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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

AMERIPRISE FINANCIAL SERVICES, LLC,

Plaintiff,

v.

LPL FINANCIAL, LLC,

Defendant.

Case No. 3:24-cv-01333-JO-MSB

REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Judge: Hon. Jinsook Ohta
Courtroom: 4C

Complaint Filed: July 30, 2024
Trial Date: None set

TABLE OF CONTENTS

		Page
I.	INTRODUCTION	1
II.	FACTUAL REBUTTAL	2
	A. LPL Cannot Disclaim the Legal and Regulatory Obligations of Its Recruitment and Management of Financial Advisors	2
	B. LPL's Is Misleading About Its Non-Compliance with The Protocol	4
III.	LEGAL ANALYSIS AND ARGUMENT	8
	A. Ameriprise Has Submitted Sufficient Evidence	8
	B. Ameriprise Has Established Irreparable Harm	9
	C. Ameriprise Has a Substantial Likelihood Of Prevailing On Its Claims	11
	D. An Injunction Would Be Equitable And Support The Public Interests	14
IV.	CONCLUSION	15

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TABLE OF AUTHORITIES

Page

CASES

Ameriprise Fin. Servs. v. Kenoyer, et al.
Case No. 2:24-cv-01675 (W.D. Wash. Oct. 14, 2024) 10

Ameriprise Fin. Servs. v. McCann, et al.
Case No. 2:24-cv-11471-BRM-KGA (July 1, 2024) 2, 4, 5, 13

Barney v. Burrow
558 F. Supp. 2d 1066, 1080 (E.D. Cal. 2008) 14

Courtesy Temp. Serv., Inc. v. Camacho
222 Cal. App. 3d 1278, 1287–88 (1990) 12

Flynt Distrib. Co. v. Harvey
734 F.2d 1389, 1394 (9th Cir. 1984) 9

Gordon v. Landau
(1958) 49 Cal.2d 690, 321 P.2d 456 12

Gordon v. Schwartz
(1956) 147 Cal.App.2d 213, 305 P.2d 117 12

Gordon v. Wasserman
(1957) 153 Cal.App.2d 328, 314 P.2d 759.) 12

H.Q. Milton, Inc. v. Webster
No. 17-CV-06598-PJH, 2017 WL 5625929, at *5 (N.D. Cal. Nov. 22, 2017) 4, 10, 15

Householder Grp., LLLP v. Van Mason
No. CV 09-2370-PHX-SMM, 2012 WL 4513635, at *8 (D. Ariz. Sept. 30, 2012) 13

Integral Dev. Corp. v. Tolat
No. C 12-06575 JSW, 2015 WL 674425, at *4 (N.D. Cal. Feb. 12, 2015) 11

Johnson v. Couturier
572 F.3d 1067, 1083 (9th Cir. 2009) 9

Kanai v. United States Dep't of Homeland Sec.
No. 20CV05345CBMKSX, 2020 WL 13441465, at *3 (C.D. Cal. June 25, 2020) 8

Keating v. Jastremski
No. 3:15-CV-00057-L-JMA, 2016 WL 5338072, at *5 (S.D. Cal. Sept. 23, 2016) 12, 13

MAI Sys. Corp. v. Peak Comput., Inc.
991 F.2d 511, 521 (9th Cir. 1993) 12

Morlife, Inc. v. Perry,
56 Cal. App. 4th 1514, 1521–22 (1997) 12

Republic of the Philippines v. Marcos
862 F.2d 1355, 1363 (9th Cir. 1988); 9

StrikePoint Trading, LLC v. Sabolyk
No. SACV071073DOCMLGX, 2008 WL 11342649, at *3 (C.D. Cal. July 21, 2008) 10

The Ret. Grp. v. Galante
176 Cal. App. 4th 1226, 1238, 98 Cal. Rptr. 3d 585, 593 (2009) 11

WBS, Inc. v. Pearcy
No. CV163495DMGAFMX, 2016 WL 11507028, at *3 (C.D. Cal. May 20, 2016) 8

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I. INTRODUCTION

Defendant LPL Financial, LLC ("LPL") cannot deny that it is in possession of, and using, Plaintiff Ameriprise Financial Services, LLC's ("Ameriprise") confidential information which LPL routinely acquires from recruits. Instead, LPL attempts to sidestep this fact with unfounded legal arguments and efforts to distance itself from the recruits. However, LPL has undeniably benefitted and continues to benefit from mass misappropriation of Ameriprise's confidential information. LPL's conduct must be enjoined.

Ameriprise sought expedited discovery in support of its claims; the result confirms LPL's ongoing misappropriation. Following multiple conferences with Magistrate Judge Berg, the parties agreed that in lieu of formal expedited discovery, LPL would provide a signed declaration of a suitable representative (in this case, Ms. Candi Sinquinami) addressing several categories of the information which Ameriprise sought. *See* Dkt. 35-2 ("Sinquinami Decl.").

Upon review of the Sinquinami Declaration, the Court will see that LPL admits to one of Ameriprise's material allegations—that LPL provided a spreadsheet called the "Bulk Upload Tool" to advisors it recruited from Ameriprise, and the Bulk Upload Tool contained "column headings for the option to enter information beyond Protocol Information." *See* Sinquinami Decl. at ¶ 7. This confirms that LPL is in possession and control of Ameriprise's trade secret customer information—as are the thirty individuals who used the Bulk Upload Tool to enter customer information "beyond that permitted by the Broker Protocol … and returned it to LPL." *See id.* at ¶ 12. Despite its voluminous responsive papers, LPL makes no effort to dispel Ameriprise or this Court of the reality that LPL is still in possession of, and using, the ill-gotten confidential information which it acquired through this scheme.

This alone entitles Ameriprise to injunctive relief, as LPL has no

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entitlement to the information it obtained via the Bulk Upload Tool. Moreover, LPL clearly continues to misappropriate Ameriprise's confidential information through more recent recruits and methodologies.

LPL tries to distance itself from this severe misconduct, claiming it has no control over its advisors. Such an argument ignores that LPL bears regulatory and supervisory responsibility for the advisors, that LPL is the signatory to the Protocol and responsible for compliance therewith, and that LPL induces its recruits with substantial upfront loans to abscond with Ameriprise's trade secrets and to transition clients for LPL's pecuniary benefit.

Ameriprise now replies to LPL's Opposition to the Motion ((Dkt. 32), hereinafter "Opposition"), in which LPL fruitlessly attempts to minimize its involvement with and connection to the wrongdoing, confuse the issues, and present questionable evidence to the Court. LPL's Opposition makes clear that LPL's ongoing misconduct must be enjoined.

II. FACTUAL REBUTTAL

A. LPL Cannot Disclaim the Legal and Regulatory Obligations of Its Recruitment and Management of Financial Advisors

Ameriprise and LPL operate in an industry that is heavily regulated by the Securities Exchange Commission ("SEC") and the Financial Industry Regulatory Authority ("FINRA"). While LPL wants to distance itself from responsibility, it has serious regulatory and legal obligations and is required to understand the agreements in place between recruits and their former firms. *See* Declaration of David Tilkin ("Tilkin Decl.") at ¶¶13, 14. LPL takes the position that its advisors are independent contractors and LPL therefore has no control over or responsibility for them. LPL's position is without merit. *Id.* at ¶¶20, 21. Courts similarly reject LPL's assertion. *Ameriprise Fin. Servs. v. McCann, et al.*, Case No. 2:24-cv-11471-BRM-KGA (July 1, 2024) ("*McCann Action*"), Dkt. 22. LPL has also

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been punished by regulators despite such objections; FINRA sanctions LPL has for failing to supervise its advisors.[1]

LPL cannot simply throw its hands into the air and exclaim that it has nothing to do with the way the advisors it recruits comport themselves in the transition, especially as it relates to trade secret information. In one part of its Opposition, LPL admits that it is responsible for "ensur[ing] compliance with relevant regulations." *See* Opposition, at 2. However, LPL then proceeds, in Subsection II.C. of its Opposition, to state that "LPL does not advise an incoming financial advisor on what customer information they are permitted to retain from their prior firm" and that LPL "expects and relies on the independent advisor to determine what customer information they may bring with them upon their transition." *See id.* at 5. So, LPL is on one hand responsible for ensuring compliance with relevant regulations, but on the other hand LPL "does not tell incoming advisors what customer information they may retain." *See id.* LPL cannot have it both ways—and surely, FINRA via its fines and Courts via their entered injunctions have agreed.

Although LPL attempts to shift the responsibility of compliance with the Protocol for Broker Recruiting—along with other industry rules and regulations—to their recruited advisors, it does not change the fact that if their recruited advisors botch their transitions and violate the Protocol, LPL gains

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[1] *See e.g.*, *LPL Fined $6 Million For Multiple Supervisory Lapses, Reg BI Violation*, AdvisorHub.com (December 28, 2023), https://www.advisorhub.com/lpl-fined-6-million-for-multiple-supervisory-lapses-reg-bi-violation/; Melanie Waddell, *LPL Facing SEC Fine as High as $50M Over Texts, App Use*, ThinkAdvisor.com (February 23, 2024), https://www.thinkadvisor.com/2024/02/23/lpl-facing-sec-fine-as-high-as-50m-over-texts-app-use/ ("LPL Financial is facing a fine from the Securities and Exchange Commission of up to $50 million over its lack of compliance with records preservation rules tied to off-channel communications like text messages.").

