

EXHIBIT J

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15 **IN THE UNITED STATES DISTRICT COURT**
 16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 17 **SAN FRANCISCO DIVISION**

18 MED VETS INC. and BAY MEDICAL
 19 SOLUTIONS INC.,

20 *Plaintiffs,*

21 v.

22 VIP PETCARE HOLDINGS, INC.,
 23 successor in interest to COMMUNITY
 24 VETERINARY CLINICS, LLC d/b/a VIP
 25 Petcare and PETIQ, INC.,

26 *Defendants,*

Case No.

**FIRST AMENDED COMPLAINT FOR
 VIOLATIONS OF THE SHERMAN AND
 CLAYTON ACTS SEEKING
 PERMANENT INJUNCTION AND
 DAMAGES**

JURY TRIAL DEMANDED

Judge: Hon. Maxine M. Chesney

1 Plaintiffs, MED VETS INC. (“Med Vets”) and BAY MEDICAL SOLUTIONS INC. (“Bay
2 Medical”), bring this action under the antitrust laws against defendants, VIP PETCARE HOLDINGS,
3 INC., successor in interest to COMMUNITY VETERINARY CLINICS, LLC d/b/a VIP Petcare
4 (“VIP”), and PETIQ, INC. (“PetIQ”), and allege:

5 **I. NATURE OF THE CASE**

6 1. The markets for prescription and veterinarian-recommended pet parasiticides are not
7 normal markets. They do not function competitively because the major veterinary pharmaceutical
8 manufacturers—including, Merial (a division of Boehringer Ingelheim), Elanco Animal Health (a
9 division of Eli Lilly), Zoetis, Merck Animal Health, Pfizer, and Novartis—claim to restrict sales of pet
10 medications to veterinary practitioners. This subterfuge has for years discouraged pet owners from
11 shopping for pet medications at non-veterinary retailers. The manufacturers’ strategies maintain
12 veterinarians’ sales volumes and protect the products they sell from price competition from retailers.
13 The manufacturers are engaged in a “subterfuge” because these pet medications easily may be
14 purchased from a wide variety of retailers, including PetSmart, 1-800PetMeds, Petco, Costco,
15 Walmart, Tractor Supply, and many others.

16 2. For years, manufacturers supplied retailers with products not sold by veterinarians
17 (demand for such products is highly weather dependent) and, at least in the case of Merial (maker of
18 Frontline Plus), supplied retailers for the purpose of maintaining retail product category leadership.
19 Manufacturers fed retailers through a “secondary distribution” system, whereby veterinarians and
20 veterinarian clinics purchase medications from manufacturers and then re-sell them to secondary
21 distributors. The secondary distributors then sell to retailers. Plaintiffs, Med Vets and Bay Medical, are
22 secondary distributors. Pet medication distribution markets therefore are not “normal” because
23 conventional distribution channels to retailers do not generally exist and because market participants
24 have consistently misrepresented the availability of their products to increase veterinary sales to
25 maintain artificially high prices.

26 3. As a consequence, the Federal Trade Commission (“FTC”) in 2011 opened an
27 investigation into anticompetitive conditions in the U.S. market for pet medications. The FTC staff
28 report, “Competition in the Pet Medications Industry, Prescription Portability and Distribution

1 Practices,” released in May 2015 (“2015 FTC Report”), identified three distinct channels through
2 which consumers purchase pet medications: i) purchased from a veterinarian or veterinary clinic; ii)
3 purchased from a retail outlet conventionally supplied directly by a manufacturer or its distributor; or,
4 iii) from a retail outlet supplied by the “secondary distribution system.” All three channels continue to
5 exist today. This case relates only to the secondary distribution system, and the deleterious effect on
6 competition in that market as a result of the PetIQ-VIP acquisition.

7 4. The pet medication products—predominantly pet parasiticides that prevent fleas, ticks,
8 and heartworm—flowing through the secondary distribution system are not the same products that are
9 conventionally distributed to retailers. Consumers do not substitute veterinarian-sold products (which
10 are also supplied to retailers through the secondary distribution system) with conventionally
11 distributed pet products available at retailers (for the reasons alleged below).

