

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

TIMOTHY FITCHETT, individually and on behalf of all others similarly situated,

Plaintiff,

CIVIL DIVISION

No.: _____

CLASS ACTION

v.

PETMED EXPRESS, INC.,

Defendant.

CLASS ACTION COMPLAINT

Plaintiff Timothy Fitchett, individually and on behalf of all others similarly situated, brings this action against Defendant PetMed Express, Inc., and alleges upon personal knowledge as to himself and upon information and belief as to all other matters, as follows:

NATURE THE ACTION

1. Plaintiff’s claim is simple: when something is always on sale, it’s never on sale.
2. Many consumers thrive on finding the best deal.
3. Retailers know this and try to lure consumers with sales that promise huge savings.
4. But promised savings are false if a product’s true price is misrepresented as a discount from an inflated “regular” price (“False Reference Price”) that no one ever pays.

5. The Federal Trade Commission prohibits retailers’ use of False Reference Prices:

One of the most commonly used forms of bargain advertising is to offer a reduction from the advertiser’s own former price for an article. If the former priced is the actual, bona fide price at which the article was offered to the public on a regular basis for a reasonably substantial period of time, it provides a legitimate basis for the advertising of a price comparison. Where the former price is genuine, the bargain being advertised is a true one. If, on the other hand, the former price being advertised is not bona fide but fictitious – for example, where an artificial, inflated price was established for the purpose of enabling the subsequent offer of a large reduction – the “bargain” being advertised is a false one; the purchaser is not receiving the unusual value he expects. In such a case, the “reduced” price is, in reality, probably just the seller’s regular price.

16 C.F.R. § 233.1(a) (emphasis added).

6. For years, Defendant has used False Reference Prices to deny Pennsylvania consumers the discounts they bargained for upon purchasing Defendant's products.

7. Plaintiff brings this action under Pennsylvania law to recover damages on his own behalf, and to resolve "particular issues" under Pa. R. Civ. P. 1702, 1708, 1709, and 1710 for the Issue Class defined below. To be clear, Plaintiff does not seek damages on behalf of the Issue Class.

JURISDICTION AND VENUE

8. The Court has subject matter jurisdiction under 42 Pa. C.S. § 931.

9. The Court has personal jurisdiction over Defendant under 42 Pa. C.S. § 5301.

10. Venue is proper under Pa. R. Civ. P. 2179 because Defendant regularly conducts business in this County, this is the County where the cause of action arose, and/or this is the County where the transactions or occurrences took place out of which the cause of action arose.

PARTIES

11. Plaintiff is a natural person over the age of eighteen. He resides in Allegheny County, Pennsylvania.

12. PetMed Express, Inc. is a Florida corporation headquartered in Florida.

13. Defendant owns, operates, and controls <https://www.1800petmeds.com/> ("Online Store"), a website where consumers may purchase products for their dogs, cats, and horses.

COMMON FACTUAL ALLEGATIONS

A. Retailers Benefit From False Reference Pricing Schemes.

14. Consumer demand is influenced by “internal” and “external” reference prices.¹

15. Internal reference prices are “prices stored in memory” (e.g., a consumer’s price expectations adapted from past experiences); external reference prices are “provided by observed stimuli in the purchase environment” (e.g., a “suggested retail price”).²

16. Consumers’ internal reference prices adjust toward external reference prices when valuing a product.³

17. “[T]here is ample evidence that consumers use reference prices in making brand choices” and publications have summarized the empirical data as follows:

Inflated reference prices can have multiple effects on consumers. They can increase consumers’ value perceptions (transaction value and acquisition value), reduce their search intentions for lower prices, increase their purchase intentions, and reduce their purchase intentions for competing products ... Inflated and/or false advertised reference prices enhance consumers’ internal reference price estimates and, ultimately, increase their perceptions of value and likelihood to purchase[.]⁴

18. Retailers, including Defendant, know consumers are susceptible to a bargain.

¹ Empirical results “suggest that internal reference prices are a significant factor in purchase decisions. The results also add empirical evidence that external reference prices significantly enter the brand-choice decision.” Mayhew, Glenn E. and Russell S. Winer. “An Empirical Analysis of Internal and External Reference Prices using Scanner Data.” *Journal of Consumer Research* 19, no. 1 (1992): 62-70, p. 68.

