IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW YORK

DONNA BEATTY, on behalf of herself and others similarly situated,

Plaintiff,

v.

QUINCY BIOSCIENCE HOLDING CO., INC., QUINCY BIOSCIENCE, LLC, PREVAGEN, INC. d/b/a SUGAR RIVER SUPPLEMENTS, and QUINCY BIOSCIENCE MANUFACTURING, LLC

Defendants.

CASE No. 1:25-cv-00727-DEH-VF

FIRST AMENDED CLASS ACTION COMPLAINT

NATURE OF ACTION

1. Defendants manufacture, market, and sell a supplement called Prevagen.

2. Until recently, and at least since January 2022, Defendants have consistently represented, among other things, that Prevagen:

a. improves memory,

b. is clinically shown to reduce memory problems associated with aging,

c. provides other cognitive benefits, including but not limited to healthy brain function, a sharper mind, and clearer thinking,

d. includes a "clinically tested ingredient" (apoaequorin) that provides cognitive benefits, including but not limited to healthy brain function, a sharper mind, and clearer thinking.

In 2024, a jury in the Southern District of New York found that many of Defendants' representations about Prevagen have a tendency to deceive and that (b) was materially misleading (the *FTC Action*").

3. Judgement was entered against Defendants on November 18, 2024. However, the only relief sought and obtained by the Federal Trade Commission was injunctive relief.

4. This class action seeks to fill the gap by seeking statutory damages on behalf of New York class members who purchased Prevagen.

PARTIES

5. Plaintiff Donna Beatty is domiciled in Milford, New Jersey. Within the last three years, Plaintiff purchased regular strength Prevagen several times from retail stores located in New York.

6. Specifically, Plaintiff first began purchasing Prevagen products sometime around 2019, and continued to purchase the products periodically through approximately 2023. She had no unrealistic expectations that the product would work instantly, but after several years of using the product as directed, concluded that it did not work as advertised. During the relevant period (i.e after January 24, 2022), she bought the product a half a dozen or more times from various chain stores in Manhattan and in the New York Hudson Valley area. To the best of her recollection, these stores typically were Walmart, Walgreen, and CVS. Sometimes, she purchased regular strength Prevagen, which typically costs around $40, and other times, she purchased extra strength, which typically costs around $60. Plaintiff used both versions but experienced no difference whatsoever between the regular and extra strength products.

7. Before purchasing the products, Plaintiff reviewed and relied on the product packaging, including the representations that Prevagen provides cognitive benefits like "healthy brain function," a "sharper mind," and "clearer thinking;" that Prevagen "is clinically shown to help with mild memory loss associated with aging;" and that the product was unqualifiedly "safe." Based on the representations on the packaging and its overall context, Plaintiff also believed that the product had a special "clinically tested ingredient" that offered more than simple, and much cheaper, Vitamin D could provide.

8. Plaintiff would not have purchased Prevagen if she had known at the time that the statements had a tendency to deceive and/or were materially misleading.

9. Plaintiff has no past or present financial, employment, familial, or other relationship with any of the attorneys in this action. Plaintiff has no conflict of interest with the proposed class members.

10. Defendant Quincy Bioscience Holding Company, Inc. is a Wisconsin corporation with its principal place of business at 726 Heartland Trail, Suite 300, Madison, Wisconsin. Quincy Bioscience Holding Company, Inc. transacts or has transacted business in this district and throughout the United States. At all times material to this Complaint, acting alone or in concert with others, Quincy Bioscience Holding Company, Inc., through its wholly-owned subsidiaries, has advertised, marketed, promoted, distributed, or sold Prevagen to consumers throughout the United States, including New York.

11. Defendant Quincy Bioscience, LLC is a wholly-owned subsidiary of Quincy Bioscience Holding Company, Inc. It is a Wisconsin limited liability company with its principal place of business at 726 Heartland Trail, Suite 300, Madison, Wisconsin. Quincy Bioscience, LLC transacts or has transacted business in this district and throughout the United States. At all times material to this Complaint, acting alone or in concert with others, Quincy Bioscience, LLC has advertised, marketed, promoted, distributed, or sold Prevagen to consumers throughout the United States, including New York.

