

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CHEWY, INC. and CHEWY PHARMACY, LLC,

Plaintiffs,

-against-

VETCOVE, INC., COVETRUS, INC. and DOES 1-100, inclusive,

Defendants.

Index No.

COMPLAINT

JURY TRIAL DEMANDED

PRELIMINARY ALLEGATIONS

Plaintiffs Chewy, Inc. (“Chewy Inc.”) and Chewy Pharmacy, LLC (“Chewy Pharmacy,” together with Chewy Inc., “Chewy”), by and through their attorneys, for their Complaint against Defendants Vetcove, Inc. (“Vetcove”), Covetrus, Inc. (“Covetrus”), and DOES 1-100, inclusive (collectively, “Defendants”), state and allege as follows:

1. People love their pets, and many “pet parents” consider their pets to be family members. When a pet needs prescription medications (“Pet Prescription(s)”) or veterinarian-authorized pet diet food (“Pet Diet Food,” together with Pet Prescriptions, “Regulated Pet Product(s)”) ¹ as part of a course of treatment recommended by the pet’s veterinarian (“Prescribing Vet”), pet parents have a natural expectation that no one would intentionally and illegally interfere with their completed orders for Regulated Pet Products with their chosen pharmacy. ² As outlined

¹ Pet Prescriptions require a valid prescription from the veterinarian prior to being fulfilled by the pet parents’ chosen pharmacy. Pet Diet Food requires veterinarian authorization, not a traditional prescription, prior to being sold by the pharmacy or other supplier/retailer of Pet Diet Food.

² Chewy Pharmacy fulfills Pet Prescriptions, while Chewy Inc. sells Pet Diet Food. Chewy customers are able to order both Pet Prescriptions and Pet Diet Food through www.chewy.com. For ease of reference, while Pet Diet Food may be purchased through suppliers/retailers in addition to pharmacies, Chewy refers herein to “pharmacy(ies)” when referring to sellers of Pet Prescriptions and Pet Diet Food.

below, however, through unlawful, unfair, improper, tortious, deceptive and misleading means, Vetcove and Covetrus intentionally interfere with the pet parent's order of Regulated Pet Products placed with Chewy (and, in many cases, delay the timely delivery of these much-needed products) and, in the process, interfere with Chewy's business relationships with its customers.

2. The fulfillment of Pet Prescriptions for animals is different than the fulfillment of prescription medications for humans, largely because of the historical absence of pet-exclusive pharmacies. Historically, pet parents had little to no choice but to receive their Regulated Pet Products directly from their veterinarian rather than from a third-party pharmacy. Over the past several years, however, there has been a natural progression of pet parents desiring to order food, supplies and Regulated Pet Products securely online from the safety of their own homes, 24/7, rather than in-person at brick-and-mortar stores or veterinarians' clinics. This migration, understandably, has accelerated during the pandemic and has led to an increase in pet parents relying on online pet-exclusive pharmacies for the timely delivery of Regulated Pet Products. The expansion of pet-exclusive retail pharmacies benefits pets, pet parents and veterinarians by allowing pet parents to order from the safety of their homes and the expedient delivery of much-needed medication to pets, many of which may not have been immediately available in their veterinarian's office due to limited inventory.

3. Notably, many states have laws governing the dispensing of Pet Prescriptions that are designed to protect the customer's right to choose which pharmacy dispenses their medications. Certain aspects of these laws, however, are woefully outdated and have not kept up with new technologies and pet parents' preference for ordering Pet Prescriptions (and Pet Diet Food) from online pet-exclusive pharmacies. Indeed, most of these state laws were adopted well before the internet was widely available and impose onerous "physical" approval requirements—i.e.,

requiring the fulfilling pharmacy to receive a physical written prescription from the veterinarian, or to have the prescription physically validated by the veterinarian (typically verbally or by fax), even though the entire transaction occurs online.

4. Chewy is an innovative, consumer-oriented, online retailer with a pet-exclusive pharmacy. Chewy has embraced pet parents' choice of secure online ordering of Regulated Pet Products and has championed the opportunity to work with both pet parents and veterinarians to make the validation and approval process for Regulated Pet Products as efficient and systematic as possible. Chewy offers all consumers transparent pricing, the option of ordering low-cost, high-quality Regulated Pet Products from the safety and comfort of their homes, and speedy one to two-day delivery.³ At the request and on behalf of the pet parent, Chewy Pharmacy also obtains confirmation from the Prescribing Vet for Pet Prescriptions and veterinarian authorization for Pet Diet Food. Chewy's transparent and competitive pricing, convenient 24/7 order placement and customer service focus, expedient delivery of Regulated Pet Products and significant investment in creating technologies and processes for validating orders for Regulated Pet Products allow Chewy's customers to achieve more compliance with their veterinarian's recommended care—resulting in healthier pets.

5. But not all companies have embraced this migration in a transparent and proper manner. Enter Defendants Vetcove and Covetrus, who have been actively building and employing technologies and processes designed to intentionally and unlawfully interfere with Chewy's relationships with its customers and the pet parents' right to choose the pharmacy of their choice. Venture capital-backed Vetcove designs and sells software, including a fee-based, for-profit product designed to intercept and divert pet parents' orders placed with pet-exclusive online

³ The vast majority of pet parents receive their Regulated Pet Products within one to two days after dispensing or packing.

pharmacies like Chewy Pharmacy to Defendant and co-conspirator Covetrus, in contravention of the laws designed to protect the pet parent's right to choose a pharmacy. Upon information and belief, in order to carry out the illegal scheme, Vetcove, which is not a licensed pharmacy or retailer of pet products, enlisted Covetrus, a licensed pharmacy formerly known as Vet's First Choice, to knowingly and willingly participate in the diversion scheme ("Diversion Scheme") and to fulfill the diverted orders for Regulated Pet Products.

