

1 JONATHAN WEISSGLASS (SBN 185008)  
2 JAMIE L. CROOK (SBN 245757)  
3 Altshuler Berzon LLP  
4 177 Post Street, Suite 300  
5 San Francisco, California 94108  
6 Telephone: (415) 421-7151  
7 Facsimile: (415) 362-8064  
8 E-Mail: jweissglass@altshulerberzon.com  
9 jcrook@altshulerberzon.com

6 MICHAEL E. WALL (SBN 170238)  
7 Natural Resources Defense Council, Inc.  
8 111 Sutter Street, 20th Floor  
9 San Francisco, CA 94104  
10 Telephone: (415) 875-6100  
11 Facsimile: (415) 875-6161  
12 E-Mail: mwall@nrdc.org

10 Attorneys for Plaintiff

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF ALAMEDA**

13 NATIONAL RESOURCES DEFENSE COUNCIL, )  
14 INC. )

14 Plaintiff, )  
15 )  
16 )

17 ALBERTSONS, INC.; CENTRAL GARDEN & PET )  
18 CO.; DRS. FOSTER & SMITH, INC.; FARNAM )  
19 COS., INC.; JEFFERS, INC.; KV VET SUPPLY CO.; )  
20 ORCHARD SUPPLY HARDWARE STORES CORP.; )  
21 PET CLUB STORES; PET FOOD EXPRESS, LTD.; )  
22 PETCO ANIMAL SUPPLIES, INC.; PETSMART, )  
23 INC.; PETSTORE.COM, CORP.; RALPHS )  
24 GROCERY CO.; SERGEANT'S PET CARE )  
25 PRODUCTS, INC.; VIRBAC, INC.; and WELLMARK )  
26 INTERNATIONAL, CORP., )

23 Defendants. )  
24 )  
25 )  
26 )  
27 )  
28 )

**ENDORSED  
FILED  
ALAMEDA COUNTY**

**APR 23 2009**

**CLERK OF THE SUPERIOR COURT  
By Esther Coleman, Deputy**

Case No. **RG09448605**

**COMPLAINT FOR DAMAGES  
AND INJUNCTIVE RELIEF**

Complex Civil Case

1 INTRODUCTION

2 1. California’s Safe Drinking Water and Toxic Enforcement Act (“Proposition 65” or “the  
3 Act”), Health & Safety Code §25249.5 *et seq.*, prohibits any person in the course of doing business from  
4 knowingly and intentionally exposing any individual to a chemical known to the State of California to  
5 cause cancer, without first giving clear and reasonable warning of such exposure. Health & Safety Code  
6 §25249.6. This prohibition applies with equal force against business entities that manufacture,  
7 distribute, or sell consumer products, where the reasonable intended use of such products would result in  
8 an exposure to a known carcinogen.

9 2. The United States Environmental Protection Agency designated propoxur as a probable  
10 human carcinogen on June 17, 1996. Propoxur is a carbamate insecticide with carcinogenic and  
11 neurotoxic effects. Propoxur was listed as a chemical known to the State of California to cause cancer  
12 on August 11, 2006.

13 3. Propoxur is widely used in flea-and-tick control products for household pets. Propoxur-  
14 containing flea-and-tick collars are designed to release propoxur residue on a pet’s fur. Humans are  
15 exposed to these residues through a variety of means, including direct dermal contact with residue on  
16 their pets’ fur, direct contact with the collars, and indirect hand-to-mouth activity. These exposures to  
17 hazardous propoxur residue result from the reasonably foreseeable use of commercially marketed  
18 propoxur-containing flea-and-tick collars.

19 4. Each Defendant has failed to provide a clear and reasonable warning that the use of the  
20 propoxur-containing flea-and-tick collars that they have manufactured, distributed, or sold will result in  
21 exposure to propoxur, a chemical known to the State of California to cause cancer. Accordingly,  
22 Plaintiff Natural Resources Defense Council seeks an order requiring that Defendants either discontinue  
23 any manufacture, distribution, or sale of the propoxur-containing flea-and-tick collars identified below or  
24 provide a clear and reasonable warning that use of these products will result in exposure to a chemical  
25 known to the State of California to cause cancer. Plaintiff also seeks civil penalties as provided for  
26 under the Act and other appropriate relief.