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possession and control over competitor trade secret information. LPL cannot shift that blame purely to the advisors they recruit on the grounds of "independence," and then reap the rewards of the misconduct by enjoying the benefits of ill-gotten sensitive customer information belonging to a competitor. The Court in *McCann* agreed on this point, obvious though it may be:

> So the Court is persuaded that LPL could independently use information that the McCanns had in order to continue to solicit clients of Ameriprise, and while the McCanns have agreed to give any information back that they currently have, plaintiff does make a point that if this information is included in LPL's systems, it is therefore susceptible to use by LPL, and the Court agrees with that.

McCann Action, Dkt. 24 at 21:1-9; *McCann Action*, Dkt. 22.

LPL misses the point. It harps on about how these businesses exist in a free market, but it neglects to address the fact that misappropriation has no place in a free market—a point on which the Northern District of California agreed in a prior trade secret case where a defendant made a similar argument. *See H.Q. Milton, Inc. v. Webster*, No. 17-CV-06598-PJH, 2017 WL 5625929, at *5 (N.D. Cal. Nov. 22, 2017) (granting temporary restraining order) ("This argument does not address the actual harm alleged—the misappropriation of pricing and customer information. Additionally, Oyster Palace and H.Q. Milton customers likely do not presume the free market functions through defendants' misappropriation of a competitor's trade secrets.") (emphasis added).

B. LPL's Is Misleading About Its Non-Compliance with The Protocol

As indicated above, and in several places in its Opposition (*see* pgs. 5-10) LPL initially claims that it has nothing to do with the financial advisor recruits who it hires to join LPL, alleging "LPL cannot (and does not) control or direct these individuals' actions" (*see* pg. 9) and similarly "does not direct or control the legal advice provided by Outside Counsel, and it is not privy to the privileged and confidential legal advice provided to the advisor by Outside Counsel" (*see*

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pg. 6) despite the fact that LPL "introduces advisors to qualified counsel suitable for such advice and will pay for such service." *Id.* This simply cannot be true. LPL expects Ameriprise—and this Court—to believe despite the fact that LPL selects, provides, and pays for counsel to advise the recruits in this highly-regulated space, that LPL has no direction or involvement in the advice given to its recruits by the counsel it pays? If so, LPL admits to a dereliction of its duties, resulting in its routine possession and use of trade secrets it should not have.

However, LPL later states that it "has created and implemented well-executed procedures that allow former Ameriprise advisors to efficiently transition their customers to LPL while permitting only the transfer of information delineated in the Protocol." *Id.* at 10. So which is it? Does LPL have nothing to do with it, or does it have a robust set of procedures? Either way, LPL's recruits consistently violate the Protocol, and it results in LPL coming into possession of, and using, Ameriprise's trade secrets. While it may be true that LPL no longer uses the Bulk Upload Tool, it is also true that: (i) LPL continues to maintain and use the confidential information acquired via those prior uses of Bulk Upload Tools; and (ii) recruits are still regularly misappropriating Ameriprise's trade secrets to LPL via other methods.

The biased and misleading declarations submitted by some of those advisors as Exhibits to the Opposition should not sway the Court. As an example, LPL submits the declarations of Mitchell and Wesley McCann, defendants from the *McCann* case, who both cursorily attest to their process of invoking the Protocol. *Id.* at 3-5; *see also* Dkt. 15-1. The Court will notice that conspicuously absent from either Declaration, however, is any reference to the social security numbers and other non-Protocol information with which those individuals absconded, referenced in Ameriprise's underlying Memo ("One Ameriprise Client even complained they had received a plain, unmarked envelope filled with

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detailed, unredacted, highly confidential personally identifiable information such as social security numbers from the advisors."). *Id.* at 6. This calls into question the veracity of each of the McCann's declarations, for paragraph 10 of both declarations states that both individuals "left with only Protocol Information for our clients." *See* Dkt. 32-6 and 32-7 at ¶ 10. This is in direct contradiction to a letter written by a client to Ameriprise stating that she had "received a large white envelope by postal mail from McCann Retirement Strategies" which contained "a printout of her investment value, and the second sheet was a printed screenshot showing her full name, date of birth, age, FULL Social Security number, phone, email, and home address." *See McCann Action,* Dkt. 2-6. The client in question also reported that "Mitch [McCann] was completely unbothered by our serious privacy concerns and stated they mail that out to all their clients." *See id.* This is why the McCanns stipulated to the injunction in Michigan—they violated the Protocol. LPL's intake of that non-Protocol information resulted in LPL being enjoined as well, over the same arguments LPL makes in this matter. *McCann Action*, Dkt. 22. Notably, Ameriprise possesses documents refuting the allegations the McCanns' instant claims obtained through discovery in that arbitration matter; however, the documents are subject to a confidentiality order designed by LPL to conceal such documents from this Court while LPL takes inconsistent positions through unfounded declarations. Palacios Decl. at ¶17(c).

The Declaration of Caitlin Boshnack (Dkt. 32-2) similarly suffers from distortion of reality. Boshnack glosses over a simple, indisputable fact—Boshnack, with the advice of LPL's outside counsel, attempted to abscond from Ameriprise with *voluminous* confidential information regarding clients which in no way belonged to her and, in fact, belonged to her former colleagues. *See* Palacios Decl. at ¶17(b). After Ameriprise's intervention, Boshnack recognized

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her conduct was a violation of the Protocol and therefore agreed to return and purge the ill-gotten confidential information. *See id*. Boshnack cannot now reasonably attempt to reverse course and claim her conduct somehow complied with the Protocol—especially when the claim is so-clearly belied by reality.

The Declaration of Todd Cousino (Dkt. 32-5) actually admits to misappropriating Ameriprise's confidential information. However, highlighting the absurdity of LPL's positions in this matter, Cousino still bizarrely argues compliance with the Protocol. Cousino's argument is wrong.

Overall, each of LPL's declarations largely constitute false and inaccurate legal argument regarding the strictures of the Protocol, not factual background. Moreover, the limited factual background provided is clearly untrue. The record shows these individuals took confidential documents and information well beyond the permissible limits of the Protocol and industry rules and regulations and that they did so for the pecuniary benefit of themselves and LPL.

Most notably, conspicuously absent from any declaration by LPL is an affirmation that the substantial confidential information misappropriated via the Bulk Upload Tool: (i) has not been utilized and (ii) has been purged from LPL's systems and devices. Ultimately, LPL spent three years providing at least thirty recruits from Ameriprise with the Bulk Upload Tool which facilitated the collection and transfer of non-Protocol information. *See Sinquinami Decl*. Those individuals and LPL are both in possession and control of non-Protocol information for over 4,500 Ameriprise customers whose accounts produced over $16 million in annual revenue. *See* Palacios Decl. at ¶13. This trade secret information that LPL was never allowed to have likely still resides on LPL's systems as well as those individual advisors' unsecure personal devices. *See* Declaration of John Jorgensen ("Jorgensen Decl.") at ¶10(d).

LPL induces these routine misappropriation efforts by its recruits. LPL

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provides tools to collect Ameriprise information. LPL selects, provides, and pays for counsel to advise the recruits and to defend them in resulting litigation. LPL routinely pays these recruits more than $1 million to bring clients and trade secrets with them to LPL. This is because LPL gains a substantial competitive and pecuniary advantage by virtue of the mass misappropriation. In essence, LPL has created a "formalized process for both violating the Protocol and … privacy rights of both the client and the other financial services firm." Tilkin Decl. at ¶18.

LPL and its recruits—either due to LPL's hands-off approach or alleged "well-executed procedures"—continue to retain confidential and trade secret information. Indeed, LPL actively induces these violations. LPL must be enjoined from possessing, using, and/or disclosing this information.

III. LEGAL ANALYSIS AND ARGUMENT

A. Ameriprise Has Submitted Sufficient Evidence

The Declaration of counsel, Dkt. 15-2, can and should be considered by the Court. *See WBS, Inc. v. Pearcy*, No. CV163495DMGAFMX, 2016 WL 11507028, at *3 (C.D. Cal. May 20, 2016) ("The Court's assessment of the TRO application will therefore rely on those specific facts set forth in the declaration of Plaintiff's counsel"); *Kanai v. United States Dep't of Homeland Sec.*, No. 20CV05345CBMKSX, 2020 WL 13441465, at *3 (C.D. Cal. June 25, 2020) (granting TRO in part based on declaration of counsel "which declares Plaintiff faces irreparable harm."). The Ninth Circuit has long held that the Federal Rules of Evidence do not strictly apply to preliminary injunction proceedings and the Court may give weight to inadmissible evidence when doing so served the purpose of preventing irreparable harm before trial. *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1363 (9th Cir. 1988); *Johnson v. Couturier*, 572 F.3d 1067, 1083 (9th Cir. 2009). "The urgency of obtaining a preliminary injunction

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necessitates a prompt determination and makes it difficult to obtain affidavits from persons who would be competent to testify at trial." *Flynt Distrib. Co. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984). The Court should decline to rule on the evidentiary objections LPL raised.

Moreover, Ameriprise provides additional declarations which support the requested relief. At a bare minimum, the declarations prove that LPL still possesses and uses Ameriprise trade secret information, and therefore must be enjoined from retaining, using, or disclosing those trade secrets.

