

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO.**

<b>SECURITIES AND EXCHANGE COMMISSION,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
v.	)	
	)	
<b>JAMES ALEX IRVIN,</b>	)	
	)	
<b>Defendant.</b>	)	
<hr style="width: 50%; margin-left: 0;"/>	)	

**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

Plaintiff Securities and Exchange Commission alleges:

**INTRODUCTION**

1. This case concerns multiple instances of insider trading by Defendant James Alex Irvin, a former executive of PetMed Express (“PetMed or the “Company”) and a member of PetMed’s Management Committee, and Irvin’s tip to his close personal friend (“Friend 1”) of material, nonpublic information concerning PetMed’s financial results.

2. As PetMed’s Director of Marketing and a member of the Management Committee, Irvin had access to material, nonpublic information concerning PetMed’s business operations, financial performance and quarterly earnings. From October 1, 2014 through January 24, 2017 (the “Relevant Period”), Irvin purchased shares of PetMed common stock and call and put options in advance of six PetMed earnings announcements while in possession of material, nonpublic information concerning the Company’s quarterly and year-end financial results.

3. Irvin owed a duty of trust and confidence to PetMed, which explicitly prohibited him from trading on the basis of material, nonpublic information and from disclosing that information to others. Despite these clear duties, Irvin knowingly or recklessly purchased shares and options on the

basis of PetMed's material, nonpublic information and also shared certain of that information with Friend 1 with the expectation that Friend 1 would trade on the basis of it.

4. As a result of his insider trading, Irvin realized profits and avoided losses of \$227,795. Friend 1 made \$24,475 in profits from his trading based on Irvin's tip.

5. By engaging in the conduct alleged in this Complaint, Irvin violated the antifraud provisions of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5(a) and (c) thereunder, 17 C.F.R. § 240.10b-5(a) and (c). Unless enjoined, Irvin is reasonably likely to continue to violate the federal securities laws. The Commission also seeks disgorgement of his ill-gotten gains with prejudgment interest, a civil money penalty, and an officer-and-director bar.

#### **JURISDICTION AND VENUE**

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

7. This Court has personal jurisdiction over Irvin and venue is proper in the Southern District of Florida. PetMed is headquartered in the Southern District of Florida and Irvin resides in this District.

8. In connection with the conduct alleged in this Complaint, Irvin, directly and indirectly, singly or in concert with others, made use of the means or instrumentalities of interstate commerce, the means or instruments of transportation or communication in interstate commerce, and of the mails.

**DEFENDANT**

9. **Irvin**, 41, is a resident of Boca Raton, Florida. Irvin worked at PetMed for more than 14 years, from June 2004 through September 2018. During the Relevant Period, Irvin served as PetMed's Director of Marketing and was a member of the Management Committee.

**RELATED ENTITY**

10. **PetMed**, a Florida corporation headquartered in Delray Beach, Florida, is an online pet pharmacy that sells medications and other health products for dogs and cats. PetMed's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on the NASDAQ under the ticker "PETS."

**FACTUAL ALLEGATIONS**

**I. Irvin Had Access To Material, Nonpublic Information Concerning PetMed's Business Operations, Financial Performance, And Quarterly Earnings**

11. As the Director of Marketing for PetMed, Irvin had access to material, nonpublic information concerning PetMed's quarterly earnings, business operations and financial performance.

12. For example, during the Relevant Period, approximately once a quarter, Irvin utilized a software called QlikView which provided data concerning PetMed's sales, revenues, and related product information.

13. Additionally, Irvin's responsibilities included, among other things, preparing monthly advertising spending reports that were used in connection with determining PetMed's return on investment and acquisition cost metrics.

14. Irvin also obtained information from third-party reports concerning which advertisements led to new orders and the associated costs of acquiring new customers from advertising dollars.

15. Irvin also had access to material, nonpublic information concerning PetMed's quarterly earnings, business operations and financial performance as a member of the Management Committee. The Management Committee generally met on a weekly basis to discuss, among other things, financial data and metrics PetMed used to assess PetMed's financial condition and business operations. PetMed's CEO and CFO typically led the weekly management committee meetings.

