7Vfd/one-a-day-mens-50->

28 <sup>17</sup> One A Day website, One A Day Men’s Health Formula, <http://oneaday.com/mens.html>  
(last visited Aug. 13, 2014) (emphasis added).

## One A Day<sup>®</sup> Men's Health Formula

A complete multivitamin for men.

One A Day<sup>®</sup> Men's is a complete multivitamin designed specifically for leading health concerns of men such as helping to support heart health.<sup>††</sup> One A Day<sup>®</sup> Men's Health Formula has more\*\* of 10 key nutrients than Centrum Men.

One A Day<sup>®</sup> Men's Health Formula is specially formulated to support:\*

- Heart Health<sup>†</sup> with Vitamins B6, B12, C, E and Folic Acid
- Healthy Blood Pressure<sup>††</sup> with Vitamin C, Calcium, Magnesium and more<sup>†</sup> Vitamin D
- Immune Health with Vitamins A, C, E and Selenium
- Physical Energy with Vitamins B1, B2, B3, B5, B6, Folic Acid, Biotin and Chromium to help convert food to fuel



41. Plaintiffs and other reasonable consumers interpret Bayer's heart health claims to mean that Bayer's Supplements bearing such claims will prevent or ameliorate heart disease. However, Bayer's products will not in fact prevent or treat heart disease.

42. Because Bayer deceptively represents that its One A Day Supplements can be used in the cure, mitigation, treatment, or prevention of cardiovascular disease including heart disease, Bayer's deceptive representations are illegal disease prevention claims.<sup>18</sup>

43. Because Bayer's heart health claims cause consumers to believe that taking One A Day Supplements can help them prevent or ameliorate heart disease, these claims are illegal and deceptive, and reasonable consumers are likely to be deceived.

### **Immunity**

44. Bayer claims that many of its One A Day Supplements help "support immunity."

45. Plaintiffs and other reasonable consumers interpret Bayer's immunity claims to mean that taking One A Day Supplements will help them get sick less often,

<sup>18</sup> Cal. Health & Safety Code §§ 109875, *et seq.* California's Sherman Law expressly adopts the federal labeling requirements of the Federal Food, Drug, and Cosmetic Act and the Nutrition Labeling and Education Act.

1 *i.e.*, that these products will help them prevent disease.<sup>19</sup> Bayer’s immunity claim is false  
2 and deceives consumers.

3 46. Bayer makes its immunity claims based on its products’ vitamin A, C, and  
4 E, selenium, iron, *beta*-carotene, and zinc content.

5 47. Bayer’s immunity claims are false because scientific studies confirm that  
6 supplementation with these vitamins and minerals has no effect on the immunity of  
7 adults in developed countries like the United States.<sup>20</sup>

8 48. This is confirmed by randomized controlled trials<sup>21</sup>—the gold standard of  
9 clinical research—that show that, as measured by the number, severity, or length of  
10 illnesses, taking multivitamin/multimineral supplements does not affect immunity.<sup>22</sup>

11 49. Bayer makes deceptive immunity claims for many of its One A Day  
12 Supplements, including One A Day Women’s Formula, One A Day Women’s 50+, One A  
13 Day Men’s Health Formula, One A Day Men’s 50+, One A Day Women’s Petites, One A  
14 Day Women’s Plus Healthy Skin Support, One A Day Teen Advantage for Her, One A  
15 Day Teen Advantage for Him, One A Day Essential, One A Day VitaCraves, One A Day

16 <sup>19</sup> The FTC has found that “reasonable consumers may interpret an advertisement to  
17 mean that the product will reduce the likelihood of getting [the disease], even if  
18 respondent includes language indicating that the science supporting the effect is limited  
19 in some way.” *In re The Dannon Company, Inc.*, FTC File No. 0823158, Analysis of  
20 Proposed Consent Order to Aid Public Comment 80053 (Dec. 15, 2010),  
21 [www.ftc.gov/os/fedreg/  
22 2010/december/101221dannonfrn.pdf](http://www.ftc.gov/os/fedreg/2010/december/101221dannonfrn.pdf) (last visited Aug. 14, 2014).

23 <sup>20</sup> *E.g.*, Nat’l Inst. of Health, Office of Dietary Supplements, Health Professional  
24 Factsheet: Vitamin C (“... regular intakes of vitamin C at doses of at least 200 mg/day do  
25 not reduce the incidence of the common cold in the general population”) (“vitamin C  
26 supplementation, usually in combination with other micronutrients, does not affect  
27 cancer risk.”); R.M. Douglas *et al.*, *Vitamin C for Preventing and Treating the Common Cold*,  
28 3 COCHRANE DATABASE SYST. REV. CD000980 (2007); Madeline Simasek *et al.*, *Treatment of  
the Common Cold*, 75 AM. FAMILY PHYSICIAN 515 (2007). E. Villamor *et al.*, *Effects of Vitamin  
A Supplementation on Immune Responses and Correlation with Clinical Outcomes*, 3 CLIN.  
MICROBIOLOGY REV. 446-64 (July 2005).

<sup>21</sup> A randomized controlled trial is a study in which people are allocated at random (by  
chance alone) to receive one of several clinical interventions, and one of these  
interventions is the standard of comparison or control.

