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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

AUNDRIA ARLANDSON, YWANNA
LONGMIRE, RICH PARSONS, BARBARA
PENNELL, STACIE GIBBS, SHELBY
TOUCHSTONE, and KRISTY PRUITTE,
individually and on behalf of all others similarly
situated,

Plaintiffs,

vs.

HARTZ MOUNTAIN CORPORATION,
SERGEANT'S PET CARE PRODUCTS, INC.,
SUMMIT VETPHARM, LLC,

Defendants

Civil Action No.

**COMPLAINT and
DEMAND FOR JURY TRIAL**

Plaintiffs Aundria Arlandson, Ywanne Longmire, Rich Parsons, Barbara Pennell, Stacie Gibbs, Shelby Touchstone, and Kristy Pruitte, individually and on behalf of all others similarly situated, by way of Complaint against Defendants Hartz Mountain Corporation, Sergeant's Pet Care Products, Inc., Summit Vetpharm, LLC, say:

NATURE OF THE ACTION

1. This is an action by Plaintiffs against the manufacturers of certain flea and tick protection products.

2. As is detailed below, these flea and tick protection product are designed to kill fleas and ticks on household pets, such as dogs and cats. However, while these products in some cases might be effective in killing fleas and ticks, they have also sickened and, in some cases, killed, the pets they were designed to protect.

3. Plaintiffs seek injunctive relief in the form of a recall of the offending products, a refund of the purchase price, for compensatory damages, punitive damages and other relief.

PARTIES/JURISDICTION/VENUE

4. Plaintiff Aundria Arlandson is a citizen of the State of Minnesota, residing in Apple Valley, Minnesota.

5. Plaintiff Ywana Longmire is a citizen of the Commonwealth of Virginia, residing in Alexandria, Virginia.

6. Plaintiff Rich Parsons is a citizen of the State of California, residing in La Quinta California.

7. Plaintiff Barbara Pennell is a citizen of the State of North Carolina, residing in Lenore, North Carolina.

8. Plaintiff Stacie Gibbs is a citizen of the State of Pennsylvania, residing in York, Pennsylvania.

9. Plaintiff Shelby Touchstone is a citizen of the State of Florida, residing in North Port, Florida.

10. Plaintiff Kristy Pruitte is a citizen of the State of North Carolina, residing in Winston-Salem, North Carolina.

11. Defendant Hartz Mountain Corporation (“Hartz”) is a Delaware corporation with its principal place of business at 400 Plaza Drive, Secaucus, New Jersey.

12. Defendant Sergeant’s Pet Care Products, Inc. (“Sergeant’s”) is a Delaware corporation with its principal place of business at 14748 W Center Rd., Ste. 303, Omaha, Nebraska.

13. Defendant Summit VetPharm LLC (“Summit”) is a Delaware limited liability company with its principal place of business at 301 Route 17 North Rutherford, New Jersey. Upon information and belief, Summit’s sole member is Summit VetPharm Holding Corporation, a Delaware corporation with its principal place of business at 301 Route 17 North Rutherford, New Jersey.

14. Both Defendants Hartz and Summit are ultimately owned by Sumitomo Corporation of America.

15. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d) because this is a class action in which the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and at least one member of the putative class is a citizen of a different state than that of the Defendants.

16. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a) because Defendants Hartz and Summit reside in this District and a substantial portion of the events and omissions giving rise to this action occurred in this District.

FACTUAL BACKGROUND

Plaintiff Audria Arlandson.

17. After returning from a trip, Ms. Arlandson purchased Sergeant's flea and tick powder for her cat "Oliver" on or about April 5, 2009. Although the directions stated that the product should be applied generously, Ms. Arlandson nevertheless applied the powder to her cat very lightly.

18. Within 24 hours of the application of the product, Ms. Arlandson noticed that the cat was shivering. Soon after the cat would not sleep or eat, and appeared to be having tremors or seizures.

19. The vet the Arlandson family was using to treat the cat at that time administered diazepam (equivalent to valium) to the cat for 2 or 3 weeks. While the diazepam appeared to help somewhat, the symptoms did not abate.

20. Meanwhile, Ms. Arlandson had conducted research on the internet and spoken to various doctors and was told by the veterinarian that Permethrin, the active ingredient in the Sergeants product, caused Oliver's tremors. Permethrin is a synthetic insecticide derived from Pyrethrins, which is made from the Chrysanthemum, a plant that is well known to be toxic to cats. .

