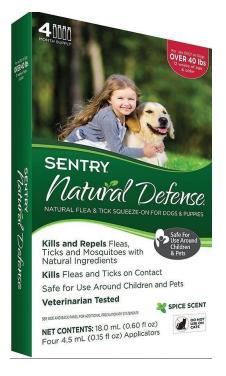
	Case 3:19-cv-05508-VC Document 24	Filed 12/02/19	Page 1 of 17
1 2 3 4 5 6 7 8 9 10	<ul> <li>BURSOR &amp; FISHER, P.A.</li> <li>L. Timothy Fisher (State Bar No. 191626)</li> <li>Joel D. Smith (State Bar No. 244902)</li> <li>Blair E. Reed (State Bar No. 316791)</li> <li>1990 North California Blvd., Suite 940</li> <li>Walnut Creek, CA 94596</li> <li>Telephone: (925) 300-4455</li> <li>Facsimile: (925) 407-2700</li> <li>E-Mail: Itfisher@bursor.com         jsmith@bursor.com</li> <li>BURSOR &amp; FISHER, P.A.</li> <li>Scott A. Bursor (State Bar No. 276006)</li> <li>2665 S. Bayshore Dr., Suite 220</li> <li>Miami, FL 33133</li> <li>Telephone: (305) 330-5512</li> </ul>		
11 12	Facsimile: (305) 676-9006 E-Mail: scott@bursor.com		
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14 15	UNITED STATES I		
16	NORTHERN DISTRIC	CT OF CALIFO	KINIA
16 17 18	NORTHERN DISTRIC RAMONA PENIKILA on behalf of herself and all others similarly situated,	CT OF CALIFO Case No. 3:19-	
17 18 19	RAMONA PENIKILA on behalf of herself and	Case No. 3:19-0	cv-05508-VC NDED CLASS ACTION
17 18	RAMONA PENIKILA on behalf of herself and all others similarly situated, Plaintiff,	Case No. 3:19- FIRST AMEN COMPLAINT	cv-05508-VC NDED CLASS ACTION
17 18 19 20	RAMONA PENIKILA on behalf of herself and all others similarly situated, Plaintiff, v. PETIQ, LLC d/b/a SENTRY and SERGEANT'S	Case No. 3:19- FIRST AMEN COMPLAINT	cv-05508-VC NDED CLASS ACTION Γ
17 18 19 20 21	RAMONA PENIKILA on behalf of herself and all others similarly situated, Plaintiff, v. PETIQ, LLC d/b/a SENTRY and SERGEANT'S PET CARE PRODUCTS, LLC d/b/a SENTRY,	Case No. 3:19- FIRST AMEN COMPLAINT	cv-05508-VC NDED CLASS ACTION Γ
<ol> <li>17</li> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> </ol>	RAMONA PENIKILA on behalf of herself and all others similarly situated, Plaintiff, v. PETIQ, LLC d/b/a SENTRY and SERGEANT'S PET CARE PRODUCTS, LLC d/b/a SENTRY,	Case No. 3:19- FIRST AMEN COMPLAINT	cv-05508-VC NDED CLASS ACTION Γ
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Plaintiff Ramona Penikila ("Plaintiff"), individually and on behalf of other similarly situated individuals, alleges the following Class Action Complaint against defendants PetIQ, LLC d/b/a Sentry ("PetIQ") and Sergeant's Pet Care Products, LLC d/b/a Sentry ("Sergeant's") (collectively "Sentry" or "Defendants") for making, marketing, and distributing various brands of Sentry Natural Defense, upon personal knowledge as to herself and her own acts and upon information and belief – based upon, *inter alia*, the investigation made by her attorneys – as to all other matters, as follows:

# **INTRODUCTION**

1. This is a class action on behalf of purchasers of the various brands of Sentry Natural Defense (the "Products") in the United States. The Products are sold as a flea and tick repellent that is "safe to use around children and pets." In fact, the essential oils that make up the Sentry Products are toxic if ingested or applied directly to the skin and can lead to serious complications.

