

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

<p>Raptors Are The Solution, a project of Earth Island Institute, 2150 Allston Way, Suite 460, Berkeley, CA 94704</p> <p>Plaintiff,</p> <p>v.</p> <p>Bell Laboratories, Inc., 6551 North Towne Road, Windsor, WI 53598</p> <p>Defendant.</p>	<p><b>COMPLAINT</b></p> <p><u>DEMAND FOR JURY TRIAL</u></p>
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On behalf of its members and the general public, Plaintiff Raptors Are The Solution, A Project of Earth Island Institute (“RATS” or “Plaintiff”) brings this action against Defendant Bell Laboratories, Inc. (“Bell Labs” or “Defendant”), regarding the deceptive labeling, marketing, and sale of its rodenticide products (“the Products”). Bell Labs repeatedly advertises itself as environmentally responsible and markets the Products as “low risk” despite the substantial risks posed by the ingredients in the Products, which consistently endanger and harm pets and wildlife in an environmentally irresponsible manner. This discrepancy between Defendant’s advertising representations and the impacts of the Products, about which Defendant knows or should have known, misleads consumers. Plaintiff RATS alleges the following based upon information, belief, and the investigation of counsel:

**INTRODUCTION**

1. This is a consumer protection action brought against Bell Labs for its misleading and deceptive marketing claims. The case is brought by RATS, a non-profit, public interest

organization. RATS seeks no damages, only an end to the deceptive marketing and advertising in which Bell Labs is engaged.

2. Defendant Bell Labs is an “exclusive manufacturer of rodent control products” and sells its products on six continents.<sup>1</sup> Bell Labs claims that it has “registered more rodenticide products with the United States Environmental Protection Agency (EPA) than all other rodenticide manufacturers in the U.S.”<sup>2</sup> and regards itself as “The World Leader in Rodent Control Technology®.”<sup>3</sup>

3. Bell Labs sells a range of products, including a variety of rodenticides. At least eleven types of rodenticides are listed on the Defendant’s website.<sup>4</sup> The active ingredients in these rodenticide products vary.

4. Some of the Defendant’s rodenticide Products contain anticoagulants as the active ingredient. Anticoagulant rodenticides (“ARs”) are “toxicant compounds that inhibit the recycling of vitamin K1 leading to clotting and coagulation impairment.”<sup>5</sup>

5. ARs kill rodents, and other animals, by preventing the coagulation of blood and leading to internal hemorrhaging and death by toxicosis—a prolonged and painful death.

6. While rodenticides are used to kill rodents as “target” animals, they can also harm or kill “non-target” animals such as pets and wildlife, including rare and endangered species.<sup>6</sup>

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<sup>1</sup> See *Our Company*, Bell Laboratories, Inc., <https://www.belllabs.com/our-company> (last visited Jan. 10, 2023).

<sup>2</sup> See *Company History*, Bell Laboratories, Inc., <https://www.belllabs.com/company-history> (last visited Jan. 10, 2023).

<sup>3</sup> See *Our Company*, *supra* note 1.

<sup>4</sup> See *Products: Rodenticides*, Bell Laboratories, Inc., <https://www.belllabs.com/bell-labs/product/us/pest-control/contrac-all-weather-blox> (last visited Jan. 10, 2023) (CONTRAC, DETEX, DITRAC, FASTRAC, FINAL, LIQUA-TOX, PCQ, T1, TERAD<sub>3</sub>, ZP, and RATICE).

<sup>5</sup> Mourad W. Gabriel et al., *Patterns of Natural and Human-Caused Mortality Factors of a Rare Forest Carnivore, the Fisher (Pekania pennanti) in California*, 10 PLOS ONE 1, 8 (2015).

<sup>6</sup> See, e.g., John E. Elliott et al., *Exposure pathways of anticoagulant rodenticides to nontarget wildlife*, 186 Env’t Monitoring and Assessment 895 (2013); Kevin D. Niedringhaus et al., *Anticoagulant rodenticide exposure and toxicosis in bald eagles (Haliaeetus leucocephalus) and golden eagles (Aquila chrysaetos) in the United States*, 16 PLOS ONE 4 (2021).

7. ARs may contain first-generation or second-generation anticoagulants. Rodenticides made with first-generation anticoagulants require rodents to feed on them multiple times before causing death, whereas second-generation anticoagulants cause death after only one feeding and are therefore generally more potent and deadly.<sup>7</sup> Some first-generation anticoagulants are nevertheless just as toxic as second-generation anticoagulants.<sup>8</sup>

8. Only ARs with first-generation anticoagulants are marketed to consumers because second-generation anticoagulants have been banned from consumer products by the EPA, though they are still permitted for commercial and industrial use.<sup>9</sup>

9. First and second generation anticoagulants have both been found to have caused or contributed to the deaths of pets and wildlife.

