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9 Attorneys for Plaintiff



10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SAN DIEGO

14 THE PEOPLE OF THE STATE OF CALIFORNIA,  
15 CALIFORNIA,

16 Plaintiff,

17 v.

18 BAYER HEALTHCARE LLC,

19 Defendant.

Case No. 31-2010-00103098-CU-MC-CTL

STIPULATION FOR ENTRY OF FINAL JUDGMENT

Dept: 25 ✓  
Judge: ~~MARGOL LEWIS~~  
MARGIE G. WOODS

22 Plaintiff the People of the State of California (“Plaintiff” or the “People”), through its  
23 attorney, Edmund G. Brown Jr., Attorney General, by Judith Fiorentini, Deputy Attorney  
24 General, and Bayer Healthcare, LLC (“Bayer” or “Defendant”) by its attorneys, Sidley Austin  
25 LLP, by Kristin Graham Koehler, Esq., and by Daron Watts, Esq., hereby stipulate as follows:

26 1. The Final Judgment (“Judgment”), a true and correct copy of which is attached to  
27 this Stipulation for Entry of Final Judgment (“Stipulation”) as Exhibit 1, may be entered in this  
28 matter.

1           2.       At the same time that Bayer is stipulating to enter into this Judgment with the  
2 California Attorney General's Office, Bayer is entering into similar judgments with the Signatory  
3 Attorneys General of Illinois and Oregon (collectively, the "Attorneys General"), each of whom  
4 conducted an investigation under their State Consumer Protection Laws as defined in the  
5 Judgment regarding certain Bayer practices concerning Bayer's One-A-Day Vitamins.

6           3.       The Plaintiff and Defendant ("Parties") agree that:

7           A.       The Judgment shall be governed by the laws of California.

8           B.       The Judgment reflects a negotiated agreement entered into by the Parties as  
9 their own free and voluntary act and with full knowledge and understanding of the nature of the  
10 proceedings and the obligations and duties imposed by the Judgment.

11           C.       By entering into the Judgment, the Parties have agreed to resolve the  
12 concerns of the Signatory Attorneys General under the State Consumer Protection Laws as to the  
13 Covered Conduct as defined in the Judgment.

14           D.       The Judgment does not constitute an approval by any of the Signatory  
15 Attorneys General of any of Bayer's business practices, including its promotional or marketing  
16 practices, and Bayer shall make no representation or claim to the contrary.

17           E.       It is the intent of the Parties that the Judgment not be admissible in other  
18 cases or binding on Bayer in any respect, other than in connection with the enforcement of the  
19 Judgment. This document and its contents are not intended for use by any third party for any  
20 purpose, including submission to any court for any purpose.

21           F.       It is the intent of the Parties that no part of the Judgment shall create a  
22 private cause of action or confer any right to any third party for violation of any federal or state  
23 statute, except that a State may file an action to enforce the terms of the Judgment.

24           G.       The Judgment sets forth the entire agreement between the Parties hereto  
25 and supersedes all prior agreements or understandings, whether written or oral, between the  
26 Parties and/or their respective counsel with respect to the Covered Conduct as defined in the  
27 Judgment. The Judgment may be amended by written agreement between the Parties, subject to  
28 any further requirements under an individual Signatory Attorney General's state law.

1           H.       The Judgment is a compromise and does not constitute an admission by  
2 Bayer for any purpose, of any fact or of a violation of any state law, rule, or regulation, nor does  
3 the Judgment or the contents thereof constitute evidence of any liability, fault, or wrongdoing.  
4 Bayer does not admit any violation of the State Consumer Protection Laws, and does not admit  
5 any wrongdoing that has or could have been alleged by the Signatory Attorneys General under  
6 those laws before or on the Effective Date. Bayer does not admit that it has violated the law as  
7 alleged in the Complaint or that the facts alleged in the Complaint are true.

8           I.       The Judgment shall not be construed or used as a waiver or any limitation  
9 of any defense otherwise available to Bayer in any action, or of Bayer's right to defend itself  
10 from, or make any arguments in, any private individual, regulatory, governmental, or class claims  
11 or suits relating to the Covered Conduct or terms of the Judgment. The Judgment is made  
12 without trial or adjudication of any issue of fact or law or finding of liability of any kind.  
13 Nothing in the Judgment, shall be construed to limit or to restrict or to preclude Bayer's right to  
14 use the Judgment to assert and maintain the defenses of res judicata, collateral estoppel, payment,  
15 compromise and settlement, accord and satisfaction, or any other legal or equitable defenses in  
16 any pending or future legal or administrative action or proceeding.