² Mayhew, Glenn E. and Russell S. Winer. “An Empirical Analysis of Internal and External Reference Prices using Scanner Data.” *Journal of Consumer Research* 19, no. 1 (1992): 62-70.

³ “Buyers’ internal reference prices adapt to the stimuli prices presented in the advertisement. That is, buyers either adjust their internal reference price or accept the advertised reference price to make judgments about the product’s value and the value of the deal.” Grewal, Dhruv, Kent B. Monroe, and Ramayya Krishnan. “The Effects of Price-Comparison Advertising on Buyers’ Perceptions of Acquisition Value, Transaction Value, and Behavioral Intentions.” *The Journal of Marketing* 62 (1998): 46-59, p. 48.

⁴ Grewal, Dhruv, and Larry D. Compeau. “Pricing and public policy: A research agenda and an overview of the special issue.” *Journal of Public Policy & Marketing* 18, no. 1 (1999): 3-10, p. 7.

19. Defendant, therefore, has a financial interest in making consumers believe they are receiving a good bargain, even if they are not.

B. Pennsylvania And Federal Law Prohibit False “Original Price” References.

20. A retailer who uses an artificially inflated “regular” price, or a False Reference Price, reference commits an unfair or deceptive act or practice in violation of Pennsylvania’s Unfair Trade Practices and Consumer Protection Law (“UTPCPL”). *See Morrow v. Carter’s, Inc.*, No. 16-cv-01485, 2017 U.S. Dist. LEXIS 139876, at *9-11, *15-19 (N.D. Ga. Mar. 6, 2017) (finding plaintiff stated a claim under UTPCPL for alleged false discount scheme); *Morrow v. Ann Inc.*, No. 16-cv-03340, 2017 U.S. Dist. LEXIS 9770, at *9-11, *14-17 (S.D.N.Y. Jan. 24, 2017) (similar); *Robey v. SPARC Grp. LLC*, 290 A.3d 199, 203 (N.J. Super. Ct. App. Div. 2023) (“We are satisfied that plaintiffs’ allegations that the discounts offered were illusory, as in our simpler example, were adequately pleaded. Plaintiffs claimed, through the details provided about their purchases briefly summarized above, that each item purchased was ‘never offered . . . at [its] purported regular price . . . either before or after [plaintiff’s] purchase’ and, thus, defendant utilized a fictitious price, as well as the come-on of a discount, as the means of hoodwinking its customers.”).⁵

21. Under the Federal Trade Commission Act (“FTCA”), when a retailer offers a discount from its own original price, the original price must have been a price at which the retailer held the item out for sale on a regular basis, for a commercially reasonable time. *See* 16 C.F.R. § 233.1(a) and (b).

⁵ *See Garcia v. Am. Eagle Outfitters, Inc.*, 293 A.3d 252, 258 (Pa. Super. 2023) (“Because these courts considered substantially identical statutory language under a uniform consumer protection law, their decisions deserve great deference from this Court.”); 1 Pa. C.S. § 1927.

C. Defendant's Fraudulent Price Discounting Scheme Violates Pennsylvania Law.

22. Defendant offers discounts on *all* of its products, *all* of the time.

23. Defendant offers these discounts by displaying a "regular" price in strikethrough font to indicate that the "regular" price is outdated and has been replaced by a "sale" price, which frequently appears in conspicuous font of a different size or color than the surrounding text, and never in strikethrough font.

24. Sometimes, Defendant describes the price disparity between a "regular" and a "sale" price in terms of a percentage discount.

