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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**

12 Steven Schneider, Individually and on
Behalf of All Others Similarly Situated,

14 Plaintiff,

15 v.

15 Bayer HealthCare LLC, a Delaware
limited liability company; Elanco Animal
16 Health, Inc., a Indiana corporation, and
DOES 1 through 100, Inclusive,

18 Defendants.

Case No. 2:21-cv-02771-VAP-KLS

Filed: March 2, 2021

CLASS ACTION COMPLAINT FOR:

(1) VIOLATIONS OF THE
CALIFORNIA CONSUMER LEGAL
REMEDIES ACT;

(2) VIOLATIONS OF THE
CALIFORNIA FALSE
ADVERTISING LAW;

(3) VIOLATIONS OF THE
CALIFORNIA UNFAIR
COMPETITION LAW; AND

(4) VIOLATIONS OF THE
SONG-BEVERLY
CONSUMER WARRANTY ACT.

DEMAND FOR JURY TRIAL

1 Plaintiff Steven Schneider (“Plaintiff”), individually and on behalf of all others
2 similarly situated, by and through his undersigned attorneys, as and for their Class
3 Action Complaint against defendants Bayer HealthCare LLC and Elanco Animal
4 Health, Inc. (“Bayer” and “Elanco,” respectively, and collectively, “Defendants”),
5 alleges the following based upon personal knowledge as to himself and his own actions,
6 and, as to all other matters, respectfully alleges, upon information and belief, as follows:

7 **NATURE OF THE ACTION**

8 1. Plaintiff, individually and on behalf of all others similarly situated, by and
9 through his undersigned attorneys, bring this class action against Defendants for the
10 deceptive practice of marketing and selling their “Seresto®” flea and tick prevention
11 collars (the “Products”) to consumers without disclosing that the flea and tick collars
12 are formulated such that they have a propensity to harm humans, particularly children,
13 and are prone to cause seizures, thyroid gland damage, and death of cat and/or dog pets
14 wearing the Products as intended and instructed by Defendants.

15 2. Plaintiff further complains that Defendants impliedly represented and
16 warranted to Plaintiff and members of the putative class that that the Products are safe
17 and of merchantable quality and fit for the ordinary use for which Defendant represented
18 and consumers understood that such Products were to be used.

19 3. Defendants breached the warranty of merchantability because they knew,
20 or should have known, that the Products were unsafe to Plaintiff and his property, were
21 unreasonably dangerous to the same, not of merchantable quality, and defective from
22 the time it left Defendants’ custody to the time Plaintiff took possession of the same.

23 4. Defendants prominently feature on their Product packaging and labels that
24 they are for “dogs of all sizes” and provide “full body protection.” In fact, however,
25 the Products’ packaging and labeling fail to disclose that the Products active ingredients
26 can cause seizures or death of pets wearing the Products.

1 and availed themselves of state laws by marketing, distributing, and selling the Products
2 within the state of California. .

3 11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) because a
4 substantial part of the events or omissions giving rise to these claims occurred in this
5 District, Defendants have caused harm to Plaintiff and other Class members in this
6 District, and Defendants are residents of this District under 28 U.S.C. § 1391(c)(2)
7 because they are subject to personal jurisdiction in this District. Also, venue is proper
8 in this district pursuant to 18 U.S.C. § 1965.

9 12. Having Defendants litigate Plaintiff's claims in California does not offend
10 traditional notions of fair play and substantial justice and is permitted by the United
11 States Constitution. Plaintiff and all Class Members' claims arise in part from conduct
12 Defendants purposefully directed to and occurred in California. On information and
13 belief, Plaintiff alleges that within the applicable statute of limitations for the claims
14 plead herein, Defendants Bayer HealthCare and Elanco's Seresto® Products were
15 distributed, advertised and sold to consumers through hundreds of local and California
16 state-wide retailers in this State. Defendants are thus subject to jurisdiction in California
17 courts.

18 13. On further information and belief, Plaintiff alleges that Defendants have,
19 and continue to, avail themselves of numerous advertising and promotional materials
20 disseminated throughout California regarding their unsafe Seresto® Products vis-à-vis
21 advertisements and product labeling campaigns specifically intended to reach consumers
22 in California, including but not limited to advertisements on local California television
23 programs, radio broadcasts, product package labeling, advertisements on billboards in
24 California, and advertisements in print and point of sale publications disseminated to
25 consumers in San Luis Obispo county and throughout the State of California.

THE PARTIES

1
2 14. Plaintiff is, and at all times relevant hereto has been, a resident citizen of
3 the state of California. Plaintiff Steven Schneider (“Plaintiff”) purchased the
4 Seresto®flea and tick collars in San Luis Obispo County and his CLRA Venue
5 Declaration is attached hereto as Exhibit A.

6 15. Plaintiff purchased the Products as the primary flea and tick prevention
7 method for his dog Ayshe, a gentle and well-loved Anatolian Shepard, in and or about
8 the Summer of 2020. Plaintiff purchased the Product for Ayshe to control ticks and
9 fleas that inhabit the San Luis Obispo region and did so intending to prevent the
10 adverse health consequences associated with pests and parasites and to promote the
11 comfort and well-being of his dog. Prior to purchasing the Products, Plaintiff
12 reviewed the warnings on the packaging, which did not include any information
13 regarding risk of serious injury, seizures, or death to the cat and/or dog pet when used,
14 which he relied on when deciding to purchase the Products at issue herein and how
15 much to pay for them. Prior to using the Product, Plaintiff carefully reviewed the
16 instructions and warnings on the Product insert and relying on the information therein,
17 applied the Product to his pet in accordance with the directions and warnings. At the
18 time of purchase, and based on the false and misleading claims, warranties,
19 representations, store and other media advertisements, and other marketing by
20 Defendants, Plaintiff was unaware that the Products had a propensity to cause injury,
21 seizures, or the death of his pets, and would not have purchased or used the Products if
22 the qualities and characteristics known to Defendants were fully disclosed to him.

