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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

AMANDA MERRIMAN, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

BAYER HEALTHCARE LLC, and ELANCO
ANIMAL HEALTH, INC.,

Defendants.

Case No. 1:21-cv-2227

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

1. BREACH OF EXPRESS WARRANTY
2. BREACH OF IMPLIED WARRANTY
3. UNJUST ENRICHMENT
4. VIOLATION OF CALIFORNIA SONG-BEVERLY ACT
5. VIOLATION OF CALIFORNIA CONSUMER LEGAL REMEDIES ACT
6. VIOLATION OF CALIFORNIA FALSE ADVERTISING LAW
7. VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW

1 Plaintiff Amanda Merriman (“Plaintiff”), brings this consumer class action lawsuit against
2 Defendants Bayer Healthcare LLC and Elanco Animal Health, Inc. (collectively, “Defendants”),
3 individually and on behalf of all others similarly situated. Plaintiff alleges the following based on
4 personal knowledge as to her own acts and based upon the investigation conducted by her counsel
5 as to all other allegations:

6 **INTRODUCTION**

7 1. Many Americans have pets and cultivate strong, loving bonds with them as
8 members of their families. As a result, pet owners are very protective of their pets and are
9 passionate about their health and well-being. When it comes to choosing pet-related products,
10 such as flea and tick collars, pet owners are understandably selective.

11 2. Defendants Bayer Healthcare LLC and Elanco Animal Health, Inc. are
12 manufacturers, marketers, advertisers, distributors, and sellers of a variety of pet-related products.
13 Since 2012, Defendants have taken advantage of the trust that loyal pet owners place in their
14 companies and products by actively manufacturing, marketing, advertising, distributing, and
15 selling dangerous flea and tick collars with the capacity to injure, maim, or even kill the pets that
16 wear, or are exposed to, them.

17 3. Specifically, Defendants’ Seresto brand flea and tick collars (“Seresto Collars” or
18 the “Products”) purport to prevent fleas and ticks on dogs and cats by releasing small amounts of
19 pesticides onto the pets over time. However, the harm inflicted by Seresto Collars far outweighs
20 any benefits of flea or tick prevention that the Products might offer.

21 4. According to the Environmental Protection Agency (“EPA”), since 2012,¹ Seresto
22 Collars have been responsible for over 75,000 reported incidents—including the deaths of 1,698
23 pets and nearly 1,000 incidents involving human harm.

24 5. Since 2012, when the Seresto Collars were first distributed and sold into the
25 consumer marketplace, Defendants have received an overwhelming number of notices regarding
26 the harm that their Products can cause, have caused, and will continue to cause.² Despite ample

27 ¹ [https://investigatamidwest.org/2021/03/02/popular-flea-collar-linked-to-almost-1700-pet-](https://investigatamidwest.org/2021/03/02/popular-flea-collar-linked-to-almost-1700-pet-deaths-the-epa-has-issued-no-warning)
28 [deaths-the-epa-has-issued-no-warning](https://investigatamidwest.org/2021/03/02/popular-flea-collar-linked-to-almost-1700-pet-deaths-the-epa-has-issued-no-warning) (last visited Mar. 26, 2021).

² *Id.*

1 opportunity to warn consumers of the harm that Seresto Collars present to pets, pet owners, and
2 their families, Defendants have refused to disclose or otherwise inform consumers of these risks,
3 which are known to Defendants but unknown to consumers. Even more, despite knowing about
4 the dangers associated with the Seresto Collars, Defendants continue to manufacture and sell
5 Seresto Collars to unsuspecting pet owners in order to profit at the expense of pet owners and
6 their pets.

7 6. In March 2021, an investigative exposé reported on the gravity of the risks
8 associated with Seresto Collars, with incidents going all the way back to the initial release of the
9 Products in 2012.³ The report revealed that, “[t]he pesticide is supposed to kill fleas, ticks, and
10 other pests but also be safe for cats and dogs. But thousands of pets are being harmed.”⁴ This
11 report widely exposed Defendants’ improper conduct, which they had long concealed from the
12 public and pet owners, leading to a slew of news articles and other coverage.⁵ Despite this latest
13 exposure of the serious risks associated with their Products, Defendants continue to market and
14 sell the dangerous Seresto Collars and have yet to admit to the consuming public that these serious
15 risks exist.

16 7. Additionally, on March 17, 2021, Representative Raja Krishnamoorthi, the
17 chairman of the House Subcommittee on Economic and Consumer Policy, wrote directly to
18 Defendant Elanco Animal Health, Inc. demanding that it voluntarily recall Seresto Collars from
19 the market due to the serious risks associated with the Products.⁶ Despite this formal request,
20 Defendant Elanco Animal Health, Inc. has not voluntarily recalled the Seresto Collars, has
21 continued to deny the existence of the serious safety risks posed by the Seresto Collars, and has
22 continued to sell the Seresto Collars to pet owners without disclosing the serious risks they pose
23 to pets.⁷ Defendants continue to deny wrongdoing and denying the fact that the Products pose

24 ³ *Id.*

25 ⁴ *Id.*

26 ⁵ *E.g.*, <https://www.usatoday.com/story/news/investigations/2021/03/02/seresto-dog-cat-collars-found-harm-pets-humans-epa-records-show/4574753001> (last visited Mar. 26, 2021).

27 ⁶ *Available at* <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2021-03-17.RK%20to%20Simmons-Elanco%20re%20Pet%20Collars.pdf> (last visited Mar. 26, 2021).

28 ⁷ <https://www.usatoday.com/story/news/investigations/2021/03/18/congressional-subcommittee-seeks-recall-seresto-flea-tick-collar/4759904001> (last visited Mar. 26, 2021);

1 serious safety risks to consumers and their pets, stating that incident reports—even in such high
2 numbers—do not implicate the Seresto Collars as the cause of harm to pets, and that reporting on
3 these many incidents of injury is nothing more than “misleading media coverage.”⁸

4 8. Plaintiff brings this class action to make whole the pet owners who unwittingly
5 purchased Seresto Collars for their pets, without any knowledge of the serious safety risks that
6 the Products posed to their pets and themselves. Plaintiff does not seek recovery in this action for
7 personal injuries, wrongful death, or emotional distress on behalf of herself or on behalf of the
8 Class Members.