27 //

28 //

1 **PARTIES**

2 5. Plaintiff NATURAL RESOURCES DEFENSE COUNCIL, INC. ("NRDC" or  
3 "Plaintiff") is a non-profit environmental organization with more than 480,000 members nationwide,  
4 including more than 90,000 members in California and numerous members in Alameda County.  
5 NRDC's purposes include the preservation, protection, and defense of the environment, public health,  
6 and natural resources. Consistent with this mission, NRDC has advocated for over a decade for stricter  
7 regulation of pesticide-containing commercial pet products and has pursued litigation concerning  
8 toxics-related issues, including enforcement of Proposition 65. NRDC brings this action on its own  
9 behalf and on behalf of its members pursuant to Health and Safety Code §25249.7(d).

10 6. Defendant ALBERTSONS, INC. ("Albertsons") is a business entity with ten or more  
11 employees that has manufactured, distributed, or sold propoxur-containing flea-and-tick collars for sale  
12 or use in California. Albertsons operates hundreds of supermarkets throughout California, including in  
13 Alameda County.

14 7. Defendant CENTRAL GARDEN AND PET COMPANY ("Central Garden") is a  
15 business entity with ten or more employees that has manufactured, distributed, or sold  
16 propoxur-containing flea-and-tick collars for sale or use in California. Central Garden maintains its  
17 corporate headquarters in California.

18 8. Defendant DRS. FOSTER & SMITH, INC. ("Drs. Foster & Smith") is a business entity  
19 with ten or more employees that has manufactured, distributed, or sold propoxur-containing  
20 flea-and-tick collars for sale or use in California. Drs. Foster & Smith makes its products available for  
21 sale to citizens in California through Drs. Foster & Smith catalogues and a website maintained by Drs.  
22 Foster & Smith at the web address <http://www.drsfostersmith.com>.

23 9. Defendant FARNAM COMPANIES, INC. ("Farnam") is a business entity with ten or  
24 more employees that has manufactured, distributed, or sold propoxur-containing flea-and-tick collars for  
25 sale or use in California.

26 10. Defendant JEFFERS, INC. ("Jeffers") is a business entity with ten or more employees  
27 that has manufactured, distributed, or sold propoxur-containing flea-and-tick collars for sale or use in  
28 California. Jeffers makes its products available for sale to citizens in California through Jeffers

1 catalogues and a website maintained by Jeffers at the web address <http://www.jefferspet.com>.

2 11. Defendant KV VET SUPPLY COMPANY ("KV Vet") is a business entity with ten or  
3 more employees that has manufactured, distributed, or sold propoxur-containing flea-and-tick collars for  
4 sale or use in California. KV Vet makes its products available for sale to citizens in California through  
5 KV Vet catalogues and a website maintained by KV Vet at the web address <http://www.kvvet.com>.

6 12. Defendant ORCHARD SUPPLY HARDWARE STORES CORPORATION ("Orchard  
7 Supply") is a business entity with ten or more employees that has manufactured, distributed, or sold  
8 propoxur-containing flea-and-tick collars for sale or use in California. Orchard Supply operates more  
9 than 80 stores throughout California, including in Alameda County.

10 13. Defendant PET CLUB STORES ("Pet Club") is a business entity with ten or more  
11 employees that has manufactured, distributed, or sold propoxur-containing flea-and-tick collars for sale  
12 or use in California. Pet Club operates nine stores in the San Francisco Bay Area, including stores in  
13 Alameda County.

14 14. Defendant PET FOOD EXPRESS, LTD. ("Pet Food Express") is a business entity with  
15 ten or more employees that has manufactured, distributed, or sold propoxur-containing flea-and-tick  
16 collars for sale or use in California. Pet Food Express is a California corporation domiciled in Alameda  
17 County. It operates more than 30 pet food and supply stores in the San Francisco Bay Area, including  
18 stores and a distribution center in Alameda County.

19 15. Defendant PETCO ANIMAL SUPPLIES, INC. ("Petco") is a business entity with ten or  
20 more employees that has manufactured, distributed, or sold propoxur-containing flea-and-tick collars for  
21 sale or use in California. Petco maintains its corporate headquarters in California and operates stores  
22 throughout California, including in Alameda County. Petco also makes its products available for sale to  
23 citizens in California through a website maintained by Petco at the web address <http://www.petco.com>.