10. Of the rodenticide products sold by Bell Labs, three contain second-generation anticoagulants, and four contain first-generation anticoagulants marketed and sold to consumers.<sup>10</sup>

11. Another active ingredient in rodenticide products sold by Bell Labs is Vitamin D<sub>3</sub>. Vitamin D<sub>3</sub> kills rodents—and other animals—by affecting the liver and kidneys and significantly elevating calcium and phosphorus absorption rates, which eventually leads to organ failure and death.<sup>11</sup> This is, again, a slow and prolonged death for the animals affected.

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<sup>7</sup> See *id.*

<sup>8</sup> See, e.g., Barnett A. Rattner et al., *Assessment of toxicity and potential risk of the anticoagulant rodenticide diphacinone using Eastern screech-owls (Megascops asio)*, 21 *Ecotoxicology* 832 (2012); *Raptors Are The Sol. v. Superior Court*, No. A161787, 2022 Cal. App. LEXIS 5902, at \*23 (Cal. Dist. Ct. App. Sept. 27, 2022) (“Based on its prevalence and toxicity, diphacinone is more akin to an SGAR [second-generation anticoagulant]”).

<sup>9</sup> See *Restrictions on Rodenticide Products*, United States Environmental Protection Agency, <https://www.epa.gov/rodenticides/restrictions-rodenticide-products#:~:text=Second%2Dgeneration%20anticoagulants%20registered%20in,is%20toxic%20in%20other%20ways> (last updated Nov. 21, 2022).

<sup>10</sup> See Bell Laboratories, Inc., *Product Guide* (2022), <https://www.belllabs.com/images/B84.14.BellProductGuide.2022-1.pdf>.

<sup>11</sup> See Holly Hommerding, *Cholecalciferol (Vitamin D3) Poisoning in Animals*, Merck Veterinary Manual (Mar. 2022), <https://www.merckvetmanual.com/toxicology/rodenticide-poisoning/cholecalciferol-vitamin-d3-poisoning-in-animals>.

12. Non-target animal exposure to rodenticides containing Vitamin D<sub>3</sub> has “increased markedly in frequency” in recent years.<sup>12</sup> This active ingredient has been identified as “one of the most deadly—and costly—rodenticides to pets.”<sup>13</sup>

13. Consumers are increasingly aware of the potential harms posed by these types of rodenticides and seek to avoid them. This is evidenced by increasingly frequent mainstream news reporting on the harms of these rodenticides,<sup>14</sup> governmental web pages dedicated to information about these rodenticide harms,<sup>15</sup> and consumer surveys.<sup>16</sup>

14. The harmful environmental impact of rodenticides and their effects on non-target animals therefore impact consumer choices and are material to consumers.

15. Reasonable consumers would understand Defendant’s representations of promoting “environmental responsibility” and offering Products that are “low risk” to mean that the aforementioned harms to the environment and wildlife caused by rodenticides have been minimized or eliminated, and that Defendant’s rodenticide Products produce less harmful environmental impacts than other comparable rodenticides.

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<sup>12</sup> *Id.*

<sup>13</sup> Justine A. Lee, *Emergency Management and Treatment of Rodenticides*, Toxicology, <http://vetfolio.s3.amazonaws.com/4b/29/210311fd44888d15c3b7c732f71e/87-leerodenticides.Rodenticides.pdf> (last visited Jan. 10, 2023).

<sup>14</sup> *See, e.g.*, Michael H. Parsons and Jason Munshi-South, *Better rat control in cities starts by changing human behavior*, Washington Post (Mar. 1, 2020), [https://www.washingtonpost.com/health/better-rat-control-in-cities-starts-by-changing-human-behavior/2020/02/28/e646b898-5815-11ea-9b35-def5a027d470\\_story.html](https://www.washingtonpost.com/health/better-rat-control-in-cities-starts-by-changing-human-behavior/2020/02/28/e646b898-5815-11ea-9b35-def5a027d470_story.html); Brooke Staggs, *Rat poison found in mountain lion P-54 and her four unborn kittens after she was killed by a car*, Los Angeles Daily News (Sept. 7, 2022), <https://www.dailynews.com/2022/09/07/rat-poison-found-in-mountain-lion-p-54-and-her-four-unborn-kittens-after-she-was-killed-by-a-car/>.

<sup>15</sup> *See Rodenticides*, California Department of Fish and Wildlife, <https://wildlife.ca.gov/Living-with-Wildlife/Rodenticides> (last visited Jan. 10, 2023).

<sup>16</sup> *See* Anita T. Morzillo and Angela G. Mertig, *Linking human behaviour to environmental effects using a case study of urban rodent control*, 68 Int’l J. of Env. Studies 107 (2011) (finding that surveyed residents in California who used rodenticides often did not know of rodenticide effects on non-target animals, but the vast majority—72%—responded as very likely to change pesticide use or stop altogether after learning of possible negative effects on wildlife).

