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18 UNITED STATES DISTRICT COURT

19 DISTRICT OF NEVADA

20 STRATEGIC PHARMACEUTICAL SOLUTIONS,
INC., d/b/a VetSource Home Delivery,

21 Plaintiff,

22 v.

23 NEVADA STATE BOARD OF PHARMACY, an
24 administrative agency of the State of Nevada; LEO
25 BASCH, an individual; KIRK WENTWORTH, an
26 individual; JASON PENROD, an individual; KEVIN
27 DESMOND, an individual; CHERYL BLOMSTROM,
an individual; and TALLIE PEDERSON, an
individual,

28 Defendants.

CASE NO.:

**COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE
RELIEF FOR VIOLATIONS OF THE
SHERMAN ACT AND STATE LAW**

1 **I. INTRODUCTION**

2 1. Last year, the Supreme Court decided *North Carolina State Board of Dental*
 3 *Examiners v. Federal Trade Commission*, 135 S. Ct. 1101 (February 25, 2015) (“*N.C. Dental*”).
 4 In this landmark decision, the Supreme Court held that a state agency controlled by active market
 5 participants in the same occupation as regulated by the agency must be actively supervised by a
 6 politically accountable state official in order to enjoy immunity from federal antitrust laws,
 7 reasoning that “[w]hen a state empowers a group of active market participants to decide who can
 8 participate in its market, and on what terms, the need for supervision is manifest.” 135 S. Ct. at
 9 1114. Thus, the Supreme Court held that a state agency composed primarily of market
 10 participants is immune from the federal antitrust laws only if its anticompetitive actions are (i) in
 11 pursuit of a clearly articulated state policy and (ii) are actively supervised by the state.

12 2. The Nevada State Board of Pharmacy is nominally a state agency (the Board and
 13 its members, collectively, the “**Pharmacy Board**”), but is controlled by private individual
 14 members who as licensed pharmacists actively participate and compete in the market for the sale
 15 and distribution of Pet Medications in Nevada (“**Relevant Market**”) (“**Pet Medications**”, for the
 16 purpose of this action, means and includes, prescription veterinary medicines prescribed and
 17 intended for household pets and companion animals, including privately owned horses, but not
 18 including medicines for commercial livestock, animals kept in and by zoos or other commercial
 19 establishments, and not including over-the-counter pet medicines). These Pharmacy Board
 20 members are misusing their position to seek to exclude innovative competitors such as Plaintiff
 21 from effectively competing in the distribution of Pet Medications in Nevada. In doing so, the
 22 Pharmacy Board is both (i) exceeding the limited authority granted to them by the State of
 23 Nevada (*i.e.*, not acting pursuant to any clearly articulated state policy) and (ii) exercising their
 24 authority over competitors without adequate (indeed, without any) state oversight and
 25 supervision. Accordingly, the Pharmacy Board’s conduct is not entitled to immunity from the
 26 federal antitrust laws. Absent state-action immunity, the Defendants’ actions violate the
 27 Sherman Act, 15 U.S.C. §§ 1 and 2.
 28

1 3. Plaintiff Strategic Pharmaceutical Solutions Inc. d/b/a VetSource Home Delivery
2 (**"VetSource"** or **"Plaintiff"**) is an out-of-state pharmacy, registered with the Defendant
3 Pharmacy Board (license number PH02320). VetSource competes in the Relevant Market by
4 shipping Pet Medications directly to pet owners at the direction and prescription of licensed
5 veterinarians (**"Direct Shipping"**) (**"veterinarians"** as used in this Complaint includes
6 individual veterinarians, veterinary practices, and veterinary hospitals). VetSource's business
7 model benefits consumers in the form of increased choice and convenience, more competitive
8 pricing for Pet Medications, and increased safety and quality. VetSource's business model also
9 provides veterinarians and pet owners with an alternative to the less efficient and increasingly
10 cost-prohibitive practice of veterinarians directly disbursing Pet Medications to their patient-
11 clients (which the veterinarians are permitted to do under state law), and merely applies to Pet
12 Medications the "drop-shipping" model of disbursing veterinary medicines that has long been
13 permitted under Nevada state law.