9 **JURISDICTION AND VENUE**

10 9. This Court has subject matter jurisdiction pursuant to the Class Action Fairness
11 Act, 28 U.S.C. § 1332(d)(2). The amount-in-controversy, exclusive of costs and interest, exceeds
12 the sum of \$5 million in the aggregate, in total there are well over 100 members of the proposed
13 Classes that are known to exist, and this is a class action in which complete diversity exists
14 between one Plaintiff and one Defendant—namely, that Plaintiff Amanda Merriman is from
15 California, while Defendant Bayer Healthcare LLC is a Delaware corporation headquartered in
16 New Jersey and while Defendant Elanco Animal Health, Inc. is an Indiana corporation
17 headquartered in Indiana. This Court has personal jurisdiction because Plaintiff purchased
18 Defendants’ Products in this District, the harm to Plaintiff occurred in this District, Defendants
19 directed their Products into the stream of commerce, which ended up in this District, and
20 Defendants engage in marketing and advertising in this District.

21 10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) because
22 Plaintiff resides in this District and is a resident of the State of California.

23 **INTRADISTRICT ASSIGNMENT**

24 11. This action is properly assigned to the Eureka Division of this District pursuant to
25 N.D. Cal. L.R. 3-2, because Plaintiff Amanda Merriman resides in Humboldt County, California,

26 _____
27 <https://investigatmidwest.org/2021/03/18/house-subcommittee-seeks-voluntarily-recall-of-seresto-flea-and-tick-collars> (last visited Mar. 26, 2021).

28 ⁸ <https://investigatmidwest.org/2021/03/18/house-subcommittee-seeks-voluntarily-recall-of-seresto-flea-and-tick-collars> (last visited Mar. 26, 2021).

1 which is the county in which a substantial part of the events or omissions which give rise to the
2 claim occurred.

3 **PARTIES**

4 **Plaintiff**

5 12. Plaintiff Amanda Merriman is a resident of the State of California. On or about
6 April 10, 2020, while a California resident, she purchased a Seresto Collar for her two pet dogs,
7 Molly and Micah, from www.Chewy.com.

8 **Defendants**

9 13. Defendant Bayer Healthcare LLC is the former owner of the Seresto brand of
10 collars. Defendant Bayer Healthcare LLC is a Delaware corporation and is headquartered in
11 Whippany, New Jersey.

12 14. Defendant Bayer Healthcare LLC sold the Products at issue from 2012 (when the
13 product was introduced onto the market) to 2020, after which Defendant Bayer Healthcare LLC
14 sold the Seresto brand to Defendant Elanco Animal Health, Inc.

15 15. Defendant Elanco Animal Health, Inc. is the current owner of the Seresto brand.
16 Defendant Elanco Animal Health, Inc. is an Indiana corporation and is headquartered in
17 Greenfield, Indiana.

18 16. Since its purchase of the Seresto brand in 2020, Defendant Elanco Animal Health,
19 Inc. has consistently sold the Products at issue.

20 **PLAINTIFF'S FACTUAL ALLEGATIONS**

21 17. Plaintiff Amanda Merriman is a resident of the State of California. She purchased
22 Seresto Collars for her two dogs, Molly and Micah, as part of their health regimen in order to
23 prevent them from being infested and/or harmed by fleas and ticks. She purchased two Seresto
24 Collars on April 10, 2020, from Chewy.com, a well-established online retailer of pet products.

25 18. At the time of purchase, Plaintiff Merriman reviewed the Products' packaging and
26 retail information. The Seresto Collars' packaging and descriptions stated that the Products were
27 a safe and effective means of flea and tick prevention for dogs. She purchased the Products with
28 the intention of ensuring her dogs' health and safety.

1 19. After receiving the Products, Plaintiff Merriman placed the Seresto Collars around
2 her dogs' necks as directed by the manufacturer's instructions. However, shortly after putting the
3 Products on her dogs, she noticed that her dogs, Molly and Micah, were suffering harm—
4 experiencing significant hair loss, developing welts, itching, and vomiting.

5 20. Plaintiff Merriman understandably grew concerned. She hired a professional dog
6 groomer to thoroughly bathe her dogs, thinking that doing so would address their skin irritation
7 and hair loss.

8 21. Further, Plaintiff Merriman purchased specialized dog food to improve her dogs'
9 diet in an effort to address the injuries her dogs had developed. She also purchased specialized
10 shampoo in an effort to address their injuries.

11 22. Plaintiff Merriman's efforts did not resolve her dogs' health conditions, which
12 developed after first applying the Seresto Collars. However, after she removed the Seresto Collars
13 from the dogs, their injuries healed.

14 23. The Products harmed both Plaintiff Merriman and her dogs, Molly and Micah. The
15 Products caused her dogs to experience significant hair loss and develop welts, itching, and
16 vomiting. And the Products caused Plaintiff to experience financial loss through the expenditure
17 of costs, including the costs of a groomer, specialized dog food, and specialized shampoo. Further,
18 Plaintiff Merriman expended significant time nursing her dogs, Molly and Micah, back to health.

19 24. Plaintiff Merriman was also harmed economically because she spent money on the
20 Products, which did not perform as advertised. She did not receive the Products she intended to
21 purchase: flea and tick collars which were fit for their ordinary purpose—the safe administration
22 of flea and tick preventatives to her dogs. She did not receive the benefit of her bargain.

23 25. Had Defendants disclosed the existence of the serious safety risks associated with
24 Seresto Collars, including significant hair loss, welts, itching, and vomiting, Plaintiff Merriman
25 either would not have purchased the Product for her dogs, Molly and Micah, or else would have
26 paid significantly less for it. She did not receive the benefit of her bargain.

