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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 NATURAL RESOURCES DEFENSE COUNCIL,)
14 INC.)

15 Plaintiff,)

16 v.)

17 PETCO ANIMAL SUPPLIES STORES, INC.;)
18 CENTRAL GARDEN & PET COMPANY; FARNAM)
19 COMPANIES, INC.; SERGEANT'S PET CARE)
20 PRODUCTS, INC.; VIRBAC CORPORATION;)
21 WELLMARK INTERNATIONAL; ALBERTSONS,)
22 INC.; NEW ALBERTSON'S, INC.; FOSTER &)
23 SMITH, INC.; FINS, FURS & FEATHERS, INC. d/b/a)
24 PETSTORE.COM; JEFFERS, INC.; KV VET)
25 SUPPLY, INC.; LEE'S PET CLUB, INC. d/b/a PET)
26 CLUB STORES; RED CART MARKET, INC. d/b/a)
27 PET CLUB STORES; ORCHARD SUPPLY)
28 HARDWARE LLC; PET FOOD EXPRESS LTD.;)
PETSMART, INC.; PETSMART STORE SUPPORT)
GROUP, INC.; RALPHS GROCERY COMPANY; and)
DOES 1-10.)

Defendants.)

Case No. RG09487873

AMENDED 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 following dermal
17 contact with the collars or residue on pets’ fur. These exposures to hazardous propoxur residue result
18 from the reasonably foreseeable use of commercially marketed propoxur-containing flea-and-tick
19 collars.

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

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

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

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

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

26 10. Defendant VIRBAC CORPORATION ("Virbac") is a business entity with ten or more
27 employees that has manufactured, distributed, or sold propoxur-containing flea-and-tick collars for sale
28 or use in California.

1 11. Defendant WELLMARK INTERNATIONAL (“Wellmark”) 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. Wellmark maintains its corporate headquarters in California.

4 12. Defendants ALBERTSONS, INC. and NEW ALBERTSON’S, INC. (collectively
5 “Albertsons defendants”) are business entities with ten or more employees that have manufactured,
6 distributed, or sold propoxur-containing flea-and-tick collars for sale or use in California. The
7 Albertsons defendants operate hundreds of supermarkets throughout California.

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

13 14. Defendant FINS, FURS & FEATHERS, INC. d/b/a PETSTORE.COM (“Fins, Furs &
14 Feathers”) is a business entity with ten or more employees that has manufactured, distributed, or sold
15 propoxur-containing flea-and-tick collars for sale or use in California. Fins, Furs & Feathers makes its
16 products available for sale to citizens in California through a website maintained by Fins, Furs &
17 Feathers at the web address <http://www.petstore.com>. Fins, Furs & Feathers maintains its corporate
18 headquarters in California.

19 15. Defendant JEFFERS, INC. (“Jeffers”) is a business entity with ten or more employees
20 that has manufactured, distributed, or sold propoxur-containing flea-and-tick collars for sale or use in
21 California. Jeffers makes its products available for sale to citizens in California through Jeffers
22 catalogues and a website maintained by Jeffers at the web address <http://www.jefferspet.com>.

23 16. Defendant KV VET SUPPLY, INC. (“KV Vet”) is a business entity with ten or more
24 employees that has manufactured, distributed, or sold propoxur-containing flea-and-tick collars for sale
25 or use in California. KV Vet makes its products available for sale to citizens in California through KV
26 Vet catalogues and a website maintained by KV Vet at the web address <http://www.kvvet.com>.

27 17. Defendants LEE’S PET CLUB, INC. and RED CART MARKET, INC., both d/b/a PET
28 CLUB STORES (collectively “Pet Club defendants”), are business entities with ten or more employees

1 that have manufactured, distributed, or sold propoxur-containing flea-and-tick collars for sale or use in
2 California. The Pet Club defendants operate several stores in the San Francisco Bay Area, including
3 stores in Alameda County.

4 18. Defendant ORCHARD SUPPLY HARDWARE LLC (“OSH”) is a business entity with
5 ten or more employees that has manufactured, distributed, or sold propoxur-containing flea-and-tick
6 collars for sale or use in California. OSH operates more than 80 stores throughout California, including
7 in Alameda County.

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

13 20. Defendants PETSMART, INC. and PETSMART STORE SUPPORT GROUP, INC.
14 (collectively “Petsmart defendants”) are business entities with ten or more employees that have
15 manufactured, distributed, or sold propoxur-containing flea-and-tick collars for sale or use in California.
16 The Petsmart defendants operate stores located throughout California, including in Alameda County.
17 The Petsmart defendants also make their products available for sale to citizens in California through a
18 website maintained by Petsmart at the web address <http://www.petsmart.com>.

