

1 **BURSOR & FISHER, P.A.**
 L. Timothy Fisher (State Bar No. 191626)
 2 Joel D. Smith (State Bar No. 244902)
 3 Blair E. Reed (State Bar No. 316791)
 1990 North California Blvd., Suite 940
 4 Walnut Creek, CA 94596
 Telephone: (925) 300-4455
 5 Facsimile: (925) 407-2700
 E-Mail: ltfisher@bursor.com
 6 jsmith@bursor.com
 7 breed@bursor.com

8 **BURSOR & FISHER, P.A.**
 Scott A. Bursor (State Bar No. 276006)
 9 2665 S. Bayshore Dr., Suite 220
 10 Miami, FL 33133
 Telephone: (305) 330-5512
 11 Facsimile: (305) 676-9006
 E-Mail: scott@bursor.com

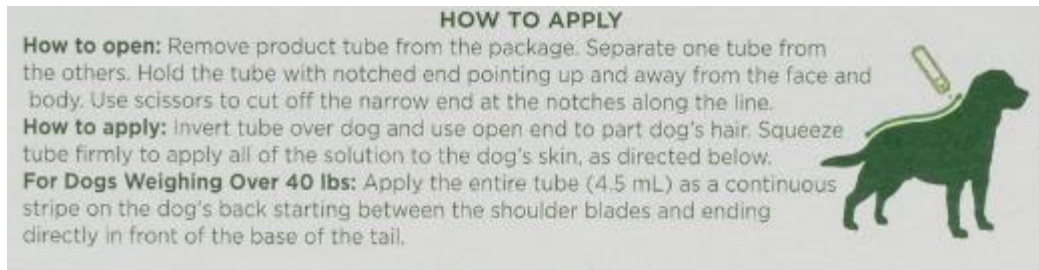
12 *Counsel for Plaintiff*

13
 14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**
 16

17 RAMONA PENIKILA on behalf of herself and
 18 all others similarly situated,
 19 Plaintiff,
 20 v.
 21 PETIQ, LLC d/b/a SENTRY and SERGEANT'S
 PET CARE PRODUCTS, LLC d/b/a SENTRY,
 22 Defendants.
 23

Case No. 3:19-cv-05508-VC
**FIRST AMENDED CLASS ACTION
 COMPLAINT**
JURY TRIAL DEMANDED

1 cinnamon oil, lemongrass oil, clove oil, and thyme oil.¹ These essential oils, despite being natural,
2 can be toxic if absorbed through the skin or ingested by pets. Symptoms of essential oil poisoning
3 include: irritation to the skin, vomiting, muscles tremors, and other more serious complications that
4 can lead to organ failure and death. Despite these risks, consumers are directed to apply the Sentry
5 Products directly to the skin of their pets:



6
7
8
9
10
11 4. Because of the risks associated with essential oil poisoning, veterinarians routinely
12 warn consumers against using the essential oils contained in the Sentry Products and other similarly
13 formulated products.

14 5. In an article posted on the Veterinary Centers of America website, Dr. Charlotte Flint
15 warns consumers to “[n]ever apply a concentrated essential oil on your pet.”² This is because “only
16 a couple of licks or a small amount on the skin could be harmful to a dog.”

17 6. In a blog post answering the question “Are essential oils really dangerous to pets?,”
18 Dr. Marty Becker identified some of the “essential oils that are toxic to pets are cinnamon, citrus,
19 lemon, pennyroyal, peppermint, pine, sweet birch, tea tree, thyme, wintergreen and ylang ylang.”³
20 Three of these identified essential oils are present in the Sentry Products (cinnamon, peppermint and
21 thyme). Contrary to the directions of the Sentry Products, Dr. Becker goes on to direct pet owners to
22 “[n]ever apply any concentrated essential oil to a pet’s skin.”

23
24
25 ¹ Available at <https://www.sentrypetcare.com/natural-flea-and-tick-protection-for-pets/>.

26 ² Dr. Charlotte Flint, *Essential Oil and Liquid Potpourri Poisoning in Dogs*, Veterinarian Centers of America.

27 ³ Dr. Marty Beck, *Are essential oils really dangerous to pets?* (January 23, 2018); available at
28 <https://www.drmartybecker.com/petconnection/essential-oils-really-dangerous-pets/>.

1 7. Defendants know about this issue, as evidenced by its ambiguous representation that
 2 the Product was “Veterinarian Tested.” But Defendants omit the fact that the Products cause
 3 essential oil poisoning and are not *recommended* by veterinarians.

