

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MERRILL LYNCH, PIERCE,
FENNER & SMITH
INCORPORATED,

Plaintiff,

v.

ERIK BJERKE, JEFFREY
CROWELL,
CHAD PIGG FIFE, EMILY
FLETCHER,
BRITTANY HARTNETT, KEVIN
HIGGINBOTHAM, JAMES
KAUFMAN,
JEFFREY NEUMEYER, STEVEN
PREDILETTO, JOSEPH SACCO,
MICHAEL SONTAG, ELIZABETH
WHITE, OPENARC CORPORATE
ADVISORY, LLC, DYNASTY
FINANCIAL PARTNERS, LLC and
CHARLES SCHWAB & CO., INC.,

Defendants.

Civil Action File
No. 1:25-cv-05437-VMC

**CHARLES SCHWAB & CO., INC.'S MEMORANDUM OF LAW IN
OPPOSITION TO PLAINTIFF'S MOTION FOR A TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

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Defendant Charles Schwab & Co., Inc. (“Schwab”), by and through counsel, hereby submits this Memorandum of Law in opposition to Plaintiff Merrill Lynch, Pierce, Fenner & Smith Incorporated’s (“Merrill”) Motion for a Temporary Restraining Order and Preliminary Injunction, Dkt. 3 (the “Motion”).

I. INTRODUCTION¹

Merrill comes to this Court seeking injunctive relief against Schwab, but Merrill cannot satisfy any of the required elements for relief. Most notably, Merrill is unable to demonstrate a substantial likelihood of success against Schwab on the merits. Despite a 48-page Complaint, a 29-page Memorandum of Law, and a 12-page supporting Affidavit, Merrill does not allege a single actionable fact against Schwab, because it has none. Instead, Merrill’s papers rely exclusively, and improperly, on allegations based purely on “information and belief” and “understandings.” Merrill’s rank speculation—which is affirmatively undermined by the sworn declaration attached hereto—is insufficient to support any claim against Schwab, let alone demonstrate a substantial likelihood of success.

Moreover, Merrill fails to demonstrate irreparable injury absent injunctive relief against Schwab, that the balance of the equities weighs in its favor, and that the

¹ By opposing Merrill’s request for a temporary restraining order Schwab does not waive its right to demand that the merits of any dispute between Schwab and Merrill be adjudicated by FINRA arbitration, as required by FINRA’s rules governing broker-dealers.

injunction would not be adverse to the public interest. Each of these failures, standing alone, defeats Merrill's claims for injunctive relief.

II. FACTUAL BACKGROUND

Schwab provides custody and trading services to Registered Investment Advisors ("RIAs"), such as providing custody of assets, support with trading and reporting, and "access to technology platforms, data integrations, and workflow tools." Declaration of Christopher Reedy ("Reedy Decl.") ¶ 6.

Because RIA's "typically do not accept custody of client funds or perform money movement for clients," they rely on broker-dealers like Schwab to custody their clients' accounts. *Id.* ¶ 8. Doing so helps ensure the safety of the clients' funds and promote "independent record keeping." *Id.*

Schwab provides such services to OpenArc, a Georgia-based RIA. *Id.* ¶ 9. Schwab has a "business-to-business relationship" with OpenArc. *Id.* ¶ 10. OpenArc is an "entirely separate entity from Schwab." *Id.* ¶ 11. OpenArc maintains its "own client relationship and investment strategy." *Id.* ¶ 10. Its employees are not "paid, compensated, or employed by Schwab," and Schwab does not "hire, fire, promote, supervise, or discipline OpenArc's employees." *Id.* ¶ 11. Schwab simply supplies OpenArc with "the infrastructure and account services" OpenArc and its clients need. *Id.* ¶ 10. All RIAs, including OpenArc, are "free to direct custody to Schwab

or any other competing custodian,” and are not wed to a “single custody relationship.” *Id.*