23 16. On or about July 4, 2020 Plaintiff began to notice Ayshe, a heretofore
24 perfectly healthy dog, displaying symptoms of a seizure and struggling to walk.
25 Plaintiff was so alarmed at the distress Ayshe was in, he rushed her to an emergency
26 veterinarian and then took her to his personal veterinarian. Both doctors were at a loss
27 over how to explain the sudden manifestation of seizures in an otherwise healthy dog.
28

1 Ayshe was prescribed anti-seizure nasal spray and Plaintiff noticed repeated, but
2 increasingly milder, symptoms associated with seizures. Shortly after this episode,
3 Plaintiff removed the Seresto® collar from Ayshe and replaced it with an organic
4 variety that did not contain harsh chemicals. Since Plaintiff removed the Seresto®
5 collar from Ayesha, she has never exhibited the symptoms, or any associated
6 symptoms, that she displayed that terrifying day in August.

7 17. Plaintiff has suffered injury as a result of Defendants' actions by paying a
8 premium price for the Product that, in reality, posed a significant risk to the health of
9 his pets beyond what was disclosed.

10 18. Plaintiff was further injured by way of Defendants' fielding an
11 unmerchantable and defective product into the stream of commerce because he
12 incurred expenses associated with the treatment of Ayshe that are directly attributable
13 to, and necessitated by, his use of the Product in the manner directed by Defendants
14 on the Product label, which includes the Product insert.

15 19. As the result of Defendants' deceptive conduct as alleged herein, Plaintiff
16 was injured when he paid the premium purchase price for the Products that did not
17 deliver what was promised. Plaintiff paid these sums on the assumption that the
18 products were safe for his dog Ayshe and he would not have paid this money had he
19 known that the Products contained ingredients that created the serious risk of injury,
20 seizures, or death to his pets and were harmful to humans. Had he been informed of the
21 truth of Defendants' flea and tick collars, Plaintiff would have purchased other products,
22 which did not contain such a risk. Defendants represented to Plaintiff and other Class
23 members their flea and tick collars were safe, but delivered something else entirely,
24 thereby depriving them of the benefit of their bargain. Plaintiff further incurred
25 expenses in seeking veterinary treatment for his dog due to his use of the Product
26 including the cost of emergency care, medications and after-care. Damages can be
27 calculated through expert testimony at trial. Further, should Plaintiff encounter the
28

1 Products in the future, he could not rely on the truthfulness of the packaging, absent
2 corrective changes to the package labeling and advertising of the Products. However, if
3 he could rely on the Product to keep his dog safe and healthy, he would purchase the
4 Product in the future.

5 20. Defendant Bayer HealthCare LLC (“Bayer”), is a Delaware limited
6 liability company headquartered at 100 Bayer Boulevard, Whippany, NJ 07981, and at
7 all times material was, and remains, a U.S. subsidiary of the German conglomerate,
8 Bayer Aktiengesellschaft (“Bayer AG”). Prior to August 2020, Bayer HealthCare
9 manufactured, distributed, and advertised, inter alia, Seresto® flea and tick prevention
10 collars for cats and/or dogs through retail stores including those in California. At all
11 times material, the manufacturing, distribution, and advertising sale of Seresto®
12 products in North American were performed by Bayer Animal Health, a division of
13 Bayer HealthCare, whose operations were headquartered in Shawnee, Kansas.

14 21. Founded in 1954 as part of Eli Lilly and Company, defendant Elanco
15 Animal Health, Inc. (“Elanco”) is incorporated in Indiana, and at all times material has
16 maintained its corporate headquarters and principal place of business at 2500
17 Innovation Way, Greenfield, Indiana.

18 22. On or about August 20, 2019, Elanco entered into a Share and Asset
19 Purchase Agreement (“Purchase Agreement”) with Bayer AG for the purpose of
20 purchasing certain of Bayer HealthCare’s animal health business assets for
21 approximately \$5.3 billion in cash and approximately \$2.3 billion in Elanco common
22 stock. Included in the animal health business assets that Elanco purchase from Bayer
23 were, inter alia, the rights produce, distribute, advertise and sell Bayer’s Seresto® brand
24 flea and tick prevention collars for cats and dogs within California and elsewhere in the
25 United States. The transaction for Elanco’s purchase certain of Bayer HealthCare’s
26 animal health business assets, including Seresto®, closed in August 2020 and Bayer
27 retained roughly \$2.3 billion in Elanco stock. The Seresto® products at issue in this
28

1 Action are currently manufactured in an Elanco facility located at Colectora Este Ramal
2 Pilar Manuel Alberti, Suite 317, Buenos Aires.

3 23. At all times material, all of the Seresto® Products at issue herein were
4 manufactured, sourced, marketed, advertised and sold through Elanco and Bayer, and
5 Elanco, together with Bayer, was directly responsible for the false and deceptive
6 product labeling alleged herein. The true names and capacities of defendants sued herein
7 under California Code of Civil Procedure section 474 as DOES 1 through 100,
8 inclusive, are presently unknown to Plaintiff, who therefore sue these defendants by
9 such fictitious names. Plaintiff will seek to amend this Complaint and include these
10 DOE defendants' true names and capacities when they are ascertained. Each fictitiously
11 named defendant is responsible in some manner for the illegal conduct alleged herein
12 and for the injuries suffered by Plaintiff and the general public as a consequence thereof.

13 24. Defendants and the DOE defendants named herein have approved, ratified,
14 controlled, directed, had knowledge of, and/or otherwise been legally responsible for
15 all aspects of the wrongful acts and practices of certain DOE defendants and about
16 which Plaintiff complains. A unity of interest exists between Defendants and certain
17 DOE defendants such that justice dictates that any liability created by the acts and/or
18 omissions of one be imposed upon the others who should be held legally and financially
19 responsible for all aspects of the wrongful acts and practices about which Plaintiff
20 complains. Defendants are the alter-ego of certain DOE defendants and, accordingly,
21 liability should be imposed upon the others on that basis.

