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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

Hon. Jinsook Ohta

LPL'S STATEMENT OF NON-OPPOSITION TO MOTION TO INTERVENE

Hearing
Date: July 17, 2025
Time: 9:30 a.m.
Courtroom: 4C

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LPL Financial LLC ("LPL") does not oppose the Advisors' Motion to Intervene and Motion to Stay or, in the alternative, Modify the Stipulated Order. Pursuant to S.D. Local Rule 7.1.e.2, LPL submits this Statement of Non-Opposition to provide relevant context and to affirm its support for a result that addresses the data privacy concern previously raised while respecting the legitimate property, privacy, and due process rights of the Advisors.

I. INTRODUCTION

LPL entered into the Stipulated Order in good faith, with what it thought was a mutual understanding. Between 2018 and 2021, certain Advisors collated their clients' information onto an Excel spreadsheet (the Bulk Upload Tool) during their transition from Ameriprise. There was nothing untoward or illegal about their doing so – the Advisors' contracts with Ameriprise allowed them to retain this information and Ameriprise consented to their doing so. Nevertheless, during the preliminary injunction hearing, Ameriprise raised the concern that an Advisor may have retained a copy of the spreadsheet on a personal device or email, creating the hypothetical risk that client data could be exposed to an unauthorized third-party. While LPL had no reason to believe this risk exists (much less that it is now, years later, exigent), it also believed there was little reason for anyone to object to deleting a spreadsheet with no ongoing utility. LPL thus agreed, via the Stipulated Order, to coordinate with the Advisors to identify and delete any holdover copies of the spreadsheet.

Unfortunately, subsequent events have frustrated this goal. The parties, predictably, point fingers at each other. LPL believes that Ameriprise's actions in suing the Advisors and insisting on a maximalist and one-sided interpretation of the Order have impeded progress. But we also recognize there is little value in assigning blame. What matters here is that the Advisors have now *agreed* to a course of action that will address the data privacy concern that led to the Stipulated Order – and is consistent with what LPL agreed to in that Order. As the Advisors detailed in their position statement yesterday, they have agreed to the targeted identification and

deletion of the spreadsheet, by a forensic examiner, from any device or email on which it may have been retained. While Ameriprise insists the Advisors should do *more* (and further insists LPL has the ability to "force" them to do so), there is no reason to delay taking the steps that all parties *agree* upon. Disagreement about potential *future* steps should not, and need not, prevent accomplishing the goal of the Order; those disagreements can be raised to the FINRA arbitrators, whom all parties are now before, at the appropriate time. In the interim, LPL will work with the Advisors to effectuate the goal of the Stipulated Order. We invite Ameriprise to work with us in doing so. But its refusal should not impede a straightforward and commonsense approach to addressing the data privacy concern put before the Court.

As to the Advisors' motions, LPL agrees they may intervene. The Advisors have their own property, privacy, and due process interests that deletion of information from their personal devices implicates. And their motion to intervene is timely: it works no prejudice on any party (and especially not on Ameriprise, whose own actions have—in part—led to their intervention).

LPL also agrees with the propriety of a stay. FINRA Rules require arbitration of the parties' dispute, and the Federal Arbitration Act requires that this case be stayed in its entirety pending that arbitration. Moreover, staying the case would not endanger the goal that led to the Stipulated Order: the Advisors have *agreed* to a process that will accomplish the goal of the Order. Any further dispute about the scope of the Order (or about the parties' rights to any client information more broadly) can and will be decided by the arbitrators themselves. Finally, LPL does not oppose, in the alternative, modification of the Stipulated Order to clarify and delineate what actions the parties will take to accomplish the goal of the Order.

