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9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11 SECURITIES AND EXCHANGE
12 COMMISSION,

Case No. 2:23-cv-173

13 Plaintiff,

COMPLAINT

14 vs.

15 STEVEN J. SUSOEFF and STEVE
16 SUSOEFF, LLC (dba Meritage
Financial Group),

17 Defendants.
18

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

21 **JURISDICTION AND VENUE**

22 1. The Court has jurisdiction over this action pursuant to Sections 20(b),
23 20(d)(1) and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§
24 77t(b), 77t(d)(1) & 77v(a), Sections 21(d)(1), 21(d)(3)(A), 21(e) and 27(a) of the
25 Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1),
26 78u(d)(3)(A), 78u(e) & 78aa(a), and Sections 209(d), 209(e)(1) and 214 of the
27 Investment Advisers Act of 1940 (“Advisers Act”), 15 U.S.C. §§ 80b-9(d), 80b-
28

1 9(e)(1) & 90b-14.

2 2. Defendants have, directly or indirectly, 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 3. 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 in
11 this district because Defendants Steven J. Susoeff (“Susoeff”) and Steve Susoeff,
12 LLC (dba Meritage Financial Group) (“Meritage Financial”) reside in this district.

13 **SUMMARY**

14 4. This case is about a “cherry-picking” scheme carried out by Susoeff, an
15 investment adviser representative, and by his investment adviser firm, Meritage
16 Financial, which Susoeff solely owned and controlled.

17 5. Between in or about January 2021 and July 2021, Meritage Financial
18 managed approximately \$8 million for approximately 59 clients. During this time,
19 Susoeff had discretionary authority over his clients’ accounts, meaning he had the
20 authority to make investment decisions and execute trades on his clients’ behalf.
21 Susoeff executed many of these trades through what is commonly called a “block
22 trading account,” which allowed him to aggregate and execute trades for several
23 clients in one account, and later allocate each trade to individual client accounts.
24 These aggregated trade allocations could be submitted to the brokerage firm at the
25 end of the trading day, so Susoeff had the opportunity to “cherry-pick” – that is, to
26 allocate the winning trades to some favored accounts, and to allocate the losing trades
27 to other disfavored accounts.

28 6. However, allocating trades in a way that favors some accounts over

1 other disfavored accounts defrauds the disfavored clients and violates the fiduciary
2 duties that an investment adviser owes to them, including Susoeff's duty of care and
3 duty of loyalty to his advisory clients. Nevertheless, that is exactly what Susoeff and
4 Meritage Financial did in this case.

5 7. For approximately seven months, Susoeff and his advisory firm engaged
6 in a cherry-picking scheme. It began with Susoeff disproportionately allocating
7 winning trades to an account of his girlfriend (ending in 9566), whose initials are
8 H.E., and to accounts of his business associate (ending in 3610 and 8378), whose
9 initials are N.A. Then, after a few months of doing this for his girlfriend and business
10 associate, Susoeff also started disproportionately allocating winning trades to his own
11 account (ending in 4264). Meanwhile, throughout the scheme, Susoeff was
12 consistently allocating losing trades to his disfavored clients' accounts.

13 8. Throughout the relevant period, "Broker A," the broker with custody of
14 of Susoeff's clients' brokerage accounts, repeatedly warned Susoeff that he could not
15 allocate trades in a manner that systematically advantaged or disadvantaged clients,
16 and that Susoeff had to have procedures in place designed to ensure that trades were
17 allocated in way that all clients were treated fairly and equitably. Susoeff ignored all
18 of these warnings and continued to cherry-pick favorable trades.

19 9. In total, Susoeff's cherry-picking scheme enabled him to obtain
20 approximately \$54,232 in ill-gotten gains for his own account, and approximately
21 \$90,334 in ill-gotten gains for the favored accounts of H.E. and N.A. At the same
22 time, the disfavored accounts suffered approximately \$144,566 in first-day losses
23 attributable to the fraud. Susoeff's cherry-picking ceased when Broker A eventually
24 removed Susoeff and his advisory firm from its trading platform.