<sup>22</sup> Audrey I. Stephen *et al.*, *A Systematic Review of Multivitamin and Multimineral  
Supplementation for Infection*, 19(3) J. HUMAN NUTRITION & DIETETICS 179 (June 2006) (a  
meta-analysis of 17 randomized controlled trials found no evidence for “a reduction in  
episodes of infection, the number of days of infection, or antibiotic use” in participants  
supplemented with multivitamins).

1 VitaCraves Gummies Plus Immunity Support, One A Day Women’s VitaCraves, One A  
 2 Day Men’s VitaCraves, One A Day VitaCraves Sour Gummies, and One A Day Energy.

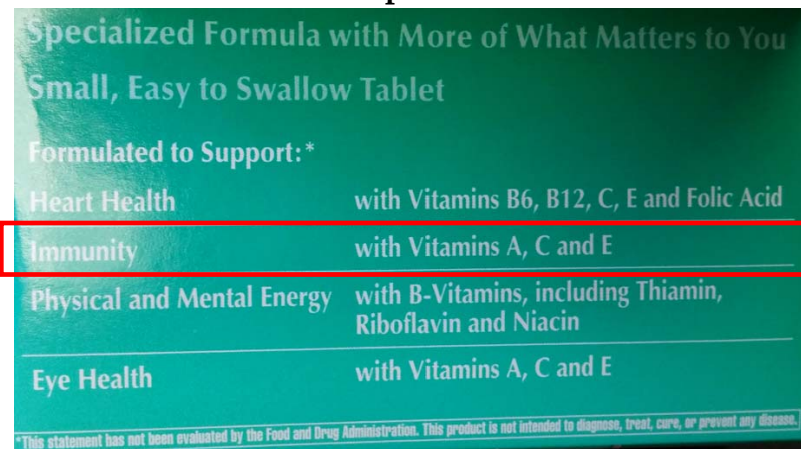
3 50. Bayer makes immunity claims for these products on the One A Day  
 4 website, on product packaging, and in print and television advertisements.

5 51. For example, Bayer makes prominent immunity claims on the product  
 6 packaging for its One A Day Essential Supplement, pictured below with the immunity  
 7 claim highlighted with a red box.

8 **Front Panel**



16 **Top Panel**



25 52. Bayer’s website for One A Day VitaCraves Gummies, which calls the  
 26 product “A fun way to help support your immune health,” is pictured below, with  
 27 immunity claims highlighted.<sup>23</sup>

28 <sup>23</sup> One A Day website, One A Day VitaCraves Gummies Plus Immunity Support,  
*Footnote continued on next page*

1 **One A Day® VitaCraves® Gummies**  
 2 **Plus Immunity Support\***

3 A fun way to help support your immune health.\*

4 One A Day® VitaCraves® Gummies Plus Immunity Support\* is a complete multivitamin  
 5 formulated with key vitamins and minerals you may need including Vitamins A, E and  
 6 twice as much Vitamin C as regular VitaCraves® Gummies which helps support immune  
 7 health.\* All this in the fun-to-take gummy you crave.

8 One A Day® VitaCraves® Gummies Plus Immunity Support\* is available in orange,  
 9 cherry and blue raspberry flavors.

10  [Download the supplement facts PDF](#)



11  
 12  
 13 53. Plaintiffs and other reasonable consumers interpret Bayer's deceptive  
 14 immunity claims to mean that by taking Bayer's Supplements, they will prevent illness.  
 15 However, Bayer's products will not in fact prevent consumers from getting sick.

16 54. Because Bayer deceptively represents that its One A Day Supplements can  
 17 be used in the cure, mitigation, treatment, or prevention of disease, Bayer's deceptive  
 18 representations are illegal disease prevention claims.<sup>24</sup>

19 55. Because Bayer's immunity claims cause consumers to believe that taking  
 20 One A Day Supplements can prevent them from getting sick, Bayer's immunity claims  
 21 are illegal and deceptive and reasonable consumers are likely to be deceived.

22 **Physical Energy**

23 56. Bayer claims that many of its One A Day Supplements help "support  
 24 physical energy." Plaintiffs and other reasonable consumers interpret energy claims to

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 26 *Footnote continued from previous page*

27 [http://oneaday.com/vitacraves\\_immunity.html](http://oneaday.com/vitacraves_immunity.html) (last visited Aug. 14, 2014) (emphasis  
 28 added).

29 <sup>24</sup> Cal. Health & Safety Code §§ 109875, *et seq.* California's Sherman Law expressly  
 30 adopts the federal labeling requirements of the Federal Food, Drug, and Cosmetic Act  
 31 and the Nutrition Labeling and Education Act. *See* 21 C.F.R. 101.93(g).

1 mean that they will feel more energetic simply due to taking these Supplements. Bayer's  
2 energy claim is false and deceives consumers.

3 57. Bayer makes its energy claims based on its products' vitamin B6, B12,  
4 pantothenic acid (vitamin B5), chromium, thiamin (vitamin B1), riboflavin (vitamin B2),  
5 niacin (vitamin B3), and folic acid (vitamin B9) content.

