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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

TAHER SUTERWALLA,

Defendant.

Case No. 06 CV 1446 DMS (LSP)

**SECOND AMENDED COMPLAINT
FOR VIOLATIONS OF THE FEDERAL
SECURITIES LAWS**

Plaintiff Securities and Exchange Commission ("Commission") alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to Sections 21(d)(1), 21(e), 21A(a)(1)(A) and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d)(1), 78u(e), 78u-1(a)(1)(A) & 78aa. The defendants have, directly or indirectly, made use of the means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

2. Venue is proper in this district pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, because certain of the transactions, acts, practices, and courses of business

1 constituting violations of the federal securities laws occurred within this district.

2 **SUMMARY**

3 3. This matter involves insider trading in the securities of Petco Animal Supplies,
4 Inc. ("Petco"), shortly before its July 14, 2006, announcement that it had agreed to be acquired
5 by two private equity investment firms for \$1.8 billion. Under the acquisition agreement, Petco
6 shareholders were to receive \$29 per share, which constituted a substantial premium over Petco's
7 July 13 closing price of \$19.45. In reaction to the news, Petco's stock opened on July 14 at
8 \$27.85, up 43% from its July 13, 2006, closing price.

9 4. From June 27 through July 13, 2006, defendant Taher Suterwalla used financial
10 institutions in Switzerland and England to buy Petco call options and "spread bets" on the price
11 of both Petco call options and Petco common stock. A call option provides the right to purchase
12 stock at a specified price on or before a specified date. A spread bet is a derivative financial
13 instrument sold in the United Kingdom that provides its purchaser with the right to profit from
14 changes in the price of the underlying security. In this case, Suterwalla purchased Petco call
15 options through a Swiss bank that filled his order by purchasing the options in the U.S. markets.
16 In addition, Suterwalla purchased spread bets from spread bet brokers in the United Kingdom,
17 knowing that they would hedge their sale of spread bets to Suterwalla by purchasing a
18 corresponding amount of Petco call options and Petco common stock in the U.S. markets.

19 5. The call options and spread bets purchased by Suterwalla were short-term and
20 mostly out of the money, making them extremely risky and highly speculative financial gambles.
21 Suterwalla would have lost the cost of the options and spread bets if the price of Petco's
22 securities did not rise, and could have lost millions of dollars if the price of Petco's securities
23 declined sharply. Instead, he profited by more than \$3 million when, on July 14, the acquisition
24 was announced and the price of Petco's securities increased dramatically.

25 6. Suterwalla traded in the securities of Petco while aware of material nonpublic
26 information concerning the pending acquisition of Petco that he knew or was reckless in not
27 knowing was acquired by his tipper in breach of a fiduciary or other duty of trust or confidence.
28 Accordingly, the Commission seeks a permanent injunction, disgorgement with prejudgment

1 interest, and civil penalties against him.

2 **THE DEFENDANT**

3 7. **Taher Suterwalla**, age 30, is a resident of London, England. Suterwalla is on the
 4 board of several United Kingdom companies. Suterwalla was a broker and/or trader at various
 5 United Kingdom securities firms from 1999 to 2003, when he resigned from Cantor Index, Ltd.,
 6 during an internal disciplinary investigation. Among other functions, Suterwalla acted as a
 7 spread bet broker while at Cantor Index. In an October 17, 2003, letter, Cantor Index advised
 8 Suterwalla that it had “concluded its preliminary investigations” and had found “evidence to
 9 support the allegation that [Suterwalla had] committed a breach of client confidentiality” by
 10 disclosing to one client information “about another client’s . . . market positions and intentions
 11 relating to [those positions].”

12 **RELEVANT ENTITIES**

13 8. **Petco Animal Supplies, Inc.** is a Delaware corporation headquartered in San
 14 Diego, California, which operates almost 800 retail stores that sell pet food, supplies, and
 15 services. None of those stores are in the United Kingdom. At the time of the events alleged
 16 herein, Petco’s common stock was traded on the Nasdaq Stock Market and its options traded on
 17 the Chicago Board Options Exchange, but its securities did not trade in the United Kingdom.

18 9. **Texas Pacific Group and Leonard Green & Partners, L.P.** were, at all relevant
 19 times, private equity investment firms. As alleged below, on July 14, 2006, Petco announced
 20 that it had been acquired by Texas Pacific Group (“TPG”) and Leonard Green & Partners, L.P.
 21 (“LG”).

22 **NEGOTIATIONS COMMENCE BETWEEN PETCO AND TPG/LG**

23 10. On or about March 25, 2006, John Danhakl, a Director of Petco and the managing
 24 partner of LG, contacted Brian Devine, Chairman of Petco’s Board of Directors, regarding a
 25 potential acquisition of Petco by TPG/LG.