Schwab first learned of OpenArc’s interest in Schwab’s custody services in February 2024 through Dynasty Financial Partners, LLC (“Dynasty”), a company that provides technical and strategic support to RIAs. *Id.* ¶ 13. Certain employees from Merrill’s Global Corporate & Institutional Advisory Services group were considering leaving Merrill and “were interested in Schwab’s custodial services.” *Id.* ¶ 14. This group later organized as OpenArc. *Id.*

Schwab “engaged in discussions” with Dynasty and the employees looking to leave Merrill about “Schwab providing custodial services to OpenArc.” *Id.* ¶ 15. Over various meetings, Schwab presented “overviews of its custodial capacities and how Schwab’s RIA model functions.” *Id.* Schwab “never ‘promised to feed’” these employees or “‘give them access to Schwab clients.’” *Id.* (quoting Compl. ¶ 52). Instead, Schwab “explained that it could facilitate introductions to certain Schwab stock plan sponsor clients, if those stock plan sponsors so wished, so that OpenArc would have an opportunity to provide them and their participants with education on equity compensation, among other areas of financial wellness.” *Id.* “OpenArc would only have contact with the plan participants at the direction of the stock plan sponsor.” *Id.*

“Schwab did not receive any confidential, proprietary, or trade secret information” throughout these discussions, or at any time thereafter, and “remains vigilant about not doing so.” *Id.* ¶ 16. Nor has Schwab discussed with the former Merrill employees the “best way to negatively impact” Merrill following their departure: “That never happened.” *Id.* ¶ 17 (quoting Compl. ¶ 55).

Despite these facts, Merrill has now sued Schwab. But the allegations against Schwab are entirely unsupported in fact or law and Merrill’s request for a temporary restraining order and preliminary injunction should be denied.

III. MERRILL IS NOT ENTITLED TO INJUNCTIVE RELIEF

A movant is entitled to injunctive relief only upon a showing that (1) it has a substantial likelihood of success on the merits, (2) injunctive relief is necessary to prevent irreparable injury, (3) the threatened injury outweighs the harm the order would inflict on the non-movant, and (4) the order would not adversely affect the public interest. *Horton v. City of St. Augustine*, 272 F.3d 1318, 1326 (11th Cir. 2001). Each element is an independent point of failure for a movant: “A preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly established the ‘burden of persuasion’ as to *all* four elements.” *Id.* (citing *Siegel v. Lepore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc) (cleaned up)) (emphasis added); *see also Chima-Nwaka v. LOGS Legal Grp. LLP*, 2025 WL 2270153, at *1 (N.D. Ga. Mar. 12, 2025) (“A temporary restraining order, like a preliminary

injunction, is an extraordinary remedy.’’) (cleaned up). “Failure to show *any* of the four factors is fatal.” *Anderson v. Franks*, 2014 WL 279722, at *3 (N.D. Ga. Jan. 24, 2014) (emphasis added).

A. Merrill Cannot Demonstrate a Substantial Likelihood of Success on the Merits against Schwab

Merrill’s application for injunctive relief falls far short of meeting its burden to clearly demonstrate a substantial likelihood of success on the merits. This is generally the most important factor in the analysis, *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1232 (11th Cir. 2005), rendering Merrill’s evidentiary deficiencies fatal. Even a generous reading of all of Merrill’s submissions—its Complaint, its Motion, and its supporting Affidavit—reveal that every actionable allegation against Schwab is based not on facts but instead on nothing more than Merrill’s hunches and guesswork.

Merrill’s allegations against Schwab in the Complaint are based entirely upon “information and belief,” unmoored from any specific factual allegations, or are otherwise conclusory and threadbare recitations of the elements of a cause of action. *E.g.*, Compl. ¶¶ 47, 53, 56, 88, 93. Caselaw is clear that surmise and hunches do not state a claim let alone entitle Merrill to extraordinary relief. Indeed, a plaintiff may not succeed on a claim for injunctive relief without stating an actionable claim in the first place. *See Greiser v. Whittier Towers Apts. Ass’n Inc.*, 551 F. App’x 506, 507 (11th Cir. 2014) (“Because Greier’s complaint failed to state a claim, he was not

entitled to a preliminary injunction.”); *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1097 (11th Cir. 2004) (“For a traditional injunction to be even theoretically available, a plaintiff must be able to articulate a basis for relief that would withstand scrutiny under Fed.R.Civ.P. 12(b)(6).”).

