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3:06-CV-01446 SEC V. ONE OR MORE UNKNOWN

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\*CMP.\*

ORIGINAL

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6 Securities and Exchange Commission  
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2006 JUL 17 P11 4:44  
BY      *do* DEPT

14 UNITED STATES DISTRICT COURT  
15 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BY FAX

16 SECURITIES AND EXCHANGE  
17 COMMISSION,

18 Plaintiff,

19 vs.

20 ONE OR MORE UNKNOWN PURCHASERS  
21 OF CALL OPTIONS FOR THE COMMON  
22 STOCK OF PETCO ANIMAL SUPPLIES,  
23 INC.,

24 Defendants.

Case No. '06 CV 1446 DMS LSP

COMPLAINT FOR VIOLATIONS OF  
THE FEDERAL SECURITIES LAWS

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

26 Jurisdiction and Venue

27 1. This Court has jurisdiction over this action pursuant to Sections 21(d)(1), 21(e),  
28 21A, and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d)(1),  
78u(e), 78u-1, and 78aa. 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.

1 *eng*

1 2. Venue is proper in this district pursuant to Section 27 of the Exchange Act, 15  
2 U.S.C. § 78aa, because certain of the transactions, acts, practices, and courses of business  
3 constituting violations of the federal securities laws occurred within this district.

4 Summary

5 3. This matter involves insider trading in call options (i.e., the right to purchase  
6 stock at a specified price on or before a specified date) for the stock of Petco Animal Supplies,  
7 Inc. ("Petco"), shortly before its July 14, 2006 announcement that it had agreed to be acquired by  
8 two private equity investment firms for \$1.8 billion. Under the acquisition agreement, Petco  
9 shareholders are to receive \$29 per share, which would be a substantial premium over Petco's  
10 July 13 closing price of \$19.45. In reaction to the news, Petco's stock opened on July 14 at  
11 \$27.85, up 43% from its July 13, 2006 closing price.

12 4. From June 27 through July 13, 2006, one or more unknown purchasers used  
13 financial institutions in Switzerland and England to buy speculative short-term, out-of-the-  
14 money Petco call options with a strategy that the price of Petco stock would rise rapidly. The  
15 unknown purchasers' profit from these call options after Petco's July 14 announcement is a total  
16 of approximately \$862,000, consisting of \$482,325 for the purchaser buying through the Swiss  
17 account and \$379,640 for the purchaser buying through the British account.

18 5. As set forth below, the Commission has reason to believe that the defendants  
19 engaged in insider trading in purchasing the call options. The Commission seeks against each  
20 defendant permanent injunctions, disgorgement with prejudgment interest, and civil penalties.

21 The Defendants

22 6. One or More Unknown Purchasers of Petco Call Options through Habib  
23 Bank AG. In late June and early July 2006, client(s) of Habib Bank AG in Zurich, Switzerland,  
24 purchased through Habib Bank a total of 850 call options for Petco common stock for \$22,925.  
25 Based on the July 14, 2006 closing prices, the profit on these option trades is approximately  
26 \$482,325.

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1           7.     **One or More Unknown Purchasers of Petco Call Options through Man**  
2 **Financial Ltd.** In late June 2006, client(s) of Man Financial Ltd. in London, England, purchased  
3 through Man Financial a total of 613 Petco call options for \$30,040. Based on the July 14, 2006  
4 closing prices, the profit on these option trades is approximately \$379,640.

5   **Other Relevant Entity**

6           8.     **Petco Animal Supplies, Inc.** is a Delaware corporation headquartered in San  
7 Diego, California, and operates almost 800 retail stores that sell pet food, supplies, and services.  
8 Petco's common stock is traded on the Nasdaq Stock Market and its options trade on the Chicago  
9 Board Options Exchange.

10   **The Insider Trading**

11 **The July 14, 2006 Petco Announcement**

12           9.     Before the markets opened on July 14, 2006, Petco announced that it had entered  
13 into an agreement to be acquired by a company owned by two private equity funds, Green Equity  
14 Investors IV, LP (which is affiliated with Leonard Green & Partners, LP) and TPG Partners V,  
15 LP (which is affiliated with Texas Pacific Group). Under the acquisition agreement, the buyer  
16 agreed to pay \$1.8 billion for Petco (including the assumption of \$120 million in debt), and the  
17 shareholders will be paid \$29 per share. The \$29 per share price represents a 49% premium  
18 above the \$19.45 price at which Petco shares closed the previous day.

19           10.    There was no public information regarding the Petco acquisition prior to the July 14,  
20 2006 announcement. The market reacted strongly to Petco's announcement with dramatic rises in  
21 Petco's stock price and trading volume. In the two months prior to the announcement, Petco's  
22 average price was \$20.22 per share with average daily trading volume of 621,805 shares.  
23 Moreover, Petco's stock price had not traded above \$22 since May 24, 2006. On July 14, 2006,  
24 Petco's share price increased 43% to close at \$27.89 and its trading volume increased by almost  
25 4,450% to 28.2 million shares.

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1 **The Options Trades**

2 11. In late June and early July 2006, as described more fully below, one or more  
3 purchasers bought call options through financial institutions in Switzerland and England. The  
4 option contracts purchased by the unknown purchasers were short term, expiring on July 22 and  
5 August 19, 2006 (in the case of the options purchased on June 28, expiring as little as three  
6 weeks after they were purchased), and all of them were out of the money, meaning that their  
7 exercise price was higher than the price at which Petco common stock was trading when the  
8 option contracts were purchased.