21. Since the diazepam did not appear to be working, Oliver was further tested and the vets concluded that he was suffering from end stage renal failure. The hospital administered IV fluids to try to stave off the renal failure as well as pill treatment. That treatment was continued at home for several additional weeks.

22. Oliver's weight dropped from a 12 healthy pounds in April to 5 pounds in August.

23. Because the renal failure would prove fatal, and because the cat was miserable and appeared to be in pain ever since he was treated with the Sergeant's product in April, on August 10, 2009, Ms. Arlandson finally made the decision to euthanize the suffering animal because neither she nor Oliver could bear his pain any longer.

Plaintiff Ywana Longmire

24. Plaintiff Ywana Longmire owns a miniature Schnauzer, who weighs approximately 29 lbs.

25. Until February of 2010, Ms. Longmire had treated her dog with the product Frontline for flea and tick protection. The dog had never exhibited any problems from application of the Frontline product.

26. On February 8, Ms. Longmire took her dog to the vet for vaccines and an annual examination. At that time, her veterinarian told her that because Frontline was now available on-line for a lesser amount than the vet's office could charge, that the office had switched to a new topical product called Vectra 3D.

27. Vectra 3D is manufactured and distributed Defendant Summit.

28. On February 8, 2010, the vet administered the Vectra 3D product to Ms. Longmire's dog.

29. Immediately after treatment and for nearly 24 hours the animal laid down and did not appear to be feeling well. Ms. Longmire encouraged the dog to go with her for a walk. The dog began to walk in circles, dragging his back legs underneath him, while whining and growling. The dog was unable to walk in a straight line.

30. When this behavior continued, Ms. Longmire took her dog back to the vet on February 10, 2010, at which time the vet recommended that the dog be bathed in Dawn

dishwashing liquid (the remedy that has been suggested by many veterinarians for Permethrin poisoning).

31. The symptoms continue to date, but have appeared to abate somewhat. Mrs. Longmire has taken the dog to the vet's office at to address the symptoms of the Vectra 3D treatment at least four times since February 8, 2010.

Plaintiff Rich Parsons

32. Plaintiff Rich Parsons owned a Scottish terrier, "Duffy", whom both he and his wife considered their beloved companion.

33. In May 2007, Mr. Parsons applied Hartz flea and tick drops having the active ingredient a Class I synthetic pyrethroid, to Duffy. Mr. and Mrs. Parsons had just returned from the Mississippi Gulf helping with the reconstruction efforts after Hurricane Katrina and were concerned they may have brought back fleas from a region where fleas are prevalent.

34. Mr. Parsons was planning to board Duffy at his veterinarian's facility the next day as he and his wife were planning a trip to their son's home in the Bay Area. Duffy, tragically, died at the veterinarian's facility three days later. Mr. Parson's' veterinarian wrote that Duffy's death was a "reaction to the insecticide" in the Hartz drops that had been applied to him three days earlier.

35. Mr. Parsons contacted Hartz about the incident. Hartz had its own experts "review" the case, and after their investigation, they "denied any responsibility," blaming Duffy's death on "underlying health problems."

36. Duffy had no known health problems of any kind prior to his exposure to the lethal Hartz flea and tick drops. In fact, Duffy had a broken tooth extracted in January of 2007

under full anesthesia and had a full medical panel taken which showed he was in excellent health.

37. After Duffy's death, Mr. Parsons also contacted, among others, the EPA, who responded in part that: "Because of situations like yours, and because of recent increases in the number of reported incidents for the pet products that EPA regulates, [the EPA] issued the April 2009 advisory statement on spot-on products that you mention in your letter. In addition to the advisory statement, we are intensifying our evaluation of spot-on products that you mention in your letter."¹

Plaintiff Barbara Pennell

38. Plaintiff Barbara Pennell and her family own 2½ year old Labrador Retriever, "Abby".

39. Approximately 45 minutes after Ms. Pennell woke on Christmas morning 2009, and while Ms. Pennell was alone at home, Abby began to suffering severe twitching and tremors, dilated eyes and began to drool profusely.

40. Ms. Pennell immediately begin making calls to determine how to save her dog. Because it was Christmas morning, she called a local pet groomer acquaintance and explained Abby's symptoms to her. She also shared that her husband had treated the dog for fleas the night before.

