

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DIANNE GRAY, on behalf of herself and
all others similarly situated,

Plaintiff,

vs.

**BAYER CORPORATION and BAYER
HEALTHCARE, LLC,**

Defendants.

∴ **Case No.:** _____

∴ **Jury Trial Requested**

CLASS ACTION COMPLAINT

Plaintiff Dianne Gray (“Plaintiff”), individually and on behalf of all others similarly situated (the “Class”), by her attorneys, hereby complains against Bayer Corporation and Bayer HealthCare, LLC (collectively “Bayer” or “Defendants”).

INTRODUCTION

1. Bayer has promoted, advertised and marketed its “One-A-Day WeightSmart” dietary supplement products as “a safe way to supplement the effort you are making to better control your weight.” Trusting consumers purchased these products hoping that the promises made were true. These promises included promises that One-A-Day WeightSmart had the ability to, *inter alia*, increase metabolism, prevent weight gain associated with the decline in metabolism that occurs after the age of 30, and help to generally promote weight maintenance.

2. In reality, Bayer’s One-A-Day WeightSmart products do not live up to these promises, a fact which was confirmed by the January 2007 Consent Decree entered

into between Bayer and the Federal Trade Commission (“FTC”), in which Bayer agreed to pay a multi-million dollar civil penalty for violating an earlier Federal Trade Commission order governing their promotion, advertising and marketing of its “One-A-Day” products.

PARTIES

3. Plaintiff Dianne Gray (“Plaintiff”) is a resident of Millbrook, Alabama. She purchased Bayer’s One-A-Day WeightSmart products. She brings this action on behalf of herself as an individual consumer and on behalf of all others similarly situated.

4. Defendant Bayer Corporation is an Indiana corporation with its headquarters located in Pittsburgh, Pennsylvania, and an office and place of business located in Morristown, New Jersey. Bayer Corporation, which has annual sales in excess of \$10 billion, through its subsidiaries, manufactures and sells a variety of products, including vitamins, dietary supplements, and over-the-counter and prescription drugs.

5. Defendant Bayer HealthCare, LLC, is a Delaware corporation with a principal place of business in Morristown, New Jersey. Bayer HealthCare, LLC is a subsidiary of Bayer Corporation. Bayer HealthCare, LLC markets and sells One-A-Day brand vitamins and supplements, including “One-A-Day WeightSmart” multivitamin and dietary supplements. Bayer Corporation and Bayer HealthCare, LLC are hereinafter referred to collectively as “Bayer.”

6. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, that the employees of Bayer, its subsidiaries, affiliates and other related entities, as well as the employees of those subsidiaries, affiliates and other related entities, were the agents, servants and employees of Bayer, and at all times herein

mentioned, each was acting within the purpose and scope of said agency and employment. Whenever reference in this Complaint is made to any act or transaction of Bayer, such allegation shall be deemed to mean that the principals, officers, directors, employees, agents, and/or representatives of Bayer committed, knew of, performed, authorized, ratified and/or directed such act or transaction on behalf of Bayer while actively engaged in the scope of their duties.

VENUE AND JURISDICTION

7. This Court has jurisdiction over the subject matter presented by this Complaint because it is a class action arising under the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4 (2005), which explicitly provides for the original jurisdiction of the Federal Courts of any class action in which any member of the Class is a citizen of a State different from any Defendant, and in which the matter in controversy exceeds in the aggregate the sum of \$5,000,000.00, exclusive of interest and costs. Plaintiff alleges that the total claims of individual Class members in this action are in excess of \$5,000,000.00 in the aggregate, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2), (5). Plaintiff is a citizen of Alabama, whereas, as set forth above, Bayer Corporation can be considered a citizen of Indiana, Pennsylvania or New Jersey and Bayer HealthCare, LLC can be considered a citizen of Delaware or New Jersey for the purposes of diversity. Therefore, diversity of citizenship exists under CAFA as required by 28 U.S.C. § 1332(d)(2)(A). Furthermore, Plaintiff alleges that more than two-thirds of all of the members of the proposed Class in the aggregate are citizens of a state other than New Jersey, where this action is originally being filed, and that the total number of members of the proposed Class is greater than 100, pursuant to 28 U.S.C.

§ 1332(d)(5)(B).

8. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims herein occurred in this district and because Bayer may be found in and is subject to personal jurisdiction in this district.

FACTUAL ALLEGATIONS

9. All allegations in this Complaint are based on information and belief and/or are likely to have evidentiary support after reasonable opportunity for further investigation and discovery. Plaintiff repeats, re-alleges and incorporates by reference the paragraphs above.

10. Bayer has promoted, advertised and marketed One-A-Day WeightSmart as “a safe way to supplement the effort you are making to better control your weight.”

11. On or about January 3, 2007, the United States, acting upon the notification and authorization to the U.S. Attorney General by the Federal Trade Commission (“FTC”), filed an action against Bayer (the “Lawsuit”) in the United States District Court for the District of New Jersey,¹ under Sections 5(1), 13(b) and 16(a) of the Federal Trade Commission Act (“FTCA”), 15 U.S.C. §§ 45(1), 53(b) and 56(a). The Lawsuit sought monetary civil penalties, a permanent injunction, rescission of contracts, restitution, disgorgement of ill-gotten gains and other equitable relief from Bayer for violation of a final FTC order to cease and desist. A true and correct copy of the Lawsuit is attached hereto as Exhibit 1 and incorporated by reference.

¹ *United States of America v. Bayer Corporation*, United States District Court, District of New Jersey, Civil Action No. 07-01 (HAA).

12. The Lawsuit was based on an earlier FTC proceeding,² in which the FTC charged Miles, Inc.,³ a U.S. subsidiary of Bayer Group of Germany, with violating Sections 5(a) and 12 of the FTCA, 15 U.S.C. §§ 45(a) and 52. On January 28, 1991, the FTC entered a final order against Miles Inc., to cease and desist certain advertising practices with respect to One-A-Day brand vitamin and mineral supplements (“Order,” a copy of which is attached as Exhibit A to the Lawsuit (Exhibit 1 to this Complaint.)) The Order was served upon Miles, Inc., in 1991, and remained in full force at all relevant times. The Order included a provision that:

respondent Miles Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale, or distribution of One-A-Day brand vitamins, including specifically, but not limited to, One-A-Day Maximum Formula, One-A-Day Stressguard, One-A-Day Essential, One-A-Day Plus Extra C, and One-A-Day Within, do forthwith cease and desist from making any representation, directly or by implication, concerning the need for or benefits to be derived from consumption of such product unless, at the time such representation is made, respondent possesses and relies upon a reasonable basis consisting of competent and reliable scientific evidence to substantiate the representation; competent and reliable scientific evidence shall mean those tests, analyses, research, studies or other evidence, conducted and evaluated in an objective manner by persons qualified to do so using procedures generally accepted by others in the profession or science to yield accurate and reliable results.

Order, Sect. II, pp. 2-3.

13. In the Lawsuit, the United States alleged that Bayer had engaged in a national advertising campaign for One-A-Day WeightSmart that made unsubstantiated claims that the product increased metabolism, enhanced metabolism through its EGCG

² Docket No. C-3323.

³ Bayer is a successor to Miles, Inc., and subject to the Order.

content,⁴ helped prevent weight gain associated with age-related metabolism decline, and helped users control their weight by enhancing their metabolism.

14. The advertising campaign was conducted through the use of various media, including television, radio, the internet, newspapers and national magazines. The Lawsuit alleged that these unsubstantiated claims violated the Order, specifically the section cited above requiring that all claims regarding the benefits of One-A-Day brand products be substantiated by competent and reliable scientific evidence.

15. On January 4, 2007, the FTC announced that it had entered into a consent decree ("Consent Decree") by which the parties agree to settle the Lawsuit. A true and correct copy of the Consent Decree is attached hereto as Exhibit "2" and incorporated by reference.

16. Pursuant to the terms of the Consent Decree, Bayer agreed to pay a \$3.2 million civil penalty and is prohibited from violating the earlier FTC Order.

17. Additionally, the Consent Decree provides that, with regard to the manufacture, labeling, advertising, promotion, offer for sale, sale, or distribution of any dietary supplement, or multivitamin, including but not limited to One-A-Day WeightSmart, Bayer is permanently enjoined from:

Making any representation, including through endorsements or trade name, expressly or by implication:

- A. That such product or any of its ingredients:
 - 1. Increases metabolism;
 - 2. Enhances metabolism through its EGCG content;
 - 3. Helps prevent some of the weight gain associated with a decline in metabolism in users over age 30;
 - 4. Helps users control their weight by enhancing their

⁴ Epigallocatechin gallate, an extract from green tea.