B. Ameriprise Has Established Irreparable Harm

As a threshold matter, Ameriprise has not delayed in bringing asserting its rights and bringing this action. LPL states that Ameriprise has known about this "since 2021"—a date LPL uses because Ameriprise filed a FINRA arbitration against LPL in 2021 for this conduct in relation to one advisor, Alan Kodama. At the time of filing that matter, Ameriprise was unaware of the extent of LPL's widespread scheme to misappropriate Ameriprise's confidential information. In fact, Ameriprise only uncovered LPL's mass violations and misappropriation in June 2024, through discovery and investigation resulting from testimony in that Kodama matter. Much like in *McCann*, LPL concealed the relevant documents and information behind confidentiality orders designed to withhold such information from this Court's consideration. Ameriprise brought this instant case to enjoin the ongoing conduct, as LPL has not stopped obtaining and using Ameriprise trade secrets. Further, Ameriprise now knows the identities of the advisors who stole trade secrets via the Bulk Upload Tool via the Sinquinami Declaration, which it obtained in this case barely a month ago.

The irreparable harm to Ameriprise is continuing—it was forced to file yet another action for injunctive relief on October 14 in the Western District of Washington against a former advisor who joined LPL and violated the Protocol

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in the process. *See Ameriprise Fin. Servs. v. Kenoyer, et al.*, Case No. 2:24-cv-01675 (W.D. Wash. Oct. 14, 2024). LPL's mass misappropriation is continuing to cause irreparable harm to Ameriprise.

On the point of the damages being speculative, LPL attempts to confuse the Court and the cases it relies on are inapposite. *See* Opposition, at 16-17. The case law cited by LPL stands for the proposition that when an advisor moves clients to a new employer, those damages are speculative and can be addressed through money damages. While those are damages Ameriprise is suffering, the thrust of Ameriprise's action herein is based on the irreparable harm caused by the misappropriation—not the movement of customers.

Of course, the misappropriation of trade secrets constitutes irreparable harm. *See StrikePoint Trading, LLC v. Sabolyk*, No. SACV071073DOCMLGX, 2008 WL 11342649, at *3 (C.D. Cal. July 21, 2008) ("Unless enjoined, Defendants' continued misappropriation of trade secrets will cause Plaintiffs to suffer irreparable harm."). Ameriprise also argues that LPL's retention and use of the misappropriated trade secrets threatens to cause harm to Ameriprise's reputation and customer goodwill. An identical argument was made in *H.Q. Milton, Inc. v. Webster*, another financial industry case, and the court agreed. No. 17-CV-06598-PJH, 2017 WL 5625929, at *4–5 (N.D. Cal. Nov. 22, 2017). The Milton Court agreed and further specified the many ways misappropriation in that case, as in this one, equated to irreparable harm:

> Each of plaintiff's identified injuries has been previously held to satisfy the irreparable harm requirement. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 841 (9th Cir. 2001) ("[e]vidence of threatened loss of prospective customers or goodwill certainly supports a finding of the possibility of irreparable harm"); *MAI Systems*, 991 F.2d at 521 (soliciting of customers of former firm constituted trade secret misappropriation); *Fid. Brokerage Servs. LLC v. Rocine*, No. 17-4993C, 2017 WL 3917216, at *5 (N.D. Cal. Sept. 7, 2017) (potential reputational harm found irreparable);

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> *Richmond Techs., Inc. v. Aumtech Bus. Sols.*, 11-02460C, 2011 WL 2607158, at *22 (N.D. Cal. July 1, 2011) ("[T]o the extent that Defendants are using Plaintiff's trade secrets to compete with Plaintiff and to encourage Plaintiff's customers to switch their accounts ... the Court agrees that Plaintiff has shown a likelihood of irreparable harm.").

Id. Additionally, LPL's actions place Ameriprise's confidential information at high risk of further exposure because the data is now dispersed across additional sources. *See* Jorgensen Decl. at ¶12. Accordingly, LPL's continued retention and use of Ameriprise's trade secrets constitutes irreparable harm.

C. *Ameriprise Has a Substantial Likelihood Of Prevailing On Its Claims*

LPL claims that Ameriprise has not identified a trade secret that it owns. To do so, LPL ignores pages 10-13 of Ameriprise's motion. LPL first complains that Ameriprise only identifies the trade secrets as confidential information, and that identifying categories of information is insufficient. *See* Opp. at 17-18 (citing *Integral Dev. Corp. v. Tolat*, No. C 12-06575 JSW, 2015 WL 674425, at *4 (N.D. Cal. Feb. 12, 2015)). But the *Tolat* case stands specifically for the proposition that a "categorization" limited to "highly sensitive information essential to Integral's competitive advantage" is not sufficient to identify a trade secret. *See Tolat*, 2015 WL 674425, at *4. LPL undermines its argument by reciting Ameriprise's specific identification of trade secret information in its motion, such as compilations of "social security numbers, account numbers, account information, routing numbers, customer dates of birth, customer ID numbers, account values, securities values, funds available, Money Market balance, Margin Available, Product Class, Plan ID, and positions held." *See* Opp. at 18 (citing Memo at 4).[2]

[2] Courts conclude customer lists qualify for trade secret protection. *The Ret. Grp. v. Galante*, 176 Cal. App. 4th 1226, 1238 (2009); *Gordon v. Landau*, 49 Cal.2d 690 (1958); *Gordon v. Schwartz* 147 Cal.App.2d 213 (1956) ; *Gordon v. Wasserman*,153 Cal.App.2d 328 (1957); *MAI Sys. Corp. v. Peak Comput., Inc.*, 991 F.2d 511, 521 (9th Cir. 1993); *Courtesy Temp. Serv., Inc. v. Camacho*, 222 Cal. App. 3d 1278, 1287–88 (1990); *Morlife, Inc. v. Perry*, 56 Cal. App. 4th 1514, 1521–22 (1997).

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LPL then argues that these types of non-public information are not trade secrets because Ameriprise "does not identify *how* basic customer and account information—known by advisors and customers alike—is maintained by Ameriprise." *See id.* at 19. First, the extensive list of personal, non-public, financial information above can in no world be considered "basic customer and account information." Second, Ameriprise identifies how it protects those trade secrets, and its description of those efforts passes muster. *See* Memo at 11.

In *Keating v. Jastremski*, No. 3:15-CV-00057-L-JMA, 2016 WL 5338072, at *5 (S.D. Cal. Sept. 23, 2016), this Court held that a former employer had taken "steps to maintain the secrecy of its client information in FSC's database by restricting access, entering into extensive agreements, and utilizing passwords and warnings" and by "require[ing] the Advisors to go through training and sign agreements informing them of the confidential and trade secret nature of TRG's client information both in its own database and FSC's." *Id.*[3] Ameriprise takes those same actions and efforts. *See* Memo at 11 ("In addition to having its affiliates and employees sign employment agreements with provisions to maintain the confidentiality of Trade Secrets, Ameriprise has a security systems designed to protect its proprietary, confidential, and trade secret information … [which] includes protected servers for storing Trade Secrets, requiring all computers accessing Ameriprise servers to have password protections, and internal file management that allows only certain individuals access to certain information."); *see also* Palacios Decl. at ¶10.

It is worth noting that in the *Keating* case, this Court held that basic contact

[3] *See also MAI Systems Corp. v. Peak Computer, Inc.*, 991F.2d 511, 521 (9th Cir. 1993) (finding plaintiff had taken reasonable efforts to maintain secrecy of information contained in customers database by having its employees sign confidentiality agreements).

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information—not even the non-public information identified by Ameriprise herein—constituted trade secrets and survived a motion for summary judgment. Herein, Ameriprise argues, and LPL has confirmed, that its former advisors have taken information beyond that which the protocol allows. If this court in *Keating* allowed a trade secret claim to survive summary judgment when the categories of information were limited to Protocol information and found that such information could constitute trade secrets, surely information beyond basic contact information, such as social security and account numbers on Ameriprise's systems, are trade secrets.

Accordingly, Ameriprise has established the existence of a trade secret. LPL, however, argues that it is the advisor, not Ameriprise who owns that trade secret. This argument underscores LPL's misunderstanding of—or alternatively flippant disregard for—its regulatory obligation to safeguard data that a broker-dealer's customers entrust to it. *See* Tilkin Decl. at ¶¶20, 21. It is also belied by the customer complaint received by Ameriprise in the *McCann* matter. *See McCann Action*, Dkt. 2-6. The customer clearly complains that the former advisor had her daughter's sensitive non-public information without her consent. It is the broker dealer who owns that information and has the regulatory obligation to protect it—not the advisor. Indeed, relevant industry laws and regulations such as the Gramm-Leach-Bliley Act and 17 C.F.R. §248.1 (known as the SEC's "Regulation S-P") demonstrate that broker-dealers hold the obligation to protect confidential customer information. *See* Complaint (Dkt. 1) at ¶¶12-18.

LPL pretends that *Householder Grp., LLLP v. Van Mason*, No. CV 09-2370-PHX-SMM, 2012 WL 4513635, at *8 (D. Ariz. Sept. 30, 2012) is directly on point, but in *Householder*, the Arizona court held that a basic list of customer names generated by the advisor was not a trade secret—the instant case deals

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with much more than just a list identifying customers, and therefore *Householder* is not on point. Similarly, LPL relies on *Barney v. Burrow*, 558 F. Supp. 2d 1066, 1080 (E.D. Cal. 2008), which suffers from the same issue: the court agreed with the defendant in that case "given the Protocol," that "records of client names, addresses and phone numbers are not trade secrets." *Id.* Again, the instant case deals with much more than LPL's retention of just names, addresses, phone numbers and includes detailed, non-public, personally identifiable information such as social security numbers.