41. The groomer asked whether the product her husband had used was Hartz Ultra Guard. Ms. Pennell called her husband who confirmed that Hartz Ultra Guard was, in fact, the product he applied to Abby the night before.

¹ Mr. Parson's tragedy was the subject of an investigation conducted by NBC, Channel 4, in Los Angeles in March 2009 and can be viewed at the following link: http://www.nbclosangeles.com/news/local/Pet_Products_Concern.html.

42. The groomer's response was that this product was poison and that Abby's symptoms were typical of animals treated with Hartz Ultra Guard. The groomer suggested that Abby be taken to the vet immediately.

43. Upon arriving at the veterinarian's office and after explaining the previous night's flea treatment with Hartz Ultra Guard, the doctor said she was 100% sure the Hartz flea treatment was the cause of Abby's illness.

44. As a result of using this deadly \$5.00 flea treatment, Abby was required to stay in the hospital overnight where she was thoroughly bathed, given IV treatments, injections of muscle relaxer, charcoal to help clean her system, and other treatments at a cost of approximately \$600.

45. The doctor who treated Abby reported that she treats at least two pets per week because pet owners did not know that the Hartz products that are sold to allegedly protect animals may cause them serious injury, including death.

46. The veterinarian also said the majority of the smaller pets did not survive the injuries inflicted by this product. She also advised Ms. Pennell not to use any Hartz, Sergeant's, or Bio-Spot products to include shampoo, treats, or other products as "they are nothing but poison."

Plaintiff Stacie Gibbs

47. On January 8, 2009, Plaintiff Stacie Gibbs and her family purchased a cat from the SPCA. This was the first family pet for the Gibbs. Mrs. Gibbs has a 9-year-old son and a 4-year-old daughter that reside in family's home in York, Pennsylvania.

48. Mrs. Gibbs noticed on or about December 1, 2009 that the cat was scratching and also observed what appeared to be flea dirt on the cat. The cat was up, until then, a healthy, indoor cat. It had been appropriately vaccinated.

49. On or about December 1, 2009, Mrs. Gibbs, went to Wal-Mart to search for a solution for the fleas. Mrs. Gibbs purchased a Hartz Ultra Guard flea collar and two Hartz flea bombs, half the number of flea bombs recommended for a home of the size of the Gibbs Family. The Gibbs family lives in a two-story, 3-bedroom semi-detached home.

50. The children and the cat were removed from the home as Mr. and Mrs. Gibbs proceeded to spray the home. They followed the instructions on the package very carefully and returned to the home hours later as instructed and proceeded to care for and clean the home as the package advised. The children and cat also returned to the home hours later. Mrs. Gibbs then placed a Hartz Ultra Flea and Tick Guard collar on the cat.

51. During the following two days, Mrs. Gibbs noticed that the cat was exhibiting some very irregular behavior. The cat tried to jump up the walls, he would not sit or lie still for very long and he hid in very peculiar places waiting to attack people as they walked or ran by. The family was alarmed by the cat's new bizarre behaviors.

52. On the evening of December 3, 2009, Mrs. Gibbs came home from a late night meeting to find her children and husband already asleep. She proceeded to get into bed herself and the cat jumped up on her as he normally did, but this time he only remained there for about 40 seconds. He then ran out of her bedroom door.

53. Approximately 5 minutes later, Mrs. Gibbs heard an strange meow and ran to see what was wrong. Mrs. Gibbs found her cat upstairs in her nine-year-old's bedroom gasping for

air and having what appeared to be convulsions or seizures. Mrs. Gibbs's son cried as the family's first family pet died minutes later.

54. Mrs. Gibbs son was very distant and quiet for days after the animals' death. Mrs. Gibbs had to explain the death of the cat to her 4-year-old daughter. Mrs. Gibbs and her family deeply miss the pet that they considered a part of and great addition to the family.

Plaintiff Shelby Touchstone

55. On or about February 10, 2010, Plaintiff Shelby Touchstone, purchased Sergeant's Gold Flea and Tick Squeeze On Application and applied it per instructions to her 10.9 pound Yorkie/Maltese mix that is approximately 2 years old.

56. The animal immediately suffered what appeared to be seizures, shaking, whining, confusion and an extremely severe and massive chemical burn. The dog has required veterinary treatment four times in less than three weeks.