Allegations based on “information and belief” must be “supported by specific facts to render them plausible.” *Small v. Hire Dynamics Skilled Staffing, Inc.*, 2023 WL 11979675, at *4 (N.D. Ga. Dec. 1, 2023) (cleaned up). There must be concrete factual allegations explaining what “information leads” to the “belief.” *Id.* at *4 (cleaned up). Indeed, the Court cannot credit allegations that a defendant engaged in misconduct where all allegations relating to the misconduct are based on “information and belief.” *Brock v. City of Atlanta*, 2023 WL 2733202, at *2 (N.D. Ga. Feb. 22, 2023). As the Supreme Court made clear years ago, courts cannot accept a plaintiff’s “threadbare recitals of a cause of action’s elements, supported by mere conclusory statements.” *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009).²

Courts routinely dismiss claims where, as here, all allegations underpinning a claim are premised on information and belief and the plaintiff fails to offer additional, specific factual allegations. *See, e.g., Joseph v. Bd of Regents of U. Sys. of*

² To be sure, the Court should not credit Merrill’s conclusory statements and recitations of the elements of a claim in its enumerated counts. “Conclusory allegations are not entitled to the assumption of truth.” *McCullough v. Finley*, 907 F.3d 1324, 1333 (11th Cir. 2018); *see Iqbal*, 556 U.S. at 678.

Ga., 2020 WL 6494202, at *14-15 (N.D. Ga. May 8, 2020) (dismissing claim where all allegations were pleaded on “information and belief” without supporting facts); *Concordia Pharmaceuticals, Inc., S.À.R.L. v. Winder Lab., LLC*, 2017 WL 1001533, at *9 (N.D. Ga. Mar. 15, 2017) (same); *Price v. Howard*, 2023 WL 2767770, at *2 (N.D. Ga. Mar. 31, 2023) (same).

The Motion does not cure the Complaint’s fatal shortcomings. Notably, each argument implicating Schwab is expressly premised on “information and belief.” *See* Mot. at 2, 7, 10. And the Affidavit provided by Mr. Nies in support of Merrill’s Motion makes painfully clear that Merrill has no factual basis for its claims against Schwab. *See* Affidavit of Michael Nies, Dkt. 3-3 (“Nies Affidavit”). Courts are “wary of issuing an injunction based solely upon allegations and conclusory affidavits submitted by the plaintiff.” *Atleisure, Inc. v. Ace Evert Inc.*, 2013 WL 12099363, at *8 (N.D. Ga. June 6, 2013) (quoting *Atari Games Corp. v. Nintendo of Am., Inc.*, 897 F.2d 1572, 1575 (Fed. Cir. 1990)); *see also* 11A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2949 (3d ed. 2025) (“Preliminary injunctions frequently are denied if the affidavits are too vague or conclusory to demonstrate a clear right to relief under Rule 65.”). In *Atleisure*, the court denied injunctive relief where the counterclaimant offered neither “argument or evidence,” rather only conclusory allegations and statements of “what ‘appears to be’ the case.” 2013 WL 12099363 at *5-6. The “evidence” presented was merely a declaration

consisting “mostly of conclusory statements and allegations,” which are of “limited probative value.” *Id.* at *8 (cleaned up).

Mr. Nies’ Affidavit suffers from these shortcomings. The Affidavit lacks any statement that all of the facts in his Affidavit are made upon his personal knowledge. As a Merrill Market Executive, Mr. Nies identifies the topics that he is “familiar with.” Nies Affidavit ¶ 4. These topics largely relate to the Individual Defendants. *Id.*

Nowhere does Mr. Nies suggest he is “familiar with” or has any first-hand, concrete knowledge of any of Schwab’s conduct that is alleged in the Complaint. Moreover, Mr. Nies has not alleged “specific facts” concerning Schwab’s conduct. Rather, he couches each statement implicating Schwab as based on his “understand[ing],” not his personal knowledge, and he gives no indication of what his “understand[ing]” is based upon. Mr. Nies’ statements concerning Schwab are substantively equivalent to making them on information and belief. Mr. Nies’ unsubstantiated and self-serving Affidavit should not be credited. *Atleisure*, 2013 WL 12099363 at *8.