27 26. If the Seresto Collars functioned as advertised—and did not pose any serious risk
28 to her dogs, to herself, or to others, associated with the Products' use—Plaintiff Merriman would

1 likely purchase or would consider purchasing additional Seresto Collars again in the future.
2 Alternatively, if the Court were to issue an injunction ordering Defendants to comply with
3 advertising and warranty laws, and to remediate the serious and ongoing safety risks associated
4 with Seresto Collars, Plaintiff Merriman would likely purchase or would consider purchasing
5 additional Seresto Collars again in the future.

6 **GENERAL FACTUAL ALLEGATIONS**

7 **History of Seresto Collars**

8 27. The United States consumer market for pet products is substantial. Pet owners
9 purchase a wide variety of products to ensure the health and safety of their pets.

10 28. An important element of a pet's health regimen includes flea and/or tick
11 preventative medication. One such purported flea and tick preventative medication is Seresto, a
12 brand of pet collars that is marketed as safe for the pet, but capable of killing and repelling fleas
13 and ticks when worn by the pet.

14 29. Seresto Collars were first produced by Defendant Bayer Healthcare LLC in 2012.
15 The Products quickly gained traction in the pet products industry, selling over \$300 million worth
16 of Seresto Collars in 2019, when the brand was still owned by Defendant Bayer Healthcare LLC.⁹

17 30. In 2020, Seresto was sold to Defendant Elanco Animal Health, Inc.¹⁰ The
18 acquisition of the Seresto brand was a key component in Elanco Animal Health's \$7.6 billion
19 acquisition of Defendant Bayer Healthcare LLC's pet products division.¹¹

20 31. Elanco still owns the Seresto brand today, and Elanco still sells the Product to pet
21 owners seeking safe and effective flea and tick prevention devices.

22 **How Seresto Collars Work**

23 32. Flea and tick prevention methods are an integral part of a dog's health regimen, as
24 fleas and ticks can cause great harm to pets, including severe skin irritation, skin damage, or Lyme
25 disease, among other health problems. There are a few different types of flea and tick prevention

26 _____
27 ⁹ <https://investigatemitwest.org/2021/03/02/popular-flea-collar-linked-to-almost-1700-pet-deaths-the-epa-has-issued-no-warning/>.

28 ¹⁰ *Id.*

¹¹ *Id.*

1 methods, including prophylactic pills, the application of prophylactic serums to the pet’s skin
2 and/or fur, and collars like those sold by Defendants under the Seresto brand name.

3 33. Seresto Collars time release two different pesticides—imidacloprid and
4 flumethrin—in a “cocktail” that works to prevent and/or kill fleas and ticks. These two pesticides
5 work in tandem.¹² As the pet wears the collar over time, more of the pesticide cocktail is released,
6 both onto the pet itself, specifically, and into the surrounding area, generally. After a given period
7 of time, the Product runs out of the pesticide cocktail and loses its efficacy. As a result, the pet
8 owner must purchase additional Seresto Collars in order to continue the flea and tick prevention
9 for his or her pet.

10 34. One of the pesticides used in Seresto Collars, imidacloprid, is commonly used as
11 an application on crops. Imidacloprid belongs to the neonicotinoid class of insecticides and is
12 connected with “massive die-offs” of certain non-targeted insects, including bees and
13 butterflies.¹³ Evidence shows that these pesticides can cause harm to mammals as well.¹⁴

14 35. The other pesticide used in Seresto Collars, flumethrin, is only actively included
15 as an ingredient in one product—Seresto Collars—according to EPA documents.¹⁵

16 **Harm Caused by Seresto Collars**

17 36. Since Seresto Collars entered the pet product market in 2012, they have inflicted
18 an unparalleled amount of harm onto pets and pet owners alike. The EPA reports *over 75,000*
19 *health-related incidents* tied to the use of Seresto products from 2012 through June 2020.¹⁶

20 37. This number of incidents tied to a single readily available consumer product is
21 particularly concerning, not only because of the significant *quantity* of reported incidents, but also
22 because of the *magnitude* of the harm Seresto Collars has caused—death to a reported 1,698 pets
23 and nearly 1,000 cases of actual physical harm to pet owners.¹⁷ The harm caused by Seresto
24 Collars is due to the dangerous chemical cocktail of pesticides that are used in the Products.

25 _____
¹² *Id.*

26 ¹³ *Id.*

27 ¹⁴ *Id.*

¹⁵ *Id.*

28 ¹⁶ *Id.*

¹⁷ *Id.*

1 38. Consequently, by design, the Seresto Collars contain dangerous, unsafe chemical
2 pesticides, which over an 8-month period slowly and continuously release chemicals onto the pet
3 wearing the Seresto Collar and into the surrounding environment. These chemicals are unsafe and
4 pose a serious, continuous risk of injury to the pet wearing the collar, to other pets exposed to the
5 collar, and to the pet owner and others exposed to the collar.

6 39. This risk of serious harm exists at all times, from the Seresto Collar’s manufacture
7 until all pesticides on/in the Product have been released, which—according to the Product’s
8 packaging—lasts at least 8 months after the Seresto Collar is placed on the pet.

9 40. Accordingly, the serious risk of harm to pets and pet owners exists within the
10 Product from the moment the Seresto Collars are manufactured (and when the Products leave
11 Defendants’ control), prior to and at the point of sale, and for 8 months after initial application to
12 the pet.