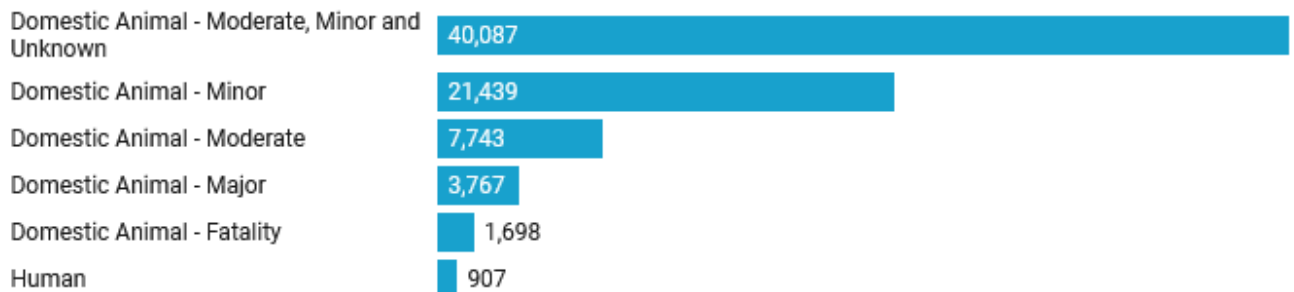
22 25. In accordance with California law, each of the Defendants are liable as a
23 direct participant, aider and abettor, co-conspirator, enabler or is otherwise jointly
24 responsible for the improper, unlawful, deceptive, misleading, unfair, and fraudulent
25 acts and practices that Defendants continue to conduct in this State to the detriment of
26 Plaintiff, Class members and members of the general public of California as well as
27 Defendants' competitors.

1 consequences due to use of the collars in a manner consistent with Defendants’
2 expectations and intentions.

3 29. The Seresto® Products were introduced to the consumer marketplace in
4 2012 and between January 2012 and June 2020, Defendants have reported over 75,000
5 adverse incidents to the United States Environmental Protection Agency (the “EPA”).
6 A true and correct copy of the US EPA Office of Pesticide Programs Incident Data
7 System for the Products is attached hereto as Exhibit B as though fully incorporated
8 herein.

9 30. Of those 75,000 reported adverse incidents, 1,698 are reports of animal
10 fatalities resulting from use of the Products, 3,767 incidents are reports of major injuries
11 resulting from use of the Products, 7,743 incidents are reports of moderate injuries
12 resulting from use of the Products, 21,439 incidents are reports of minor injuries
13 resulting from use of the Products, and the remaining 40,087 incidents are broadly
14 categorized as “Moderate Minor, and Unknown” injuries resulting from use of the
15 Products. Additionally, in the eight years of reporting contained in the data are 907
16 reports of adverse health incidents involving humans. These figures represent an
17 unreasonably high number of adverse incidents associated with the use of product
18 developed and marketed in order to promote animal health and welfare. Further still,
19 these figures represent only a small subset of the universe of injuries as most will go
20 unreported due to consumers being unable to associate the Products with the harm it
21 causes to their pets.

22 Seresto Incidents



28 Chart: Johnathan Hettinger/Midwest Center for Investigative Reporting • Source: EPA Documents • [Get the data](#) •

1 31. Though the Products at issue include warnings for both pets and humans,
2 those warnings do not disclose or warn against the Products’ tendency to cause serious
3 injury, seizures, or death to pets when the Products are used as intended. In fact, the
4 warnings on the label, including the product insert, fall short of disclosing the known
5 harmful effects of the Products and omit the most severe dangers associated with use of
6 the Product. A true and correct copy of the Product insert for small and large dogs is
7 attached hereto as Exhibit C as though fully incorporated herein.

8 32. The warnings included by Defendants intentionally, or recklessly, omit
9 necessary information that would allow reasonable consumers to evaluate the Products
10 and make an informed decision on whether to apply the inherently dangerous products
11 to their beloved and valued pets. For example, despite Defendants’ awareness of the
12 incidence reporting rate detailed above, the warning contained in the Product insert
13 reads:

14 Rarely, mild application site reactions may occur, such as scratching,
15 redness, and hair loss, which usually recover within 1 to 2 weeks without
16 the need for collar removal. In some cases, a temporary removal and
17 bathing may be recommended until symptoms have disappeared. In very
18 rare cases application site reactions such as dermatitis, inflammation,
19 eczema or lesions may occur. In these instances, collar removal is
20 recommended. If signs persist, or become more severe, contact your
21 veterinarian and call [Phone No. Omitted]

22 33. This warning, the only one provided to consumers with the Products,
23 discloses only the mildest of adverse health consequences known to Defendants and
24 reported by them to the EPA. Further still, the warnings misleadingly frame the adverse
25 health reactions as limited to contact application, i.e., “scratching,” “redness,” “hair
26 loss,” “dermatitis,” “inflammation,” “eczema,” or “lesions.” In actuality, the harmful
27 effects of the Products include death, seizures, neurological disorders, and other serious
28 injuries that are not disclosed by Defendants. This failure to disclose and intentional
mischaracterization of the label both prevents consumers from making informed
decisions as to what products they apply to their pets and prevents owners of pets from
discovering and mitigating the true cause of their pet’s maladies.

