

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

-against-

NICHOLAS KABYLAFKAS,

Defendant.

21 Civ. 2110 ()

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff United States Securities and Exchange Commission (“SEC” or the “Commission”), for its complaint against Defendant Nicholas “Niko” Kabylafkas (the “defendant”), alleges as follows:

JURISDICTION AND VENUE

1. The SEC brings this action pursuant to Sections 20(b) of the Securities Act of 1933 (“Securities Act”), [15 U.S.C. § 77t(b)] and Section 21(d) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78u(d)].

2. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. The defendant has directly, or indirectly, made use of the means or instrumentalities of transportation or communication in, or the instrumentalities of, interstate commerce, or of the mails, in connection with the transactions, acts, practices, and courses of business alleged herein.

3. Venue in this District is proper pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa], because certain of the

offers and sales of securities and certain of the acts, practices, transactions, and courses of business constituting the violations alleged in the Complaint occurred in the District.

THE DEFENDANT

4. **Nicholas (“Niko”) Kabylafkas**, age 49, is an individual who at all times relevant to the Complaint resided in Denver, Colorado.

OTHER RELEVANT ENTITIES AND INDIVIDUALS

5. **Airborne Wireless Network (“Airborne”)**, a Nevada corporation headquartered in Simi Valley, California, was originally incorporated in January 2011 as Ample-Tee, Inc. (“Ample-Tee”) to focus “on selling hard-to find ergonomic products for the physically disabled, such as chairs, workstations, back/arm/leg/wrist supports, through [its] proposed online website.” On or around May 24, 2016, the company announced its name change to Airborne Wireless Network, and later dramatically changed its line of business to, purportedly, “developing, marketing and licensing a high-speed meshed broadband airborne wireless network by linking commercial aircraft in flight.” Airborne does not have a class of securities registered with the Commission under Section 12 of the Exchange Act, but Airborne made periodic filings with the Commission between 2013 and 2019.

6. At all times relevant to this Complaint, Airborne’s stock was a “penny stock” as defined by the Exchange Act. Airborne’s stock traded at less than \$5.00 per share and did not meet any of the exceptions to penny stock classification under Section 3(a)(51) and Rule 3a51-1 of the Exchange Act.

7. **Kalistratos (“Kelly”) Kabilafkas (“Kabilafkas”)**, age 45, is an individual residing in Moorpark, California and is the defendant’s distant cousin.

8. **Jack Edward Daniels (“Daniels”)**, age 71, is an individual who at all times relevant to the Complaint resided in Los Angeles County, California. Kabilafkas used Daniels as a nominee, installing him as Airborne’s CEO. Airborne publicly identified Daniels as, at various times, a director, its President, its principal executive officer, principal financial officer, and/or its chief executive officer, but the company was at all times in fact controlled by Kabilafkas.

9. **Dr. Eric Scheffey (“Scheffey”)**, age 71, is an individual who at all times relevant to the Complaint maintained residences in both Denver, Colorado and Switzerland.

RELATED LITIGATION

10. On March 2, 2021, the SEC filed an enforcement action against Airborne, Kabilafkas, Daniels, Scheffey, and others in the United States District Court for the Southern District of New York. *See SEC v. Airborne Wireless Network, et al.*, Case No. 21-1772 (CM).

STATEMENT OF FACTS

11. The defendant, as explained further below, participated in a fraudulent scheme a group of individuals used to inflate Airborne’s stock price and sell millions of Airborne shares to unsuspecting investors to generate significant illicit proceeds. In particular, the defendant helped Kabilafkas solicit Scheffey’s investment in Airborne in exchange for Airborne stock and then deceived Airborne’s transfer agent and his broker in order to convince these market gatekeepers to issue new Airborne stock certificates in his name, accept those certificates for deposit in his brokerage account, and clear them for sale to the public.

12. In October 2015, Kabilafkas bought essentially all of then-Ample-Tee’s issued and outstanding stock. Specifically, Kabilafkas bought both the control block of about 84.1 million restricted shares (“Restricted Shares”) and about 30 million shares that had purportedly

been issued to about 30 residents of Thailand (“Thai Shareholders”) in a 2013 distribution submitted on Form S-1 (“S-1 Shares”). In fact, the Thai Shareholders were simply nominees who never owned or controlled the stock. The S-1 Shares did not bear restrictive legends, meaning that, unlike the Restricted Shares, these shares could be deposited and sold more easily.

13. After purchasing the Ample-Tee shell in October 2015, Kabilafkas repeatedly made false and misleading statements and engaged in additional deceptive conduct to conceal his involvement with, and controlling interest in, Ample-Tee, as well as his acquisition of the S-1 Shares. For example, Kabilafkas placed the control block of restricted shares in the name of his nominee, Daniels.