16. To the contrary, the ingredients used in Defendant's rodenticides are decidedly not low risk and cause harm to the environment that consumers would not expect given Defendant's representations.

17. In sum, consumers are being deceived by Bell Labs' advertising of the Products in a material manner.

18. Because Defendant's marketing of the Products tends to mislead consumers and is materially deceptive about the true nature, quality, and ingredients of the Products, Plaintiff RATS brings this consumer protection case on behalf of itself and the general public, seeking an injunction to stop Defendant's deceptive marketing of the Products, and declaratory relief in the form of an order holding Defendant's marketing practices to be unlawful.

### **STATUTORY FRAMEWORK**

19. This action is brought under the District of Columbia Consumer Protection Procedures Act ("CPPA"), D.C. Code § 28-3901, *et seq.*

20. The CPPA makes it a violation for "any person" to, *inter alia*:

"[R]epresent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;"

"[R]epresent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another;"

"[M]isrepresent as to a material fact which has a tendency to mislead;"

"[F]ail to state a material fact if such failure tends to mislead;"

"[U]se innuendo or ambiguity as to a material fact, which has a tendency to mislead;" or

"[A]dvertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered."

D.C. Code § 28-3904(a), (d), (e), (f), (f-1), (h).

21. A violation of the CPPA may occur regardless of “whether or not any consumer is in fact misled, deceived or damaged thereby.” *Id.* § 28-3904.

22. The CPPA “establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia.” *Id.* § 28-3901(c). The statute “shall be construed and applied liberally to promote its purpose.” *Id.*

23. Because RATS is a public interest organization, it may act on behalf of the general public and bring any action that an individual consumer would be entitled to bring:

[A] public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action under subparagraph (A) of this paragraph for relief from such use by such person of such trade practice.

*Id.* § 28-3905(k)(1)(D)(i). Subparagraph (A) provides: “A consumer may bring an action seeking relief from the use of a trade practice in violation of a law of the District.” *Id.* § 28-3905(k)(1)(A).

24. A public interest organization may act on behalf of the interests of consumers, *i.e.*, the general public of the District of Columbia, so long as the organization has “sufficient nexus to the interests involved of the consumers or class to adequately represent those interests.” *Id.* § 28-3905(k)(1)(D)(ii).

25. This is not a class action, or an action brought on behalf of any specific consumer, but an action brought by RATS on behalf of the general public, *i.e.*, D.C. consumers generally. No class certification will be requested.

26. Remedies available under the CPPA include “[a]n injunction against the use of the unlawful trade practice” and “[a]ny other relief which the court determines proper.” *Id.* § 28-3905(k)(2)(D), (F). This action does not seek damages or restitution. Instead, RATS seeks to

end the unlawful conduct directed at D.C. consumers by ending Defendant’s false and deceptive labeling and marketing of the Products. RATS also seeks declaratory relief in the form of an order holding Defendant’s conduct to be unlawful.

### **FACT ALLEGATIONS**

#### **I. Defendant Represents Its Products as “Environmentally Responsib[le],” “Sustainable,” and “Low Risk.”**

27. Defendant repeatedly represents that its Products and business practices are environmentally responsible, sustainable, and low risk.

28. On its consumer-facing website, Defendant prominently includes “Sustainability” as one of only four possible headings which a visitor may select.<sup>17</sup>

29. On that “Sustainability” page, under the heading of “Environmental Solutions,” Defendant represents that it “fully embraces the concept[] of environmental responsibility.”<sup>18</sup> Defendant also claims that it has “implemented numerous ongoing programs to examine and improve our procedures, systems, material use, and facilities to create not only practices, but also an attitude of environmental and social responsibility.”<sup>19</sup>

30. Defendant represents that “[t]hrough its environmental efforts [and] product solutions . . . Bell strives to create sustainable practices wherever possible.”<sup>20</sup>

31. Bell Labs also publishes a consumer-facing newsletter four times per year that reaches over 15,000 readers.<sup>21</sup> In multiple issues of this newsletter, Bell Labs makes representations as to its environmental responsibility.

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<sup>17</sup> *Home Page*, Bell Laboratories, Inc., <https://www.belllabs.com/> (last visited Jan. 10, 2023).

