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and the Proposed Class*

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

EDISON CORPUZ, individually and
on behalf of all others similarly
situated,

Plaintiff,

v.

BAYER CORPORATION,

Defendant.

Case No. '22CV1085 MMAJLB

CLASS ACTION

DEMAND FOR JURY TRIAL

1 Plaintiff EDISON CORPUZ (“Plaintiff”) individually and on behalf of all
 2 others similarly situated, by his attorneys, alleges the following upon information
 3 and belief, except for those allegations pertaining to Plaintiff, which are based on
 4 personal knowledge:

5 **SUMMARY OF THE ACTION**

6 1. This action seeks to remedy the deceptive and misleading business
 7 practices of Bayer Corporation (hereinafter “Defendant”) with respect to the
 8 marketing and sales of Defendant’s One a Day Natural Fruit Bites products¹ that
 9 represent that they are natural (“Products”).

10 2. Defendant manufactures, sells, and distributes the Products using a
 11 marketing and advertising campaign centered around claims that appeal to health-
 12 conscious consumers, i.e., that its Products are natural; however, Defendant’s
 13 advertising and marketing campaign is false, deceptive, and misleading because the
 14 Products contain non-natural, synthetic ingredients.

15 3. Plaintiff and those similarly situated (“Class Members”) relied on
 16 Defendant’s misrepresentations that the Products are natural when purchasing the
 17 Products. Plaintiff and Class Members paid a premium for the Products based upon
 18 their natural representation. Given that Plaintiff and Class Members paid a premium
 19 for the Products based on Defendant’s misrepresentations that they are natural,
 20 Plaintiff and Class Members suffered an injury in the amount of the premium paid.

21 4. Defendant’s conduct violated and continues to violate, *inter alia*,
 22 California Consumers Legal Remedies Act (“CLRA”), California Civil Code section
 23 1750 et al. Accordingly, Plaintiff brings this action against Defendant on behalf of
 24

25 ¹ The Products currently come in four varieties: Men’s, Women’s, Men’s 50+, and
 26 Women’s 50+. All make the “natural” claim. The Products would also include any
 27 additional One a Day Natural Fruit Bites introduced into the market during the Class
 28 Period that make a “natural” claim.

1 himself and Class Members who purchased the Products during the applicable
2 statute of limitations period (the “Class Period”).

3 **JURISDICTION AND VENUE**

4 5. This Court has subject matter jurisdiction under the Class Action
5 Fairness Act, 28 U.S.C. section 1332(d) in that: (1) this is a class action involving
6 more than 100 class members; (2) Plaintiff is a citizen of the State of California,
7 Defendant Bayer Corporation is a citizen of the States of Indiana and New Jersey,
8 and (3) the amount in controversy is in excess of \$5,000,000, exclusive of interests
9 and costs.

10 6. This Court has personal jurisdiction over Defendant because Defendant
11 conducts and transacts business in the State of California, contract to supply goods
12 within the State of California, and supply goods within the State of California,
13 including the Products.

14 7. Venue is proper because a substantial part of the events or omissions
15 giving rise to the classes’ claims occurred in this District.

16 **PARTIES**

17 8. Plaintiff is a citizen of California, residing in San Diego County,
18 California. Plaintiff purchased the product from retail outlets in San Diego,
19 California, during the class period.

20 9. Plaintiff purchased the Product because he believed the Product was
21 natural based on the representations on the principal display panel of the Product.
22 The packaging of the Product Plaintiff purchased contained the representation that
23 it was natural. Plaintiff believes that products that are labeled as natural do not
24 contain synthetic ingredients. Plaintiff believes a synthetic ingredient is formulated
25 or manufactured by a chemical process or by a process that chemically changes a
26 substance extracted from naturally occurring plant, animal, or mineral sources.
27 Plaintiff remains in the market for natural vitamins, and continues to shop at retail
28

1 locations where the Products are sold. If the Products did not contain unnatural
2 ingredients, Plaintiff would purchase the Product again in the immediate future. If
3 the Court were to issue an injunction ordering Defendant to comply with the state
4 and federal laws, and prohibiting Defendant's use of the deceptive practices
5 discussed herein, Plaintiff would likely purchase the Products again in the near
6 future. At present, however, Plaintiff cannot be confident that the labeling of the
7 Products is, and will be, truthful and non-misleading. As a result, Plaintiff cannot
8 rely on the labels of the Products.