26 11. On or about March 31, 2006, Petco received a letter from TPG/LG expressing an
 27 interest in purchasing Petco for \$26.50 per share, a 12.2% premium to the closing price of \$23.62
 28 for Petco stock that day.

1 12. On or about April 5, 2006, Petco's Board of Directors appointed a committee of
2 independent directors ("Petco Committee") to consider the TPG/LG proposal and any alternative
3 transactions, and to negotiate terms if deemed appropriate.

4 13. On or about May 25, 2006, representatives of Petco and TPG signed a
5 confidentiality agreement which provided, among other things, that neither Petco nor TPG or its
6 affiliates or representatives, including agents such as financial advisors, consultants, lawyers and
7 accountants, would disclose "that this Agreement exists" or "that discussions or negotiations
8 between TPG and Petco are taking or have taken place concerning a possible Transaction," or
9 "any of the terms, conditions or other facts with respect to a possible Transaction, including the
10 status thereof." Representatives of Petco also entered into a confidentiality agreement with LG.
11 These agreements were effective May 22, 2006.

12 14. On or about Friday, June 23, 2006, TPG/LG submitted to Petco's Board of
13 Directors a firm proposal letter to purchase Petco at \$26.50 per share, a 42% premium over
14 Petco's closing stock price of \$18.71 on June 21, 2006, together with a merger agreement
15 TPG/LG was prepared to execute, and equity and financing commitments from Credit Suisse and
16 certain of its affiliates and GS Mezzanine Partners 2006 Onshore Fund, L.P. and its affiliated
17 investment funds or other affiliates of the Goldman Sachs Group, Inc. In its proposal letter,
18 TPG/LG stated that its offer would only remain in effect until June 27, 2006, and that the offer
19 would expire if a "handshake deal" between Petco and TPG/LG had not been reached by that
20 time. The letter also stated that TPG/LG had instructed each party with whom TPG/LG was
21 working on the proposed acquisition "to maintain the confidentiality of this proposal, and would
22 expect [Petco] to do the same," warning that, "As such, please consider this proposal withdrawn
23 upon the public disclosure of the existence or relevant terms of this letter." Similar
24 confidentiality provisions are contained in each of the equity and financing commitment letters.

25
26 **SUTERWALLA PURCHASES SPREAD BETS AND PETCO CALL OPTIONS WHILE**
 AWARE OF MATERIAL NONPUBLIC INFORMATION

27 **A. Spread Bets Are Highly Leveraged, High Risk Transactions**

28 15. At key points during the course of negotiations between Petco and TPG/LG,

1 Suterwalla purchased spread bets on the price of Petco call options and Petco common stock
2 from the spread bet brokers Monecor (London) Ltd. (“Monecor”) and Global Trader Europe Ltd.
3 (“Global Trader”) (collectively, the “Brokers”) while aware of material nonpublic information,
4 which had been conveyed to him in breach of a fiduciary or other duty of trust and confidence
5 owed by his tipper to his or her employer or client, who was either one of the parties to the
6 negotiations (Petco, TPG, or LG) or an agent or representative of one of the parties to the
7 negotiations. In addition, as alleged below, Suterwalla purchased call options while aware of
8 such material nonpublic information conveyed to him in breach of a fiduciary or other duty of
9 trust and confidence owed by his tipper.

10 16. Spread bets represent highly leveraged positions in the underlying security. Each
11 \$1 spread bet is the equivalent of buying the price movement on 100 shares of the underlying
12 security. In addition to this built-in leverage, a spread bet purchaser typically pays only 10% to
13 20% of the total purchase price and margins the remaining 80% to 90%. Because of the highly
14 leveraged nature of spread bets, they provide a potential for large profits – and large losses. For
15 example, the loss on a \$100 spread bet on a \$20 stock such as Petco would have been \$10,000 if
16 the price of the stock went down only \$1, and would have been \$200,000 if the price fell to \$0.

17 17. Spread bet brokers typically hedge their exposure on the spread bets they sell by
18 purchasing the appropriate amount of the underlying security, then selling that security when the
19 spread bet is sold. In a successful hedge, the spread bet broker’s profits from its purchase and sale
20 of the underlying security closely tracks the spread bet buyer’s profits on the spread bet itself.

21 18. In this case, the Brokers hedged their exposure on the spread bets they sold to
22 Suterwalla by purchasing the appropriate amount of Petco call options and Petco common stock
23 in the U.S. markets. Conversely, when Suterwalla sold his spread bets, the Brokers sold the
24 Petco call options and Petco common stock they had purchased to hedge the spread bets they had
25 sold to Suterwalla.

