

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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	)	
IN RE: SERESTO FLEA AND TICK	)	MDL No. 3009
COLLAR MARKETING, SALES	)	Master Docket No. 21 C 4447
PRACTICES AND PRODUCTS	)	
LIABILITY LITIGATION	)	
	)	Judge John Robert Blakey
	)	Magistrate Judge Heather K. McShain
This Document Relates to All Cases.	)	

**CASE MANAGEMENT ORDER NO. 3: DISCOVERY PROCEDURES**

**1. Applicability of Rules**

Except as otherwise provided in this Order, the Federal Rules of Civil Procedure and the Local Rules of this Court will generally apply in this proceeding. However, the Court specifically orders that the provisions of this Order obviate: (a) the obligation of any party to this proceeding to comply with the initial disclosure requirements of Fed. R. Civ. P. 26(a)(1); (b) any specifications on timing and sequencing of discovery set forth in Fed. R. Civ. P. 26(d); and (c) any obligation of any party to this proceeding to comply with the conference and planning requirements in Fed. R. Civ. P. 26(f) and Local Rules 16.1 and 26.1.

Nothing in this Order shall preclude third-party discovery.

**2. Discovery Requests and Responses**

Pursuant to Fed. R. Civ. P. 5(d), discovery requests and responses will not be filed with the Court, except when specifically ordered by the Court or to the extent they are presented in connection with a motion.

**3. Bifurcation of Discovery**

Fact discovery shall not be bifurcated into separate class certification and merits discovery. Expert discovery shall be bifurcated into expert discovery related to class certification and, thereafter and/or further order of the Court, expert discovery related to the merits of the claims. The schedule for fact and expert discovery shall be consistent with the deadlines set forth in Case Management Order No.2: First Scheduling Order (“CMO No. 2”).

**4. Rolling Productions**

The parties shall endeavor to produce documents to which they have not raised an objection on a rolling basis rather than waiting until all documents responsive to a request have been gathered. Documents shall be produced on a rolling basis pursuant to a schedule agreed to by the parties and consistent with the discovery deadlines set forth in CMO No. 2. Upon receipt of Plaintiffs’ Master Set of Discovery Requests, the parties will meet and confer regarding the timing of documents to be produced, including privilege logs as needed.

If there is a material change in the scope of discovery or if the Parties, acting in good faith, cannot complete document production by the deadlines set forth herein based on unanticipated volumes of documents subject to discovery requests, they shall first meet and confer regarding any necessary changes to the deadlines, and then bring any agreed upon extension or requested extensions that have not been agreed upon to the attention of the Court pursuant to Paragraph 11. General Discovery Dispute Resolution.

**5. Master Written Discovery by the Parties**

Plaintiffs' Lead Counsel ("PLC") may serve a single Master Set of Requests for Production (not to exceed 50 original requests, including subparts), a single Master Set of Interrogatories (not to exceed 35 interrogatories, including all subparts), and a single Master Set of Requests for Admission (not to exceed 25, including all subparts) applicable to all Defendants. Without leave of Court, the Master Set of Requests for Production shall seek no more than a total of 15 custodial files from current or former employees of all Defendants, the scope and phasing of which, including search terms, shall be subject to further meet and confer among the parties. Additional Interrogatories, Requests for Production, or Requests for Admission may not be served in any individual case outside the Master Set of discovery absent leave of the Court.

Defendants may serve a Set of Requests for Production (not to exceed 50 original requests, including subparts), a Set of Interrogatories (not to exceed 35 interrogatories, including all subparts), and a Set of Requests for Admission (not to exceed 25, named including all subparts) on individually named Plaintiffs in each case consolidated in the MDL.

**6. Conduct of Depositions**

Each side shall limit the number of attorneys questioning a deponent by conferring in advance of the deposition to allow one attorney to be the primary questioner. Counsel for the noticing party shall give opposing counsel notice of the

identity of the examiner(s) twenty-four (24) hours prior to the beginning of each deposition.

With regard to depositions noticed by Plaintiffs, the Plaintiffs' attorney designated to conduct the examination will coordinate with Plaintiffs' Lead Counsel so as to conduct as thorough and non-duplicative an examination as practicable.