<sup>18</sup> *Sustainability*, Bell Laboratories, Inc., <https://www.belllabs.com/sustainability> (last visited Jan. 10, 2023).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

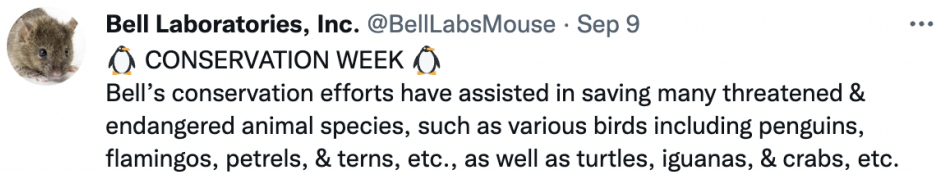
<sup>21</sup> *See The Bell Advantage*, Bell Laboratories, Inc., <https://www.belllabs.com/the-bell-advantage> (last visited Jan. 10, 2023).

32. In its newsletter for April through June 2022, Bell Labs included an article about its business practices prominently titled “Helping the Community, Helping the Earth.”<sup>22</sup>

33. And, in its newsletter for January through March 2022, Bell Labs alleged that its rodenticide products were helping in “gaining back a healthy ecosystem.”<sup>23</sup>

34. Bell Labs also makes representations about its environmental responsibility on its public social media accounts.

35. On its Twitter account, for example, Bell Labs represents that it has “assisted in saving many threatened & endangered animal species.”<sup>24</sup>



36. Bell Labs has repeated this and similar representations on the company’s LinkedIn page, including repeatedly using the hashtags “#earthfriendly” and #earthdayeveryday.”<sup>25</sup>

37. Bell Labs also makes these types of representations in relation to several of its Products.

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<sup>22</sup> *The Bell Report: April-June 2022*, Bell Laboratories, Inc., (2022), [https://www.belllabs.com/images/PDFs/Bell\\_Reports/V.41.N.2.2022.pdf](https://www.belllabs.com/images/PDFs/Bell_Reports/V.41.N.2.2022.pdf).

<sup>23</sup> *The Bell Report: January-March 2022*, Bell Laboratories, Inc., (2022), [https://www.belllabs.com/images/PDFs/Bell\\_Reports/V.41.N.1.2022.pdf](https://www.belllabs.com/images/PDFs/Bell_Reports/V.41.N.1.2022.pdf).

<sup>24</sup> @BellLabsMouse, Twitter (Sept. 9, 2022, 12:15 PM), <https://twitter.com/BellLabsMouse/status/1568271926396702721>.

<sup>25</sup> *Bell Laboratories, Inc.*, LinkedIn, [https://www.linkedin.com/posts/bell-laboratories-inc\\_earthfriendly-gogreen-bashthetrash-activity-6975834492439592960-GLj-?utm\\_source=share&utm\\_medium=member\\_desktop](https://www.linkedin.com/posts/bell-laboratories-inc_earthfriendly-gogreen-bashthetrash-activity-6975834492439592960-GLj-?utm_source=share&utm_medium=member_desktop) (last visited Jan. 10, 2023).



38. For example, Bell Labs advertises one of its rodenticides, Terad3, as one of its “Sustainable Products.”<sup>26</sup> Bell Labs describes this product as posing “a low risk of secondary poisoning . . . [and] a low risk of toxicity to birds.”<sup>27</sup>

39. Another of Defendant’s products, DITRAC, which contains first-generation anticoagulants and is marketed to consumers as, essentially, safe enough to be eaten: “Bell manufactures DITRAC with food-grade ingredients and enhancers . . . .”<sup>28</sup>

40. This same representation is made about PCQ Pro, another rodenticide containing a first generation anticoagulant. Defendant adds that the formula for this rodenticide “produces a fresher, better compressed pellet” which “is designed to compete with natural food sources.”<sup>29</sup>

## **II. The Products Contain Ingredients That Are Extremely Harmful to Pets and Wildlife When Ingested or Exposed.**

41. Contrary to Defendant’s representations regarding its environmental responsibility and the low risks posed by its rodenticide Products, the active ingredients in those Products pose severe environmental risks.

42. The connection between rodenticides and harms to pets and wildlife has been well established by numerous scientific studies.

43. Non-target pets and wildlife can be impacted by rodenticides through primary exposure, which entails directly consuming a rodenticide, or secondary exposure, which involves consuming an animal who ingested a rodenticide.

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<sup>26</sup> *Sustainable Products*, Bell Laboratories, Inc., <https://www.belllabs.com/sustainability#sustainable-products> (last visited Jan. 10, 2023).

<sup>27</sup> *Id.*

<sup>28</sup> *DITRAC All-Weather BLOX*, Bell Laboratories, Inc., <https://www.belllabs.com/bell-labs/product/us/pest-control/ditrac-all-weather-blox> (last visited Jan. 10, 2023).

<sup>29</sup> *PCQ Pro*, Bell Laboratories, Inc., <https://www.belllabs.com/bell-labs/product/us/pest-control/pcq-pro> (last visited Jan. 10, 2023).

