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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. 3:18-CV-02054-MMC

**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. Plaintiffs allege that the acquisition of VIP by PetIQ violates Section 7 of the Clayton
7 Act, 15 U.S.C. § 18, and Section 2 of the Sherman Act, 15 U.S.C. § 2. The merger removes an
8 independent competitor, VIP, from the market, the effect of which may be substantially to lessen
9 competition or tend to create a monopoly in a line of commerce, *to-wit*: the wholesale distribution to
10 non-veterinary retailers of unmeasured veterinary wellness and medication products.

11 2. Most products available at retail stores and through on-line forums are “measured.”
12 However, most veterinary wellness and medication products are “unmeasured.” Measured products are
13 those that are tracked by retail measurement services such as The Nielsen Company (US), LLC
14 (“Nielsen”). Firms such as Nielsen aggregate point of sale (POS) data from store checkout scanners,
15 employ field auditors to collect sales data through in-store inventory and price checks, and analyze data
16 about internet commerce. Unmeasured products are available in retail stores such as Petco, PetSmart,
17 Wal-Mart or Sam’s Club, but sales of these products are not tracked by firms such as Nielsen. Most or
18 all of the products served by the relevant market in this case are preventative medications designed to
19 protect animals against fleas, ticks, heartworm, and infection, both prescription and non-prescription,
20 that are “unmeasured” products.

21 3. The principal channel through which unmeasured preventative pet medications reach
22 retailers is through veterinarian practices that choose to resell pet medications to the wholesale market
23 rather than directly to the public. This practice historically has been referred to as “diversion,” and the
24 veterinarians that resell pet medications for distribution into the retail channel have been referred to as
25 “diverters.” Plaintiffs Med Vets and Bay Medical are diverters with a wholesale veterinary pharmacy
26 license to sell unmeasured pet medications, as is VIP. Historically, VIP, which also operates veterinary
27 clinics and mobile vaccination facilities, has been a significant diverter of veterinary wellness and
28 medication products and has served as an important independent wholesale source for distributors.

1 Historically, PetIQ, has been a distributor of pet products to virtually every significant retailer in the
2 U.S. In combination, the two firms are using VIP’s veterinarian status to acquire large quantities of
3 unmeasured pet wellness and medication products for the purpose of re-selling or “diverting” them to
4 PetIQ for sale to retailers, thereby foreclosing competition from other wholesaler/distributors. After their
5 first quarter of operations, the combined entity claimed to control over 90% of the wholesale market for
6 unmeasured pet wellness and medication products.

7 4. The presence of unmeasured pet wellness and medication products on retailer’s store
8 shelves and in on-line fulfillment centers is due to historical reasons. For years, the avowed policy of
9 the major veterinary pharmaceutical manufacturers—including, Merial (currently a division of
10 Boehringer Ingelheim), Elanco Animal Health (a division of Eli Lilly), Zoetis, Merck Animal Health,
11 Pfizer, and Novartis—has been to distribute their animal health medications solely through veterinary
12 clinics and practitioners, or through dispensing pharmacies where the pet owner has obtained a portable
13 prescription.¹ Animal health manufacturers refused to sell their products to retailers directly. As a result,
14 these products are supposed to be sold only by veterinary clinics and pharmacies and not through non-
15 veterinary retail stores. They are therefore not tracked by Nielsen or other retail measurement firms and
16 are thus “unmeasured.”

17 5. However, in spite of the manufacturers’ avowed policies, veterinary wellness and
18 medication products did and do appear on retail shelves. They do so through the unconventional
19 wholesale distribution to non-veterinary retail channel, which explains why pet wellness and medication
20 products are unmeasured retail products. Defendants’ public filings recognize that the wholesale
21 distribution to non-veterinary retailers of unmeasured veterinary wellness and medication products
22 constitutes and defines a separate and distinct line of commerce.

23 6. The manner in which the pet wellness and medication market operates and are distributed
24 has garnered the attention of the federal antitrust authorities. In 2011, the Federal Trade Commission
25 opened an investigation into competition in the U.S. market for pet medications. The resulting report,
26 entitled “Competition in the Pet Medications Industry, Prescription Portability and Distribution
27

28 ¹ A notable exception is Bayer Animal Health, which discontinued its veterinarian-only distribution
policy in 2010. *See* ¶ 26, *infra*.