**7. Duration of Examinations**

Unless otherwise agreed, depositions shall last no longer than seven (7) hours (excluding breaks) for fact witnesses.

**8. Number of Depositions**

Defendants may depose all named Plaintiffs in each case consolidated in the MDL. Defendants may also depose one additional fact witness for cases consolidated in the MDL. Plaintiffs may depose 15 common fact witnesses currently or formerly employed by all Defendants. This limitation shall include any depositions conducted pursuant to Federal Rule of Civil Procedure 30(b)(6). In addition, Plaintiffs may take up to ten depositions of common fact witnesses not currently or formerly employed by Defendants. Additional fact witness depositions may be permitted with leave of the Court for good cause.

**9. Avoidance of Duplicative Depositions**

Absent leave of the Court for good cause, no witness should be deposed more than once, except for experts who submit reports during both the class and merits phase of discovery, but these experts may not be questioned on information sought (or which could have been sought) at the first deposition unless such subjects remain

relevant during the second phase or there has been a change in opinions. Supplemental depositions will be permitted only upon motion demonstrating (a) a compelling need for the information sought, and (b) compelling reasons why the desired lines of questioning could not have been pursued in the original deposition and why the information cannot be obtained from any persons available for future depositions. If permitted, a supplemental deposition shall be treated as the resumption of the deposition originally noticed. Examination in any supplemental deposition shall not be repetitive of any prior interrogation.

#### **10. Deposition Procedures**

##### *a. Generally*

Except as specifically provided, below, the scheduling and conduct of depositions, including resolution of any disputes arising during depositions, shall be in accordance with the Federal Rules of Civil Procedure and the Local Rules of this Court. Counsel are expected to cooperate with, and be courteous to, each other and deponents.

##### *b. Scheduling of Depositions*

i. Depositions must be noticed pursuant to Rule 30, F.R.C.P., at least thirty (30) days in advance, with notice served upon Lead and Liaison Counsel, unless a shorter notice period is agreed to by all parties. Counsel shall consult in advance with opposing counsel and proposed deponents in an effort to schedule depositions at mutually convenient times and places. Lead or Liaison Counsel, or their representatives, shall attempt to establish by mutual agreement a

schedule for depositions in this proceeding that reflects sequencing consistent with (a) the availability of documents from among those produced by the parties and third parties, and (b) the objective of avoiding the need to subject any person to repeated depositions.

ii. Upon receipt of written notice or inquiry by Plaintiffs' Lead or Liaison Counsel which identifies the name of any individual known to be or have been employed by Defendants, Defendants will conduct an inquiry of the location of the individual and inform the Plaintiffs' Lead or Liaison Counsel if a subpoena is needed. Depositions of parties and non-parties will be in accordance with the Federal Rules of Civil Procedure.

iii. Lead or Liaison Counsel will be responsible for keeping their respective group fully apprised of the scheduling of any deposition in this proceeding.

iv. All depositions of persons currently employed by Defendants shall be taken in a place mutually agreed to by Lead or Liaison Counsel. All depositions of other witnesses shall be taken at such other locations as shall be agreed upon by the witness and Lead or Liaison Counsel. Defendants will make a good faith effort to produce former employees for deposition if the need arises.

v. Once a deposition has been mutually scheduled by Lead or Liaison Counsel, it shall not be taken off the calendar, rescheduled, or relocated less than three calendar days in advance of the date it is scheduled to occur, except upon

agreement between Lead or Liaison Counsel and counsel for the witness, or by leave of Court for good cause.

c. *Attendance*

Unless otherwise agreed to by the parties, depositions may be attended only by the parties, the parties' counsel (including in-house counsel), the deponent, the deponent's attorney, representatives of the parties' insurers, court reporters, videographers, members and/or employees of the law firms of counsel of record, and agents for the parties. Upon application, and for good cause shown, the Court may permit attendance by a person who does not fall within any of the categories set forth in the previous sentence. Unnecessary attendance by counsel is discouraged and may not be compensated in any fee application to the Court. While and so long as a deponent is being examined about any stamped confidential document or the confidential information contained therein, persons to whom disclosure is not authorized under Case Management Order No. 4: Stipulated Confidentiality and Protective Order ("CMO No. 4") shall be excluded.