12 5. The 2015 FTC Report stated that “the secondary distribution system facilitates
13 increased competition between veterinarians and other retailers, resulting in additional purchasing
14 options and potentially lower prices for consumers, particularly for OTC flea and tick products.” *Id.* at
15 90. In a Statement to the House Subcommittee on Commerce, Manufacturing, and Trade on April 29,
16 2016, the FTC stated that the secondary distribution system for pet medications “likely results in lower
17 prices than would otherwise prevail if exclusive distribution were being strictly enforced.” Today,
18 nearly 40% of all pet medications are purchased at pharmacies, “big-box” stores, pet specialty stores,
19 on-line merchants, and other non-veterinary retail outlets. According to the FTC, making pet
20 medications available to consumers for lower prices than are available through veterinarians is a pro-
21 competitive market outcome.

22 6. In this case plaintiffs claim that the acquisition of VIP Petcare by PetIQ violates
23 Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 2 of the Sherman Act, 15 U.S.C. § 2,
24 because the merger-specific anticompetitive effect of the PetIQ/VIP acquisition is likely to enable
25 defendants to monopolize the secondary distribution system—or bring them dangerously close to
26 doing so. Plaintiffs seek equitable relief to permanently enjoin the unlawful acquisition and damages.¹

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¹ Count II of the initial Complaint

1
2 7. Defendants’ monopolization or attempted monopolization of secondary distribution
3 system results in fewer suppliers from whom retailers can purchase inventory and deprives consumers
4 of the benefits of robust wholesale price competition. Prior to the merger, retailers could “horse trade”
5 by playing multiple secondary suppliers one another to reach the lowest price. Today, retailers only have
6 PetIQ from whom to purchase the class of “veterinarian only” pet medications.

7 8. The acquisition therefore violates Section 7 of the Clayton Act and should be enjoined
8 or limited and defendants attempt to monopolize the pet parasiticides formerly sold through the
9 secondary distribution system violates Section 2 of the Sherman Act, for which violations plaintiffs seek
10 equitable relief, treble damages, attorneys’ fees, and costs of this action.

11 **II. THE PARTIES**

12 9. Plaintiff, MED VETS INC. (“Med Vets”), is a corporation organized, existing and doing
13 business under and by virtue of the laws of the State of Florida, with its headquarters at 10811 Sunset
14 Plaza Circle, Suite 406, Ft. Myers, FL 33908. Med Vets is a licensed wholesale distributor of veterinary
15 pharmaceutical products, mostly those requiring a prescription from a veterinarian to be lawfully
16 purchased by a consumer.

17 10. Plaintiff, BAY MEDICAL SOLUTIONS INC. (“Bay Medical”), is a corporation
18 organized, existing and doing business under and by virtue of the laws of the State of Florida, with its
19 headquarters at 10811 Sunset Plaza Circle, Suite 406, Ft. Myers, FL 33908. Bay Medical, under common
20 ownership with Med Vets, is a wholesale distributor of OTC pet medications, principally, Frontline Plus,
21 a market leading flea-and-tick control parasiticide.

22 11. Defendant VIP PETCARE HOLDINGS, INC., successor in interest to COMMUNITY
23 VETERINARY CLINICS, LLC d/b/a VIP Petcare (“VIP”), is a corporation organized, existing and
24 doing business under and by virtue of the laws of the State of California, with its headquarters at 5813
25 Skylane Blvd., Windsor, CA 95401. VIP operates 2,900 veterinarian clinic locations and 76,000 mobile
26 clinics and employs over 1,400 veterinarians in 31 states. According to press reports, when VIP acquired
27 PawsPlus in November 2014, the deal created the largest single provider of veterinary care in the
28 country.

1 12. Defendant, PETIQ, INC. (“PetIQ”), is a publicly-held corporation organized, existing
2 and doing business under and by virtue of the laws of the State of Delaware, with its headquarters at 500
3 E. Shore Drive, Suite 120, Eagle, ID 83616. PetIQ is also a wholesale distributor of OTC pet medications
4 and manufactures and distributes a line of “generic” versions of well-known pet medications and
5 products. PetIQ distributes such products to Walmart, Target, Kroger, Albertsons, Publix, Meijer,
6 Costco, Sam’s Club, BJ’s Wholesale Club, PetSmart, PetCo, Phillips Pet Food and Supplies, Animal
7 Supply Co., Amazon.com, Chewy.com, Walmart.com, Jet.com, PetSmart.com, PetCo.com, and others.