1 Practices,” was released in May 2015 (“2015 FTC Report”). Among other things, the 2015 FTC Report
2 updated the industrial nomenclature, referring to diverters as “secondary distributors” and the
3 mechanism by which pet wellness and medication products are supplied to retailers as the “secondary
4 distribution system.”

5 7. The 2015 FTC Report stated that “the secondary distribution system [i.e., the group of
6 wholesalers that channel product from veterinarians to retailers] facilitates increased competition
7 between veterinarians and other retailers, resulting in additional purchasing options and potentially
8 lower prices for consumers, particularly for OTC flea and tick products.” *Id.* at 90. In a Statement to the
9 House Subcommittee on Commerce, Manufacturing, and Trade on April 29, 2016, the FTC stated that
10 the secondary distribution system for pet medications “likely results in lower prices than would
11 otherwise prevail if exclusive distribution were being strictly enforced.”

12 8. Defendant PetIQ, has been a significant player in the secondary market. As the company
13 stated in the 2018 Annual Form 10-K it filed with the Securities Exchange Commission on March 13,
14 2018, “We [PetIQ] pioneered and are the *leading seller to the retail channel* of pet products that were
15 *previously available for purchase primarily from veterinary clinics.*” (emphasis added). These products
16 are the same unmeasured veterinary wellness and medication products sold to retailers through the
17 secondary market described above.

18 9. On January 17, 2018, PetIQ acquired VIP in a transaction valued at \$220,000,000.

19 10. Prior to the challenged acquisition by PetIQ, defendant VIP engaged in two lines of
20 commerce. On the one hand, “[t]he company provides veterinary care to pet owners through their
21 nationwide network of community clinic locations and wellness centers within the United States.” PetIQ
22 Form 8-K/A, Exhibit 99.1, at 9/20, filed April 2, 2018. On the other hand, “The company *is also a*
23 *wholesale distributor of pet care products.*” *Id.* Because of its clinical operations, VIP enjoys unfettered
24 access to veterinary wellness and medication products and resold these products at wholesale. Thus,
25 prior to the acquisition, VIP was an independent competitor in the secondary distribution system, and
26 the products it distributed were unmeasured veterinary wellness and medication products.

27 11. Because of the challenged transaction with VIP, PetIQ has acquired unfettered access to
28 unmeasured pet wellness and medication products. By removing VIP as a horizontal competitor, and

1 acquiring its supply of veterinary wellness and medications, PetIQ has come to dominate the secondary
2 distribution market and forced other secondary distributors to exit by virtue of its acquired market power.
3 The combined defendants are abusing VIP's veterinarian status to acquire significant quantities of
4 unmeasured pet medications not necessary for their nationwide network of pet treatment facilities, and
5 re-selling or diverting them to retailers, thereby foreclosing competition from other
6 wholesaler/distributors such as plaintiffs. If left unchecked, PetIQ will be able to unilaterally raise prices
7 to retailers and/or distort inter-brand competition.

8 12. Defendants' transaction establishes a single distributor for several competing veterinary
9 pharmaceutical manufacturers, which will likely facilitate inter-brand coordination on price and other
10 coordinated effects. The likely direct effects of the transaction, therefore, are to consolidate dominance
11 of distribution for multiple rival manufacturers of unmeasured pet wellness and medication products, to
12 foreclose rival wholesalers from their customers, and depriving retailers of a competitive choice of
13 wholesale distributors.

14 13. The result of the challenged acquisition, therefore, is to substantially lessen competition
15 or tend to create a monopoly in the defined market which violates Section 7 of the Clayton Act (Count
16 I). Defendants have also succeeded in monopolizing the wholesale distribution to non-veterinary
17 retailers of unmeasured veterinary wellness and medication products, in violation of Section 2 of the
18 Sherman Act, (Count II) or have violated Section 2 by attempting to do so (Count III).