- metabolism;
 - 5. Makes a material contribution to any program or system that promotes weight maintenance;
 - 6. Can or will cure, treat, or prevent any disease; or
 - 7. Have any effect on the structure or function of the human body; or
- B. About the benefits, performance, efficacy, safety or side effects, of such product or any of its ingredients; unless at the time the representation is made, Defendant Bayer Corporation possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

Consent Decree, Sect. III, pp. 4-5.

18. Plaintiff, believing generally in the good name and reputation of Bayer, and having been exposed to the advertising, marketing and labeling representations by Bayer that One-A-Day WeightSmart increased metabolism, enhanced metabolism through its EGCG content, helped prevent weight gain associated with age-related metabolism decline, and helped users control their weight by enhancing their metabolism, has purchased and spent money on the product. In this regard, Plaintiff purchased One-A-Day WeightSmart at least once from Food World in Montgomery, Alabama approximately three years ago. In exchange, she received a product that lacked the advertised benefits, and lost money on the purchase of an ineffective product.

CLASS ALLEGATIONS

19. Plaintiff realleges and incorporates by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

20. Pursuant to Federal Rule of Civil Procedure (“FRCP”) 23, Plaintiff brings this action on behalf of herself and all other consumers who purchased One-A-Day WeightSmart during the Class period. Bayer’s practices were applied uniformly to all

members of the Class, so that the questions of law and fact are common to all members of the Class. All putative Class members were and are similarly affected by having purchased One-A-Day WeightSmart, and the relief sought herein is for the benefit of Plaintiff and members of the proposed Class. Plaintiff is informed and believes, and on that basis alleges, that the proposed Class is so numerous that joinder of all members would be impractical.

21. Based on the annual sales of One-A-Day WeightSmart and the popularity of that product, it is apparent that the number of consumers of One-A-Day WeightSmart would at least be in the many thousands, thereby making joinder impossible.

22. Questions of law and fact common to the Class exist that predominate over questions affecting only individual members, including the following:

- (a) Whether Bayer's conduct as set forth herein constitutes the act, use or employment of an unconscionable commercial practice, deceptive, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in violation of the New Jersey Consumer Fraud Act;
- (b) Whether Bayer negligently misrepresented the benefits of taking its One-A-Day WeightSmart products;
- (c) Whether Bayer intentionally misrepresented the benefits of taking its One-A-Day WeightSmart products;
- (d) Whether the product's uniform labels were misleading;
- (e) Whether Bayer's actions conform to the terms of its consent decree;
- (f) Whether Bayer was unjustly enriched by the conduct challenged herein;
- (g) Whether Bayer's conduct as set forth above injured consumers, and if so, the extent of the injury;

- (h) Whether Plaintiff and the Class are entitled to damages and attorneys' fees.

23. The claims asserted by Plaintiff in this action are typical of the claims of the members of the Class as the claims arise from the same course of conduct by Bayer, and the relief sought is common.

24. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class. Plaintiff has retained counsel competent and experienced in both consumer protection and class action litigation.

25. Certification of this class action is appropriate under FRCP 23(b), because the questions of law or fact common to the respective Class members predominate over questions of law or fact affecting only individual members.

26. This predominance makes class litigation superior to any other method available for the fair and efficient adjudication of these claims. Absent a class action, it would be highly unlikely that the representative Plaintiff or any other Class member would be able to protect their own interests because the cost of litigation through individual lawsuits might exceed expected recovery. Certification is also appropriate because Bayer acted or refused to act on grounds generally applicable to the Class. Further, given the large number of consumers of One-A-Day WeightSmart, allowing individual actions to proceed in lieu of a class action would run the risk of yielding inconsistent and conflicting adjudications, an outcome that further supports the benefit of bringing this as a class action.