14 4. VetSource's innovative Direct Shipping business model, however, threatens
15 individual and traditional pharmacists and pharmacies with increased competition and potential
16 loss of business and profits. To stifle this innovative competition, the Board and its members
17 have taken actions, based on unfounded allegations that VetSource's business model violates
18 regulations of the Nevada State Board of Veterinary Medical Examiners (**"Veterinary Board"**),
19 effectively seeking that VetSource either stop its innovative competitive practices or face having
20 its statutorily required pharmacy license revoked by the Pharmacy Board (thus forcing
21 VetSource out of the market).

22 5. The Pharmacy Board's unlawful and unreasonable exclusion of VetSource as a
23 competitor in the state has injured competition in the Relevant Market and, by seeking to
24 wrongfully exclude a major competitor and exclude innovative, pro-consumer, competitive
25 Direct Shipping practices, has caused and will cause antitrust injury to VetSource. Accordingly,
26 VetSource brings this action under the federal antitrust laws (and corresponding state
27 competition laws) to challenge and seek redress from the anticompetitive, exclusionary,
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1 monopolistic conduct and conspiracy in restraint of trade of the Board and its members (the
2 Pharmacy Board or "**Defendants**") by having the Pharmacy Board's actions declared illegal and
3 a violation of the Sherman Act and state law; to obtain a permanent injunction against the
4 anticompetitive conduct complained of herein; and to recover from the Defendants actual and
5 treble damages suffered by VetSource.

6 **II. THE PARTIES**

7 6. Plaintiff VetSource is an Oregon corporation headquartered in Portland, Oregon
8 and licensed to operate in Nevada under Nevada State Board of Pharmacy license number
9 PH02320.

10 7. Defendant Nevada State Board of Pharmacy is an agency of the State of Nevada.

11 8. a. Defendant Leo Basch, Pharmacy Board member, (Nevada Pharmacy
12 License number 12431), resides in Las Vegas, Nevada. He is sued in his individual and official
13 capacities.

14 b. Defendant Kirk Wentworth, Pharmacy Board member, (Nevada Pharmacy
15 License number 07247), resides in Las Vegas, Nevada. He is sued in his individual and official
16 capacities.

17 c. Defendant Jason Penrod, Pharmacy Board member, (Nevada Pharmacy
18 License number 16876), resides in Reno, Nevada. He is sued in his individual and official
19 capacities.

20 d. Defendant Kevin Desmond, Pharmacy Board member, (Nevada Pharmacy
21 License number 08731), resides in Reno, Nevada. He is sued in his individual and official
22 capacities.

23 e. Defendant Cheryl Blomstrom, Pharmacy Board member, resides in
24 Carson, City, Nevada. She is sued in her individual and official capacities.

25 f. Defendant Tallie Pederson, Pharmacy Board member, (Nevada Pharmacy
26 License number 17431), resides in Las Vegas, Nevada. She is sued in her individual and official
27 capacities.
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1 9. a. Co-conspirator Larry L. Pinson, Pharmacy Board Executive Secretary,
2 (Nevada Pharmacy License number 06015), resides in Reno, Nevada.

3 b. Co-conspirator Dave Wuest, Deputy Pharmacy Board Executive
4 Secretary, (Nevada Pharmacy License number 11245), resides in Reno, Nevada.

5 10. Upon information and belief, others have encouraged and conspired with the
6 Pharmacy Board to commit the exclusionary conduct complained of herein.

7 11. At all relevant times, each Defendant and co-conspirator was an agent of each of
8 the remaining Defendants and their co-conspirators and, in performing the acts alleged in this
9 Complaint, was acting within the course and scope of such agency. Each Defendant and co-
10 conspirator ratified or authorized the wrongful acts of each of the other Defendants and their co-
11 conspirators. Defendants are individually and collectively sued as participants, co-conspirators,
12 and aiders and abettors in the improper acts and transactions that are the subject of this action.

13 **III. JURISDICTION AND VENUE**

14 12. VetSource brings this lawsuit against Defendants seeking declaratory judgment
15 pursuant to 28 U.S.C. § 2201 and monetary and injunctive remedies related to the Defendants'
16 violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2 pursuant to
17 15 U.S.C. §§ 15(a) and 26 and for violations of corresponding state law, including
18 N.R.S. § 598A.060.

19 13. This Court has subject matter jurisdiction over the claims asserted in this lawsuit
20 pursuant to 28 U.S.C. §§ 1331 and 1337 and 15 U.S.C. §§ 15(a) and 26, and pendant and
21 supplementary jurisdiction
22

23 14. This Court has personal jurisdiction over each Defendant because each Defendant
24 resides in Nevada and has substantial, continuous contacts with Nevada.