Simply put, when Merrill’s papers are wiped of their inadequate, conclusory, and unsubstantiated allegations against Schwab, there are no actionable allegations left against Schwab for Merrill to pursue. Merrill thus fails to carry its burden to

demonstrate an actionable claim against Schwab, let alone a substantial likelihood of success on the merits.

Taking each factual allegation implicating Schwab in turn further reveals just how far Merrill is from meeting its burden. First, “upon information and belief,” Merrill alleges that the Individual Defendants, “with the *help and support* of the Corporate Defendants, took the following steps—all while still employed with Merrill”:

- a. founded and incorporated wealth management firm OpenArc (an RIA) to compete with Merrill;
- b. identified, leased, and began the build out of new office space to house OpenArc, under Emily Fletcher’s direction;
- c. targeted senior members of GCIAS to move to OpenArc and Dynasty and then used those senior members to pitch the departure plan to junior members and support staff;
- d. held meetings in Merrill offices and at the personal residences of James Kaufman and other GCIAS employees to coordinate their departure and persuade other employees to join the move;
- e. required GCIAS employees to execute non-disclosure agreements regarding their “strategic discussions” with Kaufman, Bjerke, Fletcher, Crowell, Higginbotham and other GCIAS senior leaders, which prohibit them from discussing the planned move, in violation of their ongoing fiduciary duties and duties of loyalty owed to Merrill;
- f. offered financial and equity incentives to junior members of GCIAS to sign non-disclosure agreements and commit to the move;

g. during meetings at GCIAS senior leaders' homes, James Kaufman, Elizabeth White, and Brittney Hartnett made Power Point pitch presentations to the captive audience, promising them equity in the business that the Defendants intended to divert from Merrill, increased compensation, and increased prestige;

h. distributed onboarding packets to GCIAS members;

i. used scare tactics to encourage employee departures, such as threats of lawsuits, and spread baseless rumors that Merrill would shut down GCIAS and terminate any junior level employee who remained behind; and

j. shared confidential and proprietary information concerning Merrill employees and Merrill customers with the Corporate Defendants.

Compl. ¶ 47 (emphasis added). These allegations are parroted in the Motion and the supporting Affidavit based on Mr. Nies' "understanding." *See* Mot. at 7-8; Nies Affidavit ¶ 30. And even there, Mr. Nies does not state that Schwab or the Corporate Defendants offered any of the "help and support" alleged in Merrill's complaint, leaving that allegation out entirely. *See* Nies Affidavit ¶ 30.

In addition, Plaintiff offers no specific factual allegations or evidence based on personal knowledge about any way in which Schwab helped or supported the above-listed activities. These allegations are based upon "information and belief" and not even Mr. Nies' mere understanding. They are unsupported by any factual allegations or evidence offered by Merrill. *See* Compl. ¶ 47; Nies Affidavit ¶ 30.

Only one part of these allegations implicates purported conduct by Schwab, even though Schwab is not named but rather lumped in as a Corporate Defendant.

Compl. ¶ 47(j). Merrill alleges that the Individual Defendants provided the Corporate Defendants with “confidential and proprietary information concerning Merrill employees and Merrill customers.” *Id.* According to Merrill, it is “inconceivable that the Individual Defendants would not have shared this information with” the Corporate Defendants. Compl. ¶ 51. But, again, all Merrill can offer in support of this assertion is Merrill’s information and belief and Mr. Nies’ “understand[ing].” Still, there is no fact alleged as to Schwab’s role in the alleged conduct. The Complaint, Motion, and Affidavit lack any well-pleaded allegation or credible evidence demonstrating that Schwab received such information or in any way aided in its distribution.