6 58. However, the National Institutes of Health and scientific studies confirm  
7 that no amount of supplementation with these vitamins or this mineral has any effect on  
8 the energy levels of typical Americans (*i.e.*, individuals who are not vitamin or mineral  
9 deficient).<sup>25</sup>

10 59. Bayer makes deceptive energy claims for several of its One A Day  
11 Supplements, including One A Day Women's Formula, One A Day Women's 50+, One A  
12 Day Men's Health Formula, One A Day Men's 50+, One A Day Women's Petites, One A  
13 Day Menopause Formula, One A Day Women's Active Mind & Body, One A Day  
14 Women's Plus Healthy Skin Support, One A Day Teen Advantage for Her, One A Day  
15 Teen Advantage for Him, One A Day Essential, One A Day VitaCraves, One A Day  
16 Women's VitaCraves, One A Day Men's VitaCraves, One A Day VitaCraves Sour  
17 Gummies, and One A Day Energy.

18 60. Bayer's claims are false because scientific evidence confirms that  
19 supplementation with vitamin B6, B12, pantothenic acid (vitamin B5), chromium,  
20

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21 <sup>25</sup> See Mayo Clinic, Drugs and Supplements, Vitamin B6 (Pyridoxine),  
22 <http://www.mayoclinic.org/drugs-supplements/vitamin-b6/background/hrb-20058788>  
23 (last visited Aug. 14, 2014); Nat'l Inst. of Health, Office of Dietary Supplements, Health  
24 Professional Factsheet: Vitamin B12 ("vitamin B12 supplementation appears to have no  
25 beneficial effect on performance in the absence of a nutritional deficit."); Mayo Clinic,  
26 Drugs and Supplements, Pantothenic Acid, [http://www.mayoclinic.org/drugs-  
supplements/pantothenic-acid-oral-route/description/drg-20065349](http://www.mayoclinic.org/drugs-supplements/pantothenic-acid-oral-route/description/drg-20065349) (last visited Aug. 14,  
27 2014) ("Vitamins alone will not take the place of a good diet and will not provide  
28 energy."); Anthony Komaroff, *Do "Energy Boosters" Work?*, Harvard Health Blog  
(Nov. 15, 2013) [http://www.health.harvard.edu/blog/do-energy-boosters-work-  
201311156878](http://www.health.harvard.edu/blog/do-energy-boosters-work-201311156878) (last visited Aug. 14, 2014); Nat'l Inst. of Health, Medline Plus, Folic Acid,  
<http://www.nlm.nih.gov/medlineplus/druginfo/natural/1017.html> (last visited Aug. 14,  
2014). See also Carrie Dennett, *Vitamin B for Energy? Not So Fast*, Seattle Times (Oct. 8,  
2012), available at [http://seattletimes.com/html/health/2019330308\\_](http://seattletimes.com/html/health/2019330308_healthdennett07.html)  
[healthdennett07.html](http://seattletimes.com/html/health/2019330308_healthdennett07.html).

1 thiamin (vitamin B1), riboflavin (vitamin B2), niacin (vitamin B3), or folic acid (vitamin  
2 B9) does not affect the energy levels of typical Americans.

3 61. Bayer makes energy claims for these products on the One A Day website,  
4 on product packaging, and in print and television advertisements.

5 62. For example, one television advertisement for Bayer One A Day  
6 VitaCraves with Energy Support shows a man performing gymnastics on a tight rope  
7 while the voice-over says, “[f]or those who want to enjoy their days, not just get through  
8 them: New One A Day VitaCraves with Energy Support. The only complete gummy  
9 multivitamin that supports energy and mental alertness. New—from One A Day.”<sup>26</sup>  
10 After the man dismounts the tightrope, the following graphic is displayed:

11 **One A Day VitaCraves with Energy Support television commercial:**



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<sup>26</sup> <http://www.ispot.tv/ad/7yV2/one-a-day-adult-vitacraves-gummies-with-energy-support-tightrope> (last visited Aug. 14, 2014).



63. Bayer's website for its One A Day Energy Supplement, promising to "help convert food to energy" is pictured below with the energy claims highlighted.<sup>27</sup>



64. Plaintiffs and other reasonable consumers interpret Bayer's deceptive energy claims to mean that by taking Bayer's Supplements, they will experience increased energy. However, because Bayer's products will not in fact increase consumers' energy, Bayer's energy claims are illegal and deceptive, and reasonable consumers are likely to be deceived.

### CLASS ACTION ALLEGATIONS

65. Plaintiffs bring this action as a class action pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure for the time period beginning when Bayer first made one or more of its Disease Prevention and Energy Claims through the time this Court rules on class certification, inclusive ("Class Period").

66. Plaintiffs seek to represent the following classes:

**National:** All persons in the United States who purchased Bayer One A Day Supplements in the United States that contained one or more Disease Prevention and Energy Claims during the Class Period. Excluded from the Class are Defendants' officers and directors and the immediate families of Defendants' officers and directors. Also excluded from the Class are the

<sup>27</sup> One A Day website, One A Day Energy, <http://oneaday.com/energy.html> (last visited Aug. 14, 2014) (emphasis added).

1 Defendants and their subsidiaries, parents, affiliates, joint venturers, and  
2 any entity in which Defendants have or have had a controlling interest.

3 **California:** All persons in California who purchased Bayer One A Day  
4 Supplements in California that contained one or more Disease Prevention  
5 and Energy Claims during the Class Period. Excluded from the Class are  
6 Defendants' officers and directors and the immediate families of  
7 Defendants' officers and directors. Also excluded from the Class are the  
8 Defendants and their subsidiaries, parents, affiliates, joint venturers, and  
9 any entity in which Defendants have or have had a controlling interest.