d. *Stenographic Recording*

A certified court reporter shall stenographically record all deposition proceedings (including those that are videotaped) and testimony. The court reporter shall administer the oath or affirmation to the deponent. A written transcript by the court reporter shall constitute the official record of the deposition for purposes of Fed. R. Civ. P. 30(e) (submission to the witness) and 30(f) (filing, exhibits).

e. *Videotaping*

Videotaping of depositions shall be subject to the requirements of the Federal Rules of Civil Procedure and the Local Rules where applicable.

i. **Cost of Deposition.** The noticing party shall bear the expense of videotaping and stenographic recording. Motions to recover these costs and expenses may be made at the conclusion of the litigation in accordance with applicable Case Management Orders and law.

ii. **Videotape Operator.** The video camera shall be operated by an experienced videocamera operator (“videotape operator”). The operator shall be subject to the provisions of Federal Rule of Civil Procedure 28(c). The videotape operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

iii. **Interruptions.** The video camera operation will be suspended during the deposition only by agreement of counsel examining and defending the deposition, and “off the record” discussions shall not be videotape recorded. The video camera operator shall record on camera the time of suspension and any subsequent reconvening of the deposition.

iv. **Index.** The videotape operator shall use a counter on the recording equipment and after completion of the deposition shall prepare a log, cross-referenced to counter numbers, that identifies the positions on the tape at which examination by different counsel begins and ends, at which objections are made and examination resumes, at which exhibits are identified, and at which any



interruption of continuous tape recording occurs, whether for recesses, “off the record” discussion, mechanical failure, or otherwise.

v.           Certification. After the deposition is completed, the video operator shall certify on camera the correctness, completeness, and accuracy of the videotape recording in the same manner as a stenographic court reporter.

f.           *Objections at Depositions and Conduct During Depositions*

The parties shall be bound and shall abide by Federal Rule of Civil Procedure 30(c)(2) during all depositions. With respect to the form of question or responsiveness of the answers, as soon as any one attorney representing a party to this litigation states the word “objection,” all parties shall be deemed to have preserved all possible objections to the form of the question or the responsiveness of the answer. Counsel for other parties shall not repeat the objection.

g.           *Deposition Exhibits*

i.           Provision of Hard Copies. Extra hard copies of documents about which counsel who conducts the principal examination expects to examine the deponent should be provided to the reporter, the deponent, deponent’s counsel, and a reasonable number of copies for counsel for the other party participants during the deposition, except as indicated in (c) below.

ii.          Marking of Deposition Exhibits. All documents marked as exhibits shall be attached to the original transcript and retained with the original transcript. Copies of exhibits may be attached to copies of the transcript where the party ordering the transcript pays for the costs of copying those exhibits.

h. *Real-Time Transcription*

Any party may arrange for “real time” transcription of a deposition at its cost.

i. *Correction and Signing of Deposition*

At the deponent’s election, the transcript of a deposition shall be submitted to the deponent for correction and signature. The deponent shall have thirty (30) days after receipt of the final transcript from the court reporter to make corrections and sign the deposition. The deposition may be signed by the deponent before any notary or pursuant to 28 U.S.C. § 1746. If no corrections are made within thirty (30) days after the deponent receives the final transcript from the court reporter, the transcript will be deemed accurate and the parties shall have the right to use a copy of the transcript in any further proceedings as though the copy of the transcript were the original transcript. In the event the original transcript is unsigned, lost, stolen, or inadvertently destroyed, a certified copy reflecting any changes made to the original transcript may be used in place of the original.

j. *Remote Depositions*

The parties agree that the preference in all cases is to conduct depositions with all participants in the same location in the traditional manner, whenever possible. But, in light of the ongoing COVID-19 pandemic, some depositions may need to be conducted remotely, meaning that they may be conducted with the witness, questioning attorney, defending attorney, court reporter, videographer, and other participants in different locations. The following procedures will apply to remote depositions:

i. **Objecting to Remote Depositions.** Any party that objects to the taking of a deposition remotely shall notify the party issuing the notice within five (5) business days after the notice is issued. The parties will meet and confer on any such disagreement, and if necessary, seek timely relief from the Court, but a deposition noticed to be conducted remotely shall not proceed until any objection to doing so is resolved by agreement or by the Court.