25 15. Venue is proper in this District because all Defendants are residents of Nevada.
26 28 U.S.C. § 1391(b)(1). Venue is also proper in this District because a substantial part of the
27 events or omissions giving rise to the claims asserted herein occurred in this District.
28 28 U.S.C. § 1391(b)(2).

1 **IV. UNITED STATES TRADE AND COMMERCE, THE RELEVANT MARKET,**
2 **BARRIERS TO ENTRY AND INJURY TO COMPETITION**

3 16. The Pharmacy Board's activities and the conduct of Defendants and their co-
4 conspirators occurred in and affected a substantial portion of interstate commerce, including
5 trade and commerce to, from, and within Nevada. The sale and distribution of Pet Medications
6 occurs in the interstate commerce of the United States.

7 17. VetSource competes with individual pharmacists and traditional pharmacies in the
8 distribution of Pet Medications in the State of Nevada. The distribution of Pet Medications is the
9 relevant product market ("**Product Market**"). The relevant geographic market is the State of
10 Nevada ("**Geographic Market**"). The Relevant Market is thus the distribution of Pet
11 Medications in the State of Nevada. Direct Shipping is part of the Relevant Market.

12 18. By law, to distribute Pet Medications in Nevada, an individual or entity must have
13 a license from the Pharmacy Board and abide by other Pharmacy Board regulations. Obtaining
14 such a license is a lengthy process, limited by education and other qualifications, and constitutes
15 a barrier to entry to the Relevant Market.

16 19. Even for licensed pharmacists or pharmacy companies, a significant investment
17 of time, resources and effort is needed to enter the Relevant Market by Direct Shipping
18 (including contracting with veterinarians), which time, resources and effort are also a barrier to
19 entry to the Relevant Market. The current proceeding of the Pharmacy Board – which would
20 have the effect of excluding under color of state law any competitor seeking to distribute Pet
21 Medications through Direct Shipping – is an additional significant barrier to entry. These
22 barriers to entry, individually and collectively, are such that any new competition by a Direct
23 Shipping or similar method is unlikely to occur at all or would not be likely, timely and sufficient
24 to provide effective competition to existing market participants and members of the Pharmacy
25 Board.

26 20. The Pharmacy Board, through its ability to exclude competitors from the market
27 under color of state law, has market power in the Relevant Market.
28

1 21. The Pharmacy Board's actions complained of herein have and will have the direct
2 effect of excluding a major competitor from providing Pet Medications in the State of Nevada;
3 excluding competition by the Direct Shipping method; causing or tending to cause a monopoly;
4 thus reducing competition and lowering consumer choice for purchasers of Pet Medications in
5 the Relevant Market.

6 22. The Pharmacy Board's actions will also have a direct, negative effect on quality,
7 safety and efficiency in the distribution of Pet Medications in the Relevant Market.

8 23. These illegal and exclusionary actions will have a direct impact on and cause
9 injury to VetSource. This constitutes injury of the type the antitrust laws were intended to
10 prevent.

11 **V. ADDITIONAL FACTUAL ALLEGATIONS**

12 **A. The VetSource Business Model**

13 24. In 2008, VetSource began its primary business as an outsourced pharmacy
14 services provider for veterinarians that contract for VetSource to provide its services at fair
15 market value.

16 25. As stated in each of VetSource's contracts with its veterinarian customers, the
17 following key events occur each time a veterinarian – who is licensed to and can legally
18 prescribe and dispense Pet Medications in Nevada – prescribes a Pet Medication and the
19 veterinarian's pet owner client requests or agrees that the Pet Medication prescription be filled
20 and delivered to his/her home through Direct Shipping. First, upon receiving a request from a
21 contracted veterinarian to process a transaction, VetSource Wholesale (a separate division of
22 VetSource) sells the Pet Medication, wholesale, to the veterinarian. In Nevada, this occurs under
23 Nevada Board of Pharmacy wholesale license number WH01459 or WH01461. The contracted
24 veterinarian takes title to the Pet Medication, but not physical possession.

25 26. Next, the contracted veterinarian sells the Pet Medication to the pet owner at a
26 retail price set by the veterinarian. The Pet Medication is then consigned by the veterinarian to
27 VetSource Home Delivery Pharmacy for processing pursuant to an authorized prescription. In
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1 Nevada, this processing occurs under VetSource's Nevada Board of Pharmacy license number
2 PH02320.

