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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Ameriprise Financial Services, LLC, Plaintiff, vs. Jared Bryce Roskelley, Matthew Joseph Tinyo, Kyle Lee Robertson, and LPL Financial LLC, Defendants.	NO. 2:25-cv-00455-SMB **DEFENDANT LPL FINANCIAL LLC'S OPPOSITION TO PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND AN ORDER PERMITTING EXPEDITED DISCOVERY** (Assigned to Hon. Susan M. Brnovich)

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Among large broker-dealers like LPL and Ameriprise, the movement of financial advisors between firms is a given: broker-dealers regularly recruit high-performing advisors, who move between multiple firms over their careers as they identify more attractive platforms through which to service their customers.[1] Decades ago, firms fought to combat this movement through extreme litigation tactics, rushing into court the moment an advisor resigned and seeking a restraining order prohibiting them from taking their customers. This constant litigation solved nothing – and it hurt retail customers, who suddenly found themselves unable to talk to their financial advisors. Most firms came to their senses, recognizing the value in ensuring that advisors can move between firms in a smooth and orderly fashion – and the harm done to investors by trying to prevent it.

But not Ameriprise. While Ameriprise, like many other major broker-dealers, has entered into an industry agreement (known as the Protocol for Broker Recruiting) with the express purpose of *avoiding* litigation, it gives that agreement only lip service. In a deeply misguided and unfortunate attempt to stop the steady outflow of advisors, Ameriprise has taken to filing serial litigation against advisors that depart it for LPL. Ameriprise does so based on alleged conduct that took place while the advisor was under *its* supervision, about which LPL could not possibly—and does not—have knowledge. And it does so despite its express agreement to act in good faith, having filed seven other actions similar to this one over the last year without making any attempt to address them with LPL before suing. Ameriprise does not attempt to work in good faith, despite its agreement to do so, because it *does not want* to avoid litigation.

Ameriprise is chasing headlines, not a genuine resolution of purported legal issues.

[1] "LPL" refers to LPL Financial LLC. "Ameriprise" refers to Ameriprise Financial Services, LLC. The "Individual Defendants" refers to Defendants Jared Bryce Roskelley, Matthew Joseph Tinyo, and Kyle Lee Roberston.

Its claims here, like in the other cases it has filed, are meritless. Ameriprise has rushed to burden this Court and the parties with a TRO based on breathless accusations. But they are empty. The advisors retained publicly-available customer information pursuant to the Protocol from Ameriprise. They did not send it to anyone else at LPL, and LPL is not otherwise in possession of *any* information originating from Ameriprise. None. And Ameriprise is plainly not at risk of irreparable harm based on the routine act of advisors calling their own customers (a list of whom were left with Ameriprise) and asking if these customers will join them at their new firm – an event that occurs with every transfer under the Protocol.[2] Ameriprise's Motion for a TRO should be denied, and the parties should be directed to FINRA arbitration to resolve the merits of their dispute.

I. FACTUAL BACKGROUND

A. LPL Champions Advisor Independence. Ameriprise Tramples It.

About one in seven FINRA-licensed advisors transfers from one firm to another in any given year. Ex. 1 (Declaration of Lisa Roth) ⁋ 18.[3] These financial advisors usually build their customer base over many years, building their books of business through their own sweat equity. *Id.* ⁋ 11. Consequently, both advisors and broker-dealers expect that if an advisor moves to a new firm, they will remain able to service their customers. *Id.* ⁋⁋ 13–16. Advisors understand their customers' relationships to be with *them*, not the broker-dealer that provides back-office administrative and technical support. *Id.* And broker-dealers expect that an advisor will bring their book of business to the new firm (or else there would be no point in recruiting them). *Id.*

[2] Even absent the Protocol, Ameriprise's restrictive covenants are unenforceable against the Individual Defendants.

[3] FINRA-registered financial advisors are known as "registered representatives" or "RRs." LPL refers to them as financial advisors for ease of understanding.

Different firms have taken different philosophies to advisor independence. LPL champions it. LPL believes advisors should have freedom to choose the business model and technology they need to serve their customers. In the advisor marketplace, the services it offers (and the payout rate it provides to advisors) are attractive on their own merits.

Other firms take a different approach. They assert that *they*, not the advisor, own the customer relationship and the customer's information. Ameriprise takes this approach to its extreme (and past the point the law allows): it asserts that the moment an advisor affiliates with it, Ameriprise takes ownership of all of the advisors' customers' information *regardless* of whether the advisor developed those customers for years before ever affiliating with Ameriprise. Ameriprise's Employment Agreement contains a provision stating that, among other things, "client files, lists, and holding pages," as well as "the names, addresses, telephone numbers, and assets and obligations carried in the accounts of Ameriprise's clients" are "confidential, proprietary and trade secret information." *See, e.g.*, Tinyo Employment Agreement (Ex. G to Compl. at pt. 4 (hereinafter the "Confidentiality Covenant")). When an advisor announces they intend to affiliate with another firm, Ameriprise claims they must leave behind the customer base they may have spent decades developing – even if most of those efforts occurred while those advisors were affiliated with another firm. The Confidentiality Covenant states: "Employee also agrees not to use Ameriprise Protected Information for any purpose other than conducting the business of Ameriprise. Employee further agrees that: (a) Employee's use of Protected Information will stop immediately upon the suspension or termination of Employee's employment relationship with Ameriprise[.]" *Id.*

What is more, Ameriprise takes the remarkable stance that when an advisor leaves, they cannot contact Ameriprise customers with whom they had no prior relationship, or

even contact *prospective* Ameriprise customers, for at least a year:

> In recognition and in consideration for continued employment and other benefits, to protect the confidentiality of Ameriprise's client information and goodwill, Employee agrees (a) during the term of Employee's employment with Ameriprise, and (b) for the longer of one year after termination of employment or until any and all financial obligations of Employee to Ameriprise are satisfied, Employee shall not, either directly or indirectly, for Employee's own benefit, or on behalf of or in conjunction with any person or entity, solicit, encourage, induce or attempt to induce any client or prospective client to terminate or otherwise change or limit their relationship with Ameriprise or its affiliates.

Id. at pt. 5 (the "Non-Solicitation Covenant").[4] This, too, is not legally permitted.

B. The Broker Protocol Exists to Stop Precisely This Type of Litigation

Given advisors' steady movement between firms, the risk for litigation is obvious. And, indeed, in the early 2000s litigation between firms was the norm. *See* Roth Decl. ¶ 19. Firms would do exactly what Ameriprise does here: rush into court seeking to stop departing advisors from taking customer information with them and calling their customers to ask them to join their new firm. *Id.*

To stem the tide of litigation, in 2004, the Protocol for Broker Recruiting was formed. *Id.* ¶ 20; *see* Ex. A to Roth Decl. The Broker Protocol, of which Ameriprise and LPL are both members, was designed to stop precisely the type of litigation Ameriprise brings here. *Id.* The Protocol recognizes that advisors move between firms, that they do so with the full intent and expectation that they will retain many of their customers, that signatory firms are on both the departing and receiving end of advisor transitions, and that litigation over these industry realities is counter-productive. *Id.* ¶ 23. The Protocol thus establishes an orderly and evenhanded process by which an advisor can depart a firm and

[4] LPL questions whether Ameriprise clearly and fairly discloses its zealous position to advisors when it recruits them and looks forward to learning as much in discovery.

join a new firm without either the advisor or the new firm being forced to rush to court to defend themselves. *Id.* ¶ 27. The designated transition procedure is:

> When RRs move from one firm to another and both firms are signatories to this protocol, they may take only the following account information: client name, address, phone number, email address, and account title of the clients that they serviced while at the firm (the "Client Information") and are prohibited from taking any other documents or information. Resignations will be in writing delivered to local branch management and shall include a copy of the Client Information that the RR is taking with him or her.[5] . . . In the event that the firm does not agree with the RR's list of clients, the RR will nonetheless be deemed in compliance with this protocol so long as the RR exercised good faith in assembling the list and substantially complied with the requirement that only Client Information related to clients he or she serviced while at the firm be taken with him or her.

Protocol at 1. In other words, an advisor must deliver a written resignation letter to branch management identifying the customer information she intends to take to her new firm. The advisor is deemed in compliance so long as she "exercised good faith in assembling the list and substantially complied" with the requirement that she only take her customers' information. The advisor may then take the five delineated items of customer information (deemed "Client Information" or "Protocol Information" within the industry), solicit her customers, and face no liability for doing so. Thus, where an advisor substantially complies with the Protocol's requirements in good faith, the departing firm cannot seek to enforce restrictive covenants related to customer information or solicitation against her.[6]

The Protocol also specifies the actions the new firm must take: limit use of the Protocol Information "to the solicitation by the RR of his or her former clients" and not

[5] This copy of client information is referred to in the industry as the "Protocol List."

[6] The Protocol does not prohibit an advisor from sending physical or electronic client records to that client while the advisor is affiliated with, and under the supervision of, a firm they might someday depart.

"for any other purpose." *Id.* If it does so, it too faces no "monetary or any other liability" "by reason of the RR taking the [Protocol List] or the solicitation of the clients serviced by the RR at his prior firm[.]" *Id.*

Given that the purpose of the Protocol is to avoid litigation, it does not require perfection or strict compliance: an advisor is "deemed in compliance with this protocol so long as the RR exercised *good faith* in assembling the list and *substantially complied* with" its requirements. Protocol at 1 (emphasis added).[7] The parties to the Protocol expressly "agree to implement and adhere to it in good faith." *Id.*

In this spirit of good faith, and to accomplish the goal of the Protocol, firms have a process by which to work out advisor transition issues without resorting to litigation. Each firm (including LPL and Ameriprise) designates a "Protocol Contact" in their letters joining the Protocol. Roth Decl. ¶ 25. If a firm has a concern about a departing advisor's transition under the Protocol, the established industry process is to reach out to the receiving firm's Protocol Contact to discuss and attempt to resolve the issue. *Id.* ¶ 26.

Unfortunately, Ameriprise refuses to abide by the Protocol – much less attempt, in good faith, to avoid litigation. It does not reach out to LPL's Protocol Contact before filing suit; rather, it appears *eager* to sue its own departing advisors and attempts to tag LPL with liability based on alleged conduct by the advisor that occurred while they were under *Ameriprise's* supervision. Advisors are taking notice of Ameriprise's bad-faith attempt to deprive them of their customers and then sue them on their way out.[8]

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[7] Here and elsewhere, Ameriprise has asserted that the terms of the Protocol "must be strictly followed in order to benefit from the protections of the Protocol." Compl. ¶ 19. The asserted need for "strict compliance" is belied by the language of the Protocol itself.

[8] Ameriprise marries these suits with statements to the press attempting to tarnish its own departing advisors and LPL. *See, e.g.*, https://www.advisorhub.com/ameriprise-keeps-up-

C. LPL Does Not Permit Departing Ameriprise Advisors to Retain Any Information Besides Protocol Information

Advisors who join LPL are principally independent contractors.[9] In light of this status, LPL does not provide these incoming advisors legal advice in connection with their transition – it is not obligated to do so. Nor does it advise an incoming advisor on what customer information they have a right to retain from their prior firm pursuant to their contractual obligations. Exhibit 2 (Declaration of Lauren Seiberling) ¶ 8; Exhibit 3 (Declaration of Melaina Baptiste) ¶ 8. LPL instead expects and relies on the independent advisor to determine what customer information they may bring with them upon their transition. Seiberling Decl. ¶ 10. Therefore, LPL expects that the advisor will review any contracts with their prior firm, the prior firm's privacy notice, whether that firm has signed the Broker Protocol, and applicable regulations. *Id.* To ensure that advisors transition their business in a manner that complies with their valid and binding legal obligations, LPL encourages incoming advisors to consult an attorney ("Outside Counsel") during their transition. *Id.* LPL informs advisors that it expects they will comply with their Outside Counsel's advice regarding how to comply with their contractual obligations, the Broker

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legal-pressure-on-lpl-with-tro-bid-against-arizona-trio/ (last visited Feb. 15, 2025). But these tactics are backfiring. Advisors recognize Ameriprise's strategy for what it is. *See id.* ("There is no true 'practice ownership' or 'independence' at Ameriprise, none!"); ("Ameriprise is making themselves into a running joke. . . . This is taking things to a whole other level. Seems like Ameriprise is going down with the advisors they have right now, with low probability of recruiting other advisors with this bad PR behavior. Kinda gross."); ("Cross Ameriprise off the list of firms you would ever consider moving your business to."); ("Maybe the story should address WHY there is a mass exodus out of Ameriprise. . . . This is the REAL story.").

[9] LPL and Ameriprise both have "employee" and "independent" channels. In the employee channel, advisors are W2 employees of the broker-dealer. In the independent channel, advisors are independent contractors. The Individual Defendants left Ameriprise's employee channel and joined LPL's independent channel.

Protocol, and any other applicable restriction during their transition. *Id.*

With all that said, Ameriprise—unique among firms in the industry—has repeatedly taken issue with the way advisors transition from it to LPL. Accordingly, LPL tells incoming Ameriprise advisors that *regardless* of what their Ameriprise contracts say (and regardless of whether they come from the employee or independent channel), they may *only* retain the five items of customer information set forth in the Broker Protocol. *Id.* ⁋ 13; Baptiste Decl. ⁋ 11. And LPL repeatedly confirms with advisors that they are complying with their obligations to their prior firms. Seiberling Decl. ⁋ 18; Baptiste Decl. ⁋⁋ 14–15. Moreover, LPL does not permit use of any Protocol Information from Ameriprise for any other purpose except contacting prior customers (as the Protocol requires). LPL does all this with the express purpose of attempting to *avoid* disputes like this one with Ameriprise.

To be clear, while LPL is unaware of any advisor—including Messrs. Roskelley, Tinyo, and Robertson—departing Ameriprise not "exercising good faith" or not "substantially complying" with the Protocol (as the terms of the Protocol require), LPL also does not control or direct these individuals. It has no visibility into, or knowledge of, advisors' actions while at their prior firms. While an advisor is registered with another broker-dealer, LPL expects that broker-dealer is supervising the advisor (in accordance with the broker-dealer's regulatory obligations) and addressing any concerns.

D. The Individual Defendants' Transition from Ameriprise to LPL

The Individual Defendants all have many years' experience in the securities industry.[10] As is common, each has moved between firms multiple times. Mr. Roskelley,

[10] Mr. Roskelley and Mr. Robertson have more than two decades of experience in the industry; Mr. Tinyo has seven. The Individual Defendants' histories in the securities industry are reviewable via their publicly available FINRA BrokerCheck reports, which are attached as Exhibits B–D to the Complaint.

for example, has in the last ten years alone moved from Cambridge Investment Research to Raymond James to Ameriprise and now to LPL.[11] The Individual Defendants' transition from Ameriprise to LPL followed the process set forth above. LPL referred Messrs. Roskelley, Tinyo, and Robertson to Outside Counsel and informed them it would not accept any information retained from Ameriprise besides Protocol Information. Seiberling Decl. ¶¶ 17, 18; Baptiste Decl. ¶ 15. The advisors informed LPL of their understanding and agreement. *Id.* LPL thus understands that the Individual Defendants provided Ameriprise with a copy of their Protocol List. And LPL did *not* receive any information originating at Ameriprise from the advisors. Seiberling Decl. ¶ 22; Baptiste Decl. ¶ 16. The advisors did not mail, email, or upload any Ameriprise customer records to LPL – nor did it take receipt of any boxes of such documents. Seiberling Decl. ¶¶ 22, 23; Baptiste Decl. ¶¶ 16, 17. Indeed, an LPL employee even visited the Individual Defendants' office following their transition and saw no Ameriprise customer records in the office (much less boxes of them). Seiberling Decl. ¶ 23; Baptiste Decl. ¶¶ 17, 18. Put simply, ***LPL is not in possession of any information originating at Ameriprise beyond what the advisors themselves retained pursuant to the Protocol.***

II. AMERIPRISE'S ALLEGATIONS

Ameriprise alleges that before their resignations on January 27, 2025, while they were still registered with Ameriprise, the Individual Defendants completed "multiple large print jobs" of "documents containing confidential client information." Compl. ¶¶ 52–55. Ameriprise does *not* assert that LPL had any knowledge of this conduct – and it did *not*. *See* Seiberling Decl. ¶¶ 23–26. By Ameriprise's own assertion, this conduct occurred while the Individual Defendants were still registered with, and supervised by, Ameriprise.

[11] *See* Ex. B to Compl.

Ameriprise further alleges that during this time the Individual Defendants mailed or uploaded materials to their own customers that Ameriprise "believe[s]" contain those customers' confidential information. *Id.* 58. Ameriprise inexplicably asserts this conduct is a "clear violation of the Protocol" and both federal and state trade secrets law. It fails to explain why printing customer records or providing customers with copies of their *own* records breaches the Protocol or any law. Ameriprise makes no factual allegations suggesting LPL knew of, much less directed, this conduct – again, it occurred on Ameriprise's watch.[12]

Ameriprise also asserts this conduct violates either its employment agreement or certain unspecified "policies" – but offers no citation to any provision of any document that would appear to be violated. *See* Compl. ⁋ 61. Nor does Ameriprise explain why it apparently failed to detect or prevent this alleged misconduct at the time given its supervisory obligations over the Individual Defendants.

Based on the volume of pages the Individual Defendants allegedly printed, Ameriprise asserts that "the only conclusion" is that they either retained customer records upon their transition to LPL or shredded the documents. *Id.* ⁋ 68. Ameriprise claims that the latter scenario would "result[] in Ameriprise not being able to service its own clients" – seemingly suggesting that it does not maintain electronic copies of customer records and is thus now in violation of SEC and FINRA books-and-records requirements. *Id.* Ameriprise alleges that "[i]t appears LPL has permitted Roskelley, Tinyo, and Robertson

[12] Ameriprise also argues the advisors pre-solicited clients. The sole specific allegation concerns a customer who asked to open new 529 accounts and was allegedly told to wait. *See* Compl. ⁋ 9. LPL knew nothing about this conversation and certainly did not *direct* it. *See* Seiberling Decl. ⁋⁋ 20, 21; Baptiste Decl. ⁋ 15. In any event, if Ameriprise had a concern regarding this customer, it could (and should) have reached out to LPL's Protocol Contact at any time to discuss and resolve this (or any other) concern.

to retain and use their Ameriprise confidential documents" – but it provides no factual allegations, much less evidence, supporting this groundless accusation. *Id.* ⁋ 81. Nor can it: these allegations are false. *See* Seiberling Decl. ⁋⁋ 14–26.

Ameriprise otherwise says nothing whatsoever about LPL's alleged involvement here. Instead, Ameriprise makes only the vague and unsupported assertion that LPL either "failed and refused to properly instruct Roskelley, Tinyo, and Robertson, regarding their obligations pursuant to the Protocol" or "encouraged and participated in" their alleged conduct. Compl. ⁋ 86. This allegation, too, is made without any evidentiary support – and is patently false. *See* Seiberling Decl. ⁋⁋ 14–26.

III. LEGAL STANDARD

To obtain injunctive relief, Ameriprise must establish: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm to plaintiff without preliminary relief; (3) that the balance of equities favors it; and (4) that an injunction is in the public interest. *See ForeFront Dermatology S.C. v. Crossman*, 642 F. Supp. 3d 947, 950–51 (D. Ariz. 2022) (citing *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008)) (noting a TRO is an "extraordinary remedy," awarded only "upon a clear showing that the plaintiff is entitled to such relief."). Ameriprise has not—and cannot— make such a showing.

IV. AMERIPRISE'S MOTION SHOULD BE DENIED

A. Ameriprise Fails to Establish a Likelihood of Irreparable Harm

"The absence of substantial likelihood of irreparable injury would, standing alone, make preliminary injunctive relief improper." *Bean v. Pearson Educ., Inc.*, No. cv 11-8030, 2011 WL 121164, at *1 (D. Ariz. Mar. 30, 2011) (citation omitted). Ameriprise alleges it is being irreparably harmed by the continued solicitation of its customers by the Individual Defendants. That is not irreparable harm where, as here, the plaintiff is a member of the

Broker Protocol – and any actionable harm can be compensated by monetary damages. Ameriprise further alleges the Individual Defendants retained customer information from it. But it offers no factual allegations suggesting *LPL* is in possession of any extra-Protocol information originating from Ameriprise (to the extent that would create irreparable harm in any event). Ameriprise fails to establish irreparable harm; its Motion can be denied on that basis alone.

1. Solicitation Is Not Irreparable Harm

Ameriprise asserts it is being irreparably harmed by the Individual Defendants' solicitation of their customers to follow them to LPL. *See* Mot. for TRO (Dkt. 2) ¶ 6. But the very *fact* of Ameriprise's agreement to the Protocol demonstrates its acknowledgment that advisors solicit customers and that such conduct does not cause irreparable harm. That is because, by entry into the Protocol, the firm *accepts* that customers may be solicited.

Smith Barney v. Griffin is on point. Smith Barney alleged a departing advisor retained customer information and solicited her former customers. The court recognized that Smith Barney's entrance into the Protocol belied any assertion of irreparable harm: "[I]f there truly was a significant risk of irreparable harm from departed financial advisors soliciting their former clients, ***one would not expect Smith Barney to have entered into a Protocol permitting precisely that."*** No. CIV. 08-0022, 2008 WL 325269, at *7 (Mass. Super. Jan. 23, 2008) (emphasis added). Smith Barney argued that the Protocol was irrelevant because the advisor was joining a firm that had not signed it. But the Court explained that the very *fact* Smith Barney signed the Protocol constituted acceptance that advisors solicit clients and that such solicitation is *not* irreparable harm. *See id.*

So it is here. Ameriprise's *entrance* into the Protocol demonstrates that the Individual Defendants' solicitation of their former customers does not cause irreparable

harm to Ameriprise. *See Credit Suisse (USA) LLC v. Lee*, No. 11-cv-08566, 2011 WL 6153108, at *4 (S.D.N.Y. Dec. 9, 2011) ("It is hardly possible to conclude that a party will suffer irreparable harm when the conduct sought to be enjoined is concededly permissible."); *Merrill Lynch, Pierce, Fenner & Smith v. Baxter*, No. 1:09-cv-45, 2009 WL 960773, at *6 (D. Utah Apr. 8, 2009) (finding Merrill had not shown likelihood of irreparable harm because of its "participation in the Protocol," regardless of whether it applied to advisor's departure); *Merrill Lynch, Pierce, Fenner & Smith v. Brennan*, No. 1:07-cv-475, 2007 WL 632904, at *3 (N.D. Ohio Feb. 23, 2007) (same). And here, the firm the advisors joined, LPL, *is* a member of the Protocol – so its terms directly apply.

2. Any Alleged Harm Can Be Rectified Without Injunctive Relief

Ameriprise's argument that it is being irreparably harmed by alleged customer solicitation suffers from another fatal flaw: any damages it is suffering from solicitation can be remedied through monetary relief. "Courts have become disinclined to find irreparable, incalculable harm from financial advisors' departures." *Barney v. Burrow*, 558 F. Supp. 2d 1066, 1083 (E.D. Cal. 2008). That is because "any loss of clients' business to [the former broker-dealer] may be adequately addressed with money damages. . . . The real loss which might be suffered by [the former broker-dealer] comes in the form of commission revenue generated by the [advisor] for the [former broker-dealer], and that can be readily calculated[.]" *Id.* (quotation marks, citation omitted); *accord Baxter*, 2009 WL 960773, at *5; *see also Morgan Stanley Dean Witter, Inc. v. Frisby*, 163 F. Supp. 2d 1371, 1376 (N.D. Ga. 2001) ("reject[ing] the argument that a brokerage firm suffers anything other than economic loss when a departing broker seeks to solicit" and holding "[t]he cognizable injury to brokerage firms such as Plaintiff is lost commissions. Money damages easily compensate Plaintiffs for this type of loss."); *Am. Ex. Fin. Advisors v. Hazlewood*,

No. 4:05-cv-00936, 2005 WL 4655136, at *4 (E.D. Ark. July 19, 2005) (stating, in action brought by Ameriprise's predecessor entity, "[t]he Court finds very persuasive the above quoted reasoning by the court in *Frisby* and adopts it here.").[13]

The same is true here. "There is abundant authority that the availability of the [FINRA] forum provides an adequate legal remedy, and that there is no irreparable harm if the request for a temporary restraining order is denied." *Frisby*, 163 F. Supp. 2d at 1376.

3. Ameriprise's Speculation Is Insufficient

Ameriprise asserts the Individual Defendants must have retained documents from Ameriprise because (i) they printed out 90 pounds of client documents, but Ameriprise "was unable to locate" 70 pounds of this print-out; and (ii) it has photographic evidence (not included with its filing) that shows the advisors "carrying out boxes and backpacks of confidential documents and information[.]" Compl. ¶¶ 59, 62. Neither of these allegations actually demonstrate that the Individual Defendants retained any information (beyond Protocol Information) from Ameriprise. *Cf. id.* ¶ 68 (acknowledging it is equally possible the documents were shredded).[14]

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[13] Ameriprise cites caselaw for the proposition that lost customer relationships constitute irreparable injury. *See* Mem. at 15. But its authority does not concern financial advisors soliciting customers from a broker-dealer. *Cf. Singlepoint Direct Solar LLC v. Curiel*, 2021 WL 3472744 (D. Ariz. Aug. 6, 2021).

[14] Even if Ameriprise's allegations are true, Ameriprise does not explain how the Individual Defendants' alleged retention of their *own customers' records* is irreparably harming Ameriprise. By signing the Protocol, Ameriprise agreed that advisors may take Protocol Information with them and solicit their former customers. And, in deciding to open an account with the new firm, these customers necessarily provide all necessary information by which to do so. *See* Roth Decl. ¶ 31. Thus, the information that Ameriprise alleges was retained by the Individual Defendants is equally obtainable by contacting customers and asking for that information directly. *See Griffin*, 2008 WL 32569, at *6 ("Under the Protocol, Smith Barney permits Client Information to be freely taken by departing financial

And nothing about these allegations suggests this information is in *LPL's* possession or has been used to contact customers (even if the advisors retained extra-Protocol information from Ameriprise, it would not help them contact their customers). Ameriprise offers nothing to support that accusation besides pure speculation. That is insufficient. *See Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) ("Speculative injury does not constitute irreparable injury sufficient to warrant granting a preliminary injunction."); *Hayden Royal LLC v. Hoyt*, No. CV-20-02388-PHX-JJT, 2021 WL 2637501, at *6-8 (D. Ariz. Jan. 22, 2021) (holding, where advisor allegedly pre-solicited and retained information, that "hearsay statements" and "conjecture" do not warrant "exercis[ing] the extraordinary authority to grant injunctive relief"); *accord Morgan Stanley Smith Barney LLC v. Sayler*, No. 1:19-CV-01067, 2019 WL 3459237, at *5 (D. Or. July 31, 2019).

And that speculation is wrong. LPL is *not* in possession of any extra-Protocol information originating from Ameriprise. *See* Seiberling Decl. ¶¶ 22, 23.[15] Absent a clear showing otherwise, Ameriprise's Motion must fail. *See Wachovia Sec., LLC v. Stanton*, 571 F. Supp. 2d 1014, 1037 (N.D. Iowa 2008) (denying motion for TRO because the movant "offered only speculation, based on information and belief, not evidence, that Stanton has taken or disclosed any such information . . . while Stanton offers a sworn affidavit that she did not take or disclose any such information").

B. Ameriprise Does Not Even Attempt to Argue It Will Succeed on the Merits of Its Claims Against LPL

Ameriprise argues it is "entitled" to an injunction because the covenants contained

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advisors who leave for another signatory financial institution, even though this information is characterized as confidential information in its Contract with Griffin. Smith Barney cannot have it both ways[.]"); *accord Brennan*, 2007 WL 632904, at *2–3.

[15] Even the Protocol Information is only with the advisors; they did not send it to anyone else at LPL. *See id.*

in its employment agreements are enforceable. *See* Mem. at 11–13. Even if that were true (it is not), Ameriprise's likelihood of success on its breach of contract claim against *the Individual Defendants* cannot support injunctive relief against *LPL*. Ameriprise says nothing about its likelihood of success on *any* of its claims against *LPL*. Its failure to even *try* to show likelihood of success on the merits against LPL dooms its Motion.

Rather than give argument or offer evidence, Ameriprise asserts it will likely succeed on the merits because of orders entered in other cases. Even setting aside the obvious impropriety of this line of argument (those cases involved different facts and different parties), this assertion fails on its own terms. ***No court has ever held that Ameriprise is likely to succeed on any claim against LPL.*** Nor has any court (or arbitration panel) ever held for Ameriprise on the merits in any case against LPL.[16]

C. Ameriprise Inexplicably Argues Under a Different, Inapplicable State's Law than Specified in Its Agreements

Ameriprise has not shown that its breach of contract claims against the Individual Defendants will succeed. To begin, LPL notes that Ameriprise argues for the enforceability of its restrictive covenants under Arizona law. But its employment agreements specify they are governed by *Minnesota* law. *See, e.g.*, Dkt. 1-7 at pg. 5 ("The provisions of this agreement shall be governed by and construed in accordance with the laws of the state of Minnesota, without reference to the principles of choice of law thereof."). Ameriprise does

[16] Of the two cases Ameriprise references, in *McCann*, the advisors entered into a stipulated injunction based on the fact that they were not engaging in the conduct that Ameriprise sought to enjoin and wished to free themselves of Ameriprise's harassment. LPL was then joined to that injunction, which was then lifted. In *Kenoyer*, Ameriprise sought a temporary restraining order and provided LPL with forty-eight hours to respond (while timing its filing so that the due date coincided with a response in another action Ameriprise had filed, and refusing to grant an extension despite counsel's informing it they could not work due to a religious holiday). The court entered an order that made no findings about LPL.

not explain its curious decision to ignore the choice of law provision in its own contracts. By failing to explain the basis for its application of Arizona law, Ameriprise opens the door to this Court's potential application of the wrong state's law. That would be a violation of Defendants' right to due process and of the Full Faith and Credit Clause of the Constitution. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 799 (1985).[17]

D. Ameriprise's Restrictive Covenants Are Unenforceable

Setting aside Ameriprise's failure to address why Arizona law applies, its breach of contract claims against the Individual Defendants will fail. The restrictive covenants are unenforceable on their own terms.[18] Employer covenants are disfavored and "strictly construed against the employer." *Amex Distrib. Co. v. Mascari*, 150 Ariz. 510, 514 (Ct. App. 1986). They are enforceable only if they are "no broader than necessary to protect the employer's legitimate business interest." *Hilb, Rogal Hamilton Co. of Ariz. v. McKinney*, 190 Ariz. 213, 216 (Ct. App. 1997). Ameriprise's covenants do not meet this high bar.

1. The Non-Solicitation Covenant Does Not Protect a Legitimate Business Interest

The Non-Solicitation Covenant does not protect a legitimate business interest of Ameriprise. "The legal justification for restricting the ability of the departing financial advisor to solicit her former clients is largely the protection of the financial services

[17] LPL reserves its right to argue, on a more complete record and free of the exigency of a TRO motion, that the agreements are governed by Minnesota law.

[18] LPL maintains the Individual Defendants' (and LPL's) good faith, substantial compliance with the Protocol precludes Ameriprise from attempting to enforce its covenants. *See Hoyt*, 2021 WL 2637501, at *4 (D. Ariz. Jan. 22, 2021) (explaining, for a Protocol departure, "notwithstanding any otherwise applicable non-solicitation or confidentiality restriction agreements, Defendants would be permitted to take the Client Information for the clients they service while in Plaintiff's employ and solicit those clients[.]"). But even if it does not, the covenants are unenforceable.

company's goodwill." *Griffin*, 2008 WL 325269, at *4. But advisors typically develop their *own* customers rather than have them assigned by the broker-dealer. Here, the Individual Defendants have had long careers prior to Ameriprise and only joined it in 2023.[19] It beggars belief to suggest their customers only work with them because of their goodwill toward a broker-dealer they joined *less than two years ago*. *See id.* (rejecting enforcement of non-solicitation provision because "[t]he goodwill . . . that a financial services company legitimately may preserve is its own goodwill, not the goodwill earned by the employee that fairly belongs to the employee"); *Valley Med. Specialists v. Farber*, 194 Ariz. 363, 370 (1999) ("Where the employee took an active role and brought customers with him or her to the job, courts are more reluctant to enforce restrictive covenants."); *see also Ag Spectrum Co. v. Elder*, 865 F.3d 1088, 1093 (8th Cir. 2017) ("Elder's customer base at Ag Spectrum was built . . . through people with whom Elder had developed relationships with over the course of his life."); *BDO Seidman v. Hirshberg*, 93 N.Y.2d 382, 393 (1999) ("[E]nforcement of the restrictive covenant as to defendant's personal clients would permit BDO to appropriate goodwill created and maintained through defendant's efforts[.]").[20]

[19] *See, e.g.*, Roskelley BrokerCheck, Ex. B to Compl.

[20] Ameriprise's cited authority does not compel a different conclusion. In *Compass Bank v. Hartley*, the court did not consider the question of whether Compass Bank had a legitimate business interest, much less consider facts analogous to this case, where the Individual Defendants developed their customers for decades before joining Ameriprise for a little over a year. 430 F. Supp. 2d 973, 979 (D. Ariz. 2006). The court found the otherwise unreasonable covenant salvageable because it contained an express "step-down provision;" here, no such provision exists. *Id.* at 981. In *J.P. Morgan Secs. LLC v. Krich*, "JPMS maintain[ed] that Krich did not independently develop most of his business but was instead referred to existing customers," a contention the advisor "did not dispute[.]" No. CV-15-00979, 2015 WL 3604199, at *1, 4 (D. Ariz. June 18, 2015). Nor did the advisor even "argue that the restrictive covenant at issue in this case is unenforceable." *Id.* at *2.

2. The Non-Solicitation Covenant Is Overbroad

"'The test of validity of restrictive covenants is one of reasonableness.'" *Fearnow v. Ridenour, Swenson, Cleere & Evans, P.C.*, 213 Ariz. 24, 26 (2006) (quoting *Olliver/Pilcher Ins. v. Daniels*, 148 Ariz. 530, 532 (1986)). The employer bears the burden of showing that a restrictive covenant is reasonable. *See Unisource Worldwide v. Swope*, 964 F. Supp. 2d 1050, 1064 (D. Ariz. 2013). Ameriprise cannot meet this burden. Indeed, Ameriprise plainly *knows* its Non-Solicitation Covenant will not survive legal scrutiny: it does not even *try* to argue that it can be enforced on its terms. While the Covenant prohibits employees from any attempt to solicit "any client or prospective client," Ameriprise represents that it is seeking only to prevent solicitation of "any Ameriprise client serviced by Defendants Robertson and Roskelley at Ameriprise or whose name became known to Defendants Robertson and Roskelley by virtue of their affiliation with Ameriprise[.]" *Compare* Compl. Ex. G (Dkt. 1-7) (Employment Agreement) *with* TRO Mot. (Dkt. 2) at 4. This sleight of hand is telling but pointless. The covenant is unenforceable as written, and Ameriprise cannot resuscitate it by attempting to "narrow" it in a legal filing.

Restrictive covenants that attempt to prohibit departing employees from contacting anyone who is even *considering* a relationship with the prior employer, including those who have never even interacted with the departing employee, are overbroad and unreasonable as a matter of law.[21] *See Mascari*, 150 Ariz. 518 (explaining Arizona law "limit[s] the employer's protectable interest to those customers to whom the employee represented the employer's goodwill"); *Orca Commc'ns Unlimited, LLC v. Noder*, 233

[21] The Non-Solicitation Covenant also contains no geographic limitation. *See Karp v. Avella of Deer Valley Inc.*, No. CV13-1885, 2013 WL 5435212, at *1 (D. Ariz. Sep. 30, 2013) ("This Court, applying Arizona law, has not favored restrictive employment provisions with unlimited geographical reach.") (collecting authority).

Ariz. 411, 418 (Ct. App. 2013), *aff'd in relevant part,* 236 Ariz. 1805 (2014) (holding non-solicitation unenforceable *in toto* because "[t]he customer non-solicitation covenant applies . . . not only to 'actual' customers, but also to 'potential' customers").[22]

3. The Confidentiality Covenant Is Similarly Unenforceable

Ameriprise's attempt to enforce its Confidentiality Covenant will similarly fail. It is likely that if the Individual Defendants retained any information at all (an assertion that is unproven), it was simply information about their own customers.[23] Ameriprise does not explain what legitimate business interest it has in stopping the Individual Defendants from accessing their own customers' information. And any such argument would ring hollow: the Individual Defendants almost certainly brought their customers with them from a prior broker-dealer. Ameriprise cannot claim proprietary ownership over those customers' information. *See ALW Mkt. Corp. v. Drunasky*, No. 91-cv-545, 1991 WL 345313, at *8 (N.D. Ga. Dec. 30, 1991) ("The plaintiffs themselves have expended little time and effort in amassing their clientele. . . . These facts cast doubt on the legitimacy of the need to maintain the confidentiality of the subject information[.]").

[22] *Accord Karp*, 2013 WL 5435212, at *3 ("The provision thus prohibits Plaintiff from having contact even with customers or suppliers with whom he had no prior relationship on behalf of Defendant. Arizona courts do not enforce such provisions.") (collecting authority); *InfoArmor Inc. v. Ballard*, No. CV-21-01844-PHX-SMB, 2021 WL 5416618, at *5 (D. Ariz. Nov. 19, 2021) (same); *GlobalTranz Enters. Inc. v. Murphy*, No. CV-18-04819-PHX-ROS, 2021 WL 1163086, at *8 (D. Ariz. Mar. 26, 2021) ("There is nothing in the record to show Murphy was able to discern who GTZ might classify as a 'potential customer.' Thus, this provision effectively imposes a blanket non-compete.").

[23] While Ameriprise half-heartedly asserts this information is a trade secret, it does not even try to base its Motion on a likelihood of success on its trade secrets claims. *Cf.* 54A Am. Jur. 2d Monopolies and Restraint of Trade § 896 ("An employer's customer relationships do not automatically qualify as trade secrets, even if a party's restrictive covenant attempts to characterize them as such.").

4. The Court Cannot Rewrite the Restrictive Covenants

Any argument this Court should "blue pencil" the restrictive covenants must be rejected. Arizona law permits courts only to "eliminat[e] grammatically severable, unreasonable provisions" of covenants. *Fearnow v. Ridenour, Swenson, Cleere & Evans, P.C.*, 138 P.3d 723, 731 (Ariz. 2006); *see also Olliver/Pilchner*, 715 P.2d at 1221. Here, the restrictive covenants cannot be rendered enforceable by deletion of a plainly severable unlawful clause. *See InfoArmor Inc. v. Ballard*, No. CV-21-01844-PHX-SMB, 2021 WL 5416618, at *5 (D. Ariz. Nov. 19, 2021) (finding non-solicitaiton clause unenforceable because "the changes asked for . . . are far more than the grammatical edits that the blue pencil rule allows"); *accord GlobalTranz Enterprises Inc. v. Murphy*, No. CV-18-04819, 2021 WL 1163086, at *10 (D. Ariz. Mar. 26, 2021).