II. FACTUAL BACKGROUND

A. Between 2018 and 2021, Departing Ameriprise Advisors Retained Customers' Information Pursuant to Their Contracts

When financial advisors move between independent broker-dealers ("IBDs"), they typically retain their clients' information as part of the transition. *See* Roth Decl. (Dkt. 32-4) ¶ 31. They do so because the great majority of their clients agree to transfer their assets to accounts held at the new broker-dealer; these clients (rightly) perceive their relationship to be with the advisor and not with the broker-dealer, and thus *want* to continue that relationship. *Id.* ¶¶ 29-30. Retaining clients' information allows advisors to efficiently open accounts at the new broker-dealer upon the clients' consent, ensuring they experience minimal interruption to their investment needs. *Id.* ¶ 32. This practice is ubiquitous in the IBD space. *Id.* ¶¶ 20-35. And financial advisors, who are licensed professionals subject to FINRA rules (and other securities regulations), fully understand the importance of keeping their clients' information secure: they are entrusted (and expected) to do so every day.

Between 2018 and 2021, the Advisors transitioned from Ameriprise to LPL in exactly this manner. They retained their clients' information because they understood their contracts with Ameriprise to permit them to do so in accordance with industry norms.[1] And many did so with Ameriprise's *express* knowledge and consent.[2] Most

[1] At the time, Ameriprise's Franchise Agreement provided that if an advisor gives two weeks' notice and meets certain other criteria then: "To the extent consistent with privacy laws and policies, in order to allow Advisor to service portable products and to fulfill compliance duties, Advisor may retain copies of consolidated statements, financial plans, tax returns, advisor notes, insurance policies, [Ameriprise] or [Ameriprise] approved product applications and trust or other legal documents for the clients Advisor serviced at [Ameriprise]." *See* ECF No. 1 at Ex. A. pg. 41, *LPL v. Ameriprise*, No. 25-cv-00880 (S.D. Cal.) (Ameriprise Franchise Agreement)

[2] Ameriprise Field Leaders confirmed, for many of the Advisors, that the manner of their departures complied with their obligations under the Ameriprise Franchise Agreement. Additionally, LPL understands that certain Advisors spoke (and even negotiated) with Ameriprise management regarding the terms and circumstances of

of their clients followed them, and thus authorized the Advisors to have their personal information in connection with the opening of accounts for them at LPL. To effectuate the efficient transfer of their customers' information, LPL provided the Advisors with an Excel spreadsheet into which they input their customers' data. Because the spreadsheet allows this information to be collated "in bulk," it is colloquially known as the Bulk Upload Tool.

B. Ameriprise Sues LPL, and the Parties Agree On a Stipulated Order

Years after the Advisors' departures, Ameriprise took issue with the way in which they left in an attempt to gain leverage over LPL in the parties' ongoing recruiting dispute. On July 30, 2024, Ameriprise sued LPL simultaneously in FINRA arbitration and this Court—followed two weeks later by a motion for preliminary injunction[3]—largely on the basis of these long-ago departures.

At the motion hearing, Ameriprise raised the *hypothetical* possibility that an Advisor may have retained a copy of the Bulk Upload spreadsheet on a personal device or email account following their departure between four and seven years ago. Ameriprise suggested the potential retention of the spreadsheet could create risk of a "data breach" because "the actual FA could leave his laptop at the coffee shop and all that information . . . can be taken." 11/14/24 Hrg. Tr. at 9:4, 7-10.

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their departures, and disclosed directly to management their intent to retain their customers' information pursuant to their contracts. *See id.* ¶¶ 35-36.

[3] FINRA Rule 13200 provides: "Except as otherwise provided in the Code, a dispute must be arbitrated under the Code if the dispute arises out of the business activities of a member or an associated person and is between or among [members and associated persons]." However, a narrow carve-out to this mandatory arbitration rule, set forth in Rule 13804, provides that "parties may seek a temporary injunctive order from a court of competent jurisdiction." It was pursuant to this carve-out that Ameriprise filed in this Court. Under Rule 13804, once the request for injunctive relief is resolved, the matter immediately proceeds to arbitration – including, if necessary, for consideration of any temporary relief ordered by the court.

