

IN THE UNITED STATES DISTRICT COURT
FOR EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

EILEEN LAW CURE; CURE & ASSOCIATES,
P.C.; AND PREMIER WEALTH & RETIREMENT
MANAGEMENT, LLC,

Plaintiffs,

V.

CIVIL ACTION NO.

(JURY)

LPL FINANCIAL LLC.,

Defendant.

PLAINTIFFS, EILEEN LAW CURE, CURE & ASSOCIATES, P.C.,
CURE FINANCIAL SERVICES, LLC'S,
ORIGINAL COMPLAINT

Eileen Law Cure, hereinafter sometimes referenced as Cure Individually and/or “Eileen Cure” and/or “Cure;” Cure & Associates, P.C., hereinafter sometimes referenced as “Cure Associates;” Premier Wealth & Retirement Management, LLC, hereinafter sometimes referred to as “Premier,” Plaintiffs herein, bring suing for damages against LPL Financial LLC, hereinafter referred to as “Defendant” and/or “LPL” Plaintiffs would show unto this Honorable Court as follows:

I. Jurisdiction and Venue

1. Plaintiff Eileen Cure is a citizen of the state of Texas, and does business in Jefferson County, Texas, and Montgomery County, Texas. Cure is a resident of Montgomery County, Texas.

2. Plaintiff Cure & Associates, P.C. is a corporation registered in the state of Texas, with offices located in Jefferson and Montgomery County, Texas.

3. Plaintiff Premier Wealth & Retirement Management, LLC, is financial services corporation doing business in the State of Texas with offices located in both Jefferson and Montgomery County counties.

4. Defendant, LPL Financial LLC, is a corporate entity, and a citizen of another state (California). This lawsuit is proper in this Court under diversity of jurisdiction (28 U.S.C. § 1332).

5. Pendent state law claims are brought before this Court pursuant to 28 U.S.C. §1367.

6. Eileen Cure and Defendant LPL executed a “Representative Agreement” (hereinafter “Agreement”) which set out, under “Regulatory Disclosures,” the following language: “1. You are agreeing to arbitrate any dispute, claim, or controversy that may arise between you and your firm, a customer, or any other person that is required to be arbitrated under the rules of the self-regulatory organization with which you are registering. This means you are giving up the right to sue a member, customer, or another associated person in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.”

7. Under Section 7 of the Agreement, “Miscellaneous,” the following is provided: “(B) This agreement shall be construed in accordance with the laws of State of California” [...]

(C) Representatives hereby expressly agree to submit to final and binding arbitration before FINRA any and all disputes, claims or controversies relating to Representative’s association with or termination from LPL. Such disputes, claims, or controversies shall be arbitrated in

accordance in accordance with FINRA rules. The parties hereby agree that such arbitration shall occur in San Diego, California.”

8. As set out in the supporting facts below, non-party Plaintiffs are properly before this Court.

9. Also as set out in the following facts, Plaintiff Eileen Cure, signatory to the Agreement, is properly before this Court, and the claims set forth herein do not fall within the scope of the claims covered by the arbitration agreement, if any; this Court has jurisdiction over Plaintiff Eileen Cure.

10. This Court has jurisdiction over the Defendant, LPL.

II. Parties

11. Eileen Cure was a “Representative” for Defendant, as that term is defined in the Agreement between the parties: “Representative shall hereinafter be defined as an individual who has been accepted as a Registered Representative and, upon election and licensing, as an Investment Advisor Representative and Insurance Representative for the purposes set forth below.”

12. Eileen Cure is licensed and registered with the federal Financial Industry Regulatory Authority (“FINRA”) as a Broker and Investment Advisor.

13. Eileen Cure is licensed and registered with the Texas State Board of Public Accountancy as a Certified Public Accountant.

14. Cure & Associates, P.C. is a corporate entity doing business in the State of Texas, and was not a party to the contract between Eileen Cure and Defendant LPL Financial, LLC.

15. Premier Wealth & Retirement Management, LLC, is a corporate entity

doing business in the State of Texas; Premier was not a signatory to the Agreement between Plaintiff Eileen Cure and Defendant LPL, but was subject to some of its terms and conditions.