Finally, LPL has misappropriated these trade secrets. LPL claims that the reason no misappropriation has taken place is that the information is not a trade secret, Ameriprise doesn't own it, and it is all readily ascertainable by proper means. As explained, Ameriprise has established that it owns and has responsibility for these trade secrets. To address LPL's third and final point, LPL knows that the advisors it recruits are not allowed to take more than what the Protocol allows, such as social security numbers. The argument that such information is "readily ascertainable by proper means" flies in the face of reality and the spirit of the Protocol. The misappropriation harms Ameriprise for the reasons set forth above. *See supra* 9-11.

D. An Injunction Would Be Equitable And Support The Public Interests

The requested injunctive relief does not "dampen competition by chilling advisors from freely moving." *See* Opposition, at 25. LPL cites case law about injunctions being adverse the public interest by preventing customers from working with brokers of their choice. *See id.* However, Ameriprise is not trying to obtain that relief. Ameriprise simply wants LPL and its advisors to not retain, use, or disclose information that they are not allowed to have, and to play by the rules that LPL signed on to: the rules of the Protocol and the industry's binding rules and regulations. Advisors are free to move anywhere they want to work.

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They just must do it the right way. The relief requested is simple, and it is supported by case law in this Circuit. In *H.Q. Milton*, 2017 WL 5625929, at *5, the court held:

> [N]othing in the TRO precludes defendants from competing in the high-end timepiece market. Instead, the TRO only prevents defendants from using H.Q. Milton's confidential information when conducting their business. To the extent Matsuba argues that such an injunction would harm defendants' fledgling company, that argument implicitly concedes H.Q. Milton's confidential information was being used and therefore does not weigh in favor of defendants.

The same is true here. Ameriprise is only trying to prevent LPL from using its trade secret information when conducting its business. To the extent LPL argues that such an injunction would harm it, that constitutes an implicit admission that it uses that same confidential information, which as the *H.Q. Milton* Court states, does not weigh in favor of defendant.

IV. CONCLUSION

Therefore, Ameriprise respectfully requests that the Court enter a Preliminary Injunction requiring the Defendant to adhere to its obligations and requiring it to return and permanently dispossess itself of all Ameriprise proprietary or confidential/trade secret documents or information in order to preserve the *status quo* until a panel of FINRA arbitrators can rule on Ameriprise's request for permanent injunctive relief after an evidentiary hearing.

SHUMAKER, LOOP & KENDRICK, LLP

DATED: October 24, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

s/Irean Z. Swan

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

AMERIPRISE FINANCIAL SERVICES, LLC, Plaintiff, v. LPL FINANCIAL, LLC, Defendant.	Case No. 3:24-cv-01333-JO-MSB **DECLARATION OF ROSS PALACIOS IN SUPPORT OF PLAINTIFF AMERIPRISE FINANCIAL SERVICES, LLC'S MOTION FOR PRELIMINARY INJUNCTION**

I, Ross Palacios, do hereby declare.

1. I am an employee of Ameriprise Financial Services, LLC ("Ameriprise"). Specifically, I am an Executive Vice President and Lead Finance Officer at Ameriprise. I have been with Ameriprise for 12 years and in my present role for over a decade.

2. In my role, I am involved with Ameriprise's experienced advisor recruiting practices. My team and I have provided wholistic reviews and assessments of more than 5,000 potential recruits over the last several years, including for issues related to compliance and regulatory matters (e.g. treatment of confidential information). Furthermore, I am involved with addressing an issue—LPL Financial LLC's ("LPL") continual and ongoing mass misappropriation of Ameriprise's confidential customer information and trade secrets.

3. Accordingly, I am familiar with industry rules, regulations, standards, and firm agreements pertaining to treatment of confidential information including, for example, the Protocol for Broker Recruiting (the "Protocol").

4. I have knowledge of the following facts and, if called upon as a witness, could competently testify thereto.

5. The financial industry is heavily regulated by the Securities and Exchange Commission ("SEC"), Financial Industry Regulatory Authority ("FINRA"), and various state and insurance regulators.

6. Among those substantial regulations are strict requirements regarding protection of confidential client information.

7. In addition, beyond the applicable laws, rules, and regulations, the component of trust is highly important to the relationship between a financial firm and its clients.

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8. I am aware of the books and records of Ameriprise with respect to the following, and with specific reference to the registered representatives identified in Ms. Sinquimani's Declaration as having used the Bulk Upload Tool.

9. Ameriprise's clients are the lifeblood of its business. As such, Ameriprise invests substantial resources into acquiring and maintaining its clientele, including into gaining knowledge about its clients and protecting the privacy of clients' information. Ameriprise invests heavily into providing superior service, customer experience, and support for its employees and affiliates.

10. Ameriprise employs various and substantial methods to protect its client information including, for example: (i) restricting access to those persons and/or affiliates whose affiliations with Ameriprise require them to refer to the confidential information; (ii) requiring authorized persons to use a secure password to access their computer terminals and the firm's intranet; (iii) providing constant reminders about the confidential nature of the information contained in the records and the need to protect it; (iv) routinely ensuring employees and other authorized persons are made aware of, and know, that they must maintain the strict confidentiality of client information; (v) maintaining a detailed privacy policy; and (vi) including robust confidentiality provisions and appropriate restrictive covenants in its agreements with financial advisors, among other protective measures.

11. Through review of departing registered representatives, I am aware LPL has engaged in a pattern and practice of misappropriating Ameriprise confidential information through its recruitment of financial advisors from Ameriprise. Through my review of relevant books, records, and pleadings, I am aware that Ameriprise registered representatives that LPL recruited have taken, for example, contact information, social security numbers, account numbers, account information, routing numbers, client dates of birth, client ID numbers, account values, securities values, funds available, Money Market balance, Margin Available, Product Class, Plan ID,

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and positions held. These categories of confidential information are well beyond what is permissible under the Protocol for Broker Recruiting.

12. Ameriprise only uncovered LPL's mass violations and misappropriation in June 2024, obtaining such information through discovery and investigation resulting from the *Kodama* matter referenced by LPL. Prior to that time, Ameriprise was not aware of the full extent of LPL's mass misappropriation of Ameriprise confidential client information. LPL has since confirmed this misconduct, including in this matter through the declaration of Ms. Sinquimani. (Dkt. 35-2). Ms. Sinquimani's declaration provides context on LPL's illicit practices and, further, importantly provides the identities of those registered representatives who used the Bulk Upload Tool to harvest confidential information from Ameriprise's systems.

13. The thirty registered representatives identified in Ms. Sinquimani's Declaration were formerly affiliated with Ameriprise and, in total, serviced upwards of 4,500 Ameriprise customers whose accounts generated over $16 million in annual revenues for Ameriprise and over $1 billion in assets under management.

14. Those thirty registered representatives removed confidential information pertaining to over 4,500 Ameriprise customers and impermissibly brought that information to LPL for competitive use against Ameriprise without the Ameriprise clients' prior approval.

15. This information exceeded what was allowed by the Protocol for Broker Recruiting, as admitted in Ms. Sinquimani's Declaration. *See* Sinquimani Declaration, at Paragraphs 7, 9, and 11. It is further a violation of the clients' right to privacy as guaranteed in Ameriprise's privacy policies.

16. To the best of my knowledge, Ameriprise has never received any confirmation that LPL has refrained from using such information or that LPL has purged this information, nor directed its affiliated registered representatives to purge the information from their personal devices. The information may also be subject to

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cybersecurity breach when maintained on these registered representatives' personal devices.

17. In addition, since February of this year, Ameriprise has discovered additional instances of misappropriation of client information and trade secrets by registered representatives who transferred to LPL. There are examples of LPL's misconduct in this year alone[1]:

a. In February of this year, LPL had one recruit, Adam Jurewicz, abscond with confidential information related to clients recently assigned to them via a "Sunset Program Agreement," a common industry term for a retirement agreement in the industry where a new advisor services the clients of a retiring advisor. Absent from Jurewicz's declaration is that clients obtained via retirement agreements such as the Sunset Program Agreement are not granted Protocol protections and thus his actions violated the Protocol and his underlying agreements with Ameriprise. Jurewicz appears to have retained confidential information related to the Sunset Program Agreement clients and is currently using the information to solicit clients on behalf of LPL. This matter is ongoing, and discovery has not yet been exchanged between the parties.

b. Separately, in February of this year, LPL had another recruit, Caitlin Boshnack, take confidential information for her teammates' clients, while her teammates remained at Ameriprise. Ameriprise sent a cease and desist correspondence to Boshnack, after which Boshnack recognized her conduct was in fact a violation of the Protocol and therefore agreed to return the confidential information. Boshnack's effort to reverse course and claim her conduct was compliant with

[1] Ameriprise previously identified these individuals by their initials to preserve their privacy. However, LPL has since disclosed their identities through declarations in this matter. Accordingly, I now refer to the individuals by name.