12. Defendant Prevagen, Inc., also doing business as Sugar River Supplements, is a wholly-owned subsidiary of Quincy Bioscience Holding Company, Inc. It is a Wisconsin corporation with its principal place of business at 726 Heartland Trail, Suite 300, Madison, Wisconsin. Prevagen, Inc. transacts or has transacted business in this district and throughout the United States. At all times material to this Complaint, acting alone or in concert with others, Prevagen, Inc. has advertised, marketed, promoted, distributed, or sold Prevagen to consumers throughout the United States, including New York.

13. Defendant Quincy Bioscience Manufacturing, LLC is a wholly-owned subsidiary of Quincy Bioscience Holding Company, Inc. It is a Wisconsin corporation with its principal

place of business at 726 Heartland Trail, Suite 300, Madison, Wisconsin. Quincy Bioscience Manufacturing, LLC transacts or has transacted business in this district and throughout the United States. At all times material to this Complaint, acting alone or in concert with others, Quincy Bioscience Manufacturing, LLC has advertised, marketed, promoted, distributed, or sold Prevagen to consumers throughout the United States, including New York.

14. Defendants Quincy Bioscience Holding Company, Inc., Quincy Bioscience, LLC, Prevagen, Inc., and Quincy Bioscience Manufacturing, LLC (collectively, "Corporate Defendants") have operated as a common enterprise while engaging in the deceptive acts and practices alleged below. These Corporate Defendants have conducted the business practices described below through an interrelated network of companies that have common ownership, officers, managers, business functions, employees, and office locations. Because these Corporate Defendants have operated as a common enterprise, each of them is jointly and severally liable for the acts and practices alleged below.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A) because this case is a class action where the aggregate claims of all members of the proposed class are in excess of $5,000,000.00, exclusive of interest and costs, and at least one member of the proposed class is citizen of a state different from Defendants.

16. This Court has specific jurisdiction over each Defendant.

17. Venue is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims occurred in this District.

FACTUAL ALLEGATIONS

18. **Product at issue:** Prevagen is a dietary supplement containing the active ingredient apoaequorin, a dietary protein, which according to Defendants was originally obtained from a species of jellyfish called *Aequorea victoria*.

19. Prevagen is available in Regular Strength (10 milligrams) and Extra Strength (20 milligrams) capsules and chewable versions, and Prevagen Professional (40 milligrams) capsules (collectively, "Prevagen Products" or "subject products").

20. A bottle of each Prevagen Product contains 30 tablets and provides a 30-day supply if taken once daily according to the product label's suggested use. The price per bottle ranges from $24.29 to $58.53 for Prevagen Regular Strength, $32.17 to $69.95 for Prevagen Extra Strength, $16.49 to $51.29 for Prevagen Chewable, and $39.33 to $68.40 for Prevagen Professional.

21. Apart from the labels "Regular Strength, "Extra Strength," "Chewable," and "Professional," the packaging of the Prevagen products were the same in all material respects.

22. Originally, the front and right-side labels looked like this:

Supplement Facts

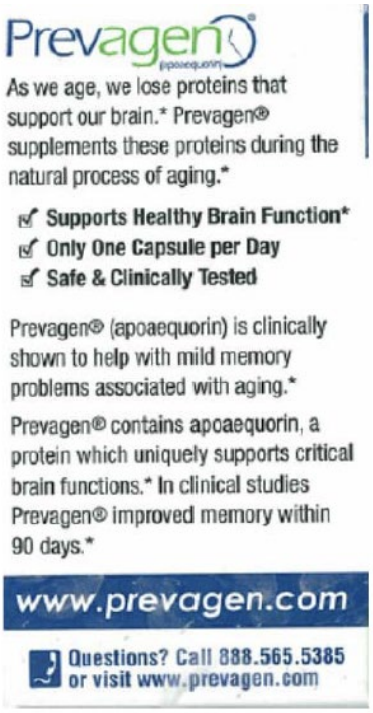
Serving Size: 1 capsule
Servings per container: 30