3 27. Then, at the direction of the licensed, prescribing veterinarian, VetSource Home
4 Delivery Pharmacy mails the prescribed and consigned Pet Medication directly to the pet owner.
5 VetSource collects the total cost of the transaction, including the retail price of the product
6 (which is set individually by each veterinarian), plus applicable shipping charges and retail taxes
7 from the pet owner, and then deposits these sums into the individual veterinarian's e-Merchant
8 account.

9 28. The veterinarian pays VetSource an agreed fair market price for the product and
10 for the services provided by VetSource via separate charges by VetSource to the individual
11 veterinarian's e-Merchant account. The charges include one for the wholesale cost of the Pet
12 Medication and one for VetSource's pharmacy processing fee plus delivery charges. The
13 remainder of the funds in the veterinarian's account represents the retail taxes due by the
14 veterinarian to the State of Nevada and the veterinarian's profit margin on the sale to the pet
15 owner, which is property of the veterinarian. The contracted veterinarian may choose to charge a
16 pet owner an amount for any given prescription that is more or less than the wholesale cost of the
17 product and the services provided by VetSource.

18 29. No veterinarians or pet owners are required to use VetSource to fill their
19 prescriptions, and a contracted veterinarian may choose to use VetSource for some but not all of
20 its patients' prescriptions. Those who do use VetSource as an outsourced pharmacy service
21 provider pay fair market value for the product and services, just as they would for any third-party
22 fill service and delivery service.

23 30. VetSource currently operates in all 50 states. It is licensed and in good standing
24 in each of these states as required and purchases all of its veterinary pharmaceutical products
25 directly from leading animal health manufacturers and distributors.

26 31. VetSource's business model and relationships with veterinarians (the same
27 business model under attack by the Pharmacy Board in this case) have been reviewed in detail by
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1 various state boards of pharmacy, expert legal counsel for these boards, trade and professional
 2 associations, and regulatory agencies. These entities have specifically examined issues related to
 3 kickbacks, rebates, and fee-splitting on a state-by-state basis. None of these reviewing entities
 4 have concluded that VetSource's business model violates any applicable laws, including
 5 applicable pharmacy statutes and regulations substantially similar to those the Pharmacy Board
 6 claims to be enforcing against VetSource now. At least eight of these entities have found
 7 VetSource's business model to be lawful and proper; the Nevada Pharmacy Board's actions
 8 aside, none have found VetSource's business model to be unlawful or improper.

9 **B. The Use of VetSource's Services**

10 32. VetSource's business model results in more competitive pricing, greater
 11 efficiency in the delivery of Pet Medications, and increased quality and safety for Pet Medication
 12 purchasers, including better patient compliance and lower error rates.

13 33. VetSource contracts with just under 5,000 veterinarians nationwide, including at
 14 least 35 in Nevada, involving approximately \$200,000 in annual revenue in Nevada.

15 34. VetSource distributes Pet Medications to over 250,000 consumers nationwide.

16 35. Pet Medications are an approximately \$14 billion (retail) industry nationwide.

17 **C. Composition of the Pharmacy Board**

18 36. The Pharmacy Board is an agency of the State of Nevada that has primary
 19 jurisdiction over the licensing and regulation of persons operating or engaging in the practice of
 20 pharmacy.
 21

22 37. Under Nevada Revised Statute 639.030, the Pharmacy Board shall be comprised
 23 of seven members, six of which "are registered pharmacists in the State of Nevada, are actively
 24 engaged in the practice of pharmacy in the State of Nevada and have had at least 5 years
 25 experience as registered pharmacists preceding the appointment" and one of which "is a
 26 representative of the general public and is not related to a pharmacist registered in the State of
 27 Nevada by consanguinity or affinity within the third degree." N.R.S. § 639.030. Six of the
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1 seven defendant members of the Pharmacy Board are competitors in the Relevant Market, and
2 have business relationships with others in the market.

3 38. No politically accountable state official has or exercises the power to review the
4 Pharmacy Board's acts and disapprove those that do not accord with state policy. Indeed, no
5 state official outside the Pharmacy Board has any such review power.

6 **D. Defendants' Anticompetitive Conduct**

7 39. The Pharmacy Board has a history of engaging in anticompetitive conduct under
8 the guise of enforcing the state's pharmacy regulations. For instance, upon information and
9 belief, for years the Pharmacy Board has engaged in anticompetitive investigations and/or letter-
10 writing campaigns against other outsourced pharmacy competitors designed to restrict
11 competition.