6. So how did they do it? Defendants first improperly gain access to Chewy's confidential and proprietary customer information through the use of Vetcove's software, without Chewy's consent, and then use that information to intentionally interrupt the process through which Chewy validates the prescription for Pet Prescriptions and authorization for Pet Diet Food and improperly divert that very same order to Covetrus through deceptive and misleading means without disclosing the Diversion Scheme to the pet parent.

7. Under Chewy's usual prescription validation process, after a Chewy customer ("Impacted Customer") places an order through Chewy for a Regulated Pet Product for which Chewy has no current prescription or authorization on file, Chewy contacts the Prescribing Vet on behalf of the Impacted Customer to "physically" validate the Pet Prescription in accordance with the outdated state laws discussed above⁴ and/or to obtain veterinarian authorization for the Pet Diet Food. Typically, Chewy seamlessly coordinates this validation and/or authorization by faxing the Prescribing Vet a simple request form (the "Prescription or Authorization Form"), which the Prescribing Vet completes, signs and returns to Chewy.

⁴ Under applicable state laws, including, but not limited to, state laws that mandate the existence of a valid prescription prior to dispensing any pet prescription medication and the normal operating procedures for veterinarian approval and issuance of a prescription, the veterinarian's duty is to promptly review and approve the issuance of a prescription unless, in the determination of the veterinarian, there is a justifiable medical reason to decline the prescription request, in which case the veterinarian should deny the prescription as to all pharmacies not just one.

8. Though the Impacted Customer rightly expects their order to be expediently processed by Chewy because they provided Chewy with all of their information needed to process the order (e.g., type and quantity of goods, shipping address and payment information), Vetcove's software instead intercepts Chewy's Prescription or Authorization Form and thereafter sends unsolicited deceptive and misleading communications to the Impacted Customer to trick them into purchasing that same Regulated Pet Product from a different pharmacy. At certain relevant times, Vetcove initiated the Diversion Scheme by sending an unsolicited text message to the Impacted Customer that falsely advises "further action" is required to finalize the completed order placed with Chewy, when, in fact, no such action is required at all. This false "further action" text message was (and is) solely intended to deceive the Impacted Customer into placing a second order for the same Regulated Pet Product with a different pharmacy.

9. If the pet parent falls victim to the Diversion Scheme and is tricked into placing a second order for the same Regulated Pet Product with Covetrus, Vetcove—which again, is not a licensed pharmacy—then cancels the completed order originally placed with Chewy and improperly and disingenuously places a "DENIED," "NOT APPROVED" or similar stamp on the Prescription or Authorization Form and sends the purportedly denied Prescription or Authorization Form back to Chewy. While it is not entirely clear when during the Prescription or Authorization Form approval process Vetcove is intercepting and "denying" the requested authorization or prescription, it appears that Vetcove is doing so after the Prescribing Vet has already approved the order, as Chewy has received Prescription or Authorization Forms with a "DENIED" stamp on them that were clearly already approved by the Prescribing Vet.

10. Defendant and co-conspirator Covetrus then steps in to complete the Diversion Scheme and fulfill the order for the Regulated Pet Product by sending its own unsolicited false and

misleading communication to the Impacted Customer. Together, Vetcove's and Covetrus's deceptive and false communications, among other things, (a) confuse the Impacted Customer as to whom they are dealing with and why, (b) fail to disclose pertinent information to the Impacted Customer regarding their order and the relationships between the parties, (c) improperly create unnecessary burdens on the Impacted Customer in the fulfillment of the Regulated Pet Product already ordered through Chewy, and (d) ultimately, interfere with Chewy's customer relationships and the customer experience. For their part, Defendants Vetcove and Covetrus, upon information and belief, both financially profit from the Diversion Scheme. Meanwhile, the Impacted Customer has been deceived as to which pharmacy is actually fulfilling the order originally placed with Chewy, in many cases receives the Regulated Pet Product later than they would have had the original order with Chewy not been interfered with, and is left with a terrible customer experience that is wrongly attributed to Chewy. At the same time, Chewy is left with a disgruntled and confused customer, a robbed sale and irreparable damage to its reputation and brand.

11. Chewy (and its customers) should not be exposed to this deceptive and misleading Diversion Scheme. By this lawsuit, Chewy seeks to stop Defendants' tortious conduct and unlawful and deceptive trade practices by immediately ceasing the Diversion Scheme and to protect against the deliberate violation of pet parents' fundamental right to choose a pharmacy of their choice and to ensure there is no interruption to the timely and efficient care of pets. The Diversion Scheme has caused and continues to cause Chewy substantial damages, irreparable harm to Chewy's reputation and brand, and an improper and unlawful interference with Chewy's business relationships with its customers.

THE PARTIES, JURISDICTION AND VENUE

12. Chewy Inc. is a Delaware corporation with its principal place of business located at 1855 Griffin Road, Suite B-428, Dania Beach, Florida 33004. Chewy Inc. operates the www.chewy.com website.

13. Chewy Pharmacy is a Delaware limited liability company with its principal place of business located at 11403 Bluegrass Parkway, Suite 650, Louisville, Kentucky 40299. Chewy Inc. is the sole member of Chewy Pharmacy. Chewy Pharmacy holds pharmacy licenses that allow it to distribute Pet Prescriptions.

14. Vetcove is a Delaware corporation with its principal place of business located at 515 Madison Avenue, Suite 1910, New York, New York 10022. Upon information and belief, Vetcove developed and runs the Diversion Scheme described herein out of its New York offices.