57. Mrs. Touchstone's dog had been treated many times in the past with the product "Frontline", with no problems, nor has the dog ever had a reaction to vaccinations or any other substance. Mrs. Touchstone's veterinarian believes that the cause of injury to Mrs. Touchstone's pet on February 10, 2010 was the application of Sergeant's Gold flea and tick drops.

Plaintiff Kristy Pruitte

58. Plaintiff Kristy Pruitte adopted a healthy kitten in mid-February 2010.

59. A week later, Ms. Pruitte purchased Hartz Ultra Guard Pro Flea and Tick Drops and applied the drops to the twelve week-old cat, "Julian," according to the packaging directions.

60. Over the course of the next two days, Julian began exhibiting various symptoms of neurological and muscular problems, including lethargy, shaking, imbalance, loss of appetite, dilated pupils, and other neuro-muscular problems.

61. By the second day, for example, the cat could not walk without falling down, he laid down and just let his head fall into his water bowl, and he tried to step off of a box and onto Ms. Pruitte' leg and lost his balance. As a result, on February 26, 2009, Ms. Pruitte immediately rushed the cat to a 24-hour emergency veterinary hospital.

62. After almost 3 hours in the emergency vet hospital, the cause was deemed to be Pyrethrin toxicity from the Hartz Ultra Guard Pro Flea & Tick Drops for cats that Ms. Pruitte had not known could injure and/or kill pets.

63. Julian had multiple tests to determine the cause of his problems, a decontaminant bath, and was required to stay overnight and have fluids administered through an IV to rid his systems of the Pyrethrin. Fortunately, because he was treated (at substantial expense), Julian survived but it is too soon to determine whether he will have continuing health issues because of his exposure to the Hartz product.

Defendants' Products

64. The symptoms of each of the Plaintiffs' pets are consistent with an overdose of Pyrethrin, which is the active ingredient in many flea-protection products.

65. Defendants Hartz and Sergeant's have for many years manufactured flea and tick control products that are sold over the counter (as opposed to through veterinarians) known to contain Pyrethrins, or the synthetic version of the same chemical, Pyrethroids, including Permethrin.

66. Upon information and belief, Defendant Summit began manufacturing Vectra 3D in 2007 to be distributed to consumers strictly through veterinarians. Summit, like Hartz Mountain is a subsidiary of Sumitomo Corporation.

67. Vectra 3D is not safer than any of the over-the-counter spot-on products manufactured by the other defendants because it contains a high concentration (36%) of Permethrin, a Pyrethroid found in many over-the-counter products, and other ingredients which increase the toxicity of the product.

68. The application dosages for Vectra 3D are also significantly higher for some weight ranges of dogs, which increases the potential for adverse reactions. For example, for a 9 lb. dog, the recommended dosage of K9 Advantix is 0.4 mL, but the recommended dosage of Vectra 3D, which contains the same active ingredient (permethrin), is 1.6 mL, four times as much pesticide.

69. These Pyrethrins are derived from Chrysanthemums, which are known to poison animals. The over-the-counter products containing these chemicals sold by Hartz and Sergeants are substantially cheaper than the products sold through veterinarians, such as Frontline, the latter of which have been used for many years without significant adverse consequences to humans or animals.

70. Pyrethrins kill fleas and ticks by interfering with their nervous systems, thus paralyzing and killing the parasites. However, if a pet receives an overdose of Pyrethrins, it will have the same effect on the pet, causing neurological problems, which have and often will result in the death of the animal.

71. Small dogs are particularly susceptible to Pyrethrin poisoning because they have more skin area relative to their body weight. Cats are particularly susceptible to poisoning due to an overdose of Permethrin, a synthetic version of Pyrethrin. The defendants know, and have known for many years, that these chemicals will substantially injure and/or kill very significant numbers of dogs and cats.

72. The U.S. Environmental Protection Agency is the federal agency responsible technically responsible for regulation of these products. In very significant measure, however, the EPA depends upon information provided by the manufacturer or “registrant” of the product and during past administrations has conducted little if any independent testing of these products. Thus, these products are largely unregulated, and their safety and efficacy is not independently tested.

73. Nonetheless, registrants have reported to the EPA, as they must, a sharp increase in adverse consequences from application of these products to companion animals. In 2008 alone, there were approximately 48,000 reports of adverse events from the spot-on, or squeeze-on products including Pyrethrins, Permethrin, or other pyrethroids.