12 40. On February 5, 2015, co-conspirator Dave Wuest, Deputy Executive Secretary of
13 the Pharmacy Board (also an active participant in the Relevant Market), contacted VetSource's
14 pharmacy manager, Laura Hysen, to solicit information about VetSource. After a very brief
15 explanation of the VetSource business model, co-conspirator Wuest communicated to Ms. Hysen
16 that he was certain the VetSource model violated the Pharmacy Board's anti-kickback regulation
17 and, in an attempt to intimidate VetSource into ceasing operations in Nevada, stressed that the
18 Pharmacy Board would win if VetSource tried to fight its position.

19 41. Co-conspirator Wuest's conclusions on behalf of the Pharmacy Board were made
20 before complete materials factually documenting VetSource's legitimate business model were
21 provided or reviewed by the Pharmacy Board, demonstrating the pretextual nature of the
22 Pharmacy Board's unreasonable anticompetitive conduct.

23 42. On February 9, 2015, counsel for VetSource had a telephone conference with
24 counsel for the Pharmacy Board to again discuss VetSource's business model. Following this
25 discussion, Pharmacy Board counsel noted that he was inclined to issue VetSource a "cease and
26 desist" letter. In response, VetSource's counsel requested the opportunity to submit in writing a
27 detailed explanation of VetSource's business model. Pharmacy Board counsel agreed. That
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1 same day, counsel for VetSource submitted a detailed explanation of VetSource's business
2 model to Pharmacy Board counsel and co-conspirator Wuest.

3 43. On February 27, 2015, without calling VetSource's counsel to discuss or ask
4 questions about the substance of VetSource's submission, the Pharmacy Board, in furtherance of
5 the conspiracy to eliminate VetSource from the Relevant Market, issued a letter to VetSource
6 stating "Strategic Pharmaceutical Solutions Inc. and/or VetSource must discontinue their
7 'outsourced hospital pharmacy service' immediately." As a pretext for its illegal and
8 unreasonable anticompetitive exclusionary conduct, the February 27 letter alleged violations
9 primarily based on a flawed (and improper) interpretation of regulations promulgated by the
10 Veterinary Board.

11 44. On March 12, 2015, in response to the Pharmacy Board's February 27 letter,
12 VetSource submitted to the Pharmacy Board a Petition for Declaratory Order or Advisory
13 Opinion ("**Petition**") to create an opportunity for VetSource to meaningfully defend against the
14 allegations in the February 27 letter. In a cover email accompanying VetSource's Petition,
15 VetSource also requested an informal review and interpretation from the Pharmacy Board
16 regarding its business model prior to being forced to discontinue its business in Nevada.

17 45. The same day (March 12, 2015), Pharmacy Board counsel called counsel for
18 VetSource to inform him that, despite the clear language in the February 27, 2015 letter
19 (directing VetSource to "discontinue their 'outsourced hospital pharmacy service'
20 immediately"), the Pharmacy Board did not intend the letter to be a cease and desist letter.

21 46. The filing of VetSource's Petition and the apparent misunderstanding with regard
22 to the intent behind the February 27 letter prompted the Pharmacy Board to schedule informal
23 meetings between representatives of VetSource, the Pharmacy Board, and the Veterinary Board,
24 all of which took place on April 30, 2015.

25 47. As part of the April 30, 2015 meetings, the parties agreed that VetSource should
26 attend the July meetings of both the Pharmacy Board and the Veterinary Board to provide
27 additional evidence demonstrating VetSource's compliance with Nevada law. In reliance on this
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1 agreement, VetSource submitted a request that its Petition be held in abeyance and initiated
2 contact with both Boards to arrange to appear at their respective July meetings.

3 48. Despite the understandings VetSource believed had been reached at the April 30
4 meetings, on May 29, 2015, the Pharmacy Board issued another cease and desist letter in
5 furtherance of the conspiracy to eliminate VetSource from the Relevant Market.

6 49. Thereafter, on or about June 18, 2015, the Pharmacy Board, again, in furtherance
7 of the conspiracy to eliminate VetSource from the Relevant Market, filed an Accusation and
8 Notice of Intended Action, initiating a proceeding to have VetSource's pharmacy license
9 revoked or suspended based on the unfounded allegation that VetSource's business model
10 violates the Pharmacy Board's anti-kickback regulation.