To be clear, Ameriprise presented no evidence that the hypothetical "laptop left at a coffee shop" scenario, or any scenario in which an Advisor inadvertently exposes the spreadsheet information to an unauthorized third-party, has happened or is likely to happen. Nor is there any basis to believe as much. The Advisors regularly handle sensitive client information and follow industry-standard information security protocols. Even *if* an Advisor retained a copy of the spreadsheet, there is no reason to believe that now, years later, this information is suddenly at risk of unauthorized disclosure or breach.

LPL nevertheless acknowledged that the spreadsheet had no ongoing utility to Advisors at the time. As the Court recognized, "those advisors presumably have already used that information to contact clients," *id.* at 8:21, and the information was years stale. LPL thus agreed to what it thought would be a commonsense and straightforward plan that would resolve the data privacy concern raised at the hearing. Specifically, it agreed in Paragraph 4 of the Stipulated Order that if an Advisor is identified as being in personal possession of customer or non-customer information retained on the Bulk Upload Tool, a forensic examiner will reasonably review the location of that information and forensically delete it. *See* Dkt. 53 ¶ 4.[4] Shortly after entry of the Order, this case was administratively closed and the parties proceeded to FINRA arbitration to litigate the merits of their dispute.

C. Ameriprise Sues the Advisors and Insists It Will Be the Ultimate Arbiter of Their Right to Retain Their Customers' Information

Since entry of the Order, LPL has continued to work in good faith to try to accomplish the aim of the Order. It identified and proposed the forensic examiner that the parties ultimately agreed to jointly retain (Consilio LLC). It took lead on developing, and then circulating to the Advisors, a custodian survey designed to

[4] LPL has complied with Paragraphs 1, 2, 3, and 6 of the Stipulated Order. Paragraph 5 of the Order provides that LPL will isolate and delete "non-customer" information on its own systems if it exists. LPL confirms it is in the process of doing so.

identify any devices or accounts on which they may have retained the spreadsheet. And it has consistently strived to be timely, responsive, and proactive in negotiations regarding the forensic review and its implementation.

Ensuing events have, however, impeded progress. First, on New Year's Eve, December 31, 2024—less than three weeks after entering into the Stipulated Order—Ameriprise filed an Amended Statement of Claim in the FINRA arbitration naming the Advisors as Respondents. The Amended Statement of Claim accuses the Advisors of misappropriating Ameriprise's "trade secrets" by retaining their own customers' information. In their Answers, the Advisors unanimously assert they were contractually permitted to retain their customers' information. As a result, the ownership of and entitlement to Advisors' client information—including information on the spreadsheet that would otherwise be of no practical utility—has become an ultimate merits issue in a live and contested proceeding.[5] Thus, while LPL entered into the Stipulated Order with the expectation that there would be no qualms with deleting stale spreadsheet information, it recognizes that the landscape has materially changed: the Advisors' due process right to contest their ownership of that information is now directly implicated and must be considered and respected.

Second, Ameriprise has taken a maximalist position on what the Stipulated Order requires. Ameriprise first insisted that *every* advisor must turn over *every* device (and *every* email/cloud password) they have used since they left Ameriprise. It further insisted that *all* of those devices and accounts would need to be *fully* forensically imaged and reviewed for data that it believes warrants deletion. While it appears Ameriprise may now realize this approach is logistically impossible, it

[5] Ameriprise's suit against thirty Advisors (one of whom is deceased) has had another practical effect. The Advisors have had to retain counsel, prepare Answers and Counterclaims, engage in arbitrator selection, and otherwise mount their defense. They have understandably stated that their attention is on defending themselves against Ameriprise's suit. They have also noted that they are now under a litigation hold and thus there is no risk of inadvertent deletion of the information at issue.

continues to insist that Advisors must submit to an intrusive forensic review through which *Ameriprise* will decide what information in their possession warrants deletion. Ameriprise takes the position that *Ameriprise* will be the arbiter of what information advisors may retain – precisely the ultimate merits issue in the arbitration.[6]

The Advisors have raised objections to the wholesale violation of their personal privacy that Ameriprise's course of action would entail. Moreover, Advisors have expressed concern that the intrusive forensic audit Ameriprise is seeking—without any basis for believing an Advisor actually possesses any holdover customer information—is, in fact, a way for Ameriprise to obtain discovery outside of the normal FINRA arbitration process.