16. Defendant LPL Financial LLC, in context of the relationship between the parties, is a Broker/Dealer, as that term is understood under federal and state securities laws; is a Brokerage firm regulated by FINRA; and is an Investment Adviser Firm, registered with the Securities and Exchange Commission (“SEC”).

III. Underlying Facts

17. Eileen Cure possesses a Central Registry Deposit (“CRD”) number of 2224269 with the Financial Industry Regulatory Authority (“FINRA”).

18. Eileen Cure has been registered as a Broker with FINRA since 1992; she first registered with Merrill Lynch, Pierce, Fenner & Smith, Incorporated (CRD #7691) from 6/10/1992 through 6/10/1994); she was subsequently registered as a Broker with Investment Management & Research, Incorporated (CRD #6694) from 10/17/1994 through 8/6/1996; H.D. Vest Advisory Services (CRD #194556) from 6/30/2006 through 12/14/2018; and LPL Financial, LLC (CRD #6415), from 12/06/2018 through 8/26/2021; Wealth Management of Kentucky, Inc. [IA] [CRD #171446] – 10/05/2021 – present. This information is found publicly at <https://brokercheck.finra.org/individual/summary/222469>.

19. Eileen Cure’s registration record with FINRA reflects “0 Disclosures”.

20. Eileen Cure’s reputation in the industry – at the point of the subject dispute – was a good one.

21. Eileen Cure has been registered as an Investment Advisor since 1992, with the same firms listed above.

22. Eileen Cure has been registered as an Investment Advisor since 2021 with

Wealth Management of Kentucky (CRD#171446).

23. Prior to the subject dispute, Eileen Cure's Investment Advisor Registration record reflected "0 Disclosures."

24. Eileen Cure's passage of required examinations/licensures related to FINRA took place on the following dates: Securities Industry Essentials Examination (SIE) (10/01/2018); Uniform Investment Adviser Law Examination (Series 65) (10/28/2005); General Securities Representative Examination (Series 7) (08/04/2004); Uniform Securities Agent State Law Examination (Series 63) (08/27/2004).¹

25. Eileen Cure has been registered with the Texas State Public Accountancy as a Certified Public Accountant ("CPA") since 10/3/1989.

26. Eileen Cure's CPA license (#C05653) has been associated with Cure & Associates, PC since 1/1/2004.²

27. Eileen Cure's record of licensure with the Texas State Board of Public Accountancy reflects "No Disciplinary History."

28. On November 18, 2018, Plaintiff Eileen Cure entered a Representative Agreement with Defendant which set out the terms and conditions of the parties' relationship.

29. Consistent with Eileen Cure's role as a registered representative, Plaintiff complied with FINRA Rule 3270, which requires written notification of outside business activities.

30. The contractual agreement of the parties identifies the relationship as a "Representative

¹ Exams listed here are within the historical time period on file and of record with FINRA, and accordingly do not include examinations or requirements passed or met prior to 2004.

² This information is accessible by the public, at <https://brokercheck.finra.org/individual/summary/222469>.

Agreement” (Contract, p. 3), with appropriate terms and conditions governing the relationship between the parties, including the following relevant provisions:

- a. (J) Shall conduct himself/herself and his/her affairs in a professional manner consistent with the building of a quality reputation for himself/herself and LPL.
- b. (V) Shall provide to LPL, while associated with LPL or subsequent to termination, originals or copies of all client account records not previously provided to LPL may maintain compliance with the applicable SEC, FINRA and state books and records requirements. Client account records include, but are not limited to, the following: direct business account applications, direct business account statements, customer correspondence, request to switch investment forms, prospectus receipts, delivery receipts, internal hand-written or computer-generated notes, security and check receipts, confirmation of customer identification as required LPL’s anti-money laundering policies and procedures, and proof of delivery of LPL’s privacy policy to customers. Failure to comply with this provision may subject you to further disciplinary action, including possible disclosure on your U-5.