2. Every Sentry Product represents that it is "safe to use around children and pets" and is "Veterinarian Tested."



3. Unfortunately for consumers and their pets, use of the Products exposes pets to the

following concentrated essential oils that are present in every Sentry Product: peppermint oil,

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

> HOW TO APPLY How to open: Remove product tube from the package. Separate one tube from the others. Hold the tube with notched end pointing up and away from the face and body. Use scissors to cut off the narrow end at the notches along the line. How to apply: Invert tube over dog and use open end to part dog's hair. Squeeze tube firmly to apply all of the solution to the dog's skin, as directed below. For Dogs Weighing Over 40 lbs: Apply the entire tube (4.5 mL) as a continuous stripe on the dog's back starting between the shoulder blades and ending directly in front of the base of the tail.

4. Because of the risks associated with essential oil poisoning, veterinarians routinely warn consumers against using the essential oils contained in the Sentry Products and other similarly formulated products.

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

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

25  $\|$  <sup>1</sup> Available at https://www.sentrypetcare.com/natural-flea-and-tick-protection-for-pets/.

<sup>26 &</sup>lt;sup>2</sup> Dr. Charlotte Flint, *Essential Oil and Liquid Potpourri Poisoning in Dogs*, Veterinarian Centers of America.

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

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

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

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

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

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Benjamin of Wauconda, WA 🛛 🖌 Verified Reviewer

Original review: July 11, 2019

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

 <sup>4</sup> Jo Marshall CVT, NREMT, Essential Oils and Dogs, available at https://www.petpoisonhelpline.com/pet-safety-tips/essential-oils-dogs/.
 <sup>5</sup> Patricia Thomblison, DVM, MS, Risky Natural Flea/Tick Products?, available at

*https://www.cliniciansbrief.com/article/risky-natural-fleatick-products.* 6 *See id.* 

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#### 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!

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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.

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

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

### JURISDICTION AND VENUE

13. This Court has personal jurisdiction over Defendants. Defendants purposefully availed themselves of the California consumer market and distribute the Products to at least hundreds of locations within this County and thousands of retail locations throughout California, 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.

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

#### PARTIES

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

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

# **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.

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.
28	FIRST AMENDED CLASS ACTION COMPLAINT 7 CASE NO. 3:19-CV-05508-VC

29. The prerequisites to maintaining a class action for equitable relief are met as Defendants have acted or refused to act on grounds generally applicable to the Class and the California Subclass, thereby making appropriate equitable relief with respect to the Class and the California Subclass as a whole.

30. The prosecution of separate actions by members of the Class and the California Subclass would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendants. For example, one court might enjoin Defendants from performing the challenged acts, whereas another might not. Additionally, individual actions could be dispositive of the interests of the Class and the California Subclass even where certain Class members are not parties to such actions.

#### COUNT I

#### Violation of the California's Consumers Legal Remedies Act

31. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

32. Plaintiff Penikila brings this cause of action on behalf of herself and members of the California Subclass.

33. This cause of action is brought pursuant to California's Consumers Legal RemediesAct, Cal. Civ. Code §§ 1750-1785 (the "CLRA").

34. Ms. Penikila and the other members of the California Subclass are "consumers," as the term is defined by California Civil Code § 1761(d), because they bought the Products for personal, family, or household purposes.

35. Ms. Penikila, the other members of the California Subclass, and Defendants have engaged in "transactions," as that term is defined by California Civil Code § 1761(e).

36. The conduct alleged in this Complaint constitutes unfair methods of competition and unfair and deceptive acts and practices for the purpose of the CLRA, and the conduct was undertaken by Defendants in transactions intended to result in, and which did result in, the sale of goods to consumers.