8 **III. JURISDICTION AND VENUE**

9 13. This court has subject matter jurisdiction and jurisdiction over the parties pursuant to 28
10 U.S.C. §§ 1331 and 1337 and over the federal antitrust claims asserted herein under Section 16 of the
11 Clayton Act, 15 U.S.C. § 26, Section 4 of the Clayton Act, 15 U.S.C. §15 , Section 7 of the Clayton Act,
12 15 U.S.C. § 18, Section 2 of the Clayton Act, 15 U.S.C. § 13, and Section 2 of the Sherman Act, 15
13 U.S.C. § 2.

14 14. Venue is proper in this district pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22,
15 and 28 U.S.C. § 1391, in that this case involves the acquisition of the ownership of VIP, a California
16 domestic corporation. Both defendants are found and transact business in the Northern District of
17 California and throughout the United States.

18 **IV. TRADE AND COMMERCE**

19 15. Defendants are engaged in “commerce,” as defined in Section 1 of the Clayton Act, 15
20 U.S.C. § 12(a). The sale of pet medications at wholesale is a distinct “line of commerce” within the
21 meaning of Section 7 of the Clayton Act, 15 U.S.C. § 18. Defendants’ transactions and conduct has
22 and will have a substantial, direct, and reasonably foreseeable effect on interstate commerce. The
23 goods referred to herein as being the subject of price discrimination were sold across state lines.

24 **V. THE TRANSACTION**

25 16. Pursuant to an agreement announced on January 8, 2018 and consummated on January
26 17, 2018, defendant, PetIQ, through a wholly-owned subsidiary, acquired the veterinary and wholesale
27 distribution business of defendant, VIP, a national chain of 2,900 veterinary clinics, 76,000 mobile
28 veterinary clinics, and 29 regional offices. On March 13, 2018, the merged entity announced plans to

1 open an additional 1,000 veterinary clinics. With the acquisition of VIP's wholesale distribution of
2 Frontline Plus, the merged entity became the dominant supplier of restricted OTC pet parasiticides to
3 retailers through the secondary distribution system.

4 17. Ms. Susan Sholtis, formerly the head of North American commercial operations for
5 Merial (makers of Frontline Plus), was appointed PetIQ's president, effective October 1, 2018, after
6 being appointed to its Board of Directors on March 15, 2018, immediately after the VIP acquisition.
7 Subsequent to the VIP acquisition, on March 19, 2018, PetIQ appointed Susan Sholtis as a member of
8 its Board of Directors. PetIQ's press release announcing the appointment describes Ms. Sholtis as the
9 former "Head of North America Commercial Operations at Merial ... responsible for transitioning
10 North America operations to Merial's new owner, Boehringer Ingelheim" and as having "spent eight
11 years at Merial beginning in 1996 where she most recently had global responsibility for managing two
12 of the largest brands in animal healthcare, FRONTLINE® and HEARTGARD®."

13 18. The merged entity will have the ability and incentive to dominate and monopolize the
14 distribution system for veterinary medications traditionally distributed through the secondary system.
15 Moreover, manufacturers stand to benefit from the creation of a single, dominant gateway for that
16 group of products, giving them greater control over secondary distribution to retailers. The transaction
17 violates Section 7 of the Clayton Act because it may substantially lessen competition in the wholesale
18 supply of veterinary medications to non-veterinarian, consumer retail outlets.

19 VI. THE SECONDARY DISTRIBUTION SYSTEM

20 19. Defendant, PetIQ's, dominance over the secondary distribution system appears to have
21 been successful, or nearly so, since the VIP acquisition. According to information distributed at a
22 Jefferies 2018 Consumer Conference on June 19-20, 2018 in Nantucket, MA, the merged entity now
23 distributes a "95% Share of Rx in Retail" (Ex. B to Motion for Expedited Limited Discovery at 7) and
24 90% of "direct purchasing from animal health suppliers" for delivery to retailers to be sold to consumers
25 (Ex. B at 12 to Motion for Expedited Limited Discovery). By any measure, 90% and 95% market shares
26 constitute monopolies.