Merrill’s allegation on this point is particularly deficient given Merrill’s robust security practices. *Id.* ¶ 42. Merrill’s own verified complaint admits that it “locks down information systems, conducts regular surveys of outgoing data and documents, and prevents employees from inserting a flash drive or connecting an external hard drive to the system.” *Id.* Surely, Merrill could trace the spread of its sensitive information. Yet, Merrill does not allege a single specific factual allegation describing a piece of information that was improperly or even suspiciously accessed, let alone shared. Merrill’s allegations and evidence against Schwab are thus unsupported and insufficient to allege any wrongdoing by Schwab.

Even more importantly, Merrill's unsubstantiated allegations are affirmatively undermined by the sworn declaration of Christopher Reedy. *See* Reedy Decl. Mr. Reedy affirms, under penalty of perjury, that during discussions with OpenArc, Schwab "did not receive any confidential, proprietary, or trade secret information," has not received such information thereafter, and "remains vigilant about not doing so." *Id.* ¶ 16. His statement, sworn to based on personal, first-hand knowledge, stands in direct contradiction to Merrill's bare allegations.

Similarly, Merrill also alleges "upon information and belief" that Dynasty and Schwab helped the Individual Defendants "marshal approximately \$90 million in capital funds for their move from" Merrill to OpenArc. Compl. ¶ 53. This allegation is replicated in Mr. Nies' Affidavit based on his "understand[ing]." Nies Affidavit ¶ 32. Again, Merrill does not allege specific facts or credible evidence necessary to allege any wrongdoing by Schwab. And again, this allegation is simply not true. As Mr. Reedy swears to, Schwab "did not assist" with the "raising of capital funds for the former Merrill employees' move to OpenArc." Reedy Decl. ¶ 12. Nor did Schwab play any role in OpenArc's incorporation or provide the "help and support" alleged by Merrill. *Id.*; *contra* Compl. ¶ 47.

Merrill also alleges that the "Individual Defendants worked together and with the Corporate Defendants to make sure that their departure to Dynasty and OpenArc would be joint, simultaneous, and disruptive." Compl. ¶ 54. "For example, upon

information and belief, they discussed the best way to negatively impact Merrill's ongoing business functions in the office following their departure." *Id.* at ¶ 55. Again, all allegations relating to Schwab's specific misconduct are premised on nothing more than information and belief and no specific factual allegations are made. This far-fetched theory is not even supported by Mr. Nies' "understanding" in his Affidavit; this allegation is missing entirely. And, again, this allegation is simply not true. Mr. Reedy—who has first-hand personal knowledge as to Schwab's interactions with OpenArc—unequivocally states "[t]hat never happened." Reedy Decl. ¶ 17.

Finally, Merrill alleges that Schwab "promised to feed the Individual Defendants corporate equity plan clients and give them access to Schwab clients." Compl. ¶ 52. Mr. Nies echoes this allegation in his Affidavit, based on his "understand[ing]." Nies Affidavit ¶ 31. Although Merrill does not plead this allegation upon information and belief, the only evidence Merrill offers in further support of this allegation is Mr. Nies' "understand[ing]" that such a promise occurred. *Id.* Given Mr. Nies' concession that he has no first-hand, personal knowledge as to Schwab's business activities during this time, this allegation is simply not credible.

And Mr. Reedy declares under penalty of perjury that Schwab never "promised" to provide such contact. Reedy Decl. ¶ 15. Rather, as Mr. Reedy states, Schwab merely explained that it could facilitate introductions to stock plan sponsor clients if

the stock plan sponsors were also interested. *See id.* Schwab “explained that it could facilitate [these] introductions . . . so that OpenArc would have an opportunity to provide [the sponsors] and their participants with education on equity compensation, among other areas of financial wellness.” *Id.* Contrary to Merrill’s assertions, “OpenArc would only have contact with plan participants at the direction of the stock plan sponsor.” *Id.*

Because Plaintiff has failed to clearly demonstrate a substantial likelihood of success on the merits, its motion for injunctive relief should be denied. *See Greiser*, 551 F. App’x at 507; *Am. C.L. Union of Fla., Inc. v. Miami-Dade Cnty. Sch. Bd.*, 557 F.3d 1177, 1198 (11th Cir. 2009) (“Failure to show any of the four factors is fatal, and the most common failure is not showing a substantial likelihood of success on the merits.”).