17           4.       This Stipulation may be executed in counterparts, and by different signatories on  
18 separate counterparts, each of which shall be deemed to constitute an original counterpart hereof,  
19 and all of which shall together constitute one and the same Stipulation for Entry of Final  
20 Judgment. One or more counterparts of this Stipulation may be delivered by facsimile or  
21 electronic transmission with the intent that it or they shall constitute an original counterpart  
22 hereof.

23           5.       Bayer acknowledges that it is a proper party to the Judgment. Bayer further  
24 warrants and represents that the individual signing this Stipulation on behalf of Bayer is doing so  
25 in his or her official capacity and is fully authorized by Bayer to enter into the Judgment and to  
26 legally bind Bayer to all of the terms and conditions of the Judgment.

27           6.       Each Signatory Attorney General warrants and represents that he or she is signing  
28 this Stipulation in his or her official capacity, and that he or she is fully authorized by his or her

1 State to enter into this Judgment, including but not limited to the authority to grant the release  
2 contained in Section VII of this Judgment, and to legally bind his or her State to all of the terms  
3 and conditions of the Judgment.

4 7. Each of the Parties represents and warrants that it negotiated the terms of this  
5 Judgment in good faith.

6 8. The Judgment attached as Exhibit 1 may be entered by any judge of the San Diego  
7 Superior Court. Counsel for Plaintiff may submit the Judgment to any judge of the Superior  
8 Court for approval and signature, during the Court's *ex parte* calendar or on any other *ex parte*  
9 basis. Bayer waives the right to any personal notice of any such *ex parte* submission of the  
10 Judgment to the Court. Bayer will accept notice of entry of judgment entered in this action by  
11 delivery of such notice to its counsel of record, and agrees that service of the notice of entry of  
12 judgment will be deemed personal service upon them for all purposes.

13 9. The Parties hereby waive their rights to move for a new trial or otherwise seek to  
14 set aside the Judgment through any collateral attack, and further waive their rights to appeal from  
15 the Judgment, except that Plaintiff and Bayer, and each of them, agree that this Court shall retain  
16 jurisdiction for the purposes of the enforcement of, compliance with, or punishment of violations  
17 of the Judgment.

18  
19 Dated: Oct. 26, 2010

EDMUND G. BROWN JR.  
Attorney General of California  
FRANCES T. GRUNDER  
Senior Assistant Attorney General  
DANIEL A. OLIVAS  
Supervising Deputy Attorney General

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JUDITH FIORENTINI  
Deputy Attorney General  
*Attorneys for Plaintiff*

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Dated: 10/20/10

SIDLEY AUSTIN LLP  
1501 K STREET, N.W.  
WASHINGTON, D.C. 20005  
TELEPHONE: 202-736-8359



KRISTIN GRAHAM KOEHLER, ESQUIRE  
*Attorneys for Defendant,*  
BAYER HEALTHCARE LLC

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Dated: 10/20/10

SIDLEY AUSTIN LLP  
555 WEST FIFTH STREET  
LOS ANGELES, CALIFORNIA 90013  
TELEPHONE: 213-896-6000



DARON WATTS, ESQUIRE  
*Attorneys for Defendant,*  
*BAYER HEALTHCARE LLC*

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Dated: 21 OCT 2010

BAYER HEALTHCARE LLC  
36 COLUMBIA ROAD  
MORRISTOWN, NJ 07962-1910  
TELEPHONE: 973-254-5000



*NGH*  
TIMOTHY G. HAYES  
SENIOR VICE PRESIDENT AND REGION HEAD  
NORTH AMERICA  
*BAYER HEALTHCARE LLC*

Exhibit 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

**THE PEOPLE OF THE STATE OF CALIFORNIA,**  
  
Plaintiff,  
  
v.  
  
**BAYER HEALTHCARE LLC,**  
  
Defendant.