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the Protocol is plainly false, inaccurate, and misguided. Boshnack was not a producing member of the team for more than four years and was not entitled to take the confidential information pertaining to her former colleagues' clients. Of the 492 clients on Boshnack's purported 'Protocol List,' 311 clients were not eligible.

c. In April of this year, LPL had recruits Mitchell and Wesley McCann abscond with bankers boxes full of confidential documents. Ameriprise brought an action in the Eastern District of Michigan to enjoin the former advisors as well as LPL. See Ameriprise Fin. Servs. v. McCann, et al., Case No. 2:24-cv-11471-BRM-KGA, (E.D. Mich. June 4, 2024) ("McCann"). Ameriprise's filings were complete with pictures of the McCanns carrying the bankers boxes from Ameriprise's offices. One Ameriprise Client even complained they had received a plain, unmarked envelope filled with detailed, unredacted, highly confidential personally identifiable information such as social security numbers from the McCanns. Recognizing their conduct was a clear violation of the Protocol, the McCanns stipulated to an injunction. The federal court held a hearing with respect to an injunction against LPL and enjoined LPL despite LPL raising the same arguments it does herein—i.e. LPL's claim that it does not control its advisors. The McCanns' effort to reverse course and now claim they acted in compliance with the Protocol is plainly false and inaccurate. In fact, Ameriprise is in possession of documents demonstrating the McCanns' present claims are false, but such documents are subject to the confidentiality agreement in the underlying FINRA arbitration matter.

d. In May of this year, LPL had a recruit, Todd Cousino, send detailed confidential client information (including client name, address, phone

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numbers, email addresses, account record type (i.e. client or prospect), account number, account names, account type, funds available, cash balances, money market account balances, margin balances, product class, representative codes, and plan identification codes, similar to information categories in the bulk upload spreadsheet) to a then-unregistered third-party's unsecured email address prior to the recruit's departure from Ameriprise. That third-party is now affiliated with LPL. In Cousino's declaration in this matter, Cousino admits to the misappropriation. Unsurprisingly, Cousino does not make any certification regarding his provision of this misappropriated information to the third-party referenced herein, nor that third-party's use or disclosure of that misappropriated information.

18. Ameriprise's investigation that in September of this year showed LPL had a recruit, Douglas Kenoyer, pre-solicit clients to move to LPL with him upon his eventual transition. Kenoyer also took detailed confidential information regarding clients which he obtained via internal acquisition at Ameriprise. Clients obtained via internal acquisitions are excluded from Protocol protections. Ameriprise therefore brought an action in the Western District of Washington to enjoin the former advisor as well as LPL. See Ameriprise Fin. Servs. v. Kenoyer, et al., Case No. 2:24-cv-01675, (W.D. Wash. Oct. 14, 2024). The matter is pending.

19. Ameriprise has an affirmative duty to protect the security of the confidential information of its clients.

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I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed at Coral Gables, Florida on October 24, 2024

Signed by:
Ross Palacios
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/s/
ROSS PALACIOS

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CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

s/Irean Z. Swan

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

AMERIPRISE FINANCIAL SERVICES, LLC, Plaintiff, v. LPL FINANCIAL, LLC, Defendant.	Case No. 3:24-cv-01333-JO-MSB **DECLARATION OF DAVID TILKIN IN SUPPORT OF PLAINTIFF AMERIPRISE FINANCIAL SERVICES, LLC'S MOTION FOR PRELIMINARY INJUNCTION**

I, David Tilkin, do hereby declare.

1. I have had the unique opportunity to be engaged with the securities industry for almost 45 years. I began as a broker-trainee for EF Hutton in 1980 and have been a securities industry expert witness since 2006. From 1980 to 2000, I have served as an advisor, assistant branch manager, branch manager, and regional director. I have worked at three firms: EF Hutton, Smith Barney, and Wheat First.

2. During my tenure in the industry, I have recruited scores of advisors from very diverse backgrounds. The recruits represented advisors from broker-dealers, RIAs, independent representative firms, banking institutions, and insurance companies. As a regional director for Wheat First, I opened over twenty new offices, all of which were seeded by new recruits.

3. In 2000, I became the Founder and CEO of Protegent, Inc. Protegent was the first company to bring software and technology to the financial services industry that automated the process of advisor, account, activity, and supervision for the benefit of firms seeking to automate and receive T+1 suitability-based surveillance analysis. By 2004, Protegent was analyzing almost 800,000 transactions per day, twenty-four million per month, and over 27,000 advisors. Users included Wachovia, Wells Fargo, Fifth Third Bank, Stifel Nicolaus, Janney Montgomery Scott, Lehman, John Hancock, Piper Jaffrey, RW Baird, and others.

4. In 2005, I sold Protegent to SunGard, Inc., and became the Global Director of Compliance Product and Service until I fulfilled my work commitment and opened my expert witness practice in 2006.

5. I have been retained over two hundred times and testified over eighty times in various venues, including FINRA, AAA, JAMS, the Securities and Exchange Commission, and various judicial venues. I testified in my first raiding/data case in 2008. I have been accepted as an expert on every opportunity to testify or offer a submission.

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6. There is much nuance in the recruiting and onboarding process for advisors across every industry segment. The Protocol has provided a backstop to the litigation that had always been the natural byproduct of advisor recruitment. Over time, the focus has shifted from recruiting as an asset and revenue conversation to data control, ownership, and security. What client data is accessed, copied, ported, moved, and shared is of critical importance to the firm sponsoring the advisor. The industry is highly regulated, and client data and security are precisely articulated in both regulation and law. In this case there should be no distinction between broker-dealers, Registered Investment Advisors, brokers, advisors, agents, or independent representatives. The same rules and regulations apply in this case to all of those groups and, in addition, if a firm executes the Protocol, it is electing to adhere to the covenants of the Protocol regardless of its company modality.

7. The Defend Trade Secrets Act (DTSA) was enacted in 2016. The DTSA allows the owner of a trade secret to sue in federal court when seeking relief for trade secret misappropriation related to a product or service in interstate or foreign commerce and does not preempt any state law.

8. The Gramm-Leach-Bliley Act (GLB Act or GLBA) is also known as the Financial Modernization Act of 1999. It is a United States federal law that requires financial institutions to explain how they share and protect their customers' private information and treatment of nonpublic personal information about consumers by financial institutions.

9. SEC's Regulation S-P, firms are required to have policies and procedures addressing the protection of customer information and records.

10. FINRA Rule 2010 requires that all member firms and associated people conduct business, observe the highest standards of commercial honor and just and equitable principles of trade.

11. The Protocol is an industry agreement between certain broker dealers that governs the use of client information when RRs move between firms that are signatories to the Broker Protocol.

12. Each financial services firm maintains written supervisory procedures and policies. Those procedures and policies will precisely detail the way customer and firm data is managed. Every employee will, through the course of their employment/affiliation (be they advisor, staff, or management), acknowledge and attest to their understanding of the firm's data policies and procedures. Typically, a firm's internal policy is based on the applicable rules and law, often stricter in both design and execution.

13. It is the responsibility of the hiring firm to execute a degree of due diligence on the advisor they seek to hire and onboard. In this case, it was LPL's responsibility to understand the depth and breadth of the agreements in force between any advisor and Ameriprise. The due diligence process is not a function that can be delegated to a third party or outside counsel.

14. Understanding what agreements are in place on an advisor's current affiliation requires understanding the portability and restrictions placed on customer and firm data and information. This is an essential component of new advisor due diligence. The objective of all participants should be to protect the interest of their customers and, in so doing, adhere to all the rules, regulations, and agreements. In an environment that is essentially self-regulated staying within the confines of rules, regulations, and agreement is central to maintaining a positive compliance culture. An attorney advising a potential new hire should not be in a position to provide the appearance of normalcy to an advisor taking and sharing restricted and confidential information from another securities firm.

15. I have found that the onboarding process for advisors varies from firm to firm. Many firms deploy a model where there is a dedicated team to work precisely

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on mapping and onboarding of newly recruited advisors. I have found that many firms are appropriately strict and restrictive as to the customer data that they will receive. Most firms naturally lean towards limiting controversy and litigation in their recruitment and onboarding practices. These are important risks as the margin for profitability of a newly hired advisor recruit is thin, if profitable at all. Adding litigation risk to the hire's expense only exacerbates an already financially challenging activity. The onboarding activity can also serve to violate industry policy and practice in that an advisor can only be employed at one firm. Collecting and sharing customer information prior to an advisor's registration at the new firm can be viewed as a solicitation and is further complicated if a customer's permission is not obtained before copying and sharing their personal information.

16. It appears that at LPL, the capture of competing firm proprietary information and non-Protocol customer data has become their own "art form." According to the Declaration of Candi Sinquimani (Dkt. 35-2), LPL provided the Bulk Upload Tool to certain Ameriprise Recruits between January I, 2018, and December 31, 2021. The Bulk Upload Tool was a spreadsheet designed to help the RRs compile data regarding the RR's customers. The data to complete the spreadsheet provided by LPL goes far beyond anything envisioned within the context of the Protocol. It also provides for no process to validate whether an Ameriprise customer has approved the sharing of their confidential data and information. I believe that sharing the spreadsheet with an advisor from a firm other than LPL, in this case, Ameriprise goes very far into normalizing what is not standard within the confines of the securities industry.

17. In Candi Sinquimani's declaration, Sinquimani states:

> "An RR was free to utilize the Bulk Upload Tool in the manner that best suited them, consistent with Outside Counsel advice, including by inputting whatever information they may retain under their contract with their prior firm. The Business Transition Team expects that RRs will only utilize Client Upload Tools to collect client information that they

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> have determined (in consultation with Outside Counsel) that they are permitted to take from their prior firm. This may include the RR, if they left their prior firm under the Broker Protocol, electing to input only the five items of information delineated in the Protocol."[1]

18. In my opinion, if a recruiting firm provides a methodology for acquiring and memorializing a client's confidential information beyond the confines of The Protocol, the firm has, as much, provided a formalized process for both violating the Protocol and, in the absence of the client's permission, violating the privacy rights of both the client and the other financial services firm.