9 10. Had Defendant not made the false, misleading, and deceptive
10 representation that the Products were natural, Plaintiff would not have been willing
11 to pay the same amount for the Products, and, consequently, would not have been
12 willing to purchase the Products. Plaintiff purchased, purchased more of and/or paid
13 more for, the Products than he would have had he known the truth about the
14 Products. The Product Plaintiff received was worth less than the Product for which
15 he paid. Plaintiff was injured in fact and lost money as a result of Defendant's
16 improper conduct.

17 11. Defendant Bayer Corporation is a corporation with its principal place
18 of business in Whippany, New Jersey. Defendant manufactures, markets, advertises,
19 and distributes the Products throughout the United States, including in the District.
20 Defendant created and/or authorized the false, misleading and deceptive
21 advertisements, packaging and labeling for the Products.

22 12. Defendant manufactures, markets, advertises and sells vitamins,
23 including the Products, one or more of which were purchased by Plaintiff and
24 members of the proposed Class. Defendant manufactured, marketed, advertised,
25 distributed and sold its Products widely throughout the State of California and the
26 Southern District of California during the Class Period.

1 13. On information and belief, in committing the wrongful acts alleged
 2 herein, Defendant, in connection with its subsidiaries, affiliates, and/or other related
 3 entities and their employees, planned, participated in and furthered a common
 4 scheme to induce members of the public to purchase the Products by means of false,
 5 misleading, deceptive and fraudulent acts and omissions.

6 **FACTS COMMON TO ALL CAUSES OF ACTION**

7 14. Consumers have become increasingly concerned about the effects of
 8 synthetic and chemical ingredients in food, cleaning products, bath and beauty
 9 products and everyday household products. Companies such as Defendant, have
 10 capitalized on consumers' desire for purportedly "natural products." Indeed,
 11 consumers are willing to pay, and have paid, a premium for products branded
 12 "natural" over products that contain synthetic ingredients. In 2015, sales of natural
 13 products grew 9.5% to \$180 billion.² Reasonable consumers, including Plaintiff and
 14 Class Members, value natural products for important reasons, including the belief

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 16
 17 ² *Natural Products Industry Sales up 9.5% to \$180bn Says NBJ*, FOOD
 NAVIGATOR, [http://www.foodnavigator-usa.com/Markets/EXPO-WEST-](http://www.foodnavigator-usa.com/Markets/EXPO-WEST-trendspotting-organics-natural-claims/(page)/6)
 18 [trendspotting-organics-natural-claims/\(page\)/6](http://www.foodnavigator-usa.com/Markets/EXPO-WEST-trendspotting-organics-natural-claims/(page)/6); *see also* Shoshanna Delventhal,
 19 *Study Shows Surge in Demand for "Natural" Products*, INVESTOPEDIA (February
 20 22, 2017), [http://www.investopedia.com/articles/investing/022217/study-shows-](http://www.investopedia.com/articles/investing/022217/study-shows-surge-demand-natural-products.asp)
 21 [surge-demand-natural-products.asp](http://www.investopedia.com/articles/investing/022217/study-shows-surge-demand-natural-products.asp) (Study by Kline Research indicated that in 2016,
 the personal care market reached 9% growth in the U.S. and 8% in the U.K. The
 trend-driven natural and organic personal care industry is on track to be worth \$25.1
 22 million by 2025); *Natural living: The next frontier for growth? [NEXT Forecast*
 23 *2017]*, NEW HOPE NETWORK (December 20, 2016),
 24 [http://www.newhope.com/beauty-and-lifestyle/natural-living-next-frontier-growth-](http://www.newhope.com/beauty-and-lifestyle/natural-living-next-frontier-growth-next-forecast-2017)
[next-forecast-2017](http://www.newhope.com/beauty-and-lifestyle/natural-living-next-frontier-growth-next-forecast-2017).

1 that they are safer and healthier than alternative products that are not represented as
2 natural.

3 15. Despite the Products containing a number of synthetic ingredients,
4 Defendant markets the Products as being natural. Below are the Products' labeling
5 at issue:





16. Defendant's representations that the Products are natural, are false, misleading, and deceptive because all the Products contain same ingredients that are, as explained below, synthetic.