26 19. Suterwalla, a former spread bet broker, knew that the Brokers would hedge the
27 spread bets they sold to him by buying the underlying securities in the United States and by
28 selling those securities when he sold his spread bets.

B. Suterwalla Places Spread Bets With Monecor And Global Trader And Purchases Petco Call Options Through A Third Party Account At A Swiss Bank Following TPG/LG's Submission Of Its Firm Proposal Letter To Petco

1. Suterwalla's June 27, 2006, Spread Bets With Monecor

20. Monecor is a spread bet broker based in London, England.

21. At all relevant times, Suterwalla maintained and directed all trading activity in an account in his name at Monecor (the "Suterwalla Monecor Account").

22. At all relevant times, Suterwalla had power of attorney over and directed all trading activity in an account at Monecor held in the name of Sandip Ahluwalia, a resident of Middlesex, England (the "Third Party Monecor Account").

23. On Tuesday, June 27, 2006, two business days after submission by TPG/LG to Petco of the firm proposal letter and related materials, while aware of the material nonpublic information that such a letter and/or materials had been submitted to Petco, and/or some or all of the contents of the letter and related materials, Suterwalla purchased a £50 spread bet on Petco call options with an expiration date of July 22, 2006, with an exercise price of \$20, and with an ask price of \$.63, through the Suterwalla Monecor Account at 16:45 London Time (8:45 a.m. Pacific Time). This spread bet provided Suterwalla with the right to receive from Monecor £50 for every penny that the July 22, 2006, \$20 Petco call option rose above \$.63. Suterwalla paid Monecor \$5,733 for this spread bet.

24. Two minutes later, at 16:47 London Time on June 27, 2006 (8:47 a.m. Pacific Time), Suterwalla purchased a £100 spread bet on Petco call options with an expiration date of August 19, 2006, with an exercise price of \$20, and with an ask price of \$1.0083, through the Suterwalla Monecor Account. Suterwalla paid Monecor \$18,351 for this spread bet.

25. At all relevant times herein, Monecor was a client of Man Financial Ltd. in London, England. Man Financial placed all of Monecor's hedging transactions through its U.S. affiliate broker-dealer Man Securities, Inc. Monecor hedged its exposure on the spread bets it sold to Suterwalla on June 27, 2006, by purchasing 91 Petco call options with an expiration date of July 22, 2006, and an exercise price of \$20 at 16:44 London Time (8:44 a.m. Pacific Time) on June 27, and by purchasing 182 Petco call options with an expiration date of August 19, 2006,

1 and an exercise price of \$20 at 16:45 London Time (8:45 a.m. Pacific Time) on June 27, through
2 its account at Man Financial, at a cost of \$21,900.

3 **2. Suterwalla's June 27, 2006, Spread Bets With Global Trader**

4 26. Global Trader is a spread bet broker based in London, England.

5 27. At all relevant times herein, Suterwalla maintained and directed all trading
6 activity in an account in his name at Global Trader.

7 28. On June 27, 2006, two business days after submission by TPG/LG to Petco of the
8 firm proposal letter and related materials, while aware of the material nonpublic information that
9 such a letter and/or materials had been submitted to Petco, and/or some or all of the contents of
10 the letter and related materials, Suterwalla purchased spread bets totaling \$1,514 on Petco
11 common stock, with an average ask price of \$19.89 per share, at a cost of \$3,012,224, from
12 Global Trader, at 22:00 London Time (2:00 p.m. Pacific Time).

13 29. At all relevant times herein, Global Trader was a client of Jeffries & Company,
14 Inc., which executed Global Trader's hedging transactions through its subsidiary, Jeffries
15 Execution Services, Inc. On June 27, 2006, Global Trader hedged its exposure on the spread
16 bets it sold to Suterwalla that day by purchasing 162,682 shares of Petco common stock, through
17 its account at Jeffries & Company at a cost of \$3,237,912.

18 **3. The June 27, 2006, Petco Committee Discussions Re Multiple Bidders And**
19 **Negotiating A Higher Share Price From TPG/LG**

20 30. On June 27, 2006, the Petco Committee met and discussed strategy regarding
21 negotiating with the multiple potential bidders to acquire Petco, which bidders included
22 TPG/LG. Among other things, the Petco Committee directed its financial advisor, UBS
23 Securities LLC ("UBS") to engage in a discussion with representatives of TPG/LG regarding
24 certain deal points associated with its draft merger agreement, including the price per share
25 offered. The Petco Committee also discussed possible incentives that could be offered to
26 TPG/LG to keep its offer open past June 27, including reimbursing certain TPG/LG expenses in
27 the event another bidder entered into an agreement to acquire Petco.