III. THE ADVISORS' PLAN IS A COMMONSENSE WAY OF ACCOMPLISHING THE GOAL OF THE STIPULATED ORDER

After the Advisors filed their motions, the parties—at the Court's direction—engaged in extensive meet-and-confer discussions regarding the Advisors' objections to the manner in which Ameriprise intended to proceed with the forensic review detailed in Paragraph 4 of the Stipulated Order.

The outcome of these discussions is a proposed plan from the Advisors that accomplishes the goal of the Order in a straightforward and pragmatic way. As the Advisors detailed in their Position Statement (Dkt. 75), they will work with Consilio to identify any devices or accounts where the spreadsheet was retained. They will further work with Consilio to ensure that a forensic copy of the spreadsheet is created (for litigation purposes) and otherwise fully and finally delete the spreadsheet.

[6] LPL notes a third material event: Ameriprise's sending of a "Notice of a Data Breach" to LPL's customers on April 8, 2025. Regardless of whether the Notice was necessary or accurate (LPL maintains it was neither), it alerted account-holders to their Advisors' retention of their information when they departed Ameriprise. Accordingly, any concern that a customer may be unaware of the possibility that an Advisor retained their data has been alleviated.

This is exactly what the Order is intended to accomplish: the identification and deletion of information that may have been retained via the Bulk Upload spreadsheet in a reasonable and minimally disruptive way. And it gives the Advisors (who were not parties to the Order) agency and control over a process that implicates their rights and defenses in the arbitration. LPL will thus proceed with assisting the Advisors in accomplishing this goal (including, for example, by providing them with the file title of the spreadsheet and other details that will assist in locating it).

LPL understands Ameriprise to have two objections. The first may be on the cusp of resolution. Ameriprise interpreted the proposal as shifting full responsibility for the search for the spreadsheets to potentially tech-unsavvy Advisors. On the parties' May 27th conference, counsel for the Advisors clarified that is not the case: Consilio will provide direct guidance and support to the Advisors.

Ameriprise's second objection stems from its continued maximalist interpretation of the Order. Ameriprise asserts Advisors should preemptively agree to delete *any* customer information that Ameriprise claims to own. It further asserts that Advisor devices and email should be subject to *full* forensic imaging and review so that Ameriprise can identify *any* information it believes warrants deletion. Neither LPL nor the Advisors interpret the Stipulated Order (which concerns information "*contained within the Bulk Upload Tool*")[7] as an agreement to accede to any demand by Ameriprise regarding deletion of any information it claims Advisors should not possess. Nor does LPL believe it necessary or appropriate to agree to deletion of information before determining (a) whether it even exists, and (b) what it is.

In any event, LPL does not view this objection as an impediment to *starting* with the Advisors' plan. Ameriprise has explained its objection stems from its concern that an Advisor may have retained some *other* customer information, besides the Bulk Upload spreadsheet, on a personal device or email. No evidence has ever

[7] Dkt. 53 at 2 (emphasis added).

been presented to LPL or the Court that this occurred (the sole evidence in this case is that the Advisors used the Bulk Upload spreadsheet). But if any such evidence *is* uncovered—and Ameriprise will have ample opportunity to probe for it in discovery in arbitration—then the parties can address it at that time. If the parties dispute ownership over the information or the propriety of its deletion, they can present their positions to the arbitrators. The arbitrators, in turn, will be best-positioned to decide that dispute. In other words, *if* Ameriprise's concern materializes, it will be resolved by and through the arbitral process. But there is no reason for that concern to impede what *all parties agree upon:* identification and deletion of any holdover spreadsheets. The Advisors' plan accomplishes exactly that while also preserving their property, privacy, and due process rights.