- a. **Cholecalciferol** (9,10-seco(5Z,7E)-5,7,10(19)-cholestatrien-3-ol) is a synthetic substance. It is manufactured by ultraviolet irradiation of 7-dehydrocholesterol produced from cholesterol. *See* 21 C.F.R. § 184.1950(a)(2). It is then purified by crystallization. *Id.*
- b. **Niacinamide** (3-pyridinecarboxylic acid amide)³ is a synthetic substance. Niacinamide, as known as nicotinamide,⁴ is manufactured

³ *See* 21 C.F.R. § 184.1535.

⁴ NAT'L CTR. FOR BIOTECHNOLOGY INFO., U.S. DEP'T OF HEALTH & HUMAN SERVS., *Open Chemistry Database: Nicotinamide: 4.2. Synonyms* PUBCHEM.NCBI.NLM.NIH.GOV .

1 in several ways, each of which is a chemical process that chemically
2 changes substances into niacinamide:⁵

- 3 i. 2-Methylglutaronitrile, a byproduct
4 of adiponitrile production, is converted to 2-methyl-1,5-
5 diaminopentane. Cyclic hydrogenation gives 3-
6 methylpiperidine. Dehydrogenation yields 3-
7 methylpyridine, which is then ammoxidated and partly
8 hydrolyzed to nicotinamide;
- 9 ii. In a multitubular reactor 3-methylpyridine, air, ammonia,
10 and hydrogen react at ca. 350 °C and moderate pressure
11 to give 3-cyanopyridine. Heterogeneous catalysts
12 containing oxides of antimony, vanadium, and titanium,
13 antimony, vanadium, and uranium or antimony-
14 vanadium-titanium catalyst are highly effective. For
15 instance, with a vanadium, titanium, zirconium,
16 molybdenum catalyst, a reactor temperature of 340 °C,
17 and a molar feed ratio of 3-methylpyridine:
18 ammonia: oxygen of 1:1.3:40 yields 95% of 3-
19 cyanopyridine. 3-Cyanopyridine is converted to
20 nicotinamide by alkaline hydrolysis. This reaction has the
21 advantage that saponification to the amide is fast
22 compared to total hydrolysis to nicotinic acid. The
23 hydrolysis to the amide is normally carried out with
24 catalytic amounts of bases, mainly sodium hydroxide, at
25 130-150 °C;

26
27 ⁵ *Id.* at 10.2 *Methods of Manufacture*.
28

- 1 iii. In the Lonza process, 3-cyanopyridine is converted to
 2 nicotinamide by means of an immobilized
 3 microorganism of the genus *Rhodococcus*.
 4 Heterogeneous catalysts are also mentioned. A copper-
 5 chromium oxide catalyst, manganese dioxide, or
 6 manganese dioxide with chromium-nickel oxide,
 7 chromium-cobalt oxide, or manganese dioxide with
 8 titanium-silicon dioxide give good yields of
 9 nicotinamide; or
- 10 iv. Nicotinic acid is melted and reacted with ammonia gas to
 11 yield nicotinamide. The reaction is catalyzed by the
 12 presence of ammonium salts. After distillation,
 13 nicotinamide is dissolved in water, purified by the
 14 addition of activated carbon, filtered, recrystallized and
 15 centrifuged. The nicotinamide contained in the mother
 16 liquor is reclaimed by a special recovery operation. The
 17 wet pure nicotinamide filter cake is dried under vacuum
 18 in a rotary vacuum drier.

19 c. **Pyridoxine hydrochloride** (3-hydroxy-4,5-dihydroxymethyl-2-
 20 methylpyridine hydrochloride) is prepared by chemical synthesis⁶,
 21 and is therefore synthetic substance. Pyridoxine hydrochloride is
 22 manufactured in several ways, each of which is a chemical process
 23 that chemically changes substances into pyridoxine hydrochloride:⁷

24
 25 ⁶ 21 C.F.R. § 184.1676.

26 ⁷ NAT'L CTR. FOR BIOTECHNOLOGY INFO., U.S. DEP'T OF HEALTH & HUMAN SERVS.,
 27 *Open Chemistry Database: Pyridoxine hydrochloride: 10.2 Methods of*
 28 *Manufacture* PUBCHEM.NCBI.NLM.NIH.GOV.