10 **Florida:** All persons in Florida who purchased Bayer One A Day  
11 Supplements in Florida that contained one or more Disease Prevention and  
12 Energy Claims during the Class Period. Excluded from the Class are  
13 Defendants' officers and directors and the immediate families of  
14 Defendants' officers and directors. Also excluded from the Class are the  
15 Defendants and their subsidiaries, parents, affiliates, joint venturers, and  
16 any entity in which Defendants have or have had a controlling interest.

17 **New York:** All persons in New York who purchased Bayer One A Day  
18 Supplements in New York that contained one or more Disease Prevention  
19 and Energy Claims during the Class Period. Excluded from the Class are  
20 Defendants' officers and directors and the immediate families of  
21 Defendants' officers and directors. Also excluded from the Class are the  
22 Defendants and their subsidiaries, parents, affiliates, joint venturers, and  
23 any entity in which Defendants have or have had a controlling interest.

24 67. For purposes of the Complaint, the term "Class" refers collectively to the  
25 National, California, Florida, and New York Classes, and the phrase "Class Members"  
26 refers to all members of the Class, including the named Plaintiffs.

27 68. This action has been brought and may properly be maintained as a class  
28 action against Bayer pursuant to the provisions of Federal Rule of Civil Procedure 23  
because there is a well-defined community of interest in the litigation and the proposed  
Class is easily ascertainable.

69. Numerosity: Plaintiffs do not know the exact size of the Class, but given  
the nature of the claims and Bayer's sales of One A Day Supplements nationally,  
Plaintiffs believe that Class Members are so numerous that joinder of all members of the  
Class is impracticable.

70. Common Questions Predominate: This action involves common questions  
of law and fact because each Class Member's claim derives from the same deceptive  
practices. The common questions of law and fact involved predominate over questions

1 that affect only Plaintiffs or individual Class Members. Thus, proof of a common or  
2 single set of facts will establish the right of each member of the Class to recover. Among  
3 the questions of law and fact common to the Class are:

- 4 • Whether Bayer marketed and sold One A Day Supplements to  
5 Plaintiffs, and those similarly situated, using deceptive statements  
6 or representations;
- 7 • Whether Bayer omitted or misrepresented material facts in  
8 connection with the marketing and sale of One A Day Supplements;
- 9 • Whether Bayer engaged in a common course of conduct as  
10 described in this Complaint;
- 11 • Whether Bayer's marketing and sales of One A Day Supplements  
12 constitutes a deceptive practice; and
- 13 • Whether, and to what extent, injunctive relief should be imposed on  
14 Bayer to prevent such conduct in the future.

15 71. Typicality: Plaintiffs' claims are typical of the Class because all Class  
16 Members bought products bearing one or more of Bayer's deceptive claims. Bayer's  
17 deceptive actions concern the same business practices described in this Complaint,  
18 irrespective of where they occurred or were received. The injuries and damages of each  
19 Class Member were caused directly by Bayer's illegal conduct as alleged in this  
20 Complaint.

21 72. Adequacy: Plaintiffs will fairly and adequately protect the interests of all  
22 Class Members because it is in their best interests to prosecute the claims alleged in this  
23 Complaint to obtain full compensation they are due for Bayer's illegal conduct. Plaintiffs  
24 also have no interests that conflict with or are antagonistic to the interests of Class  
25 Members. Plaintiffs have retained highly competent and experienced class action  
26 attorneys to represent their interests and that of the Class. No conflict of interest exists  
27 between Plaintiffs and Class Members because all questions of law and fact regarding  
28 liability of Bayer are common to Class Members and predominate over the individual  
issues that may exist, such that by prevailing on their own claims, Plaintiffs necessarily  
will establish Bayer's liability to all Class Members. Plaintiffs and their counsel have the  
necessary financial resources to adequately and vigorously litigate this class action, and

1 Plaintiffs and counsel are aware of their fiduciary responsibilities to the Class Members  
2 and are determined to diligently discharge those duties seeking the maximum possible  
3 recovery for the Class Members.

4 73. Superiority: There is no plain, speedy, or adequate remedy other than by  
5 maintenance of this class action. The prosecution of individual remedies by members of  
6 the Class will tend to establish inconsistent standards of conduct for Bayer and result in  
7 the impairment of Class Members' rights and disposition of their interests through  
8 actions to which they were not parties. Class action treatment will permit a large number  
9 of similarly situated persons to prosecute their common claims in a single forum  
10 simultaneously, efficiently, and without the unnecessary duplication of effort and  
11 expense that numerous individual actions would engender. Furthermore, as the  
12 damages suffered by each individual member of the Class may be relatively small, the  
13 expenses and the burden of individual litigation would make it difficult or impossible  
14 for individual members of the Class to redress the wrongs done to them, while an  
15 important public interest will be served by addressing the matter as a class action.

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

20 75. Plaintiffs are unaware of any difficulties that are likely to be encountered  
21 in the management of this action that would preclude its maintenance as a class action.

22 **FIRST CAUSE OF ACTION**  
23 **(California Business and Professions Code §§ 17200, *et seq.* –**  
24 **Unlawful, Unfair, and Fraudulent Business Acts and Practices)**

25 76. Plaintiffs Gallagher and Farar incorporate and reallege the unlawful,  
26 unfair, and fraudulent business acts and practices of Bayer as set forth above on behalf  
27 of the California Class.  
28

1           77. In this regard, Bayer's manufacturing, marketing, distributing, and selling  
2 of One A Day Supplements violates California's Sherman Food, Drug, and Cosmetics  
3 Law, Cal. Health & Safety Code § 109875, *et seq.* ("Sherman Law").