4 8. Even worse, Defendants target consumers who are particularly safety conscious with
 5 its representations that the Products are “natural,” and “safe for use around pets and children.” As
 6 the Pet Poison Helpline noted “[w]e have certainly seen an increase in essential oil toxicity in recent
 7 years due to the increase in pet owner’s desire to treat more holistically or with natural remedies.”⁴

8 9. Although certain plant-derived natural flea products are considered “minimum-risk
 9 pesticides,” they can still “cause significant adverse events in dogs and cats.”⁵ Many owners think
 10 they have their pet’s best interest in mind when providing natural ingredients, but studies have shown
 11 that the use of products containing essential oils, like Sentry Products, come with serious risks and
 12 can potentially be fatal to pets.⁶

13 10. In fact, countless consumers have complained of the harmful side effects attributable
 14 to Sentry Products on ConsumerAffairs.com:



16 **Benjamin of Wauconda, WA** ✓ Verified Reviewer

17 Original review: July 11, 2019

18 The hair is missing from the spots I put the liquid and I followed as instructed. The spots are bright red
 19 and irritated. My poor dog, I will never buy cheap flea and tick medication again. SHAME ON YOU
 20 SENTRY. Zero Stars.

21 //

22 //

23 //

24

25 ⁴ Jo Marshall CVT, NREMT, *Essential Oils and Dogs*, available at <https://www.petpoisonhelpline.com/pet-safety-tips/essential-oils-dogs/>.

26 ⁵ Patricia Thomblison, DVM, MS, *Risky Natural Flea/Tick Products?*, available at <https://www.cliniciansbrief.com/article/risky-natural-fleatick-products>.

27 ⁶ *See id.*



Chelsea of Fairfax, VA ✓ Verified Reviewer

Original review: June 11, 2019

DO NOT BUY THIS PRODUCT. Within 30 minutes of application, my 50lb husky mix was clearly agitated and couldn't stop panting or pacing. I looked up reviews online and quickly found that this was a common occurrence. My dog's skin was red, his heart was racing, and he couldn't sit still for more than seconds at a time. Three baths with Dawn soap and 7 restless hours later, he's feeling a bit better but still biting at his back. I will never, ever use this again and hope that the product is removed soon. So many of these terrible reviews are masked by a decent star rating, and honestly, I have no idea how.



Misty of Elizabethtown, KY ✓ Verified Reviewer

Original review: April 19, 2019

This was our first time buying flea and tick meds from the store and not the vet, worst mistake I could have made! The next day after applying the topical treatment my 16 month old Blue Pit starting itching so badly that he is balding in spots! He won't play, go outside or even sleep. A very playful and energetic puppy is now depressed looking and has no motivation to do anything! Worst product, sad thing is I always look at reviews and this time because I didn't my baby is suffering! ZERO stars, apparently it's mandatory that I put at least one. This company should be ashamed!



Rebecca of Loomis, CA ✓ Verified Reviewer

Original review: Dec. 6, 2018

I bought this ahead of time to give to my dog. I applied it yesterday afternoon like I always do with flea meds. Within an hour she was acting "different" and it kept getting worse, itching, crying, panting, drooling. I immediately put her in the bath and washed it off well. I thought it did. The night got worse, crying, panting, twitching and never slept. I called the vet this morning and they recommended bringing her in however emergency fee applied. I washed her with Dawn 2 times and then conditioned her poor red hot skin. Gave her ** and we are finally sleeping! A NEVER EVER AGAIN will I use this. Found over 600+ reviews on the Consumer Affairs website that were all the same symptoms. Very sad to feel like you are buying a reputable product from a big company. Thank GOD my little guy didn't appear to have this reaction. He had lethargy. Please pray for my rescue dog. My next step is the vet.

1 11. While this damage may not be immediately noticeable, and does not manifest every
2 time the Products are used, the Products nonetheless expose every pet on which they are used to a
3 considerable risk of a serious adverse reaction, and in some cases, death. Simply put, the Products
4 are not fit to be sold as a flea and tick medication and Defendants' representation that the Products
5 are safe to use around pets and children is false and misleading.

6 12. This is a proposed class action brought by Plaintiff, on behalf of a class of similarly
7 situated individuals, against Defendants for breach of implied warranty, unjust enrichment, fraud,
8 and violations of California consumer protection laws.

9 **JURISDICTION AND VENUE**

10 13. This Court has personal jurisdiction over Defendants. Defendants purposefully
11 availed themselves of the California consumer market and distribute the Products to at least
12 hundreds of locations within this County and thousands of retail locations throughout California,
13 where the Products are purchased by thousands of consumers every week.