4. INDEPENDENT CONTRACTOR RELATIONSHIP

- c. (A) Representative shall maintain his/her own offices and conduct his/her business in such manner as he/she shall see fit, consistent all regulatory requirements and his/her obligations hereunder. [...]
- d. (B) For all purposes, including, without limitation, the Federal Insurance Contribution Act, the Federal Unemployment Contributions Act, and the laws respecting the collection of state and federal income tax at the source of wages, the relationship between LPL and the Representative is that of a company and an independent contractor. Representative shall pay his/her own expense, is not required to work a set number of hours, shall control the manner of doing his/her business within the framework outlined herein, and may pursue other non-securities related business opportunities subject to the procedures referenced herein. (Representative is paid on a fee or commission basis only.
- e. (C) Representative is required to conform to the rules and regulations of FINRA, SEC, NFA, CFTC, MSRB and the various states, to the applicable federal and state laws, and to conform to the established customs and policies and procedures of the securities industry and LPL. In complying with such laws, rules and regulations, Representative shall accept such supervision and control by his/her branch manager and offices of LPL as is necessary to enforce such laws, regulations and rules.

31. The Agreement between the parties makes clear the relationship between the

two “shall not constitute or give rise to a franchise agreement under any applicable law” (p. 6, Section 4(D)); and that the Agreement between the parties “may be terminated by either at any time, without cause, by giving thirty (30) days written notice to the other party.” (p. 6, Section 5(B)).

32. At the time Plaintiff Eileen Cure became an associated person/registered representative with Defendant, she brought with her a forty-million-dollar (\$40,000,000.00) book of business.

33. It took Plaintiff Eileen fourteen (14) years to establish the above referenced book of business.

34. At the time of establishment of her relationship with Defendant, Plaintiff Eileen was registered with self-regulatory organizations, to-wit: Financial Industry Regulatory Authority (FINRA); Texas State Securities Board (SSB) (Securities Act of the State of Texas, “Act” or “Securities Act” or “Texas Securities Act,” Texas Revised Civil Statutes, Article 581-1 *et seq.*, Sec, 12.

35. In the securities industry, whether a person is defined as employee and/or other associated persons for securities law purposes, Broker/Dealers are required to supervise the securities activities of their personnel, whether they are considered “employees” or “independent contractors” as those terms are defined under state law.

36. 17 CFR § 240.17f-2 provides for the fingerprinting of securities industry personnel. The requirement is expansive, “Except as otherwise provided in paragraph (a)(1) or (2) of this section, every member of a national securities exchange, broker, dealer, registered transfer agent and registered clearing agency shall require that each of its partners, directors, officers and employees be fingerprinted and shall submit, or cause to be submitted, the

fingerprints of such persons to the Attorney General of the United States or its designee for identification and appropriate processing.”

37. On September 1, 2019, Texas applied the fingerprinting requirement to Certified Public Accountants: “all eligible licensees and non-CPA firm owners will be required to submit their fingerprint background check by their individual license renewal deadline or firm license renewal deadline.” This requirement is not as broad as the standard which applies to the securities industry. *See* Texas Occupation Code Section 901.253.

38. Plaintiff Eileen Cure is the owner of two business entities, one which contains the securities and insurance business and one which relate to her work in public accountancy. These entities are separate apart from each other.

39. From the period of June/July 2021 to present - the period of time relevant/material to the claims herein - the two businesses had employed twenty-one employees, of which eighteen (18) were Caucasian; two (2) were African American; and one (1) was Hispanic.

40. Of the twenty-one employees, nine (9) were employed in the Nederland office of Plaintiff Cure & Associates; two (2) were employed in the Nederland Office of Plaintiff Premier; seven (7) were employed in the Conroe office of Plaintiff Cure & Associates; and three (3) were employed in the Conroe office of Plaintiff Premier.

41. Plaintiff Eileen Cure has been involved in the securities industry for thirty-one (31) years.

42. Cure has been licensed as a certified public accountant for thirty-three years.

43. The definition of “securities” is found in the Texas Securities Act, Texas Revised Civil Statutes, Article 581-1 et seq., as amended, Sec. 4. Definitions.

44. When Cure worked with Merrill Lynch, she was deemed an employee of Merrill Lynch,

and signed a non-compete agreement with Merrill Lynch.

45. Consistent with industry practices and requirements, Cure's license was held by Merrill Lynch, until she left its employment.