13 41. Experts, such as Nathan Donley, a senior scientist at the Center for Biological
14 Diversity and an expert on U.S. pesticide regulation, said that the reported incidents are actually
15 “just the tip of the iceberg” for Seresto.¹⁸ Donley believes that a slew of incidents remain
16 unreported due to the fact that pet owners must make the connection between the incidents and
17 the Seresto Collar. Donley explained, “[m]ost of the time, people are not going to make the
18 connection or they’re not going to take an hour out of the day and figure out how to call and spend
19 time on hold [to report it to the EPA].”¹⁹

20 42. Donley, who is also a former cancer researcher, also stated that the number of
21 incidents is overwhelming: “[y]ou don’t even see these kinds of numbers with many agricultural
22 chemicals. . . . For whatever reason, this combination [of pesticides used in Seresto Collars] is
23 just really nasty.”²⁰ Donley noted that he had “never seen any product that had 75,000
24 incidents.”²¹

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26 _____
27 ¹⁸ *Id.*

28 ¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

1 43. Karen McCormack, a retired EPA employee, stated that Seresto Collars have the
2 most incidents she has ever seen related to a pesticide pet product.²²

3 44. And in a letter, Representative Krishnamoorthi explained that “the actual number
4 of deaths and injuries [from the Products] is [likely] much greater.”²³

5 45. Beyond the obvious harm to pets, the harm to consumers is also substantial.
6 Consumers have been economically injured through purchasing an unreasonably dangerous
7 product that does not perform as advertised. Unwitting consumers, including Plaintiff and Class
8 Members, did not receive the benefit of their bargain when purchasing the Products. Plaintiff
9 disclaims any intent to seek recovery for personal injuries, wrongful death, or emotional distress
10 suffered by herself, her pets, or on behalf of Class Members.

11 46. Pets who wear Seresto Collars—or are otherwise exposed to the Products—can
12 suffer injuries, including rashes, increased lethargy, vomiting, loss of appetite, seizures, or even
13 death.²⁴

14 47. But injuries caused by the Products are not limited to pets. A 2019 EPA assessment
15 of human health risk associated with Seresto Collars included 907 incidents, accumulated
16 between 2013 and 2018, in which injuries to humans were reported. This assessment determined
17 that, of these 907 incidents, 19 were considered “severe.”²⁵

18 48. Examples of the human incidents listed by the EPA include:

- 19 • A 12-year-old boy who slept in a bed with a dog wearing a collar started having
20 seizures and vomiting. He had to be hospitalized.
- 21 • A 67-year-old woman who slept in a bed with a dog wearing a collar reported
22 having heart arrhythmia and fatigue.
- 23 • A 43-year-old man put collars on eight dogs and slept in the same bed as four of
24 the dogs. A week later, he developed ear drainage and nasal and throat irritation
25 and was told by a doctor that he had a hole in his ear drum. He removed the dog

26 ²² *Id.*

27 ²³ Available at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2021-03-17.RK%20to%20Simmons-Elanco%20re%20Pet%20Collars.pdf> (last visited Mar. 26, 2021).

28 ²⁴ *Id.*

²⁵ *Id.*

1 collars and the symptoms went away. He later reapplied the collars and the
2 symptoms returned.”²⁶

3 49. Although this action specifically disclaims seeking damages for personal injuries,
4 these examples demonstrate that the Seresto Collars are not safe and that a consumer who
5 purchases the Product is not receiving the benefit of his or her bargain.

6 **Representations and Omissions by Defendants Regarding Seresto Collars**

7 50. Seresto Collars are marketed as a part of a pet’s regular health regimen—as flea
8 and tick prevention for dogs and cats—and are sold in “tin” packaging. All Seresto product
9 packaging includes representations regarding Seresto Collars, which leads reasonable consumers
10 to believe that the Products will be safe for their pets and themselves as the Product’s sole purpose
11 is to keep pets safe from fleas and ticks, since fleas and ticks can cause pets to suffer from severe
12 itching, skin damage, or Lyme disease, among other ailments. Contrary to these representations,
13 the Seresto Collars are anything but safe for Pets, as they can and have caused Pets (and their
14 owners) to suffer serious injuries.

15 51. As shown below, the Seresto Product tin represents that the Seresto Collar “[k]ills
16 and repels fleas and ticks” and provides “8 month protection.”²⁷



26 *Id.*

27 ²⁷ *E.g.*, <https://www.amazon.com/Seresto-flea-collar-8-month-prevention/dp/B00B8CG602> (last
28 visited Mar. 26, 2021) (for dogs); <https://www.amazon.com/Seresto-collar-8-month-prevention-weeks/dp/B00B8CG5NK> (last visited Mar. 26, 2021) (for cats).

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1 52. Seresto Collars are advertised as providing flea and tick prevention through
2 “continuous release.”²⁸ That is, once the Seresto Collar is placed on the pet, it continuously
3 releases chemical pesticides onto the pet and into the surrounding environment.

4 53. The Seresto Collar product tin includes additional information on the back label.
5 The back label includes warnings relating to the storage and disposal of Seresto Collars. Examples
6 of the back label of the Seresto Collar product tin are included below.²⁹ However, as shown below,
7 the back label—and the product tin as a whole—fails to include any warnings relating to the
8 serious safety risks that Seresto Collars pose to pets and pet owners, as described above.



26 ²⁸ <https://www.amazon.com/Seresto-collar-8-month-prevention-weeks/dp/B00B8CG5NK> (last
27 visited March 26, 2021).

28 ²⁹ <https://www.amazon.com/Seresto-flea-collar-8-month-prevention/dp/B00B8CG602> (last
visited Mar. 26, 2021) (for dogs); <https://www.amazon.com/Seresto-collar-8-month-prevention-weeks/dp/B00B8CG5NK> (last visited Mar. 26, 2021) (for cats).

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54. Consequently, the Seresto Collars’ product packaging includes no mention of the serious risks posed by the Product to the pet wearing the collar, to other pets nearby, to the pet owner, or to others in the immediate vicinity, including family members, including risk of irritation, rashes, hair loss, gastrointestinal problems, seizures, and even death.

55. Similarly, Defendants’ marketing of Seresto Collars never discloses the serious risks posed by the Product to the pet wearing the collar, to other pets nearby, to the pet owner, or to others in the immediate vicinity, including family members, including risk of irritation, rashes, hair loss, gastrointestinal problems, seizures, and even death. No reasonable consumer would purchase the Products if the risks were noted on the packaging or other advertising.

56. As discussed herein, Defendants have long known about the dangers associated with use of the Products, since introduction of the Products into the consumer marketplace in 2012. However, Defendants have actively and fraudulently concealed this information from unwitting consumers. Accordingly, consumers remain unaware of these serious risks, because Defendants refuse to disclose this important information—or otherwise actively conceal it.