ii. **Location.** All remote depositions shall be conducted with all participants in separate locations, including counsel representing the deponent. If the deponent and the deponent's counsel determine that it is appropriate for both of them to be present in the same location to participate in a deposition, and therefore elect to do so, then every other participant likewise may be physically present in the same location as the deponent. The deponent or the deponent's counsel shall notify the party issuing the notice of their intention to participate from the same location as soon as possible, and in no event later than five (5) business days before the scheduled

date of the deposition, so that all other participants who wish to attend in the same location may make necessary arrangements to travel there.

iii. Remote Deposition Notices. The deposition notice for any remote deposition shall indicate that the deposition will be taken remotely, identify the court reporting service(s) that will host and record the deposition, and identify the type of technology to be used (e.g., Zoom, WebEx, etc.).

iv. Notice of Participation. No later than seven (7) business days in advance of a remote deposition, the parties shall provide names of all planned participants and attendees to each other and to the vendor retained to facilitate the deposition, so that login credentials can be provided to each participant.

v. Security. All remote depositions shall be taken using a secure video deposition platform, hosted by a court reporting service with appropriate technological capabilities and selected by the party noticing the deposition, unless all parties agree to other means (e.g., telephone only). The party noticing the deposition shall provide the deponent, counsel, and all other participants with detailed instructions regarding how to participate at least five (5) business days before the deposition.

The court reporting service shall implement adequate security measures to ensure confidentiality of any remote deposition, such as use of a secure password or a virtual waiting room that allows the court reporter to admit only authorized individuals. Participants shall keep all log-in credentials or other information provided for access to a remote deposition confidential and shall take all reasonable

steps to maintain security of the deposition proceedings. Hosting and co-hosting privileges shall not be given to any participant other than personnel of the court reporting service.

vi. Technology and Equipment. Counsel representing a party-witness at a remote deposition shall be responsible for making arrangements to ensure the party-witness has all necessary equipment, including Internet access, to participate. For a remote deposition of a non-party witness, the counsel noticing the deposition shall be responsible.

All participants are expected to take reasonable measures to familiarize themselves with the process used by the video deposition platform employed for a remote deposition in order to avoid unnecessary delay or disruption of the deposition.

vii. Break-Out Rooms. The court reporting service may provide “virtual break-out rooms” for participants to use during breaks in the deposition, if requested.

viii. Appropriate Officer. A remote deposition shall be deemed to have been taken before an appropriate officer despite that officer not being present in the same physical location as the witness, as long as the officer attends by the same remote means as other participants and is able to hear and communicate with all other participants.

ix. Recoding Remote Depositions. Remote depositions shall be recorded by stenographic means and video recording. Only the court reporting service or its retained videographer shall record the proceedings and the reporting service

shall disable any “record” function otherwise available to participants through the video deposition platform. Recording may be suspended during the deposition only upon stipulation by all participating counsel. The court reporting service or videographer shall record the proceedings only when the deposition is on the record.

The court reporting service hosting the remote deposition, or the videographer, shall record all audio feeds, but only the deponent’s video feed.

Every speaking participant shall be visible by live video to all other participants while the deposition is in session. Other participants need not be visible by live video but their participation shall be announced to all other participants and documented on the transcript.

x. Exchange of Contact Information. Participating counsel shall exchange contact information that can be used during the deposition (such as email, text, direct or mobile phone number, etc.), in case any participant needs to advise others of technical or communications problems that arise during the deposition.

xi. Objections. If any lawyer is prevented from asserting a timely objection on the record due to a technical disruption, that lawyer should attempt to assert the objection before the deposition ends, in which case it will be preserved as if it had been timely presented and recorded.

xii. Exhibits. Deposition exhibits may be made available in paper copies or electronic form. If paper copies are used, paper copies will be delivered to all participants as least one business day before the deposition. Counsel may elect

to provide some or all of the exhibits in paper form in sealed envelopes, and in that case no participant, including the witness and the witnesses' counsel, shall open such envelopes until and unless instructed to do so by the examining attorney during the deposition. Participants may retain paper copies of any exhibits marked during the deposition, but if asked to do so, and if furnished with a prepaid return label, they will return any unused paper exhibits. Counsel may instead furnish exhibits in advance in electronic form and may instruct other counsel and the witness not to open particular exhibits in electronic form before they are identified during the deposition. Unused electronic exhibits will be deleted after the deposition. Nothing in this paragraph alters any obligation under existing CMOs to disclose documents to opposing counsel.