28 *

1 **4. Suterwalla's June 28, 2006, Spread Bets With Monecor**

2 31. On June 28, 2006, three business days after submission by TPG/LG to Petco of
3 the firm proposal letter and related materials, while aware of the material nonpublic information
4 that such a letter and/or materials had been submitted to Petco, and/or some or all of the contents
5 of the letter and related materials, and/or while aware of the material nonpublic information
6 regarding Petco's strategy for handling multiple bidders and negotiating certain deal points with
7 TPG/LG discussed at the June 27, 2006, Petco Committee meeting, Suterwalla purchased a £21
8 spread bet on Petco call options with an expiration date of August 19, 2006, with an exercise
9 price of \$20, and with an ask price of \$1.03, through the Suterwalla Monecor Account at 7:44
10 London Time (11:44 p.m. Pacific Time on June 27). Suterwalla paid Monecor \$879 for this
11 spread bet.

12 32. At 16:53 London Time (8:53 a.m. Pacific Time) on June 28, 2006, Suterwalla
13 purchased a £166 spread bet on Petco call options with an expiration date of July 22, 2006, with
14 an exercise price of \$22.50, and with an ask price of \$.23, through the Suterwalla Monecor
15 Account. Suterwalla paid Monecor \$6,948 for this spread bet.

16 33. On June 28, 2006, Monecor hedged its exposure on the spread bets it sold to
17 Suterwalla that same day by purchasing 38 Petco call options with an expiration date of August
18 19, 2006, and an exercise price of \$20 at 7:43 London Time (11:43 p.m. Pacific Time June 27),
19 and 302 Petco call options with an expiration date of July 22, 2006, and an exercise price of
20 \$22.50 at 16:50 London Time (8:50 a.m. Pacific Time), through its account at Man Financial, at
21 a total cost of \$5,100.

22 **5. Suterwalla's June 28, 2006, Spread Bets With Global Trader**

23 34. On June 28, 2006, as instructed by the Petco Committee on June 27,
24 representatives of UBS engaged in discussions with representatives of TPG/LG regarding the
25 merger agreement.

26 35. On June 28, 2006, three business days after submission by TPG/LG to Petco of
27 the firm proposal letter and related materials, while aware of the material nonpublic information
28 that such a letter and/or materials had been submitted to Petco, and/or some or all of the contents

1 of the letter and related materials, and/or while aware of the material nonpublic information
 2 regarding Petco's strategy for handling multiple bidders and negotiating certain deal points with
 3 TPG/LG discussed at the June 27, 2006, Petco Committee meeting and between UBS and
 4 TPG/LG on June 28, Suterwalla purchased spread bets totaling \$950 on Petco common stock,
 5 with an average ask price of \$20.13 per share, at a cost of \$1,912,200, from Global Trader, at
 6 21:31 London Time (1:31 p.m. Pacific Time).

7 36. On June 28, 2006, Global Trader hedged its exposure on the spread bets it sold to
 8 Suterwalla that day by purchasing 95,000 shares of Petco common stock, through its account at
 9 Jeffries & Company, at a cost of \$1,909,732.

10
 11 **6. Suterwalla Purchases Petco Call Options On June 28, 2006, Through A Third Party Account At Habib Bank AG Zurich**

12 37. Investex, a company incorporated in Anguilla, and beneficially owned by Mansoor
 13 Suterwalla, defendant Taher Suterwalla's uncle, was a customer of, and maintained an account at,
 14 Habib Bank AG Zurich ("Habib Bank") in Switzerland at all relevant times herein (the "Investex
 15 Account").

16 38. At all relevant times, Taher Suterwalla was one of three persons authorized to give
 17 Habib Bank orders for transactions in the Investex Account, and was the only person to do so.

18 39. On June 28, 2006, three business days after submission by TPG/LG to Petco of
 19 the firm proposal letter and related materials, while aware of the material nonpublic information
 20 that such a letter and/or materials had been submitted to Petco, and/or some or all of the contents
 21 of the letter and related materials, and/or while aware of the material nonpublic information
 22 regarding Petco's strategy for handling multiple bidders and negotiating certain deal points with
 23 TPG/LG discussed at the June 27, 2006, Petco Committee meeting and between UBS and
 24 TPG/LG on June 28, Suterwalla, through the Investex Account at Habib Bank, purchased 665
 25 Petco call options with an expiration date of July 22, 2006, and an exercise price of \$22.50, at a
 26 cost of \$9,975.