25. Sometimes, Defendant indicates the discount is available "today," suggesting the discount is time-sensitive. *See* Fig. 1 and Fig. 1.1.⁶

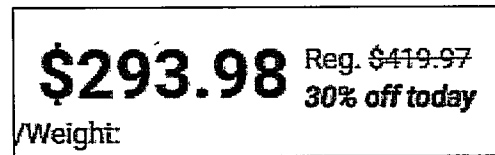


Fig. 1.1

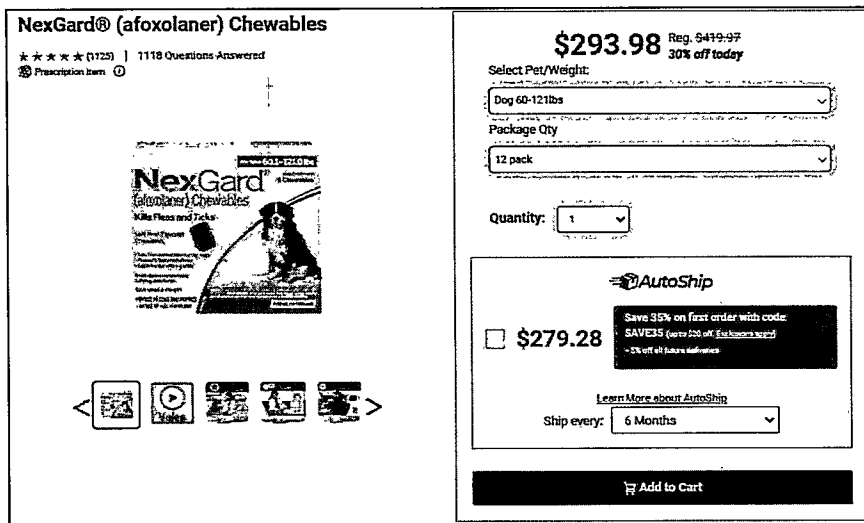


Fig. 1

⁶ The screenshots in Figs. 1 and 1.1 were taken from Defendant's Online Store on April 4, 2024. *See* <https://www.1800petmeds.com/nexgard+chewables-prod10356.html>.

26. Upon information and belief, at that time of every purchase made from Defendant, Defendant has never previously sold the purchased product at its advertised “regular” price.

27. Defendant’s perpetual discounting constitutes false, fraudulent, and deceptive advertising because the “regular” prices listed in strikethrough font are always greater than the prices Defendant sells its products.

28. In other words, the “regular” prices are a total fiction used exclusively as benchmarks from which the advertised discounts and corresponding “sale” prices are derived.

29. Defendant’s scheme is designed to trick consumers into believing their purchase includes a discount, when, in reality, all consumers get is the false impression of a bargain.

30. Defendant engages in this practice knowing it never offered or sold the products at the advertised “regular” prices.

31. For the avoidance of doubt, nowhere does Defendant disclose that the “regular” prices are not: (a) former prices; (b) recent, regularly offered former prices; (c) prices at which identical products are sold elsewhere in the market; or (d) based on an MSRP.

32. And, upon information and belief, Defendant’s “regular” prices are not, in fact, based on an MSRP.⁷

33. Nor does Defendant disclose the date at which the “regular” prices were offered in the market by either Defendant or one of Defendant’s competitors or suppliers.

⁷ See Exhibit A, Plaintiff’s Counsel’s MSRP Investigation indicating:

- (a) the MSRP for Heartgard Plus Green (6-pack) for Dogs 26-50lbs was \$66.19 on February 16, 2023—Defendant’s “reg.” price for the same product was \$84.99 on February 4, 2023;
- (b) the MSRP for Nexgard (6-pack) for dogs 4-10lbs was \$144.99 on December 7, 2022—Defendant’s “reg.” price for the same product was \$190.56 on February 3, 2023); and
- (c) the MSRP for Nexgard Chewables (6-pack) for dogs 24-60lbs was \$144.99 on January 23, 2023—Defendant’s “reg.” price for the same product was \$208.56 on February 3, 2023.

D. Investigation

34. Plaintiff's counsel's investigation revealed that every product in Defendant's Online Store displays a "regular" price and a substantially discounted "sale" price.

35. Plaintiff's counsel used the Internet Archive's Wayback Machine⁸ to investigate the "regular" and "sale" prices of Defendant's products over time. This investigation revealed that, for every product investigated, Defendant has never previously sold the product at the "regular" price displayed in the Online Store.

