

Superior Court of California

County of Orange



Case Number : 30-2016-00839608-CU-MC-CXC

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7 Attorneys for Plaintiff William Brady,
8 on behalf of himself and all others similarly situated

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ORANGE

11 WILLIAM BRADY, on behalf of himself
12 and all others similarly situated,

13 Plaintiff,

14 v.

15 BAYER AG; BAYER CORPORATION;
16 BAYER HEALTHCARE, LLC; and Does 1
through 10, inclusive,

17 Defendants.

30-2016-00839608-CU-MC-CXC

Case No.

Judge William Claster

**COMPLAINT FOR DAMAGES AND
EQUITABLE, DECLARATORY AND
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiff William Brady brings this action on behalf of himself and all others similarly
2 situated against Defendants Bayer AG, Bayer Corporation and Bayer Healthcare, LLC
3 (collectively, "Bayer" or "Defendants") and states as follows:

4 **NATURE OF ACTION**

5 1. This is a consumer protection class action arising out of Defendants' false
6 advertising of its One A Day chewable supplements. Defendants' claim behind its One A Day
7 line of supplements is that the consumer need only consume one supplement per day to get the full
8 nutritional benefits. While this may be true for Defendants' capsule supplements, it is not true for
9 its "gummies" or chewable line of One A Day supplements (hereinafter collectively referred to as
10 "chewables"), which require the consumer to take two or more supplements a day to get the full
11 nutritional benefits.

12 2. Because the One A Day chewables are labeled as "One A Day," Plaintiff and Class
13 Members (as defined below) are misled into believing that they only need to take one chewable
14 per day to receive the full nutritional value when they actually have to take two or more. This
15 means the bottles of chewables purchased by consumers last half as long as advertised. Plaintiff
16 and Class Members are essentially paying full retail price for half the amount of supplements.

17 3. Further, on the front of the bottle's label and packaging, Defendants also
18 prominently advertise the number of chewables contained in each bottle. This, combined with the
19 false "One a Day" representation, sends the message that the bottle will provide nutrition for the
20 same number of days as there are capsules in the bottle. In fact, the bottle provides nutrition for,
21 at most, only half those number of days.

22 4. Defendants communicated the same substantive message throughout their
23 advertising and marketing for the supplements, including on the bottle itself and on the front of
24 the supplements' packaging. Each person who has purchased the supplements has been exposed
25 to Defendants' misleading advertising message multiple times.

26 5. As a result of the express and implied misleading message conveyed by their
27 marketing campaign, Defendants have caused Plaintiff and Class Members to purchase a product,
28

1 which does not perform as represented. Plaintiff and other similarly situated consumers have
2 been harmed in the amount they paid, or overpaid, for the supplements.

3 6. Plaintiff brings this action on behalf of himself and all other similarly situated
4 consumers to halt Defendants' dissemination of this false and misleading advertising message,
5 correct the false and misleading perception it has created in the minds of consumers, and to obtain
6 redress for those who have purchased the supplements.

7 JURISDICTION AND VENUE

8 7. This Court has jurisdiction over this action pursuant to the California Constitution,
9 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
10 given by statutes to other courts. The statutes under which this action is brought do not specify
11 any other basis for jurisdiction.

12 8. This Court has jurisdiction over all Defendants because, upon information and
13 belief, they are either citizens of California, have sufficient minimum contacts in California or
14 otherwise intentionally avail themselves of the California market so as to render the exercise of
15 jurisdiction over them by the California courts consistent with traditional notions of fair play and
16 substantial justice.

17 9. Venue as to each defendant is proper in this judicial district, pursuant to California
18 Code of Civil Procedure section 395.5. On information and belief, Defendants distribute, market
19 and sell their products in Orange County and throughout California, and each defendant is within
20 the jurisdiction of this Court for service of process purposes. The unlawful acts alleged herein
21 have a direct effect on Plaintiff and those similarly situated within the State of California.

22 PARTIES

23 10. Plaintiff William Brady is and was at all relevant times during the Class Period
24 defined herein, an individual residing in Orange County, California, who purchased Defendants'
25 One A Day VitaCraves Adult Multivitamin Gummies for personal use during the Class Period.
26 Because the supplements are labeled "One A Day," Mr. Brady was misled into believing that he
27 only had to take one gummy vitamin supplement per day to receive the full nutritional value. Had
28 Mr. Brady known the truth about Defendants' misrepresentations and omissions, he either would

1 not have purchased the supplements or would have paid much less for them. As a result of his
2 purchases, Plaintiff suffered injury in fact and lost money. Mr. Brady is not claiming physical
3 harm or seeking recovery of personal injury damages.