19 14. As a result of defendants' acquisition transaction, the entire customer base of plaintiff
20 Bay Medical, a wholesaler of unmeasured product (Frontline Plus), has been foreclosed to it and it is no
21 longer in business. Plaintiff, Med Vets, a wholesaler of unmeasured prescription veterinary products, is
22 being foreclosed from supplying the market and threatened by the dominance of PetIQ. Plaintiffs seek
23 equitable relief, treble damages, attorneys' fees, and costs of this action.

24 **II. THE PARTIES**

25 15. Plaintiff, MED VETS INC. ("Med Vets"), is a corporation organized, existing, and doing
26 business under and by virtue of the laws of the State of Florida, with its headquarters at 10811 Sunset
27 Plaza Circle, Suite 406, Ft. Myers, FL 33908. Med Vets is a licensed wholesale distributor of
28

1 unmeasured veterinary pharmaceutical products to non-veterinary retailers, mostly those requiring a
2 prescription from a veterinarian to be lawfully purchased by a consumer.

3 16. Plaintiff, BAY MEDICAL SOLUTIONS INC. (“Bay Medical”), is a corporation
4 organized, existing, and doing business under and by virtue of the laws of the State of Florida, with its
5 headquarters at 10811 Sunset Plaza Circle, Suite 406, Ft. Myers, FL 33908. Bay Medical, under common
6 ownership with Med Vets, is a wholesale distributor of unmeasured over-the-counter (“OTC”) pet
7 medications to non-veterinary retailers, principally, Frontline Plus, a market leading flea and tick control
8 parasiticide.

9 17. Defendant, VIP PETCARE HOLDINGS, INC., successor in interest to COMMUNITY
10 VETERINARY CLINICS, LLC d/b/a VIP Petcare (“VIP”), is a corporation organized, existing, and
11 doing business under and by virtue of the laws of the State of California, with its headquarters at 5813
12 Skylane Blvd., Windsor, CA 95401. Pre-merger, VIP operated veterinary clinics around the country and
13 also distributed unmeasured pet medications through the wholesale market to non-veterinary retailers.
14 It competed with both PetIQ and plaintiffs.

15 18. Defendant, PETIQ, INC. (“PetIQ”), is a publicly-held corporation organized, existing,
16 and doing business under and by virtue of the laws of the State of Delaware, with its headquarters at 500
17 E. Shore Drive, Suite 120, Eagle, ID 83616. PetIQ is also a wholesale distributor of unmeasured OTC
18 pet medications to non-veterinary retailers and manufactures and distributes a line of “generic” versions
19 of well-known pet medications and products. PetIQ distributes such products to Walmart, Target,
20 Kroger, Albertsons, Publix, Meijer, Costco, Sam’s Club, BJ’s Wholesale Club, PetSmart, Petco, Phillips
21 Pet Food and Supplies, Animal Supply Co., Amazon.com, Chewy.com, Walmart.com, Jet.com,
22 PetSmart.com, PetCo.com, and others. As a result of the VIP acquisition, it now operates one of the
23 largest veterinary clinic conglomerates in the U.S. and is able to steer significant amounts of unmeasured
24 pet wellness and medication products to itself and to the detriment of competition.

25 **III. JURISDICTION AND VENUE**

26 19. This court has subject matter jurisdiction and jurisdiction over the parties pursuant to 28
27 U.S.C. §§ 1331 and 1337 and over the federal antitrust claims asserted herein under Section 16 of the
28 Clayton Act, 15 U.S.C. § 26, Section 4 of the Clayton Act, 15 U.S.C. §15, Section 7 of the Clayton Act,

1 15 U.S.C. § 18, Section 2 of the Clayton Act, 15 U.S.C. § 13, and Section 2 of the Sherman Act, 15
2 U.S.C. § 2.