4           78. The relevant part of the Sherman Law declares that food is misbranded if  
5 its labeling is false or misleading in any particular way and further provides that it is  
6 unlawful for any person to misbrand any food. Cal. Health & Safety Code §§ 110660,  
7 110765.

8           79. The Sherman Law defines a "person" as "any individual, firm,  
9 partnership, trust, corporation, limited liability company, company, estate, public or  
10 private institution, association, organization, group, city, county, city and county,  
11 political subdivision of this state, or other governmental agency within the state and any  
12 representative, agent, or agency of any of the foregoing." Cal. Health & Safety Code  
13 §§ 109995. Bayer is a corporation and, therefore, a "person" within the meaning of the  
14 Sherman Act.

15           80. The business practices alleged above are unlawful under the Consumers  
16 Legal Remedy Act, Cal. Civ. Code § 1750, *et seq.* ("CLRA"), which forbids deceptive  
17 advertising.

18           81. The business practices alleged above are unlawful under § 17200, *et seq.* by  
19 virtue of violating Cal. Bus. & Prof. Code. §§ 17500, *et seq.*, which forbids untrue  
20 advertising and misleading advertising.

21           82. There is no benefit to consumers or competition by deceptively marketing  
22 dietary supplements like One A Day Supplements. Indeed, the harm to consumers and  
23 competition is substantial.

24           83. Plaintiffs Gallagher and Farar and other member of the California Class  
25 who purchased Bayer's One A Day Supplements had no way of knowing that the  
26 product they bought was not actually as marketed. Thus, they could not have  
27 reasonably avoided the injury each of them suffered.  
28

1           84.     The gravity of the consequences of Bayer's conduct as described above  
2 outweighs any justification, motive or reason therefore, particularly considering the  
3 available legal alternatives which exist in the marketplace, and it is immoral, unethical,  
4 unscrupulous, offends established public policy, or is substantially injurious to Plaintiffs  
5 Gallagher and Farar and other members of the California Class.

6           85.     Bayer's deceptive marketing of One A Day Supplements is likely to  
7 deceive reasonable California consumers. Indeed, Plaintiffs Gallagher and Farar and  
8 other members of the California Class were unquestionably deceived regarding the  
9 characteristics of Bayer's One A Day Supplements, as Bayer's marketing of the product  
10 omits the true results of taking these Supplements. Said acts are deceptive business acts  
11 and practices.

12           86.     This deception caused Plaintiffs Gallagher and Farar and other members of  
13 the California Class to purchase One A Day Supplements, or pay more than they would  
14 have for One A Day Supplements, had they known and understood the true nature and  
15 quality of the product.

16           87.     As a result of the business practices described above, Business and  
17 Professions Code § 17203 entitles Plaintiffs Gallagher and Farar and other members of  
18 the California Class, to an order enjoining such future conduct on the part of Bayer and  
19 such other orders and judgments which may be necessary to disgorge Bayer's ill-gotten  
20 gains and to restore to any person in interest any money paid for One A Day  
21 Supplements as a result of the wrongful conduct of Bayer.

22           88.     The above-described unlawful business acts and practices of Bayer, and  
23 each of them, present a threat and reasonable likelihood of deception to Plaintiffs  
24 Gallagher and Farar and other members of the California Class in that Bayer has  
25 systematically perpetrated and continues to perpetrate such acts or practices on  
26 members of the California Class by means of its deceptive manufacturing, marketing,  
27 distributing, and selling of One A Day Supplements.  
28

1 **SECOND CAUSE OF ACTION**  
2 **(California Consumer Legal Remedies Act – Cal. Civ. Code § 1750, *et seq.*)**

3 89. Plaintiffs Gallagher and Farar incorporate and reallege the unlawful and  
4 deceptive business acts and practices of Bayer as set forth above on behalf of the  
5 California Class.

6 90. This cause of action is brought pursuant to the California Consumers Legal  
7 Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (“CLRA”). Plaintiff Farar provided Bayer  
8 with notice pursuant to Cal. Civ. Code § 1782.

9 91. Bayer’s actions, representations, and conduct, as described above, and each  
10 of them, have violated and continue to violate the CLRA, because they extend to  
11 transactions that are intended to result, or which have resulted, in the sale or lease of  
12 goods or services to consumers.

13 92. Plaintiffs Gallagher and Farar and other members of the California Class  
14 are “consumers” as that term is defined by the CLRA in Cal. Civ. Code § 1761(d).

15 93. The One A Day Supplement varieties that Plaintiffs Gallagher and Farar  
16 and other members of the California Class purchased from Bayer were “goods” within  
17 the meaning of Cal. Civ. Code § 1761(a).

18 94. By engaging in the actions, misrepresentations, and misconduct set forth  
19 above, Bayer has violated, and continues to violate, section 1770(a)(5) of the CLRA.  
20 Specifically, in violation of Cal. Civ. Code § 1770(a)(5), Bayer’s acts and practices  
21 constitute deceptive methods of competition, in that it misrepresents that its products  
22 have characteristics, uses, or benefits that they do not have.