15. Covetrus is a Delaware corporation with its principal place of business located at 7 Custom House Street, Portland, Maine 04101. Covetrus, through it and its wholly owned pharmacy entities, holds pharmacy licenses that allow it to distribute Pet Prescriptions and, upon information and belief, has aided and abetted, participated in, and conspired with Vetcove in New York to carry out the illegitimate Diversion Scheme.

16. Chewy is ignorant of the true names and capacities of defendants sued herein as DOES 1-100, inclusive, and therefore sues these defendants by such fictitious names. Chewy will amend this Complaint to allege the true names and capacities of the DOE defendants when ascertained.

17. Upon information and belief, Chewy alleges that each of the named and unnamed Defendants was and is an agent or principal or co-conspirator of each other and, in such capacity or capacities, participated in the acts and conduct alleged herein or committed the acts herein

alleged, and, based upon that conduct, is responsible for the matters alleged herein or has an interest in the disputes to be decided herein.

18. Upon information and belief, Chewy alleges that each of the named and unnamed Defendants, acting for their individual gain and benefit, knowingly and willfully conspired with each other and agreed among themselves to engage in the tortious misconduct alleged herein. Upon information and belief, Chewy alleges that, in performing such acts, each named and unnamed Defendant aided and abetted, and was the co-conspirator of, each other, and acted in furtherance of, and with full knowledge of, the unlawful purposes of the conspiracy.

19. This Court has jurisdiction over Defendant Vetcove pursuant to CPLR § 301. This Court has jurisdiction over Defendant Covetrus pursuant to CPLR § 302(a)(1) and (2). This Court has jurisdiction over Defendants DOES 1-100 pursuant to CPLR §§ 301 or 302(a)(1) and (2).

20. Venue in New York County is proper pursuant to CPLR §§ 503(a) and (c) because Vetcove's principal place of business is in New York, New York.

FACTUAL BACKGROUND

Overview

21. The market for Regulated Pet Products has experienced massive growth in the past 15 years. Historically, pet parents typically purchased their Pet Prescriptions directly from their Prescribing Vet and Pet Diet Food from their veterinarian or other brick-and-mortar suppliers/retailers. Under their professional licenses, veterinarians are permitted by state law to maintain inventories of Pet Prescriptions and to dispense those products to pet parents for their animals. Many veterinarians also maintain relationships with the specific veterinary fulfillment pharmacies in order to provide certain shipment and mail-order services to their pet parent clients.

22. Although many pet parents continue to purchase their Regulated Pet Products directly from veterinarians and/or other brick-and-mortar suppliers/retailers, a natural market

progression has resulted in more pet parents preferring to securely order Regulated Pet Products online. As recognized by numerous state laws, pet parents have a fundamental right to choose their pharmacy for the purchase of Pet Prescriptions. Chewy has embraced this migration to online ordering of Regulated Pet Products and strives to offer reliable and efficient service, as well as transparent pricing.

23. In a 2015 report entitled “Competition in the Pet Medications Industry,” the Federal Trade Commission (“FTC”) considered evidence and claims that the availability of Regulated Pet Products from non-veterinary retailers (such as Chewy) offers the potential for consumer cost savings, greater convenience and improved service.⁵ FTC staff concluded that prescription portability benefits consumers, and, therefore, the FTC generally supports policies that would increase consumer awareness of the availability of portable prescriptions and veterinarian release of prescriptions to consumers.⁶

Chewy Inc. and Chewy Pharmacy

24. Chewy is an online retailer and pharmacy that provides one-stop shopping for pet parents seeking to fill Pet Prescriptions, to purchase Pet Diet Food and to buy non-prescription items (such as leashes, toys and shampoo). Chewy Inc. operates the Chewy website and provides certain services to Chewy Pharmacy in connection with the sale of Pet Prescriptions.

25. Chewy Pharmacy is a full-service, licensed online pharmacy that provides its customers, from the comfort and safety of their own homes, with Pet Prescriptions at competitive prices, delivered within days of being dispensed, and around-the-clock convenience and unrivaled customer support that only Chewy can offer. Chewy Pharmacy is open for business 24/7, making

⁵ Federal Trade Commission Staff Report, *Competition in the Pet Medications Industry*, 25-28, <https://www.ftc.gov/system/files/documents/reports/competition-pet-medications-industry-prescription-portability-distribution-practices/150526-pet-meds-report.pdf> (May 2015).

⁶ *Id.* at 6.

it extremely convenient for customers to order their Pet Prescriptions whenever they want. This convenience, in conjunction with transparent and competitive pricing, makes it easier for Chewy's customers to comply with their veterinarian's recommended care and to improve or maintain their pet's health.

26. Chewy sources all its Regulated Pet Products from manufacturer-approved, licensed distributors or directly from FDA-registered manufacturers. In accordance with state pharmacy laws, Chewy Pharmacy will not dispense a Pet Prescription without first obtaining a valid patient-specific prescription, nor will Chewy Inc. sell Pet Diet Food without authorization from the veterinarian. After a customer places an order through Chewy for a Regulated Pet Product for which Chewy does not have a prescription or authorization currently on file, Chewy sends the Prescribing Vet a Prescription or Authorization Form.

27. In the ordinary course, on receipt of the Prescription or Authorization Form from the veterinarian, Chewy then ships the Regulated Pet Product to the customer. As outlined below and evidenced by the attached exhibits, however, this process is currently being unlawfully "intercepted" through a proprietary "software as a service" system (the "Prescription Management System") by which Defendants, having gained access to Chewy's confidential and proprietary customer information through the use of Vetcove's software, without Chewy's consent, are using Chewy's misappropriated confidential and proprietary customer information to intentionally, deceptively and illegally interfere with Impacted Customers' fundamental right to select which pharmacy fills their Pet Prescriptions by diverting, or attempting to divert, orders already placed by Impacted Customers with their selected pharmacy—Chewy Pharmacy—and thereby interfering with Chewy's business relationships with its customers.