Case No.  
**FINAL JUDGMENT**  
  
Dept:  
Judge:

Plaintiff, the People of the State of California (“the People” or “Plaintiff”), having filed its Complaint and appearing through its attorney Edmund G. Brown Jr., Attorney General of the State of California, and Bayer Healthcare LLC (“Bayer” or “Defendant”) by its attorneys, Sidley Austin LLP, by Kristin Graham Koehler, Esq., and by Daron Watts, Esq., having stipulated as follows:

That this Final Judgment (“Judgment”) may be signed by any judge of the San Diego Superior Court; and,

1 That Plaintiff has filed its Complaint in this matter pursuant to California Business and  
2 Professions Code sections 17200 and 17500 *et seq.*; and Bayer denies the allegations of the  
3 Complaint and denies any alleged violations; and,

4 That this Judgment is made without trial or adjudication of any issue of fact or law or  
5 finding of wrongdoing or liability of any kind; and that Bayer does not admit any violation of law  
6 or any wrongdoing and that no part of this Judgment shall constitute evidence of any liability,  
7 fault or wrongdoing by Bayer; and,

8 The Court having considered the pleadings and the Stipulation for Entry of Final Judgment  
9 executed by the Plaintiff and Bayer and filed herewith, and good cause appearing,

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

11 **I. PARTIES AND JURISDICTION**

12 1. The People of the State of California is the Plaintiff in this case and Bayer Healthcare  
13 LLC, is the Defendant in this case.

14 2. The Court has jurisdiction over the subject matter of this action, jurisdiction over the  
15 parties to this action, and venue is proper in this Court.

16 **II. DEFINITIONS**

17 3. The following definitions shall be used in construing this Judgment:

18 A. "Bayer" shall mean Bayer HealthCare LLC, all of its subsidiaries and divisions,  
19 predecessors, successors, and assigns marketing Covered Products in the United States.

20 B. "Competent and Reliable Scientific Evidence" shall mean tests, analyses,  
21 research, or studies, that have been conducted and evaluated in an objective manner by qualified  
22 persons and are generally accepted in the profession to yield accurate and reliable results, and that  
23 is sufficient in quality and quantity based on standards generally accepted in the relevant  
24 scientific fields, when considered in light of the entire body of relevant and reliable scientific  
25 evidence, to substantiate that the representation is true.

26 C. "Covered Product" shall mean any dietary supplement in Bayer's line of One A  
27 Day Multivitamins, including but not limited to One A Day Men's Health Formula and One A  
28 Day Men's 50+ Advantage.

1 D. "Covered Conduct" shall mean any and all of Bayer's promotional or marketing  
2 practices or dissemination of information regarding One A Day Multivitamins through the  
3 Effective Date of the Judgment.

4 E. "Effective Date" shall mean the date on which a copy of this Judgment duly  
5 executed by Bayer and by the Signatory Attorneys General, is approved by, and becomes an  
6 Order of the Court, whichever is later.

7 F. "Endorsement" shall have the meaning set forth in 16 C.F.R.  
8 § 255.0(b).

9 G. "Parties" shall mean Bayer and the Signatory Attorneys General.

10 H. "Signatory Attorney General" shall mean the Attorney General of California,  
11 Illinois, or Oregon, or his or her designee.

12 I. "State Consumer Protection Laws" shall mean the consumer protection laws  
13 under which the Signatory Attorneys General have conducted their investigation.<sup>1</sup>

14 J. The term "including" in this Judgment means "including without limitation."

15 K. The terms "and" and "or" in this Judgment shall be construed conjunctively or  
16 disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than  
17 exclusive.

18 **III. REPRESENTATIONS: ONE A DAY MEN'S AND**  
19 **MEN'S 50+ ADVANTAGE CLAIMS**

20 IT IS HEREBY ORDERED that Bayer, in connection with the manufacturing, labeling,  
21 advertising, promotion, offering for sale, sale, or distribution of One A Day Men's Health  
22 Formula and One A Day Men's 50+ Advantage, in or affecting commerce, shall not make,  
23 directly or by implication, including through the use of a product name, endorsement, depiction,  
24 or illustration, any representation that such product is effective in the diagnosis, cure, mitigation,  
25 treatment, or prevention of any disease, subject to paragraph V below.

26 \_\_\_\_\_  
27 <sup>1</sup> CALIFORNIA - Cal. Bus. & Prof. Code §§ 17200 *et seq.* and 17500 *et seq.*; ILLINOIS -  
28 Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/1 *et seq.* (2002);  
OREGON - Unlawful Trade Practices Act, Or. Rev. Stat. §§ 646.605 to 646.656.