11 50. On September 18, 2015, the Pharmacy Board filed an Amended Accusation and
12 Notice of Intended Action, reviving its unfounded accusation that VetSource's business model
13 violates certain Veterinary Board regulations.

14 51. Upon information and belief, the Pharmacy Board through its members and staff
15 have also communicated to veterinarians (including both veterinarians with whom VetSource
16 had existing contracts and veterinarians with whom VetSource was seeking and reasonably
17 expected to have contractual relations) in Nevada that the veterinarians are prohibited from doing
18 business with VetSource and that VetSource's Direct Shipping violates Nevada law. These
19 comments have caused certain veterinarians to cease or to avoid doing business with VetSource.

20 52. VetSource responded to both of the Pharmacy Board's Accusations denying the
21 allegations and defending its business model as lawful and proper under Nevada law. VetSource
22 has also taken steps to inform the Pharmacy Board of the Pharmacy Board's lack of authority to
23 interpret and enforce the Veterinary Board's regulations and of the illegal anticompetitive nature
24 of the Pharmacy Board's conduct.

25 53. A hearing on the Pharmacy Board's Amended Accusation, originally scheduled
26 for December 3, 2015, has been continued to March 3, 2016; and the Pharmacy Board has
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1 indicated its intent to go forward with the hearing and possibly impose immediate sanctions on
2 VetSource on that date.

3 54. While VetSource has refused to be intimidated by the Pharmacy Board's unlawful
4 and anticompetitive tactics and has continued to distribute Pet Medications to consumers in the
5 Relevant Market, upon information and belief, at least two other outsourced pharmacy
6 competitors targeted by the Pharmacy Board either limited their pharmacy activities in Nevada to
7 those acceptable to the Pharmacy Board or stopped distributing Pet Medications in Nevada
8 altogether.

9 55. If carried through, the Pharmacy Board's current actions would have the effect of
10 eliminating the ability of VetSource to compete in the market for Pet Medications in Nevada
11 through its innovative, competitive and consumer friendly Direct Shipping model.

12 56. Because of pharmacy regulations in other states, known to the Pharmacy Board,
13 any adverse (but unfounded) finding against VetSource by the Pharmacy Board would have a
14 foreseeable impact on VetSource's ability to continue to compete and distribute Pet Medications
15 in other states.

16
17 **E. No Clearly Articulated State Policy**

18 57. The Pharmacy Board's anticompetitive activity is not, and has not been, in pursuit
19 of a clearly articulated state policy. In fact, the Pharmacy Board's anticompetitive activity both
20 exceeds its statutory authority and has been in direct contravention of state policy.

21 58. That the Pharmacy Board is acting in direct contravention of state policy is
22 demonstrated by the fact that the State of Nevada has allowed, and state statutes and regulations
23 specifically permit, licensed pharmacies to ship medications prescribed by offsite veterinarians
24 directly to farms and ranches using business models substantially similar to VetSource's Direct
25 Shipping. VetSource has simply adapted this practice for domestic Pet Medications.

26 59. The Pharmacy Board's Amended Accusation and Notice of Intended Action, and
27 other actions and communications claiming to be under color of state law, are a pretext for the
28 Pharmacy Board's illegal and unreasonable anticompetitive exclusionary conduct.

1 60. Absent a clearly articulated state policy (and active state supervision), the
2 Pharmacy Board has no authority to exclude current competitors or potential new entrants from
3 the Relevant Market in which the professional Pharmacy Board members actively compete.

4 61. The Pharmacy Board has no legislative authority to interpret or enforce
5 regulations promulgated by the Veterinary Board. *See* N.R.S. 639.090 (“The members of the
6 [Pharmacy] Board, its inspectors and investigators are designated and constituted agents for the
7 enforcement and carrying out of the provisions of this chapter [639][.]”) (emphasis added);
8 N.R.S. 639.097 (“The [Pharmacy] Board may bring an action to enjoin any act which would be
9 in violation of the provisions of this chapter [639].”) (emphasis added).

10 62. Accordingly, the Pharmacy Board and its staff have unlawfully usurped power not
11 granted to the Pharmacy Board by Nevada law by attempting to interpret and enforce the
12 Veterinary Board’s regulations, contained in Chapter 638 of the Nevada Revised Statutes.

13 63. By taking these actions in excess of its statutory authority, the Pharmacy Board is
14 not acting pursuant to any clearly articulated state policy.