74. As a result, on May 5, 2009, as updated on January 10, 2010, the EPA issued the following advisory:

“Increased Scrutiny of Flea and Tick Control Products for Pets”

The U.S. Environmental Protection Agency is intensifying its evaluation of spot-on pesticide products for flea and tick control due to recent increases in the number of reported adverse reactions in pets treated with these products. Adverse reactions reported range from mild effects such as skin irritation to more serious effects such as seizures and, in some cases, death of the pet.

Flea and tick products can be appropriate treatments for protecting your pets and your family’s health because fleas and ticks can transmit disease. While many people use the products with no harm to their pets, EPA recommends that pet owners take precautions when using these products. People should carefully follow label directions and monitor their pets for any signs of an adverse reaction after application, particularly when using these products for the first time. Also, before use of these products on weak, aged, medicated, sick, pregnant or nursing pets, or on pets that have previously shown signs of sensitivity to pesticide products, EPA recommends that a veterinarian be consulted. Additional safety tips are available for taking care of fleas and ticks on your pet.

Pets may experience adverse reactions from flea and tick control products, including spot-on treatments, sprays, collars and shampoos. However, the majority of reports to EPA are related to flea and tick treatments with EPA-registered spot-on products. Spot-on products are generally sold in tubes or vials

and are applied to one or more localized areas on the body of the pet, such as in between the shoulders or in a stripe along the back.

EPA is evaluating all available data and information, including:

reports of adverse reactions,

product market share,

clarity of product use directions and label warnings,

product ingredients, and

pre-market safety data submitted to the Agency in support of registration of these products

This assessment may result in EPA action to require changes in the registration status of certain spot-on products. EPA will be working collaboratively with Health Canada to address this issue, as Canadian regulatory officials have identified similar concerns about the use of spot-on flea and tick products. EPA will be updating this page periodically to provide the public with the most current information on this issue.

Health Canada has identified similar concerns about the use of spot-on flea and tick products. EPA and Health Canada met with product manufacturers to begin discussions about this issue.

75. The EPA has requested public comments.

76. The national Humane Society of the United States submitted the following public comments to the EPA on August 3, 2009²:

These comments are being submitted on behalf of The Humane Society of the United States (HSUS) and our more than eleven million members and constituents. We thank the EPA for the opportunity to comment on this dangerous chemical as it is used in flea and tick products.

The HSUS recognizes the need to control fleas and ticks living on companion animals (dogs and cats) for both the welfare of these species but also for the welfare of human beings. Ensuring that the public has easy and economical access to products which will reduce or eliminate these ectoparasites is crucial to improving the quality of life for companion animals and their owners.

² Comments of The Humane Society of the United States in response to the Federal Register announcement published on June 5, 2009, (Docket Number EPA-HQ-OPP-2009-0308).

Our concerns relate to the adverse reactions caused by chemicals in flea and tick products. Over the past decade, the HSUS has received hundreds of complaints regarding severe reactions and even death of companion animals caused by many flea and tick products. These pet owners are outraged by the lack of proof that these chemicals are safe. After losing their beloved pets and incurring enormous veterinary expenses trying to save their lives, these pet owners feel betrayed and confused.

Despite an agreement between the Hartz Mountain Corporation and the EPA, the HSUS continues to receive complaints regarding Hartz flea and tick products more than any other manufacturer.....

Even though Hartz has agreed not to sell certain products and to improve their labeling of others, the HSUS continues to receive complaints. Anecdotally, we were recently contacted by a constituent in Minnesota who had administered Hartz Flea Drops to her cat. The cat became lethargic and refused to eat. A visit to a veterinarian, who administered fluids and antibiotics, did not help his symptoms. Only after realizing that the time of the cat's illness coincided with the application of the flea treatment did the owner realize what caused the cat's decline. Unfortunately, the veterinarian did not question the owner if there had been a recent flea/tick treatment. The owner is pursuing further treatment for her cat, at her own expense, but larger questions remain about the safety of these products.

77. The Center for Public Integrity has likewise issued its own report questioning the safety of these products. The Center For Public Integrity released information on its website for its *Perils of the New Pesticides* study in 2008. At least 1,600 pet deaths related to spot-on treatments with Pyrethroids were reported to the EPA over the last five years, according to an analysis of EPA pesticide incident exposure data by the center. Over-the-counter flea and tick products could also pose a threat to human health, according to some experts.