16. At the meetings, an Excel spreadsheet would be projected on a screen with multiple tabs containing various charts, graphs, and spreadsheets generated from PetMed's Masterpack Information System. Masterpack is a proprietary software that tracks and compiles all financial data from PetMed's other electronic information/data systems into one central software system. The Management Committee used this information to analyze the financial condition and operations of PetMed on a weekly basis.

17. PetMed's CEO and CFO would review these metrics, along with other financial data, with members of the Management Committee to understand how PetMed was performing and to ascertain what actions, if any, needed to be implemented to improve the Company's financial performance. Based on the review of these financial metrics, during the Relevant Period, Irvin had a detailed understanding of PetMed's top-line numbers and sales data on a weekly basis.

18. None of the information presented and discussed at the weekly Management Committee meetings was ever made public prior to PetMed issuing its quarterly earnings announcements and related filings with the Commission.

## **II. Irvin Was Aware Of PetMed's Prohibitions Against Insider Trading**

19. During the Relevant Period, PetMed's Insider Trading Policy prohibited trading in PetMed securities while an employee was in possession of material, nonpublic information

concerning PetMed. PetMed's Insider Trading Policy also prohibited employees from passing or tipping others outside of the Company material, nonpublic information concerning PetMed.

20. The Insider Trading Policy listed common examples of material, nonpublic information, including unannounced results of operations and projections of future earnings or losses.

21. PetMed's Insider Trading Policy further prohibited any employee from trading in the Company's securities during certain blackout periods surrounding quarterly earnings announcements and completely forbid any employee from buying or selling call or put options involving PetMed securities at any time.

22. In connection with PetMed's Insider Trading Policy, PetMed's General Counsel would send all employees, including Irvin, an email each quarter setting forth that quarter's blackout period in "which there may be no trading of the Company's stock in any manner."

23. Each year in connection with PetMed's Insider Trading Policy, PetMed employees were required to sign an "Acknowledgment of Reminder Memos concerning the PetMed Express, Inc. Corporate Code of Business Conduct and Ethics, and Insider Trading Policy AND Whistleblower Policy." Each year during the Relevant Period, Irvin signed this memo acknowledging his responsibility to read and abide by the Insider Trading Policy.

### **III. Irvin Trades In PetMed Securities On The Basis Of Material, Nonpublic Information**

24. Irvin purchased thousands of shares of PetMed common stock and call and put option contracts ahead of six PetMed quarterly earnings announcements, and during blackout periods imposed by the Company when Irvin was prohibited from trading. Irvin purchased and sold PetMed call and put options in direct contravention to the Insider Trading Policy.

25. Irvin utilized different trading strategies depending on whether an earnings announcement would have a positive or negative impact on PetMed's stock price. For example, Irvin purchased shares of PetMed common stock and/or call option contracts prior to positive earnings announcements. Conversely, Irvin engaged in short-selling shares of PetMed common stock and/or purchased put option contracts prior to negative earnings announcements. Typically, shortly after an earnings announcement, Irvin sold his PetMed securities (or covered his short-positions), generally realizing a profit and, on two occasions, avoiding losses. In total, Irvin traded ahead of six PetMed earnings announcements from October 2014 through January 2017, and made profits and avoided losses totaling \$227,795.

26. Below is a summary of Irvin's trading ahead of PetMed earnings announcements during the Relevant Period:

<b>Earnings Announcement</b>	<b>Announcement Date</b>	<b>Stock Price Change</b>	<b>Investment Amount</b>	<b>Profit</b>	<b>Losses Avoided</b>
Q2 2015	10/20/2014	-3.74%	\$30,428	\$4,432	
Q3 2015	1/20/2015	10.80%	\$18,211	\$2,536	
Q4 2015	5/4/2015	3.29%	\$170	\$680	
Q4 2016	5/9/2016	3.95%	\$818,793	\$95,174	
Q2 2017	10/24/2016	-4.35%	\$156,940		\$41,334
Q3 2017	1/23/2017	-1.76%	\$1,137,580	\$66,814	\$20,750

27. Irvin traded in PetMed securities prior to the Company issuing its quarterly earnings announcements based on material, nonpublic information that he obtained as PetMed's Director of Marketing and as a member of the Management Committee. Irvin did not have a 10b5-1 trading plan in place.