4 11. Defendant Bayer AG is a German multinational chemical and pharmaceutical
5 company.

6 12. Defendant Bayer Corporation is a corporation and is wholly owned by Bayer AG.

7 13. Defendant Bayer HealthCare LLC is a limited liability company wholly owned by
8 Bayer Corporation. Bayer HealthCare LLC is responsible for the marketing, distribution, and sale
9 of Bayer One A Day supplements to millions of consumers throughout the United States.

10 14. Defendants advertise, market and distribute the supplements to thousands of
11 customers across the country and in the State of California.

12 15. The true names and capacities, whether individual, corporate, associate, or
13 otherwise, of defendants sued herein as Does 1 to 10, inclusive, are currently unknown to
14 Plaintiff, who therefore sues these defendants by such fictitious names under California Code of
15 Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of
16 the defendants designated herein as a Doe is legally responsible in some manner for the unlawful
17 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the
18 true names and capacities of the defendants designated hereinafter as Does when such identities
19 become known. Throughout this Complaint, the term "Defendants" shall include defendants Does
20 1 to 10, inclusive.

21 **FACTUAL ALLEGATIONS**

22 16. Throughout the Class period, Defendants have distributed, marketed and sold the
23 "One A Day" chewable vitamin supplements on a nationwide basis.

24 17. The "One A Day" chewable vitamin supplements are sold online and through
25 Defendants' various retailers.

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1 18. Upon information and belief, Defendants' "One A Day" chewable supplements
2 include the following:

- 3 • One A Day Women's VitaCraves Gummies
- 4 • One A Day Men's VitaCraves Gummies
- 5 • One A Day VitaCraves Gummies With Health Metabolism Support
- 6 • One A Day Teen for Her VitaCraves Gummies
- 7 • One A Day Teen for Him VitaCraves Gummies
- 8 • One A Day VitaCraves Gummies With Immunity Support
- 9 • One A Day VitaCraves Gummies With Omega-3 DHA
- 10 • One A Day VitaCraves Adult Multi Gummies
- 11 • One A Day VitaCraves With Energy Support
- 12 • One A Day VitaCraves ChewyBites

13 **Defendants' False and Deceptive Advertising of the Supplements**

14 19. Throughout their advertising of the supplements, Defendants have consistently
15 advertised and labeled their chewable supplements as "One A Day" supplements. Below is a
16 representative sample of the packaging and labeling of these supplements:



1 As more fully set forth herein, the “One A Day” advertising claims on the chewable supplements
2 are false and misleading.

3 20. Because the One A Day chewables are labeled as “One A Day,” Plaintiff and Class
4 Members are misled into believing that they only need to take one chewable supplement per day
5 to receive the full nutritional value when they actually have to take two or more. The bottles of
6 chewables purchased by Plaintiff and Class Members therefore provide value for, at most, half as
7 long as advertised.

8 21. The number of supplements contained in each bottle is prominently displayed on
9 the front of the bottle’s label and packaging. If, as advertised, the consumer were to take “One A
10 Day,” the bottle would provide supplements for the same number of days as there are capsules in
11 the bottle. In fact, due to the requirement that the consumer take two or more chewables per day,
12 the bottle provides supplements covering half (or less) that amount of time.

13 22. Further, although the One A Day chewables require the consumer to take twice as
14 many (sometimes four times as many) supplements to get the full nutritional benefits, the One A
15 Day chewables contain the same or similar amount of supplements as the One A Day capsule
16 supplements and cost just as much, if not more. However, because Plaintiff and Class Members
17 have to take two (or more) chewables, instead of just one as labeled, Plaintiff and Class Members
18 are unwittingly paying full retail price for half the amount of supplements. By way of example, at
19 Walgreens, “One A Day Women’s VitaCraves Gummies” comes in a bottle with 70 chewable
20 supplements but requires the consumer to ingest two supplements per day – a 35-day supply of
21 supplements – at a cost of \$10.49.¹ The “One A Day Women’s” supplements in capsule form
22 comes in a 60 capsule bottle and requires only one supplement per day as advertised – a 60 day
23 supply of supplements – at a cost of \$7.49.²

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26 ¹ <http://www.walgreens.com/store/c/one-a-day-vitacraves-women's-multivitamin-gummies-fruit/ID=prod6254726-product> (accessed on Feb. 4, 2016)

27
28 ² <http://www.walgreens.com/store/c/one-a-day-women's-multivitamin/multimineral-supplement-tablets/ID=prod6096735-product> (accessed on Feb. 4, 2016)

1 California Subclass:

2 All consumers who purchased Defendants' chewable supplements in the State of
3 California. Excluded from this Class are Defendants and their officers, directors and
4 employees, and those who purchased supplements for the purpose of resale.