23 95. By engaging in the actions, misrepresentations, and misconduct set forth  
24 above, Bayer has violated, and continues to violate, section 1770(a)(7) of the CLRA.  
25 Specifically, in violation of Cal. Civ. Code § 1770(a)(7), Bayer’s acts and practices  
26 constitute deceptive methods of competition, in that Bayer misrepresents the particular  
27 standard, quality, or grade of the goods.

28

1 96. By engaging in the actions, misrepresentations, and misconduct set forth  
 2 above, Bayer has violated, and continues to violate, § 1770(a)(16) of the CLRA.  
 3 Specifically, in violation of Cal. Civ. Code § 1770(a)(16), Bayer’s acts and practices  
 4 constitute deceptive methods of competition, in that it represents that a subject of a  
 5 transaction has been supplied in accordance with a previous representation when it has  
 6 not.

7 97. Plaintiffs Gallagher and Farar request that this Court enjoin Bayer from  
 8 continuing to employ the unlawful methods, acts, and practices alleged herein, award  
 9 damages, attorneys’ fees, and any other relief the Court deems proper pursuant to Cal.  
 10 Civ. Code §§ 1780 and 1781. If Bayer is not restrained from engaging in these types of  
 11 practices on the future, Plaintiffs Gallagher and Farar and other members of the  
 12 California Class will continue to suffer harm.

13 **THIRD CAUSE OF ACTION**  
 14 **(California Business & Professions Code §§ 17500, et seq. -**  
 15 **Untrue or Misleading Advertising)**

16 98. Plaintiffs Gallagher and Farar incorporate and reallege the untrue or  
 17 misleading advertising practices of Bayer as set forth above on behalf of the California  
 18 Class, each of which constitutes untrue or misleading advertising under California  
 19 Business and Professions Code §§ 17500, et seq.

20 99. At all material times, Bayer engaged in a scheme of offering its One A Day  
 21 Supplement varieties for sale to Plaintiffs Gallagher and Farar and other members of the  
 22 California Class by way of, *inter alia*, commercial marketing. These marketing materials  
 23 misrepresented or omitted the true results of taking these Supplements. Said  
 24 advertisements and inducements were made within the State of California and come  
 25 within the definition of advertising as contained in Business and Professions Code  
 26 §§ 17500, et seq. in that such marketing materials were intended as inducements to  
 27 purchase One A Day Supplements and are statements disseminated by Bayer to  
 28 Plaintiffs Gallagher and Farar and the California Class and were intended to reach



1 members of the California Class. Bayer knew, or in the exercise of reasonable care  
2 should have known, that these statements were untrue or misleading.

3 100. In furtherance of this plan and scheme, Bayer has prepared and distributed  
4 within the State of California via commercial marketing, statements that deceptively  
5 represent benefits of the ingredients contained in, and the nature and quality of, One A  
6 Day Supplements. Consumers, including Plaintiffs Gallagher and Farar and members of  
7 the California Class, necessarily and reasonably relied on these materials concerning  
8 One A Day Supplements. Consumers, including Plaintiffs Gallagher and Farar and  
9 members of the California Class, were among the intended targets of such  
10 representations and would reasonably be deceived by such materials.

11 101. The above acts of Bayer, in disseminating said deceptive and untrue  
12 statements throughout the State of California to consumers, including Plaintiffs  
13 Gallagher and Farar and members of the California Class, were and are likely to deceive  
14 reasonable consumers, including Plaintiffs Gallagher and Farar and other members of  
15 the California Class, by obfuscating the true nature of One A Day Supplements, all in  
16 violation of California Business and Professions Code § 17500.

17 102. As a result of the above violations of California Business and Professions  
18 Code §§ 17500, *et seq.*, Bayer has been unjustly enriched at the expense of Plaintiffs  
19 Gallagher and Farar and the other members of the California Class. Plaintiffs Gallagher  
20 and Farar and the California Class, pursuant to Business and Professions Code § 17535,  
21 are entitled to an order of this Court enjoining such future conduct on the part of Bayer,  
22 and such other orders and judgments which may be necessary to disgorge Bayer's ill-  
23 gotten gains and restore to any person in interest any money paid for One A Day  
24 Supplements as a result of the wrongful conduct of Bayer.

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1 **FOURTH CAUSE OF ACTION**  
2 **(Fla. Stat. §§ 501.201 et seq. - Unfair or Deceptive Practices)**

3 103. Plaintiff Lopez incorporates and realleges the unfair and deceptive  
4 practices of Bayer as set forth above on behalf of the Florida Class, each of which  
5 constitutes an unfair or deceptive practice under Fla. Stat. § 501.204.

6 104. The Florida Deceptive and Unfair Trade Practices Act makes unlawful  
7 “unfair or deceptive acts or practices in the conduct of any trade or commerce.” Fla. Stat.  
8 § 501.204.

9 105. Bayer made representations regarding its One A Day Supplements via  
10 online, print, and television advertising as well as on the labeling of such products; these  
11 representations were false and misleading, constituting unfair or deceptive acts and  
12 practices.

13 106. Bayer’s representations were likely to deceive a consumer acting  
14 reasonably under the circumstances, and these representations did deceive consumers  
15 acting reasonably under the circumstances.

16 107. Plaintiff Lopez and members of the Florida Class would not have  
17 purchased Bayer One A Day Supplements absent Bayer’s representations.