1 enforcement discretion letter is no longer accurate, Bayer shall not utilize such qualified health  
2 claim; provided, however, that Bayer shall have a commercially reasonable period of time to  
3 make necessary changes to its marketing, advertising, and promotional materials, and its labeling  
4 and packaging; or

5 F. such representation is a non-misleading statement made in accordance with 21  
6 U.S.C. § 343(r)(6) and, at the time the representation is made, Bayer possesses and relies upon  
7 Competent and Reliable Scientific Evidence.

#### 8 VI. DISBURSEMENT OF PAYMENTS: PAYMENT TO THE STATES

9 A. Within thirty (30) days of the Effective Date of this Judgment, Bayer shall pay  
10 \$3,300,000.00 to the States by electronic fund transfer made payable to the Oregon Attorney  
11 General's Office, which shall divide and distribute these funds as designated by and in the sole  
12 discretion of the Signatory Attorneys General. Said payment shall be used by the States for  
13 attorneys' fees and other costs of investigation and litigation, or to be placed in, or applied to, the  
14 consumer protection enforcement fund, consumer education or litigation or local consumer aid  
15 or revolving fund, used to defray the costs of the inquiry leading hereto, or for other uses  
16 permitted by state law, at the sole discretion of each Signatory Attorney General.<sup>2</sup> Nothing in  
17 this Judgment constitutes any agreement by the Parties concerning the characterization of the  
18 amounts paid pursuant to this Judgment for purposes of the Internal Revenue Code or any state  
19 tax laws.

#### 20 VII. RELEASE

21 A. Subject to the reservations set forth in Paragraph VII.C. below, by execution of  
22 this Judgment, each Signatory Attorney General releases and forever discharges, to the fullest  
23 extent permitted by law, Bayer and all of its past and present officers, directors, shareholders,  
24 employees, affiliates, subsidiaries, predecessors, assigns and successors (hereinafter referred to  
25 collectively as the "Released Parties"), from the following: all civil claims, causes of action,  
26 counterclaims, set-offs, demands, actions, suits, rights, liabilities, damages, restitution, fines,

27 <sup>2</sup> In OREGON, Oregon's share shall be deposited to the account established pursuant to  
28 Or. Rev. Stat. § 180.095.

1 costs, and penalties under the State Consumer Protection Laws arising from the Covered Conduct  
2 that were or could have been asserted against the Released Parties by the Signatory Attorneys  
3 General on or before the Effective Date of this Judgment. This release does not apply to any  
4 conduct occurring after the Effective Date of this Judgment.

5 B. The Signatory Attorneys General acknowledge by their execution hereof that this  
6 Judgment terminates their investigations under the State Consumer Protection Laws into the  
7 Covered Conduct prior to and including the Effective Date of this Judgment.

8 C. Notwithstanding any term of this Judgment, specifically reserved and excluded  
9 from Paragraphs VII.A. and VII.B. as to any entity or person, including Released Parties, are any  
10 and all of the following:

11 1. Any criminal liability that any person or entity, including Released Parties,  
12 has or may have to any or all of the Signatory Attorneys General;

13 2. Any civil or administrative liability that any person or entity, including  
14 Released Parties, has or may have to any or all of the Signatory Attorneys General, under  
15 any statute, regulation or rule not expressly covered by the release in Paragraphs VII.A.  
16 and VII.B., including, but not limited to, any and all of the following claims:

17 a. State or federal antitrust violations;

18 b. Medicaid violations, including federal Medicaid drug rebate statute  
19 violations, Medicaid fraud or abuse, and/or kickback violations related to any  
20 State's Medicaid program;

21 c. State false claims violations; and,

22 d. Claims to enforce the terms and conditions of this Judgment.

23 3. Any liability under the State Consumer Protection Laws, which any person  
24 or entity, including Released Parties, has or may have to individual consumers or State  
25 program payors of said States, and which have not been specifically enumerated as  
26 included herein.