78. The Center reported that Pyrethroid spot-ons also account “for more than half of ‘major’ pesticide pet reactions reported to EPA over the last five years—that is, those incidents involving serious medical reactions such as brain damage, heart attacks, and violent seizures. In contrast, non-pyrethroid spot on treatments accounted for only about 6 percent of all major incidents.”

79. The Center For Public Integrity's study said Pyrethroid-based flea and tick treatments are approved for sale by the EPA, and they are readily available at grocery stores, specialty pet retailers, and hardware stores, "but they are also linked to thousands of reported pet poisonings, and they have stirred the ire of pet owners, the concern of veterinarians, and the attention of regulatory agencies."

80. In 2000, the Natural Resources Defense Council released a report called *Poisons on Pets: Health Hazards from Flea and Tick Products*. The report also demonstrated a link between chemicals commonly used in flea and tick products and serious health problems.

81. Hundreds of victims have reported the ill and all too often lethal effects of these products on websites, including Hartzvictims.org and biospotvictims.org. As a result, the news media has also begun to report upon and investigate these products.

CLASS ACTION ALLEGATIONS

82. Plaintiff brings this action on behalf of a Class consisting of all persons who purchased flea-protection products from Defendants containing Pyrethrin and Pyrethrin derivatives.

83. The Classes are defined as:

Hartz Class

All persons who purchased flea-control products manufactured or marketed by Hartz containing Pyrethrin or Pyrethrin derivatives within the applicable statute of limitations period

Sergeant's Class

All persons who purchased flea-control products manufactured or marketed by Sergeant's containing Pyrethrin or Pyrethrin derivatives within the applicable statute of limitations period

Summit Class

All persons who purchased flea-control products manufactured or marketed by Summit containing Pyrethrin or Pyrethrin derivatives within the applicable statute of limitations period

84. Plaintiffs are members the respective classes which they seek to represent.

Numerosity

85. At this time, Plaintiffs do not know the exact size of the Class; however, due to the nature of the trade and commerce involved, Plaintiffs believe that Class members number in the millions and, thus, are so numerous that joinder of all members is impracticable. The number of class members can be determined through appropriate discovery.

Typicality

86. Plaintiffs' claims are typical of the claims of the class because they and all of members of the class have purchased unmerchantable goods manufactured or otherwise placed in the stream of commerce by Defendants which are substantially identical.

Commonality

87. There are numerous questions of law and fact common to the Class which predominate over any questions affecting only individual class members, including but not limited to the following:

- a) whether Defendants' products were unmerchantable because they could easily cause an overdose of Pyrethrin when used in accordance with label instructions;
- b) whether the defects in Defendants' products were discoverable based upon a reasonable inspection of the product;
- c) whether Plaintiffs and other class members may revoke their acceptance of Defendants' products;
- d) whether Defendants' products were unreasonably dangerous;

- e) whether Defendants were negligent in selling products which created an unreasonable risk of harm to Class Members' pets;
- f) whether Defendants' products caused harm to Class Members;
- g) whether Defendants Hartz and Summit's actions were unconscionable and/or deceptive for purposes of the New Jersey Consumer Fraud Act;
- h) whether Plaintiffs are entitled to damages, including incidental and consequential damages;
- i) Whether Defendants knew that the products would seriously injure and/or kill pets in significant numbers;
- j) Whether the Class is entitled to recover punitive damages.

88. All common questions are able to be resolved through the same factual occurrences as specifically and/or generally alleged herein.

Adequacy

89. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class. Plaintiffs has no claims antagonistic to those of the Class. Plaintiffs have retained competent and experienced counsel in complex class actions and consumer actions. Counsel is committed to the vigorous prosecution of this action.

The Prerequisites of Rule 23(b)(2) are Satisfied

90. The prerequisites to maintaining a class action for injunctive and equitable relief pursuant to Fed.R.Civ.P. 23(b)(2) exist as Defendants have acted or refused to act on grounds generally applicable to the Class thereby making appropriate final injunctive and equitable relief with respect to the Class as a whole

91. The prosecution of separate actions by members of the Class would create a risk of establishing incompatible standards of conduct for Defendants. For example, one court might decide that products in question are defective and order a recall, while another court might decide that the products are not defective, or, if defective, decide that a recall is not an

appropriate remedy. Individual actions may, as a practical matter, be dispositive of the interest of the Class, who would not be parties to those actions.