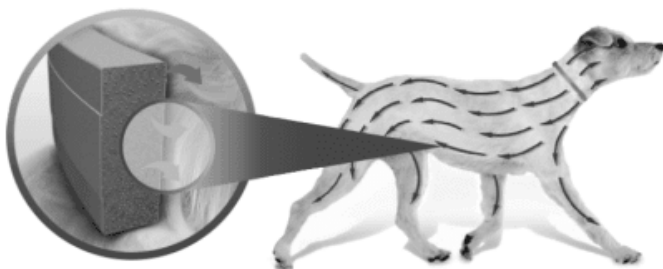
1 34. The adverse health consequences reported to the EPA by Defendants
2 include harm caused to human beings as well. Reported incidents include injuries to: a
3 twelve year old boy who slept with his dog who was wearing a Seresto® collar and who
4 developed seizures and vomiting as a result; a 67-year-old woman who suffered heart
5 arrhythmia and fatigue after sleeping in a bed with a dog wearing a collar; and a 43-year-
6 old man who slept with his dogs who wore Seresto® collars and developed ear drainage
7 and nasal and throat irritation until he removed the Seresto® collars. That same 43-
8 year-old man later reapplied the collars to his dogs and his symptoms returned.

9 35. The warning on the Product insert broadly warns that humans should not
10 ingest the Products but fails to warn of the known adverse consequences that affect
11 human beings:

12 **Keep the collar in the bag and in the outer packaging until use.** As with
13 any pesticide product, do not allow small children to play with the collar
14 or reflectors, or to put them into their mouths. Avoid contact with eyes,
15 skin or clothing. Wash thoroughly with soap and cold water after fitting
16 the collar. People with sensitivity reactions to the ingredients of the collar
17 should avoid contact with the collar. Choking hazard. Contains small parts.
18 Do not place collar or reflectors in mouth. Not intended for use on humans.

19 36. These warnings are insufficient to allow human beings to avoid the adverse
20 consequences associated with use of the Products. As noted by the Product insert, the
21 collars are designed to coat the animal in the insecticides Flumethrin and Imidacloprid:

22 The patented continuous release technology ensures that both active ingredients are slowly and
23 continuously released in low concentrations from the collar towards the animal. This avoids peak
24 concentrations and ensures that concentrations of both active ingredients are present in the dog's
25 haircoat during the entire efficacy period. The active ingredients spread from the site of direct contact
26 over the skin surface.



1 37. As Defendants must be aware, people, particularly children, regularly pet,
2 sleep with, and physically interact with dogs and cats who wear the Products consistent
3 with Defendants' instructions and intentions. By warning people not to touch or ingest
4 the collars, and to wash immediately after fitting the collar, Defendant fails to convey
5 the precautions necessary to allow a reasonable consumer to avoid injury that may arise
6 by ingesting insecticide through normal and anticipated contact with the cat or dog
7 wearing the collar rather than simply the collar itself.

8 38. Not only does Defendant fail to adequately disclose the known dangers
9 and necessary precautions but the product itself is unreasonably dangerous. Seresto®
10 collars combine two pesticides, Imidacloprid and Flumetherin. Seresto® Products are
11 the only flea and tick collars on the market that contain Flumetherin as an active
12 ingredient. According to a 2012 internal study by Defendant Bayer, when Flumetherin
13 and Imidacloprid are combined they produce a synergistic effect that increases the
14 toxicity level to make the combination more toxic to fleas than either chemical alone.
15 As a result of this study, Defendants knew or should have know that the synergistic
16 effect would also increase the toxicity to mammals, including dogs, cats, and human
17 beings. Indeed, this increased toxicity to mammals is likely reflected in the over 75,000
18 reported adverse health incidents reported in animals and the 907 reported adverse
19 health incidents that affected humans.

20 39. The official websites for Seresto® that display the advertise the Products
21 note that the Products are for “for pets up to 18 pounds” or “for pets over 18 pounds,”
22 thereby implying the Products can be safely used for pets of those broad size categories.
23 However, as indicated by September 2011 EPA guidance instructing manufacturers to
24 include “precise label instructions to ensure proper dosage per pet weight, the
25 concentration of insecticides effects animals of different sizes more acutely than others.
26 Thus, the broad application of only two different concentrations of Seresto® collars for
27 two very broad weight classes, creates a misleading impression in the minds of
28

1 consumers that the Products are suitable for an animal of a particular size when they are
2 not.

3 40. As a result of Defendants' misrepresentations and omissions, a reasonable
4 consumer (such as the Plaintiff) would, and did, have no reason to suspect that the
5 Products could cause serious injury, seizures, or even death to their pets. In fact, even
6 after reviewing the Product insert, a reasonable consumer would not be put on notice of
7 the most severe dangers associated with use of the Products and may not understand
8 that the Products are causing harm to people and pets and be thus unable to mitigate or
9 eliminate such harm in time to prevent irreversible injury or death to their pets or loved
10 ones.

11 41. Most pet owners who purchase the Products do so to promote the health
12 and safety of their animals by eliminating harmful pests and parasites that would
13 otherwise cause adverse health consequences to those pets. Reasonable pet owners do
14 not anticipate that use of a flea collar, marketed and designed to promote animal well-
15 being, can result in adverse health consequences, including seizures and death, that are
16 worse than the disease they are intended to cure. Indeed, at least one out of every 568
17 animals that are fitted with the Products suffers some malady or adverse health
18 consequence as a result. This is an unusually high number and one that likely does not
19 reflect the actual incidence rate as many pet owners may not connect the harm visited
20 upon their animals to the Products they purchased to keep them healthy. This is the
21 precise reason that accurate and intelligible warnings must be included on the Product's
22 labeling and throughout the Products advertising regime. Consumers should be
23 empowered to understand the risks they take, to their own health, and that of their
24 animals, when they consider whether or not to purchase a product and what price to pay
25 for it. It is clear that the flea and tick prevention collar Products do, in fact, cause such
26 injuries to the detriment of Plaintiff, his property, the general public, and other members
27 of the Class he seeks to represent.