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

7 **IV. TRADE AND COMMERCE**

8 21. Defendants are engaged in “commerce,” as defined in Section 1 of the Clayton Act, 15
9 U.S.C. § 12(a). The wholesale distribution to non-veterinary retailers of unmeasured pet wellness and
10 medication products is a distinct “line of commerce” within the meaning of Section 7 of the Clayton
11 Act, 15 U.S.C. § 18. Defendants’ transactions and conduct has and will have a substantial, direct, and
12 reasonably foreseeable effect on interstate commerce. The goods referred to herein as being the subject
13 of price discrimination were sold across state lines.

14 **V. THE TRANSACTION**

15 22. Under an agreement announced on January 8, 2018 and consummated on January 17,
16 2018, defendant PetIQ, through a wholly-owned subsidiary, acquired the clinical and veterinary and
17 wholesale distribution business of defendant VIP. For years, VIP had diverted significant quantities of
18 unmeasured pet wellness and medication products manufactured by Merial to non-veterinary retailers
19 through the wholesale market. The transaction therefore bridged and solidified the relationship between
20 PetIQ and Merial, makers of Frontline Plus, HEARTGARD, Nexgard, and other widely recommended
21 or prescribed products. Immediately after the VIP acquisition, Ms. Susan Sholtis, formerly the head of
22 North American commercial operations for Merial, was appointed to PetIQ’s Board of Directors on
23 March 19, 2018. She was appointed President of PetIQ on October 1, 2018. PetIQ’s press release states
24 that Ms. Sholtis “spent eight years at Merial beginning in 1996 where she most recently had global
25 responsibility for managing two of the largest brands in animal healthcare, FRONTLINE® and
26 HEARTGARD®.” Given Ms. Sholtis’s history with Merial, PetIQ can steer Merial’s product to itself
27 on favorable terms, including not only product price, but also duration (a function of the product’s
28

1 expiration date), quantity, packaging, bundled discounts, and financing, and thereby foreclose
2 competitors.

3 23. In sum, the merged entity will have the ability and incentive to dominate and monopolize
4 the market for wholesale distribution to non-veterinary retailers of unmeasured veterinary wellness and
5 medication products. Manufacturers, such as Merial, stand to benefit from the creation of a single,
6 dominant gateway for unmeasured products, giving them greater control over secondary distribution to
7 retailers. The transaction violates Section 7 of the Clayton Act because it substantially may lessen
8 competition in the alleged product market.

9 VI. THE RELEVANT MARKET

10 24. The relevant product market is the wholesale distribution to non-veterinary retailers of
11 unmeasured veterinary wellness and medication products. The market, therefore, is defined by type of
12 customer: non-veterinarian retailer. According to the U.S. Department of Justice and Federal Trade
13 Commission *Horizontal Merger Guidelines* (issued August 19, 2010), “If a hypothetical monopolist
14 could profitably target a subset of customers for price increases, the Agencies may identify relevant
15 markets defined around those targeted customers ... the Agencies often define markets for groups of
16 targeted customers, i.e., by type of customer, rather than by individual customer.”² As alleged above,
17 the secondary distribution system is the only mechanism through which retailers can obtain unmeasured
18 veterinary wellness and medication products. As a result, the customers—retailers—could not and
19 would not switch to a different distribution source if a small but significant and non-transitory increase
20 in the price of unmeasured veterinary wellness and medication products were imposed by a hypothetical
21 monopolist of the secondary distribution system. For the reasons alleged above, animal health
22 manufacturers do not serve as a substitute source of pet wellness and medication products for non-
23 veterinary retailers.

24 _____
25 ² Product market definitions based on a particular mode of distribution that serve the needs of a distinct
26 type of customer have been upheld in many merger cases. See, e.g., *Fed. Trade Comm’n. v. Staples, Inc.*
27 *and Office Depot, Inc.*, 970 F. Supp.1066, 1074 (D.C.D.C. 1997) (relevant product market definition is
28 the sale of consumable office supplies through office supply superstores); *Fed. Trade Comm’n. v. Sysco*
Corp. and U.S. Foods, Inc., 113 F. Supp.3d 1, 26 (D.C.D.C. 2015) (relevant product market definition
is “not any particular food item sold or delivered by defendants, but the full panoply of products and
services offered by them that customers recognize as ‘broadline distribution.’”)