1 **VIII. DISPUTES REGARDING COMPLIANCE**

2 A. For the purposes of resolving disputes with respect to compliance with this  
3 Judgment, should any of the Signatory Attorneys General have legally sufficient cause to believe  
4 that Bayer has violated a provision of this Judgment subsequent to the Effective Date, then such  
5 Signatory Attorney General shall notify Bayer in writing of the specific objection, identify with  
6 particularity the provisions of this Judgment that the practice appears to violate, and give Bayer  
7 thirty (30) business days to respond to the notification; provided, however, that any Signatory  
8 Attorney General may take any action where the Signatory Attorney General concludes that,  
9 because of the specific practice, a threat to the health or safety of the public requires immediate  
10 action. Upon receipt of written notice from a Signatory Attorney General, Bayer shall provide a  
11 good-faith written response to such Signatory Attorney General notification, containing either a  
12 statement explaining why Bayer believes it is in compliance with the Judgment or a statement  
13 explaining how Bayer intends to remedy the alleged breach.

14 B. Upon giving Bayer thirty (30) business days to respond to the notification  
15 described in Paragraph VIII.A. above, such Signatory Attorney General shall be permitted to  
16 serve a document request for relevant, non-privileged, non-work-product records and documents  
17 in the possession, custody, or control of Bayer that relate to Bayer's compliance with each  
18 provision of this Judgment. In response to that document request, Bayer will make responsive  
19 documents available to the requesting Signatory Attorney General.

20 **IX. PENALTIES FOR FAILURE TO COMPLY**

21 A. The Signatory Attorneys General may assert any claim that Bayer has violated this  
22 Judgment in a separate civil action to enforce compliance with this Judgment, or may seek any  
23 other relief afforded by law, but only after providing Bayer an opportunity to respond as  
24 described in Paragraph VIII.A. above; provided however, that a Signatory Attorney General may  
25 take any action if there is a reasonable basis to believe that, because of the specific practice, a  
26 threat to the health or safety of the public requires immediate action.

27 B. In any such action or proceeding, relevant evidence of conduct that occurred  
28 before the Effective Date shall be admissible on any material issue, including alleged willfulness,

1 intent, knowledge, contempt or breach, to the extent permitted by law. Bayer does not waive any  
2 objection it may have to the admissibility of any such evidence, as permitted by law.

3 **X. COMPLIANCE WITH ALL LAWS**

4 A. Except as expressly provided in this Judgment, nothing in this Judgment shall be  
5 construed as:

6 1. Relieving Bayer of its obligation to comply with all applicable state laws,  
7 regulations or rules, or granting permission to engage in any acts or practices prohibited by such  
8 law, regulation or rule; or

9 2. Limiting or expanding in any way any right the State may otherwise have  
10 to enforce applicable state law or obtain information, documents or testimony from Bayer  
11 pursuant to any applicable state law, regulation, or rule, or any right Bayer may otherwise have to  
12 oppose any subpoena, civil investigative demand, motion, or other procedure issued, served, filed,  
13 or otherwise employed by the State pursuant to any such state law, regulation, or rule.

14 **XI. NOTICES UNDER THIS JUDGMENT**

15 A. Any notices that must be sent to the State or to Bayer under this Judgment shall be  
16 sent by overnight United States mail. The documents shall be sent to the following addresses:

17 For Oregon:  
18 David Anthony Hart  
19 Senior Assistant Attorney General  
20 1515 SW 5th Ave., Suite 410  
21 Portland, Oregon  
22 Salem, Oregon 97201  
23 Telephone: 971.673.1880  
24 Facsimile: 971.673.1902

25 For California:  
26 Judith Fiorentini  
27 Deputy Attorney General  
28 California Attorney General's Office  
110 West A Street, Suite 1100  
San Diego, California 92101  
Telephone: 619.645.2207  
Facsimile: 619.645.2062

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For Illinois:  
James D. Kole  
Chief, Consumer Fraud Bureau  
100 W. Randolph Street, 12<sup>th</sup> Floor  
Chicago, Illinois 60601  
Telephone: 312.814.5018  
Facsimile: 312.814.2593

For Bayer:  
William Hawxhurst, Esquire  
Bayer Healthcare LLC  
36 Columbia Rd.  
Morristown, NJ 07960  
Telephone: 973.254.5000  
Facsimile: 973.408.8000

and

Kristin Graham Koehler, Esquire  
Sidley Austin LLP  
1501 K Street, N.W.  
Washington, D.C. 20005  
Telephone: 202.736.8359  
Facsimile: 202.736.8711

The Clerk is ordered to enter this Judgment forthwith.

Dated: \_\_\_\_\_

JUDGE OF THE SUPERIOR COURT