46. Upon Cure leaving Merrill Lynch, because of her employer/employee relationship with Merrill Lynch, she did not have an independent book of business.

47. Plaintiff Cure's relationship with Defendant was not employer/employee; she was an independent contractor.

48. At the time that Cure signed the Agreement with Defendant, she brought with her a book of business which she had accumulated over many years.

49. Cure was given a \$190,000.00 transition loan when she began working with Defendant. The loan was for five-year period, and was designated as forgivable at the expiration of the five-year period if Cure remained for that period as an independent contractor.

50. During the two-and-a-half year period Cure worked with Defendant as an independent contractor, her firm's assets/book of business increased, from forty million dollars (\$40,000,000.00) to fifty-six million dollars (\$56,000,000.00).³

51. As a result of this success, Plaintiffs opened two offices in Conroe (Montgomery County), two hours by car from the Plaintiffs' Nederland (Jefferson County) offices.

52. In June/July 2021, Plaintiff Cure & Associates – the accounting business, not involved in the securities industry - was undertaking the process of hiring a new employee in its Nederland/Jefferson County office.

53. The hiring process was instituted to replace an African American employee

³ As a relevant

who had a difficult time in several respects, including difficulty with the Nederland clientele and following office procedures, such as accounting for funds and punctuality.

54. In filling the position, Eileen Cure instructed her staff to present the top four applicants.

55. The position being filled was a receptionist/clerk position.

56. At the time, there were eight (8) employees in Plaintiff Cure & Associates' Nederland/Jefferson County office.

57. At the time Plaintiff Cure & Associates engaged in this hiring process, it employed four (4) accountants and two (2) support personnel in its Nederland/Jefferson County Office.

58. At the time of the hiring process, Plaintiff Premier employed two (2) employees in its Nederland/Jefferson County Office.

59. One of the "top" applicants presented to Plaintiff Cure by Cure & Associates' staff had two degrees, and another was a waitress at Chili's; this latter applicant happened to be black, and was not as qualified as other.

60. On or about June 30, 2021, in context of interviewing the top applicants for the position, this black applicant was included among the top applicants for the position.

61. After conducting the interview with said applicant, a written exchange took place on Skype between Cure and an employee of Cure & Associates. The communication was sent via the office's messaging system (Skype).

62. Skype private conversations have full end-to-end encryption, such that they are more secure than standard messages; they are not copied or shared between devices in the same account, so a private conversation cannot be continued by a user on a different device.

63. In this written exchange, Cure wrote to her office manager, "I specifically said no

blacks. I'm not a prejudiced person, but our clients are 90 percent white, and I need to cater to them, so that interview was a complete waste of my time.”

64. An employee who came into the office manager's office around the time of said written exchange took an unauthorized picture (with her cell phone) of this private written exchange, from the screen of the office manager's computer.

65. Weeks later, on or about July 20, 2021 at 2:30 p.m., the employee who had taken this unauthorized picture deliberately and maliciously misinformed a client about the Plaintiff's availability to consult with the client; the employee told the client that Plaintiff was only in the office once a week, and would not be able to speak with the client for a week.

66. Upon learning of this misinformation, on or about July 26, 2021, Plaintiff Cure issued a disciplinary write-up to the employee.

67. On July 27, 2021, the day following the disciplinary write-up, the employee forwarded the unauthorized image of the private conversation, which said employee had taken/stolen from the office manager's personal computer, to a user on the social media platform TikTok.

68. That same day, Plaintiff learned what the employee had done when Plaintiff received over six hundred (600) Facebook messages regarding the image of the private Skype conversation.

69. On or about July 29, 2021, after undertaking some investigation as to the source of the TikTok user's access to the image, Cure terminated the employee who had taken/stolen and disseminated the the unauthorized material.

70. As an aside - Plaintiff Cure & Associates filled the vacant position with the applicant who had two degrees.

71. The TikTok dissemination did not distinguish between the businesses (Plaintiffs Cure &

Associates and Premier); did not attribute the information to the accounting business, Cure & Associates; did not contain any information related to the employee being replaced, reasons for that employee's termination; and did not contain any information regarding the qualifications, or lack thereof, of the applicant referenced.

