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SAN LUIS OBISPO SUPERIOR COURT
BY 
M. Zepeda, Deputy Clerk

Attorneys for Plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

Steven Schneider, Individually and on Behalf of
All Others Similarly Situated,

Case No. 21CV-0115

Plaintiff,

CLASS ACTION COMPLAINT FOR:

v.

- (1) VIOLATIONS OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT;
- (2) VIOLATIONS OF THE CALIFORNIA FALSE ADVERTISING LAW; AND
- (3) VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW;

Bayer HealthCare LLC, a Delaware limited liability company; Elanco Animal Health, Inc., a Indiana corporation, and DOES 1 through 100, Inclusive,,

Defendants.

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

1 Plaintiff Steven Schneider (“Plaintiff”), individually and on behalf of all others similarly
2 situated, by and through his undersigned attorneys, as and for their Class Action Complaint against
3 defendants Bayer HealthCare LLC and Elanco Animal Health, Inc. (“Bayer HealthCare” and
4 “Elanco,” respectively, and collectively, “Defendants”), alleges the following based upon personal
5 knowledge as to himself and his own actions, and, as to all other matters, respectfully alleges, upon
6 information and belief, as follows:

7 **NATURE OF THE ACTION**

8 1. Plaintiff, individually and on behalf of all others similarly situated, by and through her
9 undersigned attorneys, bring this class action against Defendants for the deceptive practice of
10 marketing and selling their “Seresto®” flea and tick prevention collars (the “Products”) to consumers
11 without disclosing that the flea and tick collars contain pesticides and other ingredients that can cause
12 seizures, thyroid gland damage, and death of cat and/or dog pets wearing the Products.

13 2. Defendants prominently feature on their Product packaging and labels that they are for
14 “dogs of all sizes” and provides “full body protection.” In fact, however, the Products’ packaging and
15 labeling fail to disclose that the Products active ingredients can cause seizures or death of pets wearing
16 the Products.

17 3. Defendants manufacture, market, advertise, label, distribute, and sell flea and tick
18 collars for cat and/or dog pets under the brand name Seresto® throughout California, including in San
19 Luis Obispo County through online purchases and throughout retail locations stores within the state.

20 4. Defendants failed to disclose to Plaintiff the risk of serious injury or death to their pets;
21 in doing so, Defendants deceptively marketed, distributed, and sold the Products to unsuspecting
22 consumers, whose pets suffered injury as a result.

23 5. Defendants’ advertisement and product labeling is deceptive to consumers under the
24 consumer protection laws of California. Defendants have been unjustly enriched as a result of their
25 conduct. For these reasons, Plaintiff seeks the relief set forth herein below.

26 6. Plaintiff brings this proposed consumer class action on behalf of themselves and all
27 other citizens of California, who, from the applicable limitations period up to and including the present,
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1 purchased for consumption and not resale any of Defendants' flea and tick Seresto[®] Products directly
2 or indirectly by or through the Defendants named herein.

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4 **JURISDICTION AND VENUE**

5 7. This Court has jurisdiction over this action pursuant to Article 6, § 10 of the California
6 Constitution, Civil Code § 1780(d), and Code of Civil Procedure §§ 382 and 410.10.

7 8. This Court has jurisdiction over Defendants because they have conducted and continue
8 to conduct substantial business within California, including, *inter alia*, the promotion, advertising,
9 distribution and sale of the Products at issue herein.

10 9. Venue is proper in this Court pursuant to Code of Civil Procedure § 395 because
11 Plaintiff Steven Schneider purchased Defendants' Products in San Luis Obispo, California, within the
12 applicable statute of limitations and the resulting economic harm and damage occurred in San Luis
13 Obispo County.

14 10. Having Defendants litigate Plaintiff's claims in California does not offend traditional
15 notions of fair play and substantial justice and is permitted by the United States Constitution. Plaintiff
16 and all Class Members' claims arise in part from conduct Defendants purposefully directed to and
17 occurred in California. On information and belief, Plaintiff alleges that within the applicable statute
18 of limitations for the claims plead herein, Defendants Bayer HealthCare and Elanco's Seresto[®]
19 Products were distributed, advertised and sold to consumers through hundreds of local and California
20 state-wide retailers in this State. Defendants are thus subject to jurisdiction in California Superior Court.