14 14. This Court has original subject-matter jurisdiction over this proposed class action
15 pursuant to 28 U.S.C. § 1332(d), which, under the provisions of the Class Action Fairness Act
16 ("CAFA"), explicitly provides for the original jurisdiction of the federal courts in any class action
17 in which at least 100 members are in the proposed plaintiff class, any member of the plaintiff class
18 is a citizen of a State different from any defendant, and the matter in controversy exceeds the sum
19 of \$5,000,000.00, exclusive of interest and costs. Plaintiff alleges that the total claims of individual
20 members of the proposed Class (as defined herein) are well in excess of \$5,000,000.00 in the
21 aggregate, exclusive of interest and costs.

22 15. Venue is proper in this District under 28 U.S.C. § 1391(a). Substantial acts in
23 furtherance of the alleged improper conduct, including the dissemination of false and misleading
24 information and omissions regarding the Sentry Products, occurred within this District.

25 **PARTIES**

26 16. Plaintiff Ramona Penikila is an individual consumer who, at all times material
27 hereto, was a citizen of California. Ms. Penikila purchased Sentry Natural Defense for her dog in
28

1 or around August 2019 at Petco in San Francisco, California. In purchasing the Product, Ms.
2 Penikila relied on Defendants’ false, misleading, and deceptive marketing of the Products as a safe
3 flea and tick medication. Had Defendants disclosed that the Products are not fit to be used as a flea
4 and tick medication because they cause essential oil poisoning, Ms. Penikila would not have
5 purchased the Product. Ms. Penikila read and followed the instructions of the Product when
6 applying it to her dog. After application, Ms. Penikila’s dog experienced serious hair loss and
7 abnormal skin irritation and itching. After Ms. Penikila scrubbed the area where the Product was
8 applied, her dog eventually returned to normal.

9 17. Defendants’ misrepresentation that the Products are “safe for use around pets and
10 children” and their failure to disclose that the Products cause essential oil poisoning were
11 immediate causes of Plaintiff Penikila’s decision to purchase one of the Products. In all reasonable
12 probability, she would not have agreed to purchase one of the Products, or would have sought
13 materially different terms, had she known that the truth. Defendants’ misrepresentation and
14 omission were substantial factors in Plaintiff Penikila’s decision to purchase the Sentry Product.

15 18. Plaintiff remains interested in purchasing a safe natural flea and tick repellant and
16 would consider the Sentry Products in the future if Defendants provided a product that would not
17 cause essential oil poisoning.

18 19. Defendant PetIQ, LLC d/b/a Sentry is incorporated in the State of Idaho with a
19 principal place of business in Eagle, Idaho.

20 20. Defendant Sergeant’s Pet Care Products, LLC d/b/a Sentry is incorporated in the
21 State of Michigan, with its headquarters in Omaha, Nebraska.

22 21. Defendants manufacture, market, and distribute the Products throughout California,
23 and the United States.

24 **CLASS ALLEGATIONS**

25 22. Plaintiff seeks to represent a class defined as all persons in the United States who
26 purchased the Products (the “Class”). Excluded from the Class are persons who made such
27 purchases for purpose of resale.
28

1 23. Plaintiff also seeks to represent a Subclass of all Class Members who purchased the
2 Products in California (the “California Subclass”).

3 24. At this time, Plaintiff does not know the exact number of members of the Class and
4 California Subclass; however, given the nature of the claims and the number of retail stores in the
5 United States selling the Products, Plaintiff believes that Class and California Subclass members
6 are so numerous that joinder of all members is impracticable.

7 25. There is a well-defined community of interest in the questions of law and fact
8 involved in this case. Questions of law and fact common to the members of the Class that
9 predominate over questions that may affect individual Class members include:

- 10 a. whether Defendants misrepresented and/or failed to disclose material facts
11 concerning the Products;
- 12 b. whether Defendants’ conduct was unfair and/or deceptive;
- 13 c. whether Defendants have been unjustly enriched as a result of the unlawful,
14 fraudulent, and unfair conduct alleged in this Complaint such that it would be inequitable for
15 Defendants to retain the benefits conferred upon Defendants by Plaintiff and the Class;
- 16 d. whether Defendants breached implied warranties to Plaintiff and the Class;
- 17 e. whether Defendants breached express warranties to Plaintiff and the Class
- 18 f. whether Plaintiff and the Class have sustained damages with respect to the
19 common-law claims asserted, and if so, the proper measure of their damages.

20 26. Plaintiff’s claims are typical of those of the Class because Plaintiff, like all members
21 of the Class, purchased, in a typical consumer setting, Defendants’ product and Plaintiff sustained
22 damages from Defendants’ wrongful conduct.