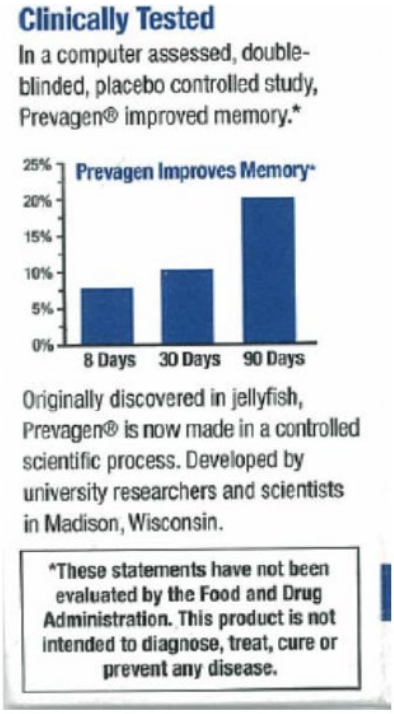
Amount per capsule		% Daily Value
Apoaequorin	10 mg	†

† Daily Value not established.

Other ingredients: white rice flour, cellulose, salt, magnesium stearate, acetic acid.
Manufactured & Distributed by Quincy Bioscience
301 S Westfield Road • Madison, WI 53717
Made without COMMON ALLERGENS
Suggested use: Take 1 vegetarian capsule daily in the morning, with or without food.

23. The left-side and back labels looked like this:





24. The product labeling later changed, and Defendants have admitted in these proceedings that the labeling was consistent during the entire period between January 24, 2022 through January 24, 2024. ECF No. 33, at ¶ 4. According to Defendants, the labeling at issue in this case looks like this:

25. **Relevant time period:** All misrepresentations at issue here were uniformly and consistently made at all times while the products were sold during the period January 24, 2022 through January 24, 2024. The product packaging remained the same during the period, and any material changes that occurred were made, if at all, after the issuance of the November 18, 2024 injunction in the *FTC Action*.

26. **The misrepresentations:** The misrepresentations at issue are as follows:

a. Prevagen "Improves Memory" (front of box).

b. Prevagen "supports healthy brain function, [a] sharper mind, [and] clearer thinking" (front of box).

c. Prevagen "supports healthy brain function" (top of the box).

d. Apoaequorin "uniquely supports brain function" (back of box).

e. Prevagen "is clinically shown to help with mild memory loss associated with aging" (back of box).

f. "Clinically tested ingredient" (front of box).

g. The representations that certain products are "regular strength," "extra strength," or "professional formula" (front of box).

h. "Safe and clinically tested ingredient" (back of box).

27. All of the misrepresentations are material to a reasonable consumer because they involve health and relate to the central characteristics of Prevagen.

28. The misrepresentations are also material because Prevagen is marketed for no purpose other than for its purported benefits on memory and cognition.

29. Defendants intended Plaintiff and other consumers to be deceived by these misrepresentations. The purpose of each misrepresentation was to induce sales.

30. **How/why misleading:**

"Improves Memory," "Supports Healthy Brain Function, etc.:

31. The representations that Prevagen "improves memory" and "supports healthy brain function, [a] sharper mind, [and] clearer thinking," and the representation on the top of the box that it "supports healthy brain function," all have a tendency to deceive and are misleading because Prevagen does not materially provide any of the advertised benefits. Prevagen is no more effective than a placebo, if at all.

"Uniquely supports brain function"

32. The statement on the back of the box that apoaequorin "uniquely supports brain function" has a tendency to deceive and is materially misleading because during the trial in the *FTC Action*, Defendants' own expert admitted that "not much of anything is shown to directly help improve healthy brain function, memory, and cognition …."

33. Also, Defendants' own studies showed that apoaequorin is rapidly digested in the stomach and broken down into amino acids and small peptides. The problem with placing apoaequorin in a capsule or tablet is that it creates problems with how it is absorbed. When a person eats protein (or takes a capsule with protein in it), the stomach and pancreas quickly start working together to break it down and digest it, rather than absorbing it. This is why protein-based medications are typically injectable only. As a result, orally-administered apoaequorin provides no material benefit at all, or alternatively, not in the dosages provided in Prevagen products.

