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9
10 **UNITED STATES DISTRICT COURT**
11 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 vs.

16 ONE OR MORE UNKNOWN PURCHASERS
17 OF CALL OPTIONS FOR THE COMMON
STOCK OF PETCO ANIMAL SUPPLIES,
INC., and TAHER SUTERWALLA,

18 Defendants.

Case No. 06 CV 1446 DMS (LSP)

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

19
20 Plaintiff Securities and Exchange Commission ("Commission") alleges as follows:

21 **Jurisdiction And Venue**

22 1. This Court has jurisdiction over this action pursuant to Sections 21(d)(1), 21(e),
23 21A, and 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§ 78u(d)(1),
24 78u(e), 78u-1, and 78aa. The defendants have, directly or indirectly, made use of the means or
25 instrumentalities of interstate commerce, or of the mails, or of the facilities of a national
26 securities exchange, in connection with the transactions, acts, practices, and courses of business
27 alleged in this complaint.

28 2. Venue is proper in this district pursuant to Section 27 of the Exchange Act, 15

1 U.S.C. § 78aa, because certain of the transactions, acts, practices, and courses of business
2 constituting violations of the federal securities laws occurred within this district.

3 Summary

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

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

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

26 6. Suterwalla traded in the securities of Petco while aware of material nonpublic
27 information concerning the pending acquisition of Petco. Accordingly, the Commission seeks a
28 permanent injunction, disgorgement with prejudgment interest, and civil penalties against him.

1 **Defendant Suterwalla**

2 7. **Taher Suterwalla**, age 30, is a resident of London, England. Suterwalla is on the
3 board of several United Kingdom companies. Suterwalla was a trader at various United
4 Kingdom securities firms from 1999 to 2003, when he resigned from a securities firm during an
5 internal disciplinary investigation.

6 **Other Relevant Entity**

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

12 **The Insider Trading**

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

14 9. Before the markets opened on July 14, 2006, Petco announced that it had entered
15 into an agreement to be acquired by a company owned by two private equity funds, Green Equity
16 Investors IV, LP (which is affiliated with Leonard Green & Partners, LP) and TPG Partners V,
17 LP (which is affiliated with Texas Pacific Group). Under the acquisition agreement, the buyers
18 agreed to pay \$1.8 billion for Petco (including the assumption of \$120 million in debt), from
19 which the shareholders were to be paid \$29 per share. The \$29 per share price represented a
20 49% premium above the \$19.45 price at which Petco shares had closed the previous day.

21 10. There was no public information regarding the Petco acquisition prior to the July 14,
22 2006 announcement. The market reacted strongly to Petco's announcement with dramatic rises in
23 Petco's stock price and trading volume. In the two months prior to the announcement, Petco's
24 average price was \$20.22 per share with average daily trading volume of 621,555 shares.
25 Moreover, Petco's stock price had not traded above \$22 since May 24, 2006. On July 14, 2006,
26 Petco's share price increased 43% to close at \$27.89 and its trading volume increased by almost
27 4,450% to 28.2 million shares.

28 ///

1 **Suterwalla's Insider Trading In Petco Call Options Through Habib Bank AG Zurich**

2 11. A company incorporated in Anguilla was a customer of, and maintained an account
3 at, Habib Bank AG Zurich ("Habib Bank") in Switzerland at all relevant times herein (the "Anguilla
4 Company Account").

5 12. Taher Suterwalla was one of three persons authorized to give Habib Bank orders for
6 transactions in the Anguilla Company Account, and was the only person to do so, at all relevant
7 times herein.

8 13. On June 28, 2006 (only 16 days before the acquisition announcement), Suterwalla,
9 through the Anguilla Company Account at Habib Bank, purchased 665 Petco call options with an
10 expiration date of July 22, 2006 and an exercise price of \$22.50, at a cost of \$9,975.

11 14. On July 13, 2006 (just one day before the acquisition announcement), Suterwalla,
12 through the Anguilla Company Account at Habib Bank, purchased another 185 Petco call options
13 with an expiration date of August 19, 2006 and an exercise price of \$20, at a cost of \$12,950.

14 15. Most of the Petco call options purchased by Suterwalla through the Anguilla
15 Company Account at Habib Bank were out of the money, meaning that their exercise price was
16 higher than the price at which Petco common stock was trading when the option contracts were
17 purchased.

18 16. On July 14, 2006, the day of the acquisition announcement, Suterwalla, through
19 the Anguilla Company Account at Habib Bank, sold all 850 of the Petco call options for
20 \$488,250, making a profit of \$465,325.

21 17. Habib Bank placed these trades through Bache Financial Ltd., a Swiss broker-
22 dealer, which executed the trades through its U.S. affiliate broker-dealer Prudential Equity
23 Group, LLC.

24 **Suterwalla's Insider Trading In Connection With The Purchase Of Petco Call Options And**
25 **Petco Common Stock Through Spread Bets On Petco Securities**

26 18. Suterwalla purchased spread bets on the price of Petco call options and Petco
27 common stock from the spread bet brokers Monecor (London) Ltd. ("Monecor") and Global
28 Trader Europe Ltd. ("Global Trader") (collectively, the "Brokers").