1 42. As a result of Defendants’ representations and omissions, a reasonable
2 consumer (such as Plaintiff) would, and did, have no reason to suspect that the Products
3 could cause serious injury, seizures, or even death to their pets. Defendants violated the
4 Federal Insecticide Fungicide and Rodenticide Act which, in part, prohibits misbranded
5 pesticides where “its labeling bears any statement, design, or graphic representation
6 relative thereto or to its ingredients which is false or misleading in any particular.” 7
7 U.S.C. § 136(q)(1)(A). And, as described herein, the Products labels, which include the
8 Product’s insert, are false and misleading as they mischaracterize the known hazards of
9 the Product and the propensity of the Products to harm humans and animals. FIFRA
10 further defines a pesticide as misbranded if “the labeling accompanying it does not
11 contain directions for use which are necessary for effecting the purpose for which the
12 product is intended and if complied with, [. . .] are adequate to protect health and the
13 environment. 7 U.S.C § 136(q)(1)(F). FIFRA defines “environment” to include “man
14 and other animals living therein, and the interrelationships which exist among these.” 7
15 U.S.C.A. § 136(j).

16 43. Accordingly, the mislabeled Products are in violation of FIFRA
17 regulations as they do not accurately portray the known characteristics of the Products
18 and do not properly instruct users on how to avoid known harms associated with the
19 Products.

20 44. After media reports reflecting the severity and frequency of incidences of
21 pet and human injury resulting from use of the Products came to light, it is now clear
22 that the flea and tick collar Products do, in fact, cause such injuries to the detriment of
23 Plaintiff, his property, the general public, and other members of the Class they seek to
24 represent and are defective and unfit for their intended purpose.

25 45. Plaintiff brings this action individually and on behalf of all other similarly
26 situated resident consumers within who purchased the Seresto® branded flea and tick
27 prevention collar Products identified in herein, in order to cause the disclosure of risk
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1 of serious injury, seizures, or death to pets, to correct the false and misleading
2 perception Defendants have created in the minds of consumers that the Products are
3 safe and contribute positively to pet health and to obtain redress for those who have
4 purchased said Products.

5 **CLASS ACTION ALLEGATIONS**

6 46. Plaintiff brings this action pursuant to Rules 23(a), 23(b)(2), and 23(b)(3)
7 of the Federal Rules of Civil Procedure on behalf of himself and all others similarly
8 situated.

9 Plaintiff Schneider seeks to represent a California statewide class defined as: All
10 California resident citizens who, within the applicable statute of limitations,
11 purchased one or more of the Defendants' "Seresto[®]" brand-named Products at
12 issue herein for household use, and not for resale (the "Class").

13 47. Excluded from the Class are the Defendants, any of their parent companies,
14 subsidiaries, and/or affiliates, officers, directors, legal representatives, employees, co-
15 conspirators, all governmental entities, and any judge, justice, or judicial officer
16 presiding over this matter.

17 48. This action is brought and may be properly maintained as a class action.
18 There is a well-defined community of interests in this litigation and the members of the
19 Class are easily ascertainable.

20 49. The members in the proposed Class are so numerous that individual joinder
21 of all members is impracticable, and the disposition of the claims of all Class members
22 in a single action will provide substantial benefits to the parties and Court.

23 50. Questions of law and fact common to Plaintiff and the Class include, but
24 are not limited to, the following:

25 (a) whether Defendants owed a duty of care to the Class;

1 (b) whether Defendants' fail to inform consumers and disclose that the
2 Products carry serious risk of injury, seizures, and death to humans, and pet cats and/or
3 dogs;

4 (c) whether Defendants' representations in advertising and/or labeling
5 are false, deceptive, and misleading;

6 (d) whether those representations are likely to deceive a reasonable
7 consumer;

8 (e) whether Defendants had knowledge that those representations were
9 false, deceptive, and misleading;

10 (f) whether Defendants continue to disseminate those representations
11 despite knowledge that the representations are false, deceptive, and misleading;

12 (g) whether a failure to disclose that a product can cause serious
13 injuries, seizures, or death for pets is material to a reasonable consumer;

14 (h) whether Defendants' failure to disclose that a product can cause
15 serious injuries, seizures, or death for pet cats and dogs is likely to mislead, deceive,
16 confuse, or confound consumers acting reasonably;

17 (i) whether Defendants violated California Business & Professions
18 Code sections 17200, *et seq.*;

19 (j) whether Defendants violated California Business & Professions
20 Code sections 17500, *et seq.*;

21 (k) whether Defendants violated California Civil Code sections
22 1750, *et seq.*;

23 (l) whether Defendants violated California Civil Code sections
24 1790, *et seq.*;

25 (m) whether Defendants were unjustly enriched; and

26 (n) whether Defendants violated the Federal Insecticide Fungicide and
27 Rodenticide Act with respect to its misbranding provisions.

28

1 51. Defendants engaged in a common course of conduct giving rise to the legal
2 rights sought to be enforced by Plaintiff individually and on behalf of the other members
3 of the Class. Identical statutory violations and business practices and harms are
4 involved. Individual questions, if any, are not prevalent in comparison to the numerous
5 common questions that dominate this action.

6 52. Plaintiff's claims are typical of Class members' claims in that they are
7 based on the same underlying facts, events, and circumstances relating to Defendants'
8 conduct.

9 53. Plaintiff will fairly and adequately represent and protect the interests of the
10 Class, have no interests that are incompatible with the interests of the Class, and have
11 retained counsel competent and experienced in class action, consumer protection, and
12 false advertising litigation.

13 54. Class treatment is superior to other options for resolution of the
14 controversy because the relief sought for each Class member is small such that, absent
15 representative litigation, it would be infeasible for Class members to redress the wrongs
16 done to them.

17 55. Questions of law and fact common to the Class predominate over any
18 questions affecting only individual Class members.

19 56. As a result of the foregoing, Class treatment is appropriate.

20 **COUNT ONE**
21 **Violations of California's Consumer Legal Remedies Act**
22 **Cal. Civ. Code §1750, et seq.**
23 **(Against all Defendants)**

24 57. Plaintiff incorporates by reference and realleges each and every allegation
25 contained above, as though fully set forth herein.

26 58. Plaintiff brings this cause of action individually and on behalf of the other
27 members of the Class.
28

1 59. Plaintiff and each proposed Class member are a “consumer,” as that term
2 is defined in California Civil Code section 1761(d).