#### **IV. Irvin Tipped Friend 1 Material, Nonpublic Information Concerning PetMed's Fiscal 2017 Fourth Quarter And Year-End Financial Results**

28. Irvin and Friend 1 are close personal friends, having met in college nearly 20 years ago. They have remained friends since college and stay in touch via email, phone calls, and text

messages. Irvin tipped Friend 1 material, nonpublic information concerning PetMed's fiscal 2017 fourth quarter and year-end financial results prior to the Company publicly issuing its earnings announcement on May 8, 2017.

29. Prior to the earnings announcement, Irvin sent an SMS message to Friend 1 on April 3, 2017, and then Irvin and Friend 1 proceeded to have four telephone calls between April 9 and 19, 2017. On April 20, 2017, Friend 1 purchased 55 PetMed call options. PetMed issued the earnings announcement at 8:00 a.m. on May 8, 2017, prior to the market opening.

30. The May 8, 2017 earnings announcement caused the price of PetMed common stock to increase by 25.43% from the previous day's closing price, from \$24.22 per share to \$30.38 per share at closing on May 8, 2017.

31. Friend 1 sold all 55 PetMed call options on May 8, 2017, after the Earnings Announcement was disseminated to the market, and realized profits of \$24,475. Friend 1 had never traded in PetMed securities prior to April 2017.

32. On April 12, 2017 – eight days prior to purchasing PetMed call options – Friend 1 opened an account at Charles Schwab & Co., Inc. ("Schwab"). Friend 1 used approximately 99% of the funds in the Schwab account to purchase the 55 PetMed call options and, after liquidating the entire position, withdrew all the funds from this account. Other than this securities transaction, Friend 1 did not purchase or sell any other securities in the Schwab account in 2017.

### **CLAIM FOR RELIEF**

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

33. The Commission repeats and realleges paragraphs 1 through 32 of this Complaint as if fully set forth herein.

34. Irvin knew, or was severely reckless in not knowing, that the information he learned concerning PetMed's quarterly earnings, business operations, and financial performance prior to PetMed's quarterly earnings announcements during the Relevant Period was material, nonpublic information.

35. Irvin knew, or was severely reckless in not knowing, that he owed a fiduciary duty or other duty of trust and confidence to PetMed and its shareholders to keep the information confidential and to refrain from both trading on it and from tipping others about it.

36. By trading on material, nonpublic information ahead of six PetMed quarterly earnings announcements during the Relevant Period, Irvin breached his fiduciary duty or other duty of trust and confidence to PetMed and its shareholders.

37. Irvin also breached his fiduciary duty or other duty of trust and confidence to PetMed and its shareholders when he tipped Friend 1 material, nonpublic information concerning PetMed's positive fiscal 2017 fourth quarter and year-end financial results prior to the Company's May 8, 2017 earnings announcement publicly disseminating such information.

38. Irvin tipped Friend 1 as a gift of confidential information with the expectation that Friend 1 would trade on it.

39. By virtue of the foregoing, Irvin, in connection with the purchase or sale of securities, by the use of any means or instrumentalities of interstate commerce, or of the mails, or a facility of a national securities exchange, directly or indirectly employed devices, schemes, or artifices to defraud and/or engaged in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon any person.



40. By engaging in the foregoing conduct, Irvin violated, and unless enjoined will again violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5(a) and (c) thereunder, 17 C.F.R. § 240.10b-5(a) and (c).