34. The labeling references to apoaequorin therefore also have a tendency to deceive because they are a misleading partial representation that fails to disclose that apoaequorin does not provide the benefits advertised when it is administered orally.

"Clinically Proven"

35. The statement on the back of the box that "Prevagen is clinically shown to help with mild memory loss associated with aging" also is materially misleading for at least three reasons.

36. First, it is misleading because Prevagen has no material benefit with respect to memory loss associated with aging, and is no more effective than a placebo, if at all.

37. Second, Defendants fail to disclose that even their own studies showed that apoaequorin is rapidly digested in the stomach and broken down into amino acids and small peptides. Defendants have no studies showing that orally administered apoaequorin (the active ingredient in Prevagen) can cross the human blood brain barrier and benefit cognition.

38. Third, the statement is a misleading partial representation (or half-truth) because Defendants fail to disclose that Defendants bought and paid for the clinical studies referenced, and hence, the study and purported results were not the result of an unbiased process. Instead, the study was done for self-serving commercial purposes, not legitimate, scientific purposes. The unqualified statement that the benefits are "clinically proven" are therefore misleading, because a reasonable consumer would want to know the full and unadorned truth, which is that the study was sham designed to gin-up the desired results.

39. Specifically, Defendants have disclosed that the "clinical study" referenced on the labeling was called the "Madison Memory Study" ("MMS"). That study was not the result of a legitimate clinical study or accepted scientific principles. The accepted approach to determine the efficacy of a given medication or supplement is to determine whether there is a statistically significant effect over a placebo based on a properly-conducted randomized controlled clinical trial. It also is a basic scientific principal that the results of any such study must be replicable.

So, any legitimate expert in the field of medicine—i.e. one who is not being paid by Prevagen to produce the desired results—would require that any cognitive benefits claimed by a product be proven by at least one well-conducted randomized clinical trial, but preferably more to establish that the results can be replicated. This did not happen with the Madison Memory Study.

40. Every clinical trial has a pre-stated protocol that sets forth what hypothesis is being studied and then governs how the study is to be conducted and what conclusions can be drawn. The MMS's purpose was to test the effects of Prevagen on 218 people, without regard to their purported cognitive status (i.e., impaired or not). The 2016 published version of the study said this about that subject: "**no statistically significant results were observed over the entire study population**… ." In the results section, they acknowledge that there was no statistical difference for any of the endpoints they studied.

41. In other words, the MMS was what is called a "negative study" showing that Prevagen did not work as represented.

42. To get the results they were looking for, Defendants then conducted a post-hoc analysis of a small subset of study participants. Defendants cherry-picked the data to gin-up purportedly statistically significant results by combining the results of one subgroup of people identified with either minimal or no cognitive impairment. However, that is not how the study was designed to work. Post-hoc analyses like the one conducted by Defendants are not a scientifically accepted method for reaching reliable efficacy conclusions.

43. The post-hoc analysis also is invalid because Defendants used an unreliable method to categorize individual study subjects' baseline cognitive status, which in turn, produced unreliable results for the subgroup Defendants chose.

44. Finally, the MMS was designed and conducted by people with no training or experience in clinical trials and who had obviously biased motivations. The study was developed by an employee of Defendants who had a bachelor's degree in psychology. In turn, that individual was supervised by another employee of Defendants who had an MBA degree, and little or no scientific background. Another person in charge of the study was former-Defendant Mark Underwood, who—perhaps more than anyone else—had the greatest personal incentive to ensure that the MMS said what he needed it to say.

45. The upshot of all of this is that when Defendants rely on the MMS to support their defenses in this case, they are essentially saying "Prevagen works because we say it does."

46. Although Defendants lack scientifically valid substantiation for their advertising claims about Prevagen, that is not the basis for the claims alleged here. Instead, the crux of this case is that—irrespective of Defendants' lack of substantiation—the labeling statements at issue here are affirmatively false or misleading, or otherwise have the capacity to deceive or confuse reasonable consumers. In other words, Plaintiff is not arguing that Defendants have the burden to prove that their products are effective or that they must conduct tests showing their products are effective; instead, Plaintiff can affirmatively prove that Defendants' products are no more effective than a placebo. The reason is that, contrary to the labeling:

- ✓ Prevagen does not "improve memory."
- ✓ Prevagen does not "support healthy brain function, a sharper mind, and clearer thinking."
- ✓ Prevagen does not "help with mild memory loss associated with aging."

