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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**

11
12 **SECURITIES AND EXCHANGE**
13 **COMMISSION,**

14 Plaintiff,

15 vs.

16 **JAMES BURLESON,**

17 Defendant.

Case No.

COMPLAINT

DEMAND FOR JURY TRIAL

18
19
20 Plaintiff Securities and Exchange Commission (“SEC”) alleges:

21 **SUMMARY**

22 1. From August 2020 to October 2022 (the “Relevant Period”), Defendant
23 James Burleson, the majority owner and principal of formerly SEC-registered
24 investment adviser, Burleson & Company LLC (the “Firm”), conducted a fraudulent
25 “cherry-picking” scheme to benefit himself at the expense of his clients, violating his
26 fiduciary duty to act for his clients’ benefit.

27 2. Burleson conducted this fraud by making risky options trades in his Firm’s
28 block account, which allowed him to execute trades for multiple clients and then

1 subsequently allocate them to individual client accounts. Burleson then waited,
2 frequently until after the markets had closed, to see whether his options trades would be
3 profitable before deciding whether to allocate the trades to himself or to his clients.

4 3. During the Relevant Period, Burleson disproportionately allocated
5 profitable options trades to his personal account, making over \$1.8 million in profits
6 with a return rate of +26.5 percent at the time of allocation. Meanwhile, Burleson
7 disproportionately allocated unprofitable options trades to his clients' accounts, leaving
8 them with over \$3.2 million in losses with a return rate of -5.1 percent at the time of
9 allocation.

10 4. The probability that such wildly divergent returns occurred by chance is
11 less than one in a million.

12 5. In addition to this fraudulent conduct, Burleson also made materially
13 false and misleading statements to his clients in the Firm's Form ADV, Part 2A
14 filings, which claimed the Firm would allocate trades "in the most equitable manner
15 possible." In light of Burleson's cherry-picking scheme, that claim was false.

16 6. Through his cherry-picking scheme and misrepresentations, Burleson
17 violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and
18 Rule 10b-5 thereunder, Section 17(a) of the Securities Act of 1933 ("Securities Act"),
19 and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers
20 Act").

21 7. With this action, the SEC seeks permanent injunctive relief against
22 Burleson to prevent his future violation of the securities laws, disgorgement of his ill-
23 gotten gains, and to punish his violations of the securities laws.

24 **JURISDICTION AND VENUE**

25 8. The Court has jurisdiction over this action pursuant to Sections 20(b),
26 20(d)(1) and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(b), 77t(d)(1) & 77v(a),
27 Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27(a) of the Exchange Act, 15 U.S.C. §§
28 78u(d)(1), 78u(d)(3)(A), 78u(e) & 78aa(a), and Sections 209(d), 209(e)(1) and 214 of

1 the Advisers Act, 15 U.S.C. §§ 80b-9(d), 80b-9(3)(1) & 90b-14.

2 9. Defendant, directly or indirectly, has made use of the means or
3 instrumentalities of interstate commerce, of the mails, or of the facilities of a national
4 securities exchange in connection with the transactions, acts, practices, and courses of
5 business alleged in this Complaint.

6 10. Venue is proper in this district pursuant to Section 22(a) of the Securities
7 Act, 15 U.S.C. § 77v(a), Section 27(a) of the Exchange Act, 15 U.S.C. § 78aa(a), and
8 Section 214 of the Advisers Act, 15 U.S.C. § 80b-14, because certain of the
9 transactions, acts, practices, and courses of conduct constituting violations of the
10 federal securities laws occurred within this district. In addition, venue is proper
11 because Burleson resides in this district and his Firm was based in this district.

12 **THE DEFENDANT**

13 11. James David Burleson, age 57, is a resident of Petaluma, California.
14 Burleson previously held Series 7 and 66 licenses.

15 **THE ALLEGATIONS**

16 **A. Background on Burleson & Company**

17 12. Burleson founded Burleson & Company, LLC, which was registered
18 with the SEC as an investment adviser from March 30, 2006, through May 31, 2023.

19 13. During the Relevant Period, Burleson owned 97 percent of the Firm and
20 served as its principal, managing partner, and chief compliance officer.

21 14. During the Relevant Period, both Burleson and his Firm were investment
22 advisers, as defined by Section 202(a)(1) of the Advisers Act.

23 15. During the Relevant Period, Burleson and his Firm provided investment
24 advice to clients in exchange for advisory fees based on a percentage of assets under
25 management.

26 16. During the Relevant Period, Burleson's firm worked with over 200
27 clients.