9 12. Specifically, one or more clients of Habib Bank AG in Zurich, Switzerland,  
10 purchased a total of 850 Petco call options for \$22,925. On June 28, 2006 (only 16 days before  
11 the acquisition announcement), the Habib Bank client(s) purchased 665 Petco call options that  
12 expire on July 22, 2006, with an exercise price of \$22.50, at a total cost of \$9,975. On July 13,  
13 2006 (just one day before the acquisition announcement), the Habib Bank client(s) purchased  
14 another 185 call options that expire on August 19, 2006, with an exercise price of \$20, at a cost  
15 of \$12,950.

16 13. Habib Bank placed these trades on behalf of its client(s) through Bache Financial  
17 Ltd., a Swiss broker-dealer, which placed the trade through its U.S. affiliate broker-dealer  
18 Prudential Equity Group, LLC. The identity of Habib Bank's client(s) is not known to  
19 Prudential Equity and apparently not to Bache Financial. It is unknown whether these options  
20 have been sold, but the options could be sold and the proceeds transferred overseas at any time.  
21 Based on the July 14, 2006 closing prices, the profit on these option trades is approximately  
22 \$482,325, which profit (either in the form of the options themselves or the proceeds from the sale  
23 of the options) is currently being held at Prudential Equity Group.

24 14. In addition, in late June 2006, one or more clients of Man Financial Ltd. in  
25 London, England, purchased a total of 613 Petco call options for \$30,040. On June 27, 2006  
26 (only 17 days before the acquisition announcement), the Man Financial client(s) purchased 91  
27 Petco call options that expire on July 22, 2006, with an exercise price of \$20, and 220 call  
28 options that expire on August 19, 2006, with an exercise price of \$20, for a total cost of \$25,510.

1 On June 28, 2006 (only 16 days before the announcement), the Man Financial client(s)  
2 purchased 302 call options that expire on July 22, 2006, with an exercise price of \$22.50, at a  
3 total cost of \$4,530.

4 15. Man Financial placed these trades through its U.S. affiliate broker-dealer Man  
5 Securities, Inc. These Petco call options have been sold and the proceeds are at Man Securities  
6 and could be transferred at any time. Based on the July 14, 2006 closing prices, the profit on  
7 these option trades is approximately \$379,640.

8 16. Petco options trade infrequently, and the options at issue represent a substantial  
9 portion of all the trading in the relevant options. In particular, in the month preceding the July 14  
10 announcement, the Habib Bank and Man Financial client(s) accounted for 71% of all call options  
11 purchased with a July expiration and a \$22.50 strike price, 12.8% of all call options purchased  
12 with a July expiration and a \$20 strike price, and 78% of all call options purchased with an  
13 August expiration and a \$20 strike price.

14 **First Claim for Relief**

15 **Fraud In Connection With The Purchase or Sale of Securities**

16 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

17 17. The Commission realleges and incorporates by reference paragraphs 1 through 16  
18 above.

19 18. The defendants, by engaging in the conduct described above, directly or  
20 indirectly, in connection with the purchase or sale of a security, by the use of means or  
21 instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities  
22 exchange, with scienter:

- 23 a. employed devices, schemes, or artifices to defraud;
- 24 b. made untrue statements of a material fact or omitted to state a material fact  
25 necessary in order to make the statements made, in light of the  
26 circumstances under which they were made, not misleading; or
- 27 c. engaged in acts, practices, or courses of business which operated or would  
28 operate as a fraud or deceit upon other persons.

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

4 **Prayer For Relief**

5 WHEREFORE, the Commission respectfully requests that the Court:

6 **I.**

7 Issue findings of fact and conclusions of law that the defendants committed the alleged  
8 violations.

9 **II.**

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

15 **III.**

16 Issue, in a form consistent with Fed. R. Civ. P. 65, a temporary restraining order and a  
17 preliminary injunction freezing the options at issue and/or the proceeds from the sale or exercise  
18 of the options and an order prohibiting the destruction of documents and expediting discovery.

19 **IV.**

20 Order each defendant to disgorge all ill-gotten gains from their illegal conduct, together  
21 with prejudgment interest thereon.

22 **V.**

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

25 **VI.**

26 Retain jurisdiction of this action in accordance with the principles of equity and the  
27 Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and  
28 decrees that may be entered, or to entertain any suitable application or motion for additional

1 relief within the jurisdiction of this Court.

2 VII.

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

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5 DATED: July 17, 2006

*Peter Del Greco*

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DAVID J. VAN HAVERMAAT

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PETER F. DEL GRECO

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MARC J. BLAU

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CATHERINE A. WIMBERLY

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Attorneys for Plaintiff

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Securities and Exchange Commission

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JS44

**CIVIL COVER SHEET**

(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

**I (a) PLAINTIFFS**

SECURITIES AND EXCHANGE COMMISSION

**DEFENDANTS**

2006 JUL 17 PM 4:42  
ONE OR MORE UNKNOWN PURCHASERS OF CALL OPTIONS FOR THE COMMON STOCK OF PETCO ANIMAL SUPPLIES, INC.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)

SAN DIEGO

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)  
Peter F. Del Greco 323-965-3998  
Securities & Exchange Commission  
5670 Wilshire Blvd., 11th Floor  
Los Angeles, CA 90036

**ATTORNEYS (IF KNOWN)**

'06 CV 1446

DMS LSP

BY FAX

**II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)**

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)**

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PT                         | DEF                        |   | PT                         | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).**

The Complaint alleges violations of the federal securities laws. 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5 thereunder.

**V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)**

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 191 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employer's Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC811 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (922) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(a)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeers Injunction and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mistakes & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions			

**VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)**

- 1 Original Proceeding
- 2 Removal from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER f.r.o.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND:  YES  NO

**VIII. RELATED CASE(S) IF ANY (See Instructions):** JUDGE

Docket Number

DATE

7-17-06

SIGNATURE OF ATTORNEY OF RECORD

Peter Del Greco

#127212 \$350 145 7/17/06

ORIGINAL