92. Defendant's actions are generally applicable to the Class as a whole, and Plaintiff seeks, *inter alia*, equitable remedies with respect to the Class as a whole.

93. Defendant's systemic policy and practices make declaratory relief with respect to the Class as a whole appropriate.

The Prerequisites of Rule 23(b)(3) are Satisfied

94. This case satisfies the prerequisites of Fed.R.Civ.P. 23(b)(3). The common questions of law and fact enumerated above predominate over questions affecting only individual members of the Class, and a class action is the superior method for fair and efficient adjudication of the controversy. The likelihood that individual members of the Class will prosecute separate actions is remote due to the extensive time and considerable expense necessary to conduct such litigation, especially in view of the relatively modest amount of monetary, injunctive and equitable relief at issue for each individual Class member. This action will be prosecuted in a fashion to ensure the Court's able management of this case as a class action on behalf of the Class defined above.

**FIRST COUNT
(Breach of Implied Warranty of Merchantability)**

95. Plaintiffs repeat the allegations contained in Paragraphs 1-94 as if fully set forth herein.

96. The flea-treatment products manufactured and/or sold by Defendants are "goods" within the meaning of the Uniform Commercial Code.

97. Defendants are "merchants" with respect to the flea-treatment products which form the subject matter of this action.

98. The flea-treatment products in question are not merchantable. They would not pass without objection in the trade, nor are they fit for the ordinary purposes for which they are used in that they can cause pets to become ill or die when the products are used in accordance with the instructions on the product.

99. Plaintiffs and other class members are entitled to revoke their acceptance of the flea-treatment products in question because the defects in the products are not discoverable by any reasonable inspection prior to acceptance of the goods. Indeed, the defects in the products are discoverable only by actual use of the product on a pet and causing harm to the pet.

100. As a result of the foregoing, Plaintiffs and other Class members are entitled to return to Defendants the flea-treatment products that they purchased and receive a refund.

101. In addition, Plaintiffs and other Class members are entitled to any incidental and consequential damages which they suffered as a result of their purchase of the defective goods.

SECOND COUNT
(Strict Product Liability)

102. Plaintiffs repeat the allegations contained in Paragraphs 1-101 as if fully set forth herein.

103. The products which form the subject matter of this action are unreasonably dangerous in that they create an unreasonable risk that they will cause illness or death to the pets that they are supposed to protect when used in accordance with label instructions or other reasonably foreseeable ways.

104. The pets owned by Plaintiffs and other Class members were harmed by the defective products manufactured and sold by Defendants.

105. As a result of the foregoing, Plaintiffs and other Class members have been damaged.

**THIRD COUNT
(Negligence)**

106. Plaintiffs repeat the allegations contained in Paragraphs 1-105 as if fully set forth herein.

107. Defendants owed a duty to Plaintiffs and other Class members to sell in the stream of commerce products that would not harm their pets when used in accordance with the label instructions and other reasonably foreseeable ways.

108. It was reasonably foreseeable by Defendants that if they failed to use reasonable care in designing and manufacturing flea-care products in a way protect against harm pets when used in accordance with the label instructions and other reasonably foreseeable ways, pets upon which the products were used would suffer illness or death.

109. Defendants failed to use reasonable care in designing, manufacturing and/or distributing the products which form the subject matter of this action in that those products pose a significant and unreasonable risk of harm to pets upon which they were used.

110. Plaintiffs and other Class members suffered damages as a result of Defendants' failure to exercise reasonable care in the design, manufacture and/or distribution of the products which form the subject matter of this action because their pets became ill and/or died as a result of use of Defendants' unreasonably dangerous products.

**FOURTH COUNT
(New Jersey Consumer Fraud)**

111. Plaintiffs repeat the allegations contained in Paragraphs 1-110 as if fully set forth herein.

112. Defendants Hartz and Summit were aware of the fact that their flea-protection products containing Pyrethrin or related active ingredients posed an unreasonable risk of harm to pets upon which they were used.

113. Nonetheless, they have marketed and continued to market such products to consumers notwithstanding their knowledge that the products were potentially dangerous, if not deadly, to the pets upon which they were to be used.