72. The TikTok user published Defendant LPL's name and mentioned Eileen Cure's role as an adviser with LPL.

73. LPL terminated its relationship with Eileen Cure and Premier on August 26, 2021.

LPL'S RESPONSE & TERMINATION OF RELATIONSHIP

74. On July 27, 2021, Cure called Jimmy Rodriguez, her client manager with LPL, and discussed the unauthorized publication by the employee of a private interoffice communication between Cure and the office manager for Cure & Associates.

75. Rodriguez stated that Cure was an independent contractor with LPL, and LPL did not and would not get involved in Cure's human resources issues.

76. Defendant LPL inquired of Plaintiff Eileen Cure the circumstances surrounding the information published on TikTok; this communication took place on July 29, 2021, by email.

77. Cure took from these conversations that, because the issue was not just a human resources issue, but was the issue of the accounting firm, Plaintiff Cure and Associates, and was not related in any way to the securities industry or Plaintiff Premier, issue, LPL's position remained true/consistent with her, and Premier's, relationship with Defendant LPL.

78. Cure's understanding would have been consistent also with LPL's responses to controversies involving other brokers with whom it maintained independent contractor relationships – having their backs by, at least, refraining from comment.

79. On July 29, 2021, LPL posted on Twitter, providing the following response to a

tweet by a Curtis Jefferson dated July 29, 2021, concluding Cure's firm was a racist one: "Curtis, we condemn racism and aim to create an inclusive workplace where everyone feels they belong. An internal investigation is underway."⁴

80. At the time, most of of LPL's board members and executive officers were Caucasian, and the majority were male.

81. Despite its July 29, 2021 statement regarding an investigation, LPL did not conduct any such investigation.

82. On or about August 5, 2021, the following statement by LPL issued was published: "LPL has seen the video discriminatory comments by Ms. Cure. We immediately launched an internal investigation to review the matter, and a decision is forthcoming this week regarding Ms. Cure's relationship with the firm. We will not tolerate discrimination of any kind of our LPL community."

83. Although Financial Planning published an article on August 4, 2021, attributing a different position to LPL (LPL stating it would not be liable for Cure's alleged actions because she was an independent contractor and not an employee) LPL's other statements contradict this position.⁵

84. On August 4, 2021, a story ran online by Investment News attributing

⁴ See <https://mobile.twitter.com/lpl/status/1420813019920183304>, last visited January 30, 2022.

⁵ See <https://www.financial-planning.com/news/eileen-cure-no-longr-an-lpl-advisor-after-alledged-racist-comments>, last visited January 30, 2022.

the following statement to LPL, “We will not tolerate discrimination of any kind in our LPL community.” LPL also stated that “following our process for review of adviser conduct, Ms. Cure is no longer a client of the firm.”⁶

85. On August 4, 2021, a story ran online by Investment News attributing the following statement to LPL, “We will not tolerate discrimination of any kind in our LPL community.” LPL also stated that “following our process for review of adviser conduct, Ms. Cure is no longer a client of the firm.”⁷

86. On August 4, 2021, a story ran online by Investment News attributing the following statement to LPL, “We will not tolerate discrimination of any kind in our LPL community.” LPL also stated that “following our process for review of adviser conduct, Ms. Cure is no longer a client of the firm.”⁸

87. Prior to LPL’s statements, circulation of the TikTok user’s story was fairly limited.

⁶ See <https://www.investmentnews.com/lpl-adviser-challenges-defamatory-tiktok-allegations-of-racism-209795/amp>, last visited January 30, 2022. See tweet at <https://mobile.twitter.com/lpl/status/1423157734220967937>, last visited January 30, 2022; tweet dated August 5, 2021.

⁷ See <https://www.investmentnews.com/lpl-adviser-challenges-defamatory-tiktok-allegations-of-racism-209795/amp>, last visited January 30, 2022. See tweet at <https://mobile.twitter.com/lpl/status/1423157734220967937>, last visited January 30, 2022; tweet dated August 5, 2021.