25 10. By engaging in this conduct, defendants Susoeff and Meritage Financial
26 violated the antifraud provisions of Sections 17(a)(1) and (a)(3) of the Securities Act,
27 15 U.S.C. § 77q(a)(1) and (a)(3), Section 10(b) of the Securities Exchange Act, 15
28 U.S.C. § 78j(b), and Rules 10b-5(a) and (c) thereunder, 17 C.F.R. § 240.10b-5(a) and

1 (c), and Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. § 80b-6(1) and
2 (2).

3 11. With this action, the SEC seeks permanent injunctive relief against the
4 defendants to prevent future violations of the federal securities laws, disgorgement of
5 ill-gotten gains along with prejudgment interest on a joint-and-several basis, and civil
6 penalties.

7 **THE DEFENDANTS**

8 12. Defendant Steven James Susoeff, is a resident of Henderson, Nevada.
9 Since approximately 2008, Susoeff has been the sole owner, officer, control person
10 and chief compliance officer of Meritage Financial. Prior to 2008, Susoeff was a
11 registered representative at broker-dealers for 11 years.

12 13. Defendant Meritage Financial Group, also known as Steve Susoeff,
13 LLC, is a Nevada company with its principal place of business in Henderson,
14 Nevada, and is a registered investment adviser with Nevada and California.
15 According to its March 25, 2022 Form ADV, Meritage Financial currently has 78
16 clients and \$9 million in assets under management.

17 **THE ALLEGATIONS**

18 **A. Background**

19 14. Susoeff founded Meritage Financial on or around May 7, 2008 and by
20 January 2021 it had approximately 59 clients and approximately \$8 million in assets
21 under management.

22 15. Meritage Financial provided a variety of financial planning services to
23 individuals, families and other clients regarding the management of their financial
24 resources based upon their financial situation, goals, and objectives.

25 16. At all relevant times, Susoeff and Meritage Financial were investment
26 advisers under Section 202(a)(11) of the Advisers Act, 15 U.S.C. §80b-2(a)(11),
27 because they provided investment advice for compensation to their clients regarding
28 securities.

1 17. Susoeff and Meritage Financial provided investment advice by using
2 their discretionary authority over their clients' accounts to buy and sell securities.
3 They received compensation by charging their clients an advisory fee that was a
4 percentage of their assets under management.

5 18. As the sole owner, officer, and control person of Meritage Financial,
6 Susoeff directly benefitted from the advisory fees that clients paid to Meritage
7 Financial.

8 19. Susoeff was the only person at Meritage Financial who provided
9 investment advice to its clients and was the only person who executed trades on
10 behalf of its clients.

11 20. Many of the trades that Susoeff executed on behalf of clients were
12 through its block trading account at Broker A, the custodian of the assets under
13 Meritage Financial's management.

14 21. Meritage Financial's block trading account at Broker A allowed Susoeff
15 to place a single trade in a stock through the block trading account, and later that
16 same day, allocate portions of that trade to multiple client accounts and/or his
17 personal account.

18 22. Susoeff was the only person at Meritage Financial who allocated trades
19 executed in the block trading account.

20 **B. The Cherry-Picking Scheme**

21 23. From approximately January 2021 through approximately July 2021,
22 Susoeff and Meritage Financial misused the block trading account at Broker A to
23 engage in a fraudulent scheme to defraud their investment advisory clients by cherry-
24 picking and disproportionately allocating profitable trades to the accounts of his live-
25 in girlfriend, H.E., his business associate, N.A, and eventually to Susoeff's own
26 account. At the same time, Susoeff defrauded his other clients and violated the
27 fiduciary duties that he owed to them by disproportionately allocating the
28 unprofitable trades to their accounts.

1 24. Susoeff carried out this scheme by executing trades in the block trading
2 account and taking advantage of the time he had to allocate those trades in order to
3 determine the security's intraday performance.

4 25. For example, when the price of a stock rose on the purchase date,
5 Susoeff disproportionately allocated those profitable trades to one or more of the
6 favored accounts. In most instances, when Susoeff did this, he sold the security that
7 same day, making it a day-trade and locking in the profit.

8 26. By contrast, when the price of a stock went down on the purchase date,
9 Susoeff disproportionally allocated those unprofitable trades to the disfavored clients'
10 accounts as long positions (*i.e.*, stocks to be held in their accounts).