24 16. Defendant PETSMART, INC. ("Petsmart") is a business entity with ten or more  
25 employees that has manufactured, distributed, or sold propoxur-containing flea-and-tick collars for sale  
26 or use in California. Petsmart is headquartered in California and operates stores located throughout  
27 California, including in Alameda County. Petsmart also makes its products available for sale to citizens  
28 in California through a website maintained by Petsmart at the web address <http://www.petsmart.com>.

1 17. Defendant PETSTORE.COM CORPORATION ("Petstore") is a business entity with ten  
2 or more employees that has manufactured, distributed, or sold propoxur-containing flea-and-tick collars  
3 for sale or use in California. Petstore makes its products available for sale to citizens in California  
4 through a website maintained by Petstore at the web address <http://www.petstore.com>. Petstore  
5 maintains its corporate headquarters in California.

6 18. Defendant RALPHS GROCERY COMPANY ("Ralphs") is a business entity with ten or  
7 more employees that has manufactured, distributed, or sold propoxur-containing flea-and-tick collars for  
8 sale or use in California. Ralphs maintains its corporate headquarters in California and operates  
9 hundreds of supermarkets throughout California.

10 19. Defendant SERGEANT'S PET CARE PRODUCTS, INC. ("Sergeant's") is a business  
11 entity with ten or more employees that has manufactured, distributed, or sold propoxur-containing  
12 flea-and-tick collars for sale or use in California.

13 20. Defendant VIRBAC, INC. ("Virbac") is a business entity with ten or more employees that  
14 has manufactured, distributed, or sold propoxur-containing flea-and-tick collars for sale or use in  
15 California.

16 21. Defendant WELLMARK INTERNATIONAL CORPORATION ("Wellmark") is a  
17 business entity with ten or more employees that has manufactured, distributed, or sold  
18 propoxur-containing flea-and-tick collars for sale or use in California. Wellmark maintains its corporate  
19 headquarters in California.

#### 20 JURISDICTION AND VENUE

21 22. This Court has jurisdiction over this action pursuant to Article VI, §11 of the California  
22 Constitution because this case is not a cause given by statute to other trial courts.

23 23. This Court has jurisdiction over each Defendant named above because each is a business  
24 entity that conducts sufficient business, has sufficient minimum contacts in, or otherwise intentionally  
25 avails itself of the market in California.

26 24. Venue is proper in this Court because one or more Defendants reside in this County.

#### 27 STATUTORY BACKGROUND

28 25. In 1986, the voters of California overwhelmingly enacted Proposition 65.



1 with the collar, and hand-to-mouth activity following direct dermal exposure. These exposures result  
2 from consumers' reasonably foreseeable use of propoxur-containing flea-and-tick collars.

3 35. Each Defendant has manufactured, distributed, or sold propoxur-containing flea-and-tick  
4 collars for sale or use within the State of California. Specifically:

5 a. Defendant Albertsons has sold Sergeant's Dual Action Flea & Tick Collar For  
6 Large Dogs for use in California since August 11, 2007, and continuing through the present.

7 b. Defendant Central Garden has manufactured and/or distributed Adams Flea &  
8 Tick Collar For Large Dogs, Adams Flea & Tick Collar For Small Dogs, Adams Plus Flea & Tick Collar  
9 For Large Dogs, Adams Plus Flea & Tick Collar For Small Dogs, Bio Spot Flea & Tick Collar For Large  
10 Dogs, Bio Spot Flea & Tick Collar For Puppies, Bio Spot Flea & Tick Collar For Small Dogs, Scratchex  
11 Color-Full Formula 5 Flea & Tick Collar For Dogs, Vet-Kem Powerband Flea & Tick Collar For Dogs,  
12 Zodiac Featrol Flea & Tick Collar For Large Dogs, Zodiac Featrol Flea & Tick Collar For Puppies,  
13 Zodiac Featrol Flea & Tick Collar For Small Dogs, and Zodiac Tick Collar For Dogs for sale or use in  
14 California since August 11, 2007, and continuing through the present.

15 c. Defendant Drs. Foster & Smith has sold Bio Spot Flea & Tick Collar For Puppies  
16 and Bio Spot Flea & Tick Collar For Small Dogs for use in California since August 11, 2007, and  
17 continuing through the present.