19 21. Defendant RALPHS GROCERY COMPANY (“Ralphs”) 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. Ralphs maintains its corporate headquarters in California and operates
22 numerous supermarkets throughout California.

23 22. Plaintiff NRDC does not know the true names and capacities of Doe Defendants 1-10
24 therefore sues said defendants by such fictitious names. NRDC will amend this Complaint to show the
25 Doe Defendants’ true names and capacities when they have been ascertained. Plaintiff is informed and
26 believes, and on the basis of that belief alleges, that each of these Doe Defendants is in some manner
27 legally responsible for the violations of Health & Safety Code §25249.7 alleged herein.

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1 **JURISDICTION AND VENUE**

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

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

7 25. Venue is proper in this Court because one or more Defendants reside in this County.

8 **STATUTORY BACKGROUND**

9 26. In 1986, the voters of California overwhelmingly enacted Proposition 65.

10 27. Among other requirements, Proposition 65 provides that “[n]o person in the course of
11 doing business shall knowingly and intentionally expose any individual to a chemical known to the state
12 to cause cancer . . . without first giving clear and reasonable warning to such individual, except as
13 provided in Section 25249.10.” Health & Safety Code §25249.6.

14 28. An exposure to a chemical in a consumer product is one that “results from a person’s
15 acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or
16 any exposure that results from receiving a consumer service.” Code Regs., tit. 27, §25602(b).

17 29. An exposure is knowing if the person or entity responsible for the exposure had or has
18 “knowledge of the fact that . . . exposure to the chemical listed pursuant to Section 24249.8(a) of the Act
19 is occurring.” Code Regs., tit. 27, §25102(n).

20 30. Pursuant to Health & Safety Code §25249.7, this Court has authority to enjoin “[a]ny
21 person that violates or threatens to violate [§25249.6]” and to impose civil penalties “not to exceed two
22 thousand five hundred dollars (\$2500) per day for each violation in addition to any other penalty
23 established by law.”

24 31. Private parties are entitled to bring an action to enforce the Act under Health and Safety
25 Code §25249.7(d).

26 **FACTS**

27 32. Propoxur is an insecticide in the n-methyl carbamate class. It is used for, among other
28 things, structural pest control, in agriculture, and in household pet products.

1 33. Several brands of flea-and-tick collars for use on household pets contain propoxur. These
2 collars are designed to release particles of the pesticide onto an animal's fur throughout the
3 recommended life of the collar, which ranges from five to six months depending on the brand and
4 model.

5 34. The Carcinogen Identification Committee placed propoxur on the list of chemicals known
6 to the State of California to cause cancer on August 11, 2006, pursuant to its authority under Health &
7 Safety Code §25249.8 and Code of Regulations, tit. 27, §25302.

8 35. Consumers who use propoxur-containing flea-and-tick collars on their pets are exposed to
9 propoxur through direct dermal contact with propoxur particles on their pets' fur, direct dermal contact
10 with the collar, and hand-to-mouth activity following direct dermal exposure. These exposures result
11 from consumers' reasonably foreseeable use of propoxur-containing flea-and-tick collars.

12 36. Each Defendant has manufactured, distributed, or sold propoxur-containing flea-and-tick
13 collars for sale or use within the State of California without clear and reasonable warnings that the
14 intended and reasonably foreseeable use of the products will result in exposure to a chemical known to
15 the State of California to cause cancer ("Proposition 65 warning"). Specifically, on information and
16 belief:

17 a. Defendant Petco has sold Adams Plus Flea & Tick Collar For Large Dogs, Adams
18 Plus Flea & Tick Collar For Small Dogs, Bio Spot Flea & Tick Collar For Large Dogs, Bio Spot Flea &
19 Tick Collar For Puppies, Bio Spot Flea & Tick Collar For Small Dogs, Zodiac Featrol Flea & Tick
20 Collar For Large Dogs, Zodiac Featrol Flea & Tick Collar For Puppies, Zodiac Featrol Flea & Tick
21 Collar For Small Dogs, and Zodiac Tick Collar For Dogs for use in California without a Proposition 65
22 warning since August 11, 2007, and continuing through the present; and sold Sentry Dual Action Flea &
23 Tick Collar For Small Dogs And Puppies for use in California without a Proposition 65 warning from
24 August 11, 2007 through at least January 2009.