IV. AMERIPRISE'S ASSERTIONS REGARDING LPL'S POWER TO "COMPEL" ADVISORS TO ACT ARE MISPLACED

Given that the Advisors have developed a plan to do exactly what the Stipulated Order seeks to accomplish (a plan that does not prevent Ameriprise from raising any *further* issue to the arbitrators), LPL does not believe further argument is necessary. Nevertheless, we anticipate that Ameriprise will argue that LPL has the power to "force" its Advisors to surrender to a complete forensic audit of their devices and that it has been derelict in not doing so. Ameriprise has raised several sources of this supposed authority to "force" the Advisors—who are independent contractors with their own rights and reasonable privacy expectations—to do what it demands. Because we anticipate Ameriprise will similarly raise them to the Court, we address them here—notwithstanding that they are mooted by the Advisors' plan.

First, Ameriprise argues LPL has the power to force Advisors to surrender their personal devices for forensic audit because its Representative Agreement contains a cooperation clause stating: "Representative agrees to cooperate fully with counsel to LPL in any arbitration, litigation, regulatory, or corporate inquiry, matter, investigation, customer complaint or proceeding." Cooperation clauses are utilized

where one party needs another's help in order to defend against litigation; insurance contracts are the most prominent example. *See, e.g.*, 7A Am. Jur. 2d Automobile Insurance § 389 ("A cooperation clause is breached, and the insurer released from its contract, by the unjustifiable refusal of the insured to permit the insurer to make any defense."). Such clauses impose reasonable assistance duties. *See id.* (explaining that duties imposed by cooperation clause are "pragmatic" and include "submitting to interviews by the insurer, giving information with which to reconstruct the pertinent events, attending depositions"); Stempel on Insurance Contracts § 9.02[A] (3d ed. 2006) ("With the exception of a few narrowly specific duties such as requiring forwarding of papers and willingness to sign consent forms, the typical cooperation clause is short and general, implicitly imposing a duty of cooperation derived from common sense."). The clause does not require an Advisor to surrender his or her rights in their entirety – it requires cooperation necessary for LPL to adequately respond to inquiries or disputes related to the advisor's conduct. Nor is it a weapon for forcing Advisors to undergo intrusive examination of their personal property over their valid privacy and due process objections.

Moreover, Ameriprise has never explained what it believes LPL should *do* under the cooperation clause of its Representative Agreement. Even *if* an advisor were breaching that clause, LPL's sole remedy would be to terminate its association with the Advisor. That would only *exacerbate* the data privacy concern that Ameriprise raised, leaving an advisor who may have potentially retained information taking that data to another firm.

Second, Ameriprise argues LPL can and should force Advisors to undergo a full forensic audit because its Code of Conduct provides that confidential "information should never be transmitted outside of LPL to personal email accounts or any external file or storage device." LPL is not aware of any violation of its Code of Conduct. And, more fundamentally, Ameriprise has no standing to try to "enforce" compliance with LPL's Code of Conduct. *See, e.g.*, *Kowalski v. Tesmer*, 543 U.S.

125, 129 (2004) ("A party generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.") (quotation marks and citation omitted). *If* LPL identifies a violation of its internal policies and procedures, it will address that matter directly through its established process and under the supervision of its regulator. Ameriprise has no right or ability to try to identify violations of LPL' policies and procedures, much less to seek to "enforce" compliance with them.

Third, Ameriprise has argued that the SEC's off-channel communications "sweep" establishes that LPL has the authority to force the Advisors to surrender their personal devices for full forensic audit. In the sweep, the SEC entered into settlements with dozens of firms—including both Ameriprise and LPL—for failures to maintain and preserve business-related messages as required under SEC Rule 17a-4, codified at 17 C.F.R. § 240.17a-4.[8] Specifically, the SEC found that personnel at these firms engaged in business communications on personal devices that were not retained in the firms' books and records as required by the Rule. *See generally id.* But the SEC did not order, or require, firms to forensically audit advisors' devices in connection with ongoing compliance with the Rule. And even if it *did*, Ameriprise does not have standing to step into the SEC's shoes and attempt to "enforce" such an obligation (which does not exist in the first instance). *See, e.g.*, *Northstar Fin. Advisors, Inc. v. Schwab Invs.*, 615 F.3d 1106, 1116 (9th Cir. 2010) (explaining that where statute does not have private right of action, only the SEC is authorized to enforce it).