3 60. The Seresto[®] Products are “goods,” as that term is defined in California
4 Civil Code section 1761(a).

5 61. Each Defendant is a “person” as that term is defined in California Civil
6 Code section 1761(c).

7 62. Plaintiff and each Class member’s purchase of Defendants’ Products
8 constituted a “transaction,” as that term is defined in California Civil Code section
9 1761(e).

10 63. Defendants’ conduct alleged herein violates the following provisions of
11 California’s Consumer Legal Remedies Act (the “CLRA”):

12 (a) California Civil Code section 1770(a)(5), by representing that the
13 Products have characteristics, uses or benefits which they do not have;

14 (b) California Civil Code section 1770(a)(7), by representing that the
15 Products were of a particular standard, quality, or grade, when they were of another;

16 (c) California Civil Code section 1770(a)(9), by advertising the
17 Products with intent not to sell them as advertised; and

18 (D) California Civil Code section 1770(a)(9), by advertising the
19 Products with intent not to sell them as advertised; and

20 (d) California Civil Code section 1770(a)(16), by representing that the
21 Products have been supplied in accordance with previous representations when
22 they have not.

23 64. By failing to disclose and concealing the defective and dangerous nature
24 of the Products from Plaintiffs and the prospective Class members, Defendants violated
25 California Civil Code § 1761(a), as they represented that the Products had
26 characteristics and benefits that they do not have and represented that the Products were
27
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1 of a particular standard, quality, or grade when they were of another. See Cal. Civ.
2 Code §§ 1770(a)(5), (7), (9), and (16).

3 65. Defendants' unfair and deceptive acts or practices occurred repeatedly in
4 Defendants' trade or business, were capable of deceiving a substantial portion of the
5 purchasing public and imposed a serious safety risk on the public and their property.

6 66. Defendants knew that the Products were inherently dangerous and unfit for
7 their intended use, were misbranded and do not adequately describe the Product's
8 known characteristics or properly warn consumers such that they can avoid consequent
9 harm. As a result of their reliance on Defendants' omissions and/or misrepresentations,
10 purchasers of the Products suffered an ascertainable loss of money, property, and/or the
11 value of the misbranded Products.

12 67. Defendants were under a duty to Plaintiffs and the Class members to
13 disclose the defective and dangerous nature of the Products because Defendants were
14 in a superior position to know the true state of facts about the characteristics of the
15 Products and Plaintiffs and the Class members could not reasonably have been expected
16 to learn or discover that Products had a propensity to cause harm due to Defendants
17 mislabeling of the same.

18 68. In failing to disclose the known characteristics of the Products prior to, or
19 during, the time of transaction, Defendants knowingly and intentionally concealed
20 material facts and breached their duty not to do so.

21 69. A reasonable consumer would have considered the facts Defendants
22 concealed or did not disclose to Plaintiff and the Class Members to be important in
23 deciding whether to purchase Products or pay less for them and were material. Had
24 Plaintiff and the Class members known of the true nature of the Products, they would
25 not have purchased the Products or would have paid less for them.

26 70. Plaintiff and the Class members are reasonable consumers who do not
27 expect flea collars to cause serious injury or death to their pets or to present significant
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1 health risks to anyone coming into contact with their pets. This is the reasonable and
2 objective consumer expectation relating to consumer pet products.

3 71. As a direct and proximate result of these violations, Plaintiff and the Class
4 have been harmed, and that harm will continue unless Defendants are enjoined from
5 using the misleading practices described herein.

6 72. Pursuant to § 1782(a) of the CLRA, and concurrent with the filing of this
7 complaint, Plaintiff separately notified each of the Defendants via certified mail in
8 accordance with § 1770(a)(1) of the particular violations of § 1770 and demanded that
9 Defendants correct, remedy or otherwise rectify the actions described above and give
10 notice to all similarly affected California consumer Class members of their intention to
11 do so.

12 73. Because Defendants failed to respond to Plaintiff's demand within 30 days
13 of receipt of such notice and demand for relief, pursuant to § 1782(d) of the CLRA
14 Plaintiff seeks both injunctive relief and actual damages, plus punitive damages, interest
15 and attorneys' fees jointly against Defendants. Additionally, Plaintiff also seek to
16 recover up to \$5,000 for each eligible senior citizen and disabled Class member who
17 purchased Seresto[®] cat and/or dog pets as provided for under § 1780(b) of the CLRA.

18 **COUNT TWO**

19 **Violations of California False Advertising Law**

20 **California Business & Professions Code §§17500, *et seq.***

21 **(Against All Defendants)**

22 74. Plaintiff incorporates by reference and realleges each and every allegation
23 contained above, as though fully set forth herein.

24 75. Plaintiff brings this cause of action individually and on behalf of the other
25 members of the Class.

26 76. California's False Advertising Law prohibits any statement in connection
27 with the sale of goods "which is untrue or misleading." Cal. Bus. & Prof. Code §17500.
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1 77. As set forth herein, Defendants' warnings included in the Product insert
2 conceal, omit, and misrepresent the known dangers associated with use of the Products
3 and fail to include the precautions necessary to prevent harm to humans who come into
4 physical contact with the animals wearing the collars. These claims are false, untrue,
5 and misleading and likely to deceive the public.

6 78. Further, Defendants' claim that the Seresto[®] Products are appropriate for
7 "pets above 18 pounds" or "pets below 18 pounds," thereby implying the Products are
8 safe for the same, are false, untrue, and misleading and likely to deceive the public.

9 79. Defendants knew, or reasonably should have known, that their descriptions
10 and warnings were untrue or misleading due to the overwhelming number of adverse
11 health incidents they received between 2012, when the Products were introduced, and
12 June 2020.

13 80. Defendants' conduct is ongoing and continuing, such that prospective
14 injunctive relief is necessary, especially given Plaintiff's desire to purchase these
15 Products in the future if they can be assured that, so long as the Products are safe.