Defendants' Knowledge of the Risks Associated with Seresto Collars

57. Defendants knew, or otherwise should have known, about the serious risks posed by Seresto Collars based upon: (1) their own internal testing and surveys, (2) EPA testing and surveys, (3) numerous consumer complaints lodged directly with Defendants, (4) numerous consumer complaints lodged to retailers, (5) numerous consumer complaints and reports lodged with the EPA, (6) numerous consumer complaints on online fora, and (7) media reports, dating back to 2012.

58. Defendant Bayer Healthcare LLC knew, or otherwise should have known, about the serious risks posed by Seresto Collars prior to its sale of the Seresto brand to Defendant Elanco Animal Health, Inc. in August 2020. Prior to the sale of the Seresto brand, Defendant Bayer Healthcare LLC had a duty to investigate the numerous complaints relating to the Products. Defendant Bayer Healthcare LLC also had an obligation to disclose to Defendant Elanco Animal Health, Inc. the serious safety risks the Products pose to consumers and their pets as part of the sale of the Seresto brand.

59. Defendant Elanco Animal Health, Inc. knew, or otherwise should have known, about the serious risks posed by Seresto Collars during its purchase of the Seresto brand in August 2020. Immediately prior to its purchase of the brand, in its exercise of due diligence, Defendant Elanco Animal Health, Inc. investigated, or otherwise should have investigated, the numerous complaints relating to the Products. Further, Defendant Elanco Animal Health, Inc. learned, or otherwise should have learned, from Defendant Bayer Healthcare LLC of the serious safety risks the Products pose to consumers and their pets, pursuant to Defendant Bayer Healthcare LLC's obligations as part of the sale of the Seresto brand.

60. Despite Defendants' extensive knowledge of the serious safety risks posed by Seresto Collars to consumers and their pets, Defendants have refused to disclose—or otherwise actively conceal—the dangers of the Seresto Collars (which exist when the Products leave Defendants' control, prior to, and at the point of sale), despite marketing the Products as a safe means of flea and tick prevention for pets, as part of a pet's health regimen.

TOLLING OF THE STATUTES OF LIMITATIONS

1
2 61. Discovery Rule. Plaintiff’s respective statutes of limitation accrued upon
3 discovery that the Seresto Collar she had purchased was defective in that this Product contained
4 serious safety risks which Defendants had not disclosed to Plaintiff prior to purchase, or at any
5 other point. While Defendants knew and concealed the fact that the Seresto Collars posed serious
6 safety risks, Plaintiff and Class Members could not and did not discover this fact through
7 reasonable diligent investigation until after their pets were first injured, or otherwise showed
8 symptoms of harm related to the Seresto Collars. Even then, following recent congressional calls
9 for Defendant Elanco Animal Health, Inc. to voluntarily recall the Products, it has refused to do
10 so and has continued to actively deny that the Products pose serious safety risks to consumers and
11 pets. Defendant Bayer Healthcare LLC has also denied wrongdoing.

12 62. Active Concealment Tolling. Any statutes of limitations are tolled by Defendants’
13 knowing and active concealment of the fact that the Seresto Collars pose a serious, continuous
14 safety risk to consumers and pets. Defendants had actual knowledge for years that the Seresto
15 Collars are dangerous to pets and their owners. Defendants kept Plaintiff and Class Members
16 ignorant of vital information essential to the pursuit of their claims, without any fault or lack of
17 diligence on the part of Plaintiff or the proposed Classes. Although Defendants were aware of the
18 dangers associated with use of the Seresto Collars, they took no steps to warn Plaintiff or Class
19 Members of these dangers. At least by 2012, if not earlier, Defendants received knowledge that
20 the Seresto Collars were dangerous. Despite this knowledge, Defendants fraudulently concealed
21 the fact that the Seresto Collars are dangerous, and despite having a duty to disclose the existence
22 of these dangers. Defendants made affirmative misrepresentations to consumers during the sale
23 of the Seresto Collars, leading reasonable consumers to believe the Products were safe for their
24 pets and themselves, when they are not. Defendants concealed material facts that would have
25 been important to Plaintiff and Class Members in deciding whether to purchase the Seresto
26 Collars. Defendants’ concealment was knowing and made with intent to deceive Plaintiff and
27 Class Members to rely on it. Further details of Defendants’ efforts to conceal their above-
28 described unlawful conduct are in their possession, custody, and control, to the exclusion of

1 Plaintiff and Class Members. Plaintiff and Class Members could not have reasonably discovered
2 the fact that the Products pose serious safety risks at the time of their purchase. As a result of
3 Defendants active concealment of the hazards associated with use of the Seresto Collars, any and
4 all applicable statutes of limitation otherwise applicable to the allegations herein have been tolled.

5 63. Estoppel. Defendants were and are under a continuous duty to disclose to Plaintiff
6 and Class Members the true character, quality, and nature of the Products. At all relevant times,
7 and continuing to this day, Defendants knowingly, affirmatively, and actively misrepresented and
8 concealed the true character, quality, and nature of the Seresto Collars. The details of Defendants’
9 efforts to conceal its above-described unlawful conduct are in their possession, custody, and
10 control, to the exclusion of Plaintiff and Class Members. Plaintiff reasonably relied upon
11 Defendants’ knowing, affirmative, and/or active concealment and affirmative misrepresentations.
12 Based on the foregoing, Defendants are estopped from relying on any statutes of limitation in
13 defense of this action.

14 64. Equitable Tolling. Defendants took active steps to conceal the fact that they
15 wrongfully, improperly, illegally, and repeatedly designed, manufactured, marketed, distributed,
16 and sold the Products, which posed serious safety risks to consumers and pets. The details of
17 Defendants’ efforts to conceal their above-described unlawful conduct are in their possession,
18 custody, and control, to the exclusion of Plaintiff and Class Members. When Plaintiff learned
19 about this material information, she exercised due diligence by thoroughly investigating the
20 situation, retaining counsel, and pursuing her claims. Defendants fraudulently concealed their
21 above-described wrongful acts. Should such tolling be necessary, therefore, all applicable statutes
22 of limitation are tolled under the doctrine of equitable tolling.