44. The director of urban wildlife programs for the Humane Society of the United States recently stated that “The number of animals who get either compromised or die from [rodenticides] is enormous... We’re awash in rodenticides.”<sup>30</sup>

45. Indeed, since 2018, rodenticides have been among the top eight toxins to which pets are exposed, accounting for over 13,000 reported exposures in 2018 alone.<sup>31</sup>

46. Rodenticide use is not sustainable or environmentally responsible with respect to wildlife and other non-target animals.

47. ARs containing both first and second generation anticoagulants have been found to have caused or contributed to the deaths of pets and wildlife, including coyotes,<sup>32</sup> foxes,<sup>33</sup> dogs,<sup>34</sup> cats,<sup>35</sup> a wide variety of bird species,<sup>36</sup> reptiles,<sup>37</sup> insects,<sup>38</sup> fish,<sup>39</sup> slugs,<sup>40</sup> and other animals.

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<sup>30</sup> See Nancy Lawson, *A modern-day DDT? Rodenticides wreak havoc across the animal kingdom*, Humane Society of the United States (Aug. 27, 2019), <https://www.humanesociety.org/news/modern-day-ddt>.

<sup>31</sup> See Charlotte Gerhard and Jared A. Jaffey, *Persistent Increase in Serum 25-Hydroxyvitamin D Concentration in a Dog Following Cholecalciferol Intoxication*, 6 *Frontiers Veterinary Sci.* 472 (2019).

<sup>32</sup> See Sharon A. Poessel et al., *Anticoagulant Rodenticide Exposure and Toxicosis in Coyotes in the Denver Metropolitan Area*, 51 *J. Wildlife Diseases* 1 (2015).

<sup>33</sup> See Kristen Opdal Seljetun, *Prevalence of Anticoagulant Rodenticides in Feces of Wild Red Foxes (Vulpes Vulpes) in Norway*, 55 *J. Wildlife Diseases* 4 (2019).

<sup>34</sup> See Eivind Norum, *Many dogs have rat poison in their bodies*, Norwegian University of Life Sciences (Jan. 17, 2016), <https://www.nmbu.no/en/news/node/26247>.

<sup>35</sup> See Karie L. Walton and Cynthia M. Otto, *Retrospective evaluation of feline rodenticide exposure and gastrointestinal decontamination: 146 cases (2000–2010)*, 28 *J. Veterinary Emergency and Critical Care* 457 (2018).

<sup>36</sup> See Richard A. Lovett, *Killing rats is killing birds*, *Nature*, Nov. 2012.

<sup>37</sup> See D.C. Lettoof et al., *Toxic time bombs: Frequent detection of anticoagulant rodenticides in urban reptiles at multiple trophic levels*, 724 *Sci. Total Env’t* 1 (2020).

<sup>38</sup> Elliott et al., *supra* note 6.

<sup>39</sup> See Matthias Kotthoff et al., *First evidence of anticoagulant rodenticides in fish and suspended particulate matter: spatial and temporal distribution in German freshwater aquatic systems*, 26 *Env’t Sci. and Pollution Rsch.* 7315 (2018).

<sup>40</sup> See Hussein Alomar et al., *Accumulation of anticoagulant rodenticides (chlorophacinone, brodifacoum) in a non-target invertebrate, the slug, Deroceras reticulatum*, 610 *Sci. Total Env’t* 576 (2018).

48. Vitamin D<sub>3</sub> rodenticide use, which Bell Labs markets as “Sustainable” and “low risk,” has been deemed by one wildlife veterinarian to be “inhumane and painful” for a variety of wild animals, especially given the fact that there is no existing effective antidote.<sup>41</sup>

49. One four-year-old dog that consumed an unknown quantity of a Vitamin D<sub>3</sub> rodenticide made and sold by the Defendant suffered symptoms of “vomiting, anorexia, lethargy, polyuria, and polydipsia,” and effects of the rodenticide lasted for almost one year.<sup>42</sup>

50. Suspected consumption of Vitamin D<sub>3</sub> rodenticides by birds has been seen to cause “subdued behavior, weight loss, and an inability to fly.”<sup>43</sup> Vitamin D<sub>3</sub> rodenticides have also been recorded as causing the deaths of chickens and canaries.<sup>44</sup>

51. Because of greater regulations on ARs, the use of Vitamin D<sub>3</sub> (also called cholecalciferol) rodenticides is projected to increase. Consequently, “accidental ingestions of cholecalciferol rodenticides by domesticated pets are likely to increase.”<sup>45</sup> This is dangerous and high-risk because “it takes only a small amount [of cholecalciferol rodenticide] to cause severe toxicosis in dogs and cats.”<sup>46</sup>

52. Studies increasingly reveal the growing prevalence of rodenticide exposure in wild animals, for example in the Santa Monica Mountains in California where more than **90%** of mountain lions tested had been exposed to rodenticides, as well as the majority of bobcats and coyotes tested.<sup>47</sup>

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<sup>41</sup> See Caroline Guzman, *Rodenticides Continue to Affect Seattle Wildlife*, South Seattle Emerald (Apr. 25, 2022), <https://southseattleemerald.com/2022/04/25/rodenticides-continue-to-affect-seattle-wildlife/>.