16 81. Plaintiff and members of the Class are entitled to injunctive and equitable
17 relief, and restitution in the amount they spent on the Products.

18 **COUNT THREE**

19 **Violations of the Unfair Competition Law**

20 **Cal. Bus. & Prof. Code §§17200, *et seq.***

21 **(Against all Defendants)**

22 82. Plaintiff incorporates by reference and realleges each and every allegation
23 contained above, as though fully set forth herein.

24 83. Plaintiff brings this cause of action individually and on behalf of the other
25 members of the Class.
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1 84. California Business & Professions Code § 17200 prohibits acts of “unfair
2 competition,” including any “unlawful, unfair or fraudulent business act or practice”
3 and “unfair, deceptive, untrue or misleading advertising.”.

4 85. Plaintiff and the members of the Class are reasonable consumers who do
5 not expect consumer pet products intended to promote animal health to suffer from the
6 issues described herein.

7 86. In failing to disclose the known qualities of the Products, and
8 misrepresenting its true characteristics, Defendants have knowingly or intentionally
9 concealed material facts and breached their duty not to do so.

10 87. Defendants were under a duty to Plaintiffs and the Class members to
11 disclose the known characteristics of the Products because Defendants were in a
12 superior position to know the true state of facts about the Products and their propensity
13 to harm and Plaintiffs and the Class members could not reasonably have been expected
14 to learn or discover the truth about the Products until the danger manifested and/or were
15 prevented from learning that the issues they experienced were the result of a defect due
16 to Defendants’ active concealment of the same.

17 **Fraudulent**

18 88. Defendants’ acts, conduct, and practices were fraudulent, in that they
19 constituted business practices and acts that were likely to deceive reasonable members
20 of the public. Defendants have long known of the harmful characteristics associated
21 with the misbranded Products and continued to conceal those facts from consumers
22 while making misrepresentations regarding the Products and their propensity to harm.
23 Defendant’s acts, conduct, and practices were fraudulent because they are immoral,
24 unethical, oppressive, unscrupulous, and/or are substantially injurious to consumers,
25 including Plaintiff and the Class.

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1 **Unlawful**

2 1. A business practice is unlawful if it is forbidden by any law. Defendant's
3 acts, conduct, and practices were unlawful, in that they constituted:

- 4 a. Violations of the California Consumer Legal Remedies Act;
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6 b. Violations of the Song-Beverly Consumer Warranty Act;
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8 c. Violations of California's False Advertising Law; and
9
10 d. Violations of the mislabeling prohibitions of FIFRA, 7 U.S.C. §
136(q) *et seq.*;

11 **Unfair**

12 89. Defendants' acts, conduct, and practices were unfair, in that they
13 constituted business practices and acts the utility of which does not outweigh the harm
14 to consumers and reasonable consumers are unable to avoid the harm resulting from
15 Defendants practices. Defendants' business acts and practices were further unfair in that
16 they offend established public policy, are immoral, unethical, oppressive, unscrupulous,
17 and substantially injurious to consumers.

18 90. Defendants' conduct with respect to the labeling, advertising, marketing,
19 and sale of the Products is also unfair because it violates public policy as declared by
20 specific constitutional, statutory, or regulatory provisions, including, but not limited to,
21 FIFRA, the False Advertising Law and the CLRA.

22 91. Defendants' conduct with respect to the labeling, advertising, marketing,
23 and sale of the Products is also unfair because the consumer injury is substantial, not
24 outweighed by benefits to consumers or competition, and not one consumer's,
25 themselves, can reasonably avoid.

26 92. By its conduct, Defendants have engaged in unfair competition and
27 unlawful, unfair, and fraudulent business practices.

1 93. Defendant’s unfair or deceptive acts or practices occurred repeatedly in
2 Defendants’ trade or business and were capable of deceiving a substantial portion of the
3 purchasing public.

4 94. As a direct and proximate result of Defendant’s unfair and deceptive
5 practices, Plaintiff and the Class have suffered and will continue to suffer actual
6 damages.

7 95. Defendant has been unjustly enriched and should be required to make
8 restitution to Plaintiff and the Class pursuant to §§ 17203 and 17204 of the Business &
9 Professions Code. Plaintiff and members of the class also seek injunctive relief as
10 deemed appropriate by the Court.

11 96. On behalf of himself and the Class, Plaintiff also seeks an order for the
12 restitution of all monies from the sale of Seresto[®] Products, which were unjustly
13 acquired through acts of fraudulent, unfair, or unlawful competition.

14 **COUNT FOUR**

15 **Violations of the Song-Beverly Consumer Warranty Act**

16 **Cal. Civ. Code § 1790, *et seq.***

17 **(Against all Defendants)**

18 97. Plaintiff incorporates by reference and realleges each and every allegation
19 contained above, as though fully set forth herein.

20 98. Plaintiff brings this cause of action individually and on behalf of the other
21 members of the Class.

22 99. At all times herein mentioned, the Defendants manufactured, distributed,
23 compounded, recommended, merchandized, advertised, promoted, and sold the
24 Products and/or have recently acquired the Defendants who have manufactured,
25 compound portrayed, distributed, recommended, merchandized, advertised, promoted,
26 and sold The Products, as a flea and tick device intended to promote the health and well-
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1 being of consumers’ pets. These actions were under the ultimate control and supervision
2 of Defendants.

3 100. At the time Defendants marketed, sold, and distributed the Products for use
4 by Plaintiff, Defendants knew of the Products intended use and impliedly warranted the
5 Product to be of merchantable quality and safe and fit for this use.

6 101. In California every sale of consumer goods is accompanied by an implied
7 warranty of merchantability. Cal. Civ. Code § 1792. A core test of merchantability
8 under the Song–Beverly Consumer Warranty Act is fitness for the ordinary purpose for
9 which such goods are used; such fitness is shown if the product is in safe condition and
10 substantially free of defects. Cal. Civ. Code §§ 1791.1(a), 1792.