19. There is nothing that a securities firm can do to delegate their responsibilities under the securities rules and regulations. And as delegation is not an acceptable option, hiring outside counsel to collaborate with potential recruits does nothing to absolve LPL of absolute responsibility for their recruit process and actions. With LPL, the bulk uploading tool and the related data acquisition spreadsheets are an open invitation to acquire and memorialize data that is protected by the other firm's advisor agreements, Protocol, and industry standards.

20. In the Lisa Roth declaration, Roth attempts to draw significant distinction between advisors leaving a broker-dealer versus advisors leaving an independent representative firm. Roth states:

> "RRs who associate with an independent broker-dealer typically operate in a free market: they may choose to associate with the independent firm that best fits their particular business needs, to utilize the services and assistance it offers in a manner that most suits their needs, and to freely port their customers between broker-dealers with them.
>
> Under the independent model, the RRs' customer relationships are understood—by the independent broker-dealer, the RR, and the industry—to be the RR's and not the broker-dealer firm's. The RR under the independent model is fully responsible for obtaining customers, developing them, and assisting them with their investment needs."[2]

[1] Candi Sinquimani Declaration (Dkt. 35-2) 10/15/2024 Page 6 (16-22)
[2] Lisa Roth Declaration (Dkt. 32-4) 10/17/2024 page 4 (26-27)

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This assumption is simply false. Agreements between the employing firm and the advisor determine the nature and foundation of an advisor's relationship with their firm. There simply is no consistent pattern that would validate Roth's assumption of relationship "ownership." The ultimate owner of this information is the firm in combination with the investment customer. There is no foundation to believe that confidential and protected information and data are ever "owned" or "controlled" by the advisor.

21. Roth, continues:

> "It is typical for an independent broker-dealer to have a contract with an RR that contains provisions allowing for the transitioning RR to take more than the five pieces of Protocol information to the RR's and typically permits them to take complete customer information (such as account balances, customer biographical information, and the like). In other words, in the independent space, the Broker Protocol operates as a floor, not a ceiling: RRs can take at least the five items delineated in the Protocol, but when coming from another independent firm, RRs can usually bring complete customer information in line with their "ownership" of these customer relationships and contracts with the firm."[3]

Once again, Roth's conclusion is unsubstantiated. Every firm and every advisor/firm relationship is controlled by agreements between the parties that determine the control and limitations of data control and "ownership." The advisor is never the owner or custodian of customer data.

22. In the securities industry, assets fuel revenue. A firm needs to constantly acquire new assets, which illustrates why retention and recruitment are such central issues. LPL wants the assets of other firms. To access those assets LPL recruits from competitors. The advisor requires assets to drive their personal production revenue. LPL provides the people power and technology to move a competitors data, and eventually assets to their firm at times having gathered enormous amount of protected data before the advisor even becomes registered with LPL or a single customer having

[3] Roth Declaration (Dkt. 32-4) 10-17-24 Page 5 (35-36)

executed a customer agreement. Through LPL's aggressive recruiting and customer onboarding practices it is apparent that LPL has acquired and retained confidential information relating to competitors' including Ameriprise's clients (including Ameriprise clients) who never became clients of LPL. It is important for Ameriprise to be able to answer to customers the path onto which their data may have traveled if for no other reason than Ameriprise fulfilling their fiduciary duty to their customers. LPL would be blocking that fiduciary process if they were not able to detail specifically what customer data they gathered and what Ameriprise customer data resides on LPL servers.

23. In summary, there appears to be a systemic and ethical issue relative to LPL's standards and practices regarding the recruiting and onboarding of advisors from competing firms. The procedure of attempting to capture all client data and information using prepared spreadsheets is a concern when the data requested, or that it is suggested to be captured, far exceeds the guidelines defined in the Protocol. I doubt that the relationship between the outside counsel and advisor prospective advances the concept of remaining within the bounds of the Protocol or advances the assurances that customers expect relative to the protection of their data and information. LPL appears more concerned with absolving themselves of responsibility for another firm's data being gathered, held by a third party, and repurposed for the objective of transferring assets. They do not appear concerned with the investment in customers' data privacy and security. Objective number one for LPL is to "move the assets," Under regulation and law, their primary concern should be honoring commitments that far exceed their need to secure customers' assets from competitors. There is an industry standard represented in FINRA 2010 where every member firm should "in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." LPL's standards and practices relate to recruiting and onboarding conflict with the spirit of that regulation.

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SAN DIEGO, CALIFORNIA 92101

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed at Cohasset, Massachusetts on October 24, 2024

/s/ Signed by: David Tilkin
DAVID TILKIN

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SAN DIEGO, CALIFORNIA 92101

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

s/Irean Z. Swan

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Attorneys for Plaintiff
AMERIPRISE FINANCIAL SERVICES, LLC

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

AMERIPRISE FINANCIAL SERVICES, LLC, Plaintiff, v. LPL FINANCIAL, LLC, Defendant.	Case No. 3:24-cv-01333-JO-MSB **DECLARATION OF JOHN JORGENSEN IN SUPPORT OF PLAINTIFF AMERIPRISE FINANCIAL SERVICES, LLC'S MOTION FOR PRELIMINARY INJUNCTION**

I, JOHN JORGENSEN, hereby declare as follows:

1. I am over the age of 18 and reside in the State of Florida. I have personal knowledge of the following facts, and if called as a witness, I could and would competently testify thereto.

2. Attached hereto as **Exhibit A** is a true and correct copy of my curriculum vitae and my qualifications.

3. I am the Managing Director of Digital Forensics for Crowe LLP and formerly worked over 25 years for and with the National Security Agency. I have been the President and CEO of Sylint Group Inc. (now Crowe LLP) and the senior forensic engineer for over 25 years.

4. The Digital Forensics and Consulting Group of Crowe LLP is composed of approximately 40 employees with US government, Intelligence Community, military, law enforcement and legal background. Crowe provides computer systems and digital data forensic analysis, evidentiary data recovery and collection, computer security systems specification, guidance and implementation, and Counter Cyber Warfare expertise. Crowe also provides litigation support to include technical data recovery and reconstruction, deposition question assistance, 26(f) and Meet & Confer guidance, Affidavit, Declaration and Motion preparation and electronic investigation and data search.

5. I have served as Special Master to the Court, as an Expert Witness in both Federal and local Judicial jurisdictions in civil and criminal matters and have overseen the computer forensic analysis in over 3,000 successful cases.

6. Crowe's and Sylint's clients include Fortune 100 companies, AM 100 Law firms, state governments, utilities, FBI, IRS, Secret Service, Department of Homeland Security, the Federal Government and are Payment Card Industry Certified Forensic Investigators and NSA Accredited Incident Response providers. I have personally provided six to twelve presentations per year to the American Bar Association, Federal Judges, Florida Bar Association, RSA and have guest lectured annually at both Ave Maria and Nova Law Schools.

7. I have provided digital data forensic analysis and eDiscovery services for over 300 cases involving Intellectual Property theft and financial fraud and theft and in particular over 100

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Financial Industry Regulatory Authority (FINRA) cases and testified before FINRA concerning FINRA regulations and violations.

8. Crowe/Sylint is a Cyber Security firm and provides both financial firms, banks, brokerage companies, and government agencies (Internal Revenue Service and Secret Service) with cyber security guidance, breach investigations, ransomware negotiations, and data recovery. Crowe/Sylint's extensive background in financial Cyber Security provides us with a unique understanding and knowledge of critical issues surrounding this case.

9. Shumaker Loop & Kendrick, LLP requested that I evaluate the potential data compromise in this case and perform other analysis, investigation and Cyber Security threat and risk evaluation.

10. I have read the Declaration of Candi Sinquimani, of September 19, 2024. Paragraph 12 of Candi Sinquimani's Declaration stated: "Attached as Exhibit A is a complete list of the Ameriprise Recruits who entered customer information, beyond that permitted by the Broker Protocol, into the Bulk Upload Spreadsheet and returned it to LPL." From the statement of the Candi Sinquimani, the Vice President, Business Transactions at LPL, in Paragraph 12 of her Declaration it is apparent that:

a. LPL recognizes and acknowledges, that they are in possession of Ameriprise client information contained in the Bulk Upload Spreadsheet (BUS) provided by LPL for recording Ameriprise client information that goes beyond what is allowed by the Protocol for Broker Recruiting (Broker Protocol), and that was then provided to LPL by former Ameriprise employees (Exhibit A list of 30 former Ameriprise employees).

b. LPL has not supplied, in this case, the BUS worksheets of former Ameriprise employees in order for Ameriprise to evaluate the extent of their client personal and financial information breach.

c. LPL has not notified Ameriprise of the violation of the Broker Protocol by LPL current employees and former Ameriprise employees. Therefore, Ameriprise has

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been unable to forensically identify, return and arrange for the deletion of Ameriprise client personal and financial data from the listed Brokers (Exhibit A) and LPL sources.

d. The extent of the Ameriprise client personal and financial information disclosure is potentially throughout the former Ameriprise Brokers' personal computers, cellular phones, Web based data storage, Web based email systems, data storage devices, LPL's electronic devices, Corporate communications, servers, data backup, and data storage systems.