28 17. As of March 29, 2023, the Firm held over \$450 million in regulatory

1 assets under management.

2 18. During the Relevant Period, the Firm maintained brokerage accounts for
3 all its clients at Charles Schwab & Co., Inc. (“Schwab”), including a personal account
4 for Burleson.

5 19. During the Relevant Period, the Firm also maintained a block or
6 omnibus trading account at Schwab through which it could make trades on behalf of
7 multiple clients simultaneously and allocate those trades to individual accounts
8 afterwards, without identifying to Schwab in advance of the trade the specific
9 accounts for which the trade was intended.

10 20. For many of his clients, Burleson had been granted discretion to execute
11 trades on the client’s behalf without pre-authorization.

12 21. As an investment adviser, Burleson owed a fiduciary duty to his
13 advisory clients to act for his clients’ benefit, including an affirmative duty of utmost
14 good faith and full disclosure of all material facts. Burleson also owed a duty to
15 avoid misleading his advisory clients.

16 22. On or about May 9, 2023, after the Relevant Period, the Firm sold its
17 assets to another investment adviser.

18 **B. Burleson’s Cherry-Picking Scheme**

19 23. Burleson’s cherry-picking scheme involved options trading through the
20 Firm’s block trading account at Schwab.

21 24. Burleson was the only person at his Firm who traded options through the
22 block account.

23 25. In making his options trades, Burleson could place the trade either as a
24 “direct trade” or an “allocated trade.”

25 26. A direct trade was one in which Burleson placed the option purchase or
26 sale in the individual client account or his own personal account.

27 27. An allocated trade was one in which Burleson placed the option
28 purchase or sale in the Firm’s block trading account and later allocated the options to

1 individual client accounts or his own personal account.

2 28. Burleson was the sole person at his Firm in charge of directing
3 allocations of options trades from the block account to individual client accounts.

4 29. As part of his cherry-picking scheme, Burleson placed options trades in
5 the Firm's block account and subsequently allocated the trades to individual client
6 accounts or his own personal account.

7 30. During the Relevant Period, Burleson executed over 750 options trades
8 through the Firm's block account.

9 31. Burleson's options trades during the Relevant Period were then allocated
10 to 32 different individual accounts at Schwab, including Burleson's own account and
11 two accounts held in the names of his children.

12 32. Burleson breached his fiduciary duty to the 29 clients ("Defrauded
13 Clients") to whom he allocated options trades by engaging in his cherry-picking
14 scheme, which unfairly benefitted Burleson at the Defrauded Clients' expense.

15 33. Burleson managed each of the Defrauded Client accounts on a
16 discretionary basis.

17 34. Burleson executed his cherry-picking scheme by trading in options in the
18 Firm's block account and delaying the allocation of these trades to a specific account
19 until after he had an opportunity to observe the options' intraday performance.

20 35. If the option price went up between the time of the trade and the later
21 allocation, Burleson disproportionately allocated the trade to his personal account. If,
22 however, the option price went down between the time of the trade and the later
23 allocation, Burleson disproportionately allocated the trade to the Defrauded Clients'
24 accounts.

25 36. Burleson did not make a contemporaneous record of how he intended to
26 allocate options trades in advance of or at the time of the trades.

27 37. During the Relevant Period, Burleson executed more than 60 percent of
28 the options trades in the Firm's block account before noon eastern time.

1 38. During the Relevant Period, Burleson waited until after the markets
2 closed to allocate over 87 percent of the options trades he executed in the block
3 account.

4 39. As reflected in the chart below, during the Relevant Period, Burleson
5 disproportionately allocated profitable options trades to his personal account, earning
6 over \$1.8 million profit with a return rate of +26.5 percent at the time of allocation.
7 During the same period, Burleson disproportionately allocated unprofitable options
8 trades to his Defrauded Clients' accounts, leaving them with over \$3.2 million in
9 losses, with a return rate of -5.1 percent at the time of allocation.

Accounts	Total Profits/Losses at Time of Allocation	Total Return Rate at Time of Allocation
Burleson	\$1,862,160	+26.5%
Defrauded Clients	-\$3,260,260	-5.1%

14 40. By contrast, as reflected in the table below, when Burleson traded
15 options directly in his personal account as opposed to in the block account—leaving
16 him no opportunity to cherry-pick the profitable trades—the profitability of his
17 returns plummeted to -5.8 percent, as measured at the end of the first day.