18 d. Defendant Farnam has manufactured and/or distributed Adams Flea & Tick Collar  
19 For Large Dogs, Adams Flea & Tick Collar For Small Dogs, Adams Plus Flea & Tick Collar For Large  
20 Dogs, Adams Plus Flea & Tick Collar For Small Dogs, Bio Spot Flea & Tick Collar For Large Dogs,  
21 Bio Spot Flea & Tick Collar For Puppies, Bio Spot Flea & Tick Collar For Small Dogs, and Scratchex  
22 Color-Full Formula 5 Flea & Tick Collar For Dogs for sale or use in California since August 11, 2007,  
23 and continuing through the present.

24 e. Defendant Jeffers has sold Adams Plus Flea & Tick Collar For Large Dogs and  
25 Adams Plus Flea & Tick Collar For Small Dogs for use in California since August 11, 2007, and  
26 continuing through the present.

27 f. Defendant KV Vet has sold Adams Plus Flea & Tick Collar For Large Dogs,  
28 Adams Plus Flea & Tick Collar For Small Dogs, Bio Spot Flea & Tick Collar For Large Dogs, Bio Spot

1 Flea & Tick Collar For Small Dogs, and Zema Dual Action Flea & Tick Collar For Dogs for use in  
2 California since August 11, 2007, and continuing through the present.

3 g. Defendant Orchard Supply has sold Zodiac Featrol Flea & Tick Collar For Large  
4 Dogs and Zodiac Featrol Flea & Tick Collar For Small Dogs for use in California since August 11, 2007,  
5 and continuing through the present.

6 h. Defendant Pet Club has sold Scratchex Color-Full Formula 5 Flea & Tick Collar  
7 For Dogs, Zema Dual Action Flea & Tick Collar For Dogs, and Zodiac Featrol Flea & Tick Collar For  
8 Small Dogs for use in California since August 11, 2007, and continuing through the present.

9 i. Defendant Pet Food Express has sold Bio Spot Flea & Tick Collar For Large  
10 Dogs, Bio Spot Flea & Tick Collar For Small Dogs, and Zodiac Tick Collar For Dogs for use in  
11 California since August 11, 2007, and continuing through the present.

12 j. Defendant Petco has sold Adams Plus Flea & Tick Collar For Large Dogs, Adams  
13 Plus Flea & Tick Collar For Small Dogs, Bio Spot Flea & Tick Collar For Large Dogs, Bio Spot Flea &  
14 Tick Collar For Puppies, Bio Spot Flea & Tick Collar For Small Dogs, Sentry Dual Action Flea & Tick  
15 Collar For Small Dogs And Puppies, Zodiac Featrol Flea & Tick Collar For Large Dogs, Zodiac Featrol  
16 Flea & Tick Collar For Puppies, Zodiac Featrol Flea & Tick Collar For Small Dogs, and Zodiac Tick  
17 Collar For Dogs for use in California since August 11, 2007, and continuing through the present.

18 k. Defendant Petsmart has sold Adams Plus Flea & Tick Collar For Large Dogs,  
19 Adams Plus Flea & Tick Collar For Small Dogs, Bio Spot Flea & Tick Collar For Large Dogs, Bio Spot  
20 Flea & Tick Collar For Puppies, Bio Spot Flea & Tick Collar For Small Dogs, Sentry Dual Action Flea  
21 & Tick Collar For Dogs, Sentry Dual Action Flea & Tick Collar For Small Dogs And Puppies, Zodiac  
22 Featrol Flea & Tick Collar For Large Dogs, Zodiac Featrol Flea & Tick Collar For Puppies, Zodiac  
23 Featrol Flea & Tick Collar For Small Dogs, and Zodiac Tick Collar For Dogs for use in California  
24 since August 11, 2007, and continuing through the present.

25 l. Defendant Petstore has sold Adams Plus Flea & Tick Collar For Large Dogs,  
26 Adams Plus Flea & Tick Collar For Small Dogs, Bio Spot Flea & Tick Collar For Large Dogs, Bio Spot  
27 Flea & Tick Collar For Small Dogs, Zodiac Featrol Flea & Tick Collar For Large Dogs, Zodiac Featrol  
28 Flea & Tick Collar For Puppies, Zodiac Featrol Flea & Tick Collar For Small Dogs, and Zodiac Tick



1 Collar For Dogs for use in California since August 11, 2007, and continuing through the present.

2 m. Defendant Ralphs has sold Zodiac Tick Collar for Dogs and Bansect Flea & Tick  
3 Collar For Dogs for use in California at some time between August 11, 2007, and the present.