Fourth, Ameriprise has raised the fact that most Advisors have not yet returned the custodial survey disseminated to them in March as evidence of non-compliance with the Order (and of LPL's refusal to "force" Advisors to comply). This issue is now moot: as the Advisors have explained to Ameriprise, to the extent the purpose of

[8] *See* https://www.sec.gov/newsroom/press-releases/2024-98 (announcing settlements with twenty-six broker-dealers, including both Ameriprise and LPL) (last visited May 28, 2015).

the custodial survey was to assist in identifying locations where the spreadsheet may exist, they will undertake that search and identification process themselves with Consilio's help.[9]

* * *

Finally, we reiterate that while Ameriprise's argument that LPL can "force" advisors to undergo a full forensic audit (or that delay in completion of the survey evidences misconduct) is misplaced, it is also moot. The Advisors' plan accomplishes the goal of the Stipulated Order, and LPL will fully assist them in doing so.

V. LPL DOES NOT OPPOSE THE ADVISORS' MOTIONS

The Advisors moved to intervene so as to move to stay or, in the alternative, modify the Stipulated Order. LPL agrees they have the right to intervene. The Advisors have interests—including in their personal property, privacy, and due process—that are plainly implicated by the Stipulated Order. While LPL did not originally believe those interests would be impaired by the Order, subsequent developments have given rise to legitimate concerns. The Advisors have a right to raise those concerns. We understand that Ameriprise's principal objection to their intervention is that it is untimely. But "the most important consideration in deciding whether a motion is untimely" is "prejudice to the other parties[.]" *Smith v. Los Angeles Unified Sch. Dist.*, 830 F.3d 843, 854 (9th Cir. 2016). The Advisors' intervention works no prejudice; to the extent Ameriprise contends otherwise, it was *Ameriprise's* decision to sue the Advisors that has led the parties to where they are.

[9] Advisors have repeatedly expressed concerns about the breadth of the survey. The very first question (included at Ameriprise's insistence) asks each Advisor to "[i]dentify all Physical Device(s) by make and model used by you within the 3 months prior to your resignation from Ameriprise through present." Advisors have raised concerns that it is impossible to identify every device they have used for a period of up to seven years. They have also raised concerns that Ameriprise intended to use this information to seek full forensic imaging and review of every device they have used during this period. LPL believes their hesitance in answering the survey until such concerns were resolved is reasonable.

LPL also agrees with the Advisors' motion to stay given the pending arbitration. This action was originally before this Court under the narrow carve-out to FINRA's mandatory arbitration rule for actions seeking temporary injunctive relief. The Court has since resolved Ameriprise's motion. The parties are thus required to arbitrate all further disputes – and that arbitration is proceeding apace. Under the FAA, courts are required to compel arbitrable matters to arbitration upon motion and stay any proceedings. *See* 9 U.S.C. § 3 ("[T]he court in which such suit is pending upon being satisfied that the issue . . . is referable to arbitration . . . *shall* on application of one of the parties stay the trial of the action until such arbitration has been had[.]") (emphasis added). And here, staying further proceedings would not imperil the goal of the Stipulated Order in light of the Advisors' voluntary agreement to pursue it and Ameriprise's ability to bring any further dispute to the arbitrators.

Finally, LPL also does not oppose, in the alternative, modification of the Stipulated Order to clarify the rights and responsibilities of the parties. LPL believes the Advisors' plan fully satisfies the Order and thus agrees to modification of the Order to clarify as much.

VI. CONCLUSION

The Advisors' rights are implicated by the Stipulated Order. LPL thus does not oppose their intervention. And given that the Advisors have agreed to accomplish the goal of the Order, LPL also does not oppose a complete stay of this action. A stay would not prevent Ameriprise from raising any future concerns directly to the arbitrators overseeing the parties' dispute. Finally, LPL also does not oppose modification of the Order to clarify that the Advisors' plan accomplishes its goal.

DATED: May 28, 2025

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