11 27. This scheme, by its very nature, was inherently deceptive because
12 cherry-picking is virtually impossible for clients to detect on their own. They
13 generally are unable to see how their adviser allocates trades and rely on their adviser
14 to meet his fiduciary duty of care to provide investment advice that is in their best
15 interest, and meet his fiduciary duty of loyalty by putting their financial interests
16 ahead of his own. Thus, each allocation of a trade based on the security's
17 performance was an inherently deceptive act in furtherance of the scheme.

18 28. As one example, on or about May 7, 2021, Susoeff used the block
19 trading account to purchase 767 shares of Apple, Inc. stock ("AAPL") at 10:05 a.m.
20 for \$130.485 (for a total of \$100,082).

21 29. Then, at 10:27 a.m. that same day, Susoeff sold 767 shares of AAPL for
22 \$130.71 (for a total of \$100,251).

23 30. At 1:30 p.m. that same day, Susoeff bought another 767 shares of AAPL
24 \$130.225 (for a total of \$99,883).

25 31. At the end of the day, the 4:00 p.m. closing price of AAPL stock was
26 down to \$130.21. At this time, Susoeff still had not allocated any of the block trading
27 account's AAPL stock trades at 10:05 a.m. and 1:30 p.m. to any client accounts.

28 32. Beginning at 5:17 p.m., Susoeff allocated the 10:27 a.m. sale of 767

1 AAPL shares for \$130.71 and the subsequent 1:30 p.m. purchase of 767 AAPL shares
2 for \$130.21 to the favored accounts, rendering this allocation profitable.

3 33. At 5:55 p.m., when the share price was trading at \$130.22, Susoeff
4 allocated the bulk of the 767 AAPL shares purchased earlier at 10:05 a.m. (at the
5 higher price of \$130.485) to the disfavored accounts (679 shares), which in light of
6 the intraday price of AAPL's stock rendered this allocation unprofitable.

7 34. Only a small portion of this unprofitable allocation (88 shares) went to
8 the favored accounts.

9 35. At the time of allocation, Susoeff knew the prices of the two block
10 purchases and the sale price of the block sale, as well as the current trade price. He
11 allocated an AAPL day trade that would be most profitable to the favored accounts:
12 the 10:27 a.m. sale for \$130.71 and the later 1:30 p.m. purchase for \$130.225 for a
13 realized gain \$0.458 per share. To the disfavored accounts, he allocated at 5:55 p.m.,
14 after the stock had fallen to \$130.22 at market close, the more expensive 10:05 a.m.
15 purchase of \$130.485, for a first-day unrealized loss of \$0.265 per share.

16 36. In total, during the relevant period: (1) Susoeff's allocations resulted in
17 approximately 89.9 percent of the dollars traded on behalf of the favored accounts
18 being profitable at the time of the allocation; and (2) Susoeff's allocations resulted in
19 only 25.5 percent of the dollars traded on behalf of the disfavored accounts being
20 profitable at the time of the allocation. During the same period: (1) Susoeff's
21 allocations through the block trading account resulted in an approximate 0.61 percent
22 rate of return on investments for the favored accounts; and (2) Susoeff's allocations
23 through the block trading account resulted in approximately -0.60 percent rate of
24 return on investments for the disfavored accounts.

25 37. The scheme resulted in Susoeff receiving ill-gotten gains of
26 approximately \$54,232 and all of the favored accounts combined receiving
27 approximately \$144,566 in ill-gotten gains.
28

1 **C. Susoeff’s Scierter and Negligence**

2 38. Susoeff, whose mental state is imputed to Meritage Financial as its sole
3 owner and control person, knew, or was reckless in not knowing, that using the block
4 trading account to allocate winning trades to the favored accounts and losing trades to
5 the disfavored accounts defrauded his disfavored clients and violated the fiduciary
6 duties that he owed to those clients.

7 39. Susoeff also acted negligently; that is, he failed to act as a reasonable
8 person would under the circumstances when acting as his advisory clients’
9 investment adviser, including his allocation of trades in the block trading account.

10 **1. Trade Blotter Analysis**

11 40. Based on a statistical analysis of the subject trades, trade allocations, and
12 first-day investment returns, the likelihood that Susoeff’s disproportionate allocation
13 of profitable trades to the favored accounts and unprofitable trades to disfavored
14 accounts resulted from random chance, as opposed to knowing and intentional
15 conduct, is, at best, less than one in a million.