"Clinically tested ingredient"

47. The front labeling reference to "clinically tested ingredient" is misleading because in the context of the labeling as a whole, a reasonable consumer would infer that the ingredient referenced would provide the benefits advertised on the front label: namely, "improve[] memory," "support[s] healthy brain function, [a] sharper mind, [and] clearer thinking," None of the ingredients provide those benefits in any material way, and they are no more effective than a placebo, if at all.

48. The reference to a "clinically tested ingredient" also has the tendency to deceive for the same reasons already alleged above concerning the ingredient apoaequorin, and concerning the Defendants' sham test.

"Regular Strength," "Extra Strength," etc.

49. The representations that certain products are "regular strength," "extra strength," or "professional formula" have a tendency to deceive and are materially misleading because they suggest that different versions are more potent that others, when in fact none of them have any material affect. Consumers obtain no benefit from paying more for "extra strength" or "professional formula," and the mere existence of those options misleadingly reinforces the false impression that the products provide the advertised benefits, and that there are material differences between one version of the product and another.

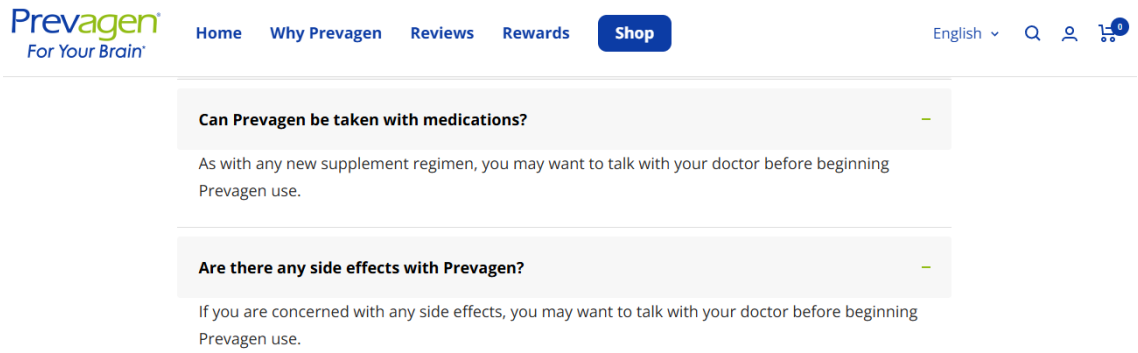
"Safe"

50. The unqualified representation on the back of the box that Prevagen is "safe" has tendency to deceive because the truth is, Prevagen carries a risk of side effects and potential interactions with prescription drugs.

51. The potential side effects reportedly include, among other issues, gastrointestinal issues, edema, and increased blood pressure, each of which can be of significant concern to the very same demographic that Prevagen targets: older people who may be facing memory problems, and who are also more likely to have medical conditions in which gastrointestinal issues, edema, and increased blood pressure are a particular concern.

52. Likewise, the use of the unqualified word "safe" has a tendency to deceive because there is a risk of taking Prevagen with certain other prescription medications, which again, is a common concern for Prevagen's target demographic.

53. Defendants' website concedes the potential for side effects or adverse interactions with other medications (or at least does not deny it), and yet the product labeling nonetheless makes the unqualified assertion that the product is "safe."