Nexgard Chewables (3-pack) – Dog (4-10 lbs)⁹

	Feb. 15, 2016	Feb. 5, 2017	Sept. 19, 2018	May 2, 2019	Jan. 11, 2020
"Regular" Price	\$78.74	\$79.99	\$86.13	\$73.84	\$79.99
"Sale" Price	\$57.99	\$58.64	\$58.64	\$46.15	\$55.99

	Jan. 17, 2021	Jan. 21, 2022	Feb. 3, 2023	Aug. 1, 2023
"Regular" Price	\$84.27	\$89.99	\$104.56	\$104.56
"Sale" Price	\$58.99	\$62.99	\$73.19	\$73.19

Heartgard Chewables for Cats (6-pack) – Cat (5-15 lbs)¹⁰

	Apr. 30, 2020	Jan. 19, 2021	Jan. 24, 2022	Feb. 15, 2023	Aug. 1, 2023
"Regular" Price	\$51.27	\$57.13	\$57.13	\$67.13	\$67.13
"Sale" Price	\$35.89	\$39.99	\$39.99	\$46.99	\$46.99

⁸ The Wayback Machine "allows users to browse versions of pages and documents as they existed at various points in history[.]" *Perera v. AG United States*, 536 F. App'x 240, 242 n.3 (3d Cir. 2013).

⁹ See Exhibit B, Investigation into PetMeds' False Price Disparities, pp. 1-9.

¹⁰ See Exhibit B, Investigation into PetMeds' False Price Disparities, pp. 10-14.

Apoquel (price per tablet) – 3.6mg¹¹

	Jan. 30, 2016	May 8, 2017	Sept. 19, 2018	May 2, 2019	Apr. 17, 2020
“Regular” Price	\$2.60	\$3.49	\$3.58	\$2.87	\$3.27
“Sale” Price	\$2.08	\$2.51	\$2.29	\$1.79	\$2.29

	Jan. 17, 2021	Jan. 20, 2022	Feb. 15, 2023	Aug. 1, 2023
“Regular” Price	\$3.47	\$3.61	\$3.86	\$3.86
“Sale” Price	\$2.43	\$2.53	\$2.70	\$2.70

36. Plaintiff’s investigation demonstrates that the “regular” prices listed in the Online Store are False Reference Prices.

ALLEGATIONS SPECIFIC TO PLAINTIFF

37. Plaintiff resides in Allegheny County, Pennsylvania.

38. On February 8, 2023, Plaintiff visited Defendant’s Online Store and purchased:

(a) a 6-pack of Heartgard Plus Green for dogs that weigh between 26 and 50 pounds (“Heartgard”) for \$59.49;

(b) a 6-pack of Nexgard for dogs that weigh between 24 and 60 pounds (“Nexgard 24-60”) for \$138.99; and

(c) a 6-pack of Nexgard for dogs that weigh between 4 and 10 pounds (“Nexgard 4-10”) for \$133.39. *See* Exhibit C, Order Confirmation.

¹¹ *See* Exhibit B, Plaintiff’s Counsel’s Investigation into PetMeds’ False Price Disparities, pp. 15-23.

Heartgard Plus Green (6-pack) – Dog (26-50 lbs)

39. Below is a screenshot from the Internet Archive’s Wayback Machine that displays Defendant’s Heartgard advertisement as it existed on February 4, 2023. Upon information and belief, the advertisement did not change between February 4, 2023 and the time of Plaintiff’s purchase four days later, on February 8, 2023.