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1 37. As alleged more fully above, Defendants have violated the CLRA by marketing the 2 Sentry Products as a flea and tick medication but failing to inform consumers that it is not fit to be 3 used as a flea and tick medication for domestic animals because it causes essential oil poisoning. 4 38. As a result of engaging in such conduct, Defendants have violated California Civil 5 Code § 1770(a)(5) and (a)(7). 6 39. Plaintiff and the members of the California Subclass have suffered harm as a result 7 of these violations of the CLRA because they have paid monies for Sentry Products that they 8 otherwise would not have incurred or paid. 9 40. Plaintiff also seeks to enjoin the sale of the Sentry Products, or to require 10 Defendants to disclose the risk of essential oil poisoning and to prohibit representation that the 11 Products are "safe for use around pets and children." 12 41. On November 8, 2018 and August 28. 2019, CLRA demand letters were sent to 13 Defendants via certified mail that provided notice of Defendants' violation of the CLRA and 14 demanded that within thirty (30) days from that date, Defendants correct, repair, replace or other 15 rectify the unlawful, unfair, false and/or deceptive practices complained of herein. The letters also 16 stated that if Defendants refused to do so, a complaint seeking damages in accordance with the 17 CLRA would be filed. Defendants failed to respond to the letters. 18 **COUNT II** Violation of California's Unfair Competition Law 19 Plaintiff incorporates by reference and re-alleges each and every allegation set forth 42. 20 above as though fully set forth herein. 21 43. Plaintiff Penikila brings this cause of action on behalf of herself and members of the 22 California Subclass. 23 44. By committing the acts and practices alleged herein, Defendants have violated 24 California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200-17210, as to the 25 California Subclass, by engaging in unlawful, fraudulent, and unfair conduct. 26 27 28 9 FIRST AMENDED CLASS ACTION COMPLAINT CASE NO. 3:19-CV-05508-VC

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

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

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

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

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

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

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53. Defendants' violations of the UCL continue to this day.

FIRST AMENDED CLASS ACTION COMPLAINT CASE NO. 3:19-CV-05508-VC

1	54.	Pursuant to California Business and Professional Code § 17203, Plaintiff and the
2	California Su	bclass seek an order of this Court that includes, but is not limited to, an order
3	requiring De	fendants to:
4		(a) provide restitution to Ms. Penikila and the other California Subclass
5		members;
6		(b) disgorge all revenues obtained as a result of violations of the UCL; and
7		(c) pay Ms. Penikila and the California Subclass' attorney's fees and costs.
8 9		<u>COUNT III</u> Fraud
10	52.	Plaintiff incorporates by reference and re-alleges each and every allegation set forth
11	above as thou	ugh fully set forth herein.
12	53.	Plaintiff brings this claim individually and on behalf of the members of the Class
13	and Californi	a Subclass against Defendants.
14	54.	As discussed above, Defendants not only failed to disclose to class members that
15	use of the Se	ntry Products could cause essential oil poisoning, but represented to Plaintiff and the
16	Class that the	e Products were "veterinarian tested" and "safe for use around pets and children."
17	55.	The false and misleading representations and omissions were made with knowledge
18	of their falsel	hood.
19	56.	The false and misleading representations and omissions were made by Defendants,
20	upon which l	Plaintiff and members of the Class and California Subclass reasonably and justifiably
21	relied, and w	ere intended to induce and actually induced Plaintiff and Class members to purchase
22	Sentry Produ	cts.
23	57.	The fraudulent actions of Defendants caused damage to Plaintiff and members of
24	the Class, wh	no are entitled to damages and other legal and equitable relief as a result.
25		<u>COUNT IV</u> Unjust Enrichment
26	58.	Plaintiff incorporates by reference and re-alleges each and every allegation set forth
27	above as thou	igh fully set forth herein.
28		DED CLASS ACTION COMPLAINT 11 9-CV-05508-VC

59. Plaintiff brings this claim individually and on behalf of members of the Class and
 California Subclass against Defendants.

60. Plaintiff and Class members conferred benefits on Defendants by purchasing the Sentry Products.

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61. Defendants have knowledge of such benefits.

62. Defendants have been unjustly enriched in retaining the revenues derived from
Plaintiff's and Class members' purchases of Sentry Products. Retention of those monies under
these circumstances is unjust and inequitable because Defendants failed to disclose that the Sentry
Products cause essential oil poisoning.

Because Defendants' retention of the non-gratuitous benefits conferred on it by
 Plaintiff and Class members is unjust and inequitable, Defendants must pay restitution to Plaintiff
 and the Class members for their unjust enrichment, as ordered by the Court.

## <u>COUNT V</u> Breach of the Implied Warranty of Merchantability

64. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

65. Plaintiff brings this claim individually and on behalf of members of the Class and California Subclass against Defendants.

66. Defendants, as the designers, manufacturers, marketers, distributors, and/or sellers, impliedly warranted that the Sentry Products are merchantable as flea and tick medication.