27 40. Habib Bank placed these trades, as well as the additional trades alleged below,
 28 through Bache Financial Ltd., a Swiss broker-dealer, which executed the trades through its U.S.

1 affiliate broker-dealer Prudential Equity Group, LLC, on the Chicago Board Options Exchange
2 and/or the Philadelphia Stock Exchange's Options Trading System.

3 41. Most of the Petco call options described in this Complaint which were purchased
4 by Suterwalla through the Investex Account at Habib Bank, including the above options, were
5 out of the money, meaning that their exercise price was higher than the price at which Petco
6 common stock was trading when the option contracts were purchased.

7 **C. On June 29, 2006, Petco Decides To Counter The TPG/LG Offer And To Pay**
8 **Certain TPG/LG Expenses To Keep The Offer Open; Suterwalla Engages In**
9 **Additional Insider Trading**

10 **1. The Petco Committee Considers Countering The TPG/LG Offer**

11 42. At 10:00 a.m. Pacific Time (18:00 London Time) on Thursday, June 29, 2006, the
12 Petco Committee held a telephonic meeting regarding issues raised by the proposed TPG/LG
13 merger agreement, bidder strategy, and a potential arrangement to pay TPG/LG expenses.

14 **2. Suterwalla Engages In Additional Spread Betting**

15 43. On June 29, 2006, a few hours after the June 29 Petco Committee meeting, and
16 three business days after submission by TPG/LG to Petco of the firm proposal letter and related
17 materials, while aware of the material nonpublic information that such a letter and/or materials
18 had been submitted to Petco, and/or some or all of the contents of the letter and related materials,
19 and/or while aware of the material nonpublic information regarding Petco's strategy for handling
20 multiple bidders and negotiating certain deal points with TPG/LG discussed at the June 27, 2006,
21 Petco Committee meeting and between UBS and TPG/LG on June 28, and/or while aware of the
22 material nonpublic information discussed at the June 29 Petco Committee meeting, Suterwalla
23 purchased spread bets totaling \$36 on Petco common stock, with an average ask price of \$20.25
24 per share, at a cost of \$72,914, from Global Trader at 21:53 London Time (1:53 p.m. Pacific
25 Time).

26 44. On June 29, 2006, Global Trader hedged its exposure on the spread bets it sold to
27 Suterwalla that day by purchasing 3,600 shares of Petco common stock, through its account at
28 Jeffries & Company, at a cost of \$72,825.

*

1 **3. The Petco Committee Decides To Counter The TPG/LG Offer**

2 45. At 3:00 p.m. Pacific Time (23:00 London Time), on June 29, 2006, the Petco
3 Committee decided to counter the \$26.50 per share price offered by TPG/LG and offer to pay
4 TPG/LG expenses in order to keep the offer open through July 7, 2006.

5 46. On June 30, 2006, UBS reported to the Petco Committee that TPG/LG had
6 increased its firm proposal to \$27.00 per share. The Petco Committee then decided to extend a
7 “handshake deal” to TPG/LG in exchange for fee reimbursement to TPG/LG of up to \$3 million
8 to keep the firm proposal open and to continue to negotiate the TPG/LG merger agreement.

9
10 **D. The Merger Agreement Is Finalized; Suterwalla Engages In Additional Insider Trading**

11 47. On Sunday, July 9, 2006, the Petco Committee held a telephonic meeting. Petco
12 and TPG/LG worked on finalizing the merger agreement.

13 48. On July 10, 2006, and at 2:00 p.m. Pacific Time on July 11, 2006 (22:00 London
14 Time), additional Petco Committee meetings were held. At the July 11 meeting the Petco
15 Committee directed UBS to communicate to TPG/LG the request that it consider improving its
16 proposal to include a price per share above \$27.00.

17 49. On July 11, 2006, during or after the July 11, 2006, Petco Committee meeting,
18 after the July 10 Petco Committee meeting, after the June 29 Petco Committee meeting, after the
19 June 23 submission by TPG/LG to Petco of the firm proposal letter and related materials, while
20 aware of the material nonpublic information that such a letter and/or materials had been
21 submitted to Petco, and/or some or all of the contents of the letter and related materials, and/or
22 while aware of the material nonpublic information regarding Petco’s negotiation strategy and
23 progress discussed at the June 27, June 29, July 10 and/or July 11 Petco Committee meetings,
24 and/or related meetings between UBS and TPG/LG or its agents, Suterwalla purchased a £43
25 spread bet on Petco common stock through the Third Party Monecor Account at 20:44 London
26 Time (12:44 p.m. Pacific Time).

27 50. On July 11, 2006, Monecor hedged its exposure on the spread bet it sold to
28 Suterwalla by purchasing 7,954 shares of Petco common stock, at a cost of \$157,852, through its

1 account at Man Financial, at 20:46 London Time.