1 30. Bayer Animal Health remains the only major veterinary pharmaceutical manufacturer
2 that has broken from the pack by openly supporting the sale of its pet medications by retailers,
3 pharmacies, and on-line merchants.

4 31. Nonetheless, by 2015, a robust mechanism emerged by which retailers could obtain
5 supplies from manufacturers such as Elanco and Merial through the secondary distribution system.
6 Several competitors entered the wholesale market so that unmeasured veterinary wellness and
7 medication products could be purchased by retailers from a variety of sources. Secondary distribution
8 increased competition and put downward pressure on veterinarian-sold pet wellness and medication
9 products.

10 32. As part of their common scheme to dominate the wholesale market for unmeasured pet
11 wellness and medication products, VIP and PetIQ first targeted the distributors specializing in the sale
12 of Merial's Frontline Plus. Several distributors, including plaintiff Bay Medical, quickly lost all of their
13 retail business to VIP. VIP was supplied with product for wholesale distribution from Merial at
14 preferential prices and/or with longer shelf life, and PetIQ resold those supplies to retailers. Plaintiff,
15 Bay Medical, and other distributors of unmeasured OTC pet wellness and medication products, were
16 foreclosed from the market. This arrangement was followed by the outright acquisition of VIP by PetIQ
17 on January 17, 2018, which now also dominates the wholesale distribution of unmeasured *prescription*
18 veterinary wellness and medication products.

19 33. Today, according to a presentation at a Jefferies 2018 Consumer Conference on June 19-
20 20, 2018 in Nantucket, MA, defendant PetIQ now claims to distribute a "95% Share of Rx in Retail"
21 and 90% of "direct purchasing from animal health suppliers" for delivery to retailers. Together these
22 two product categories comprise the relevant product market. PetIQ touted its dominance in the
23 following pages from its slide presentation from the conference:³

24
25
26
27
28 ³ The complete slide presentation has been previously filed in the docket in this case as "Exhibit A" to
Plaintiffs' Motion for Limited Expedited Discovery, Doc. No. 38-3.



PET IQ

Distributed Product

- Prescription and OTC
- Leading Animal Health Partner to Retailers
 - 95% Share of Rx in Retail
- 24 Hour Delivery to Any Pharmacy

FRONTLINE Plus
NexGard
Heartgard
K9 Advantix II

34. On May 15, 2018, PetIQ’s CEO, McCord Christensen, speaking on an investor conference call, enthusiastically reported that post-acquisition, 64% of PetIQ sales were to unmeasured accounts. *PetIQ’s CEO McCord Christensen on Q1 2018 Results – Earnings Call Transcript*, at 9/23.⁴ Thus, in the first quarter of 2018, only 36% of PetIQ’s sales were through its legacy business of selling measured accounts that report through Nielsen. “Unmeasured accounts are doing extremely well,” said Mr. Christensen, “and made up for any disappointment we would have had in the measured accounts.” *Id.* The PetIQ CEO was referring to the disappointment in measured sales the company would have had *without the unmeasured sales from the VIP acquisition*. “This is the first time I’ve ever communicated that our measured accounts that report through Nielsen in Q1 was 36% of our business,” Mr. Christensen said, “which means unmeasured accounts were 64%.” *Id.*

⁴ Downloaded from <https://seekingalpha.com/article/4174496-petiqs-peti-q-ceo-mccord-christensen-q1-2018-results-earnings-call-transcript?part=single>

1 35. Manufacturers continue to insist that distribution of their products is limited to
2 veterinarians, even as large volumes of these products are sold by PetIQ to non-veterinarian retailers.

3 **VIII. ANTICOMPETITIVE EFFECTS**

4 36. With PetIQ as the dominant distributor of unmeasured veterinary wellness and
5 medication products to retailers, it can profitably benefit from its dominance by raising prices,
6 decreasing output, and affecting inter-brand competition.