67. Defendants breached the warranty implied in the contract for the sale of the Sentry Products because they could not "pass without objection in the trade under the contract description," the goods were not "of fair average quality within the description," the goods were not "adequately contained, packaged, and labeled as the agreement may require," and the goods did not "conform to the promise or affirmations of fact made on the container or label." *See* U.C.C. § 2-314(2) (listing requirements for merchantability). As a result, Plaintiff and Class members did not receive the goods as impliedly warranted by Defendants to be merchantable.

1	68. Plaintiff and Class members purchased the Sentry Products relying on Defendants'
2	skill and judgment in properly packaging and labeling Sentry Products.
3	69. The Sentry Products were not altered by Plaintiff or Class members.
4	70. The Sentry Products were defective when they left the exclusive control of
5	Defendants.
6	71. Defendants knew that the Sentry Products would be purchased and used without
7	additional testing by Plaintiff and Class members.
8	72. The Sentry Products were defectively designed and unfit for their intended purpose
9	and Plaintiff and Class members did not receive the goods as warranted.
10	73. As a direct and proximate cause of Defendants' breach of the implied warranty,
11	Plaintiff and Class members have been injured and harmed because they would not have purchased
12	the Sentry Products if they knew the truth about the product and that the product they received was
13	worth substantially less than the product they were promised and expected.
14	COUNT VI
15	<b>Breach of Express Warranty</b>
16	74. Plaintiff incorporates by reference and re-alleges each and every allegation set forth
17	above as though fully set forth herein.
18	75. Plaintiff brings this claim individually and on behalf of the members of the Class
19	and California Subclass against Defendants.
20	76. Defendants, as the designers, manufacturers, marketers, distributors, and/or sellers
21	expressly warranted that the Products were fit for their intended purpose in that they would
22	function properly as flea and tick medication, and that the Products were "veterinarian tested" and
23	"safe for use around pets and children."
24	77. In fact, the Products do not function properly as flea and tick medication and are not
25	safe for use around pets and children because the Products cause essential oil poisoning.
26	78. Plaintiff and the Class members were injured as a direct and proximate result of
27	Defendants' breach because: (a) they would not have purchased the Products on the same terms if
28	the truth concerning Defendants' Products had been known; (b) they paid a price premium due toFIRST AMENDED CLASS ACTION COMPLAINT13CASE NO. 3:19-CV-05508-VC13

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1 2		misrepresentations	about the Products; and (c) the Products did not perform as
2	promised.		
			PRAYER FOR RELIEF
4			demands judgment on behalf of herself and members of the Class
5	and Californ	ia Subclass as follow	ws:
6 7	А.	Federal Rules of	fying the Class and the California Subclass under Rule 23 of the Civil Procedure and naming Plaintiff as representative of the Class lbclass and Plaintiff's attorneys as Class Counsel to represent the
8			nia Subclass members;
9 10	B.	For an order decl herein;	aring that Defendants' conduct violates the statutes referenced
11	C.	For an order find all counts asserte	ing in favor of Plaintiff, the Class, and the California Subclass on d herein;
12 13	D.	For compensator the Court and/or	y, statutory, and punitive damages in amounts to be determined by jury;
14	E.	For injunctive rel	ief enjoining the illegal acts detailed herein;
15	F.	For prejudgment	interest on all amounts awarded;
16	G.	For an order of re	estitution and all other forms of equitable monetary relief;
17 18	H.		rding Plaintiff and the Class and California Subclass their eys' fees and expenses and costs of suit.
19			JURY TRIAL DEMANDED
20	Plain	tiff demands a trial h	by jury on all claims so triable.
21			
22	Dated: Decer	mber 2, 2019	Respectfully submitted,
23			BURSOR & FISHER, P.A.
24			By:/s/L. Timothy Fisher
25			L. Timothy Fisher
26			L. Timothy Fisher (State Bar No. 191626) Joel D. Smith (State Bar No. 244902)
27			Blair E. Reed (State Bar No. 316791) 1990 North California Blvd., Suite 940
28	FIRST AMEN	DED CLASS ACTION	
	CASE NO. 3:1	9-CV-05508-VC	

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9	Counsel for Plaintiff
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	FIRST AMENDED CLASS ACTION COMPLAINT CASE NO. 3:19-CV-05508-VC

<b><u>CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)</u></b>
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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