Vetcove's Operations

28. Vetcove is a venture-capital-backed e-commerce platform, based in New York, New York, that promotes itself as “free” to independently owned veterinary practices but offers paid services to veterinary organizations, hospital groups, individual large hospital customers and “select nonprofit veterinary organizations”—Vetcove’s “Inner Circle”—including e-commerce integrations, payment processing, loyalty program logistics, cash-back promotions and customer relationship management (“CRM”) tools.⁷ These tools purport to “provide rich content product listings, payment processing, and order management capabilities to manufacturers that are not using distributors to sell their products.”⁸ Vetcove derives income from these manufacturers when customer veterinarians purchase the manufacturers’ products.⁹

29. According to Vetcove, since launching in late 2015, it has grown to become the procurement platform of more than 10,000 veterinary hospitals, or over one in three veterinary hospitals in the United States.¹⁰

30. Vetcove also provides certain “practice management” systems (software) to veterinarians to facilitate the use of these Vetcove tools. Upon information and belief, veterinarians (or veterinarian aggregator and trade groups) enter into “SaaS” (Software-as-a-Service) agreements with Vetcove. Vetcove does not charge veterinarians a fee for basic SaaS services; however, upon information and belief, Vetcove does charge fees for upgraded features of its Practice Management System, its “Inner Circle.”¹¹

⁷ *Vetcove is Completely Free and Always Will Be*, VETCOVE, <https://www.vetcove.com/why-is-it-free/> (last visited May 18, 2021).

⁸ Alexander Kates, *How Does Vetcove Earn Revenue?*, <https://help.vetcove.com/en/articles/639125-how-does-vetcove-earn-revenue> (last visited May 18, 2021).

⁹ *Id.*

¹⁰ *About Vetcove*, VETCOVE, <https://www.vetcove.com/about/> (last visited May 18, 2021); VETCOVE, <https://www.vetcove.com/> (last visited May 18, 2021).

¹¹ VETCOVE, *supra* note 7.

31. Members of Vetcove’s “Inner Circle” “generally pay Vetcove (or subsidize memberships) on behalf of their members for access to these premium features and services.”¹² Upon information and belief, included in these premium services is the Vetcove “Prescription Management System”—the very system that is facilitating the interception and diversion of Impacted Customers’ prescriptions.

32. From its New York City headquarters, Vetcove promotes its Prescription Management System as a means to “help” veterinary practices manage prescription requests that are received by veterinary practices from online pharmacies, such as Chewy Pharmacy. Vetcove specifically targets “online consumer pharmacies like Chewy,” and, at one point, its website even contained a password-protected blog entitled “Converting Chewy Requesters.”

33. Vetcove is not a licensed pharmacy. Since Vetcove cannot legally fill prescriptions, Vetcove has partnered with Covetrus to provide pharmacy fulfillment services for the Impacted Customers’ diverted Regulated Pet Product orders as part of the Diversion Scheme.¹³

Covetrus’s Operations

34. Covetrus is one of the world’s largest veterinary pharmacies that provides online pharmacy services to veterinary markets.¹⁴ According to its website, Covetrus services some 100,000 veterinary practices globally.¹⁵ In the United States, 27,000 veterinary practices use some

¹² Kates, *supra* note 8.

¹³ Veterinarians who contract with Vetcove and/or Covetrus are referred to herein as “Participating Vets.” Participating Vets may include large clinic management or advisory groups and small or individual practices. Upon information and belief, many of these veterinarians may not know of the illegal tactics employed by Vetcove and Covetrus in connection with the Diversion Scheme described herein.

¹⁴ *Prescription Management*, COVETRUS, <https://covetrus.com/prescription-management/> (last visited May 18, 2021).

¹⁵ *Our Company*, COVETRUS, <https://ir.covetrus.com/about-us/our-corporate> (last visited May 18, 2021).

form of Covetrus services, with over 8,000 “affiliated” veterinary practices—about a quarter of the market—signed up for Covetrus’s prescription management.¹⁶

35. Under its arrangement with Vetcove, upon information and belief, Covetrus is a provider of pharmacy fulfillment services for the prescriptions that Vetcove successfully diverts from Chewy Pharmacy’s customers. Upon information and belief, under the terms of the Vetcove/Covetrus arrangement, Covetrus has made veterinary practice group information available to Vetcove for Vetcove’s rollout of the Prescription Management System. Upon information and belief, veterinarians affiliated with Covetrus (or their industry associations) pay Vetcove for this Prescription Management System as part of the Vetcove “Inner Circle.”

36. Covetrus is aware of the Diversion Scheme and, further, because the Prescription Management System favorably diverts Impacted Customers’ prescription requests to Covetrus for fulfillment, Covetrus was and is complicit in the development and/or support of the concept of the Prescription Management System. Covetrus is, in other words, a knowing and willing participant in the Diversion Scheme designed and operated by Vetcove. Vetcove and Covetrus both profit from the Diversion Scheme.