11 102. As defined in the Song-Beverly Consumer Warranty Act, ‘an implied
12 warranty of merchantability guarantees that ‘consumer goods meet each of the
13 following: (1) Pass without objection in the trade under the contract description; (2) Are
14 fit for the ordinary purposes for which such goods are used; (3) Are adequately
15 contained, packaged, and labeled; and (4) Conform to the promises or affirmations of
16 fact made on the container or label.’ Unlike an express warranty, ‘the implied warranty
17 of merchantability arises by operation of law’ and ‘provides for a minimum level of
18 quality.’ Cal. Civ. Code § 1791.1(a).

19 103. The implied warranty of merchantability may only be disclaimed by
20 Defendants if the disclaimer strictly complies with the provisions of the Song-Beverly
21 Consumer Warranty Act. Cal. Civ. Code §§ 1792.3 and 1792.5. Under the Act, a
22 conspicuous writing must disclose to the buyer prior to the sale that the goods are being
23 sold on an “as is” or “with all faults” basis and that the buyer has assumed the entire
24 risk as to the goods’ quality and performance. Cal. Civ. Code §§ 1792.4.

25 104. At all times that Defendants warranted and sold the Products, they knew
26 or should have known that their warranties were false, and yet they did not disclose the
27 truth, or stop manufacturing or selling the Products, and instead continued to issue false
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1 warranties, and continued to insist the products were safe when they were not. The
2 Products were defective when Defendants delivered them to their resellers, dealers, and
3 distributors which sold the Products, and the Products were therefore still defective
4 when they reached Plaintiff and the Class.

5 105. The Defendants impliedly represented and warranted to Plaintiff and users
6 of the Products, that Seresto® collars were safe and of merchantable quality and fit for
7 the ordinary purpose for which it was to be used.

8 106. These representations and warranties were false, misleading, and
9 inaccurate in that the Products are unsafe, unreasonably dangerous, not of merchantable
10 quality, and defective.

11 107. Plaintiff and members of the putative class did rely on the Defendants'
12 implied warranty of merchantability with respect to the Products.

13 108. Plaintiff reasonably relied upon the skill and judgment of Defendants as to
14 whether Seresto® collars were of merchantable quality and safe and fit for their
15 intended use.

16 109. The Products were injected into the stream of commerce by the Defendants
17 in a defective, unsafe, and inherently dangerous condition, and the Products' materials
18 were expected to and did reach users, handlers, and persons coming into contact with
19 said products without substantial change in the condition in which they were
20 manufactured, distributed, and sold.

21 110. Plaintiff and each Class member's acquisition of the Products suffices to
22 create privity of contract between Plaintiff and all other members of the Class, on the
23 one hand, and Defendants on the other hand; however, privity of contract need not be
24 established nor is it required because Plaintiff and the Class members are intended third-
25 party beneficiaries of contracts between Defendants and their resellers, authorized
26 dealers, and, specifically, of Defendants' implied warranties.

1 111. Defendants' resellers and distributors are intermediaries between
2 Defendants and consumers. These intermediaries sell the Products to consumers and
3 are not, themselves, consumers of the Products, and therefore have no rights against
4 Defendants with respect to Plaintiff's and all other Class members' acquisition of the
5 Products.

6 112. The Defendants breached the aforesaid implied warranties, as their
7 Seresto® Products were not fit for their intended purposes and uses.

8 113. As a result of the foregoing acts and omissions, Plaintiff incurred damages
9 necessitated by the emergency veterinary care of his animal who suffered from seizures
10 afflicted by the Products.

11 114. Plaintiff respectfully requests that this Court enter judgment in Plaintiff's
12 favor for compensatory and punitive damages, together with interest, costs herein
13 incurred, attorneys' fees and all relief as this Court deems just and proper. Additionally,
14 Plaintiff demands a jury trial on all issues contained herein.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff Steven Schneider, on behalf of himself and all others
17 similarly situated, prays for judgment against the Defendants as to each and every count,
18 including:

19 A. An order declaring this action to be a proper class action, appointing
20 Plaintiff and his counsel to represent the Class, and requiring Defendants to bear the
21 costs of class notice;

22 B. An order enjoining Defendants from selling the Products in any manner
23 suggesting or implying that they are safe for cat and/or dog pets of any weight, and
24 failing to disclose the risk of serious injury, seizures, or death to consumers and their
25 pets;

1 C. An order requiring Defendants to engage in a corrective advertising
2 campaign and engage in any further necessary affirmative injunctive relief, such as
3 recalling existing Seresto® Products;

4 D. An order awarding declaratory relief, and any further retrospective or
5 prospective injunctive relief permitted by law or equity, including enjoining Defendants
6 from continuing the unlawful practices alleged herein, and injunctive relief to remedy
7 Defendants' past misconduct;

8 E. An order requiring Defendants to pay restitution to restore all funds
9 acquired by means of any act or practice declared by this Court to be an unlawful, unfair,
10 or fraudulent business act or practice, untrue or misleading advertising, or a violation
11 of the Unfair Competition Law, False Advertising Law, or CLRA, plus pre- and post-
12 judgment interest thereon;

13 F. An order requiring Defendants to disgorge or return all monies, revenues,
14 and profits obtained by means of any wrongful or unlawful act or practice;

15 G. An order requiring Defendants to pay all actual and statutory damages
16 permitted under the causes of action alleged herein;

17 H. An order requiring Defendants to pay punitive damages on any cause of
18 action so allowable;

19 I. An order awarding attorneys' fees and costs to Plaintiff and the Class; and

20 J. An order providing for all other such equitable relief as may be just and
21 proper.

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JURY DEMAND

Plaintiff Steven Schneider hereby demands a trial by jury on all issues so triable.

DATED: April 8, 2021

Respectfully submitted,
FINKELSTEIN & KRINSK LLP
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