- i. Synthesis by condensation of cyanoacetamide & ethoxyacetylacetone;
 - ii. Synthesis from 2-butanon-1,4-diol & alpha-methyliminopropionitrile; or
 - iii. Synthesis from ethyl pyruvate, ethyl glycinate, and 1,4-diethoxy-2-butanone.
- d. **D-biotin** is a synthetic substance. Di-biotin, as known as biotin,⁸ is manufactured in several ways, each of which is a chemical process that chemically changes substances into niacinamide:⁹
- i. The Hoffman-La Roche industrial synthesis of biotin starts with fumaric acid. The sequence of bromination, replacement of dibromide with benzyl-bromide, and ring closure with phosgene gives the imidazole cis-dicarboxylic acid. The corresponding anhydride is opened with cyclohexanol to the racemic monoester which is resolved with (+)-ephedrine in high yield. The enantiomer is recycled back to the anhydride. Lithium borohydride reduces only the ester group of (+)-ephedrine, thus producing the lactone with the desired absolute configuration. Sulfur is then introduced by treatment with potassium thioacetate to give the thiolactone. The side chain is introduced in two phases. The first three carbons are attached by a Grignard

⁸ NAT'L CTR. FOR BIOTECHNOLOGY INFO., U.S. DEP'T OF HEALTH & HUMAN SERVS., *Open Chemistry Database: Biotin: 2.4.2. Depositor-Supplied Synonyms* PUBCHEM.NCBI.NLM.NIH.GOV .

⁹ *Id.* at 10.2 *Methods of Manufacture*.

1 reaction. Dehydration and hydrogenation over Raney
2 nickel establishes the third chiral center
3 stereospecifically. The last two carbons are then added by
4 reaction of the cyclic sulfonium cation with sodium
5 dimethylmalonate. Hydrolysis of the ester groups of
6 decarboxylation, and didebenzylation occur during
7 heating with aqueous HBr to produce the optically pure
8 biotin in a more than 25% overall yield;

9 ii. Sumitomo produces biotin by an efficient asymmetric
10 conversion of the prochiral cis-acid to the optically active
11 lactone. The acid reacts with the optically
12 active dihydroxy amine to give quantitatively the chiral
13 imide. Sodium borohydride reduces stereoselectively the
14 pro-R carbonyl group to give, after recrystallization, the
15 optically pure hydroxy amide. Hydrolysis then yields the
16 lactone; or

17 iii. The stereocontrolled formation of all chiral centers of
18 biotin can be achieved in three syntheses by means of
19 1,3-dipolar nitron-olefin cycloadditions and in two
20 syntheses by (2+2) cycloaddition methods.

21 e. **Potassium iodide** is prepared by reacting hydriodic acid with
22 potassium biocarbonate,¹⁰ and is therefore a synthetic substance.

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¹⁰ 21 C.F.R. § 184.1634.

1 Other methods of manufacturing include a chemical process that
2 chemically changes substances into potassium iodide:¹¹

- 3 i. Prepared from HI and KHCO₃. Purification by melting in
4 dry hydrogen ... Continuous electrolytic process for large
5 scale industrial preparation;
- 6 ii. A hot aqueous solution of potassium hydroxide is treated
7 with iodine ... to form mixture of KI & potassium iodate.
8 Solution is concentrated by heating ... then an excess of
9 powdered charcoal is added ... Mixture is evaporated to
10 dryness, then ignited. Charcoal ...
11 reduces iodate to iodide and all of the iodine is thus
12 obtained as potassium iodide;
- 13 iii. Prepared by first forming ferrosferric iodide through
14 reaction between iron wire and iodine in presence
15 of water. A solution of pure potassium carbonate ...
16 added until solution is faintly alkaline, boiled for few
17 moments, and filtered; filtrate is concentrated and set
18 aside to crystallize. KI ... is crystallized from an alkaline
19 solution;
- 20 iv. Most USA production involves absorption of iodine in
21 KOH. Approximately 80 wt % of the potassium iodate ...
22 crystallizes from the reaction mixture and is separated for
23 sale. Of the remainder, 90 wt % is removed by
24 evaporation, fusion, and heating to about 600 °C.

26 ¹¹ NAT'L CTR. FOR BIOTECHNOLOGY INFO., U.S. DEP'T OF HEALTH & HUMAN SERVS., *Open*
27 *Chemistry Database: Potassium iodide: 10.2 Methods of Manufacture*
28 PUBCHEM.NCBI.NLM.NIH.GOV.