15 64. Being outside of any clearly articulated state policy, the Defendants’ actions are
16 not entitled to state-action immunity from antitrust liability under *N.C. Dental*.

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18 **F. Not Actively Supervised**

19 65. Even if one could find that the Pharmacy Board has been acting pursuant to a
20 clearly articulated state policy (which one could not), the Pharmacy Board is not actively
21 supervised by politically accountable officials of the State of Nevada.

22 66. No politically accountable state official has or exercises the power to review the
23 Pharmacy Board’s acts and disapprove those that do not accord with state policy. No politically
24 accountable state official reviews the substance of the Pharmacy Board’s decisions or has the
25 power to veto or modify particular decisions of the Pharmacy Board to ensure they accord with
26 state policy.

27 67. For lack of active state supervision, the Defendants’ actions are not entitled to
28 state-action immunity from antitrust liability under *N.C. Dental*.

1 **G. Impact on and Injury to VetSource**

2 68. While VetSource has continued to provide its services to its contracted
3 veterinarians in the Relevant Market in the face of the Pharmacy Board's unlawful and
4 anticompetitive conduct, other competitors in the Relevant Market have been, and potential new
5 entrants are likely to be, dissuaded by the Pharmacy Board's anticompetitive conduct.

6 69. If the Pharmacy Board succeeds in imposing its position, (i) a significant,
7 effective and innovative competitor would be eliminated from the Relevant Market, in whole or
8 in significant part, (ii) Direct Shipping as an effective and innovative method of competition
9 would be eliminated from the Relevant Market, and (iii) competition in the distribution of Pet
10 Medications would be reduced, consumer choice in the purchase of Pet Medications would be
11 limited, and quality and safety in the distribution of Pet Medications in the Relevant Market
12 would decrease. Allowing the Pharmacy Board's anticompetitive conduct to continue would
13 also increase barriers to entry in the Relevant Market.

14 70. These results are the direct, intended and foreseeable result of the Pharmacy
15 Board's conduct in restraint of trade and would be to the detriment of Pet Medication consumers
16 in Nevada and competitors in the Relevant Market.

17 71. The impact of the Pharmacy Board's actions would also cause dramatic and
18 irreparable injury to VetSource, which will effectively be put out of business in Nevada and have
19 its business nationwide placed in jeopardy.

20 72. The loss of VetSource's ability to lawfully distribute Pet Medications in the
21 Relevant Market and to continue its proper Direct Shipping method of business would cause
22 irreparable injury to VetSource.

23 73. In addition to such irreparable injury, the Pharmacy Board's illegal actions,
24 conspiracy and activities in restraint of trade will cause significant monetary damage to
25 VetSource.
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COUNT I

Declaratory Judgment

74. VetSource incorporates by reference as if fully set forth here the allegations in all the foregoing paragraphs of this Complaint.

75. There is an actual, current dispute and controversy between VetSource and the Pharmacy Board as to the Pharmacy Board's actions alleged herein being in violation of the Sherman Act and Nevada state law.

76. VetSource seeks a determination and declaration that (i) the Pharmacy Board's actions complained of herein are an illegal restraint of trade and may tend to cause a monopoly, and thus are in violation of the Sherman Act (sections 1 & 2); (ii) that the Board and its members are not entitled to state action immunity in carrying out the actions complained of herein; and (iii) that Board and its members may not continue the activities complained of herein against VetSource.

COUNT II

**Combination and Conspiracy in Restraint of Trade
In Violation of Section 1 of the Sherman Act**

77. VetSource incorporates by reference as if fully set forth here the allegations in all the foregoing paragraphs of this Complaint.

78. As described above, beginning at least as early as February 2015 and continuing through at least the date of this Complaint, the Pharmacy Board, its members and their co-conspirators entered into a continuing agreement, understanding, combination and/or conspiracy in restraint of trade, resulting in harm both to competition generally and to Plaintiff VetSource specifically, in violation of Section 1 of the Sherman Act.

79. The Defendants' conduct complained of herein constitutes (i) an illegal attempt to exclude VetSource as a lawful competitor from the Relevant Market; and (ii) an illegal attempt to exclude the innovative, efficient and pro-consumer practice of Direct Shipping as a means of competition in the Relevant Market.

1 86. The Board and its members have market power, including the ability to exclude
2 competition, in the Relevant Market.