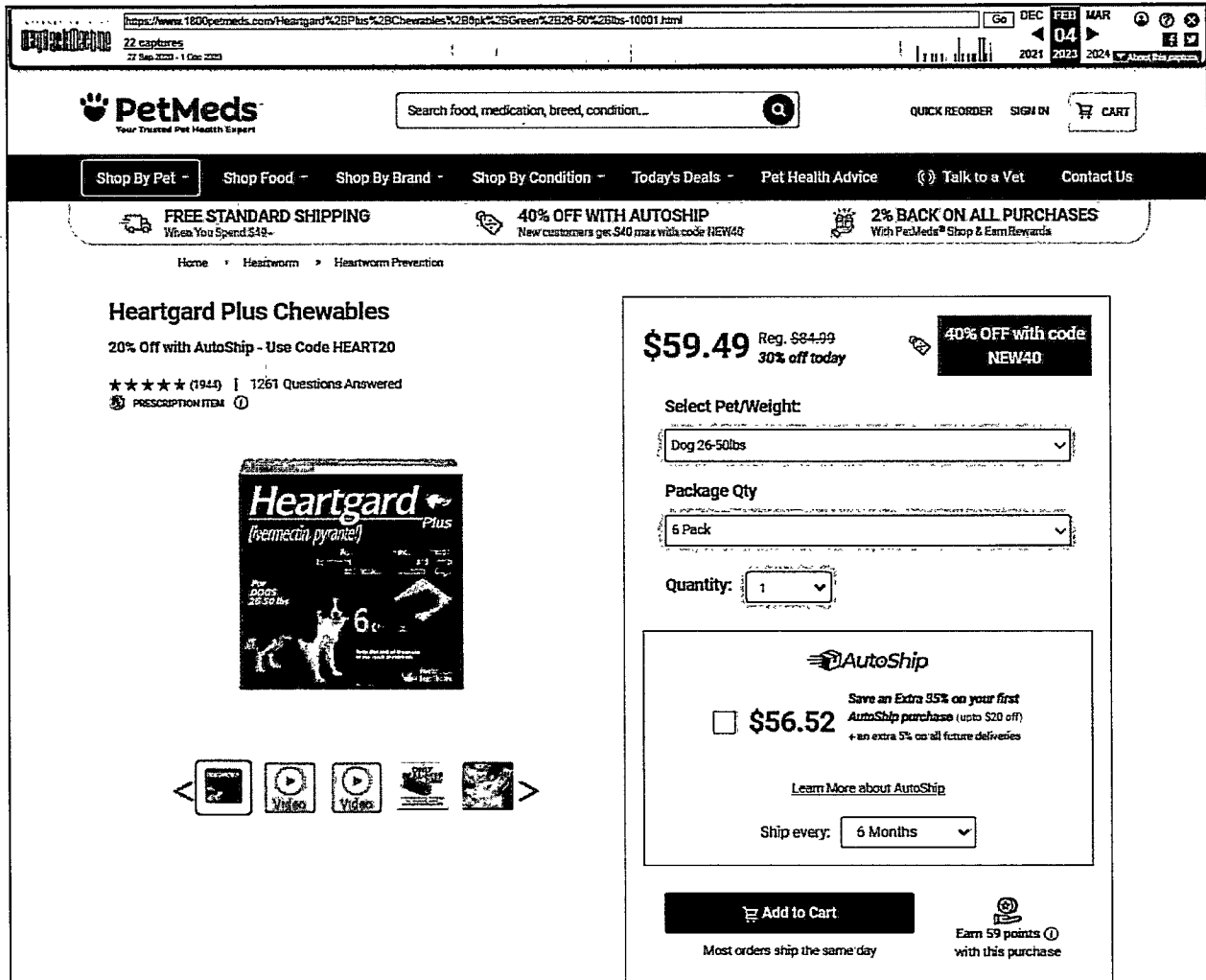


Fig. 2.¹²

¹² See <https://web.archive.org/web/20230204145156/https://www.1800petmeds.com/Heartgard+Plus+Chewables+6pk+Green+26-50+lbs-10001.html> (captured Apr. 3. 2024).

40. When Plaintiff visited Defendant's Online Store on February 8, 2023, Defendant represented that (a) Heartgard's "reg." price was \$84.99, (b) Heartgard's sale price was \$59.49, and (c) Plaintiff could "save 30%," or \$25.50, by purchasing Heartgard "today." See Fig. 2.

41. After notifying Plaintiff of Heartgard's "regular" and sale prices, and the \$25.50 discount this price disparity represents, Plaintiff purchased Heartgard from Defendant on February 8, 2023. See Exhibit C, Order Confirmation.

42. Defendant has never offered Heartgard for sale at the listed "reg." price of \$84.99.

43. In fact, at the time of Plaintiff's purchase, Defendant had never sold Heartgard for more than \$59.49, the False Reference Price displayed at the time of Plaintiff's purchase.