27 20. The precise market definitions to which these shares refer are largely undefined. But, "Rx
28 in Retail" likely refers to prescription pet medications, a class of products purported to be sold only by

1 veterinarians and veterinarian clinics and distributed to retailers through the secondary market. The
2 second market, “direct purchasing from animal health suppliers” suggests control of distribution of both
3 non-prescription medications traditionally restricted to the secondary distribution system (*e.g.* Frontline
4 Plus) and conventionally distributed OTC pet products. The precise list of secondary-distributed
5 products and the identity and shares of the market are not known with precision by plaintiffs, but such
6 information is likely to be contained in the parties’ pre-merger Notice and Report (HSR filings)
7 submitted by defendants to the FTC in advance of the transaction.

8 21. With the notable exception of Bayer Animal Health, nearly all animal health
9 pharmaceutical manufacturers engage in the subterfuge that they restrict distribution of prescription and
10 certain OTC medications to veterinarians for sale to the public. In spite of this, some 38% of all pet
11 medications, including prescription and restricted OTC pet parasiticides, are sold at pharmacies, big-
12 box stores, pet specialty stores, or on-line.

13 22. Bayer Animal Health is the only major veterinary pharmaceutical manufacturer that has
14 broken from the pack by openly supporting the sale of its pet medications by pharmacies and on-line
15 merchants. In February 2010, Bayer announced an end to its decades-old policy of selling its Advantage
16 and K-9 Advantix flea and tick prevention products exclusively through veterinarians. Bayer’s rival, Eli
17 Lilly’s Elanco, responded with a widely-disseminated call-to-arms in a letter to U.S. veterinarians,
18 stating:

19 Your business is at a crossroad. Will you stand by and watch while industry
20 “leaders” redirect patients outside your office for veterinary products? Will you
21 endorse companies which disrespect your profession and redirect patients to other
22 sources? Or will you support companies whose words are supported by action? At
23 Elanco, we believe it is critically important to align actions and words. We believe
24 our unwavering commitment to veterinarians, demonstrated through innovative
25 product introductions and methods of keeping our products within the veterinary
26 channel, demonstrate our support to you and your practice.

27 23. Bayer sued Eli Lilly over the disparaging statements in the letter, claiming false
28 advertising and unfair competition. (Southern District of New York Case No. 1:11-cv-03047-AKH, filed
May 4, 2011). In the Consent Decree terminating the case, Lilly (including its sales force, employees
and agents) were required to refrain from making or disseminating any of the following statements:

a. That there is a direct correlation between Bayer’s sales of pet medicines through

1 retail stores and a decline in veterinary-dispensed flea medication; or

2 b. That Bayer does not support veterinarians; or

3 c. That Elanco's pet medicines cannot ever be purchased by pet owners from
4 Internet pharmacies; ...

5 24. Contrary to the last stipulation, Elanco's Comfortis, an oral flea treatment for dogs and
6 cats, and other Elanco medications were and remain available for purchase through a number of non-
7 veterinarian Internet pharmacies, including 1800petmeds.com and drsfostersmith.com. As Bayer
8 summarized in its Complaint, although sales "to th[e] non-veterinary market violated the terms of
9 Bayer's and Elanco's sales policies, this practice was and is common in the sale of many pet medicines."

10 25. Merial manufactures Frontline Plus, which it represents as the best-selling veterinary
11 product in the world. Frontline Plus is a continual use parasiticide for dogs and cats containing the active
12 ingredients fipronil and methoprene. As the top-selling pet flea and tick parasiticide purchased at *retail*
13 year after year, Frontline Plus became the only true "blockbuster" pet medication in history, attaining
14 global sales of almost \$ 1 billion in the years before Merial's patents began to expire and imitators (one
15 of which was PetIQ) began to enter the retail market.