The Unlawful and Deceptive Diversion Scheme

37. Beginning in late 2020, Impacted Customers began alerting Chewy that they were receiving “denials” of Regulated Pet Product orders placed through Chewy. In fact, by at least late 2020, upon information and belief, Defendants had launched their Diversion Scheme and were

¹⁶ Manas Mishra & Tamara Mathias, *U.S. Pet Doctors Steel Themselves for Online Pharmacy Challenge*, REUTERS, <https://www.reuters.com/article/us-usa-healthcare-pets/u-s-pet-doctors-steel-themselves-for-online-pharmacy-challenge-idUSKCN1TD151> (June 12, 2019).

using Vetcove's Prescription Management System to improperly intercept and divert Impacted Customers' Regulated Pet Products orders from Chewy.

38. As noted above, after an Impacted Customer selects Chewy Pharmacy as its pharmacy of choice by placing an order on the Chewy website and paying for it, Chewy Pharmacy sends a request¹⁷ to the Participating Vet asking the veterinarian to fax a prescription for the Pet Prescription. Chewy's customers and related customer information are confidential and proprietary to Chewy, and Chewy protects and does not disclose the name of its customers unless necessary to fulfill an order, when legally required or with the customer's consent.¹⁸ Chewy takes reasonable steps to protect its confidential and proprietary information, including but not limited to by maintaining security systems to safeguard confidential and proprietary information within the company and similarly counseling employees, who are subject to confidentiality obligations.

39. As a software provider to Participating Vets, Vetcove has access to certain confidential data concerning Chewy's customers as provided to Participating Vets by Chewy for the purpose of approving the fulfillment by Chewy of Regulated Pet Products to its customers. Through the access Vetcove obtains via its Prescription Management System, however, once the Participating Vet completes the Prescription or Authorization Form, and without Chewy's knowledge or consent, the completed Prescription or Authorization Form is transmitted not to Chewy—which requested the approval in the first instance—but to Vetcove instead.

40. After the completed Regulated Pet Product approval is intercepted by Vetcove, and before it is sent to Chewy, upon information and belief, Vetcove's Prescription Management

¹⁷ Chewy Pharmacy only sends a request to the veterinarian for a faxed prescription if there is no prescription on file, and the pet parent has requested that Chewy reach out to the veterinarian on the pet parent's behalf to obtain the prescription.

¹⁸ Accordingly, Chewy has redacted customers' names and prescription information in the attached exhibits to this Complaint, which Chewy is prepared to provide to Defendants and the Court *in camera*.

System generates a misleading text message and sends it to the Impacted Customer (without, upon information and belief, the Impacted Customer's consent) purporting to be "with" or on behalf of the Participating Vet. This and subsequent communications ("Diversion Communication(s)") are sent directly to Impacted Customers with the intent of interfering with the Impacted Customers' choice of pharmacy and Chewy's business relationships with its customers and converting the sale of Regulated Pet Products from Chewy to Defendants.

41. These deceptive and misleading Diversion Communications come in a series of steps as the Impacted Customer is diverted away from their order with Chewy and misled into ordering the same Regulated Pet Product through Covetrus. Exhibits A-B are representative examples of the deceptive communications that, upon information and belief, are ongoing.

42. First, once Chewy's request for a faxed prescription is intercepted by Vetcove, a text message is sent to the Impacted Customer. The text message purports to be from the veterinary clinic but is actually from Vetcove. The text message attempts to divert the order that the Impacted Customer already placed with Chewy and have the Impacted Customer unknowingly and deceptively place a second order through a link in the text message. As an example, in one such text message, the text message states, "I am with [Vet Practice] and saw that you placed an order for [prescription] through Chewy. We have \$10 off your total order! Action is required to finalize your order: [https://www.vetcove.com/rx\[\]](https://www.vetcove.com/rx[])." (See Exhibit A-1.)

43. This Diversion Communication does not advise the Impacted Customer that by clicking the link, the Impacted Customer is not finalizing the order placed with Chewy. In fact, the order was already finalized with Chewy Pharmacy, and no "action" was required by the Impacted Customer to finalize the order. At that point, all that Chewy needed to ship the order was a completed Prescription or Authorization Form from the Participating Vet, which the

Participating Vet is required to provide absent a legally valid medical reason to deny the prescription, in which case the prescription must be denied as to all pharmacies and not one specific pharmacy.

44. Second, once the unsuspecting Impacted Customer clicks on the link in the text message to “finalize the order,” the Impacted Customer is sent to a web page operated by Vetcove, without any disclosure of this fact. (See Exhibit A-2.) At the top of the page, the Participating Vet is prominently referenced in bold text. The Impacted Customer is then asked again to confirm the prescription being ordered. In a faded, nondescript font, the Impacted Customer’s only other choice is to click, “I no longer need this item.”

45. This second Diversion Communication does not advise the Impacted Customer that the requested confirmation is not necessary to finalize the order placed with Chewy, nor does it advise the Impacted Customer that “finalizing the order” is actually placing a second order for the same Pet Prescription with a different pharmacy. Nor does it identify that different pharmacy.

46. Third, once the Impacted Customer “confirms the prescription,” the Impacted Customer is taken to yet another deceptive and misleading web page titled “Message from your vet.” (See Exhibit A-3.) Again, however, upon information and belief, this web page is operated by Vetcove, and it appears to include “stock” language prepared by Vetcove. In this third Diversion Communication is a link to “Choose Pharmacy.” At this point, the Impacted Customer is unable to end the process and can only select the “Choose Pharmacy” link.

47. Fourth, the “Choose Pharmacy” link then takes the Impacted Customer to yet another web page, again operated by Vetcove, where Chewy’s purported retail price is displayed

alongside the Participating Vet's purported price.¹⁹ (See Exhibit A-4.) Notably, however, the Participating Vet's price includes discounts. Nowhere on this web page does it disclose that Covetrus—not the Participating Vet (or Vetcove)—is the dispensing pharmacy. The Impacted Customer must click a link that says “Buy direct from us” in order to proceed. There is no option to continue with the previous order placed with Chewy, nor is there any explanation to the Impacted Customer that by doing nothing, the previous order placed with Chewy cannot, at that point, go through because, upon information and belief, Vetcove has already denied Chewy's prescription request.