25 b. Defendant Central Garden has manufactured and/or distributed Adams Flea &
26 Tick Collar For Large Dogs, Adams Flea & Tick Collar For Small Dogs, Adams Plus Flea & Tick Collar
27 For Large Dogs, Adams Plus Flea & Tick Collar For Small Dogs, Bio Spot Flea & Tick Collar For Large
28 Dogs, Bio Spot Flea & Tick Collar For Puppies, Bio Spot Flea & Tick Collar For Small Dogs, Scratchex

1 Color-Full Formula 5 Flea & Tick Collar For Dogs, Vet-Kem Powerband Flea & Tick Collar For Dogs,
2 Zodiac Featrol Flea & Tick Collar For Large Dogs, Zodiac Featrol Flea & Tick Collar For Puppies,
3 Zodiac Featrol Flea & Tick Collar For Small Dogs, and Zodiac Tick Collar For Dogs for sale or use in
4 California without a Proposition 65 warning since August 11, 2007, and continuing through the present.

5 c. Defendant Farnam has manufactured and/or distributed Adams Flea & Tick Collar
6 For Large Dogs, Adams Flea & Tick Collar For Small Dogs, Adams Plus Flea & Tick Collar For Large
7 Dogs, Adams Plus Flea & Tick Collar For Small Dogs, Bio Spot Flea & Tick Collar For Large Dogs,
8 Bio Spot Flea & Tick Collar For Puppies, Bio Spot Flea & Tick Collar For Small Dogs, and Scratchex
9 Color-Full Formula 5 Flea & Tick Collar For Dogs for sale or use in California without a Proposition 65
10 warning since August 11, 2007, and continuing through the present.

11 d. Defendant Sergeant's manufactured and/or distributed Bansect Flea & Tick Collar
12 For Cats, Bansect Flea & Tick Collar for Dogs, Sentry Dual Action Flea & Tick Collar For Dogs, Sentry
13 Dual Action Flea & Tick Collar For Small Dogs And Puppies, Sergeant's Dual Action Flea & Tick
14 Collar For Dogs, Sergeant's Dual Action Flea & Tick Collar For Large Dogs, and Sergeant's Dual
15 Action Flea & Tick Collar For Small Dogs And Puppies for sale or use in California without a
16 Proposition 65 warning since August 11, 2007, and continuing through at least January 2009; and has
17 manufactured and/or distributed Sergeant's Double Duty Flea & Tick Collar For Dogs and Puppies for
18 use or sale in California without a Proposition 65 warning since August 11, 2007, and continuing
19 through at least November 2009.

20 e. Defendant Virbac manufactured and/or distributed Zema Dual Action Flea & Tick
21 Collar For Dogs for sale or use in California without a Proposition 65 warning from August 11, 2007
22 and continuing to approximately the end of December 2008.

23 f. Defendant Wellmark has manufactured and/or distributed Vet-Kem Powerband
24 Flea & Tick Collar For Dogs, Zodiac Featrol Flea & Tick Collar For Large Dogs, Zodiac Featrol Flea &
25 Tick Collar For Puppies, Zodiac Featrol Flea & Tick Collar For Small Dogs, and Zodiac Tick Collar For
26 Dogs for sale or use in California without a Proposition 65 warning since August 11, 2007, and
27 continuing through the present.

1 g. The Albertsons defendants sold Sergeant's Dual Action Flea & Tick Collar For
2 Large Dogs for use in California without a Proposition 65 warning from August 11, 2007, and
3 continuing through at least January 2009.

4 h. Defendant Foster & Smith has sold Bio Spot Flea & Tick Collar For Puppies for
5 use in California without a Proposition 65 warning since August 11, 2007, and continuing through the
6 present; and sold Bio Spot Flea & Tick Collar For Small Dogs for use in California without a
7 Proposition 65 warning since August 11, 2007, and continuing through at least April 2009.

8 i. Defendant Fins, Furs & Feathers sold Adams Plus Flea & Tick Collar For Large
9 Dogs, Adams Plus Flea & Tick Collar For Small Dogs, Bio Spot Flea & Tick Collar For Large Dogs,
10 Bio Spot Flea & Tick Collar For Small Dogs, Zodiac Featrol Flea & Tick Collar For Large Dogs, Zodiac
11 Featrol Flea & Tick Collar For Puppies, and Zodiac Featrol Flea & Tick Collar For Small Dogs for use
12 in California without a Proposition 65 warning since August 11, 2007, and continuing through at least
13 April 2009; and has sold Zodiac Tick Collar for Dogs for use in California without a Proposition 65
14 warning since August 11, 2007, and continuing through the present.

15 j. Defendant Jeffers has sold Adams Plus Flea & Tick Collar For Large Dogs and
16 Adams Plus Flea & Tick Collar For Small Dogs for use in California without a Proposition 65 warning
17 since August 11, 2007, and continuing through at least April 2009.