	Sept. 27, 2020	Oct. 20, 2021	May 22, 2022	June 8, 2023	Dec. 1, 2023
"Regular" Price	\$67.13	\$71.41	\$77.13	\$84.99	\$84.99
"Sale" Price	\$46.99	\$49.99	\$53.99	\$59.49	\$59.49 ¹³

¹³ See Exhibit B, Investigation into PetMeds' False Price Disparities pp. 24-29.

Nexgard (6-pack) – Dog (4-10 lbs)

44. Below is a screenshot from the Internet Archive's Wayback Machine that displays the Nexgard 4-10 advertisement as it existed on February 3, 2023. Upon information and belief, the advertisement did not change between February 3, 2023 and the time of Plaintiff's purchase five days later, on February 8, 2023.

The screenshot shows the PetMeds website interface. At the top, there is a search bar and navigation links. Below the navigation, there are promotional banners for shipping and discounts. The main product area features the Nexgard (afloxolaner) Chewables product image and a price of \$27.99, which is 30% off the regular price of \$39.99. A 40% off code (NEW40) is applied. The product is selected for a Dog 04-10lbs and a 6-pack quantity. A table of options shows the 6-pack selected with a price of \$133.39 (including free shipping). Below the table, there is a shipping frequency dropdown set to 1 Month and an 'Add to Cart' button.

Package Qty	Price	Shipping
1 pack	\$27.99	\$39.99
3 pack	\$73.19	\$104.56
6 pack	\$133.39	\$190.56
12 pack	\$266.77	\$381.11

Fig. 3.¹⁴

45. When Plaintiff visited Defendant's Online Store on February 8, 2023, Defendant represented that (a) Nexgard 4-10's "reg." price was \$190.56, (b) Nexgard 4-10's sale price was \$133.39, and (c) Plaintiff could "save 30%," or \$57.17, by purchasing Nexgard 4-10 "today." See Fig. 3.

¹⁴ See

<https://web.archive.org/web/20230203102105/https://www.1800petmeds.com/nexgard+chewables-prod10356.html> (captured Apr. 3, 2024).

46. After notifying Plaintiff of Nexgard 4-10's "regular" and sales prices, and the \$57.17 discount this price disparity represents, Plaintiff purchased Nexgard 4-10 from Defendant on February 8, 2023. *See* Exhibit C, Order Confirmation.

47. Defendant has never offered Nexgard 4-10 for sale at the "reg." price of \$190.56.

48. In fact, at the time of Plaintiff's purchase, Defendant had never sold Nexgard 4-10 for more than \$133.39, the False Reference price displayed at the time of Plaintiff's purchase.

	Feb. 15, 2016	Feb 5, 2017	July 20, 2018	May 2, 2019	Jan. 11, 2020
"Regular" Price	\$151.23	\$153.73	\$164.89	\$141.70	\$154.27
"Sale" Price	\$115.98	\$112.27	\$112.27	\$88.56	\$107.99

	Jan. 17, 2021	Jan. 21, 2022	Feb. 3, 2023
"Regular" Price	\$159.27	\$190.56	\$190.56
"Sale" Price	\$111.49	\$133.39	\$133.39 ¹⁵

¹⁵ *See* Exhibit B, Investigation into PetMeds' False Price Disparities, pp. 30-38.

Nexgard (6-pack) – Dog (24-60 lbs)

49. Below is a screenshot from the Internet Archive's Wayback Machine that displays the Nexgard 24-60 advertisement as it existed on February 3, 2023, five days before Plaintiff's purchase on February 8, 2023.

The screenshot shows the PetMeds website interface. At the top, there is a search bar and navigation links. Below the navigation, there are promotional banners for shipping and discounts. The main product section features the Nexgard (6-pack) product image and a price of \$30.79, which is 30% off the regular price of \$43.99. A 40% off code (NEW40) is also visible. The product is categorized as 'Dog 24-60lbs' and '6 pack'. Shipping options are listed as '1 Month'.

Package Qty	Price	Shipping
1 pack	\$30.79	\$43.99
3 pack	\$79.79	\$112.99
6 pack	\$145.99	\$202.56
12 pack	\$291.98	\$417.11

Fig. 4.¹⁶

50. When Plaintiff visited Defendant's Online Store on February 8, 2023, Defendant represented that (a) Nexgard 24-60's "reg." price was one price, (b) Nexgard 24-60's sale price was another lower price, and (c) Plaintiff could "save 30%" by purchasing Nexgard 24-60 "today."