B. Merrill Has Not Suffered and Will Not Suffer Irreparable Harm By Schwab’s Actions

Merrill also fails to carry its burden as to how it will suffer irreparable harm from Schwab’s actions if injunctive relief is not granted. “An injury is ‘irreparable’ only if it cannot be undone through monetary remedies.” *S & M Brands, Inc. v. Georgia ex rel. Carr*, 230 F. Supp. 3d 1338, 1344 (N.D. Ga. 2017) (quoting *Ferrero v. Associated Materials Inc.*, 923 F.2d 1441, 1449 (11th Cir. 1991)). The alleged injury may be “neither remote nor speculative, but actual and imminent.” *Siegel*, 234 F.3d at 1176. A showing of irreparable injury is “the sine qua non of injunctive

relief’’: its absence alone in Merrill’s case is sufficient grounds to deny the motion. *Id.* (quoting *Ne. Fla. Chapter of the Ass’n of Gen. Contractors v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990)) (collecting cases where injunctive relief was denied due to a failure to demonstrate irreparable harm even though there was a showing of a likelihood of success on the merits).

As discussed above, Merrill offers no well pleaded allegations or credible evidence to suggest that Schwab has caused or will cause any harm to Merrill, let alone irreparable harm. Its asserted irreparable injury is thus “purely speculative” and insufficient. *See supra* Section III.A; *Capital Inventory, Inc. v. Green*, 2020 WL 10056790, at *10-11 (N.D. Ga. Sept. 16, 2020) (noting that harm based on information and belief is “purely speculative” and insufficient). To the extent Merrill alleges that the “Corporate Defendants” together caused Merrill to lose business, it fails to show the business that was lost to Schwab. Compl. ¶ 164. *See Atleisure*, 2013 WL 12099363 at *8 (holding that a declaration claiming lost business to competitors “including [the defendant]” is insufficiently specific to show irreparable harm and enjoin the defendant’s conduct). As Mr. Reedy makes clear, Schwab did not receive the confidential, proprietary, or trade secret information that Merrill baselessly fears Schwab will weaponize. *See Reedy Decl.* ¶ 16. Merrill thus cannot clearly demonstrate it is entitled to injunctive relief against Schwab where, as here, it will not face irreparable harm absent such relief.

So too when Merrill claims that it stands to lose “business, revenue, [and] profits” because of Schwab’s “unlawful predation.” Compl. ¶ 164. Such “speculative claims of business loss without support in the record are insufficient to establish irreparable harm. *Seafoodlicious, Inc. v. United States*, 2023 WL 5672193, at *4 (S.D. Ga. Sept. 1, 2023). All Merrill has is speculation because it has not and will not face harm by Schwab’s actions.

Because Merrill has failed to clearly demonstrate that it will suffer irreparable harm absent injunctive relief, this independently dooms Merrill’s request for injunctive relief against Schwab and it should be denied. *See Ass’n of Gen. Contractors*, 896 F.2d at 1285; *Keita v. Kinyanjui*, 2024 WL 5709925, at *3 n.3 (N.D. Ga. Oct. 30, 2024).

IV. Merrill has Failed to Demonstrate that the Balance of Hardships Tips in its Favor or that the Injunction is not Adverse to the Public Interest

In analyzing the balance of equities, the Court “must weigh the harm to the moving party if the injunction is not granted against the harm to the non-moving party if the injunction is granted.” *Doubleday Acquisitions, LLC v. Envirotainer AB*, 2022 WL 2784800, at *11 (N.D. Ga. May 31, 2022). The movant must demonstrate that the balance “tips” in its favor. *Starbucks Corp. v. McKinney*, 602 U.S. 339, 346 (2024) (cleaned up). A failure to demonstrate a likelihood of success on the merits “sets the tone” for this assessment. *Doubleday Acquisitions, LLC*, 2022 WL 2784800, at *12. Indeed, the equities do not favor a movant where the movant has

“no ultimate chance of success on the merits.” *Sadler v. 218 Housing Corp.*, 417 F. Supp. 348, 360 (N.D. Ga. 1976).