48. One discount provided to an Impacted Customer referenced a “Discount (Coupon: welcome 20)” (“Welcome Discount”), which, upon information and belief and by its name, appears to be a one-time discount that is not applied to future transactions. (See *id.*)

49. On this same web page, the Impacted Customer is also told that shipping is “free,” but the Impacted Customer is not told how long it takes to receive the Pet Prescription. (*Id.*) Chewy Pharmacy, for its part, offers speedy delivery—the vast majority of prescriptions reach pet parents within one or two days after being dispensed—which is free for orders over \$49 and only \$4.95 for all other orders. Upon information and belief, if the Pet Prescription is purchased from Vetcove/Covetrus, the Impacted Customer is charged \$19.95 for one to two-day delivery, although they are not notified of this fact until after they are illegally diverted. In blue, highlighted, bold text, the Impacted Customer is asked to proceed by clicking “Buy direct from us.” (*Id.*) Nowhere does Vetcove or the Participating Vet advise that, by clicking that link, the Impacted Customer is actually agreeing to have the Pet Prescription filled by Covetrus. And in a faded, nondescript font,

¹⁹ Upon information and belief, Chewy believes that Vetcove is improperly accessing Chewy's web site by automated means to collect Chewy's retail prices of Regulated Pet Products, and it is not clear whether the prices displayed by Vetcove are even accurate. Chewy reserves all rights to amend this Complaint to assert additional claims at a later date.

located toward the bottom of the web page, the Impacted Customer is finally (albeit, barely) advised that they can proceed with Chewy, even though that transaction with Chewy should have long been completed. (*Id.*)

50. Fifth, once the Impacted Customer clicks “Buy direct from us,” the customer is brought to yet another deceptive and misleading web page operated by Vetcove that asks whether the Impacted Customer wishes to proceed with the transaction by email or by phone.

51. Sixth, if the Impacted Customer clicks “By Email,” an email that appears to be coming from the veterinary clinic is sent. In reality, upon information and belief, Covetrus is sending the email. (*See Exhibit B.*) At this stage, Vetcove has now inserted Covetrus directly into the scheme. Impacted Customers are then advised by Covetrus that the clinic has received a prescription request from another pharmacy (Chewy), but the clinic has approved the prescription to be fulfilled from “our practice’s own online pharmacy.” (*Id.*) The email advises the customer that they will not be charged by Chewy, and they should instead “Order Now” to complete the transaction through what is ultimately the Covetrus online pharmacy. (*Id.*) At the very bottom of the email, the Impacted Customer is belatedly told that they can still proceed with the “third-party pharmacy” (Chewy), but only after the Impacted Customer goes through the additional onerous process of contacting the Participating Vet directly by phone. (*Id.*) Remarkably, this email even states that it “cannot guarantee the efficacy or authenticity of products purchased from a third-party pharmacy,” falsely suggesting that Regulated Pet Products purchased from Chewy are of a lesser quality. (*Id.*)

52. Nowhere in any of the Diversion Communications described above did Defendants advise that they are responsible for the communications, that Defendants have a financial arrangement with each other to profit off of the diverted sale, that the Participating Vets are not

the ones who actually dispense the Regulated Pet Product or that Defendants have no relationship or affiliation with Chewy. Indeed, in the initial text message to the Impacted Customer (and others), Chewy is referenced directly, suggesting an affiliation between Chewy and the Participating Vet.

53. At some point in the process discussed above, Vetcove sends the Prescription or Authorization Form previously sent by Chewy to the veterinarian for approval back to Chewy with a “DENIED” or similar stamp centrally located on the sheet. (*See, e.g., Exhibit C.*)²⁰ Despite the denial stamp, certain prescriptions show that the Participating Vet had already approved the prescription, added usage instructions and refill quantities, and signed and dated it. These faxes contain a prominent footer from Vetcove stating: “This clinic uses Vetcove Scripts to manage their pharmacy prescription requests. To send and receive script request approvals electronically, contact us at partners@vetcove.com.”

54. Vetcove started trying to conceal its wrongdoing by, among other things, hiding the Vetcove footer from the misleading “DENIED” prescription. In fact, beginning around February 15, 2021, Chewy began to notice two new versions of the denials: one that reads “Canceled by Client This Order Should Not Be Fulfilled,” and another that reads “Declined,” both in all capital letters. Both messages completely block and conceal Vetcove’s footer from the bottom of the “denial.” (*See Exhibits D-1-2.*)

55. On one denial received by Chewy Pharmacy, Defendants even spelled out the scheme by marking the denial with the word “converted,” clearly a reference to Defendants’ deceptive and misleading Diversion Scheme. (*See Exhibit E.*)

²⁰ This same conduct is occurring in multiple states. Through about May 2021, Chewy has identified at least 55 clinics with over 890 denials.