27. A class action is a fair and appropriate method for the adjudication of the controversy, in that it will permit a large number of claims to be resolved in a single

forum simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of numerous individual actions and the duplication of discovery, effort, expense and burden on the courts that such individual actions would engender. The benefits of proceeding as a class action, including providing a method for obtaining redress for claims that would not be practical to pursue individually, outweigh any difficulties that might be argued with regard to the management of this class action.

28. In the aggregate, Plaintiff contends that the claims of the individual Class members exceed the sum of \$5,000,000.00, exclusive of interest and costs.

COUNT ONE

(Violation of the New Jersey Consumer Fraud Act,
N.J.S.A. 56:8-1, *et seq.*)

29. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

30. At all relevant times, Bayer Corporation and Bayer Healthcare, LLC were and are “persons,” as defined by N.J.S.A. 56:8-1(d).

31. At all relevant times, the One-A-Day WeightSmart products at issue constituted “merchandise,” as defined by N.J.S.A. 56:8-1(c).

32. At all relevant times, Bayer’s manufacturing, marketing, advertising, sales and/or distribution of the One-A-Day WeightSmart products at issue met the definition of “advertisement” set forth by N.J.S.A. 56:8-1(a).

33. At all relevant times, Bayer’s manufacturing, marketing, advertising, sales and/or distribution of the One-A-Day WeightSmart products at issue met the definition of “sale” set forth by N.J.S.A. 56:8-1(e).

34. N.J.S.A. 56:8-2 provides that “[t]he act, use or employment by any

person of any unconscionable practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of material fact with the intent that others rely upon such concealment, suppression or omission, . . . is declared to be an unlawful practice. . .

35. Bayer uniformly represented to Plaintiff and each Class Member by means of its advertising, marketing and other promotional materials, and on the One-A-Day WeightSmart labeling and packaging and, that One-A-Day WeightSmart:

(a) was “Specially formulated to help you While You Control Your Weight”;

(b) contained “EGCG, natural green tea extract to enhance your metabolism”; and that

(c) “Starting in your 30’s your body’s metabolism can slow down and you can gain weight. To help maintain healthy metabolism levels, you need to give your body key nutrients. That is why One A Day has created WeightSmart, a unique complete multivitamin with EGCG (a natural extract of green tea) to enhance your metabolism.”

As alleged herein, during the class period, Bayer uniformly misrepresented and failed to disclose the lack of substantiation of the claimed benefits of taking its One-A-Day WeightSmart products in its advertising, marketing and other promotional materials, and on its labeling and packaging of these products, all in violation of the FTC’s prior Order.

36. Bayer has therefore engaged in practices which are unconscionable, deceptive and fraudulent and which are based on false pretenses, false promises, misrepresentations, and the knowing concealment, suppression, or omission of material fact with the intent that others rely upon such concealment, suppression or omission in their manufacturing, advertising, marketing, selling and distribution of its One-A-Day WeightSmart products. Bayer has therefore violated the New Jersey Consumer Fraud

Act, N.J.S.A. 56:8-1, *et seq.*

37. As a direct and proximate result of Bayer's improper conduct, Plaintiff and the other members of the Class have suffered damages and ascertainable losses of moneys and/or property, by paying more for One-A-Day WeightSmart products than they would have, and/or by purchasing One-A-Day WeightSmart products which they would not have purchased, if the benefits of taking such products had not been misrepresented, in amounts to be determined at trial.

38. New Jersey has numerous contacts with the conduct alleged herein and a strong interest in applying the New Jersey Consumer Fraud Act to that conduct. Bayer is found, does business or transacts business within this district. Bayer HealthCare, LLC maintains its principal offices, as well as agents, in this district and is licensed to do, has done, and continues to do business in this district. Bayer Corporation maintains offices, as well as agents, in this district and is licensed to do, has done, and continues to do business in the state of New Jersey. Bayer's improper conduct set forth herein occurred in this district or was conceived of and executed from this district in whole or in part. Bayer's advertising, marketing, pricing, sales and distribution operations for its One-A-Day WeightSmart products sold throughout the United States, which form the basis of this litigation, originate from and/or are controlled by, Bayer's offices in this district. In addition, Bayer directly advertised, marketed and sold One-A-Day WeightSmart to consumers in this district.

39. As such, New Jersey's contacts to this litigation make it a desirable forum for this litigation and New Jersey's interest in applying the New Jersey Consumer Fraud Act in this litigation outweighs any interests other states or their laws may have.