7 37. As a result of the acquisition, rival distributors, such as plaintiffs, Southeastern
8 Veterinary Exports, Lambert Vet Supply, Rainbow Vet Supply, Pet Vet Supplies, and other distributors
9 not known to plaintiffs, are being foreclosed from the retail customer base and have been or may be
10 forced to exit the market. The opaqueness of the industry and dearth of any sales measurements
11 precludes plaintiffs from estimating the remaining secondary distributors' market shares at this stage of
12 the litigation.⁵ But, with PetIQ reporting that it controls over 90% of the market, no other secondary
13 distributor could serve as a constraint on defendants' ability to raise prices. And, the direct effect of the
14 transaction is to consolidate dominance of distribution for multiple rival manufacturers of unmeasured
15 pet wellness and medication products and to foreclose rival wholesalers from their customers. As a result
16 of the elimination of VIP as a wholesaler, PetIQ's resulting dominant position as distributor of
17 unmeasured product deprives retailers of a competitive choice of wholesale distributors and deprives
18 competitors, such as plaintiffs, access to retailer customers.

19 38. Defendants' transaction establishes a single distributor for several competing veterinary
20 pharmaceutical manufacturers and is likely to facilitate inter-brand coordination on price and other
21 coordinated effects.

22
23
24 ⁵ Plaintiffs' Motion for Limited Expedited Discovery of Defendants' HSR filings, which requires the
25 filer to estimate competitors' market shares, was denied in the Court's *Order Denying Plaintiffs' Motion*
26 *for Limited Expedited Discovery; Extending Deadline to File First Amended Complaint*, Nov. 28, 2018,
27 Doc. No. 45. Other potential sources regarding wholesale distribution of unmeasured veterinary
28 products have been unavailing. A veterinary industry economist reported, "I have been unable to get
anyone to talk about distribution specifics in the veterinary pharmacy space. That being the case I don't
think there is any hard proof the manufacturers have openly created new channels directly to retailers.
In talking with some of the prominent veterinarians in the profession they categorize these types of
relationships as 'leakages' more than industry wide practice."

1 44. Plaintiffs bring Count I under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent
2 and restrain the defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18. The likely effect
3 of the defendants' acquisition will be to lessen competition substantially in a line of interstate trade and
4 commerce, *to-wit*: the wholesale distribution to non-veterinary retailers of unmeasured veterinary
5 wellness and medication products, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

6 45. Plaintiffs are threatened with the loss of their business and property and other irreparable
7 harm from the violation and have no adequate remedy at law.

8 **COUNT II**

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

10 (All defendants)

11 46. Plaintiffs bring Count II under Section 4 of the Clayton Act, 15 U.S.C. § 15 and Section
12 16 of the Clayton Act, 15 U.S.C. § 26, for damages and injunctive relief against defendants, jointly and
13 severally, for violating Section 2 of the Sherman Act, 15 U.S.C. § 2. Defendants' coordinated conduct
14 and acquisition transaction has created a monopoly in the market for wholesale distribution to non-
15 veterinary retailers of unmeasured veterinary wellness and medication products, in violation of Section
16 2 of the Sherman Act, 15 U.S.C. § 2, as described herein.

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

19 **COUNT III**

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

21 (All defendants)

22 48. Plaintiffs bring Count II of this action under Section 4 of the Clayton Act, 15 U.S.C. §
23 15 and Section 16 of the Clayton Act, 15 U.S.C. § 26, for damages and injunctive relief against
24 defendants, jointly and severally, for violating Section 2 of the Sherman Act, 15 U.S.C. § 2. Defendants'
25 coordinated conduct and acquisition transaction and created a dangerous probability that defendants will
26 succeed in monopolizing the market for wholesale distribution to non-veterinary retailers of unmeasured
27 veterinary wellness and medication products, in violation of Section 2 of the Sherman Act, 15 U.S.C. §
28 2, as described herein.

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

3 **XIII. RELIEF REQUESTED**

4 WHEREFORE, plaintiffs request the following relief:

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

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

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

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

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

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

17 G. Such other further temporary and permanent equitable relief as may be reasonably
18 necessary.

19 **DEMAND FOR JURY TRIAL**

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

1 Dated: December 14, 2018
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4 /s/ Jonathan L. Rubin

5 Jonathan L. Rubin (*Pro hac vice*)

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