<sup>42</sup> See Gerhard, *supra* note 32.

<sup>43</sup> See Julie Swenson and Gregory A. Bradley, *Suspected Cholecalciferol Rodenticide Toxicosis in Avian Species at a Zoological Institution*, 27 J. Avian Med. and Surgery 136 (2013).

<sup>44</sup> See Charles T. Eason et al., *Non-target and secondary poisoning risks associated with cholecalciferol*, 53 New Zealand Plant Protection 299 (2000).

<sup>45</sup> See Tammy Dee and Lynn Rolland Hovda, *Cholecalciferol Rodenticide Toxicosis*, Veterinary Technician, Jan. 2012.

<sup>46</sup> *Id.*

<sup>47</sup> See Lawson, *supra* note 31.

53. Similarly, **100%** of hawks tested in a Massachusetts study had been exposed to ARs that resulted in their death, indicating both the prevalence and severity of rodenticide exposure.<sup>48</sup>

54. Despite the EPA's ban on ARs with second-generation anticoagulants for over-the-counter purchase by consumers, ARs with first-generation anticoagulants like diphacinone—that are just as toxic as many second generation anticoagulants—are still marketed and sold to consumers, and researchers project that their use will increase as a result of the second generation restrictions.<sup>49</sup>

55. Rodenticides like the Products sold by Bell Labs also consistently demonstrate cumulative and interactive effects in non-target animals.<sup>50</sup>

56. Whenever non-target animals are tested for the presence of rodenticide active ingredients in their systems, two or more active ingredients are almost always detected, indicating exposure to multiple rodenticides and compounding health risks to animals.<sup>51</sup>

57. Demonstrating the need to acknowledge the unique harms caused by these cumulative effects, a recent court decision in California held that the California Department of Pesticide Regulation must consider the cumulative impacts of rodenticides by analyzing “each rodenticide’s prevalence, toxicity, effect on non-target wildlife, and the effect of its interaction with other rodenticides . . . on non-target wildlife.”<sup>52</sup>

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<sup>48</sup> See Angela Nelson, *Understanding the Risks of Rodent Poisons to Birds of Prey*, TuftsNow (Sept. 16, 2020), <https://now.tufts.edu/2020/09/16/understanding-risks-rodent-poisons-birds-prey>.

<sup>49</sup> See Rattner, *supra* note 8.

<sup>50</sup> See, e.g., Barnett A. Rattner et al., *Brodifacoum Toxicity in American Kestrels (Falco sparverius) with Evidence of Increased Hazard Upon Subsequent Anticoagulant Rodenticide Exposure*, 39 *Env't Toxicology Chem.* 2 (2020).

<sup>51</sup> See, e.g., Laurel E.K. Serieys et al., *Anticoagulant rodenticides in urban bobcats: exposure, risk factors and potential effects based on a 16-year study*, *Ecotoxicology* (2015) (“Seventy-seven percent of all bobcats and 87 % of those exposed showed the presence of [greater than or equal to] 2 compounds in the liver”).

<sup>52</sup> *Raptors Are The Sol. v. Superior Court*, No. A161787, 2022 Cal. App. LEXIS 5902, at \*23 (Cal. Dist. Ct. App. Sept. 27, 2022).

### III. Defendant's Representations Are Material and Misleading to Reasonable Consumers.

58. Consumers increasingly express concern about the environmental impacts of rodenticides, specifically voicing concerns about effects on wildlife.<sup>53</sup>

59. Consumers therefore seek to avoid harmful environmental impacts on pets, wildlife, and ecosystems when searching for and purchasing rodenticides.

60. Information about the sustainability of and risks posed by rodenticide products is material to consumers.

61. Reasonable consumers would not expect the Products, advertised as "Sustainable," "low risk," and "food-grade," to pose significant health and safety risks to pets and wildlife or to contain ingredients that have been consistently shown to kill non-target animals.

62. Ordinary consumers do not have access to laboratory testing for the Products or scientific studies on the toxicity of the Products to non-target animals.

63. Defendant misleadingly represents the nature and characteristics of the Products.

64. At least 75% of U.S. consumers are concerned about the environmental impacts of the products they buy, and 66% are willing to pay more money for products they perceive as sustainable.<sup>54</sup>

65. Defendant Bell Labs takes advantage of this consumer priority by representing itself as environmentally responsible, sustainable, and an environmental steward.