COUNT TWO

(Negligent Misrepresentation)

40. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

41. Bayer represented to Plaintiff and each Class Member by means of its advertising, marketing and other promotional materials, and the One-A-Day WeightSmart labeling and packaging, that One-A-Day WeightSmart:

(a) was “Specially formulated to help you While You Control Your Weight”;

(b) contained “EGCG, natural green tea extract to enhance your metabolism”; and that

(c) “Starting in your 30’s your body’s metabolism can slow down and you can gain weight. To help maintain healthy metabolism levels, you need to give your body key nutrients. That is why One A Day has created WeightSmart, a unique complete multivitamin with EGCG (a natural extract of green tea) to enhance your metabolism.”

42. Bayer’s representations were untrue as set forth above.

43. Bayer made the representations herein alleged with the intention of inducing Plaintiff and the public to purchase One-A-Day WeightSmart.

44. Plaintiff and Class members saw, believed, and relied on Bayer’s representations and, in reliance on them, purchased One-A-Day WeightSmart. Said reliance was reasonable, given Bayer’s generally good reputation among consumers. Plaintiff and the Class were without the ability to determine the truth of these statements on their own and could only rely on Bayer’s statements in its advertising, marketing and other promotional materials, and on the One-A-Day WeightSmart labeling and packaging.

45. At the time Bayer made the misrepresentations herein alleged, it had no

reasonable grounds for believing the representations to be true, as it possessed no competent and reliable scientific evidence to substantiate the representations set forth in detail above, and was already subject to the above-referenced FTC Order.

46. As a proximate result of the foregoing negligent misrepresentations by Bayer, Plaintiff and Class members were induced to spend an amount to be determined at trial on One-A-Day WeightSmart and they were deprived of the weight loss benefits represented by Bayer. Accordingly, and as a proximate result of Bayer's misrepresentations as set forth herein, Plaintiff and Class members lost the money they paid for the product in an amount to be determined at trial in that it did not have the qualities they sought, which Bayer represented to them that it had. Had Plaintiff and the Class members known the true facts about the product, they would not have purchased it.

COUNT THREE

(Intentional Misrepresentation)

47. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

48. Bayer represented to Plaintiff and each Class Member by means of its advertising, marketing and other promotional materials, and One-A-Day WeightSmart labeling and packaging, and in that One-A-Day WeightSmart:

(a) was "Specially formulated to help you While You Control Your Weight";

(b) contained "EGCG, natural green tea extract to enhance your metabolism"; and that

(c) "Starting in your 30's your body's metabolism can slow down and you can gain weight. To help maintain healthy metabolism levels, you need to give your body key nutrients. That is why One A Day has created WeightSmart, a unique complete multivitamin with EGCG (a natural extract of green tea) to enhance your metabolism."

49. Bayer's representations were untrue as set forth above.

50. Bayer made the representations herein alleged with the intention of inducing Plaintiff and the public to purchase its One-A-Day WeightSmart products.

51. Plaintiff and Class members saw, believed, and relied on Bayer's representations and, in reliance on them, purchased One-A-Day WeightSmart. Said reliance was reasonable, given Bayer's generally good reputation among consumers.

52. At the time Bayer made the representations herein alleged, Bayer knew the representations were false, as evidenced by the above-referenced FTC Order and Bayer's failure, despite that Order, to establish any competent or reliable scientific evidence to support its claims. Even so, Bayer continued to make the unsubstantiated, false claims.

53. Bayer made these misrepresentations with the intention of depriving Plaintiff and Class members of property or otherwise causing injury, and is guilty of fraud.

54. As a proximate result of the foregoing intentional misrepresentations by Bayer, Plaintiff and Class members were induced to spend an amount to be determined at trial on One-A-Day WeightSmart and they were deprived of the weight loss benefits represented by Bayer. Accordingly, and as a proximate result of Bayer's intentional misrepresentations as set forth herein, Plaintiff and Class members lost the money they paid for the product in an amount to be determined at trial in that it did not have the qualities they sought, which Bayer represented to them that it had. Had Plaintiff and the Class members known the true facts about the products, they would not have purchased them.