16 26. When Bayer decided to supply retailers directly, Merial also responded with a letter to
17 veterinarians. Merial's then U.S. Operations President wrote, "Merial's policy has always been to sell
18 Frontline products only to licensed practicing veterinarians. I want to personally assure you that this
19 policy remains unchanged. So if you hear that Frontline products are 'going OTC,' it isn't true."

20 27. The letter was met with incredulity by most veterinary practitioners, who were fully
21 aware that Frontline products were widely available at Costco, PetSmart, and Petco and from e-
22 commerce merchants, such as PetMed Express. An article in 2010 in the veterinary industry publication
23 VIN News Service suggested that Merial knowingly misrepresented its distribution policies. The
24 company even appeared to concede that its distribution policies were bereft of any legitimate business
25 purpose, other than to vie for the loyalty of veterinarians by paying lip service to a policy observed in
26 name only. A Merial executive also reportedly asserted that the antitrust laws were limiting the
27 company's ability to "aggressively enforce" its policy, because retail sales are not illegal and because
28

1 Frontline is the market leader, putting them under “particular scrutiny to avoid breaking laws against
2 restraint of trade, anti-competitive behavior.” The Merial executive was quoted as saying:

3 We’re caught between having a sales policy that we enforce and legal constraints that
4 dictate that we must be extremely careful how we enforce it. It may sound like a story
5 we’re concocting. We haven’t raised it much before because it’s a legalistic argument,
6 and I’m afraid people may not understand the extent to which this is a very important
7 concern.

8 Yet, Merial for years had maintained so-called “Zulu” accounts free of sales commissions to facilitate
9 the flow of Frontline Plus into the secondary distribution system, thereby supplying the necessary
10 inventories to maintain the product’s leading retail sales position.

11 28. Pet parasiticide manufacturers continue to insist that distribution of their products is
12 limited to veterinarians, even though large volumes of these products are sold by non-veterinarian
13 retailers. The PetIQ acquisition of VIP restrains the volume of distribution to retail outlets with no
14 legitimate purpose but to enable manufacturers artificially to limit supply to maintain prices above their
15 competitive levels. With PetIQ as practically the only available wholesaler, manufacturers can perpetuate
16 the subterfuge while at the same exercising greater discipline and control over secondary distribution.

17 **VII. VETERINARY PRESCRIPTION NON-PORTABILITY**

18 29. Unlike prescription drugs for humans, which are prescribed by doctors but sold only by
19 pharmacies, there are no statutory or regulatory restrictions on the right of veterinarians to dispense pet
20 medications, so veterinarians both prescribe and sell prescription as well as high-value OTC pet
21 medications. A financial conflict of interest exists when the exclusive legal right to prescribe is
22 combined with *de facto* exclusive authorization to dispense. In such an environment, competition in the
23 market for pet medications can be severely distorted when manufacturers restrain retail supplies.

24 30. To purchase prescription pet medications from a retailer, a consumer must first obtain a
25 “portable” prescription from their veterinarian. Although many veterinarians provide portable
26 prescriptions to clients upon request, the FTC observed that “complaints persist that some veterinarians
27 do not always comply with requests for prescriptions.” 2015 FTC Report, at 18. For this reason, federal
28 legislation has been introduced on several occasions to require veterinarians to provide portable
prescriptions for every medication they prescribe. (*See, e.g.*, Fairness to Pet Owners Act of 2011, H.R.

1 1406, 112th Cong. (2011); Fairness to Pet Owners Act of 2014, H.R. 4023, 113th Cong. (2014); and
2 Fairness to Pet Owners Act of 2014, S. 2756, 113th Cong. (2014)). Such legislation is intended to enable
3 pet owners to shop for the best prices for pet medications.

4 31. However, as the FTC recognized, even achieving universal portability of pet medication
5 prescriptions is unlikely to enhance competition in the presence of restrictive manufacturer distribution
6 policies. Indeed, maintaining the secondary distribution system and the availability of prescription
7 medications from non-veterinary retailers is necessary for any improvement in veterinary prescription
8 portability to have a pro-competitive effect. With PetIQ in control of the distribution of prescription pet
9 medications, prescription portability can do little to stimulate competition and create competitive
10 downward pressure on pet medications.