2 **E. Petco Makes Additional Demand On TPG/LG To Increase Its Offer; TPG/LG**
 3 **Increases Its Offer; Final Merger Terms Are Negotiated; Suterwalla Engages In A**
 4 **Final Round Of Insider Trading**

5 51. On July 12, 2006, the Petco Committee instructed its financial advisor, UBS, to
 6 contact TPG/LG to inform them that a material increase above the offered \$27.00 per share could
 7 result in the Petco Committee's immediate consideration of a recommendation to Petco's Board
 8 of Directors to enter into a merger agreement.

9 52. On July 13, 2006, UBS reported to the Petco Committee that TPG/LG had
 10 increased its offer to \$29.00 per share, and the final merger agreement was negotiated.

11 53. At 15:16 London Time (7:16 a.m. Pacific Time) on July 13, 2006, after the July
 12 12, July 11, July 10 and June 29 Petco Committee meetings, after the June 23 submission by
 13 TPG/LG to Petco of the firm proposal letter and related materials, while aware of the material
 14 nonpublic information that such a letter and/or materials had been submitted to Petco, and/or
 15 some or all of the contents of the letter and related materials, and/or while aware of the material
 16 nonpublic information regarding Petco's negotiation strategy and progress discussed at the June
 17 27, June 29, July 10, July 11 and/or July 12 Petco Committee meetings, and/or related meetings
 18 between UBS and TPG/LG or its agents, Suterwalla purchased an additional £108 spread bet on
 19 Petco common stock through the Third Party Monecor Account. The cost to Suterwalla for these
 20 spread bets was \$393,887.

21 54. On July 13, 2006, Monecor hedged its exposure on the spread bet it sold to
 22 Suterwalla that same day by purchasing 20,000 shares of Petco common stock at 15:14 London
 23 Time (7:14 a.m. Pacific Time) at a cost of \$388,068, through its account at Man Financial.

24 55. At 21:26 London Time (1:26 p.m. Pacific Time) on July 13, 2006, Suterwalla
 25 purchased spread bets totaling \$60 on Petco common stock, with an average ask price of \$19.37
 26 per share, at a cost of \$116,250, from Global Trader.

27 56. On July 13, 2006, Global Trader hedged its exposure on the spread bets it sold to
 28 Suterwalla that day by purchasing 6,000 shares of Petco common stock through its account at
 Jeffries & Company, at a cost of \$116,130.

57. On July 13, 2006, Suterwalla, through the Investex Account at Habib Bank, purchased another 185 Petco call options with an expiration date of August 19, 2006, and an exercise price of \$20, at a cost of \$12,950.

F. Petco Publicly Announces It Has Been Acquired

58. Before the U.S. markets opened on July 14, 2006, Petco issued a press release announcing that it had entered into a “definitive agreement” to be acquired by two private equity investment firms, TPG and LG, and filed a Current Report on Form 8-K with the Commission disclosing the merger transaction and attaching a copy of the definitive merger agreement as an exhibit. Under the acquisition agreement, the buyers agreed to pay \$1.8 billion for Petco (including the assumption of \$120 million in debt), from which the shareholders were to be paid \$29 per share. The \$29 per share price represented a 49% premium above the \$19.45 price at which Petco shares had closed the previous day.

59. There was no public information regarding the Petco acquisition prior to the July 14, 2006, announcement. The market reacted strongly to Petco’s announcement with dramatic rises in Petco’s stock price and trading volume. In the two months prior to the announcement, Petco’s average price was \$20.22 per share with average daily trading volume of 621,555 shares. Moreover, Petco’s stock price had not traded above \$22 since May 24, 2006. On July 14, 2006, following the public announcement, Petco’s share price increased 43% to close at \$27.89 and its trading volume increased by almost 4,450% to 28.2 million shares.

G. Suterwalla Profits By \$3,082,520 From His Insider Trading

60. On July 14, 2006, following the acquisition announcement, and shortly after the U.S. markets opened, Suterwalla sold all £337 spread bets on Petco call options he had purchased through the Suterwalla Monecor Account for \$402,874, realizing a profit of \$370,963 on these transactions. Also on that same day, Suterwalla sold all £151 spread bets on Petco common stock he had purchased through the Third Party Monecor Account for \$787,074, realizing a profit of \$232,704 on these transactions.

61. That same day, Monecor sold all of the Petco call options it had purchased to hedge its exposure on the spread bets on Petco call options it had sold to Suterwalla, and sold all

1 of the Petco common stock it had purchased to hedge its exposure on the spread bets on Petco
2 common stock it had sold to Suterwalla.