16 **2. Broker A Repeatedly Warned Susoeff Not to Allocate Trades in a**
17 **Manner that Systematically Advantaged or Disadvantaged His**
18 **Clients**

19 41. Beginning at least in or about December 2020 and continuing through
20 July 2021, Broker A repeatedly warned Susoeff not to allocate trades in a manner that
21 systematically advantaged or disadvantaged his clients. Broker A began issuing these
22 warnings after noticing that Susoeff was late in allocating trades in the block trading
23 account, which violated Broker A’s policy that all traded allocations occur by no later
24 than 6 p.m. Eastern Standard Time and resulted in several financial penalties being
25 imposed against Susoeff.

26 42. Each time Susoeff was late in allocating trades in the block trading
27 account, Broker A sent Susoeff an email containing general information about how to
28 properly use the block trading account.

1 43. This information warned Susoeff that he could aggregate or “bunch”
2 orders in the block trading account “so long as ... no client is systematically
3 advantaged or disadvantaged by the bunching.” It further warned Susoeff that he
4 “must have procedures in place that are designed to ensure that the trades are
5 allocated in such a manner that all clients are treated fairly and equitably.”

6 44. Broker A sent these emails and warnings to Susoeff on at least six
7 different occasions before and during the cherry-picking scheme, including on or
8 about December 14, 2020, December 15, 2020, April 12, 2021, April 26, 2021, May
9 19, 2021 and July 13, 2021.

10 45. Despite receiving these warnings, Susoeff continued to misuse the block
11 trading account for the cherry-picking scheme, disproportionately allocating
12 profitable trades to the favored accounts and unprofitable trades to other disfavored
13 accounts.

14 46. Moreover, Susoeff never kept records of his trade allocations and had no
15 procedures in place that were designed to ensure that the trades were allocated in a
16 manner that all clients were treated fairly and equitably.

17 **3. Susoeff’s Fiduciary Duty to His Advisory Clients**

18 47. Susoeff’s scienter and negligence is further evidenced by the fiduciary
19 duties that he owed to his clients.

20 48. Susoeff and Meritage Financial were fiduciaries for their advisory
21 clients.

22 49. Susoeff and Meritage Financial owed their advisory clients a duty of
23 loyalty. That duty of loyalty included an affirmative duty of utmost good faith, a
24 duty to provide full and fair disclosure of all material facts, and a duty to employ
25 reasonable care to avoid misleading their clients. Susoeff and Meritage Financial’s
26 duty to disclose all material facts included a duty to tell clients about actual or
27 potential conflicts of interest that might incline Susoeff and Meritage Financial to
28 render investment advise that is not disinterested.

1 50. Susoeff and Meritage Financial owed their advisory clients a separate
2 duty of care. Their duty of care included a duty to provide investment advice that
3 was in the best interest of their client, including a duty to provide advice that was
4 suitable for their advisory clients. Susoeff and Meritage Financial's duty of care also
5 included a duty to seek best execution of their clients' securities transactions because
6 they were responsible for choosing the broker-dealer that would execute their clients'
7 trades.

8 51. Susoeff knew, or was reckless for not knowing, that he owed his clients
9 these fiduciary duties because they were acknowledged in the company's code of
10 ethics and its policies and procedures manual, which Susoeff was required to know
11 and examine as the chief compliance officer ("CCO") of Meritage Financial.

12 52. For instance, the policies and procedures manual made it clear that
13 Meritage Financial was a fiduciary to its advisory clients, and had a duty of undivided
14 loyalty to always act in utmost good faith, place its clients' interests first and
15 foremost, and to make full and fair disclosure of all material facts including
16 information as to any conflicts of interest. It also prohibited Meritage Financial and
17 Susoeff, as one of its investment adviser representatives, from carrying out any
18 device, scheme or artifice to defraud a client and from engaging in any transaction,
19 practice or course of business that would do so.

20 53. The policies and procedures manual further stated that, as the CCO, it
21 was Susoeff's responsibility to monitor how he performed his job duties and to
22 ensure they comported with his fiduciary obligations. This included making sure that
23 he placed the interests of his clients ahead of his own and conducted business in an
24 ethical fashion.

25 54. Similarly, the code of ethics made it clear that Susoeff and Meritage
26 Financial owed a fiduciary duty to their clients and must at all times place the interest
27 of their clients above their own. This meant that whenever any questions arose
28 concerning Susoeff's trading in securities it had to be resolved in favor of the interest

1 of his clients, even if that meant at the expense of Susoeff's interest.

2 **FIRST CLAIM FOR RELIEF**

3 **Fraud in Connection with the Purchase or Sale of Securities**

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

5 **(against All Defendants)**

6 55. The SEC realleges and incorporates by reference paragraphs 1 through
7 54 above.

8 56. As alleged above, defendants Susoeff and Meritage Financial engaged in
9 a scheme to defraud their clients, and engaged in acts, practices or courses of business
10 that operated as a fraud upon their clients, by cherry-picking profitable trades to be
11 allocated to the favored accounts and unprofitable trades to the disfavored accounts.
12 The cherry-picking scheme was inherently deceptive and created the false appearance
13 that disfavored clients' first-day losses were attributable to market forces rather than
14 his fraudulent trade allocation practices.

15 57. By engaging in the conduct described above, defendants Susoeff and
16 Meritage Financial, and each of them, directly or indirectly, in connection with the
17 purchase or sale of a security, and by the use of means or instrumentalities of
18 interstate commerce, of the mails, or of the facilities of a national securities
19 exchange: (a) employed devices, schemes, or artifices to defraud; and (b) engaged in
20 acts, practices, or courses of business which operated or would operate as a fraud or
21 deceit upon other persons.

22 58. By engaging in the conduct described above, defendants Susoeff and
23 Meritage Financial violated, and unless restrained and enjoined will continue to
24 violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5(a)
25 and 10b-5(c) thereunder, 17 C.F.R. §§ 240.10b-5(a) & 240.10b-5(c).

SECOND CLAIM FOR RELIEF

Fraud in the Offer or Sale of Securities

Violations of Sections 17(a)(1) and (3) of the Securities Act

(against All Defendants)

59. The SEC realleges and incorporates by reference paragraphs 1 through 54 above.

60. As alleged above, defendants Susoeff and Meritage Financial engaged in a scheme to defraud their clients, and engaged in acts, practices or courses of business that operated as a fraud upon their clients, by cherry-picking profitable trades to be allocated to the favored accounts and unprofitable trades to the disfavored accounts. The cherry-picking scheme was inherently deceptive and created the false appearance that disfavored clients' first-day losses were attributable to market forces rather than his fraudulent trade allocation practices.

61. By engaging in the conduct described above, defendants Susoeff and Meritage Financial, and each of them, directly or indirectly, in the offer or sale of securities, and by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails directly or indirectly: (a) employed devices, schemes, or artifices to defraud; and (b) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

62. By engaging in the conduct described above, defendants Susoeff and Meritage Financial violated, and unless restrained and enjoined will continue to violate, Sections 17(a)(1) and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(1) & 77q(a)(3).

1 **II.**

2 Issue judgments, in forms consistent with Rule 65(d) of the Federal Rules of
3 Civil Procedure, permanently enjoining Susoeff and Meritage Financial, and their
4 officers, agents, servants, employees and attorneys, and those persons in active
5 concert or participation with any of them, who receive actual notice of the judgment
6 by personal service or otherwise, and each of them, from violating Section 17(a) of
7 the Securities Act [15 U.S.C. §77q(a)], 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], and Section 206 of the
9 Advisers Act [15 U.S.C. § 80b-6].

10 **III.**

11 Order Defendants to disgorge all funds received from their illegal conduct, on a
12 joint and several basis, together with prejudgment interest thereon pursuant to
13 Securities Exchange Act of 1934, Section 21(d)(3), (d)(5) and (d)(7) [15 U.S.C. §§
14 78u(d)(3), (d)(5) and (d)(7)].

15 **IV.**

16 Order Defendants to pay civil penalties under Section 20(d) of the Securities
17 Act [15 U.S.C. § 77t(d)], Section 21(d)(3) of the Exchange Act [15 U.S.C. §
18 78u(d)(3)], and Section 209(e) of the Adviser Act [15 U.S.C. § 80b-9(e)].

19 **V.**

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

VI.

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

Dated: February 1, 2023

/s/ Gary Y. Leung

GARY Y. LEUNG

Attorney for Plaintiff

Securities and Exchange Commission

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