114. Defendants Hartz and Summit failed to disclose to Plaintiffs and other Class members that their flea-protection products posed an unreasonable harm to their pets when used in accordance with label instructions or other reasonably foreseeable ways and, in fact, in selling their products to the general public, implicitly represented that such products were safe and would not cause harm to pets.

115. The foregoing actions constitute an unconscionable commercial practice or deception by Defendants Hartz and Summit, contrary to the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.*

116. Plaintiffs and other Class members suffered an ascertainable harm as a result of Defendants' unconscionable and deceptive actions in that they purchased products which are unusable on their pets for their intended purpose because of the unreasonable risk of harm to the pets, and the products caused their pets to suffer sickness and/or death.

117. Defendants Hartz and Summit are headquartered in New Jersey.

118. Upon information and belief, all of the substantial decisions with respect to the design and marketing of the products in question were made at their New Jersey headquarters such that it would be reasonable to apply New Jersey law to the claims against Defendants Hartz and Summit.

FIFTH COUNT
(Punitive Damages)

119. Plaintiffs repeat the allegations contained in Paragraphs 1-118 as if fully set forth herein.

120. At all times pertinent hereto, Defendants were aware that there was a significant likelihood that serious harm would result from the use of the flea-treatment products which form the subject matter of this Complaint.

121. The flea-treatment products posed such a significant risk of causing illness or death to pets that were treated with these products in accordance with label instructions such that it was inevitable that some pets would become sick and/or die as a result of the use of these products, even though it may not be predictable which particular pets might be affected.

122. Notwithstanding Defendants' knowledge of the foregoing risks and that their products would inevitably cause harm to pets, the continued to market these flea-treatment products to veterinarians and to the general public for use on pets as if the products were safe.

123. The significant numbers of adverse reactions to Defendants' products, which are consistent with symptoms of an overdose of the active ingredient in the products, in close proximity to the application of those product, cannot be a coincidence and is significant evidence that Defendants' products posed a significant danger to pets.

124. However, upon learning that harm did, in fact, occur from the use of their flea-treatment products, Defendants have repeatedly and consistently denied that their products were problematic and blamed any adverse reactions on conditions or circumstances other than their products and continued to market their products as being safe for use on pets.

125. Plaintiffs and other Class members were harmed as a result of Defendants' actions as described above as a result of Defendants wanton and willful disregard of the consequences of their actions to Plaintiffs and other Class members.

126. As a result of the foregoing, Plaintiffs and the Class are entitled to recover punitive damages.

WHEREFORE, Plaintiffs demand judgment against Defendants for the following relief:

- a) Certification of the Classes set forth herein;
- b) Appointment of Plaintiffs' Counsel as Class Counsel;
- c) A preliminary and/or permanent injunction directing a recall of the offending products;
- d) Damages;
- e) For treble damages and attorney's fees against Defendants Hartz and Summit with respect to the Fourth Count of the Complaint;
- f) For punitive damages
- g) Such other relief as the Court may deem just.

CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO
Attorneys for Plaintiff

By: /s/ James E. Cecchi
JAMES E. CECCHI

Dated: March 2, 2010

Jacqueline Mottek
POSITIVE LEGAL GROUP
3030 Bridgeway, Suite 106
Sausalito, California 94965
(415) 233-4863

DEMAND FOR JURY TRIAL

The undersigned hereby demands a trial by jury as to all claims so triable.

CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO
Attorneys for Plaintiff

By: /s/ James E. Cecchi
 JAMES E. CECCHI

Dated: March 2, 2010

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JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Aundria Arlandson, Ywana Longmire, Rich Parsons, Barbara Pennell, Stacie Gibbs, Sehlby Touchstone, and Kristy Pruitt

(b) County of Residence of First Listed Plaintiff Dakota
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Carella, Byrne, Cecchi, Olstein, Brody & Agnello, 5 Becker Farm Road, Roseland, New Jersey 07068

DEFENDANTS

Hartz Mountain Corporation, Sergeant's Pet Care Products, Inc., and Summit VetPharm LLC

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY - Med. Malpractice <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input checked="" type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. sec 1332(d)

Brief description of cause:
 This is a class action relating to defective pet flea-treatment products.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMANDS CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 03/01/2010 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

James E. Cecchi