1 The iodate is a poison /and/ ... must be completely
2 removed frequently by a final reduction with carbon.
3 After re-resolution in water, further purification is carried
4 out before recrystallization. Iron, barium, carbonate,
5 and hydrogen sulfide are used to effect precipitation of
6 sulfates and heavy metals; or

7 v. Made by (1) Reaction of HI & KCl, followed by
8 distillation of HCl, (2) Reaction of iodine with KOH or
9 K₂CO₃ in solution, (3) Reaction of ferrous/ferric
10 iodide with K₂CO₃, and (4) Evaporation of natural
11 brines.

12 17. Whether Defendant's labeling of the Products as natural is deceptive is
13 judged by whether it would deceive or mislead a reasonable person. To assist in
14 ascertaining what a reasonable consumer believes the term natural means, one can
15 look to the regulatory agencies for their guidance.

16 18. In 2013, the United States Department of Agriculture ("USDA") issued
17 a Draft Guidance Decision Tree for Classification of Materials as Synthetic or
18 Nonsynthetic (Natural). In accordance with this decision tree, a substance is
19 natural—as opposed to synthetic—if: (a) it is manufactured, produced, or extracted
20 from a natural source (i.e. naturally occurring mineral or biological matter); (b) it
21 has not undergone a chemical change (i.e. a process whereby a substance is
22 transformed into one or more other distinct substances) so that it is chemically or
23 structurally different than how it naturally occurs in the source material; or (c) the
24 chemical change was created by a naturally occurring biological process such as
25 composting, fermentation, or enzymatic digestion or by heating or burning
26 biological matter.

1 19. Congress has defined “synthetic” to mean “a substance that is
2 formulated or manufactured by a chemical process or by a process that chemically
3 changes a substance extracted from naturally occurring plants, animals, or mineral
4 sources” 7 U.S.C. § 6502 (21).

5 20. Consumers lack the meaningful ability to test or independently
6 ascertain or verify whether a product is natural, especially at the point of sale.
7 Consumers would not know the true nature of the ingredients merely by reading the
8 ingredients label. This is because the ingredient list does not disclose the
9 manufacturing process for each ingredient. As the citations in paragraph 7 make
10 clear, it takes dedicated research of the scientific, manufacturing, and regulatory
11 literature to ascertain the manufacturing process for each ingredient, and thereby
12 ascertain whether the ingredient is a synthetic substance.

13 21. Discovering that the ingredients are not natural and are actually
14 synthetic requires a scientific investigation and knowledge of chemistry beyond that
15 the everyday knowledge of the average consumer. This is why, even though the
16 ingredients listed above are identified on the back of the Products’ packaging in the
17 ingredients list, the reasonable consumer would not understand – nor are they
18 expected to understand - that these ingredients are synthetic.

19 22. Moreover, the reasonable consumer is not expected or required to scour
20 the ingredients list on the back of the Products in order to confirm or debunk
21 Defendant’s prominent claims and representations that the Products are natural.

22 23. Defendant did not disclose that the above listed ingredients are
23 synthetic ingredients. A reasonable consumer understands Defendant’s natural
24 claims to mean that the Products are natural and do not contain synthetic ingredients.

25 24. Consumers rely on label representations and information in making
26 purchasing decisions.

1 25. The marketing of the Products as natural in a prominent location on the
2 labels of all of the Products, throughout the Class Period, evidences Defendant's
3 awareness that natural claims are material to consumers.

4 26. Defendant's deceptive representations and omissions are material in
5 that a reasonable person would attach importance to such information and would be
6 induced to act upon such information in making purchase decisions.

7 27. Plaintiff and the Class members reasonably relied to their detriment on
8 Defendant's misleading representations and omissions.

9 28. Defendant's false, misleading, and deceptive misrepresentations and
10 omissions are likely to continue to deceive and mislead reasonable consumers and
11 the general public, as they have already deceived and misled Plaintiff and the Class
12 members.

13 29. In making the false, misleading, and deceptive representations and
14 omissions described herein, Defendant knew and intended that consumers would pay
15 a premium for Products labeled as being natural over comparable products not so
16 labeled.

17 30. As an immediate, direct, and proximate result of Defendant's false,
18 misleading, and deceptive representations and omissions, Defendant injured
19 Plaintiff and the Class members in that they:

- 20 a. Paid a sum of money for Products that were not what
21 Defendant represented;
- 22 b. Paid a premium price for Products that were not what
23 Defendant represented;
- 24 c. Were deprived of the benefit of the bargain because the
25 Products they purchased had less value than what
26 Defendant represented;
- 27 d. Ingested a substance that was of a different quality than
28

1 what Defendant promised; and

2 e. Were denied the benefit of the beneficial properties of the
3 natural supplements Defendant promised.