23 27. Plaintiff will fairly and adequately protect the interests of the Class and has retained
24 counsel that is experienced in litigating complex class actions. Plaintiff has no interests which
25 conflict with those of the Class or the California Subclass.

26 28. A class action is superior to other available methods for the fair and efficient
27 adjudication of this controversy.

1 45. Defendants have violated the UCL’s proscription against engaging in *unlawful*
2 conduct as a result of its violations of the CLRA, Cal. Civ. Code § 1770(a)(5) and (a)(7) as alleged
3 above.

4 46. Defendants’ acts and practices described above also violate the UCL’s proscription
5 against engaging in fraudulent conduct.

6 47. As more fully described above, Defendants’ misleading marketing, advertising,
7 packaging, and labeling of the Products is likely to deceive reasonable consumers.

8 48. Defendants’ acts and practices described above also violate the UCL’s proscription
9 against engaging in *unfair* conduct.

10 49. Ms. Penikila and the other California Subclass members suffered a substantial injury
11 by virtue of buying the Sentry Products that they would not have purchased absent Defendants’
12 unlawful, fraudulent, and unfair marketing, advertising, packaging, and labeling or by virtue of
13 paying an excessive premium price for the unlawfully, fraudulently, and unfairly marketed,
14 advertised, packaged, and labeled product.

15 50. There is no benefit to consumers or competition from deceptively marketing and
16 labeling the Sentry Products.

17 51. Plaintiff and the other California Subclass members had no way of reasonably
18 knowing that the Sentry Products they purchased were not as marketed, advertised, packaged, or
19 labeled. Thus, they could not have reasonably avoided the injury each of them suffered.

20 52. The gravity of the consequences of Defendants’ conduct as described above
21 outweighs any justification, motive, or reason therefore, particularly considering the available legal
22 alternatives which exist in the marketplace, and such conduct is immoral, unethical, unscrupulous,
23 offends established public policy, or is substantially injurious to Ms. Penikila and the other
24 members of the California Subclass.

25 53. Defendants’ violations of the UCL continue to this day.
26
27
28

1 Defendants' misrepresentations about the Products; and (c) the Products did not perform as
2 promised.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff demands judgment on behalf of herself and members of the Class
5 and California Subclass as follows:

- 6 A. For an order certifying the Class and the California Subclass under Rule 23 of the
7 Federal Rules of Civil Procedure and naming Plaintiff as representative of the Class
8 and California Subclass and Plaintiff's attorneys as Class Counsel to represent the
9 Class and California Subclass members;
- 10 B. For an order declaring that Defendants' conduct violates the statutes referenced
11 herein;
- 12 C. For an order finding in favor of Plaintiff, the Class, and the California Subclass on
13 all counts asserted herein;
- 14 D. For compensatory, statutory, and punitive damages in amounts to be determined by
15 the Court and/or jury;
- 16 E. For injunctive relief enjoining the illegal acts detailed herein;
- 17 F. For prejudgment interest on all amounts awarded;
- 18 G. For an order of restitution and all other forms of equitable monetary relief;
- 19 H. For an order awarding Plaintiff and the Class and California Subclass their
20 reasonable attorneys' fees and expenses and costs of suit.

21 **JURY TRIAL DEMANDED**

22 Plaintiff demands a trial by jury on all claims so triable.

23 Dated: December 2, 2019

Respectfully submitted,

24 **BURSOR & FISHER, P.A.**

25 By: /s/ L. Timothy Fisher
L. Timothy Fisher

26 L. Timothy Fisher (State Bar No. 191626)
27 Joel D. Smith (State Bar No. 244902)
Blair E. Reed (State Bar No. 316791)
28 1990 North California Blvd., Suite 940

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
E-Mail: ltfisher@bursor.com
jsmith@bursor.com
breed@bursor.com

BURSOR & FISHER, P.A.
Scott A. Bursor (State Bar No. 276006)
2665 S. Bayshore Dr., Suite 220
Miami, FL 33133
Telephone: (305) 330-5512
Facsimile: (305) 676-9006
E-Mail: scott@bursor.com

Counsel for Plaintiff

CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)

I, L. Timothy Fisher, declare as follows:

1. I am an attorney at law licensed to practice in the State of California and a member of the bar of this Court. I am a Partner at Bursor & Fisher, P.A., counsel of record for Plaintiff in this action. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would competently testify thereto under oath.

2. The Complaint filed in this action is filed in the proper place for trial under Civil Code Section 1780(d) in that a substantial portion of the events alleged in the Complaint occurred in the Northern District of California.

I declare under the penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and that this declaration was executed at Walnut Creek, California this 2nd day of December, 2019.

/s/ L. Timothy Fisher
L. Timothy Fisher

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28