23 **CLASS ACTION ALLEGATIONS**

24 65. Plaintiff brings this Action on behalf of herself and as a class action pursuant to
25 Rule 23 of the Federal Rules of Civil Procedure on behalf of members of the following Class:

26 California Class:

27 All persons within the State of California who purchased the Products from the
28 beginning of the applicable statutory period through present (the “Class”).

1 66. Excluded from the Class are Defendants, any of their respective members,
2 affiliates, subsidiaries, officers, directors, employees, successors or assigns, the judicial officers,
3 and their immediate family members, as well as the Court staff assigned to this Action. Plaintiff
4 reserves the right to modify or amend Class definitions as appropriate during the pendency of this
5 Action.

6 67. Plaintiff seeks relief only for economic damages, injunctive and equitable relief
7 on behalf of herself and similarly situated consumers. She specifically disclaims any intent or
8 right to seek recovery for personal injuries, wrongful death, or emotional distress on her own
9 behalf or on behalf of the Class.

10 68. This Action has been brought and may be properly maintained as a class action
11 under the criteria of Federal Rule of Civil Procedure 23.

12 69. Numerosity – Fed. R. Civ. P. 23(a)(1). The members of each of the Classes are so
13 numerous and geographically dispersed that individual joinder of all Class members is
14 impracticable. While the precise number of Class members is unknown at this time, there are
15 likely tens of thousands of putative Class Members throughout the United States who are
16 ascertainable through discovery.

17 70. Commonality and Predominance – Fed. R. Civ. P. 23(a)(2),(b)(3). This action
18 involves questions of law and fact common to the Class, which predominate over any individual
19 questions. These common legal and factual questions include, but are not limited to, the
20 following:

- 21 a. Whether Seresto Collars pose risks to pets, pet owners, and others, as
22 described herein;
- 23 b. Whether Defendants engaged in the conduct alleged herein;
- 24 c. Whether Defendants designed, manufactured, marketed, distributed, sold,
25 or otherwise placed Seresto Collars into the stream of commerce in the
26 United States knowing that they posed the risks described herein;
- 27 d. When Defendants first learned that Seresto Collars posed the risks
28 described herein;

- 1 e. Whether Defendants intentionally concealed the risks posed by Seresto
- 2 Collars, as described herein;
- 3 f. Whether Defendants breached warranties with purchasers when they
- 4 marketed and sold Seresto Collars, which posed known but undisclosed
- 5 risks, as described herein;
- 6 g. Whether Plaintiff and other Class Members have been harmed by the fraud
- 7 alleged herein;
- 8 h. Whether Defendants were unjustly enriched by their deceptive practices;
- 9 and
- 10 i. Whether Plaintiff and the members of the proposed Class are entitled to
- 11 declaratory, equitable, or injunctive relief.

12 71. Typicality – Fed. R. Civ. P. 23(a)(3). Plaintiff’s claims are typical of the other
13 Class Members because Plaintiff, as well as the members of the proposed Class, uniformly paid
14 for Defendants’ toxic and poisonous Products at retail. Plaintiff and the members of the proposed
15 Class reasonably relied on the representations made by Defendants prior to making their purchase
16 of the Products at-issue. Plaintiff and the members of the proposed Class paid for Defendants’
17 Products at retail and would not have purchased them (or would have paid significantly less for
18 them) if they had known that Defendants’ representations were untrue relating to the safety of the
19 Products.

20 72. Adequacy of Representation – Fed. R. Civ. P. 23(a)(4). Plaintiff is an adequate
21 Class representative because her interests do not conflict with the interests of the other Class
22 Members whom she seeks to represent, Plaintiff has retained counsel competent and experienced
23 in complex class action litigation, and Plaintiff intends to prosecute this action vigorously. Class
24 Members’ interests will be fairly and adequately protected by Plaintiff and her counsel. Plaintiff’s
25 counsel believes they are best suited to lead this litigation, as the firms who are listed on this Class
26 Action Complaint are all experienced in class action consumer fraud litigation. Each of the firms
27 listed have been practicing said litigation for at least the past decade and have collected millions
28 of dollars in settlements and verdicts on behalf of injured consumers.

1 73. Superiority of Adjudication as a Class Action – Fed. R. Civ. P. 23(b)(3). Because
2 of the aforementioned allegations, and in an effort to preserve judicial economy, this case will be
3 best maintained as a class action, which is superior to other methods of individual adjudication of
4 these claims. Plaintiff and her counsel feel this matter is best maintained as a class action because
5 of the large number of consumers affected by the alleged violations of law as well as the low
6 number of economic damages being sought by Plaintiff and members of the proposed Class
7 support that this dispute would be best resolved on a class-wide basis as opposed to through
8 individual cases.

9 74. The nature of this action and the nature of laws available to Plaintiff and the Class
10 make the use of the class action device a particularly efficient and appropriate procedure to afford
11 relief to Plaintiff and the Class for the wrongs alleged because Defendants would necessarily gain
12 an unconscionable advantage since they would be able to exploit and overwhelm the limited
13 resources of each individual Class Member with superior financial and legal resources; the costs
14 of individual suits could unreasonably consume the amounts that would be recovered; proof of a
15 common course of conduct to which Plaintiff was exposed is representative of that experienced
16 by the Class and will establish the right of each member of the Class to recover on the cause of
17 action alleged; and individual actions would create a risk of inconsistent results and would be
18 unnecessary and duplicative of this litigation.

19 75. Certification of Specific Issues – Fed. R. Civ. P. 23(c)(4). To the extent that a Class
20 does not meet the requirements of Fed. R. Civ. P. 23(b)(2) or 23(b)(3), Plaintiff seeks certification
21 of issues that will drive this litigation toward resolution.

22 76. Declaratory and Injunctive Relief – Fed. R. Civ. P. 23(b)(2). Defendants have
23 acted or refused to act on grounds generally applicable to Plaintiff and the other Class Members,
24 thereby making appropriate final injunctive relief and declaratory relief, as described below, with
25 respect to the Class Members as a whole.