Accounts	Return Rate for Allocated Trades	First-Day Return Rate for Direct Trades
Burleson	+26.5%	-5.8%
Defrauded Clients	-5.1%	-3.9%

22 41. During the Relevant Period, Burleson allocated over 90 percent of his
23 options trades to just five accounts: his own personal account and four accounts held
24 by clients with over \$1 million in assets.

25 42. These high value accounts had significant additional activity to mask the
26 losses allocated to them through Burleson's options trades.

27 43. The wide difference in the profitability of Burleson's options trades was
28

1 due in part to the fact that he frequently traded options that were expiring within three
2 days of the date of purchase or sale. These options trades were particularly risky,
3 offering a higher potential profit but also a higher potential loss.

4 44. In fact, 80 percent of Burleson's total profits from options trades—over
5 \$1.4 million as measured at the time of allocation—came from options set to expire
6 within three days or less.

7 45. Further, Burleson frequently used his Firm's block account to complete
8 options transactions within a single day by either: (1) acquiring options and then
9 closing the position within the same day; or (2) acquiring options that expired the
10 same day, locking in the price.

11 46. These same-day options trades allowed Burleson to know exactly how
12 profitable they would be before he allocated them at the close of the trading day.

13 47. In fact, more than \$1 million of Burleson's profits from options trades
14 during the Relevant Period (over 56 percent) were from these same-day trades.

15 48. On these same-day options trades, Burleson allocated to himself trades
16 with a return rate of over +75 percent.

17 49. In contrast, the same-day options trades that Burleson allocated to his
18 clients during the Relevant Period had a return rate of -15.8 percent.

19 50. The probability that the wildly divergent allocation of returns between
20 Burleson's personal account and his Defrauded Client's accounts occurred by
21 chance—as opposed to knowing and intentional conduct—is less than one in a
22 million.

23 51. This scheme was inherently deceptive because cherry-picking is
24 virtually impossible for clients to detect on their own. Clients are usually unable to
25 see how their adviser allocates trades and rely on their adviser to meet his fiduciary
26 duty to act in their best interest and put their financial interests ahead of his own.
27 Thus, each time Burleson allocated a trade based on a security's performance was an
28 inherently deceptive act in furtherance of the scheme.

1 **C. Schwab Notifies Burleson and Ultimately Terminates His Account**

2 52. Around March 1, 2021, Schwab identified possible cherry-picking by
3 Burleson based on his allocations of trades.

4 53. On March 23, 2021, Schwab representatives called Burleson and
5 explained that Schwab had identified potential preferential options allocations to
6 Burleson's personal account.

7 54. Schwab representatives advised Burleson that a securities' performance
8 should not determine its allocation and suggested that Burleson speak to his Firm's
9 compliance consultant or to the SEC for more guidance.

10 55. Burleson told Schwab that he allocated trades to his personal account
11 from the block account because the block account was easier to use, but that it would
12 be "no big deal" to trade directly in his personal account going forward.

13 56. However, Burleson continued to trade options through his Firm's block
14 account after this call with Schwab.

15 57. And Burleson continued to disproportionately allocate profitable options
16 trades to his personal account after the call from Schwab.

17 58. Burleson attempted to mask his cherry-picking by including a few
18 clients' accounts when allocating profitable options trades to himself.

19 59. Indeed, in the eight months prior to the call with Schwab in March 2021,
20 Burleson allocated 27 options trades solely to his own account. But over the 19
21 months following that call, Burleson did not allocate any options trades solely to his
22 own account.

23 60. On October 26, 2022, Schwab representatives called Burleson again and
24 raised concerns about additional trading that was indicative of a preferential block
25 allocation scheme.

26 61. During that call, Burleson stated that he knew ahead of time who would
27 be allocated the trades but that, going forward, he intended to allocate the opening
28 trade upon execution, rather than at the end of the day.

1 62. In late November 2022, Schwab representatives notified the Firm that it
2 was terminating Schwab's relationship with the Firm due to Schwab's concerns over
3 Burleson's preferential allocations.

4 63. Schwab subsequently terminated the Firm's access to its block trading
5 system on December 2, 2022.

6 64. Burleson did not use the block account to allocate options after the
7 October 26, 2022, call from Schwab.

8 **D. Burleson's False and Misleading Statements to His Clients**

9 65. A Form ADV is a document filed with the SEC by investment advisers.
10 The filing consists of two parts: Part 1 contains general information about the firm;
11 and Part 2 is a narrative description of key information about the firm, including the
12 types of services the firm provides. An investment adviser's Form ADV must be
13 updated annually and be made available to firm clients.