1 19. Spread bets represent highly leveraged positions in the underlying security. Each
2 \$1 spread bet is the equivalent of buying the price movement on 100 shares of the underlying
3 security. In addition to this built-in leverage, a spread bet purchaser typically pays only 10% to
4 20% of the total purchase price and margins the remaining 80% to 90%. Because of the highly
5 leveraged nature of spread bets, they provide a potential for large profits – and large losses. For
6 example, the loss on a \$100 spread bet on a \$20 stock like Petco would have been \$10,000 if the
7 price of the stock went down only \$1, and would have been \$200,000 if the price fell to \$0.

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

12 21. In this case, the Brokers hedged their exposure on the spread bets they sold to
13 Suterwalla by purchasing the appropriate amount of Petco call options and Petco common stock
14 in the U.S. markets. Conversely, when Suterwalla sold his spread bets, the Brokers sold the
15 Petco call options and Petco common stock they had purchased to hedge the spread bets they had
16 sold to Suterwalla.

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

20 **Suterwalla's Trading In Spread Bets With Monecor**

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

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

24 25. At all relevant times herein, Suterwalla had power of attorney over and directed
25 all trading activity in an account at Monecor held in the name of a third party (the "Third Party
26 Monecor Account").

27 26. On June 27, 2006, only 17 days before the acquisition announcement, Suterwalla
28 purchased a £50 spread bet on Petco call options with an expiration date of July 22, 2006, with

1 an exercise price of \$20, and with an ask price of \$.63, through the Suterwalla Monecor Account.
2 This spread bet provided Suterwalla with the right to receive from Monecor £50 for every penny
3 that the July 22, 2006, \$20 Petco call option rose above \$.63. Suterwalla paid Monecor \$5,733
4 for this spread bet.

5 27. Also on June 27, 2006, Suterwalla purchased a £100 spread bet on Petco call
6 options with an expiration date of August 19, 2006, with an exercise price of \$20, and with an
7 ask price of \$1.0083, through the Suterwalla Monecor Account. Suterwalla paid Monecor
8 \$18,351 for this spread bet.

9 28. On June 28, 2006, Suterwalla purchased a £166 spread bet on Petco call options
10 with an expiration date of July 22, 2006, with an exercise price of \$22.50, and with an ask price
11 of \$.23, through the Suterwalla Monecor Account. Suterwalla paid Monecor \$6,948 for this
12 spread bet.

13 29. Also on June 28, 2006, Suterwalla purchased a £21 spread bet on Petco call
14 options with an expiration date of August 19, 2006, with an exercise price of \$20, and with an
15 ask price of \$1.03, through the Suterwalla Monecor Account. Suterwalla paid Monecor \$879 for
16 this spread bet.

17 30. At all relevant times herein, Monecor was a client of Man Financial Ltd. in
18 London, England. On June 27, 2006, Monecor hedged its exposure on the spread bets it sold to
19 Suterwalla that same day by purchasing 91 Petco call options with an expiration date of July 22,
20 2006 and an exercise price of \$20, and 220 Petco call options with an expiration date of August
21 19, 2006 and an exercise price of \$20, through its account at Man Financial, at a cost of \$21,900.

22 31. On June 28, 2006, Monecor hedged its exposure on the spread bets it sold to
23 Suterwalla that same day by purchasing 302 Petco call options with an expiration date of July 22,
24 2006 and an exercise price of \$22.50, and 38 Petco call options with an expiration date of August
25 19, 2006 and an exercise price of \$20, at a cost of \$5,100.

26 32. On July 11, 2006, Suterwalla purchased a £43 spread bet on Petco common stock
27 through the Third Party Monecor Account. On July 13, 2006, Suterwalla purchased an
28 additional £108 spread bet on Petco common stock through the Third Party Monecor Account.

1 The cost to Suterwalla for these spread bets was \$554,370.

2 33. On July 11 and July 13, 2006, Monecor hedged its exposure on the spread bets it
3 sold to Suterwalla those same days by purchasing 7,954 and 20,000 shares of Petco common
4 stock, respectively, at a cost of \$545,920, through its account at Man Financial.

5 34. On July 14, 2006, the day of the acquisition announcement, Suterwalla sold all
6 £337 spread bets on Petco call options he had purchased through the Suterwalla Monecor
7 Account for \$402,874, realizing a profit of \$370,963 on these transactions. Also on that same
8 day, Suterwalla sold all £151 spread bets on Petco common stock he had purchased through the
9 Third Party Monecor Account for \$787,074, realizing a profit of \$232,704 on these transactions.

10 35. That same day, Monecor sold all of the Petco call options it had purchased to
11 hedge its exposure on the spread bets on Petco call options it had sold to Suterwalla, and sold all
12 of the Petco common stock it had purchased to hedge its exposure on the spread bets on Petco
13 common stock it had sold to Suterwalla.