**RELIEF REQUESTED**

**WHEREFORE**, the Commission respectfully requests that the Court find Irvin committed the violations alleged, and:

**A.**

**Permanent Injunctive Relief**

Issue a Permanent Injunction enjoining Irvin, and his officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who received actual notice of the judgment by personal service or otherwise, and each of them, from violating Section 10(b) the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5(a) and (c) thereunder, 17 C.F.R. § 240.10b-5(a) and (c).

**B.**

**Disgorgement and Prejudgment Interest**

Issue an Order directing Irvin to disgorge all ill-gotten gains or proceeds received as a result of the acts and/or courses of conduct complained of herein, with prejudgment interest thereon.

**C.**

**Civil Money Penalties**

Issue an Order directing Irvin to pay a civil money penalty pursuant to Section 21A of the Exchange Act, 15 U.S.C. § 78u-1.

**D.**

**Officer and Director Bar**

Issue an Order, pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), prohibiting Irvin from acting as an officer or director of any issuer that has a class of securities

registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78u(d)(2), or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

**E.**  
**Retention of Jurisdiction**

The Commission respectfully requests that the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that it may enter, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

**F.**  
**Further Relief**

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

Dated: September 24, 2019

Respectfully submitted,

By: **Robert K. Levenson**  
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CIVIL COVER SHEET

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 NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
SECURITIES AND EXCHANGE COMMISSION
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)
Robert K, Levenson, Esq., Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, FL 33131, 305-982-6341

DEFENDANTS
JAMES ALEX IRVIN
County of Residence of First Listed Defendant Palm Beach County, FL
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
James D. Sallah, Esq., Sallah Astarita Cox, LLC, 3010 North Military Trail, Suite 210, Boca Raton, FL. 33431,

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
[X] 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)
PTF DEF
Citizen of This State [ ] 1 [ ] 1
Citizen of Another State [ ] 2 [ ] 2
Citizen or Subject of a Foreign Country [ ] 3 [ ] 3
Incorporated or Principal Place of Business In This State [ ] 4 [ ] 4
Incorporated and Principal Place of Business In Another State [ ] 5 [ ] 5
Foreign Nation [ ] 6 [ ] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excludes Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise
TORTS: PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury, 362 Personal Injury - Medical Malpractice; 365 Personal Injury - Product Liability, 367 Health Care/Pharmaceutical Personal Injury Product Liability, 368 Asbestos Personal Injury Product Liability; PRISONER PETITIONS: 463 Alien Detainee, 460 Motions to Vacate Sentence, 530 General, 535 Death Penalty, Other: 540 Mandamus & Other, 550 Civil Rights, 555 Prison Condition, 560 Civil Detainee - Conditions of Confinement
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC 881, 690 Other
LABOR: 710 Fair Labor Standards Act, 720 Labor/Management Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Employee Retirement Income Security Act
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157
PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 835 Patent - Abbreviated New Drug Application, 840 Trademark
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g))
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS—Third Party 26 USC 7609
OTHER STATUTES: 375 False Claims Act, 376 Qui Tam (31 USC 3729(a)), 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit (15 USC 1681 or 1692), 485 Telephone Consumer Protection Act, 490 Cable/Sat TV, [X] 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
[X] 1 Original Proceeding [ ] 2 Removed from State Court [ ] 3 Remanded from Appellate Court [ ] 4 Reinstated or Reopened [ ] 5 Transferred from Another District (specify) [ ] 6 Multidistrict Litigation - Transfer [ ] 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 10b-5 of Securities Act of 1934; 15 U.S.C. § 78j(b), and Rule 10b-5(a) and (c); 17 C.F.R. § 240.10b-5(a) and (c).
Brief description of cause: antifraud, registration and reporting provisions of federal securities laws

VII. REQUESTED IN COMPLAINT:
[ ] CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ Inj., Disg., Pen., O&D Bar CHECK YES only if demanded in complaint: JURY DEMAND: [ ] Yes [X] No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 09/24/2019 SIGNATURE OF ATTORNEY OF RECORD /s/Robert K. Levenson, Esq.

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE