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10
11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13
14 LPL FINANCIAL LLC,

15 Plaintiff,

16 v.

17 AMERIPRISE FINANCIAL
SERVICES, LLC,

18 Defendant.

Case No. 25-cv-0880-JO-MSB

**DEFENDANT AMERIPRISE
FINANCIAL SERVICES, LLC'S
OPPOSITION TO PLAINTIFF LPL
FINANCIAL LLC'S MOTION FOR
TEMPORARY RESTRAINING
ORDER**

Judge: Hon. Jinsook Ohta
Courtroom: 4C

Complaint Filed: April 14, 2025
Trial Date: None set

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1 **I. Introduction**

2 Plaintiff Ameriprise Financial Services, LLC (“Ameriprise”), by and through
3 its undersigned counsel, hereby submits this Opposition to Plaintiff LPL Financial
4 LLC’s (“Plaintiff” or “LPL”) Motion for Temporary Restraining Order. LPL comes
5 to this Court to complain about a process to which it literally agreed in a Stipulated
6 Order before this Court in a prior case.¹

7 LPL’s recitation of facts is woefully inaccurate and self-serving. LPL is
8 simply attempting to shift the narrative away from what matters most—protecting
9 customer data. The steps Ameriprise took to inform impacted individuals that their
10 data had been shared without their authorization and contrary to Ameriprise’s
11 privacy policy were completely lawful and contemplated by this Court’s Stipulated
12 Order, again, to which LPL recently agreed.

13 The misrepresentations within the Complaint and the Memorandum of Points
14 and Authorities (“Memorandum”) are surprising, given that this Court is already
15 intimately familiar with the facts of this case, having already heard the underlying
16 dispute between these parties *see id.*²

17 As the Court will recall, Ameriprise brought its concerns regarding LPL’s use
18 of a spreadsheet called the “Bulk Upload Tool” before this Court in July of last year.
19 At that time, the Bulk Upload Tool was alleged to contain myriad (yet largely
20 unknown) categories of customer information taken and misappropriated by various
21 registered representatives who resigned from Ameriprise to join LPL. This Court—
22 through a series of orders for the parties to meet and confer—ultimately required

23 ¹ *See Ameriprise Financial Services, LLC v. LPL Financial, LLC*, Docket No. 24-cv-
24 01333-JO-MSB (S.D. Ca. Dec. 12, 2024) (Dkt. 53).

25 ² Ameriprise registers its objection to LPL’s filing of a brand-new case in this Court
26 given that the Court itself retained jurisdiction over disputes relating to the
27 enforcement of the parties’ Stipulated Order (see Paragraph 7 of that Stipulated
28 Order), and this current dispute arises out of Paragraph 6 of that Stipulated Order.
See Ameriprise Financial Services, LLC v. LPL Financial, LLC, Docket No. 24-cv-
01333-JO-MSB (S.D. Ca. Dec. 12, 2024) (Dkt. 53).

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1 LPL to, for the first time, reveal the identities of the thirty Bulk Upload Tool users.

2 Later, via the Stipulated Order agreed to by the parties and entered by this
3 Court following yet more encouragement from the Court for the parties to meet and
4 confer, LPL agreed to, among other things,³ the production of all Bulk Upload Tools
5 used by thirty advisors to abscond with extensive, sensitive customer information.

6 Importantly, for the purposes of this Opposition, LPL also agreed in the
7 Stipulated Order that part of the purpose behind its production of the Bulk Upload
8 Tool was “for the purpose of Ameriprise determining whether it must make
9 notification to customers and what information to include in the notification to
10 customers.” *See id.* at 3. LPL also agreed to the Stipulated Order’s requirement that
11 “Ameriprise agrees to provide a copy of such notice to individuals who became
12 customers of LPL, to LPL, and provide a date such notice is made if any.”⁴ Of
13 course, prior to LPL’s production of the Bulk Upload Tools on January 24, 2025,
14 Ameriprise did not know the specific information taken by the advisors, nor the
15 identities of the customers for whom information was taken. Any complaint by LPL
16 that a data breach notification should not have been sent is therefore not credible, as
17 LPL and Ameriprise, and even this court, contemplated the likelihood that
18 Ameriprise would need to send a data breach notification letter, and that this letter
19 could be sent to individuals who became customers of LPL, based on the very
20 legitimate concerns raised by this Court.

21 At the parties’ first hearing on the then-pending Motion for Preliminary
22 Injunction, this Court stated: “I do see these massive third-party privacy concerns
23 that do have irreparable harm to these individuals.” Transcript of Hearing on Mot.

24 _____
25 ³ *See generally*, Stipulated Order (Dkt. 53); *see also* Declaration of Michael S.
26 Taaffe.

27 ⁴ Ameriprise complied with this requirement on April 8 via email transmission to
28 counsel for LPL, Cheryl Haas.

1 for Preliminary Injunction at 20:24-25. The Court also stated: “I wouldn't want my
2 social security number or the holdings I have in certain companies and what trade
3 decisions that I've made out there.” Transcript of Hearing on Mot. for Preliminary
4 Injunction at 13:7-9.

5 Those privacy concerns exist still. Ameriprise customers, whether current or
6 former, have a right, and would also be similarly concerned, to know that their
7 social security numbers and other extremely sensitive information were taken
8 without their prior authority and transmitted to a third party (not to mention that
9 these transmissions could have taken place using unsecured personal devices and
10 personal email accounts, and that the sensitive information may still be residing on
11 someone’s unsecured personal device or email repository). But this was not
12 Ameriprise’s determination alone. Based on a good faith determination following a
13 careful review of the produced Bulk Upload Tools, Ameriprise had an obligation to
14 send a Notification of Data Breach (“Notice”) under the state data breach laws of 47
15 states. Contrary to LPL’s assertions, Ameriprise’s Notice contains true and accurate
16 information, is not defamatory, and was not used as a litigation strategy.

17 LPL’s arguments as to whether there was unauthorized disclosure, whether
18 this unauthorized disclosure constituted a breach, whether the advisors at issue were
19 allowed to take this voluminous information pursuant to certain contractual
20 agreements, whether the breach notice was appropriate, and others, are addressed
21 fully below. For the purposes of this Introduction, Ameriprise rejects LPL’s
22 arguments and submits to this Court that LPL has not met—and cannot meet—the
23 very high burden to obtain the extraordinary remedy of a Temporary Restraining
24 Order, and therefore respectfully requests that the Court summarily deny LPL’s
25 Motion.

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II. Statement of Operative Facts

A. Ameriprise’s Franchise Agreement Does Not Permit Advisors To Retain Unlimited Amounts Of Customer Information Upon Departure

LPL continues to parrot the notion that there is some separate “independent broker dealer space” that has its own rules. See Memorandum, at 2. This is false. Registered Representatives, whether they are independent contractors or employees, whether working for a broker-dealer or an RIA, are subject to the same FINRA, SEC, and state rules and regulations governing the protection of client information, and still must abide by relevant company policies.

Essentially, LPL states that “independent” advisors are allowed to take whatever confidential client information they want, with impunity. However, this is simply not the case.

Financial institutions must give their customers a "clear and conspicuous" written notice (“Privacy Notice”) describing their privacy policies and practices. This Privacy Notice forms the permissions a customer gives regarding the sharing of their information with third parties. Ameriprise’s client Privacy Notice clearly states, and has stated at all times relevant to this dispute, as follows:

If your financial advisor’s affiliation with Ameriprise ends and your financial advisor joins a nonaffiliated securities broker-dealer or registered investment advisor, they may be permitted to use limited information to contact you. The information they may use is limited to your name, address, email address, phone number and account title.

See Ameriprise Privacy Notice,⁵ attached as Exhibit D to the Declaration of Michael S. Taaffe.

This is what the clients see. This is what the clients know. This is what the clients expect: that an Ameriprise advisor servicing their accounts will only take and

⁵ Available at https://www.ameriprise.com/binaries/content/assets/ampcom/wcm/AMP_PRIVACY-NOTICE.PDF, at 2.

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1 share these limited categories of client data (“Protocol Information”) in the event they
2 leave Ameriprise to join a new firm. While LPL might have its own contracts and
3 privacy policies that differ and inform how they do business, that is LPL’s
4 prerogative. Ameriprise is not subject to LPL’s contracts or policies.
5

6 Moreover, the language of the various addenda in the Franchise Agreements,
7 for nearly twenty years, has been clear that the agreements themselves are subject to
8 privacy policies, such as (and specifically) the one cited above, along with relevant
9 laws. Over time, these addenda have been marked as Addendum 3-R (Rollout),
10 Addendum 3-T (Employee to Franchise Transitions), and Addendum 3-V (Veteran
11 Advisor Recruits) (together, the “Addenda”).
12

13
14 Section 3 of the Addenda is entitled “Return of Complete Files and Proprietary
15 Materials” and governs what a Registered Representative must do upon providing a
16 notice of termination. This section, comprised of two short paragraphs, identifies a
17 series of requirements a registered representative must fulfill to ensure compliance
18 with Ameriprise’s client privacy policies before the advisor’s registration with
19 Ameriprise ends. A registered representative complies with Section 3 by returning
20 all client files and all Ameriprise proprietary materials—both originals and copies—
21 to a designated party within the advisor’s local leadership. Starting in approximately
22 2007, Ameriprise clarified these requirements by adding the following sentence to
23 Section 3 of the Addenda:
24
25
26

27 “Independent Advisor must comply with Ameriprise Financial’s client
28 privacy policy, including, but not limited to, provisions related to client

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files, records and/or information.”

Accordingly, for a registered representative to comply with Section 3, the advisor must adhere to Ameriprise’s client privacy policy. This policy is published to customers and, as exhibited above, states that registered representatives can only take with them Protocol Information.

The amount and types of documents and information any advisor is allowed to retain for transition purposes at the time of their departure is (1) extremely limited and (2) always subject to Ameriprise’s privacy policies. In no way can the franchise agreements and their Addenda be read to allow a carte blanche taking of any and all documents or information, as LPL claims and as LPL encourages, and as the users of the Bulk Upload Tool did.

What’s more, if LPL and the relevant advisors really believed that the advisors were authorized to take this extensive information and give it to LPL when they resigned from Ameriprise, all they had to do was provide Ameriprise with a copy of the already filled out Bulk Upload Tool and let Ameriprise know that it contained all of the client information they were taking with them. But of course, that did not occur. LPL and the advisors in question sought to hide this misappropriation, and ultimately Ameriprise had to come to this Court to compel LPL to produce that information.

B. An Unauthorized Disclosure Occurred, Necessitating the Breach Notice, Which Was Appropriate

Based on the above alone, the registered representatives’ use of the Bulk Upload Tool to share and retain voluminous customer information without customer

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1 authorization and in violation of Ameriprise’s Privacy Notice and applicable
2 agreements constituted an unauthorized disclosure of sensitive customer data.
3 However, there is even more support for the Notice.
4

5 1. LPL Tacitly Admits There Was A Breach

6 LPL tacitly admits there was a data breach by arguing that Ameriprise
7 delayed in sending these breach notifications and has known about these breaches
8 for years. *See* Memorandum, at 1-2. But as LPL and this Court already know,
9 Ameriprise did not have the information to assess which former advisors committed
10 a data breach nor which individuals were impacted until this Court ultimately forced
11 LPL to turn over that information, which Ameriprise did not obtain until January 24,
12 2025 pursuant to the Stipulated Order.

13 LPL feigns shock that Ameriprise sent out data breach notifications, but again
14 ignores the fact that both LPL and this Court already knew that Ameriprise was
15 contemplating the need to send a data breach notification in light of the Stipulated
16 Order, which expressly contemplates the fact that LPL would produce the Bulk
17 Upload Tools so that Ameriprise could make a determination as to whether a data
18 breach occurred and determine who was impacted, and if so, Ameriprise would send
19 data breach notification letters. If sending a breach notification letter was so
20 improper, why did LPL expressly agree in the Stipulated Order that Ameriprise
21 could do it? For LPL to cry foul about this now signals bad faith.

22 2. All Of The Impacted Individuals Were Ameriprise Customers or
23 Beneficiaries of Ameriprise Customers

24 All of the individuals who received the Notice were Ameriprise customers or
25 beneficiaries of Ameriprise customers. The sensitive personal information for these
26 individuals that was the subject of the breach notice was sourced from Ameriprise
27 books and records and transmitted to LPL via the Bulk Upload Tools. Indeed, many
28 of these individuals are still Ameriprise customers, despite LPL’s bold assertion that

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1 the advisors in question “retained [] their *own customers* information upon their
2 transition from Ameriprise to LPL.” *See* Memorandum, at 1-2. (emphasis in
3 original). In other words, the fact that many of the customers at issue remained at
4 Ameriprise and never left belies LPL’s false assertion that these customers are the
5 advisors’ customers. And even though LPL advisors may have had business
6 relationships with these customers, past or present, that does not entitle them to take
7 confidential personal information about these individuals without authorization and
8 share that information with another company.

9 As all of the impacted individuals were either customers of Ameriprise or
10 beneficiaries of Ameriprise customers at the time of the breach, Ameriprise had an
11 obligation to notify each and every one of them of the breach. As previously
12 addressed with this Court, Ameriprise has a duty to its current and former customers
13 to protect and safeguard their confidential information. This very Court has
14 recognized this same duty in other financial industry cases—the “obligation” of a
15 financial company to “protect the nonpublic personal information of its customers.”
16 *Erhart v. BofI Holding, Inc.*, 612 F. Supp. 3d 1062, 1119 (S.D. Cal. 2020); *see also*
17 *In re Sony Gaming Networks & Customer Data Sec. Breach Litig.*, 996 F. Supp. 2d
18 942, 966 (S.D. Cal. 2014) (finding “common sense and California” law support “a
19 legal duty to safeguard a consumer's confidential information entrusted to a
20 commercial entity”) (emphasis added).⁶

21
22

23 ⁶ *See, e.g.*, 15 U.S.C. § 6801 (“[E]ach financial institution has an affirmative and
24 continuing obligation to respect the privacy of its customers and to protect the security
25 and confidentiality of those customers' nonpublic personal information.”); CAL. FIN.
26 CODE § 4052.5 (providing that unless an exception applies, a “financial institution
27 shall not sell, share, transfer, or otherwise disclose nonpublic personal information ...
28 without the explicit prior consent of the consumer to whom the nonpublic personal
information relates”); *see also* CAL. CIV. CODE § 1798.81.5(b) (“A business that owns
or licenses personal information about a California resident shall implement and
maintain reasonable security procedures and practices appropriate to the nature of the
information, to protect the personal information from unauthorized access,
destruction, use, modification, or disclosure.”).

3. The Customers Did Not Authorize Retention, Use, or Sharing Of The Information In Question

LPL claims that customers who actually did move to LPL with the advisors in question “necessarily authorized their advisors to retain, use, and share their information with LPL when they agreed to follow their advisors to LPL and open accounts there.” See Memorandum, at 1. But this cannot be true. LPL cannot make the *post hoc* inference that because some customers followed these advisors to LPL they authorized the unsecure transfer, retention, use, and sharing of their sensitive personal information. Which information did the customers authorize the advisors to retain? In what ways were the advisors authorized to use this information? Importantly, where did the customers authorize that the advisors could store their sensitive information? With whom did the customers authorize the advisors to share their information?

Do these customers know that their advisors—and in some cases the advisors’ assistants or other team members—may have transferred and may still possess confidential personal information relating to these customers and, in some cases, their account beneficiaries, stored on unsecured devices or repositories, such as the advisors’ personal email accounts or physical devices? Doubtful. Do these customers know that the Bulk Upload Tools in which their sensitive information was retained were transmitted via unsecure personal email addresses, and may still reside in those email repositories?⁷

What’s more, Ameriprise has learned that several of these advisors’ unsecured email addresses have been identified as compromised email addresses to which unknown third parties have access through subsequent data breaches or hacking. See Declaration of J. Jorgensen, at paras 12-15. John Jorgensen is an independent forensic examiner whose declaration details the process by which he

⁷ The Stipulated Order requires forensic review of the Bulk Upload Tool users’ personal devices and digital repositories to ensure appropriate and permanent deletion of customer information from those advisors’ personal possession.

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1 identified whether the email addresses used to transfer the Bulk Upload Tools were
2 compromised. *See id.* Many of the relevant email addresses have been compromised
3 via one or more breaches or hacks, including three that had a combination of both
4 the email address and password exposed to unknown third parties. *See id.* at paras
5 13-15. Mr. Schwartz, who filed a Declaration in Support of LPL’s Motion for
6 Temporary Restraining Order, is one such individual whose email address and
7 password have been compromised in one or more hacks or data breaches, and
8 therefore it is believed that unknown third parties had access to his email address.
9 *See id.* at paras 14-15.

10 LPL’s contention to this Court is that the retention, use and sharing of
11 sensitive information has been authorized by these customers. Not so. The sensitive
12 information associated with these impacted individuals, regardless of where their
13 accounts are now, was sourced without authorization from Ameriprise books and
14 records that were attached to Ameriprise customer relationships, and therefore
15 Ameriprise had a duty to inform these individuals—much like this Court had
16 previously recognized. Further, the customers certainly did not authorize any
17 advisors, merely by means of transferring their accounts to the advisors at LPL, to
18 retain their information on their personal devices or email repositories, which is why
19 the Stipulated Order contemplates a review of such devices and repositories.

20 4. The Notice Is Truthful And Appropriate

21 As a threshold matter, the contents of the Notice sent by Ameriprise are
22 truthful and accurate and do not constitute defamation. LPL takes issue with the fact
23 that the introductory paragraph in the Ameriprise Notice differs from certain prior
24 notices Ameriprise sent on different breach issues. Would LPL have really preferred
25 that Ameriprise simply indicate in the Notice, as it suggests in its brief⁸ “I am
26 writing to inform you of an incident involving your personal information.
27

28 ⁸ *See Memorandum*, at 6-7.

1 Unfortunately, it has been determined that there has been unauthorized access to
2 your information.”? Of course not. That would have created considerable confusion,
3 particularly for former Ameriprise customers who are now LPL customers. Instead,
4 Ameriprise appropriately included a simple factual reference to LPL – i.e., “*Your*
5 *former Ameriprise Financial advisor left Ameriprise for LPL Financial...*” so
6 recipients of the Notice would have the necessary context to understand what was
7 being communicated to them. This is consistent with the thoughtful approach that
8 Ameriprise takes in communicating with its customers, whether current or former.

9 Moreover, there is no requirement for Ameriprise to simply copy language of
10 a prior notice on a different breach issue, nor does LPL get to dictate how, when, or
11 why Ameriprise informs Ameriprise customers (whether current or former) on what
12 happened to their data.

13 LPL tries to draw a distinction between verbiage used in the prior notice sent
14 only to Ameriprise customers and language used in the Notice at issue, which was
15 also sent to current customers of LPL. LPL fails to mention, however, that the
16 Notice at issue in this case was sent with the same verbiage to *all impacted*
17 *individuals*, whether they are current Ameriprise customers or otherwise.

18 LPL complains that Ameriprise refuses to tell LPL which LPL account
19 holders the Notice was sent to or what the Notice actually said. This is misleading at
20 best.

21 First and foremost, as Ameriprise has informed LPL, Ameriprise has no way
22 of knowing who is or is not an LPL customer at this time. Second, Ameriprise is not
23 simply going to give LPL—its competitor—a list of all Notice recipients, which
24 would include many current Ameriprise customers. This is information LPL does
25 not currently have. Ameriprise suspects that LPL wants this information so that it
26 can use it to reach out to Ameriprise’s customers. LPL already has the names of all
27 Notice recipients because the names were sourced from the Bulk Upload Tools
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1 produced by LPL to Ameriprise on January 24, 2025. Third, Ameriprise has already
2 given LPL a copy of the Notice sent to all customers. LPL knows exactly what the
3 letter says. Importantly, Ameriprise has no way of knowing who LPL’s customers
4 are, and therefore cannot provide a list of such customers. As LPL already has all of
5 the information contained within the Bulk Upload Tools, it could easily cross-
6 reference that information against its own customer list if it felt so compelled.

7 LPL does not have to “correct Ameriprise’s lie.” Ameriprise did not lie. LPL
8 states that “account holders are receiving Ameriprise’s Notice and being falsely led
9 to believe that their personal information was disclosed without authorization and is
10 at risk.” *See* Memorandum, at 2. The Notice does not say that the information is “at
11 risk”—that is LPL’s grandstanding. The Notice does, however, state that
12 information was disclosed without authorization, which is the truth, as described
13 above. At the time the advisors in question took the sensitive information and shared
14 it with LPL, it was transmitted without the customers’ authorization. Moreover, as
15 indicated above, Ameriprise referenced in the introductory paragraph of the Notice
16 the advisors’ transitions to LPL to provide objective and clear context to the Notice
17 recipients.

18 Moreover, Ameriprise did not blindly send the Notice to impacted
19 individuals. Ameriprise sent the Notice in compliance with the data breach laws of
20 forty-seven states. *See* Declaration of Jennifer Swihart. All fifty states, the District
21 of Columbia and Puerto Rico, have data breach laws that require organizations to
22 notify individuals when a data breach affects their personal information (“PI”). The
23 particular breach at issue in this case affected individuals in forty-seven different
24 jurisdictions. The definition of protected PI varies by state, but at a minimum, state
25 laws typically define PI to include an individual's first name or initial and last name,
26 and in some cases other identifiers, when one or more of the following specified
27 personal data elements is present:

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- 1 • Social Security number;
- 2 • Driver's license or state identification card number; and/or
- 3 • Financial account, credit card, or debit card number in combination
- 4 with any required security code, access code, or password that permits
- 5 access to an individual's account.

6 Ameriprise meticulously applied the specific requirements of each
 7 jurisdiction to ensure proper notification. This involved understanding the breach
 8 notification requirements including the types of data triggering notification, the
 9 thresholds for notification, and the timelines for reporting breaches.

10 In addition to client name, address, email address, and phone number (data
 11 elements that would have been permissible for transition purposes had the advisors
 12 complied with the Protocol), the PI involved in this breach involved disclosure of
 13 the following categories of information for all impacted individuals: social security
 14 number, date of birth, and account number; and disclosure of bank account
 15 information for some impacted individuals. Along with the customer identities, the
 16 disclosure of these categories of PI constituted a data breach. *See* Declaration of
 17 Jennifer Swihart.

18 Accordingly, the Notice sent by Ameriprise was not only appropriate, but
 19 entirely truthful and its contents do not constitute defamation.

20 **III. Legal Standard**

21 To obtain injunctive relief, LPL must establish: (1) a likelihood of
 22 success on the merits; (2) a likelihood of irreparable harm to plaintiff without
 23 preliminary relief; (3) that the balance of equities favors it; and (4) that an injunction
 24 is in the public interest. *See Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008).
 25 As the Court knows, injunctive relief is an “extraordinary remedy”; accordingly, it
 26 may be awarded only “upon a clear showing that the plaintiff is entitled to such
 27 relief.” *Id.* at 22. “This ‘clear showing’ requires factual support beyond the
 28

1 allegations of the complaint.” *CI Games S.A. v. Destination Films*, No. 16-cv-05719,
2 2016 U.S. Dist. LEXIS 189118, at *35 (C.D. Cal. Oct. 25, 2016) (citing *Flynt*
3 *Distrib. Co. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984)).

4 When a party fails to submit sufficient evidence to substantiate its allegations,
5 as here, its request for relief fails. *See Takiguchi v. MRI Int’l, Inc.*, 611 F. App’x
6 919, 921 (9th Cir. 2015) (“[T]he mere allegations of a complaint will never suffice
7 to establish the prerequisites for obtaining a preliminary injunction[.]”).

8 “Irreparable harm is the single most important prerequisite for the issuance of
9 a preliminary injunction Accordingly, the moving party must *first demonstrate*
10 *that such injury is likely* before other requirements for the issuance of an injunction
11 will be considered.” *Amylin Pharms., Inc. v. Eli Lilly & Co.*, No. 11-CV-1061, 2011
12 U.S. Dist. LEXIS 125993, *3 (S.D. Cal. Jun. 8, 2011) (emphasis added).

13 “Conclusory affidavits are insufficient to demonstrate irreparable harm.” *Suzhou*
14 *Angela Online Game Tech. Co. v. Snail Games USA, Inc.*, No. 21-cv-09552, 2022
15 U.S. Dist. LEXIS 20164, at *19 (C.D. Cal. Jan. 31, 2022) (citing *Am. Passage*
16 *Media Corp. v. Cass Commc’ns, Inc.*, 750 F.2d 1470, 1473 (9th Cir. 1985)).

17 Further, LPL seeks a mandatory injunction: the provision of information to LPL.
18 Dkt. 1 at 22. *See Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571
19 F.3d 873, 879 (9th Cir. 2009) (“A mandatory injunction orders a responsible party to
20 take action.”) (quotation marks and citation omitted). Mandatory injunctions are
21 “particularly disfavored,” “are not granted unless extreme or very serious damage
22 will result[,] and are not issued in doubtful cases or where the injury complained of
23 is capable of compensation in damages.” *Id.* (quotation marks and citations omitted).
24 A movant seeking a mandatory injunction faces a heightened burden of proof, and
25 its request should be denied “unless the facts and law clearly favor the moving
26 party.” *Coltharp v. Herrera*, 584 F. App’x 334, 336 (9th Cir. 2014) (citation
27 omitted).

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1 **IV. Argument**

2 Ameriprise has not made any defamatory statements. More importantly for
3 the purposes of this Court’s evaluation of LPL’s Motion, and aside from any
4 outreach Ameriprise may receive from impacted individuals in response to the
5 Notice, Ameriprise does not currently plan on making any further statements
6 regarding the data breach to the individuals identified on the Bulk Upload Tools.
7 Ameriprise already sent its Notice on April 8, 2025 as contemplated by the
8 Stipulated Order, fulfilled its obligations to its customers (current and former), and
9 complied with the data breach laws of 47 states. Therefore, on this point, there is no
10 conduct for the Court to enjoin.

11 Moreover, there is no requirement that Ameriprise provide to LPL the
12 identities of the individuals to whom it sent Notices. LPL is essentially seeking
13 discovery—which it can get later in the underlying FINRA arbitration case—via the
14 extraordinary remedy of a public temporary restraining order. LPL undercuts its
15 request by its admission in its own brief that the information it seeks as part of its
16 requested injunctive relief is discoverable: “[t]he information which LPL asks the
17 Court to order Ameriprise to provide, is information which would be the appropriate
18 subject of discovery in this action.” See Memorandum, at 18. Further, if LPL’s
19 customers are raising concerns, LPL can—as it has already likely done—assuage
20 those concerns.⁹ The mandatory injunction sought by LPL is an extreme remedy and
21 is not appropriate given the circumstances.

22 First, as the Notice was contemplated by both parties in the Stipulated Order,
23 and it was not defamatory, LPL has no likelihood of succeeding on its merits.
24 Second, there is no harm here, let alone irreparable harm. As the Notice was already
25 sent, there is no threat of immediate irreparable harm, and providing the names of

26 _____
27 ⁹ However, any communication by LPL that interfere with the spirit of the breach
28 notification or disparages Ameriprise would be grounds for intervention by the
Court.

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1 individuals to whom the Notice was sent does nothing to prevent future harm, if any,
2 to LPL. Third, as the Notice was contemplated by the Stipulated Order and its
3 contents were truthful it would be inequitable to enter a public injunctive order
4 against Ameriprise ordering it to reveal the identities of even its own customers to
5 LPL, as LPL seeks. Alternatively, as Ameriprise has no way of knowing which of
6 the individual recipients are currently customers of LPL, Ameriprise could not
7 comply with even a “narrow” order. Fourth, and finally, an injunction requiring
8 Ameriprise to turn over the names of its customers can hardly be said to serve the
9 public interest. These arguments are set out in more detail below.

10 1. LPL Has Not Shown That It Is Likely To Succeed On The Merits Of Its Claims

11 A. The Notice Was Not Defamatory

12 LPL is not likely to prevail on its defamation claim because the Notice was
13 not false or defamatory in any way, nor did it cause any injury or special damage.
14 As a threshold, LPL lacks standing to even bring a claim for defamation, as none of
15 the statements within the Notice were about LPL itself, other than the contextual and
16 factual statement that the customers’ financial advisor at one point left Ameriprise to
17 join LPL. Therefore, Ameriprise did not make any statement about LPL, false or
18 otherwise. The statements within the notice that LPL complains about were
19 regarding the actions of the individual financial advisors at issue.¹⁰

20 In any event, to succeed on its defamation claim, LPL must prove that
21 Ameriprise’s notice contained a “false and unprivileged publication that exposes the
22 plaintiff to hatred, contempt, ridicule, or obloquy, or which causes him to be
23 shunned or avoided, or which has a tendency to injure him in his occupation.”
24 *McGarry v. Univ. of San Diego*, 154 Cal. App. 4th 97, 112, 64 Cal. Rptr. 3d 467,
25 478 (2007) (quoting Civ. Code, § 45.). LPL is not being ridiculed, shunned, or
26

27 ¹⁰ Of course, LPL encouraged and was complicit in that wrongdoing, but Ameriprise
28 did not inform customers of that misconduct in the Notice.

1 avoided—nor is it being injured.

2 Further, a statement is only defamatory when it tends “directly to injure [a
3 person] in respect to his office, profession, trade or business, either by imputing to
4 him general disqualification in those respects which the office or other occupation
5 peculiarly requires, or by imputing something with reference to his office, trade,
6 profession, or business that has a natural tendency to lessen its profits[.]” *see id.*
7 (quoting Civ. Code, § 46, subd. 3.). Nothing in Ameriprise’s Notice “imputed
8 general disqualification” as to what LPL’s “occupation peculiarly requires.” Further,
9 nothing in the Notice imputed something that has a “natural tendency to lessen
10 [LPL’s] profits.”

11 Accordingly, no defamatory statement exists, and LPL cannot hope to
12 succeed on the merits of its defamation claim.

13 B. The Statements Within The Notice Are Privileged

14 Ameriprise enjoys qualified privilege in sending its data breach notification.
15 A breach notification issued under a legal duty would be viewed as occurring on a
16 “privileged” occasion. Under the doctrine of qualified privilege, a statement made in
17 the performance of a legal, moral, or social duty to a party with a corresponding
18 interest is protected from defamation liability (absent malice). Breach notices clearly
19 fit this paradigm: the organization has a legal duty to warn affected individuals or
20 regulators, and the recipients (whether the individuals whose data was breached, or
21 authorities overseeing data protection) have a legitimate interest in the information.
22 *See Swift & Co. v. Gray*, 101 F.2d 976, 980 (9th Cir. 1939); *Easley v. Ameriprise*
23 *Fin., Inc.*, 2020 WL 5881820, at *4 (D. Nev. Sept. 11, 2020) (finding data breach
24 notice to be privileged). In *Swift*, the Court stated that the “general rule on the
25 question of qualified privilege” is as follows:

26 Qualified privilege relates to private interests; and comprehends
27 communications made in good faith, without actual malice, with
28 reasonable or probable grounds for believing them to be true, upon a
subject matter in which the author of the communication has an interest,

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1 or in reference to which he has a duty, public, personal, or private, either
2 legal, judicial, political, moral, or social, made to a person having a
3 corresponding interest or duty.

4 *Swift*, 101 F.2d, at 980.

5 In this case, Ameriprise made a good faith breach notification without actual
6 malice and had reasonable and probable grounds for believing its statements to be
7 true. Further, Ameriprise made its statements in reference to a legal duty—pursuant
8 to the laws of 47 states—as well as private and moral duties to its customers.
9 Accordingly, the statements within the Notice enjoy qualified privilege and
10 therefore cannot form the basis for claims of defamation or tortious interference.

11 C. The Notice Was Truthful, and Truth is an Ultimate Defense To A Defamation
12 Claim

13 The statements contained within the Notice sent by Ameriprise are all true,
14 and an essential component of a defamation claim is the existence of falsehood. *See*
15 *Reed v. Gallagher*, 248 Cal. App. 4th 841, 855 (2016)). Substantial truth thus
16 constitutes a defense to claims of defamation and intentional interference based on
17 allegedly injurious falsehoods under California law. *See Carver v. Bonds*, 135
18 Cal.App.4th 328, 344 (2005) (“California law permits the defense of substantial
19 truth, and thus a defendant is not liable if the substance of the charge be proved
20 true.”) (internal quotation marks omitted).

21 The first statement that LPL claims is false is that the advisors in question
22 “shared certain confidential personal information about you and your account(s) that
23 exceeded the limited scope of information your former advisor was permitted to use
24 for transition purposes” and that the permissible scope was limited to “name,
25 address, email address, phone number and account title.” *See Memorandum*, at 11
26 (citing Notice). These statements, however, are demonstrably true. The advisors in
27 question did in fact share confidential information relating to Ameriprise customers
28 with LPL without prior authorization of those customers. The information shared far

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1 exceeded the scope allowable under the Privacy Notice, which is the customer-
2 facing document; customers do not see and are not privy to the terms of the
3 advisors’ agreements with Ameriprise. The permissible scope allowable by the
4 Privacy Notice, and indeed by the Protocol, is limited to those five categories of
5 information. For the reasons stated above in Subsection II.A,¹¹ the Addenda do not
6 control anyway and do not allow the advisors in question to take the information
7 they took.

8 The second statement contained within the Notice that LPL claims is false is
9 that Ameriprise “recently became aware of this unauthorized disclosure.” *See*
10 Memorandum, at 12 (citing Notice). This Court already knows that the statement in
11 the Notice is true and accurate. The whole reason Ameriprise came to this Court last
12 year was to identify the users of the Bulk Upload Tools and identify the customers
13 whose information may have been misappropriated. Only through its action before
14 this Court did Ameriprise obtain from LPL that critical information. All Ameriprise
15 knew before the production of the Bulk Upload Tool in September of 2024 was that
16 LPL provided a tool to advisors to store and take customer information. Without
17 obtaining the identities of the relevant financial advisors and without obtaining the
18 Bulk Upload Tools themselves, Ameriprise could not have possibly known to whom
19 it was required to send breach notifications.

20 As none of the statements alleged to be false are actually false, but are instead
21 true or at least substantially true, they cannot be considered defamatory and LPL’s
22 claim yet again fails.

23 These statements do not have a natural tendency to injure LPL. A statement is
24 actionable only when it is "of and concerning" the plaintiff. *See Dickinson v. Cosby*,
25 37 Cal. App. 5th 1138, 1160, 250 Cal. Rptr. 3d 350, 367 (2019). This requirement
26 limits the right of action to those who are the direct object of a statement and denies
27

28 ¹¹ *See supra* pages 3-7.

1 it to those who complain of nonspecific statements that they feel caused them harm.

2 To satisfy the “of and concerning” requirement, a plaintiff must show the
3 statement “expressly mentions her or refers to her by reasonable implication.”
4 (quoting *Blatty v. New York Times Co.* (1986) 42 Cal.3d 1033, 1046, 232 Cal.Rptr.
5 542, 728 P.2d 1177). The statements identified by LPL do not expressly identify
6 LPL as having done anything.

7 Further, a plaintiff must also show the statement was understood by at least
8 one third person to have concerned the plaintiff. *See Bartholomew v. YouTube, LLC*
9 (2017) 17 Cal.App.5th 1217, 1231, 225 Cal.Rptr.3d 917; *see Neary v. Regents of*
10 *University of California* (1986) 185 Cal.App.3d 1136, 1147, 230 Cal.Rptr. 281
11 (“For publication to occur the defamatory matter must be communicated to a third
12 party who understands the defamatory meaning and its applicability to the
13 plaintiff.”).

14 Importantly, none of the declarations submitted by LPL in this matter indicate
15 that anybody interpreted any of the statements to be about LPL. None of the
16 Declarations contain any reference—which would constitute hearsay anyways—to
17 either himself or any clients he services interpreting any of the statements made in
18 the Notice to be about LPL.

19 Because the statements LPL places at issue are not “of and concerning” LPL,
20 and because LPL has offered no proof that the statements were interpreted to be
21 about LPL, LPL has not been damaged at all and further has no right to bring a
22 defamation claim.

23 Based on the foregoing, LPL is not likely to succeed on the merits of its
24 defamation claim, and therefore its requested relief should be denied.

25 D. Ameriprise Did Not Tortiously Interfere With LPL’s Customer Relationships

26 Generally, “if a defendant's conduct was lawful and undertaken to enforce its
27 rights, it cannot be held liable for intentional interference with a contract even if it
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1 knew that such conduct might interrupt a third party's contract.” *SIC Metals, Inc. v.*
2 *Hyundai Steel Co.*, 442 F. Supp. 3d 1251, 1256 (C.D. Cal. 2020). This principle alone
3 suggests that LPL is not likely to succeed on the merits of its tortious interference
4 claim.

5 Ameriprise took reasonable steps and made a good faith determination that a
6 data breach notice must be sent based on its lawful compliance with the data breach
7 laws of forty-seven states. LPL’s allegation is that “Ameriprise tortiously interfered
8 with LPL’s relationship with its customers when it sent the Notice.” *See*
9 Memorandum, at 15. But Ameriprise has already established that LPL agreed in the
10 Stipulated Order that Ameriprise could send a data breach notification after its review
11 of the Bulk Upload Tools. LPL’s position is one of bad faith. Either it negotiated the
12 Stipulated Order while planning to sue Ameriprise in the future for sending a data
13 breach notification, or it is suing Ameriprise for sending a data breach notification
14 despite its prior agreement via Stipulated Order contemplating the same.

15 LPL ignores that Ameriprise sent the same Notice to all impacted individuals—
16 not just customers of LPL. Ameriprise did not target LPL’s customers. Ameriprise
17 does not know who is or is not a customer of LPL. Ameriprise certainly did not act
18 intentionally to disrupt any relationship between a customer and LPL, and LPL has
19 barely even pled, let alone proven, any disruption. Claims for tortious interference fail
20 where parties cannot prove actual disruption. *See Edo Reconnaissance & Surveillance*
21 *Sys., Inc. v. Phoenix Logistics, Inc.*, No. 05-02789JF(PT), 2006 WL 2038058, at *9
22 (N.D. Cal. July 17, 2006) (granting motion to dismiss where movant failed to “specify
23 any actual disruption of the particular relationships with the named foreign countries
24 or show how economic harm resulted from the alleged interference.”); *LucasArts Ent.*
25 *Co. v. Humongous Ent. Co.*, 870 F. Supp. 285, 291 (N.D. Cal. 1993) (granting motion
26 for summary judgment “on the ground that Electronic Arts has failed to show any
27 evidence of actual disruption.”).

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1 LPL merely makes the conclusory statement that its “relationships were
2 actually disrupted by the Notice”, but it does not explain how. *See* Memorandum, at
3 16. LPL does not allege that customers have made complaints about LPL, nor does it
4 allege that customers have terminated their relationship. No actual disruption has
5 occurred. Additionally, nor has any economic harm befallen LPL.

6 Not only has LPL failed to show or prove actual disruption, but even if it had,
7 LPL has utterly failed to demonstrate how it has suffered or will suffer any economic
8 harm. LPL knows this, which is why it largely ignores this critical element. LPL’s
9 analysis as to economic harm is as follows: “[f]inally, there has been economic harm
10 to LPL. As discussed below, LPL’s goodwill has been . . . damaged.” LPL does not
11 even allege that it is Ameriprise or Ameriprise’s actions that have caused the
12 economic harm, nor does it identify what the harm is. LPL simply refers to its
13 goodwill, which has not been damaged; but even if it had, that is not an economic
14 harm.

15 Accordingly, LPL has no likelihood of succeeding on the merits of its tortious
16 interference claim, which is bound to fail for the foregoing reasons.

17
18 2. *LPL Has Not Suffered, And Will Not Suffer, Irreparable Harm In The*
Absence Of An Injunction

19 This Court’s analysis can begin and end with LPL’s failure to establish
20 that it is likely to suffer irreparable harm. *See Singleton v. Kernan*, No. 16-cv-02462,
21 2017 U.S. Dist. LEXIS 180549, *8 (S.D. Cal. Oct. 31, 2017) (“Where a plaintiff
22 fails to demonstrate a likelihood of irreparable harm without preliminary relief, the
23 court need not address the remaining elements of the preliminary injunction
24 standard.”) (citing *Ctr. for Food Safety v. Vilsack*, 636 F.3d 1166, 1174 (9th Cir.
25 2011)). LPL fails to meet its burden for at least four reasons, set forth below.

26 There is no threatened or immediate irreparable harm here requiring
27 injunctive relief. Ameriprise already sent the Notice. Ameriprise is not going to send
28

1 another Notice. What conduct is there for the Court to enjoin? Even if there was
2 continuing irreparable harm—which there is not—an injunction requiring
3 Ameriprise to provide the names of the recipients of the Notice does nothing to
4 address that alleged irreparable harm.

5 For the Court to find irreparable harm exists here, the Court must find that the
6 Notice was defamatory specifically as to LPL, which it was not, and that the
7 allegedly defamatory nature of the Notice resulted in cognizable damage to
8 customer goodwill, which it did not. Again, the Notice does not even claim that LPL
9 did anything wrong. Though, of course, Ameriprise has alleged in the related
10 lawsuit that LPL did engage in misconduct by providing the Bulk Upload Tool to
11 the advisors in the first place with instructions to improperly take all of this sensitive
12 information at issue. However, the Notice sent to customers does not contain that
13 information, which still would have been true. The Notice was intended to be
14 facially neutral, and it was.

15 Moreover, LPL’s alleged “injuries,” even if taken at face value, are entirely
16 speculative. The Ninth Circuit has held that “[s]peculative injury does not constitute
17 irreparable injury sufficient to warrant granting a preliminary injunction.”
18 *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988). Here,
19 LPL’s allegation is the height of unsupported speculation, as it refers vaguely to the
20 alleged loss of customer goodwill based on allegedly defamatory statements that are
21 not even specifically related to LPL. *See Regions Bank*, 2020 U.S. Dist. LEXIS
22 221452, at *12 (rejecting alleged harm from advisor’s departure with customer
23 information as “mostly speculative”). Accordingly, LPL has not demonstrated that it
24 has suffered or will suffer irreparable harm and, on those grounds, alone its motion
25 fails.

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1 3. The Balance of Equities Weighs In Favor Of Denying LPL’s Motion For Temporary Restraining Order

2 This Court’s balancing of the equities reaffirms that an injunction should not
3 be granted here. There is no harm to LPL to even balance. Ameriprise sent a data
4 breach notification, which was contemplated by the parties in the Stipulated Order,
5 and the Notice itself was truthful and accurate.

6 On the other hand, entry of an injunctive order, particularly a mandatory one
7 requiring Ameriprise to take some action, is an extraordinary remedy. Moreover, as
8 drafted, the relief sought by LPL would require Ameriprise to identify all customers
9 who received the Notice, including Ameriprise customers, which is frankly none of
10 LPL’s business.

11 4. Entry Of An Injunction Would Not Serve The Public Interest

12 The Notice itself served the public interest. An injunction would not. The
13 Notice identified that advisors took more information than authorized and brought it
14 to LPL. That is particularly concerning for customers, particularly for customers of
15 Ameriprise who never authorized that data to be taken out of Ameriprise.
16 Ameriprise was not required to create different breach notifications for customers
17 and non-customers.
18

19 Further, regardless of whether the recipients are customers of LPL and have
20 since authorized LPL to safeguard their information, the customers are entitled to
21 know that their information might have once been at risk or could still be at risk.

22 Accordingly, the public interest would not be served by entry of an
23 injunction.

24 **V. Conclusion**

25 Based on the foregoing, Ameriprise respectfully requests that the Court deny
26 LPL’s Motion for Temporary Restraining Order.
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SHUMAKER, LOOP & KENDRICK, LLP

DATED: April 18, 2025

By: s/ Michael S. Taaffe
Michael S. Taaffe
Attorneys for Plaintiff AMERIPRISE
FINANCIAL SERVICES, LLC

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DATED: April 18, 2025

By: s/ Daniel S. Agle
Greg A. Garbacz
Daniel S. Agle
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FINANCIAL SERVICES, LLC

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CERTIFICATE OF SERVICE

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I hereby certify that on April 18, 2025, 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/ Maria E. Suarez-Lopez

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