14. In May 2016, Ample-Tee changed its name to “Airborne Wireless Network.”

15. Then, in August 2016, to help create the false appearance that Airborne was something other than a vehicle for Kabilafkas’s fraudulent scheme, Airborne bought from another company Kabilafkas controlled (“Private Company”) the patent that Airborne would use as the centerpiece of a deceptive promotional campaign.

16. Kabilafkas also distributed S-1 Shares to family, friends, and associates, including Scheffey and the defendant. Kabilafkas, the defendant, and the others involved in the scheme then deceived Airborne’s transfer agent and their broker-dealers so that the transfer agent would transfer S-1 Shares into their names and the broker-dealers would accept them for deposits into their brokerage accounts where they could be timely liquidated during a promotional campaign.

17. In fact, the defendant received S-1 Shares in exchange for recruiting at least one investor in Airborne. Kabilafkas initially recruited the defendant to solicit investments in the Private Company around August 2015, and later, the defendant switched to soliciting investments in Airborne.

18. In connection with his efforts to identify potential Airborne investors, the defendant connected Kabilafkas with Scheffey and, together, they worked to solicit Scheffey's investment in Airborne.

19. In October 2016, Scheffey paid \$250,000 to purchase 312,500 restricted Airborne shares.

20. Later that same month, after Scheffey's initial \$250,000 investment, the defendant flew to California to meet with Kabilafkas. While inside Kabilafkas's home, Kabilafkas showed the defendant a box that the defendant saw Daniels hand to Kabilafkas earlier that day. The box contained many Ample-Tee S-1 Share certificates that were still in the Thai Shareholders' names. Kabilafkas told the defendant he would give him a share certificate in exchange for locating new Airborne investors. But, Kabilafkas explained that the defendant had not yet earned the shares because the defendant had only raised \$250,000 to date.

21. In November 2016, Scheffey received another 1.5 million restricted Airborne shares. This time, the \$1.2 million purchase price was transferred from an account in another person's name.

22. On October 13, 2016 and again in November 22, 2016, Airborne filed periodic reports with the Commission on Form 8-K, signed by Daniels, announcing the purported details of Scheffey's restricted share transactions. In particular, Airborne's filings announced an \$0.80 per share purchase price for both transactions. Airborne also disseminated press releases to publicize these transactions.

23. As discussed further below, however, prior to Scheffey's initial \$250,000 investment, Kabilafkas agreed to lower Scheffey's cost-basis for each share by giving Scheffey 2,803,558 of Kabilafkas's S-1 Shares at no additional cost.

24. Thus, Kabilafkas, Airborne, and Daniels used the Scheffey transactions to deceive the market about the price and demand for Airborne stock. Critically, Kabilafkas did not want the Scheffey transactions to reveal to the market that Airborne stock was worth far less than the price at which it was then trading. Kabilafkas and Scheffey therefore contrived to have Scheffey, and the other person from whom at least some of the funds originated, pay a higher disclosed price for the restricted stock announced in the October and November 2016 Forms 8-Ks, in exchange for Kabilafkas secretly giving Scheffey millions of S-1 Shares.

25. Kabilafkas began the process of giving Scheffey a portion of these S-1 Shares during a November 2016 trip Scheffey and the defendant took to California. During that trip, Scheffey and the defendant met with Kabilafkas in a hotel restaurant near the Burbank, California airport. Kabilafkas took out Ample-Tee S-1 Share certificates Nos. 10 (841,000 shares) and 29 (1,401,779 shares), still in the names of the Thai Shareholders, and instructed the defendant to complete share transfer paperwork so that the shares could be reissued in Scheffey's name. Specifically, Kabilafkas directed the defendant to backdate and insert Scheffey's name onto share transfer paperwork, falsely making it appear as though Scheffey bought the certificates directly from the Thai Shareholders in February 2015, for about \$0.001 per share. The goal of this deception was to have Airborne's transfer agent cancel the Ample-Tee S-1 Shares in the Thai Shareholders' names and reissue Airborne shares in Scheffey's name, again without restricted legends, which made the shares easier to deposit with a broker and monetize.

26. When Kabilafkas handed the transfer paperwork to the defendant, the portions related to the transferors—supposedly, the original Thai Shareholders—were already completed, signed, and notarized. The portions related to the transferee, however, were blank. The defendant filled in the blank portions of the forms using Scheffey's name and knowingly

backdated them to February 5, 2015. The backdating falsely made it appear as though Scheffey had bought the share certificates from the Thai Shareholders in bona fide transactions more than a year earlier.

27. Around March 2017, the defendant again traveled to California, where Kabilafkas finally rewarded him with an Ample-Tee S-1 Share certificate along with additional, partially completed share transfer paperwork, consistent with their discussion during the October 2016 meeting at Kabilafkas's home. At the same time, Kabilafkas told the defendant to call him later for instructions on how to have the transfer agent cancel the Ample-Tee certificate in the Thai Shareholder's name, reissue an Airborne certificate in the defendant's name, and deposit that new certificate with a broker-dealer so he could monetize the shares as partial compensation for soliciting Scheffey.