See Fig. 4.

¹⁶ See

<https://web.archive.org/web/20230203102105/https://www.1800petmeds.com/nexgard+chewables-prod10356.html> (captured Apr. 3, 2024).

51. After notifying Plaintiff of Nexgard 24-60's "regular" and sale prices, and the 30% discount this price disparity represents, Plaintiff purchased Nexgard 24-60 from Defendant on February 8, 2023 for \$138.99. *See* Exhibit C, Order Confirmation.

52. Defendant has never offered Nexgard 24-60 for sale at the "reg." price that Defendant displayed at the time of Plaintiff's purchase.

	Feb. 15, 2016	Feb 5, 2017	Dec. 15, 2019	June 4, 2020	Jan. 17, 2021
"Regular" Price	\$156.23	\$159.98	\$157.13	\$166.41	\$208.56
"Sale" Price	\$119.98	\$117.37	\$109.99	\$116.49	\$145.99

	Jan. 21, 2022	Feb. 3, 2023
"Regular" Price	\$208.56	\$208.56
"Sale" Price	\$145.99	\$145.99 ¹⁷

53. The "regular" prices advertised on products sold at the Online Store are False Reference Prices, utilized only to perpetuate Defendant's false discount scheme.

54. Defendant knows its reference pricing is false, deceptive, misleading, and unlawful.

55. Defendant concealed from, and intentionally failed to disclose to, Plaintiff the truth of its false discounts and False Reference Prices.

56. At all relevant times, Defendant had a duty to Plaintiff to disclose the truth about its false discounts.

57. Plaintiff was damaged and suffered losses equal to the discounts that Defendant offered, and that Plaintiff accepted by making a purchase but never received.

¹⁷ *See* Exhibit B, Investigation into PetMeds' False Price Disparities, pp. 39-45.

CLASS ACTION ALLEGATIONS

58. Plaintiff seeks to certify an Issue Class that includes “all Pennsylvania citizens who are domiciled in Pennsylvania and who purchased products from Defendant’s Online Store” solely for purpose of determining whether Defendant’s display of an artificially inflated ‘regular’ price reference constitutes an unfair or deceptive act or practice in violation of Pennsylvania’s Unfair Trade Practices and Consumer Protection Law (this issue is referred to herein as the “UTPCPL Issue”).

59. The Issue Class is maintainable pursuant to Pennsylvania Rules of Civil Procedure 1702, 1708, 1709, and 1710.

60. The Issue Class is so numerous that joinder is impracticable. Upon information and belief, Defendant’s records will demonstrate there are more than 40 members of the Issues Class. Pa. R. Civ. P. 1702(a)(1).

61. There are questions of law and fact common to Plaintiff and the Issue Class because Plaintiff and the Issue Class were subjected to the same false advertisements, and the questions of whether those advertisements were false or deceptive has a single common answer with respect to Plaintiff and the Issue Class. Pa. R. Civ. P. 1702(2).

62. The claims of Plaintiff and the Issue Class are typical of one another because they are based on the same legal theories and arise from the same conduct. Pa. R. Civ. P. 1702(3).

63. Plaintiff will fairly and adequately assert and protect the interest of the Issue Class. Pa. R. Civ. P. 1702(4).

64. The interests of Plaintiff and the Issue Class align, and Plaintiff has retained counsel who are competent and experienced in class action and consumer rights litigation. Pa. R. Civ. P. 1709.

65. Certifying the Issue Class solely for purposes of determining whether Defendant's uniform representations were false, deceptive, or misleading provides a fair and efficient method of adjudication of the controversy. Pa. R. Civ. P. 1702(5).

66. The common issue that the Issue Class seeks to litigate—whether Defendant's false price representations constitute an unfair or deceptive act or practice in violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law—predominates over any individual issue of law or fact. Pa. R. Civ. P. 1708(b)(1).

67. There are likely no difficulties in maintaining this case as a class action to decide whether Defendant's false price representations are false or deceptive because Defendant made the same false representations to Plaintiff and each member of the Issue Class, which means the same evidence will be needed by Plaintiff and the Issue Class to determine the single issue before the Court and there will be no individual legal or factual issues for the Court to resolve. Pa. R. Civ. P. 1708(b)(1).