Merrill’s unsubstantiated and unsupported claims against Schwab prevent it from clearly demonstrating a substantial likelihood of success on the merits. *See supra* Section III.A. What is more, Merrill has failed to allege or offer any concrete facts based on personal knowledge suggesting that, absent an injunction against Schwab, Merrill will endure irreparable harm. *See supra* Section III.B. Accordingly, as Merrill has failed to demonstrate a substantial likelihood of success on the merits as well as any irreparable harm from Schwab’s conduct, the equities cannot tip in Merrill’s favor. Merrill thus fails to clearly demonstrate that the balance of equities tips in its favor.

Finally, public policy considerations also militate against granting Merrill the drastic relief it seeks. Merrill cannot credibly argue that the public interest favors enjoining Schwab when Merrill entirely fails to demonstrate both that Schwab engaged in actionable misconduct and that any actions by Schwab would cause Merrill irreparable harm. *See supra* Sections III.A-B. Accordingly, public policy does not support granting Merrill the relief it seeks. Merrill’s failure to carry the burden as to the balance of equities and public interest, both independently and collectively, are “fatal” to the relief Merrill seeks. *Anderson*, 2014 WL 279722, at *3.

V. CONCLUSION

For the foregoing reasons, Merrill's Motion should be denied. At its core, Merrill offers no well pleaded allegations or credible evidence to suggest Schwab has engaged in any of the misconduct vaguely attributed to it. Merrill has thus failed its burden of clearly demonstrating a substantial likelihood of success on the merits, irreparable harm absent injunctive relief against Schwab, or that the equities and public policy favor injunctive relief. Each failure independently warrants denial of Merrill's Motion. There is thus no basis for the Court to award Merrill the extraordinary relief it seeks.

Accordingly, this Court should deny Merrill's Motion.

Respectfully submitted, this 26th day of September.

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MERRILL LYNCH, PIERCE,
FENNER & SMITH
INCORPORATED,

Plaintiff,

v.

ERIK BJERKE, JEFFREY
CROWELL,
CHAD PIGG FIFE, EMILY
FLETCHER,
BRITTANY HARTNETT, KEVIN
HIGGINBOTHAM, JAMES
KAUFMAN,
JEFFREY NEUMEYER, STEVEN
PREDILETTO, JOSEPH SACCO,
MICHAEL SONTAG, ELIZABETH
WHITE, OPENARC CORPORATE
ADVISORY, LLC, DYNASTY
FINANCIAL PARTNERS, LLC and
CHARLES SCHWAB & CO., INC.,

Defendants.

Civil Action File
No. 1:25-cv-05437-VMC

DECLARATION OF CHRISTOPHER REEDY

I, Christopher Reedy, certify and declare as follows:

1. I am an employee of Charles Schwab & Co., Inc., (“Schwab”), a brokerage firm headquartered in Westlake, Texas.
2. I am over the age of eighteen and competent to make oaths.

3. In preparing this Declaration, I reviewed Merrill's Complaint, Motion for a Temporary Restraining Order and Preliminary Injunction, and the affidavit of Michael Nies. Schwab did not play a role in the formation of OpenArc Corporate Advisory, LLC, ("OpenArc"), and Schwab has not received Merrill's confidential, proprietary, or trade secret information.

4. I have worked with Schwab or its affiliates in different capacities for approximately 13 years. In connection with my employment, I have personal knowledge of Schwab's custody offer for RIAs. I am a Managing Director and lead the Advisor Services Business Development Team. I am authorized to provide this Declaration in support of Schwab's Memorandum of Law in Opposition to Merrill's Motion for a Temporary Restraining Order and Preliminary Injunction.

5. The statements set forth in this Declaration are true and correct to the best of my knowledge. The statements contained herein are based on my personal knowledge or review of Schwab's records.

I. Schwab Provides Custodial Services to Registered Investment Advisors

6. Schwab offers custody and trading services to Registered Investment Advisors ("RIAs"). These services include providing custody of assets, support with trading and reporting, as well as providing access to technology platforms, data integrations, and workflow tools.