4 31. Had Defendant not made the false, misleading, and deceptive
5 representations and omissions, Plaintiff and the Class members would not have been
6 willing to pay the same amount for the Products they purchased.

7 32. Plaintiff and the Class members paid for Products that are natural but
8 received Products that are not natural. The Products Plaintiff and the Class members
9 received were worth less than the Products for which they paid.

10 33. Plaintiff and the Class members all paid money for the Products;
11 however, Plaintiff and the Class members did not obtain the full value of the
12 advertised Products due to Defendant's misrepresentations and omissions. Plaintiff
13 and the Class members purchased, purchased more of, and/or paid more for the
14 Products than they would have had they known the truth about the Products.
15 Consequently, Plaintiff and the Class members have suffered injury in fact and lost
16 money as a result of Defendant's wrongful conduct.

17 **CLASS ALLEGATIONS**

18 34. Plaintiff brings this action as a class action pursuant to Federal Rule of
19 Civil Procedure 23. Plaintiff seeks to represent the following class ("Class" or
20 "California Class") defined as follows:

21 All consumers within the State of California who purchased the
22 Products from July 25, 2019 through the date of entry of class
23 certification for their personal use, rather than for resale or
24 distribution. Excluded from the Class are Defendant's current or
25 former officers, directors, and employees; counsel for Plaintiff
26 and Defendant; and the judicial officer to whom this lawsuit is
27 assigned.

1 35. The requirements of Federal Rule of Civil Procedure 23 are satisfied
2 because:

3 A. Numerosity: The members of the class are so numerous that
4 joinder of all members is impracticable. While the exact number of class members
5 is presently unknown to Plaintiff, based on Defendant's volume of sales, Plaintiff
6 estimates that it is in the thousands.

7 B. Commonality: There are questions of law and fact that are
8 common to the class members and that predominate over individual questions.
9 These include the following:

10 i. Whether Defendant is responsible for the conduct alleged herein
11 which was uniformly directed at all consumers who purchased
12 the Products;

13 ii. Whether Defendant's misconduct set forth in this Complaint
14 demonstrates that Defendant has engaged in unfair, fraudulent,
15 or unlawful business practices with respect to the advertising,
16 marketing, and sale of its Products;

17 iii. Whether Defendant made false and/or misleading statements to
18 the Class and the public concerning the contents of its Products;

19 iv. Whether Defendant's false and misleading statements
20 concerning its Products were likely to deceive the public; and

21 v. Whether Plaintiff and the Class are entitled to money damages
22 under the same causes of action as the other Class Members.

23 C. Typicality: Plaintiff's claims are typical of the claims of the class
24 members because Plaintiff suffered the same injury as the class members—*i.e.*,
25 Plaintiff purchased the Products based on Defendant's misleading
26 misrepresentations, omissions, and non-disclosures that the Products did not contain
27 benzene.

1 D. Adequacy: Plaintiff will fairly and adequately represent and
 2 protect the interests of the members of each class. Plaintiff does not have any
 3 interests that are adverse to those of the class members. Plaintiff has retained
 4 competent counsel experienced in class action litigation and intends to prosecute this
 5 action vigorously.

6 E. Superiority: A class action is superior to other available methods
 7 for the fair and efficient adjudication of this controversy. Class action treatment will
 8 permit a large number of similarly situated persons to prosecute their common
 9 claims in a single forum simultaneously, efficiently, and without the unnecessary
 10 duplication of effort and expense that numerous individual actions would engender.
 11 Since the damages suffered by individual class members are relatively small, the
 12 expense and burden of individual litigation make it virtually impossible for the class
 13 members to seek redress for the wrongful conduct alleged, while an important public
 14 interest will be served by addressing the matter as a class action.

15 36. The prerequisites for maintaining a class action for injunctive or
 16 equitable relief under Federal Rule of Civil Procedure 23(b)(2) are met because
 17 Defendant had acted or refused to act on grounds generally applicable to each class,
 18 thereby making appropriate final injunctive or equitable relief with respect to each
 19 class as a whole.

20 **FIRST CAUSE OF ACTION**
 21 **Violation of the Consumers Legal Remedies Act**
 22 **California Civ. Code § 1750 *et seq.***
 (On Behalf of the Class)

23 37. Plaintiff incorporates by reference the allegations set forth above.