18 108. Plaintiff Lopez and members of the Florida Class were directly and  
19 proximately injured by Bayer’s deceptive representations in that they each purchased  
20 Bayer One A Day Supplements that did not conform to what Bayer represented in the  
21 product’s marketing and labeling.

22 109. As a result of Bayer’s misleading and deceptive representations with  
23 respect to its One A Day Supplements, Plaintiff Lopez and members of the Florida Class  
24 suffered actual damages in an amount to be determined at trial.

25 110. Pursuant to Fla. Stat. § 501.211, Plaintiff Lopez seeks, on behalf of herself  
26 and the Florida Class, actual damages, punitive damages, attorneys’ fees, and costs.

27  
28

1 **FIFTH CAUSE OF ACTION**  
2 **(Fla. Stat. § 817.41 - Misleading Advertising)**

3 111. Plaintiff Lopez incorporates and realleges the misleading advertising  
4 practices of Bayer as set forth above on behalf of the Florida Class, each of which  
5 constitutes misleading advertising under Fla. Stat. § 817.41.

6 112. Bayer made representations regarding its One A Day Supplements via  
7 online, print, and television advertising as well as on the labeling of such products; these  
8 representations constitute advertising.

9 113. Bayer's representations were false and constituted misrepresentations of  
10 material fact.

11 114. Bayer knew, or through the exercise of reasonable care could have known,  
12 that these representations were false.

13 115. Bayer made these representations for the purpose of selling its One A Day  
14 Supplements and intended that consumers would rely upon such representations in  
15 purchasing Bayer One A Day Supplements.

16 116. Plaintiff Lopez and members of the Florida Class justifiably relied upon  
17 Bayer's representations regarding its One A Day Supplements.

18 117. Bayer's representations constitute false advertising.

19 118. Plaintiff Lopez and members of the Florida Class were directly and  
20 proximately injured by Bayer's false advertising in that they purchased Bayer One A  
21 Day Supplements that did not conform to what was promised in Bayer's advertising.

22 119. As a result of Bayer's false advertising, Plaintiff Lopez and members of the  
23 Florida Class suffered actual damages in an amount to be determined at trial and are  
24 entitled to such damages in addition to injunctive relief.

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**SIXTH CAUSE OF ACTION  
(N.Y. Gen. Bus. Law § 349 - Deceptive Acts and Practices)**

120. Plaintiffs Cordaro and Cosgrove incorporate and reallege the unlawful practices of Bayer as set forth above on behalf of the New York Class, each of which constitutes a deceptive act and practice under N.Y. Gen. Bus. Law § 349.

121. N.Y. Gen. Bus. Law § 349 prohibits “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state.”

122. Bayer made representations regarding its One A Day Supplements via online, print, and television advertising as well as on the labeling of such products; these representations targeted consumers and were thus consumer-oriented.

123. Bayer’s representations regarding its One A Day Supplements are materially misleading and deceptive, and Plaintiffs Cordaro and Cosgrove and members of the New York Class would not have purchased Bayer One A Day Supplements absent Bayer’s representations.

124. Plaintiffs Cordaro and Cosgrove and members of the New York Class were directly and proximately injured by Bayer’s deceptive marketing and labeling practices in that they purchased Bayer One A Day Supplements that did not conform to what was promised in Bayer’s marketing and labeling.

125. As a result of Bayer’s misleading and deceptive marketing and labeling practices with respect to its One A Day Supplements, Plaintiffs and Class Members suffered actual damages in an amount to be determined at trial.

126. N.Y. Gen. Bus. Law § 349 (h) provides a private right of action to recover the greater of each class member’s actual damages or \$50.

127. Bayer willfully or knowingly violated N.Y. Gen. Bus. Law § 349, and N.Y. Gen. Bus. Law § 349(h) authorizes the Court to increase the award of damages to an amount not to exceed three times actual damages, up to \$1,000 per class member, if the Court finds that Defendant willfully or knowingly violated this section.

1 128. Section 349(h) also authorizes the Court to award attorneys' fees to a  
2 prevailing plaintiff in addition to damages.

3 **SEVENTH CAUSE OF ACTION**  
4 **(N.Y. Gen. Bus. Law § 350 - False Advertising)**

5 129. Plaintiffs Cordaro and Cosgrove incorporate and reallege the unlawful  
6 practices of Bayer as set forth above on behalf of the New York Class, each of which  
7 constitutes false advertising under N.Y. Gen. Bus. Law § 350.

8 130. N.Y. Gen. Bus. Law § 350 prohibits "[f]alse advertising in the conduct of  
9 any business, trade or commerce or in the furnishing of any service in this state."

10 131. N.Y. Gen. Bus. Law § 350-a defines "false advertising" to mean  
11 "advertising, including labeling, of a commodity . . . if such advertising is misleading in  
12 a material respect." N.Y. Gen. Bus. Law § 350-a(1).

13 132. Bayer made representations regarding its One A Day Supplements via  
14 online, print, and television advertising as well as on the labeling of such products; these  
15 representations constitute advertising.

16 133. Bayer's advertising regarding its One A Day Supplements targets  
17 consumers and is consumer-oriented.

18 134. Bayer's representations regarding its One A Day Supplements are  
19 materially false, misleading, and deceptive, and Plaintiffs Cordaro and Cosgrove and  
20 members of the New York Class would not have purchased Bayer One A Day  
21 Supplements absent Bayer's representations.