56. Defendants' Diversion Communications are deceptive and misleading in numerous ways, including because they (i) suggest that further action is necessary by the Impacted Customer to complete the transaction with Chewy, when in fact, no action by the Impacted Customer is required at all; (ii) falsely affiliate Chewy with the Defendants; (iii) fail to adequately disclose to the Impacted Customer of their right to use a pharmacy of their choosing; (iv) do not state a medically appropriate reason for the diversion of the Regulated Pet Product to another pharmacy (because none exists); (v) fail to disclose contractual relationships and financial benefits by, between and among Defendants, leaving the consumer unaware of the financial motivations for these diversionary actions; (vi) suggest that Regulated Pet Products are being denied for some medically appropriate reason when fulfilled by Chewy, when in fact they are being denied for financial reasons only; (vii) in some cases, improperly question the efficacy or authenticity of the Regulated Pet Product sold by Chewy and/or affirmatively misrepresent that the prescription will be filled "locally," when in fact it is filled hundreds of miles away; and (viii) in some cases, unnecessarily delay receipt of the Regulated Pet Product. Each layer of deception undermines the Impacted Customer's freedom to choose a pharmacy.

57. Defendants' tortious conduct and deceptive, unfair and misleading practices are harming Chewy, Chewy's customers and the public at large. Defendants' improper diversion of Regulated Pet Products from fulfillment by Chewy, and consequent interference of Chewy's business relationships with its customers, damages Chewy and interferes with Impacted Customers' fundamental right to choose who provides their Regulated Pet Products and has led, and will continue to lead, to consumer confusion, higher prices, less convenience and less consumer choice.

58. Chewy is damaged through the loss of specific prescription sales and other related and future sales and has suffered, and continues to suffer, irreparable harm to Chewy’s reputation and brand and to Chewy’s relationships with existing and prospective customers, the loss of which is not calculable. Chewy’s losses to date are only the tip of the iceberg and—unless stopped—will continue to grow as Defendants continue to interfere with Chewy’s business relationships.

AS AND FOR A FIRST CAUSE OF ACTION
(Tortious Interference with Current and Prospective Business Relationships
Against Defendants Vetcove, Covetrus and DOES 1-100)

59. Chewy repeats and realleges the allegations contained in paragraphs 1 through 58 as if set forth fully herein.

60. Chewy had and has business relationships with existing and prospective Impacted Customers who placed orders for Regulated Pet Products through Chewy’s website, including but not limited those identified in Exhibits C-E hereto.

61. Defendants were aware of and had actual knowledge of Chewy’s business relationships with existing and prospective Impacted Customers who placed orders for Regulated Pet Products through Chewy’s website.

62. Defendants acted intentionally, maliciously and without justification to induce the Impacted Customers, including but not limited to those identified in Exhibits C-E hereto, to terminate their business relationships with Chewy, including by intercepting and diverting Impacted Customers’ orders for Regulated Pet Products and “steering” customers away from Chewy to an arrangement in which all Defendants profit from the sale diverted by Defendants of intercepted Regulated Pet Products. Vetcove profits from the sale of its Practice Management System and other fees and aspects of the arrangement.

63. Defendants used improper means and unlawful conduct, that was malicious and unjustified to induce Chewy’s Impacted Customers, including but not limited to those identified

in Exhibits C-E hereto, to terminate their business relationships with Chewy and to secure economic advantage over Chewy. Defendants' Diversion Communications are tortiously deceptive and misleading to Impacted Customers because, among other things, they (i) suggest that further action is necessary by the Impacted Customer to complete the transaction with Chewy, when in fact, no action is required at all; (ii) falsely affiliate Chewy with the Participating Vet and/or Defendants; (iii) fail to adequately disclose to the Impacted Customer their right to use a pharmacy of their choosing; (iv) do not state a medically appropriate reason for the diversion of the Regulated Pet Products to another pharmacy (because there is none); (v) fail to disclose contractual relationships and financial benefits by, between and among Defendants and the Participating Vets, leaving the consumer unaware of the financial motivations for these diversionary actions; (vi) suggest that Regulated Pet Products are being "DENIED" for some medically appropriate reason when fulfilled by Chewy, when in fact, they are being denied for financial reasons only; and (vii) in some cases, improperly question the efficacy or authenticity of the Regulated Pet Products sold by Chewy and/or affirmatively misrepresent that the prescription will be filled "locally" when in fact it is filled hundreds of miles away; and (viii) in some cases, unnecessarily delay receipt of the Regulated Pet Product.

64. Defendants' illegal Diversion Scheme violates state laws protecting Impacted Customers' fundamental right to choose who provides their Regulated Pet Products and, among others, laws prohibiting unprofessional conduct and unlawful or deceptive trade practices.

65. The Impacted Customers' termination of their business relationships with Chewy was a direct and proximate result of Defendants' conduct and would not have occurred but for Defendants' conduct. In particular, but for Defendants' tortious interference, the representative

Chewy orders in Exhibits C-E, and hundreds of others, as well as a number of others that is growing daily, would have been fulfilled by Chewy.

66. Defendants' interference has caused and continues to cause injury to Chewy's relationship with Impacted Customers and damages and irreparable injury to Chewy through the loss of specific prescription sales, future sales, customer confusion and harm to the Chewy brand.

67. Defendants' conduct is willful, wanton, egregious, malicious and/or harms members of the general public, who are Chewy's customers. Accordingly, punitive damages are appropriate to deter similar conduct in the future.

68. As a result of Defendants' improper actions, Chewy has been damaged in an amount to be determined at trial.

AS AND FOR A SECOND CAUSE OF ACTION

(Unfair Competition Against Defendants

Vetcove, Covetrus and DOES 1-100)

69. Chewy repeats and realleges the allegations contained in paragraphs 1 through 58 as if set forth fully herein.

70. As set forth above, Defendants have used unfair or improper means of competition in an effort to misappropriate the fruits of Chewy's efforts through its customer relationships.

71. Defendants have used Chewy's confidential and proprietary information, including but not necessarily limited to confidential information concerning Chewy's customers, to steal Chewy's customers and to compete against Chewy.