18 k. Defendant KV Vet 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 Small Dogs, and Zema Dual Action Flea & Tick Collar For Dogs for use in
21 California without a Proposition 65 warning since August 11, 2007, and continuing through the present.

22 l. The Pet Club defendants have sold Scratchex Color-Full Formula 5 Flea & Tick
23 Collar For Dogs, Zema Dual Action Flea & Tick Collar For Dogs, and Zodiac Featrol Flea & Tick
24 Collar For Small Dogs for use in California without a Proposition 65 warning since August 11, 2007,
25 and continuing through the present.

26 m. Defendant OSH has sold Zodiac Featrol Flea & Tick Collar For Large Dogs and
27 Zodiac Featrol Flea & Tick Collar For Small Dogs for use in California without a Proposition 65
28 warning since August 11, 2007, and continuing through the present.

1 n. Defendant Pet Food Express has sold Bio Spot Flea & Tick Collar For Large
2 Dogs, Bio Spot Flea & Tick Collar For Small Dogs, and Zodiac Tick Collar For Dogs for use in
3 California without a Proposition 65 warning since August 11, 2007, and continuing through the present.

4 o. The Petsmart defendants have sold Adams Plus Flea & Tick Collar For Large
5 Dogs, Adams Plus Flea & Tick Collar For Small Dogs, Bio Spot Flea & Tick Collar For Large Dogs,
6 Bio Spot Flea & Tick Collar For Puppies, Bio Spot Flea & Tick Collar For Small Dogs, Zodiac Featrol
7 Flea & Tick Collar For Large Dogs, Zodiac Featrol Flea & Tick Collar For Puppies, Zodiac Featrol Flea
8 & Tick Collar For Small Dogs, and Zodiac Tick Collar For Dogs for use in California without a
9 Proposition 65 warning since August 11, 2007, and continuing through the present; sold Sentry Dual
10 Action Flea & Tick Collar For Dogs for use in California without a Proposition 65 warning from August
11 11, 2007, through at least September 2009; and sold Sentry Dual Action Flea & Tick Collar For Small
12 Dogs And Puppies for use in California without a Proposition 65 warning from August 11, 2007,
13 through at least January 2009.

14 p. Defendant Ralphs has sold Zodiac Tick Collar for Dogs for use in California
15 without a Proposition 65 warning since August 11, 2007, and continuing through the present; and sold
16 Bansect Flea & Tick Collar For Dogs for use in California without a Proposition 65 warning from
17 August 11, 2009 through at least January 2009.

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

20 38. 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 39. Each Defendant knowingly and intentionally has exposed consumers 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 40. Each Defendant has received a written notice of violation stating that the Defendant has
27 violated Proposition 65 by exposing individuals to propoxur in flea-and-tick collars without providing a
28 clear and reasonable warning.

1 41. In accordance with Health & Safety Code §25249.7(d), this action is being commenced
2 more than 60 days from the date that NRDC provided notice of the violations of §25249.6 alleged herein
3 to the Attorney General and the district attorneys and city attorneys in whose jurisdiction the violations
4 are alleged to have occurred, and to Defendants. The notice provided included a certificate of merit that
5 complied with the requirements of Health & Safety Code §25249.7(d)(1). Factual information sufficient
6 to establish the basis of the certificate of merit was attached to the certificate of merit served on the
7 Attorney General.

8 42. Neither the Attorney General, any district attorney, any city attorney, nor any other public
9 prosecutor has commenced and is diligently prosecuting an action against the violations alleged herein.

10 **FIRST CAUSE OF ACTION**

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

12 43. Paragraphs 1 through 42 are realleged as if fully set forth herein.

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

16 45. These actions violate Health & Safety Code §25249.6. These violations render each
17 Defendant liable for civil penalties up to \$2,500 per day for each violation occurring within the year
18 prior to the date of the filing of this action, as well as other remedies.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff pray that the Court:

- 21 A. Grant civil penalties according to proof;
- 22 B. Pursuant to Health and Safety Code §25249.7, enter such injunctions or other
23 orders as are necessary to prevent Defendants from exposing persons within the State of California to
24 known carcinogens caused by the reasonably foreseeable use of their products without providing clear
25 and reasonable warnings;
- 26 C. Award Plaintiff reasonable attorneys' fees and costs; and
- 27 D. Grant such other and further relief as the Court deems just and proper.
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Dated: January 19, 2010

Respectfully submitted,

JONATHAN WEISSGLASS
BARBARA J. CHISHOLM
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MICHAEL E. WALL
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By: 
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