E. The Public Interest Favors the Advisors and Their Customers

"Courts and FINRA arbitration panels have recognized that restrictions on a financial advisor's ability to solicit clients is contrary to the public interest." *Wachovia Sec., L.L.C. v. Stanton*, 571 F. Supp. 2d 1014, 1041(N.D. Iowa 2008) (collecting authority). Enforcing the restrictive covenants here would force retail customers to stop working with their financial advisors. This clear harm to the public, standing alone, is sufficient to deny injunctive relief. *See id.* at 1048–49 ("[P]ublic policy concerns about the enforceability of the covenants ripens into a public policy bar on a temporary restraining order, in light of public interest favoring customer choice of brokers and recognizing that the client relationship belongs to the financial consultant, not the firm.").[24]

[24] *Accord Carvalho v. Credit Suisse Sec. (USA) LLC*, No. 1:07-CV-2612, 2007 U.S. Dist. LEXIS 80651, at *6 (N.D. Ga. Oct. 31, 2007) ("The public interest weighs in favor of allowing investors to maintain relationships with advisors in whom they have

F. The Equities Favor Denying Ameriprise's Motion

Finally, in its argument regarding the balancing of the equities, Ameriprise ignores the most profound and immediate implication of a ruling in its favor: it would destroy the Individual Defendants' ability to continue their businesses. The Individual Defendants developed their customers over many years, the great majority of which were spent elsewhere. Ameriprise's assertion that the Individual Defendants can no longer continue their relationships with these customers would leave them without the customer base that they spent years building, and leave their long-standing customers behind, too. The equities thus tip heavily towards *denying* a request for a fundamentally anti-competitive restraint:

> [T]his Court holds that the balance of the equities clearly tips in favor of Defendants and their customers. . . . To deprive them of contact with their customers would leave them with no client base in a business that thrives on commissions from regular clients. The damage to [Defendants] would equal almost a complete loss of income. . . . [T]he balance of the equities *clearly favors the denial of Plaintiff's requested temporary restraining order.*

Frisby, 163 F. Supp. 2d at 1381 (quotation omitted; emphasis added); *see also Hazlewood*, 2005 WL 4655136, at *9 (applying, in action by Ameriprise's predecessor, "[e]ssentially the same arguments . . . as were made on behalf of the Defendants in the *Frisby* case").[25]

Ameriprise cites an *ex parte* TRO issued in *Edward D. Jones & Co., L.P. v.*

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confidence."); *Merrill Lynch, Pierce, Fenner & Smith Inc. v. deLiniere*, 572 F. Supp. 246, 249 (N.D. Ga. 1983) ("The public's ability to choose the professional services it prefers, is central to the consideration of this criterion of injunctive relief."); *Frisby*, 163 F. Supp. 2d at 1382 ("[T]he inability of a client to consult a trusted advisor for even a single day could result in enormous financial losses to the client. . . . Issuance of a temporary restraining order in this case is not in the public interest.").

[25] Ameriprise argues an injunction would "discourage Ameriprise's current employees from breaching their contractual obligations[.]" Mem. at 15. Courts reject this argument. *See Postnet Int'l Franchise Corp. v. Wu*, 521 F. Supp. 3d 1087, 1105 (D. Colo. 2021) ("PostNet can still seek other remedies, like money damages, that will deter franchisees from breaching contracts like any other business.").

Peterson, No. 29-cv-1968, 2019 WL 5889291 (D. Nev. Nov. 22, 2019). In arbitration, not only were all of Edward Jones's claims—premised on alleged use of printed information to solicit—denied, it was ordered to pay more than $500,000 to Peterson and more than $200,000 in attorneys' fees to his new firm. *See* Exhibit 4 (FINRA award).

The new firm? ***Ameriprise.*** Ameriprise, like every other broker-dealer, recruits advisors and expects they will work to port their business over to it. It cannot both permit and decry that conduct.[26] As one court put it regarding this hypocrisy:

> [W]hile many financial services companies claim that they are (in the words of Police Captain Louis Renault in the movie, "Casablanca") "shocked, shocked" that another financial service company would show so little respect for the sanctity of a contract preserving confidential client information and prohibiting client solicitation as to induce their financial advisor to breach such a contract, they are themselves engaged in precisely the same "shocking" conduct.

Griffin, 2008 WL 325269, at *3. Ameriprise's Motion should be denied.[27]

DATED this 15th day of February, 2025.

RUSING LOPEZ & LIZARDI, P.L.L.C.

/s/ Patricia V. Waterkotte
Patricia V. Waterkotte
Kaylee J. Ivy

[26] *Cf.* Ameriprise Mem. of Law, at 19, ECF 242, *Allstate Ins. v. Ameriprise*, No. 1:17-cv-05826 (N.D. Ill. Jan. 22, 2021) (arguing "customer information is not a trade secret where, as here, it could easily be duplicated," and advocating for "client choice"); *Hoyt*, 2021 WL 2637501, at *6–8 (finding defendants who joined Ameriprise, represented by its counsel here, entitled to Protocol protection in action alleging departure with confidential information and pre-solicitation).

[27] Given the numerous reasons an injunction is inappropriate here, LPL respectfully submits expedited discovery is unnecessary. The merits of this dispute will be decided, on a full evidentiary record, in FINRA arbitration. If an injunction is issued, LPL requests Ameriprise be required to post an adequately-sized bond to compensate it should the injunction be dissolved. *See* Fed. R. Civ. Pro. 65(c).

Cheryl L. Haas (*pro hac vice*)
Alexander M. Madrid (*pro hac vice pending*)

Attorneys for Defendant LPL Financial LLC

CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2025, I electronically transmitted the foregoing document to the Clerk's using the CM/ECF System for filing, and transmittal of a Notice of Electronic Filing on the CM/ECF Registrants.

By:

Patricia V. Waterkotte