26 77. Plaintiff reserves the right to modify or amend the definition of the proposed Class
27 before the Court determines whether certification is appropriate and as the parties engage in
28 discovery.

1 78. Notice of a certified class action and of any result or resolution of the litigation
2 can be provided to Class Members by first-class mail, email, or publication, or such other methods
3 of notice as deemed appropriate by the Court.

4 79. Plaintiff does not anticipate any difficulties in the management of this action that
5 would preclude its maintenance as a class action.

6 **CLAIMS FOR RELIEF**

7 **FIRST CAUSE OF ACTION**
8 **BREACH OF EXPRESS WARRANTY**
9 **(On Behalf of the Proposed Class)**

10 80. Plaintiff brings this count on behalf of herself and the Class and repeats and re-
alleges all previous paragraphs, as if fully included herein.

11 81. Defendants marketed, sold, and/or distributed the Seresto Collars, and Plaintiff
12 and Class Members purchased the Seresto Collars.

13 82. Defendants represented in their marketing, advertising, and promotion of the
14 Seresto Collars that their Products provided a safe means of flea and tick prevention for
15 consumers' pets, and failed to disclose that the Products posed serious safety risks to consumers
16 and their pets.

17 83. Defendants made these representations to induce Plaintiff and Class Members to
18 purchase the Seresto Collars, which did in fact induce Plaintiff and Class Members to purchase
19 these Products.

20 84. Accordingly, Defendants' representations and omissions that the Seresto Collars
21 provided a safe means of flea and tick prevention for consumers' pets, while refusing to disclose
22 the serious safety risks posed by the Products to consumers and their pets, formed a part of the
23 bargain between Defendant and Plaintiff and Class Members.

24 85. The Seresto Collars did not conform to Defendants' representations and
25 warranties that the Products provided a safe means of flea and tick prevention for consumers' pets
26 because at all times relevant the Seresto Collars posed serious, continuous safety risks to
27 consumers and their pets.
28

1 101. Because it is unjust and inequitable for Defendants to retain such non-gratuitous
2 benefits conferred on them by Plaintiff and Class Members, Defendants must pay restitution to
3 Plaintiff and Class Members, and other such relief as justice demands as ordered by the Court.

4 102. As a result of Defendants' breaches of implied warranties, Plaintiff and Class
5 Members did not receive the benefit of their bargain and suffered damages at the point of sale
6 stemming from their overpayment for the Seresto Collars, which posed serious safety risks to
7 those who purchased them and to their pets.

8 103. As a direct and proximate result of Defendants' breach of the warranties of
9 merchantability, Plaintiff and Class Members have been damaged in an amount to be proven at
10 trial.

11
12 **FOURTH CAUSE OF ACTION**
13 **VIOLATION OF THE CALIFORNIA**
14 **SONG-BEVERLY CONSUMER WARRANTY ACT**
 (Cal. Civ. Code § 1790, *et seq.*)
 (On Behalf of the Proposed Class)

15 104. Plaintiff brings this count on behalf of herself and the Class and repeat and re-
16 allege all previous paragraphs, as if fully included herein.

17 105. At all times relevant, Defendants were the manufacturers, distributors, warrantors
18 and/or sellers of the Seresto Collars. Defendants knew or should have known of the specific use
19 for which the Products were purchased.

20 106. Defendants provided Plaintiff and Class Members with an implied warranty that
21 the Seresto Collars were merchantable and fit for the ordinary purposes for which they were sold.
22 However, the Products, which are purported to function as a safe means of flea and tick prevention
23 as part of a pet's normal health regimen, are not fit for their ordinary purpose because the Seresto
24 Collars pose serious, continuous safety risks to consumers who purchase them and to the pets for
25 whom they are purchased. As such, the Products failed to provide a healthy and safe form of flea
26 and tick prevention, and instead, exposed consumers and their pets to dangerous chemical
27 pesticides, which were capable of causing—or did cause—serious injuries. The serious safety
28 risks, which are present at the point of sale (and exist throughout the Product's useful life), renders
the Products non-merchantable and dangerous.

- 1 a. Cal. Civ. Code § 1770(a)(5): representing that goods have characteristics,
2 uses, or benefits which they do not have;
- 3 b. Cal. Civ. Code § 1770(a)(7): representing that goods are of a particular
4 standard, quality, or grade if they are of another;
- 5 c. Cal. Civ. Code § 1770(a)(9): advertising goods with intent not to sell them
6 as advertised; and
- 7 d. Cal. Civ. Code § 1770(a)(16): representing the subject of a transaction has
8 been supplied in accordance with a previous representation when it was
9 not.

10 115. Defendants' unfair or deceptive acts or practices occurred repeatedly in
11 Defendants' trade or business and were capable of deceiving a substantial portion of the
12 purchasing public.

13 116. Defendants knew that the Seresto Collars were unsafe and posed serious,
14 continuous safety risks to consumers and their pets.

15 117. Defendants were under a duty to Plaintiff and the Class Members to disclose that
16 the Seresto Collars were, in fact, unsafe because:

- 17 a. Defendants were in a superior position to know the true state of facts about
18 the unsafe quality of the Seresto Collars;
- 19 b. Plaintiff and Class Members could not reasonable have been expected to
20 learn or discover that the Seresto Collars were unsafe;
- 21 c. Defendants knew that Plaintiff and Class Members could not reasonably
22 have been expected to learn or discover the unsafe quality of the Seresto
23 Collars, except by suffering injury from the Products' use; and
- 24 d. Defendants actively concealed from the consuming public and failed to
25 disclose the unsafe quality of the Seresto Collars.

26 118. In failing to disclose the serious safety risks posed by the Seresto Collars at the
27 time of sale, Defendants have knowingly and intentionally concealed material facts and breached
28 their duty not to do so.

1 127. The California False Advertising Law (“FAL”) states: “It is unlawful for
2 any . . . corporation . . . with intent directly or indirectly to dispose of real or personal property . .
3 . to induce the public to enter into any obligation relating thereto, to make or disseminate or cause
4 to be made or disseminated . . . from this state before the public in any state, in any newspaper or
5 other publication, or any advertising device, . . . or in any other manner or means whatever,
6 including over the Internet, any statement . . . which is untrue or misleading, and which is known,
7 or which by the exercise of reasonable care should be known, to be untrue or misleading.” Cal.
8 Bus. & Prof. Code § 17500.