5 29. Numerosity. On information and belief, the Nationwide Class and California
6 Subclass (collectively, the "Class" or "Class Members") are each so numerous that joinder of all
7 members of the Class is impracticable. Plaintiff is informed and believes that the proposed Class
8 contains thousands of purchasers of the supplements who have been damaged by Defendants'
9 conduct as alleged herein. The precise number of Class Members is unknown to Plaintiff.

10 30. Existence and Predominance of Common Questions of Law and Fact. This action
11 involves common questions of law and fact, which predominate over any questions affecting
12 individual Class Members. These common legal and factual questions include, but are not limited
13 to, the following:

- 14 a. whether the claims discussed above are true, or are misleading, or objectively
15 reasonably likely to deceive;
- 16 b. whether Defendants' alleged conduct violates public policy;
- 17 c. whether the alleged conduct constitutes violations of the laws asserted;
- 18 d. whether Defendants engaged in false or misleading advertising;
- 19 e. whether Plaintiff and Class Members have sustained monetary loss and the proper
20 measure of that loss; and
- 21 f. whether Plaintiff and Class Members are entitled to other appropriate remedies,
22 including corrective advertising and injunctive relief.

23 31. Typicality. Plaintiff's claims are typical of the claims of the members of the Class
24 because, *inter alia*, all Class Members were injured through the uniform misconduct described
25 above and were subject to Defendants' deceptive "One A Day" claims that accompanied each and
26 every supplement that Defendants sold. Plaintiff is advancing the same claims and legal theories
27 on behalf of himself and all members of the Class.

1 32. Adequacy of Representation. Plaintiff will fairly and adequately protect the
2 interests of the members of the Class. Plaintiff has retained counsel experienced in complex
3 consumer class action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff
4 has no adverse or antagonistic interests to those of the Class.

5 33. Superiority. A class action is superior to all other available means for the fair and
6 efficient adjudication of this controversy. The damages or other financial detriment suffered by
7 individual Class Members is relatively small compared to the burden and expense that would be
8 entailed by individual litigation of their claims against Defendants. It would thus be virtually
9 impossible for Plaintiff and Class Members, on an individual basis, to obtain effective redress for
10 the wrongs done to them. Furthermore, even if Class Members could afford such individualized
11 litigation, the court system could not. Individualized litigation would create the danger of
12 inconsistent or contradictory judgments arising from the same set of facts. Individualized
13 litigation would also increase the delay and expense to all parties and the court system from the
14 issues raised by this action. By contrast, the class action device provides the benefits of
15 adjudication of these issues in a single proceeding, economies of scale, and comprehensive
16 supervision by a single court, and presents no unusual management difficulties under the
17 circumstances here.

18 34. The Class also may be certified because Defendants have acted or refused to act on
19 grounds generally applicable to the Class, thereby making appropriate final declaratory and/or
20 injunctive relief with respect to the members of the Class as a whole.

21 35. Plaintiff seeks preliminary and permanent injunctive and equitable relief on behalf
22 of the entire Class, on grounds generally applicable to the entire Class, to enjoin and prevent
23 Defendants from engaging in the acts described, and requiring Defendants to provide full
24 restitution to Plaintiff and Class Members.

25 36. Unless a Class is certified, Defendants will retain monies received as a result of its
26 conduct that were taken from Plaintiff and Class Members. Unless an injunction is issued,
27 Defendants will continue to commit the violations alleged, and the members of the Class and the
28 general public will continue to be misled.

1 **COUNT I**

2 **Violations of the Consumers Legal Remedies Act**

3 **California Civil Code §1750 et seq.**

4 37. Plaintiff repeats and re-alleges the allegations contained in the Paragraphs above,
5 as if fully set forth herein.

6 38. Plaintiff brings this claim individually and on behalf of the Class.

7 39. This cause of action is brought pursuant to the Consumers Legal Remedies Act,
8 California Civil Code § 1750, et seq. (the “Act”). Plaintiff is a “consumer” as defined by
9 California Civil Code § 1761(d). Defendants’ supplements are “goods” within the meaning of the
10 Act.

11 40. Defendants violated and continues to violate the Act by engaging in the following
12 practices proscribed by California Civil Code § 1770(a) in transactions with Plaintiff and the
13 Class which were intended to result in, and did result in, the sale of the supplements:

14 (5) Representing that [the supplements have] . . . approval, characteristics , . . uses
15 [and] benefits . . . which [they do] not have

16 * * *

17 (7) Representing that [the supplements are] of a particular standard, quality or
18 grade . . . if [they are] of another.