22 135. Plaintiffs Cordaro and Cosgrove and members of the New York Class were  
23 directly and proximately injured by Bayer's deceptive marketing and labeling practices  
24 in that they purchased Bayer One A Day Supplements that did not conform to what was  
25 promised in Bayer's marketing and labeling.

26 136. As a result of Bayer's misleading and deceptive marketing and labeling  
27 practices with respect to its One A Day Supplements, Plaintiffs and Class Members  
28 suffered actual damages in an amount to be determined at trial.

1 137. Plaintiffs Cordaro and Cosgrove and members of the New York Class  
2 relied upon Bayer's advertising regarding its One A Day Supplement.

3 138. N.Y. Gen. Bus. Law § 350-e(3) provides a private right of action to recover  
4 the greater of each class member's actual damages or \$500.

5 139. Bayer willfully or knowingly violated N.Y. Gen. Bus. Law § 350, and N.Y.  
6 Gen. Bus. Law § 350-e(3) authorizes the Court to increase the award of damages to an  
7 amount not to exceed three times actual damages, up to \$10,000 per class member, if the  
8 Court finds that Defendants willfully or knowingly violated that section.

9 140. Section 350-e(3) also authorizes the Court to award attorneys' fees to a  
10 prevailing Plaintiff in addition to damages.

11 **EIGHTH CAUSE OF ACTION**  
12 **(Restitution Based On Unjust Enrichment/Quasi-Contract)**

13 141. Plaintiffs incorporate and reallege Bayer's unlawful practices as set forth  
14 above on behalf of the National Class.

15 142. Bayer sold One A Day Supplements to Plaintiffs and the National Class  
16 that did not have the benefits that Bayer represented the products to have. Plaintiffs and  
17 other Class members would not have bought these Supplements if they had known that  
18 the promises Bayer made were false.

19 143. As a result of Bayer's deceptive marketing and labeling of its One A Day  
20 Supplements, Bayer received a benefit at the expense of Plaintiffs and the National Class,  
21 and it is unjust for Bayer to retain that benefit.

22 144. Under the circumstances, it is against equity and good conscience to  
23 permit Bayer to retain the ill-gotten benefits that it received from Plaintiffs and the  
24 National Class, in light of the fact that the One A Day Supplements they purchased were  
25 not what Bayer represented them to be. Thus, it is unjust or inequitable for Bayer to  
26 retain the benefit without restitution to Plaintiffs and the National Class.

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1 145. As a direct and proximate result of Bayer's actions, Bayer has been unjustly  
2 enriched, and Plaintiffs and the National Class have a right to restitution in an amount  
3 to be proven at trial.

4 **PRAYER FOR RELIEF**

5 THEREFORE, Plaintiffs ask the Court to enter the following judgment:

- 6 1. Approving of the Class, certifying Plaintiffs as representatives of the Class,  
7 and designating their counsel as counsel for the Class;
- 8 2. Declaring that Bayer has committed the violations alleged herein;
- 9 3. Granting damages, restitution, or disgorgement to Plaintiffs and the Class;
- 10 4. Granting declaratory and injunctive relief to enjoin Defendants from  
11 engaging in the unlawful practices described in this Complaint;
- 12 5. Granting compensatory damages, the amount of which is to be determined  
13 at trial;
- 14 6. Granting punitive damages;
- 15 7. Granting pre- and post-judgment interest;
- 16 8. Granting attorneys' fees and costs; and
- 17 9. Granting further relief as this Court may deem proper.
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**JURY TRIAL DEMANDED**

Plaintiffs hereby demand a trial by jury.

Dated: December 3, 2014

**KAPLAN FOX & KILSHEIMER LLP**

By:           /s/ Laurence D. King            
          Laurence D. King

Laurence D. King (SBN 206423)  
lking@kaplanfox.com  
Linda M. Fong (SBN 124232)  
lfong@kaplanfox.com  
350 Sansome Street, Suite 400  
San Francisco, California 94104  
Telephone: (415) 772-4700  
Facsimile: (415) 772-4707

- and -

**KAPLAN FOX & KILSHEIMER LLP**  
Robert N. Kaplan (admitted *pro hac vice*)  
rkaplan@kaplanfox.com  
Lauren I. Dubick (admitted *pro hac vice*)  
ldubick@kaplanfox.com  
850 Third Avenue, 14th Floor  
New York, New York 10022  
Telephone: (212) 687-1980  
Facsimile: (212) 687-7714

**CENTER FOR SCIENCE IN THE PUBLIC INTEREST**  
Amanda Howell (admitted *pro hac vice*)  
ahowell@cspinet.org  
5646 Milton Street, Suite 714  
Dallas, Texas 75206  
Telephone: (214) 827-2774  
Facsimile: (214) 827-2787

- and -

**STANLEY LAW GROUP**  
Marc R. Stanley (pending *pro hac vice*)  
marcstanley@mac.com  
Martin Woodward (pending *pro hac vice*)  
mwoodward@stanleylawgroup.com  
Stephen Gardner (admitted *pro hac vice*)  
steve@consumerhelper.com  
3100 Monticello Avenue, Suite 770  
Dallas, Texas 75205  
Telephone: (214) 443-4300  
Facsimile: (214) 443-0358

*Counsel for Plaintiffs*



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EXHIBIT 1

BAYER ONE A DAY WEBSITE HOMEPAGE:  
<http://www.oneaday.com/>