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<sup>53</sup> See Morzillo, *supra* note 17; Sofi Hindmarsch et al., *Rats! What triggers us to control for rodents? Rodenticide user survey in British Columbia, Canada*, 75 Int'l J. Env't Stud. 1011 (Nov. 2018) (conducting survey of 100 farmers and residents and finding that between 50-65% of respondents were "very concerned" that rodenticides were affecting wildlife in their area).

<sup>54</sup> See *Majority of US Consumers Say They Will Pay More for Sustainable Products*, Sustainable Brands (Aug. 29, 2022), <https://sustainablebrands.com/read/marketing-and-comms/majority-of-us-consumers-say-they-will-pay-more-for-sustainable-products#:~:text=75%20percent%20of%20US%20consumers,this%20jumps%20to%2075%20percent>.

66. The Products sold by Bell Labs have demonstrable and significant negative impacts on the environment that a consumer would not expect when reading Defendant's representations, and Defendant omits material facts regarding these environmental impacts.

67. Defendant knows or should have known the true nature and characteristics of the Products. Defendant knows or should have known the chemical properties and toxicological effects of the Products. Thus, Defendant knew or should have known that its representations regarding the Products were false or misleading to consumers, including D.C. consumers.

68. Defendant continues to mislead consumers through ambiguity, misrepresentation, and omission.

69. Defendant's representations regarding the environmental responsibility, sustainability, and risk level of the Products are material to D.C. consumers.

70. D.C. consumers are at risk of real, immediate, and continuing harm if the Products continue to be sold with misleading representations.

### **JURISDICTION AND VENUE**

71. This Court has personal jurisdiction over the parties in this case. Plaintiff, by filing this Complaint, consents to this Court having personal jurisdiction over it.

72. This Court has personal jurisdiction over Defendant pursuant to D.C. Code § 13-423. Defendant has sufficient minimum contacts with the District of Columbia to establish personal jurisdiction of this Court over it because, *inter alia*, Bell Labs is engaged in deceptive schemes and acts directed at persons residing in, located in, or doing business in the District of Columbia, or otherwise purposefully avails itself of the laws of this District through its marketing and sales of the Products in this District.

73. This Court has subject matter jurisdiction over this action pursuant to D.C. Code §§ 28-3905(k)(1)(B), (k)(1)(D), and (k)(2).

### **PARTIES**

74. RATS is a 501(c)(3) nonprofit organization whose mission is “to work toward eliminating toxic rodenticides from the food web.”<sup>55</sup> RATS is a public-interest-oriented organization that prioritizes “educating people about the dangers of rat poison in the food web.”<sup>56</sup>

75. RATS works towards its public interest goals by educating the public and by “incentiviz[ing] businesses, municipalities, and communities” to reduce or eliminate the use of dangerous rodenticides through advocacy and outreach. RATS also operates an “Owl Wise Leader” program publicly recognizing businesses, communities, and other institutions who refrain from selling or using any rodenticides.<sup>57</sup>

76. RATS describes its purpose and background as follows: “RATS is a fiscally-sponsored project of Earth Island Institute, rated a Four Star Charity by Charity Navigator. RATS is an environmental conservation organization that raises its own funds through grants and donations. RATS partners with other nonprofits, agencies, scientists, cities, and others to work toward eliminating toxic rodenticides from the food web. RATS was founded in the San Francisco Bay Area in 2011 after Cooper’s hawks began falling dead on the streets from eating poisoned rats.

77. Defendant Bell Laboratories, Inc., is incorporated and headquartered in Wisconsin.

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<sup>55</sup> *About Us*, Raptors Are The Solution, <https://www.raptorsarethesolution.org/about-us/> (last visited Jan. 10, 2023).

<sup>56</sup> *Id.*

<sup>57</sup> *See Owl Wise Leader (O.W.L.)*, Raptors Are The Solution, <https://www.raptorsarethesolution.org/owl-wise-leader/> (last visited Jan. 10, 2023).

78. Bell Labs describes itself as follows: “An exclusive manufacturer of rodent control products, Bell Laboratories produces the highest quality rodenticides and other rodent control products available to the pest control and agricultural industries on six continents.”