55. Plaintiff is informed and believes and thereon alleges that Bayer knew that

One-A-Day WeightSmart did not provide the weight loss benefits it represented, and that it intended that customers and the unknowing public should rely on its representations. Such knowledge is evidenced by Bayer's actions as set forth above in continuing to make the representations regarding One-A-Day WeightSmart products during the pendency of the Order, despite Bayer's lack of competent and reliable scientific evidence to support its claims. Plaintiff and Class members, in purchasing and using the products as herein alleged, did rely on Bayer's representations, all to their damage as hereinabove alleged. In doing these things, Bayer was guilty of malice, oppression and fraud, and Plaintiff and Class members are entitled to recover punitive damages.

COUNT FOUR
(Unjust Enrichment)

56. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

57. Bayer has benefited from its unlawful acts by receiving excessive revenue derived from the sales of One-A-Day WeightSmart products which do not provide the weight loss benefits represented. These payments have been received by Bayer at the expense of Plaintiff and other members of the Class, under circumstances in which it would be inequitable for Bayer to be permitted to retain the benefit.

58. Plaintiff and other members of the Class are entitled to the establishment of a constructive trust consisting of the benefit conferred upon Bayer in the form of their excessive revenue derived from the sales of One-A-Day WeightSmart products which Plaintiff and other Class members may make claims on a *pro rata* basis for restitution.

COUNT FIVE

(For Injunctive and Declaratory Relief)

59. Plaintiff repeats and realleges all preceding paragraphs, as if fully set forth herein.

60. As set forth above, through the improper practices described above, Bayer has intentionally misrepresented the nature of its One-A-Day WeightSmart products sold to Plaintiff and other members of the Class..

61. Bayer's practices described herein are unlawful and against public policy and, therefore, Bayer should be prohibited and enjoined from engaging in these practices in the future.

NOTICE TO ATTORNEY GENERAL

62. A copy of this complaint will be mailed to the Attorney General of the State of New Jersey within 10 days of filing pursuant to N.J.S.A. 56:8-20.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class pray that the Court enter judgment for them and against Bayer as follows:

- (a) Certifying the Class pursuant to Rule 23 of the Federal Rules of Civil Procedure, certifying Plaintiff as the representative of the Class, and designating Plaintiff's counsel as counsel for the Class;
- (b) Declaring that Bayer's acts and practices, as described herein, constitute unconscionable and deceptive commercial practices that are unlawful under the New Jersey Consumer Fraud Act;
- (e) Awarding Plaintiff and the Class refunds, damages, treble

damages, attorneys' fees, expert witness fees and other costs; and

(f) Granting any such other and further legal or equitable relief as this

Court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims so triable as a matter of right.

Dated: September 22, 2008

WHATLEY DRAKE & KALLAS, LLC

/s/Mitchell M. Breit

Mitchell M. Breit (Bar #043741989)

Joe R. Whatley, Jr.

Edith M. Kallas

Patrick J. Sheehan

WHATLEY DRAKE & KALLAS, LLC

1540 Broadway, 37th Floor

New York, New York 10036

Telephone: (212) 447-7070

Facsimile: (212) 447-7077

mbreit@wdklaw.com

jwhatley@wdklaw.com

ekallas@wdklaw.com

psheehan@wdklaw.com

W. Tucker Brown

WHATLEY DRAKE & KALLAS, LLC

1540 Broadway, 37th Floor

New York, NY 10036

Telephone: (212) 447-7070

Facsimile: (212) 447-7077

tbrown@wdklaw.com

Greg Davis

GREG DAVIS, LLC

6987 Halcyon Park Drive

Montgomery, AL 36117

Telephone: (334) 823-9080

Facsimile: (334) 409-7001

gldavis@knology.net

Attorneys for Plaintiff

CERTIFICATION PURSUANT TO LOCAL RULE 11.2

Plaintiff, by her attorneys, hereby certifies that to the best of her knowledge the matter in controversy is related to *Wilkinson v. Bayer Corporation*, No. 07-DV-00396 BEN (NLS) (S.D.Ca.) and *Camuy v. Bayer Corporation*, No. 08-CH-29199 (Ill. Cir. Ct., Cook County, Chancery Div.) . Plaintiff is not aware of any other party who should be joined in this action.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/Mitchell M. Breit
Mitchell M. Breit