19 * * *

20 (9) Advertising goods . . . with intent not to sell them as advertised.

21 * * *

22 (16) Representing that [the supplements have] been supplied in accordance with a
23 previous representation when [they have] not.

24 41. Defendants violated the Act by representing and failing to disclose material facts
25 on the supplements’ labeling and packaging and associated advertising, as described above, when
26 they knew, or should have known, that the representations were false and misleading and that the
27 omissions were of material facts they were obligated to disclose.
28

1 51. In the course of conducting business, Defendants committed unlawful business
2 practices by, *inter alia*, making the representations (which also constitute advertising within the
3 meaning of § 17200), as set forth more fully herein. Defendants have violated California Civil
4 Code §§ 1572, 1573, 1709, 1711, 1770(a)(5), (7), (9) and (16); California Business & Professions
5 Code §§ 17200 *et seq.*; and the common law, including breach of express warranty. Defendants’
6 above-described wrongful acts and practices constitute actual and constructive fraud within the
7 meaning of Civil Code §§ 1572 and 1573, as well as deceit, which is prohibited under Civil Code
8 §§ 1709 and 1711.

9 52. Plaintiff and the Class reserve the right to allege other violations of law, which
10 constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this
11 date.

12 53. Defendants’ actions also constitute “unfair” business acts or practices because, as
13 alleged above, *inter alia*, Defendants engaged in false advertising, misrepresented and omitted
14 material facts regarding the supplements, and thereby offended an established public policy, and
15 engaged in unethical, oppressive, and unscrupulous activities that are substantially injurious to
16 consumers.

17 54. As stated in this complaint, Plaintiff alleges violations of consumer protection,
18 unfair competition and truth in advertising laws in California, resulting in harm to consumers
19 throughout the United States. Defendants’ acts and omissions also violate and offend the public
20 policy against engaging in false and misleading advertising, unfair competition and deceptive
21 conduct towards consumers. This conduct constitutes violations of the unfair prong of Business &
22 Professions Code § 17200, *et seq.*

23 55. There were reasonably available alternatives to further Defendants’ legitimate
24 business interests, other than the conduct described herein.

25 56. Business & Professions Code § 17200 *et seq.*, also prohibits any “fraudulent
26 business act or practice.”
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1 packaging and sales materials as described above. These representations constitute express
2 warranties, became part of the basis of the bargain, and are part of a standardized contract between
3 Plaintiff and the members of the Class on the one hand, and Defendants on the other.

4 67. All conditions precedent to Defendants' liability under this contract have been
5 performed by Plaintiff and the Class.

6 68. Defendants breached the terms of this contract, including the express warranties,
7 with Plaintiff and the Class by not providing supplements that could provide the treatments, cure
8 and/or prevention of various diseases and ailments as represented and described above.

9 69. As a result of Defendants' breach of their warranty, Plaintiff and the Class have
10 been damaged in the amount of the purchase price of supplements they purchased.

11 **PRAYER**

12 WHEREFORE, Plaintiff, on behalf of himself and on behalf of the other members of the
13 Class, request award and relief as follows:

- 14 1. Certifying the Class and California Subclass as requested herein;
- 15 2. Awarding Plaintiff and the proposed Class Members damages;
- 16 3. Awarding restitution and disgorgement of Defendants' revenues to Plaintiff and the
17 proposed Class Members;
- 18 4. Awarding declaratory and injunctive relief as permitted by law or equity,
19 including: enjoining Defendants from continuing the unlawful practices as set forth herein and
20 directing Defendants to identify, with Court supervision, victims of its conduct and pay them all
21 money it is required to pay;
- 22 5. Ordering Defendants to engage in a corrective advertising campaign;

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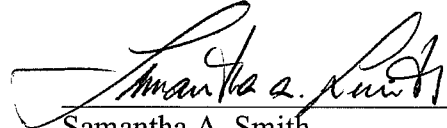
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- 6. Awarding attorneys' fees and costs; and
- 7. Providing such further relief as may be just and proper.

Dated: March 8, 2016

THE COOPER LAW FIRM, P.C.

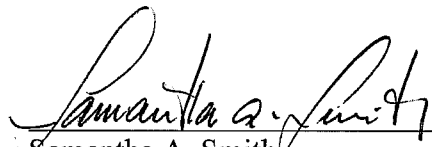

Samantha A. Smith
Attorney for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all causes of action and/or issues so triable.

Dated: March 8, 2016

THE COOPER LAW FIRM, P.C.


Samantha A. Smith
Attorney for Plaintiffs