55. In short, the unqualified use of the term "safe" is misleading.

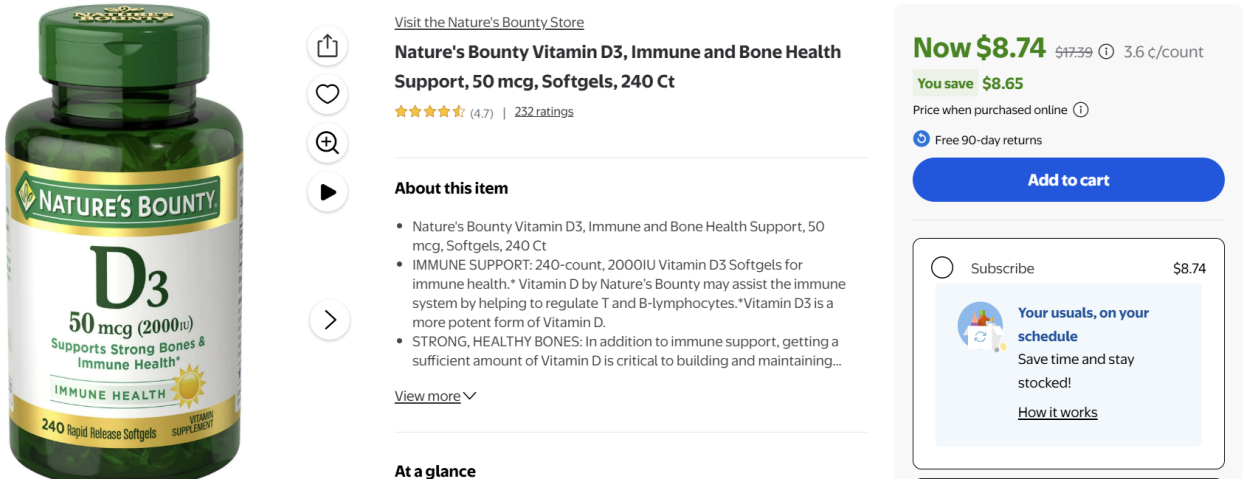
56. **Defendants' admissions concerning Vitamin D furnish an alternative or additional basis for liability**. In these proceedings, Defendants argued that Prevagen's labeling statements are not misleading because it discloses that the products contain Vitamin D, which Defendants now claim "provide[s] Prevagen's advertised benefits." ECF No. 32 at p.17. That

position, asserted for the first time in these proceedings, furnishes a separate and independent basis for liability.

57. If it is true that Prevagen's purported benefits derive or are intended to derive from common Vitamin D instead of the "clinically tested ingredient" apoaequorin, then the product has the tendency or capacity to deceive or confuse reasonable consumers about the true source of any purported benefits. That is materially misleading because whereas a 30-count box of Prevagen can cost $70 or more based on representations about apoaequorin, a bottle of 50 mcg of Vitamin D (the amount in Prevagen) costs only around $8-$10.

58. For example, if a person were to go to Walmart today and had a choice between 30ct Extra Strength Prevagen and a bottle of 240ct Nature's Bounty 50 mcd Vitamin D (a common and popular brand): Prevagen would cost roughly $50 more than the vitamin D, even though the Nature's Bounty product would have eight times more pills than Prevagen. Put another way, the Vitamin D pills would cost around 3 cents per pill, but each Prevagin pill would cost closer to $2.33 per pill, even though it has the same amount of Vitamin D.

59. The only reason someone would pay more for Prevagen to get less is if they believed that the apoaequorin in Prevagen provided the advertised benefits, not the Vitamin D.



60. Notably, as can be seen in the image above, even other manufacturers do not claim on the front of their labels that Vitamin D "improves memory" or provides other cognitive benefits. As of April 25, 2025, Walmart—one of the same stores that sells Prevagen—offered twenty different brands of Vitamin D supplements, including the most popular brands like Nature's Bounty, Nature Made, and Vitafusion. None of them claimed on the front label that Vitamin D improved memory, provided a sharper mind, or helped with clearer thinking. Most refer to supporting immunity and bone health, neither of which have any obvious relationship with Defendants' labeling statements.

61. So, to the extent Prevagen means to convey the impression that Vitamin D provides the advertised benefits, the labeling is false and misleading because Vitamin D does not do that, or does not do that in the dosages contained in Prevagen.

62. Defendants' assertion that Vitamin D provides the advertised benefits is misleading for another reason: even though the products are sold in "regular," "extra strength," and "professional" strength, each of those versions contains exactly the same amount of Vitamin D: 50 mcg. Hence, even if Vitamin D could provide any of the advertised benefits beyond a

placebo effect, each version of the product is exactly the same. Just as no rational consumer would buy Prevagen instead of Vitamin D, no rational consumer would pay more for a version of Prevagen that has exactly the same amount of Vitamin D, and that provides no additional benefit.