24 38. Plaintiff and the California Class members are “consumers” under the
 25 California Consumers Legal Remedies Act (“CLRA”), California Civil Code section
 26 1761(d).

27 39. The Products are “goods” under California Civil Code section 1761(a).
 28

1 40. The purchases by Plaintiff and the California Class members of the
2 Products are “transactions” under California Civil Code section 1761(e).

3 41. Under section 1770 of the CLRA:

4 (a) The following unfair methods of competition and
5 unfair or deceptive acts or practices undertaken by any
6 person in a transaction intended to result or which results
7 in the sale or lease of goods or services to any consumer
8 are unlawful:

9 * * * * *

10 (5) Representing that goods or services have sponsorship,
11 approval, characteristics, ingredients, uses, benefits, or
12 quantities which they do not have or that a person has a
13 sponsorship, approval, status, affiliation, or connection
14 which he or she does not have.

15 * * * * *

16 (7) Representing that goods or services are of a particular
17 standard, quality, or grade, or that goods are of a
18 particular style or model, if they are of another.

19 * * * * *

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

22 * * * * *

23 (16) Representing that the subject of a transaction has
24 been supplied in accordance with a previous
25 representation when it has not.

26 *Id.* § 1770.

1 42. As alleged above, Defendant violated, and continues to violate, Civil
2 Code section 1770(a)(5) by representing the Products have characteristics, uses,
3 benefits, and qualities which they do not. Specifically, Defendant represents the
4 Products are natural, when, in fact, the Products contained unnatural ingredients.

5 43. Further, as alleged above, Defendant violated, and continues to violate,
6 Civil Code section 1770(a)(7) by representing the Products are of a particular
7 standard or quality when they are of another. Specifically, Defendant represents the
8 Products are natural, when, in fact, the Products contained unnatural ingredients.

9 44. Further, as alleged above, Defendant violated, and continues to violate,
10 Civil Code section 1770(a)(9) by advertising the Products are natural, when, in fact,
11 the Products contained unnatural ingredients.

12 45. Finally, as alleged above, Defendant violated, and continues to violate,
13 Civil Code section 1770(a)(16) by representing that the Products it sold Plaintiff and
14 the Class members are natural, when, in fact, they are not.

15 46. Plaintiff and the Class members believed the Products were natural
16 based on the Products' label. Plaintiff and the Class members would not purchase
17 the Products, but for Defendant's misleading misrepresentations, omissions, and
18 non-disclosures.

19 47. Plaintiff and the Class members are injured in fact and lose money as a
20 result of Defendant's conduct. Plaintiff and the Class members pay for Products that
21 are natural but do not receive such Products because the Products contained
22 unnatural ingredients.

23 48. On information and belief, Defendant's actions were willful, wanton,
24 and fraudulent.

25 49. On information and belief, officers, directors, or managing agents at
26 Defendant authorized the use of the misleading statements about the Products.

- 1 H. awarding Plaintiff reasonable costs and expenses of suit, including
2 attorneys' fees;
3 I. awarding pre- and post-judgment interest to the extent the law allows;
4 and
5 J. for such further relief as this Court may deem just and proper.

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff hereby demands trial by jury on all claims so triable.

8 Date: July 25, 2022

Respectfully submitted,

9 /s/Michael R. Reese

10 Michael R. Reese (SBN 206773)

11 Sue J. Nam (SBN 206729)

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27
28

CIVIL COVER SHEET

The JS 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 by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Edison Corpuz

(b) County of Residence of First Listed Plaintiff San Diego County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Michael R. Reese (212) 643-0500
REESE LLP 100 West 93rd Street, NY, NY 10025

DEFENDANTS

Bayer Corporation

County of Residence of First Listed Defendant Morris County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'22CV1085 MMAJLB**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 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)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)[Click here for: Nature of Suit Code Descriptions.](#)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|---|--|---|---|--|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education | PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | | |

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 (specify) ☐ 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):

28 U.S.C. 1332(d)

Brief description of cause:
deceptive labeling

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
5000000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

July 25, 2022

/s/ Michael R. Reese

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 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 by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating 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 Rule 8(a), F.R.Cv.P., 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.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 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.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 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 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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN 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 Rule 23, F.R.Cv.P.
- 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 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.