14 66. Burleson's Firm filed both parts of its Form ADV in 2020, 2021, and
15 2022.

16 67. Burleson signed the Firm's Form ADV in each of these years.

17 68. Burleson also approved the contents of the Firm's Form ADV Part 2.

18 69. The Firm's Form ADV Part 2 was provided to all of the Firm's clients.

19 70. During the Relevant Period, each version of the Firm's Form ADV
20 Part 2 stated: "As a fiduciary, it is our duty to always act in the client's best interest."

21 71. Further, each version of the Firm's Form ADV Part 2 contained a section
22 entitled "Trade Aggregation and Allocation" that stated the Firm would "attempt to
23 allocate trade executions in the most equitable manner possible, taking into
24 consideration client objectives, current asset allocation and availability of funds using
25 price averaging, proration and consistently non-arbitrary methods of allocations."

26 72. These statements from the Firm's Form ADV Part 2 were false and
27 misleading considering Burleson's cherry-picking scheme.

28 73. Specifically, the statement that Burleson and the Firm would "always act

1 in the client’s best interest” was false.

2 74. Further, the statement that Burleson and the Firm would “attempt to
3 allocate trade executions in the most equitable manner possible” was false.

4 75. These statements were material to investors in deciding to use and
5 continue to use Burleson and his Firm as their investment advisers, meaning
6 Burleson’s advisory clients would have considered it important to know that the
7 following statements contained in the Firm’s Form ADV’s were false: (a) that
8 Burleson and the Firm would always act in their clients’ best interest, and (b) that
9 Burleson and the Firm would allocate trades in the most equitable manner.

10 **E. Burleson’s Scienter and Negligence**

11 76. Burleson knew, or was reckless in not knowing, that using the block
12 account to allocate profitable trades to his personal accounts and unprofitable trades
13 to his clients violated the fiduciary duty that he owed to them. At a minimum,
14 Burleson acted negligently and unreasonably when allocating his options trades for
15 the benefit of his own account and to the detriment of his Defrauded Clients’
16 accounts.

17 77. Burleson’s scienter and negligence in carrying out the scheme is
18 evidenced by the following:

19 (a) Burleson was the only person at his Firm who traded options
20 through the block account and the sole person in charge of directing the allocation of
21 those trades.

22 (b) Burleson did not memorialize how he intended to allocate options
23 trades from the block account in advance of or at the time the trades were made.

24 (c) Burleson executed most of his options trades from the block
25 account before noon eastern time but waited to allocate most of his options trades
26 until after the market closed.

27 (d) Burleson disproportionately allocated profitable options trades
28 from the block account to his own account and disproportionately allocated

1 unprofitable options trades to the Defrauded Clients' accounts.

2 (e) At the time of allocation, the difference in profitability between
3 the options trades that Burleson allocated to himself versus the options trades that he
4 allocated to his Defrauded Clients was so significant (+26.5% return rate to Burleson
5 vs. a -5.1% return rate to his Defrauded Clients) that the probability of this occurring
6 by chance—as opposed to knowing and intentional conduct—is less than one in a
7 million.

8 (f) When Burleson traded options directly in his own account, his
9 first-day return rate was -5.8 percent—more than 32 percentage points worse than the
10 return rate of options trades that Burleson allocated to himself from the block
11 account.

12 (g) Schwab representatives told Burleson in March 2021 that they had
13 identified preferential allocations of options trades made in the block account, but
14 Burleson continued to make options trades in the block account—without identifying
15 which client they were made for—and continued to wait to allocate those trades until
16 after the market closed.

17 (h) Burleson's only change after this call from Schwab was to attempt
18 to mask his disproportionate allocations of profitable options trades by including a
19 few client accounts when allocating these trades to his own account.

20 78. Burleson also knew, or was reckless or negligent in not knowing, that his
21 Firm's Forms ADV were false and misleading when they claimed that the trading of
22 securities would be allocated fairly and equitably among client accounts.

23 79. Burleson's scienter and negligence in signing the false and misleading
24 Form ADV is evidenced by the same evidence outlined above in paragraph 77.

25 **FIRST CLAIM FOR RELIEF**

26 **Fraud in Connection with the Purchase or Sale of Securities**
27 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5**

28 80. The Commission realleges and incorporates by reference here the

1 allegations in paragraphs 1 through 79.

2 81. As alleged above, Burleson engaged in a scheme defraud, made
3 materially false statements, and engaged in acts, practices or courses of business that
4 operated as a fraud upon his clients, in connection with the purchase and sale of
5 securities, by cherry-picking favorable options trades for his own account and by
6 allocating less favorable options trades to his Defrauded Clients' accounts.