21 11. On further information and belief, Plaintiff alleges that Defendants have, and continue
22 to, avail themselves of numerous advertising and promotional materials disseminated throughout
23 California regarding their unsafe Seresto[®] Products vis-à-vis advertisements and product labeling
24 campaigns specifically intended to reach consumers in California, including but not limited to
25 advertisements on local California television programs, radio broadcasts, product package labeling,
26 advertisements on billboards in California, and advertisements in print and point of sale publications
27 disseminated to consumers in San Luis Obispo county and throughout the State of California.
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THE PARTIES

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3 12. Plaintiff is, and at all times relevant hereto has been, a resident citizen of the state of
4 California. Plaintiff Steven Schneider (“Plaintiff”) purchased the Seresto flea and tick collars as the
5 primary flea and tick prevention method for his dog Ayshe, a gentle and well-loved Anatolian
6 Shepard, in and or about the Summer of 2020. Plaintiff purchased the Product for Ayshe to control
7 ticks and fleas that inhabit San Luis Obispo. Prior to purchasing the Products, Plaintiff reviewed the
8 warnings on the packaging, which did not include any information regarding risk of serious injury,
9 seizures, or death to the cat and/or dog pet when used, which he relied on when deciding to purchase
10 the Products at issue herein and how much to pay for them. At the time of purchase, and based on
11 the false and misleading claims, warranties, representations, store and other media advertisements,
12 and other marketing by Defendants, Plaintiff was unaware that the Products contained ingredients
13 that could cause injury, seizures, or the death of her pets, and would not have purchased the Product
14 if that was fully disclosed.

15 13. In or about August of 2020, Plaintiff began to notice Ayshe, a heretofore perfectly
16 healthy dog, displaying symptoms of a seizure and struggling to walk. Plaintiff was so alarmed at the
17 distress Ayshe was in, he rushed her to an emergency veterinarian and then took her to his personal
18 veterinarian. Both doctors were at a loss over how to explain the sudden manifestation of seizures in
19 an otherwise healthy dog. Ayshe was prescribed anti-seizure nasal spray and Plaintiff noticed
20 repeated, but increasingly milder, symptoms associated with seizures. Shortly after this episode,
21 Plaintiff removed the Seresto collar from Ayshe and replaced it with an organic variety that did not
22 contain harsh chemicals. Since Plaintiff removed the Seresto collar from Ayesha, she has never
23 exhibited the symptoms, or any associated symptoms, that she displayed that terrifying day in
24 August.

25 14. Plaintiff has suffered injury as a result of Defendants’ actions by paying a premium
26 price for the Product that, in reality, posed a significant risk to the health of her pets beyond what
27 was disclosed.
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1 15. As the result of Defendants’ deceptive conduct as alleged herein, Plaintiff was injured
2 when he paid the premium purchase price for the Products that did not deliver what was promised.
3 Plaintiff paid these sums on the assumption that the products were safe for his dog Ayshe and would
4 not have paid this money had he known that the Products contained ingredients that created the serious
5 risk of injury, seizures, or death to her pets. Had he been informed of the truth of Defendants’ flea
6 and tick collars, Plaintiff would have purchased other products, which did not contain ingredients
7 creating such a risk. Defendants represented to Plaintiff and other Class members their flea and tick
8 collars were safe, but delivered something else entirely, thereby depriving them of the benefit of their
9 bargain. Damages can be calculated through expert testimony at trial. Further, should Plaintiff
10 encounter the Products in the future, he could not rely on the truthfulness of the packaging, absent
11 corrective changes to the package labeling and advertising of the Products. However, if he could rely
12 on the product to keep his dog safe and healthy, he would purchase the product in the future.

13 16. Defendant Bayer HealthCare LLC (“Bayer HealthCare”), is a Delaware limited liability
14 company headquartered at 100 Bayer Boulevard, Whippany, NJ 07981, and at all times material was,
15 and remains, a U.S. subsidiary of the German conglomerate, Bayer Aktiengesellschaft (“Bayer AG”).
16 Prior to August 2020, Bayer HealthCare manufactured, distributed, and advertised, inter alia, Seresto®
17 flea and tick prevention collars for cats and/or dogs through retail stores including those in California.
18 At all times material, the manufacturing, distribution, and advertising sale of Seresto® products in
19 North American were performed by Bayer Animal Health, a division of Bayer HealthCare, whose
20 operations were headquartered in Shawnee, Kansas.

21 17. Founded in 1954 as part of Eli Lilly and Company, defendant Elanco Animal Health,
22 Inc. (“Elanco”) is incorporated in Indiana, and at all times material has maintained its corporate
23 headquarters and principal place of business at 2500 Innovation Way, Greenfield, Indiana.

24 18. On or about August 20, 2019, Elanco entered into a Share and Asset Purchase
25 Agreement (“Purchase Agreement”) with Bayer AG for the purpose of purchasing certain of Bayer
26 HealthCare’s animal health business assets for approximately \$5.3 billion in cash and approximately
27 \$2.3 billion in Elanco common stock. Included in the animal health business assets that Elanco purchase
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1 from Bayer were, inter alia, the rights produce, distribute, advertise and sell Bayer's Seresto® brand
2 flea and tick prevention collars for cats and dogs within California and elsewhere in the United States.
3 The transaction for Elanco's purchase certain of Bayer HealthCare's animal health business assets,
4 including Seresto®, closed in August 2020, and the Seresto® products at issue in this Action are
5 currently manufactured in an Elanco facility located at Colectora Este Ramal Pilar Manuel Alberti,
6 Suite 317, Buenos Aires.

7 19. At all times material, all of the Seresto® Products at issue herein were manufactured,
8 sourced, marketed, advertised and sold through Elanco, and together with Bayer was directly
9 responsible for the false and deceptive product labeling alleged herein. The true names and capacities
10 of defendants sued herein under California Code of Civil Procedure section 474 as DOES 1 through
11 100, inclusive, are presently unknown to Plaintiff, who therefore sue these defendants by such
12 fictitious names. Plaintiff will seek to amend this Complaint and include these DOE defendants' true
13 names and capacities when they are ascertained. Each fictitiously named defendant is responsible in
14 some manner for the illegal conduct alleged herein and for the injuries suffered by Plaintiff and the
15 general public as a consequence thereof.

16 20. Defendants and the DOE defendants named herein have approved, ratified, controlled,
17 directed, had knowledge of, and/or otherwise been legally responsible for all aspects of the wrongful
18 acts and practices of certain DOE defendants and about which Plaintiff complains. A unity of interest
19 exists between Defendants and certain DOE defendants such that justice dictates that any liability
20 created by the acts and/or omissions of one be imposed upon the others who should be held legally
21 and financially responsible for all aspects of the wrongful acts and practices about which Plaintiff
22 complains. Defendants are the alter-ego of certain DOE defendants and, accordingly, liability should
23 be imposed upon the others on that basis.

24 21. In accordance with California law, each of the Defendants are liable as a direct
25 participant, aider and abettor, co-conspirator, enabler or is otherwise jointly responsible for the
26 improper, unlawful, deceptive, misleading, unfair, and fraudulent acts and practices that Defendants
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1 continue to conduct in this State to the detriment of Plaintiff, Class members and members of the
2 general public of California as well as Defendants' competitors.

3 22. Together, Defendants jointly formulated, developed, manufactured, labeled,
4 distributed, marketed, advertised, and and sold the subject Products under the trademarked brand name
5 Seresto® throughout California, and in this County, during Class Period (defined below). The
6 advertising, labeling, and packaging for the Products alleged herein, and relied upon by Plaintiff, was
7 prepared, reviewed, and/or approved by Defendants and their agents, and was disseminated by
8 Defendants and their agents through marketing, advertising, packaging, and labeling that contained
9 the misrepresentations alleged herein. The marketing, advertising, packaging and labeling for the
10 subject Products was designed to encourage consumers to purchase the Products and reasonably
11 misled the reasonable consumer, *i.e.*, Plaintiff and the Classes, into purchasing the subject Products
12 alleged above.

13 **FACTUAL ALLEGATIONS**

14 23. Defendants formulate, develop, manufacture, label, package, distribute, market,
15 advertise, and sell their Seresto® line of flea and tick collar prevention products across the United
16 States, including the Products at issue herein.

17 24. Though the Products at issue include numerous warning for both pets and humans,
18 those warnings do not disclose or warn against the Products' tendency to cause serious injury, seizures,
19 or death to pets when the Products are used as intended.

20 25. The Products at issue herein are available at numerous retail and online outlets in
21 California and are widely advertised in this State. The official websites for Seresto® display the
22 subject Products notes that the Products are for "for pets up to 18 pounds" or "for pets over 18 pounds,"
23 thereby implying the Products can be safely used for pets of that size. Likewise, the official websites
24 for Seresto® indicate that the "Bayer Seresto collar helps keep pets healthy."

25 26. As a result of Defendants' omissions, a reasonable consumer (such as the Plaintiff)
26 would, and did, have no reason to suspect that the Products could cause serious injury, seizures, or
27 even death to their pets.

1 33. The members in the proposed Class are so numerous that individual joinder of all
2 members is impracticable, and the disposition of the claims of all Class members in a single action
3 will provide substantial benefits to the parties and Court.

4 34. Questions of law and fact common to Plaintiff and the Class include, but are not limited
5 to, the following:

- 6 (a) whether Defendants owed a duty of care to the Class;
7 (b) whether Defendants' fail to inform consumers and disclose that the Products
8 carry serious risk of injury, seizures, and death to pet cats and/or dogs;
9 (c) whether Defendants' representations in advertising and/or labeling are false,
10 deceptive, and misleading;
11 (d) whether those representations are likely to deceive a reasonable consumer;
12 (e) whether Defendants had knowledge that those representations were false,
13 deceptive, and misleading;
14 (f) whether Defendants continue to disseminate those representations despite
15 knowledge that the representations are false, deceptive, and misleading;
16 (g) whether a failure to disclose that a product can cause serious injuries, seizures,
17 or death for pets is material to a reasonable consumer;
18 (h) whether Defendants' failure to disclose that a product can cause serious
19 injuries, seizures, or death for pet cats and dogs is likely to mislead, deceive, confuse, or confound
20 consumers acting reasonably;
21 (i) whether Defendants violated California Business & Professions Code sections
22 17200, *et seq.*;
23 (j) whether Defendants violated California Business & Professions Code sections
24 17500, *et seq.*;
25 (k) whether Defendants violated California Civil Code sections
26 1750, *et seq.*;
27 (l) whether Defendants were unjustly enriched;
28

1 46. Plaintiff and each Class member’s purchase of Defendants’ Products constituted a
2 “transaction,” as that term is defined in California Civil Code section 1761(e).

3 47. Defendants’ conduct alleged herein violates the following provisions of California’s
4 Consumer Legal Remedies Act (the “CLRA”):

5 (a) California Civil Code section 1770(a)(5), by stating the Products are for “pets
6 above 18 pounds” or “pets below 18 pounds,” thereby implying the Products are safe for the same and
7 failing to disclose that the Products can cause serious injury, seizures, or death to consumers’ cat
8 and/or pets;

9 (b) California Civil Code section 1770(a)(7), by representing that the Products
10 were of a particular standard, quality, or grade, when they were of another;

11 (c) California Civil Code section 1770(a)(9), by advertising the Products with
12 intent not to sell them as advertised; and

13 (d) California Civil Code section 1770(a)(16), by representing that the Products
14 have been supplied in accordance with previous representations when they have not.

15 48. As a direct and proximate result of these violations, Plaintiff and the Class have been
16 harmed, and that harm will continue unless Defendants are enjoined from using the misleading
17 marketing described herein in any manner in connection with the advertising and sale of the Products.

18 49. Pursuant to § 1782(a) of the CLRA, and concurrent with the filing of this complaint,
19 Plaintiff separately notified each of the Defendants through their registered agent for service of process
20 in accordance with § 1770(a)(1) of the particular violations of § 1770 and demanded that Defendants
21 correct, remedy or otherwise rectify the actions described above and give notice to all similarly
22 affected California consumer Class members of their intention to do so.

23 50. In the event Defendants fail to respond to Plaintiff’s demand within 30 days of service
24 of such notice and demand for relief, pursuant to § 1782(d) of the CLRA Plaintiff will filed an
25 amendment to this complaint to seek both injunctive relief and actual damages, plus punitive damages,
26 interest and attorneys’ fees jointly against Defendants. Additionally, Plaintiff also seek to recover up
27

1 to \$5,000 for each eligible senior citizen and disabled Class member who purchased Seresto[®] cat
2 and/or dog pets as provided for under § 1780(b) of the CLRA.