3 62. Also on July 14, 2006, Suterwalla sold all of the spread bets on Petco common stock
4 he had purchased from Global Trader for \$7,127,116, realizing a profit of \$2,013,528 on these
5 transactions.

6 63. Additionally, on July 14, 2006, Suterwalla, through the Investex account at Habib
7 Bank, sold all 850 of the Petco call options for \$488,250, making a profit of \$465,325.

8 64. Suterwalla thus profited \$3,082,250 as a result of his insider trading.

9 **H. Hedging By Monecor Of Suterwalla's Spread Bets Accounted For 25-90% Of Petco**
10 **Option Volume In The U.S. Market On Certain Days**

11 65. As a result of the Brokers' hedging transactions in the U.S. markets, Suterwalla's
12 spread bet trading had a substantial impact on the U.S. market for Petco securities. Specifically,
13 as a result of Suterwalla's spread bets on the price of Petco call options, Monecor purchased 613
14 Petco call options. Petco options traded infrequently, and these option purchases represented a
15 substantial percentage of the trading in the relevant options. Specifically, Monecor's option
16 purchases accounted for 25% to 90% of the trades in the relevant options on the days of
17 Monecor's purchases.

18 66. As a result of spread bets on the price of Petco stock in accounts in the name of
19 and/or controlled by Suterwalla, the Brokers purchased more than 295,000 shares of Petco
20 common stock through the U.S. markets.

21 **I. Suterwalla Engaged In Insider Trading In Petco Securities While Aware Of**
22 **Material Nonpublic Information**

23 67. Prior to the public announcement on July 14, 2006, the parties to the acquisition
24 (Petco, TPG and LG) had all taken steps to ensure that the negotiations between Petco and
25 TPG/LG remained confidential and nonpublic. Among other things, as alleged above, the parties
26 had executed confidentiality agreements and other documents by which the parties and their
27 agents and representatives would maintain the confidentiality of the TPG/LG proposal and
28 subsequent negotiations. Accordingly, the parties owed fiduciary or other duties of trust and

1 confidence to each other, their agents and representatives owed fiduciary or other duties of trust
2 and confidence to the parties, and the parties' and their representatives' and agents' officers and
3 employees owed fiduciary or other duties of trust and confidence to their employers not to
4 disclose the June 23 TPG/LG firm proposal letter, the parties' negotiations, or what occurred
5 during internal meetings regarding the negotiations. In breach of such fiduciary or other duty of
6 trust and confidence, an officer or employee of Petco or TPG/LG or one of their agents or
7 representatives tipped Suterwalla with material nonpublic information concerning the course of
8 the negotiations at key points during the negotiation process, as alleged above. The tipper did so
9 for his or her own personal benefit.

10 68. Suterwalla engaged in all of the above alleged trades in Petco securities and in
11 spread bets on Petco securities while aware of material nonpublic information concerning the
12 pending acquisition of Petco, which information he knew or was reckless in not knowing was
13 conveyed to him in breach of a fiduciary or other duty of trust and confidence. Suterwalla took
14 large and speculative positions on the price of Petco's securities, buying short-term, out-of-the-
15 money call options that would have expired worthless if Petco's price did not increase sharply
16 and quickly, and spread bets that exposed him to the potential for millions of dollars in losses if
17 Petco's price declined. Suterwalla made a number of his purchases the day before Petco's
18 acquisition announcement, and made all of his purchases after key events during the negotiation
19 process between Petco and TPG/LG. Suterwalla, a resident of the United Kingdom, took these
20 positions even though Petco's securities do not publicly trade in the United Kingdom and even
21 though Petco has no stores there.

22
23 **J. After Learning That The Commission Had Filed This Action, Suterwalla Destroys**
His Email Communications And Other Electronic Data For The Relevant Period

24 69. On July 17, 2006, the Commission filed its Complaint in this action, alleging
25 fraudulent insider trading by certain unknown purchasers of Petco securities. On July 18, 2006,
26 the Court issued a temporary restraining order freezing certain proceeds from trades in certain
27 Petco call options.

28 70. The Commission subsequently learned that all of the frozen funds derived from

1 trades by Suterwalla in Petco call options. Accordingly, on or about August 1, 2006, the
 2 Commission caused Suterwalla to be served with the Summons and Complaint and temporary
 3 restraining order freezing funds. On or about August 2, 2006, the Commission caused
 4 Suterwalla to be served with its application for issuance of a preliminary injunction continuing
 5 the asset freeze and supporting papers.

