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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

NATURAL RESOURCES DEFENSE COUNCIL, INC.

Plaintiff,

v.

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

Defendants.

Case No. 09487873

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Complex Civil Case

INTRODUCTION

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

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

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

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

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PARTIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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JURISDICTION AND VENUE

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

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

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

STATUTORY BACKGROUND

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

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

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

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

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

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

FACTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

k. Defendant KV Vet has sold Adams Plus Flea & Tick Collar For Large Dogs, Adams Plus Flea & Tick Collar For Small Dogs, Bio Spot Flea & Tick Collar For Large Dogs, Bio Spot Flea & Tick Collar For Small Dogs, and Zema Dual Action Flea & Tick Collar For Dogs for use in California without a Proposition 65 warning since August 11, 2007, and continuing through the present.

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

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

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

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

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

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

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

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

40. Each Defendant has received a written notice of violation stating that the Defendant has violated Proposition 65 by exposing individuals to propoxur in flea-and-tick collars without providing a clear and reasonable warning.

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

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

FIRST CAUSE OF ACTION

(Against Each Defendant For Violation Of Proposition 65)

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray that the Court:

A. Grant civil penalties according to proof;

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

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

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

Dated: December 7, 2009

Respectfully submitted,

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