79. Bell Labs sells many different products to control rodents, including the rodenticides which are the Products at issue in this Complaint. Bell Labs develops and manufactures the active ingredients used in its rodenticides, and it conducts laboratory testing on all rodenticides before marketing and selling them to the public.<sup>58</sup>

80. Defendant markets and sells the Products throughout the United States, including in the District of Columbia.

81. Upon information and belief, Defendant has caused harm to the general public of the District of Columbia.

### **CAUSE OF ACTION**

#### ***Violations of The District of Columbia Consumer Protection Procedures Act***

82. Pursuant to D.C. Code §§ 28-3905(k)(1) and 28-3905(k)(2), RATS brings this Count against Bell Labs, on behalf of itself and the general public of the District of Columbia, for Bell Labs’ violation of the District of Columbia Consumer Protection Procedures Act (“CPPA”), D.C. Code § 28-3901, *et seq.*

83. Plaintiff incorporates by reference all the allegations in the preceding paragraphs of this Complaint.

84. Bell Labs has marketed and advertised the Products as “low risk,” “food-grade,” “[s]ustainable,” and “designed to compete with natural food,” and Bell Labs has otherwise made representations suggesting that the environmental impacts of Products are minimal, when

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<sup>58</sup> See *The Bell Advantage*, *supra* note 22.



in fact the Products contain toxic, deadly active ingredients that regularly are consumed by, harm, and kill pets and wildlife.

85. Bell Labs' advertising of the Products misrepresents, tends to mislead, and omits facts regarding the source, characteristics, standard, quality, and grade of the Product.

86. The Products lack the characteristics, ingredients, benefits, standards, qualities, or grades that Bell Labs states and implies in its advertisements.

87. Bell Labs' misstatements, innuendo, and omissions are material and have the tendency to mislead.

88. Bell Labs knowingly did not sell the Products as advertised.

89. The facts as alleged above demonstrate that Bell Labs has violated the CPPA, D.C. Code § 28-3901 *et seq.* Specifically, Bell Labs has violated D.C. Code § 28-3904(a), (d), (e), (f), (f-1), (h) as described above. *See supra* ¶ 20.

90. Bell Labs knows and should have known that reasonable consumers would believe that the Products are "low risk," "[s]ustainable," "fresh[]," and "food-grade" when in fact they are not. RATS need not show proof of actual deception to succeed on its CPPA claim. Bell Labs' conduct violates the CPPA regardless of whether "any consumer is in fact misled, deceived or damaged thereby." D.C. Code § 28-3904.

91. Because Bell Labs misrepresents the characteristics, ingredients, and benefits of the Products; misrepresents the standard, quality, and grade of the Products; misrepresents, fails to state, and uses innuendo and ambiguity in ways which tend to mislead reasonable consumers with regard to material facts about the Products; and advertises the Products without the intent to sell the Products as advertised, the representations used by Bell Labs in their marketing of the Products violate D.C. Code §§ 28-3904(a), (d), (e), (f), (f-1), and (h).

92. Bell Labs is a “person” within the meaning of D.C. Code § 28-3901(a)(1), is a “merchant” under § 28-3901(a)(3) and provides “goods” within the meaning of § 28-3901(a)(7).

93. Any consumer has the right to bring an action for redress of Bell Labs’ unlawful behavior, *see* D.C. Code § 28-3905(k)(1)(A), and the statute does not limit consumer plaintiffs according to whether they purchased the product at issue. Nevertheless, as alleged in this Complaint, the Bell Labs Products are marketed and sold in the District, and consumers in the District purchased one or multiple of the Products having seen the representations made by Bell Labs about the Products.

94. The only limitation on the power of a public interest organization to act on behalf of consumers is that the public interest organization must have “sufficient nexus to the interests involved of the consumer or class to adequately represent those interests.” D.C. Code § 28-3905(k)(1)(D)(ii). As set forth in this Complaint, Plaintiff RATS was founded with the purpose of advocating for and educating the public and consumers, including consumers in the District of Columbia. In addition, RATS has retained the undersigned competent counsel, with significant experience in litigating under the CPPA, to pursue this action.

95. Via §§ 28-3905(k)(1)(D)(i), the CPPA allows for non-profit organizational standing and public interest organizational standing to the fullest extent recognized by the D.C. Court of Appeals in its past and future decisions addressing the limits of constitutional standing under Article III.

96. Plaintiff is a public interest organization pursuant to D.C. Code § 28-3905(k)(1)(D) and brings this action on behalf of consumers who could bring the action under D.C. Code § 28-3905(k)(1)(A).

97. Plaintiff is a “person” within the meaning of D.C. Code § 28-3901(a)(1), a “non-profit organization” within the meaning of D.C. Code § 28-3901(a)(14), and a “public interest organization” within the meaning of D.C. Code § 28-3901(a)(15).

**JURY TRIAL DEMANDED**

98. Plaintiff RATS hereby demands a trial by jury.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff RATS prays for judgment against Bell Labs and requests the following relief:

- A. a declaration that the aforementioned conduct of Bell Labs is in violation of the CPPA;
- B. an order enjoining any conduct of Bell Labs found to be in violation of the CPPA;
- C. an order granting Plaintiff costs and disbursements, including reasonable attorneys’ fees and expert fees, and prejudgment interest at the maximum rate allowable by law.

DATED: January 11, 2023

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