11 **VIII. THE RELEVANT MARKET**

12 32. The relevant lines of commerce and product markets in which to analyze the effects of
13 PetIQ's acquisition of VIP are the wholesale markets for prescription and restricted pet parasiticides for
14 distribution to non-veterinary retailers (the secondary distribution system for prescription and restricted
15 OTC pet parasiticides, respectively). A small but significant and non-transitory increase in the wholesale
16 price of prescription and restricted pet parasiticides by a hypothetical monopolist distributor in each of
17 the relevant markets likely would be profitable.

18 33. The relevant geographic market for analyzing the effects of the acquisition is the United
19 States.

20 **IX. ANTICOMPETITIVE EFFECTS**

21 34. As a result of defendants' transaction, the combined company possesses considerable
22 capacity and opportunity to purchase large quantities of prescription pet parasiticides through its
23 veterinary clinics, and plans to increase such capacity with the opening of an additional 1,000 veterinary
24 clinics in the near future. Endowed with VIP's wholesale access to such large quantities of prescription
25 pet medications and PetIQ's comprehensive relationships with retailers, the combined company has the
26 capacity to gain a monopoly share of distribution of the products traditionally flowing through the
27 secondary distribution system. The market for prescription parasiticides is vulnerable because it is
28 already highly concentrated. Plaintiffs estimate that in 2017, VIP distributed over 27% of the

1 prescription pet parasiticides sold by non-veterinary retailers, compared to about 25% of retailer-sold
2 medications that were sourced from all other U.S. veterinarian-wholesalers combined. Other key
3 wholesalers of prescription products to non-veterinary retailers include Southeastern Veterinary Exports
4 (a captive distributor to 1-800-Petmeds) (33%), Lambert Vet Supply (5%), Rainbow Vet Supply (4%),
5 Pet Vet Supplies (2%), and plaintiff, Med Vets (4%). Should defendants receive discriminatory pricing
6 or exclusive distribution agreements for prescription pet parasiticides similar to the discriminatory
7 pricing and exclusive agreements received for restricted OTC medications, rival distributors, such as
8 plaintiff and other distributors, including, are likely to be foreclosed from a competitive source of supply
9 and forced to exit the market. PetIQ's resulting dominant position benefits manufacturers by
10 consolidating control of secondary distribution for multiple rival manufacturers, but deprives retailers
11 of a competitive choice of wholesale distributors and consumers of the benefits of unfettered competition
12 in the wholesale market.

13 35. As a result of defendants' past conduct, non-veterinary retailers have been deprived of
14 numerous choices of wholesale suppliers of pet medications, including Lambert, Rainbow, and plaintiff
15 Pet Vets, and others not presently known to plaintiffs and consumers have been deprived the benefits of
16 a competitive wholesale market. The anticompetitive harm to the secondary distribution system
17 attributable to the PetIQ acquisition, therefore, substantially threatens to harm to competition in the pet
18 medication market. Defendants' transaction establishes a common secondary distributor for several
19 competing veterinary pharmaceutical manufacturers and it is likely to result in reduced lower volumes
20 of medications available to non-veterinarian retailers and are is likely to facilitate inter-brand
21 coordination on price and other coordinated effects.

22 36. Entry of new secondary distributors into the relevant markets is unlikely to prevent or
23 remedy the anticompetitive effects of defendants' transaction or conduct. Such wholesaling requires
24 veterinary licensing and other regulatory authorizations and product for distribution in addition to
25 appropriate relationships with manufacturers and retailers. A new entrant would find it practically
26 impossible to establish and cultivate the business relationships necessary to purchase and sell products
27 in competition with PetIQ.

28

1 37. The transaction will not generate verifiable, merger-specific efficiencies in the relevant
2 markets sufficient to reverse or outweigh the anticompetitive effects that are likely to occur and have
3 occurred. The parties' arrangements and co-ownership create no additional or unique improvements or
4 greater efficiencies than a competitive distribution market. Any savings resulting from the parties'
5 transaction will inure only to the profits of the enterprise and will result in no price or non-price retailer
6 or consumer benefits.