3 87. As described above, beginning at least as early as February 2015 and continuing
4 through at least the date of this Complaint, Defendants and their co-conspirators have
5 monopolized, through the willful acquisition, maintenance, and/or enhancement of monopoly
6 power; attempted to monopolize; and/or combined and conspired to monopolize the Relevant
7 Market, resulting in harm both to competition generally and to Plaintiff VetSource specifically,
8 in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

9 88. Defendants' unlawful monopolization, attempted monopolization, and/or
10 combination and conspiracy to monopolize threaten to injure competition in the Relevant Market
11 and will result in the unlawful exclusion of Plaintiff from that Market. Defendants' unlawful
12 monopolization, attempted monopolization, and/or combination and conspiracy to monopolize
13 will result in the elimination of the innovative and efficient Direct Shipping method of
14 competition from the Relevant Market.

15 89. The direct, foreseeable and intended result of this unlawful monopolization,
16 attempted monopolization, and/or combination and conspiracy to monopolize is to reduce
17 competition in the distribution of Pet Medications, reduce consumer choice in the purchase of
18 Pet Medications, and decrease quality and safety in the distribution of Pet Medications, all in
19 violation of the Sherman Act.

20 90. Defendants' actions have forced other competitors to withdraw from the Relevant
21 Market, have caused some veterinarians to cease or avoid doing business with VetSource and
22 have raised barriers to entry in the Relevant Market.

23 91. Defendants' monopolization, attempted monopolization, and/or combination and
24 conspiracy to monopolize injured or will injure competition in the Relevant Market and
25 proximately caused or will cause VetSource economic loss and damages. This damage by
26 reason of reduced competition, injury to competition, reduced consumer choice and decreased
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1 quality and safety, is the type of injury the antitrust laws were intended to prevent. VetSource
2 has thus suffered, will suffer or will continue to suffer antitrust injury.

3 92. VetSource is entitled to damages equal to three time its economic losses, in an
4 amount to be demonstrated, jointly and severally from each Defendant, plus the cost of this
5 action including attorneys' fees.

6
7 **COUNT IV**

8 **Nevada Unfair Trade Practices**

9 93. VetSource incorporates by reference as if fully set forth here the allegations in all
10 the foregoing paragraphs of this Complaint.

11 94. Defendants' actions complained of herein also violate the Nevada Unfair Trade
12 Practices Act, N.R.S. § 598A.060.

13 95. The Nevada Unfair Trade Practices Act is construed in conformity with the
14 federal antitrust laws.

15 96. Defendants' violation of the Nevada Unfair Trade Practices Act has caused and
16 will cause injury to VetSource.

17 97. VetSource is entitled to damages for Defendants' violation of the Nevada Unfair
18 Trade Practices Act, in an amount to be demonstrated.

19 **COUNT V**

20 **Injunctive Relief**

21 98. VetSource incorporates by reference as if fully set forth here the allegations in all
22 the foregoing paragraphs of this Complaint

23 99. VetSource has a right to compete lawfully in the Relevant Market.

24 100. VetSource's Direct Shipping method is a legal, innovative, competitive and
25 efficient method of competition.

26 101. The loss or infringement of VetSource's right to compete lawfully in the Relevant
27 Market cannot, or cannot be fully, be measured or compensated in money damages.
28

1 (iii) Finding that the activities of the Board and its members in attempting and
2 seeking to exclude VetSource from competing in the Relevant Market, are actions of
3 active market participants in the same market, not acting pursuant to a clearly articulated
4 state policy, and not actively supervised by politically accountable state officials, and are
5 thus not entitled to state action immunity under the antitrust laws of the United States;

6 (iv) Finding that the activities of the Board and its members complained of
7 herein in violation of the Sherman Act sections 1 and 2 have caused damages to
8 VetSource and awarding VetSource, jointly and severally against all Defendants, treble
9 the amount of such damages, as may be demonstrated;

10 (v) Awarding VetSource, jointly and severally against all Defendants, the cost
11 of this action, including its reasonable attorneys' fees;

12 (vi) Finding that the activities of the Board and its members complained of
13 herein are in violation of the Nevada State Unfair Competition Act, and awarding
14 VetSource damages, in an amount to be demonstrated, caused by such violations;

15 (vi) Permanently enjoining the Board and its members from attempting to
16 exclude VetSource, including its innovative and efficient Direct Shipping method of
17 competition, from competing in the Relevant Market;
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(vii) Awarding such other and further relief as this Court may find to be just and proper.

DATED this 29th day of January, 2016.

**HOLLEY DRIGGS WALCH
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