6 71. On August 3, 2006, Suterwalla installed operating systems on his HP Compaq
 7 D350 laptop later seized from his business by the City of London Police Department, and his
 8 Dell Dimension desktop later seized from his home by the City of London Police Department.

9 72. On August 4, 2006, the Court issued its preliminary injunction order continuing
 10 the asset freeze.

11 73. On August 15, 2006, the Commission caused Suterwalla to be served with the
 12 preliminary injunction order.

13 74. On August 22, 2006, Suterwalla ran the destructive data wiping tool “secure-
 14 delete” on his Sony Viao laptop later seized from his home by the City of London Police
 15 Department.

16 75. By installing the operating systems on two of his computers and running the
 17 “secure delete” data wiping tool on a third computer, Suterwalla caused the deletion of email and
 18 other electronic data for the period during which he was receiving material nonpublic
 19 information and engaging in insider trading.

20 **CLAIM FOR RELIEF**
 21 **Fraud In Connection With The Purchase or Sale of Securities**
 22 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

23 76. The Commission realleges and incorporates by reference paragraphs 1 through 75
 24 above.

25 77. The defendants, by engaging in the conduct described above, directly or
 26 indirectly, in connection with the purchase or sale of a security, by the use of means or
 27 instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities
 28 exchange, with scienter:

- a. employed devices, schemes, or artifices to defraud;

1 b. made untrue statements of a material fact or omitted to state a material fact
2 necessary in order to make the statements made, in light of the
3 circumstances under which they were made, not misleading; or

4 c. engaged in acts, practices, or courses of business which operated or would
5 operate as a fraud or deceit upon other persons.

6 78. By engaging in the conduct described above, the defendants violated, and unless
7 restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. §
8 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, the Commission respectfully requests that the Court:

11 **I.**

12 Issue findings of fact and conclusions of law that the defendants committed the alleged
13 violations.

14 **II.**

15 Issue a judgment, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining
16 the defendants and those persons in active concert or participation with them who receive actual
17 notice of the judgment by personal service or otherwise, and each of them, from violating Section
18 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

19 **III.**

20 Continue the preliminary injunction order freezing certain assets and granting other
21 interim relief that this Court entered on August 4, 2006.

22 **IV.**

23 Order the defendants to disgorge all ill-gotten gains from their illegal conduct, together
24 with prejudgment interest thereon.

25 **V.**

26 Order the defendants to pay civil penalties pursuant to Section 21A of the Exchange Act,
27 15 U.S.C. § 78u-1.

28 *

1 **VI.**

2 Retain jurisdiction of this action in accordance with the principles of equity and the
3 Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and
4 decrees that may be entered, or to entertain any suitable application or motion for additional
5 relief within the jurisdiction of this Court.

6 **VII.**

7 Grant such other and further relief as this Court may determine to be just and necessary.
8

9 DATED: November 2, 2007

/s/Karen Matteson

10 KAREN MATTESON

11 DAVID J. VAN HAVERMAAT

PETER F. DEL GRECO

Attorneys for Plaintiff

Securities and Exchange Commission
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PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

U.S. SECURITIES AND EXCHANGE COMMISSION, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036-3648

Telephone No. (323) 965-3998; Facsimile No. (323) 965-3908.

On November 2, 2007, I served the document entitled **SECOND AMENDED COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS** on all the parties to this action addressed as stated on the attached service list:

☐ **OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

☐ **PERSONAL DEPOSIT IN MAIL:** By placing in sealed envelope(s), which I personally deposited with the U.S. Postal Service. Each such envelope was deposited with the U.S. Postal Service at Los Angeles, California, with first class postage thereon fully prepaid.

☐ **INTERNATIONAL REGISTERED MAIL, RETURN RECEIPT REQUESTED:** Each such envelope was deposited in a facility regularly maintained at the U.S. Postal Service for receipt of International Registered Mail, Return Receipt Requested at Los Angeles, California, with International Registered Mail, Return Receipt Requested postage paid.

☐ **HAND DELIVERY:** I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

☒ **FEDERAL EXPRESS:** By placing in sealed envelope(s) designated by Federal Express with delivery fees paid or provided for, which I deposited in a facility regularly maintained by Federal Express or delivered to a Federal Express courier, at Los Angeles, California.

☒ **ELECTRONIC MAIL:** By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

☐ **FAX:** By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

☒ **(Federal)** I declare that I am employed in the office of a member of the bar of this Court, at whose direction the service was made. I declare under penalty of perjury that the foregoing is true and correct.

Date: November 2, 2007

/s/Karen Matteson
KAREN MATTESON

SEC v. TAHER SUTERWALLA
United States District Court – Southern District of California
Case No. 06 CV 1446 DMS (LSP)

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