7 38. For years, pet medication manufacturers have known that artificial restraints on the
8 distribution of pet medications through "veterinarian only" distribution policies risks exposing them to
9 antitrust liability. The restrictive, discriminatory, and exclusionary arrangements facilitated by the
10 defendants' transaction, which in the process lowers output and raises prices, also violates the antitrust
11 laws. Industry participants should not be permitted to accomplish indirectly what the antitrust laws
12 prohibit from accomplishing directly.

13 39. Accordingly, the transaction substantially may lessen competition in the secondary
14 distribution of certain prescription pet parasiticides and is likely to lower the output and raise the prices
15 of those products. The merger has created a dangerous probability that defendants will succeed in
16 monopolizing the secondary distribution of certain pet parasiticides.

17 **XI. ANTITRUST INJURY**

18 40. As a direct, proximate, and foreseeable result of defendants' transaction and antecedent
19 conduct, plaintiffs have been injured in their business and property or are threatened with such injury.
20 Plaintiff, Bay Medical, has been excluded from the wholesale market for the distribution of restricted
21 OTC pet parasiticides to non-veterinarian retailers. Plaintiff, Med Vets, is threatened with exclusion
22 from the wholesale market for the distribution of prescription pet parasiticides to non-veterinarian
23 retailers and has no adequate remedy at law.

24 **XII. VIOLATIONS ALLEGED**

25 41. Plaintiffs incorporate the allegations of paragraphs 1 through 37 above as if fully set forth
26 in each Count herein.
27
28

1 **COUNT I**

2 **(Unlawful Merger in Violation of the Clayton Act § 7)**

3 42. Plaintiffs bring Count I of this action under Section 16 of the Clayton Act, 15 U.S.C. §
4 26, to prevent and restrain the defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.
5 The likely effect of the defendants' acquisition will be to lessen competition substantially in interstate
6 trade and commerce in both relevant markets throughout the country, in violation of Section 7 of the
7 Clayton Act, 15 U.S.C. § 18.

8 43. Plaintiffs are threatened with the loss of their business and property and other irreparable
9 harm from the violation and have no adequate remedy at law.

10 **COUNT II**

11 **(Attempted Monopolization in Violation of the Sherman Act § 2)**

12 44. Plaintiffs bring Count III of this action under Section 4 of the Clayton Act, 15 U.S.C. §
13 15 and Section 16 of the Clayton Act, 15 U.S.C. § 26, for damages and injunctive relief against
14 defendants for violating Section 2 of the Sherman Act, 15 U.S.C. § 2. Defendants' acquisition
15 transaction and antecedent conduct and create a dangerous probability that defendants will succeed in
16 monopolizing the relevant markets in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2, as
17 described herein.

18 45. As a direct and proximate result of the foregoing, plaintiffs have lost their business and
19 property and are threatened with additional loss and injury for which there is no adequate remedy at law.

20 **XIII. RELIEF REQUESTED**

21 WHEREFORE, plaintiffs request the following relief:

22 A. A declaration that the Pet IQ acquisition of VIP violates Section 7 of the Clayton Act, 15
23 U.S.C. § 18;

24 B. A preliminary order enjoining defendants from proceeding to integrate the acquired
25 companies into the operations of PetIQ and requiring defendants to hold the assets acquired in the
26 transaction separate during the pendency of this litigation;

27 C. A temporary order enjoining defendants from soliciting additional contracts from
28 veterinary pharmaceutical manufacturers without prior notification to the Court and to plaintiffs;

1 D. A permanent order requiring PetIQ to divest its interests in VIP and for a novation of the
2 January 17, 2018 acquisition;

3 E. Three-fold damages directly and proximately caused by defendants' anticompetitive
4 conduct and attempted monopolization of the relevant markets;

5 F. An order awarding a reasonable attorneys' fee and the costs of this suit; and,

6 G. Such other further temporary and permanent equitable relief as may be reasonably
7 necessary.

8 **DEMAND FOR JURY TRIAL**

9 Plaintiffs demand trial by jury of all issues so triable.

10
11 Dated: October 3, 2018

12
13
14 /s/ Jonathan L. Rubin

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