7. RIAs are independent companies, unaffiliated with Schwab, that run their own businesses and serve their own clients.

8. RIAs typically do not accept custody of client funds or perform money movement for clients. Instead, they introduce a broker-dealer to act as a third-party custodian for their clients' accounts. Schwab acts as a custodian ensuring safety of funds and independent record keeping. Typically, but not always, individual clients grant limited power of attorney to their advisor to trade on their behalf. RIA's act as fiduciaries to their clients and can recommend to their clients to custody their account at a custodian.

II. Schwab Acts as a Custodian to OpenArc Corporate Advisory, LLC

9. Schwab provides custodial services to OpenArc, an RIA headquartered in Atlanta, Georgia. OpenArc is just one of the RIAs for which Schwab provides custodial services.

10. Schwab has a business-to-business relationship with OpenArc, the terms of which are outlined in our Investment Advisor Service Agreement dated September 23, 2025. Schwab supplies OpenArc with the infrastructure and account services needed by the RIAs and their clients. OpenArc and other RIAs who utilize Schwab's services maintain their own client relationships and investment strategy, while Schwab delivers the services described above to the RIAs and the RIAs' clients. OpenArc and all RIAs are free to direct custody to Schwab or any other

competing custodian and are not beholden to a single custody relationship. Many RIAs are what is commonly known as ‘multi-custodial’ and all RIAs, whether they have chosen to be single or multi-custodian, are free to choose account by account which custodian to use.

11. Merrill has alleged that OpenArc is a “Schwab-affiliated” RIA. Compl. ¶ 3. That is false. OpenArc is an entirely separate entity from Schwab. OpenArc employees are not paid, compensated, or employed by Schwab. Schwab does not hire, fire, promote, supervise, or discipline OpenArc’s employees. OpenArc is its own company and makes its own personnel decisions.

12. Schwab played no role in OpenArc’s incorporation, did not assist with its raising of capital funds for the former Merrill employees’ move to OpenArc, and certainly did not offer the “help and support” listed in Paragraph 47 of Merrill’s Complaint.

13. Schwab first learned of OpenArc’s principals’ interest in Schwab’s custody platform through Dynasty Financial Partners, LLC (“Dynasty”) in or around February 2024. Dynasty helps RIAs administer and grow their independent wealth management practices by providing infrastructure, capital, and strategic support to help RIAs manage client relationships and make investment decisions.

III. Schwab Did Not Receive Proprietary Data

14. Schwab was informed that certain employees of Merrill's Global Corporate & Institutional Advisory Services ("GCIAS") group were considering leaving GCIAS to start their own firm and were interested in Schwab's custodial services. Eventually these individuals created OpenArc.

15. Schwab engaged in discussions with the individuals and Dynasty about Schwab providing custodial services to OpenArc. Schwab had various meetings with the individuals and Dynasty during which Schwab presented overviews of its custodial capacities and how Schwab's RIA model functions. Contrary to Merrill's assertions, Schwab never "promised to feed the Individual Defendants corporate equity plan clients" or "give them access to Schwab clients." Compl. ¶ 52. Instead, Schwab explained that it could facilitate introductions to certain Schwab stock plan sponsor clients, if those stock plan sponsors so wished, so that OpenArc would have an opportunity to provide them and their participants with education on equity compensation, among other areas of financial wellness. OpenArc would only have contact with the plan participants at the direction of the stock plan sponsor.

16. Throughout these discussions, Schwab did not receive any confidential, proprietary, or trade secret information. At no time has Schwab received any such information and remains vigilant about not doing so.

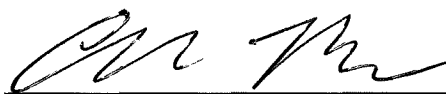
17. Finally, Merrill has claimed that Schwab and certain former Merrill employees “discussed the best way to negatively impact Merrill’s ongoing business functions in the office following their departure.” Compl. ¶ 55. That never happened.

I declare under penalty of perjury that the foregoing is true and correct.

Dated:

September 26, 2025

By:



Christopher Reedy