11. There are actions necessary for resolution of the depth and extent of the Ameriprise client personnel and financial information breach. These actions have been performed by Sylint/Crowe in over 300 cases in over 25 years that we have been involved in personal and financial fraud and confidentiality violation cases.

a. Since the BUS spreadsheet is electronic, it is highly likely that the information was entered onto the spreadsheets using a computer and that information may still reside on personal and/or LPL computers. Therefore, to determine the extent of the proliferation of the Ameriprise client confidential information, entered in violation of the Broker Protocol, the computers (personal and LPL company computers assigned to individuals), storage media, backup media of the digital data, networks that the computers were attached to, all data storage devices that were attached to the computer identified, and all devices that were used in the communications of the Ameriprise client confidential data must be thoroughly forensically examined. All Ameriprise client confidential data locations must be identified and communications of that data mapped.

b. It is necessary to recognize that there is a requirement to preserve all data and that includes placing a litigation hold on all communications, both personal and corporate. Preservation of evidentiary data will allow a complete understanding

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of Ameriprise client personal and financial data location and potential breach of that data.

c. In the event that Ameriprise client personal and financial data is discovered, a protocol must be established to return that data to Ameriprise and then to delete the data from the source. Crowe/Sylint has developed a protocol used in both State and Federal Court and can provide the Protocol to the Court for consideration in this case.

12. Crowe/Sylint experience, over the last 25 years, and especially our current experience indicates that the likelihood of a breach in the financial industry is quite large. Sylint processes approximately 2 (two) new breach cases per week, most financially related. Crowe/Sylint participates on the Panels of over six (6) National Insurance firms being selected as the forensic Cyber Security firm to conduct investigations. Crowe/Sylint would be remiss in not expressing our concern that Ameriprise client personal and financial data may be at risk given the potential extent of exposure in this case with Ameriprise client data dispersed over at least 30 (thirty) Broker private computers, data storage repositories, Web based data accounts, email accounts as well as LPL Corporate computers, data storage and communications sources. Most breaches are not recognized for days and weeks and even very notable breaches for years after the breach occurs.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed at Sarasota, Florida on October 24, 2024

JOHN JORGENSEN

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Exhibit A

CURRICULUM VITAE FOR JOHN E. JORGENSEN

Crowe LLP

John Jorgensen is the Digital Forensics Managing Director and the Senior Forensics Engineer for Crowe, LLP. Sylint Inc. joined Crowe on August 12, 2024. The press release is enclosed here: https://www.prnewswire.com/news-releases/crowe-adds-global-incident-response-and-cybersecurity-advisory-firm-sylint-group-inc-302212691.html.

The Sylint Group, Inc.

John Jorgensen is the President, CEO and Founding Partner of The Sylint Group, Inc. established in 1998. The Sylint Group is composed of over 40 professionals formerly with National Security Agency, Law Enforcement, Federal Bureau of Investigation, Department of Defense, military personnel, contractor employees and other engineering professionals.

The Sylint Group provides consulting and professional services for Cyber Security, Industrial Counter-Espionage, Counter Cyber Warfare, eDiscovery, Signal Analysis and Digital Data Forensic Investigations (www.Sylint.com) nationally and internationally. The Sylint Group has appeared on the front pages of the Tampa Bay Business Journal, the Sarasota Herald Tribune Business Weekly and the Tampa Tribune Business Section, SciTech (ABA Publication) as well as several appearances in local television news segments. The Sylint Group is cited in Westlaw Review and is published in other Periodicals and Books. Sylint is a member of the American Bar Association and the Sedona Conference (Working Group 11).

The Sylint Group provides: computer systems and digital data forensic analysis; evidentiary data recovery and collection; data and signal analysis; computer and network security systems specification, guidance and implementation; eDiscovery collection and processing; 26(f) conference and Meet-and-Confer preparation; and computer facilities physical security guidance and implementation. Sylint's client base includes small business professionals, law firms and medical practice, to multi-billion-dollar multi-national Fortune 100 corporations. Sylint provides litigation support to include technical data recovery and reconstruction, deposition question assistance, trial preparation and electronic investigation and data search to AM 100 law firms. Sylint also provides industrial counter-espionage services to include electronic listening device detection and intrusion protection and response, information systems protection and monitoring, and specialized information collection. Sylint has developed several unique services and software applications to include: Cyber Security Risk Matrix (CSRM) ®, DRIL ®, STALKER ®, SYNERGY ® and ZEROMapper ® and is currently developing other cyber-security and forensics applications through its inhouse software development team.

A partial client list for The Sylint Group includes Ravago Americas, Nucor Steel International, Cott Beverages International, Waste Management, ServiceMaster, IBM, Morgan Stanley, Bridgestone Firestone, Nissan Global, Marvell Technology Group, Sheridan Healthcare, MAPEI, Kate Spade, TIAA-CREF, HUD Fort Pierce, Florida Department of Transportation Lynx, City of

St. Petersburg, Greater Orlando Airport Authority, City of Sarasota, Texas Health Care, US Sailing Association, Wharton-Smith, Jones Day (Chicago), Parker Poe (Atlanta), Epstein Becker & Green (Houston), Morrison & Mahoney (Boston), Ford & Harrison (Tampa and Orlando), Abel Band Chartered (Sarasota), Sutherland (Atlanta), InfoLawGroup (Denver), Edelson McGuire (Chicago), Shumaker Loop (National), Kozyak Tropin & Throckmorton (Miami), Latham Watkins (San Francisco), Arnstein & Lehr (Fort Lauderdale), Duane Morris (National), Ogletree Deakins (National), Kirk Pinkerton (Sarasota), Horack Talley (Atlanta), Smolker Bartlett (Tampa), Florida Bar Association and other large, medium, and small companies and AM 100 law firms, and US Government entities to include FBI, IRS, Department of Homeland Security, Secret Service, various Law Enforcement Agencies and State Attorney Offices.

Mr. Jorgensen serves as the Senior Forensic Engineer and developed the computer forensic analytic process and techniques for the Sylint Group based on intelligence analysis and processing techniques designed, developed and implemented while working for the National Security Agency, in the military, as a direct employee, and as a government contractor. Mr. Jorgensen has briefed two Directors NSA, the Under Secretary of Defense, the House Permanent Select Committee on Intelligence, The Bundesnachrichtendienst (Federal Intelligence Service) on various intelligence matters. Mr. Jorgensen has also briefed the MoD Spain, and various government personnel of Egypt, Kuwait, Malaysia, England, South Korea and Germany.

Mr. Jorgensen has served as Special Master to the Court (5 instances), an Escrow Agent for the Court and served as an Expert Witness in both Federal and local Judicial jurisdiction and has overseen the computer forensic analysis of over 1550 successful cases. He has lectured multiple times before the American Bar Association, Florida Bar Association, RSA Conference (USA), Tiger Bay Association, Ford & Harrison LLP, Employers Association of Florida, National Private Investigator's Association, Tampa Bay FBI Infragard, Special Operations Command (SOCOM), the International Cryptologic Association, the FBI, and other government organizations concerning eDiscovery, digital data forensic analysis, ethics, cyber security and counter cyber warfare.

Mr. Jorgensen is a Guest Instructor (current) at Nova Law School, Ave Maria Law School and University of South Florida.

Summary of Experience (October 1984 to July 1994)

Loral Data Systems (formerly Fairchild Weston Data Systems Division)

Director of Program Development (January 1992 - July 1994): Directed and Managed Special Projects and high technology intelligence programs in cutting edge technology computer controlled real-time data collection, analysis, and processing systems. Directed and Managed the Business Development, Program Management, Consultants, and Technology Offices. Responsible for interfacing with and representing Loral Data Systems to the U.S. government and international customers to include, Spain, Germany, Egypt, Kuwait, Brazil, Taiwan, and others. Responsible for conducting successful business contract negotiations ($55M program) for Loral with the government of Egypt. Has provided senior level technical briefings on advanced signal's processing systems to the governments of Taiwan, Kuwait, Spain, Germany, Egypt, South Korea and Malaysia. Grade: Engineer IV, Director

Director of Advanced Systems (1984-1992): Researched, developed, and implemented new technologies in the design of computer based communications and data signals collection, processing, analysis, and reporting systems; Electronic Warfare jamming, direction-finding, signal collection and Command and Control systems; and multi-sensor reconnaissance and surveillance systems. Performed systems design, systems data linking and requirements definition, functional and operational modeling, and systems performance evaluation (to include threat analysis and response). Performed intelligence data management assessments and requirements and tasking definition at the strategic and tactical levels for single and multilevel systems. Managed a staff of senior-level technical personnel and the Applications Engineering group, Research and Development, and Program Management offices. Reported to the Vice President of Signal Processing Systems for U.S. government business segment and reported to the President of Loral Data Systems for International Signals Collection, Analysis, Processing, and Reporting Systems and ground based Electronic Warfare Systems.

Background Experience

U.S. Government, National Security Agency (1982-1984)

Selected for and attended the Naval Postgraduate School for courses in Defense Department Resource Management. Designed, developed, deployed and budgeted advanced, multi-million dollar, multi-rack, computer systems controlled, real-time collection, processing, analysis and reporting systems. Performed systems requirements definition and tasking, systems analysis, design, and evaluation to include collection, analysis, processing, and reporting functions. Performed system level inter- and intra-network communications and data flow analysis and definition over local and worldwide networks and communications links. Managed multi-site worldwide system design, development, budgeting and deployment program. Performed threat recognition, assessment, and analysis for follow-on systems definition and development. Defended Group technology budgets to the annual Resource Allocation Committee (RAC) hearings. Organized, developed and managed a Special Projects Quick Response Team for unique collection activities. Provided multi-system operability and linkage assessments and capabilities definition at the tactical and strategic levels. Received cash bonus awards and Letters of Commendation for Excellence. Grade GS-12.4.