4 n. Defendant Sergeant's has manufactured and/or distributed Bansect Flea & Tick  
5 Collar For Cats, Bansect Flea & Tick Collar for Dogs, Sentry Dual Action Flea & Tick Collar For Dogs,  
6 Sentry Dual Action Flea & Tick Collar For Small Dogs And Puppies, Sergeant's Double Duty Flea &  
7 Tick Collar For Dogs And Puppies, Sergeant's Dual Action Flea & Tick Collar For Dogs, Sergeant's  
8 Dual Action Flea & Tick Collar For Large Dogs, and Sergeant's Dual Action Flea & Tick Collar For  
9 Small Dogs And Puppies for sale or use in California since August 11, 2007, and continuing through the  
10 present.

11 o. Defendant Virbac has manufactured and/or distributed Zema Dual Action Flea &  
12 Tick Collar For Dogs for sale or use in California at some point between August 11, 2007, and the  
13 present.

14 p. Defendant Wellmark has manufactured and/or distributed Vet-Kem Powerband  
15 Flea & Tick Collar For Dogs, Zodiac Featrol Flea & Tick Collar For Large Dogs, Zodiac Featrol Flea &  
16 Tick Collar For Puppies, Zodiac Featrol Flea & Tick Collar For Small Dogs, and Zodiac Tick Collar For  
17 Dogs for sale or use in California since August 11, 2007, and continuing through the present.

18 36. Each Defendant has had knowledge that the above-listed collar or collars that it  
19 manufactures, distributes, or sells contains or contain propoxur.

20 37. Each Defendant has intended that consumers use these propoxur-containing collars on  
21 their pets in a manner consistent with the instructions printed on the product packaging.

22 38. Each Defendant has knowingly and intentionally exposed individuals to propoxur. The  
23 exposure is knowing and intentional because it results from each Defendant's manufacture, distribution,  
24 or sale of flea-and-tick collars that contain propoxur, with knowledge that reasonably foreseeable use of  
25 these collars will result in consumers' exposure to propoxur.

26 39. At times between August 11, 2007, and the present, each Defendant has failed to provide  
27 clear and reasonable warnings that the intended and reasonably foreseeable use of the above-listed  
28

1 collars resulted or results in exposure to a chemical known to the State of California to cause cancer, and  
2 no such warning was provided by any other person.

3 40. Each Defendant has received a written notice of violation stating that the Defendant has  
4 violated Proposition 65 by exposing individuals to propoxur in flea-and-tick collars without providing a  
5 clear and reasonable warning. Each Defendant received said notice more than 60 days' prior to the  
6 commencement of this action.

7 **FIRST CAUSE OF ACTION**

8 **(Against Each Defendant For Violation Of Proposition 65)**

9 41. Paragraphs 1 through 40 are realleged as if fully set forth herein.

10 42. By committing the acts alleged above, each Defendant has, since August 11, 2007, in the  
11 course of doing business, knowingly and intentionally exposed individuals to a chemical known to the  
12 State of California to cause cancer without first giving clear and reasonable warning to such individuals.

13 43. These actions violate Health & Safety Code §25249.6. These violations render each  
14 Defendant liable for civil penalties up to \$2,500 per day for each violation, as well as other remedies.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff pray that the Court:

17 A. Grant civil penalties according to proof;

18 B. Pursuant to Health and Safety Code §25249.7, enter such injunctions or other  
19 orders as are necessary to prevent Defendants from exposing persons within the State of California to  
20 known carcinogens caused by the reasonably foreseeable use of their products without providing clear  
21 and reasonable warnings;

22 C. Award Plaintiff reasonable attorneys' fees and costs; and

23 D. Grant such other and further relief as the Court deems just and proper.

24 //

25 //

26 //

27 //

28 //

1 Dated: April 23, 2009

Respectfully submitted,

2 JONATHAN WEISSGLASS  
3 JAMIE L. CROOK  
4 Altshuler Berzon LLP

5 MICHAEL E. WALL  
6 Natural Resources Defense Council, Inc.

7 By:   
8 \_\_\_\_\_  
9 Jamie L. Crook

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28