63. Plaintiff would not have purchased Prevagen if Defendants disclosed that the purported benefits of the product are attributable or intended to be attributable to common Vitamin D, rather than the marquee ingredient touted on the box, apoaequorin.

64. **Injury**

65. As a result of the facts alleged above, the Prevagen products are useless, and hence, the price premium associated with the misrepresentations is at or close to 100%, thereby establishing actual damages and entitlement to statutory damages under the GBL.

66. Alternatively, the only potential benefits, if any, from Prevagen derive from the inclusion of Vitamin D in the product, although not for the benefits advertised. Hence, given the massive cost difference between Prevagen and typical Vitamin D tablets, the price premium would be around 96%, if not more.

67. **Presuit notice:** Defendants were provided pre-suit notice via certified mail in a letter that complied with all applicable notice requirements.

68. **Tolling:** Any statute of limitation applicable to Plaintiff's or class members claims are tolled because Defendants affirmatively hid the true nature of Prevagen while misrepresenting that the product provided benefits that it did not provide.

69. Plaintiff and class members did not have the information essential to pursue their claims, without any fault or lack of diligence on their own part.

70. Defendants were under a duty to disclose the true character, quality, and nature of Prevagen to Plaintiff. Defendants therefore are estopped from relying on any statute of limitations.

71. All applicable statutes of limitations have been tolled by operation of the discovery rule. Plaintiff and other class members could not have learned through the exercise of reasonable diligence of Defendants' conduct as alleged herein.

CLASS ALLEGATIONS

72. ***Class Definition*:** Plaintiff brings this action on behalf of all people who purchased Prevagen in New York after January 24, 2022.

73. The class definition is a placeholder that may be altered or amended before final judgment. Fed. Civ. P. 23(c)(1)(C). Subject to additional information obtained through further investigation and discovery, the foregoing class definition may be expanded or narrowed by amendment or in the motion for class certification, including through the use of subclasses.

74. Excluded from the putative classes are Defendants and any entities in which Defendants have a controlling interest, Defendants agents and employees, the judge to whom this action is assigned, members of the judge's staff, and the judge's immediate family. Also excluded are any claims for personal injury.

75. ***Numerosity.*** Class members are so numerous that their individual joinder is impracticable. The class includes thousands of consumers. The precise number of class members and their identities are unknown to the Plaintiff at this time but may be determined through discovery.

76. ***Commonality and Predominance***. Common questions of law and fact exist as to all class members and predominate over questions affecting only individual class members. Common legal and factual questions include, but are not limited to:

a. Whether the challenged statements have a tendency to deceive;

b. Whether the challenged statements are materially misleading;

c. Whether class members are entitled to statutory damages;

d. Whether Defendants' conduct, as alleged herein, violates the consumer protection laws asserted here;

77. ***Typicality.*** Plaintiff's claims are typical of the claims of class members because Plaintiff and the Classes sustained damages as a result of Defendants' uniform wrongful conduct.

78. ***Adequacy***. Plaintiff will fairly and adequately protect the interests of class members. Plaintiff retained counsel that is highly experienced in complex consumer class action litigation, and Plaintiff will vigorously prosecute this action on behalf of class members.

79. ***Superiority***. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy for, *inter alia*, the following reasons: prosecutions of individual actions are economically impractical for class members; the class is readily definable; prosecution as a class action avoids repetitious litigation and duplicative litigation costs, conserves judicial resources, and ensures uniformity of decisions; and prosecution as a class action permits claims to be handled in an orderly and expeditious manner.

80. Without a class action, Defendants will likely retain the benefits of their wrongdoing.

FIRST CAUSE OF ACTION

Violation of New York General Business Law § 349

81. Plaintiff repeats the prior allegations of this Complaint and incorporates them by reference herein.

82. Plaintiff brings this cause of action individually and on behalf all other class members.

83. New York's General Business Law § 349 prohibits deceptive acts or practices in the conduct of any business, trade, or commerce.

84. In their sale of goods throughout the State of New York, Defendants conduct business and trade within the meaning and intendment of New York's General Business Law § 349.