U.S. Military (Assigned to National Security Agency, Special Projects, Special Activities Detachment 3; SAD-3) (1969-1982)

Internals Analyst ('79-'83): Performed signals internals analysis for the government using various computer based analysis systems and tools; assisted in the development of standardized analysis software; performed internals and externals analysis, publishing analysis and feasibility studies, provided briefings and reports to Directors of DoD organizations, Director of NSA, Under Secretary of Defense and various other government agencies. Oversight of budgets for multi-million-dollar state-of-the-art technology programs. Organized, directed and operated a Quick Response Special Projects team. Received the Defense Meritorious Service Medal (3rd highest peacetime award) for Special Projects' efforts. Grade E7.

Senior Analyst, Research and Development for Special Projects ('73-'79): Performed signals internals and externals analysis for multiple signal technologies using state-of-the-art computer controlled systems. Served as Computer Programming Specialist (FORTRAN and Assembly Language) for Special Projects. Received Joint Service Commendation Medal for signal systems analysis work and design and engineering of site deployed multi-rack computer controlled signal collection, processing, analysis, and reporting system. Served 6 years in an overseas Special Project's assignment.

Internals and Externals Analysis ('69-'73)*;* Served with Special Projects Office, Army Security Agency, Special Activities Detachment 3 (SAD-3). Received Army Commendation Medal for special site analysis work. Instructor for the Tri-Service Electronic Warfare School teaching Internal's and External's Analysis and data systems collection, processing and analysis.

Education

Northeastern University, Chemical Engineering; 1966-1967

U.S. Army Security Agency: 1969-1976
Intercept Analyst
Analog Production
Key Instructor Program, Signal Analysis
Advanced NCOES EW/C Supervisor
SA 430 (Classified)
SA 431 (Classified)
Multi-Channel Technology
Received Commendation of Excellence

U.S. Department of Defense Schools (NSA): 1979-1982
EA030 (Classified) EAB01 (Classified) EA100 (Classified)
EA161 (Classified) EA162 (Classified) EA164 (Classified)
EA174 (Classified) EA175 (Classified) EA176 (Classified) EA178 (Classified)

Naval Postgraduate School: 1982 (Appointment by NSA)
Defense Resource Management

Certified Military Tri-Service School Instructor

Electronic Warfare Operator/Analyst – 98J
Computer System Operator – MOS 74E (Computer Programmer)

X-Ways Software Technology AG; (2008)
X-Ways Forensics
File Systems Revealed

Federal Bureau of Investigation Citizen's Academy – Graduate November 2009

Criminal Justice Information System Security & Awareness Training – Level 4 CJIS Security Training – expires March 1, 2020.

Military Awards:
Defense Meritorious Service Medal; (Awarded and presented by Director NSA)
Joint Service Commendation Medal
Army Commendation Medal
Vietnam Service Medal

Security Clearance
Top Secret Special Intelligence, Special Compartmented Information (TSSI SCI) - NSA Polygraph 05/15/91; SBI 02/91

Criminal Justice Information System – Level 4 CJIS Security Training Valid through 02/04/2022.

Non-Profit Organizations:

- Board of Directors, Tampa Bay FBI Infragard Group (Current, Former President)
- American Bar Association (ABA), SciTech eDiscovery Committee, Chair of Forensics Sub-Committee (Former)
- Vice President, Sailing Alternatives, Inc.; (SAlt) Paralympic Sailing/Racing Instructor (Former)
- President, Lou Gehrig's Disease Association of Southwest Florida, Inc. (LGDA) (Former)

Florida Private Investigator License: C 2900442 (Individual); A 2900240 (Firm)

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

s/Irean Z. Swan

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Declaration of Candi Sinquimani

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO:

I, Candi Sinquimani, declare the following under the penalties of perjury:

1. I am employed by the Defendant in this case, LPL Financial, LLC ("LPL"). I am a Vice President, Business Transitions at LPL. In that role, I manage a team that helps registered representatives ("RRs"), most of whom are independent contractors, transition their businesses to LPL when they change broker-dealers from another firm to LPL.

2. I make this declaration based upon my personal knowledge of LPL through my role, my review of relevant records, and discussion with persons employed by LPL and knowledgeable regarding these issues.

3. For the purposes of this Declaration, the terms "Defendant" or "LPL" means any employee and/or any other person, including independent contractor, acting under Defendant's authority or control, on behalf of, or in concert with Defendant in any action to transition a recruit's customers to LPL, as well as any predecessors and successors in interest and any subsidiaries, parent or sister corporations, officers, and/or directors.

4. For the purposes of this Declaration, the term "Ameriprise Recruit" means any current or former Ameriprise employee and/or affiliate with whom LPL discussed a potential, prospective, or actual transition to LPL and/or to whom LPL extended an offer of employment and/or affiliation.

5. In my role, I am familiar with the Protocol for Broker Recruiting ("Broker Protocol"). The Broker Protocol is an industry agreement between various broker-dealers. I understand that both LPL and Ameriprise Financial Services, LLC ("Ameriprise") are signatories to the Broker Protocol.

6. In general terms, the Broker Protocol provides that a RR may elect to resign under the terms of the Broker Protocol and take only certain customer information—specifically, customer name, address, phone number, email address, and account title ("Protocol Information")—when transitioning from one Broker Protocol Member Firm to another without incurring liability (on behalf of either the RR or the firm that the RR joins).

7. In my role, I am also familiar with a tool referred to as the Bulk Upload Tool. The Bulk Upload Tool is a spreadsheet for the compilation of data regarding a RR's customers. This spreadsheet contains column headings for the option to enter information beyond the Protocol Information.

8. LPL provided the Bulk Upload Tool to certain Ameriprise Recruits between January 1, 2018, and December 31, 2021.

9. To my knowledge, and consistent with LPL's company practice, as of January 1, 2022, LPL has not provided the Bulk Upload Tool or any similar tool to any Ameriprise Recruit for the purpose of compiling information beyond that permitted by the Broker Protocol.

10. To my knowledge, and consistent with LPL's company practice, as of January 1, 2022, LPL has not provided the Bulk Upload Tool or any similar tool to any counsel advising the Ameriprise Recruit concerning the Ameriprise Recruit's transition to LPL for use that is inconsistent with the Broker Protocol, nor did LPL request that such counsel provide the Bulk Upload Tool or any similar tool to any Ameriprise Recruit. As used in this paragraph, "counsel" includes any counsel "assigned" by LPL to advise an Ameriprise Recruit concerning the Ameriprise Recruit's transition to LPL, to the extent that LPL can be understood to have "assigned" counsel to an Ameriprise Recruit for these purposes.

11. To my knowledge, the last time LPL received a Bulk Upload Tool that contained customer information, beyond that permitted by the Broker Protocol, from an Ameriprise Recruit

was prior to December 31, 2021. LPL's investigation is continuing and I understand that it will supplement this response if needed.

12. Attached as Exhibit A is a complete list of the Ameriprise Recruits who entered customer information, beyond that permitted by the Broker Protocol, into to the Bulk Upload Spreadsheet and returned it to LPL.

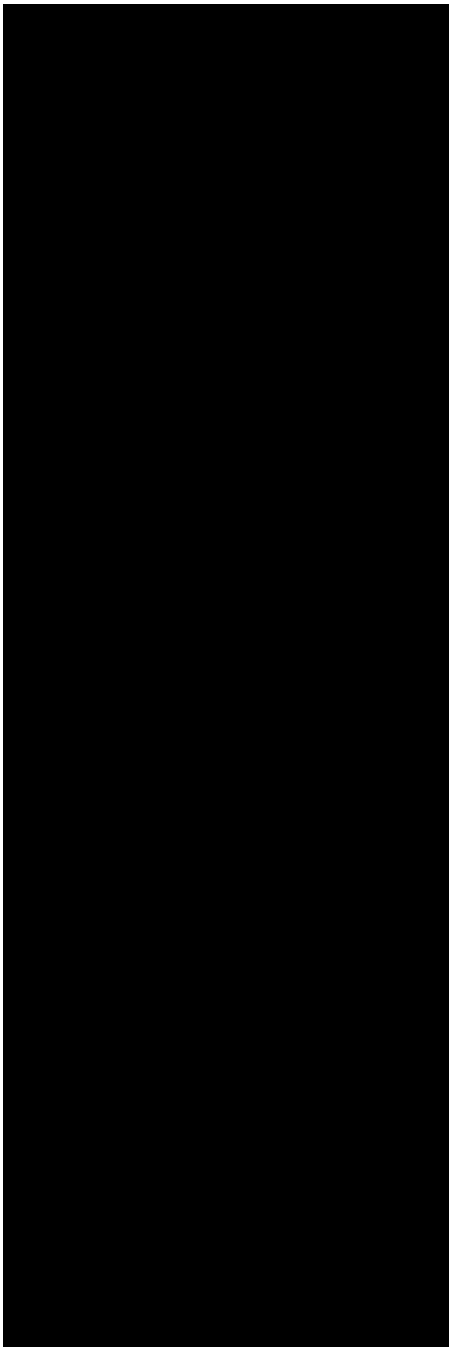
Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Candi Sinquimani

Candi Sinquimani

Dated: September 19, 2024

EXHIBIT A



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Ameriprise Financial Services LLC v. LPL Financial LLC
Case No. 24-CV-01333-JO-MSB in the Southern District of California

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

s/Irean Z. Swan

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