14 36. Man Financial placed all of Monecor's hedging transactions through its U.S.
15 affiliate broker-dealer Man Securities, Inc.

16 **Suterwalla's Trading In Spread Bets With Global Trader**

17 37. Global Trader is a spread bet broker based in London, England.

18 38. At all relevant times herein, Suterwalla maintained and directed all trading
19 activity in an account in his name at Global Trader.

20 39. On June 27, 2006, only 17 days before the acquisition announcement, Suterwalla
21 purchased spread bets totaling \$1,514 on Petco common stock, with an average ask price of
22 \$19.89 per share, at a cost of \$3,012,224, from Global Trader. On June 28, 2006, Suterwalla
23 purchased spread bets totaling \$950 on Petco common stock, with an average ask price of \$20.13
24 per share, at a cost of \$1,912,200, from Global Trader. On June 29, 2006, Suterwalla purchased
25 spread bets totaling \$36 on Petco common stock, with an average ask price of \$20.25 per share,
26 at a cost of \$72,914, from Global Trader. And on July 13, 2006, the day before the acquisition
27 announcement, Suterwalla purchased spread bets totaling \$60 on Petco common stock, with an
28 average ask price of \$19.37 per share, at a cost of \$116,250, from Global Trader. In all,

1 Suterwalla purchased \$2,560 in spread bets on Petco common stock from Global Trader, at a
2 cost of \$5,113,588.

3 40. On each of the four days that Suterwalla purchased spread bets from Global
4 Trader, Global Trader purchased the appropriate number of shares of Petco common stock in the
5 U.S. markets to hedge its position. On June 27, 2006, Global Trader hedged its exposure on the
6 spread bets it sold to Suterwalla that day by purchasing 162,682 shares of Petco common stock,
7 at a cost of \$3,237,912. On June 28, 2006, Global Trader hedged its exposure on the spread bets
8 it sold to Suterwalla that day by purchasing 95,000 shares of Petco common stock, at a cost of
9 \$1,909,732. On June 29, 2006, Global Trader hedged its exposure on the spread bets it sold to
10 Suterwalla that day by purchasing 3,600 shares of Petco common stock, at a cost of \$72,825.
11 And on July 13, 2006, Global Trader hedged its exposure on the spread bets it sold to Suterwalla
12 that day by purchasing 6,000 shares of Petco common stock, at a cost of \$116,130. In all, Global
13 Trader purchased 267,282 shares of Petco common stock, at a cost of \$5,336,599, to hedge its
14 exposure on the spread bets it sold to Suterwalla.

15 41. At all relevant times herein, Global Trader was a client of Jeffries & Company,
16 Inc., which executed Global Trader's hedging transactions through its subsidiary, Jeffries
17 Execution Services, Inc.

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

20 **The Impact On The U.S. Markets Of Suterwalla's Insider Trading In Connection With**
21 **The Purchase Of Petco Call Options And Petco Common Stock Through Spread Bets On**
Petco Securities

22 43. As a result of the Brokers' hedging transactions in the U.S. markets, Suterwalla's
23 spread bet trading had a substantial impact on the U.S. market for Petco stock. Specifically, as a
24 result of Suterwalla's spread bets on the price of Petco call options, Monecor purchased 613
25 Petco call options through the U.S. markets. Petco options traded infrequently, and these option
26 purchases represented a substantial percentage of the trading in the relevant options. Monecor's
27 option purchases accounted for 25% to 90% of the trades in the relevant options on the days of
28 Monecor's purchases.

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

4 **Suterwalla Engaged In Insider Trading In Petco Securities While Aware Of Material**
5 **Nonpublic Information**

6 45. Suterwalla traded in Petco securities and in spread bets on Petco securities while
7 aware of material nonpublic information concerning the pending acquisition of Petco.
8 Suterwalla took large and speculative positions on the price of Petco's securities, buying short-
9 term, out-of-the-money call options that would have expired worthless if Petco's price did not
10 increase sharply and quickly, and spread bets that exposed him to the potential for millions of
11 dollars in losses if Petco's price declined. Suterwalla made a number of his purchases the day
12 before Petco's acquisition announcement, and made all of his purchases within 17 days of
13 Petco's acquisition announcement. Suterwalla, a resident of the United Kingdom, took these
14 positions even though Petco's securities do not publicly trade in the United Kingdom and even
15 though Petco has no stores there.

16 **Claim for Relief**
17 **Fraud In Connection With The Purchase or Sale of Securities**
18 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder**

19 46. The Commission realleges and incorporates by reference paragraphs 1 through 45
20 above.

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

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

1 operate as a fraud or deceit upon other persons.

2 48. By engaging in the conduct described above, the defendants violated, and unless
3 restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. §
4 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

5 **Prayer For Relief**

6 WHEREFORE, the Commission respectfully requests that the Court:

7 **I.**

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

10 **II.**

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

15 **III.**

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

18 **IV.**

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

21 **V.**

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

24 **VI.**

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

VII.

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

DATED: August 1, 2007

/s/ Peter F. Del Greco
BRIANE NELSON MITCHELL
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