68. The Court should certify the Issue Class because the prosecution of separate actions on the issue of whether the uniform misrepresentation made to Plaintiff and the members of the Issue Class is false or deceptive would lead to inconsistent or varying adjudications, which would confront Defendant with incompatible standards of conduct. Pa. R. Civ. P. 1708(b)(1).

69. Based on the knowledge of Plaintiff and undersigned counsel, there are no similar cases currently pending against Defendant. Pa. R. Civ. P. 1708(b)(1).

70. This forum is appropriate for litigation, as Defendant regularly conducts business in this County and all or part of the claims arose in this County. Pa. R. Civ. P. 1708(b)(1).

71. Defendant has acted or refused to act on grounds that apply generally to the Issue Class, such that the relief sought on behalf of the Issue Class is appropriate respecting the Issue

Class as a whole. The relief requested on behalf of the Issue Class applies equally to Plaintiff and the Issue Class members. Pa. R. Civ. P. 1708(b)(2).

CAUSE OF ACTION

COUNT I

Violation of the Unfair Trade Practices and Consumer Protection Law

73 P.S. § 201-1, et seq.

On behalf of Plaintiff and the Issues Class

72. Plaintiff realleges and incorporates by reference all previous paragraphs of this Complaint as if set forth fully herein.

73. This claim is brought in Plaintiff's individual capacity, except for Plaintiff's request for the certification and resolution of the UTPCPL Issue, which Plaintiff seeks on behalf of the Issue Class.

74. Plaintiff, the Issue Class members, and Defendant are persons, the products that Defendant sells at its Online Store are goods purchased for personal, family, and/or household use, and Defendant's conduct described herein is trade or commerce under the UTPCPL. 73 P.S. §§ 201-2(2)-(3), 201-9.2.

75. Defendant's conduct described herein constitutes unfair methods of competition and unfair or deceptive acts or practices under the UTPCPL because Defendant: (a) represented that goods have discounted characteristics they do not have; (b) advertised goods with intent not to sell them as advertised; (c) made false and misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions; and (d) engaged in fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding. 73 P.S. §§ 201-2(4)(v), (ix), (xi), (xxi).

76. Defendant's use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce violates 73 P.S. § 201-3.

77. As a result of Defendant's violation of the UTPCPL, Plaintiff suffered losses equal to the discounts that Defendant offered, and that Plaintiff accepted by making a purchase but never received.

78. Pursuant to 73 P.S. § 201-9.2(a), Plaintiff is entitled to actual damages or \$100 for each product purchased in which Defendant used a False Reference Price, whichever is greater, treble damages, reasonable costs and attorneys' fees, and such additional relief the Court deems necessary and proper.

79. Pursuant to Pa. R. Civ. P. 1702, 1708, 1709, and 1710, the Issue Class is entitled to certification and a determination of the UTPCPL Issue.

JURY TRIAL DEMANDED

Plaintiff requests a jury trial on all claims so triable.

PLAINTIFF'S FIRST DISCOVERY REQUESTS

Plaintiff's First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission directed to PetMed Express, Inc. are attached to this Complaint as Exhibit D.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- a. An order awarding Plaintiff actual, statutory, treble, and all other damages available by law, along with pre- and post-judgment interest;
- b. An order awarding Plaintiff restitution for any amounts paid to Defendant because of Defendant's misconduct described herein;
- c. An order certifying the Issue Class, appointing Plaintiff as representative of the Issue Class, and appointing undersigned counsel as counsel for the Issue Class;
- d. An order certifying the Issue Class to decide whether Defendant's display of an artificially inflated "regular" price reference constitutes an unfair or deceptive act or practice in violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law; and

e. An order awarding attorneys' fees and costs.

Respectfully Submitted,

Dated: April 18, 2024

/s/ Kevin W. Tucker

Kevin W. Tucker (he/him) (PA 312144)

Kevin J. Abramowicz (PA 320659)

Chandler Steiger (she/her) (PA 328891)

Stephanie Moore (she/her) (PA 329447)

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