7 82. By engaging in the conduct described above, Burleson, directly or
8 indirectly, in connection with the purchase or sale of a security, and by the use of
9 means or instrumentalities of interstate commerce, of the mails, or of the facilities of
10 a national securities exchange: (a) employed devices, schemes, or artifices to defraud;
11 (b) made untrue statements of material fact and omitted to state material facts in order
12 to make the statements made, in light of the circumstances under which they were
13 made, not misleading, and (c) engaged in acts, practices, or courses of business which
14 operated or would operate as a fraud or deceit upon other persons.

15 83. By engaging in the conduct described above, Burleson violated Section
16 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R.
17 §§ 240.10b-5(a)-(c).

18 **SECOND CLAIM FOR RELIEF**

19 **Fraud in the Offer or Sale of Securities**
20 **Violations of Sections 17(a) of the Securities Act**

21 84. The Commission realleges and incorporates by reference here the
22 allegations in paragraphs 1 through 83.

23 85. As alleged above, Burleson engaged in a scheme to defraud clients,
24 obtained money by means of untrue statements, and engaged in a course of business
25 that operated as a fraud upon a purchaser, by cherry-picking favorable options trades
26 for his own account and allocating less favorable options trades to the Defrauded
27 Clients' accounts.

28 86. By engaging in the conduct described above, Burleson, directly or

1 indirectly, in the offer or sale of securities, and by the use of means or instruments of
2 transportation or communication in interstate commerce or by use of the mails
3 directly or indirectly employed devices, schemes, or artifices to defraud, obtained
4 money by means of untrue statements of material fact or omissions to state a material
5 facts necessary in order to make the statements made, in light of the circumstances
6 under which they were made, not misleading, and engaged in transactions, practices,
7 and courses of business which operated as a fraud or deceit upon on a purchaser.

8 87. By engaging in the conduct described above Burleson violated Section
9 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

10 **THIRD CLAIM FOR RELIEF**

11 **Fraud by an Investment Adviser**
12 **Violations of Sections 206(1) and 206(2) of the Advisers Act)**

13 88. The Commission realleges and incorporates by reference here the
14 allegations in paragraphs 1 through 87.

15 89. As alleged above, Burleson had an adviser-client relationship with, and
16 therefore owed a fiduciary duty to, each of his Firm's clients.

17 90. Burleson breached his fiduciary duty by carrying out the cherry-picking
18 scheme and by falsely representing in his Firm's Form ADV Part 2 that the Firm
19 would act in its clients' best interest and equitably and fairly allocate transactions
20 among its clients.

21 91. By engaging in the conduct described above, Burleson, directly or
22 indirectly, by use of the mails or means of instrumentalities of interstate commerce:
23 (a) with scienter, employed devices, schemes or artifices to defraud clients or
24 prospective clients, and (b) with scienter or, at a minimum negligently, engaged in
25 transactions, practices, or courses of business which operated as a fraud or deceit
26 upon clients or prospective clients.

27 92. By engaging in the conduct described above, Burleson violated Sections
28 206(1) and (2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) & 80b-6(2).

PRAYER FOR RELIEF

WHEREFORE, the SEC respectfully requests that the Court:

I.

Issue findings of fact and conclusions of law that Burleson committed the alleged violations.

II.

Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of Civil Procedure, permanently enjoining Burleson from violating Section 17(a) of the Securities Act [15 U.S.C. §77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§80b-6(1) & 80b-6(2)].

III.

Order Burleson to disgorge all funds received from his illegal conduct, together with prejudgment interest thereon pursuant to Securities Exchange Act of 1934, Section 21(d)(3), (d)(5) and (d)(7) [15 U.S.C. §§ 78u(d)(3), (d)(5) and (d)(7)].

IV.

Order Burleson to pay civil penalties under Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

V.

Issue an order against Burleson, in accordance with Securities Act Section 20(b), and Exchange Act Sections 21(d)(1) and 21(d)(5), permanently restraining and enjoining Burleson from participating, directly or indirectly, in the purchase, offer, or sale of any security other than for his own personal accounts.

VI.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of

1 all orders and decrees that may be entered, or to entertain any suitable application or
2 motion for additional relief within the jurisdiction of this Court.

3 **VII.**

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

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8 Dated: November 21, 2024

9 */s/ Alec Johnson*

10 Alec Johnson
11 Matthew T. Montgomery
12 Attorneys for Plaintiff
13 Securities and Exchange Commission
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