72. Chewy's customer information is kept strictly confidential and is not known outside of Chewy, except to the extent that the name of Chewy's customer and related information about the customer's pet are included in the Prescription or Authorization Form. Chewy takes reasonable steps to protect its confidential and proprietary information, including but not limited to by

maintaining security systems to safeguard confidential and proprietary information within the company and similarly counseling employees, who are subject to confidentiality obligations.

73. Defendants have bestowed upon themselves monetary gains in the form of, *inter alia*, profits from Chewy's Impacted Customers through their bad faith and tortious conduct toward Chewy.

74. Defendants' activities have further caused confusion with, or have been mistaken for, Chewy's activities in the mind of the public, or are likely to cause such confusion or mistake in that customers have been and are being misled in some instances to believe they are placing their orders with Chewy through the Vetcove link pursuant to unsolicited communications that state, for example, "I . . . saw that you placed an order for [prescription] through Chewy. We have \$10 off your total order! Action is required to finalize your order: <https://www.vetcove.com/rx>." Defendants deceptively divert sales away from Chewy by forcing the customer to click through a series of misleading and improper communications—all while fraudulently denying Regulated Pet Products from Chewy Pharmacy, the pharmacy of choice by the Impacted Customer, in violation of state laws.

75. Defendants' actions, including but not limited to their misappropriation of Chewy's efforts, expenditures on developing its customer base, good will and commercial advantage, are unfair, involve bad faith, and/or create confusion or a likelihood of confusion between Chewy and Defendants.

76. As a direct and proximate result of Defendants' actions, Chewy is suffering irreparable harm for which injunctive relief should be granted and the loss of past and future profits, reputational harm and other damages in an amount to be proven at trial.

77. Defendants' conduct is willful, wanton, egregious, malicious and/or harms members of the general public, who are Chewy's customers. Accordingly, punitive damages are appropriate to deter similar conduct in the future.

AS AND FOR A THIRD CAUSE OF ACTION
(Unjust Enrichment Against Defendants Covetrus and DOES 1-100)

78. Chewy repeats and realleges the allegations contained in paragraphs 1 through 58 as if set forth fully herein.

79. Through the misdirection and improper diversion of Impacted Customers' prescriptions, Defendants Covetrus and DOES 1-100 have been enriched at Chewy's expense through their transactions of Regulated Pet Products associated with Vetcove's Prescription Management System.

80. It is against equity and good conscience to permit Defendants Covetrus and DOES 1-100 to retain all of the benefits, including but not limited to profits, they have earned through the diversion of Impacted Customers' orders for Regulated Pet Products.

81. As a result of the actions of Defendants Covetrus and DOES 1-100, Chewy has suffered injury and is entitled to restitution and/or disgorgement in an amount to be determined at trial.

AS AND FOR A FOURTH CAUSE OF ACTION
(Permanent Injunction Against All Defendants)

82. Chewy repeats and realleges the allegations contained in paragraphs 1 through 58 as if set forth fully herein.

83. Defendants' conduct has caused and threatens to cause irreparable harm to Chewy.

84. Chewy lacks an adequate remedy at law.

85. Chewy will suffer irreparable harm if the injunction is not granted.

86. The balance of equities tips in Chewy's favor.

87. Defendants should be preliminarily and permanently enjoined from misappropriating and using Chewy's confidential and proprietary information without Chewy's consent, from interfering with Chewy customers' right to choose their own pharmacy and with Chewy's business relationships with its customers, from diverting Chewy customers' orders of Regulated Pet Products, from sending deceptive and misleading communications to Chewy customers in an effort to interfere with Chewy's business relationships, from engaging in any conduct related in any way to the Diversion Scheme, and from otherwise engaging in tortious conduct, unfair competition and/or deceptive or misleading trade practices designed to intercept and divert Chewy customers' orders of Regulated Pet Products from Chewy to others.

DEMAND FOR JURY TRIAL

Pursuant to CPLR § 4101, Plaintiffs demand a jury trial for all claims and issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants as follows:

1. For compensatory damages in an amount to be proved at trial.
2. For restitution in an amount to be determined at trial.
3. For disgorgement of Defendants' profits in an amount to be determined at trial.
4. For preliminary and permanent injunctive relief against Defendants enjoining them from misappropriating and using Chewy's confidential and proprietary information without Chewy's consent, from interfering with Chewy customers' right to choose their own pharmacy and with Chewy's business relationships with its customers, from diverting Chewy customers'

orders of Regulated Pet Products, from sending deceptive and misleading communications to Chewy customers in an effort to interfere with Chewy's business relationships, from engaging in any conduct related in any way to the Diversion Scheme, and from otherwise engaging in tortious conduct, unfair competition and/or deceptive or misleading trade practices designed to intercept and divert Chewy customers' orders of Regulated Pet Products from Chewy to others.

5. For punitive and exemplary damages.
6. For Plaintiffs' costs incurred in connection with this action, including reasonable attorneys' fees.
7. For pre- and post-judgment costs as permitted by law.
8. For such other relief as the Court deems just and proper.

Dated: New York, New York
May 19, 2021

MANATT, PHELPS & PHILLIPS, LLP

By: s/ Samantha J. Katze
Samantha J. Katze
7 Times Square
New York, New York 10036
(212) 790-4500
Email: SKatze@manatt.com

Matthew P. Kanny
(pro hac vice forthcoming)
Catherine Noble
(pro hac vice forthcoming)
2049 Century Park East
Suite 1700
Los Angeles, CA 90067
(310) 312-4000
Email: mkanny@manatt.com
cnoble@manatt.com

*Attorneys for Plaintiffs
Chewy, Inc. and Chewy Pharmacy, LLC*