85. Plaintiff and class members are consumers who purchased the subject products for their personal use.

86. By the acts and conduct alleged herein, Defendants engaged in deceptive, unfair, and misleading acts and practices, as alleged above.

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

88. The foregoing deceptive acts and practices are misleading in a material way because they fundamentally misrepresent the characteristics and quality of the subject products to induce consumers to purchase the same.

89. By reason of this conduct, Defendants engaged in deceptive conduct in violation of New York's General Business Law.

90. Defendants' actions are the direct, foreseeable, and proximate cause of the damages Plaintiff and class members have sustained from having paid for and used the subject products.

91. As a result of Defendants' violations, Plaintiff and class members have suffered damages because: (a) they would not have purchased the subject products on the same terms if they knew about Defendants' misrepresentations; (b) they paid price premium for the subject products due to the misrepresentations; and (c) the subject products do not have the characteristics, uses, benefits, or qualities as promised.

92. Plaintiff seeks all available relief under this cause of action.

SECOND CAUSE OF ACTION

Violation of New York General Business Law § 350

93. Plaintiff repeats the prior allegations of this Complaint and incorporates them by reference herein.

94. Plaintiff brings this cause of action individually and on behalf all other class members.

95. New York's General Business Law § 350 prohibits false advertising in the conduct of any business, trade, or commerce.

96. Pursuant to said statute, false advertising is defined as "advertising, including labeling, of a commodity . . . if such advertising is misleading in a material respect."

97. Based on the foregoing, Defendants engaged in consumer-oriented conduct that is deceptive or misleading in a material way which constitutes false advertising in violation of New York's General Business Law § 350.

98. Defendants' false, misleading, and deceptive statements and representations of fact were and are directed toward consumers. Defendants also actively concealed and knowingly admitted material facts regarding the true nature of the subject products.

99. Defendants' false, misleading, and deceptive statements and representations of fact and omissions were and are likely to mislead a reasonable consumer acting reasonably under the circumstances.

100. Defendants' false, misleading, and deceptive statements and representations of fact have resulted in consumer injury or harm to the public interest.

101. As a result of Defendants' false, misleading, and deceptive statements and representations of fact, Plaintiff and class members have suffered and continue to suffer economic injury.

102. As a result of Defendants' violations, Plaintiff and class members have suffered damages because: (a) they would not have purchased the Products on the same terms if they knew about Defendants' misrepresentations; (b) they paid price premium for the Products due to the misrepresentations; and (c) the Products do not have the characteristics, uses, benefits, or qualities as promised.

103. Plaintiff seeks all available relief under this cause of action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the proposed class, prays for the following relief:

A. Certification of the proposed classes; appointment of Plaintiff as representatives of the class; appointment of undersigned counsel as counsel for the classes;

B. A declaration that Defendants' actions complained of herein violated the statutes referenced herein;

C. For an order finding in favor of Plaintiff and class members on all counts asserted herein;

D. For actual, compensatory, statutory, nominal, and/or punitive damages in amounts to be determined by the Court and/or jury, or alternatively, non-restitutionary disgorgement of profits;

E. For prejudgment interest on all amounts awarded;

F. For an order awarding Plaintiff and class members their reasonable attorney fees, expenses, and costs of suit.

G. Orders granting such other and further relief as the Court deems necessary, just, and proper.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff requests a jury trial on all issues so triable.

Dated: May 9, 2025

Respectfully submitted,

/s/ Joel Smith
Joel Smith

SMITH KRIVOSHEY, PC
Joel D. Smith
867 Boylston Street, 5th Floor, Ste. 1520
Boston, MA 02116
Telephone: 617-377-7404
E-Mail: joel@skclassactions.com

Yeremey O. Krivoshey (SBN 295032)
(*pro hac vice* pending)
166 Geary Str STE 1500-1507
San Francisco, CA 94108
Telephone: 415-839-7077
Facsimile: 888-410-0415
E-Mail: yeremey@skclassactions.com

Stacy Ann Van Malden
GOLDBERGER & DUBIN, PC
5114 Post Road
Bronx, NY 10471
(718) 601-2652
Fax: (212) 966-0588
Email: staceyl11@optonline.net

Attorneys for Plaintiff