9 128. All of the wrongful conduct alleged herein occurred in the course and conduct of
10 Defendants’ business.

11 129. Defendants caused to be made or disseminated throughout California and the
12 United States, through advertising, marketing, and other publications, statements that were untrue
13 or misleading, and which were known, or which, by the exercise of reasonable care, should have
14 been known to Defendants, to be untrue and misleading to consumers, including Plaintiff and
15 Class Members.

16 130. Defendants have violated the FAL because the omissions regarding the unsafe
17 quality of the Seresto Collars, as described herein, were material and likely to deceive a
18 reasonable consumer. Defendants marketed and sold the Products as a safe means of flea and tick
19 prevention for pets. At no point, however, did Defendants disclose that the Products posed serious,
20 continuous safety risks to consumers and their pets. By omitting or concealing information
21 concerning the unsafe quality of the Seresto Collars when marketing the Products, Defendants’
22 statements were untrue or misleading.

23 131. Plaintiff and Class Members have suffered an injury in fact, including the loss of
24 money or property, as a result of Defendants’ unfair, unlawful, and/or deceptive practices. In
25 purchasing the Seresto Collars, Plaintiff and Class Members relied on the omissions of
26 Defendants with respect to the safety of the Products. Defendants’ representations were untrue
27 because the Seresto Collars, as designed, manufactured, marketed, and sold, were unsafe to
28 consumers and their pets.

1 the true unsafe quality of the Products, which in reality posed serious safety risks to consumers
2 and their pets.

3 139. The acts alleged herein are “unlawful” under the UCL in that they violate, at a
4 minimum: (a) the California FAL, Cal. Bus. & Prof. Code §§ 17500, *et seq.*; and (b) the California
5 CLRA, Cal. Civ. Code §§ 1750, *et seq.*

6 140. Defendants’ conduct with respect to the marketing and sale of the Seresto Collars
7 was “unfair” because it was immoral, unethical, unscrupulous, or substantially injurious to
8 consumers, and the utility of their conduct, if any, does not outweigh the gravity of the harm to
9 their victims, including Plaintiff and Class Members.

10 a. Defendants’ conduct with respect to the marketing and sale of the Seresto
11 Collars was and is unfair because it violates public policy as declared by
12 specific constitutional, statutory or regulatory provisions, including but not
13 limited to the applicable sections of the California FAL and California
14 CLRA.

15 b. Defendants’ conduct with respect to the marketing and sale of the Seresto
16 Collars was and is unfair because the consumer injury was substantial, not
17 outweighed by benefits to consumers or competition, and such consumers’
18 injury was not one consumers themselves could reasonably have avoided.

19 c. Reasonable consumers, including Plaintiff and Class Members, purchased
20 the Seresto Collars believing the Products were safe, both for their pets and
21 for themselves, when in fact they were not—a fact of which consumers
22 could not reasonably have become aware.

23 141. Defendants’ conduct as alleged herein is “fraudulent” under the UCL because it
24 was likely to mislead or deceive a reasonable consumer—and did mislead and deceive reasonable
25 consumers, including Plaintiff and Class Members.

26 a. Defendants’ omissions regarding the unsafe quality of the Seresto Collars,
27 which was material information about the Products, were and are false and
28 likely to mislead or deceive the public because a significant portion of the

1 general consuming public, acting reasonably, could be misled by
2 Defendants' representations, which failed to disclose the unsafe quality of
3 the Products.

4 142. Defendants' conduct directly and proximately caused and continues to cause
5 substantial injury to Plaintiff and Class Members. Plaintiff and Class Members have suffered
6 injuries-in-fact as a result of Defendants' unlawful, unfair, and fraudulent conduct.

7 143. The injuries suffered by consumers, including Plaintiff and Class Members,
8 greatly outweigh any potential countervailing benefit to consumers or to competition.

9 144. Consumers, including Plaintiff and Class Members, are likely to continue to be
10 damaged by Defendants' deceptive trade practices, because Defendants continue to disseminate
11 misleading information about the Seresto Collars on the Products' packaging and through the
12 marketing of the Products. Thus, injunctive relief enjoining Defendants' deceptive practices is
13 appropriate.

14 145. In accordance with Cal. Bus. & Prof. Code § 17203, Plaintiff seeks an order
15 enjoining Defendants from continuing to conduct business through unlawful, unfair, and/or
16 fraudulent acts and practices, and to commence a corrective marketing campaign.

17 146. Plaintiff and Class Members also seek an order for and restitution of all monies
18 from the sale of the Seresto Collars, which were unjustly acquired through acts of unlawful
19 competition.

20

21

JURY DEMAND AND PRAYER FOR RELIEF

22

WHEREFORE, Plaintiff seeks a judgment:

23

- Ordering Defendants, in the form of an injunction, to cease the sale of the affected Products;

24

25

- Declaring this Action as a class action representing the Class as defined herein pursuant to Federal Rule of Civil Procedure 23, designating Plaintiff as representative for said Class, and appointing the undersigned counsel of record as class counsel;

26

27

28

- 1 • Declaring Defendants' conduct unlawful under the statutes and causes of action pleaded
- 2 herein;
- 3 • Awarding damages pursuant to the statutes and the causes of action pleaded herein;
- 4 • Awarding costs and expenses, including reasonable fees for Plaintiff's attorneys and
- 5 experts;
- 6 • Awarding pre- and post-judgment to Plaintiff and members of the proposed Class, if
- 7 applicable; and, ordering further relief as this Court deems just and proper.

8
9 Plaintiff demands a trial by jury of all claims triable in this Complaint. Plaintiff also
10 respectfully requests leave to amend this Complaint as necessary.

11 DATED: March 30, 2021

Respectfully submitted,

/s/ Alex R. Straus

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**pro hac vice* application forthcoming

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