3
4 **CAUSE OF ACTION II**
5 **(Violations of California False Advertising Law, California Business &**
6 **Professions Code §§17500, *Et Seq.*, Against All Defendants)**

7 51. Plaintiff incorporates by reference and realleges each and every allegation contained
8 above, as though fully set forth herein.

9 52. Plaintiff brings this cause of action individually and on behalf of the other members of
10 the Class.

11 53. California's False Advertising Law prohibits any statement in connection with the sale
12 of goods "which is untrue or misleading." Cal. Bus. & Prof. Code §17500.

13 54. As set forth herein, Defendants' claims that the Seresto[®] Products are appropriate for
14 "pets above 18 pounds" or "pets below 18 pounds," thereby implying the Products are safe for the
15 same, are false and likely to deceive the public.

16 55. Defendants' claims that the Products are for "pets above 18 pounds" or "pets below 18
17 pounds," thereby implying the Products are safe for the same, are untrue or misleading.

18 56. Defendants knew, or reasonably should have known, that the claims were untrue or
19 misleading.

20 57. Defendants' conduct is ongoing and continuing, such that prospective injunctive relief
21 is necessary, especially given Plaintiff's desire to purchase these Products in the future if they can be
22 assured that, so long as the Products are safe.

23 58. Plaintiff and members of the Class are entitled to injunctive and equitable relief, and
24 restitution in the amount they spent on the Products.

25 **CAUSE OF ACTION III**
26 **(Violations of the Unfair Competition Law, California Business &**
27 **Professions Code §§17200, *Et Seq.*, Against All Defendants)**

28 59. Plaintiff incorporates by reference and realleges each and every allegation contained
above, as though fully set forth herein.

1 60. Plaintiff brings this cause of action individually and on behalf of the other members of
2 the Class.

3 61. The Unfair Competition Law prohibits any “unlawful, unfair or fraudulent business act
4 or practice.” Cal. Bus. & Prof. Code §17200.

5 **Fraudulent**

6 62. Defendants’ statements that Seresto® Products are for “pets above 18 pounds” or “pets
7 below 18 pounds,” thereby implying the Products are safe for the same, are false and likely to deceive
8 the public.

9
10 63. Defendants’ failure to warn consumers that the Products create significant risk of
11 serious injury, seizures, or death to a consumer’s pet cat and/or dog is likely to deceive the public.

12 **Unlawful**

13 64. As alleged herein, Defendants have advertised Seresto® Products with false or
14 misleading claims, such that Defendants’ actions as alleged herein violate at least the following laws:

- 15 • The CLRA, California Business & Professions Code sections 1750, *et*
16 *seq.*; and
17 • The False Advertising Law, California Business & Professions Code sections
18 17500, *et seq.*

19 **Unfair**

20 65. Defendants’ conduct with respect to the labeling, advertising, marketing, and sale of
21 Seresto® Products is unfair because Defendants’ conduct was immoral, unethical, unscrupulous, or
22 substantially injurious to consumers and the utility of their conduct, if any, does not outweigh the
23 gravity of the harm to their victims.

24 66. Defendants’ conduct with respect to the labeling, advertising, marketing, and sale of
25 the Products is also unfair because it violates public policy as declared by specific constitutional,
26 statutory, or regulatory provisions, including, but not limited to, the False Advertising Law and the
27 CLRA.
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1 practice, untrue or misleading advertising, or a violation of the Unfair Competition Law, False
2 Advertising Law, or CLRA, plus pre- and post-judgment interest thereon;

3 F. An order requiring Defendants to disgorge or return all monies, revenues, and profits
4 obtained by means of any wrongful or unlawful act or practice;

5 G. An order requiring Defendants to pay all actual and statutory damages permitted under
6 the causes of action alleged herein;

7 H. An order requiring Defendants to pay punitive damages on any cause of action so
8 allowable;

9 I. An order awarding attorneys' fees and costs to Plaintiff and the Class; and

10 J. An order providing for all other such equitable relief as may be just and proper.

11
12 **JURY DEMAND**

13 Plaintiff Steven Schneider hereby demands a trial by jury on all issues so triable.

14
15 DATED: March 2, 2021

16 Respectfully submitted,

17 FINKELSTEIN & KRINSK LLP

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