28. During the later call, Kabilafkas told the defendant how to complete the share transfer paperwork to make it falsely appear as though the defendant had bought the shares in a bona fide transaction directly from the relevant Thai Shareholder. In sum, Kabilafkas directed the defendant to falsely fill out the paperwork in the same way he had directed the defendant to fill out Scheffey's paperwork several months earlier.

29. Kabilafkas also provided the defendant a cover story to use if a broker asked him to explain how he had come to purchase shares from an investor ostensibly located in Thailand. If asked how he obtained the share certificate, Kabilafkas instructed the defendant to lie and say that one of his clients knew the original Thai Shareholder, who was sick and needed money, and the defendant bought the shares to help the Thai Shareholder. But, both the defendant and Kabilafkas knew the defendant really obtained the shares from Kabilafkas.

30. After Kabilafkas gave the defendant the S-1 Share certificate, the defendant followed Kabilafkas's directions and submitted false and misleading share transfer paperwork to the transfer agent.

31. On or about May 5, 2017, the transfer agent received a package from the defendant requesting cancellation of Ample-Tee S-1 Share certificate 6, still in the Thai Shareholder's name and representing 560,779 shares, and the reissuance of five new Airborne share certificates in his name. The defendant enclosed the original S-1 Share certificate and the share transfer paperwork, which he fraudulently completed to make it appear as though he purchased the shares directly from the Thai Shareholder. The transfer agent, relying on the falsified paperwork defendant submitted, canceled Ample-Tee certificate No. 6 and issued five new Airborne certificates, totaling 560,779 shares, in the defendant's name.

32. The defendant knew, or was reckless in not knowing, that the representations he made to the transfer agent were false and misleading.

33. After the defendant fraudulently convinced the transfer agent to reissue Airborne certificates in his name, he attempted to deposit them in his brokerage accounts so that he could sell the shares to the public.

34. In doing so, the defendant knowingly provided his brokers with fraudulent documentation.

35. Ultimately, in October 2017, a broker accepted all five of the defendant's Airborne share certificates for deposit. Thereafter, a representative from the broker called to ask the defendant questions about his stock, including where and how he obtained it. Just as Kabilafkas had instructed him, the defendant told the broker that he had purchased the shares

directly from the Thai Shareholder after learning from one of his clients that the shareholder was sick. Thereafter, the broker allowed the defendant to sell his Airborne shares from his account.

36. Between October 30, 2017 and January 29, 2018, the defendant sold 105,779 Airborne shares for proceeds of \$21,866.29.

37. In addition to the 560,779 Airborne shares, Kabilafkas also paid the defendant approximately \$35,000 for his role in recruiting Scheffey and for his other efforts to recruit investors.

CLAIMS FOR RELIEF

COUNT I

Securities Act Sections 17(a)(1)-(3)

38. The SEC realleges and incorporates by reference each allegation in paragraphs 1 through 1 through 37, inclusive, as if they were fully set forth herein.

39. By engaging in the conduct that is described above, the defendant knowingly, recklessly, and negligently, in the offer or sale of securities, by the use of the 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;
- b. obtained money or property by means of untrue statements of material facts, or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or
- c. engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

40. By engaging in the foregoing conduct, the defendant violated, and unless enjoined will continue to violate, Securities Act Section 17(a) [15 U.S.C. § 77q(a)].

COUNT II

Exchange Act Section 10(b) and Rule 10b-5 Thereunder

41. The SEC realleges and incorporates by reference each allegation in paragraphs 1 through 1 through 37, inclusive, as if they were fully set forth herein.

42. By engaging in the conduct described above, the defendant knowingly or recklessly, in connection with the purchase or sale of securities, directly or indirectly, by use the means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange:

- a. employed devices, schemes or artifices to defraud; and
- b. made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and/or
- c. engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security.

43. By engaging in the foregoing conduct the defendant violated, and unless enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5], thereunder.

PRAYER FOR RELIEF

WHEREFORE, the SEC respectfully requests that the Court enter a final judgment:

- A. Finding defendant liable for the violations alleged herein;
- B. Permanently restraining and enjoining defendant from, directly or indirectly, engaging in conduct in violation of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)];

C. Permanently restraining and enjoining defendant from, directly or indirectly, engaging in conduct in violation of 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];

D. Barring defendant from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock, pursuant to Section 21(d)(6) of the Exchange Act [15 U.S.C. § 78u(d)(6)];

E. Ordering defendant to disgorge, with prejudgment interest, all ill-gotten gains received by any person or entity as a result of the conduct alleged in this Complaint;

F. Ordering defendant to pay a civil penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];

G. Retaining jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

H. Granting such other and further relief as the Court deems just, equitable, or proper.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands that this case be tried to a jury.

Dated: March 11, 2021

Respectfully submitted,

S/ David Misler

Daniel Maher*

David Misler*

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