In addition to or instead of the methods in the previous paragraph, an examining attorney may provide electronic copies of exhibits during the deposition, through the video deposition platform or by other means agreed to by all counsel. Such documents shall be made available in such a fashion that participants may review the entire contents of each exhibit when it is introduced and used and may review exhibits previously marked during the deposition. The fact that a deponent was provided with an exhibit only in electronic form shall not be a basis to object to the admissibility of that exhibit at trial.

xiii. Setting. All deponents shall take reasonable measures to participate in a quiet, well-lit indoor location, seated in front of a neutral background if possible, facing the camera that is being used to record the deponent, and with

sufficient lighting from the front to avoid the deponent appearing in shadow. The deponent shall not turn off his/her/their video or audio feed unless instructed to do so by his/her/their counsel or when the deposition is off the record.

Participants shall enable the “do not disturb” settings for all applications on their devices that are not required to be in use, including, but not limited to, instant messaging and email notifications. The microphones for the deponent, court reporter, and the attorneys taking and defending the deposition must remain on while the deposition is on the record. Other participants shall mute their microphones when not speaking.

xiv. Time. Time will be counted in the same manner as in a traditional deposition, as long as all participants are on the record and connected through the video deposition platform.

xv. Technology Problems. If any participant experiences problems remaining connected to the audio and video feed, that participant shall promptly notify the other participants using the alternative contact methods arranged prior to the deposition. The issue will be noted promptly on the record and the remote deposition will be suspended until the participant is able to rejoin.

The parties shall work collaboratively to address any technology problems that arise during a deposition. If the problem cannot be resolved within thirty (30) minutes after the deposition goes off the record, the parties shall meet and confer to discuss appropriate arrangements to completing the deposition, or if necessary, seek direction from the Court. Any time during which the deposition is



suspended due to problems with the technology that impede or prevent the participation of any participant shall not be counted toward the time allowed to complete the deposition.

xvi. **Communication with the Deponent.** During the deposition, no attorney or other person shall be permitted to communicate with the deponent in any manner that is not recorded and known to all participants. Specifically, counsel shall not communicate with the witness using instant or text messages transmitted on any platform or app, by emails, or by any other type of electronic, voice, or in-person communication to the deponent. This does not preclude counsel for the deponent from consulting privately with the deponent (a) on issues relating to the assertion of privilege, after advising all other participants of counsel's intention to do so, or (b) during breaks to the extent permitted by applicable law, rules, court order, or agreement of all participating counsel.

#### **11. General Discovery Dispute Resolution**

Discovery dispute resolution shall be resolved in accordance with Local Rule 37.2 and Judge Blakey's "Discovery Motions" case procedure guidance.

#### **12. Confidentiality of Documents**

All parties will be subject to the CMO Nos. 4 and 5 entered by this Court, which will govern the production, dissemination, confidentiality, and use of documents.

#### **13. Privilege**

All rules concerning privilege will be governed by CMO No. 4, once entered.

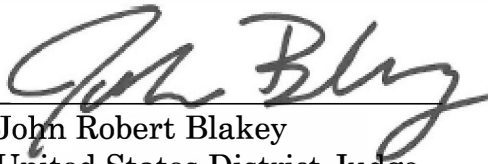
**14. Coordination**

All discovery directed to Defendants and non-party witnesses on behalf of Plaintiffs shall be undertaken by, or under the direction of, Plaintiffs' Lead and Liaison Counsel, who will coordinate with the PSC, on behalf of Plaintiffs with cases in these MDL proceedings. Any discovery not limited to a specific plaintiff shall be signed by Plaintiffs' Liaison Counsel or Plaintiffs' Lead Counsel. The parties will negotiate coordination of discovery with any state court actions when and if the situation arises and submit a separate CMO on this issue.

SO ORDERED.

Dated: March 25, 2022

Entered:

  
John Robert Blakey  
United States District Judge