⁸ See <https://www.investmentnews.com/lpl-adviser-challenges-defamatory-tiktok-allegations-of-racism-209795/amp>, last visited January 30, 2022. See tweet at <https://mobile.twitter.com/lpl/status/1423157734220967937>, last visited January 30, 2022; tweet dated August 5, 2021.

88. After LPL's statement, various news organizations around the country picked it up, and LPL's statements were published in various journals, magazines, and other news sources sought out and relied upon by financial/securities industry professionals.

89. On or about August 11, 2021, LPL disseminated a statement to the public that "the interviewee in question could not only sue Cure but LPL, something LPL does not want."

90. On August 4, 2021, LPL disseminated letters to Cure's, and/or Premier's, clients, containing the following introductory paragraph, "Please be advised your LPL financial adviser, CURE, EILEEN L., is no longer licensed with LPL Financial as of 08/04/2021. As a result your [*type of account*] with LPL Financial has been moved to a deactivated account status with billing, performance, trading and/or account management features turned off."

91. LPL's letter also invited Cure's/Premier's clients to contact Cure "about transferring your account to a new firm." The letter also provided information as to how the client could remain with LPL, and how to locate an LPL-associated financial adviser or broker in the client's locale.

92. Also on August 4, 2021, a letter was forwarded by Defendant to Eileen Cure, referencing termination of its relationship with Cure "for cause."

93. The termination was effective at the close of business August 4th, 2021.

94. Plaintiff was instructed to immediately cease and desist from holding herself out to the public as an LPL representative.

95. The termination letter also provided, "[y]our Form U5 will reflect the circumstances under which you were discharged from LPL and a copy will be mailed to your home address."

96. About Cure's book of business, LPL instructed Cure the business would remain with

LPL due to client opt-out (of their relationship with Cure), meaning “all book and records would be sent to LPL, and copies should be kept” by Cure.

97. The letter sent by LPL to Cure did not identify any clients who had chosen to opt out.

98. The termination letter provided the following instruction:

Client account records include, but are not limited to, the following: direct business account applications, direct business account statements, customer correspondence, request to switch investments forms, prospectus receipts, delivery receipts, internal hand-written or computer-generated notes, security and check receipts, confirmation of customer identification and proof of delivery of LPL’s privacy policy to customers. Please send your books and records to the address below within 10 business days of termination. If you prefer to upload your books and records using iDoc, or currently use iDoc, please notify the Centralized Supervision by sending an email to booksandrecords@lpl.co, when books and records have been uploaded.

[Emphasis in original text]

99. Upon termination of its relationship with Cure, without notice, Defendant immediately cut Cure off from all communication with her clients.

100. Defendant thus laid claim to Plaintiff’s entire book of business, as though she were an employee who had assembled said book of business during her employment with LPL, rather than an independent contractor who had brought her own book of business with her.

101. In non-employee relationships with financial professionals, LPL styles itself as a

custodian; with respect to its independent contractor relationships with Registered Investment Advisers, for example, LPL's website provides:

When you custody with LPL Financial, you get more.

Like concierge support from a dedicated RIA-focused team, streamlined technology, and access to a suite of business-building resources to help you build your future on your terms.

Unlike other leading custodians, we never compete for your clients. Ever. Our only business is helping financial advisors succeed. Part of that commitment is a dedication to supporting RIAs like yours.⁹

[Emphasis Added.]

102. LPL is the largest independent broker-dealer in the United States.

103. LPL revenue for 2020 was a record 5.9 billion dollars.

104. In 2020, LPL had more than 17,500 financial advisors, with over 1 trillion dollars in advisory and brokerage assets.

105. At the end of 2021, LPL had 19,876 broker-dealers and remained the largest independent broker-dealer in the country, with 7.7 billion dollars in annual revenue, and over 1 trillion dollars in customer assets under management.

106. LPL is a publicly traded company.

107. LPL's use of Twitter and social media to publish/disseminate statements is

⁹ Registered Investment Advisers Get More at LPL Financial, <https://www.lpl.com/join-lpl/establishing-your-business/business-model-options/individual-advisor/registered-investment-advisor.html>, last visited August 4, 2022.

consistent with practice of using social media to promote its business, as explained in its September 4, 2019 article “Three Reasons Financial Advisors Need Twitter,” authored by Sarah Leblanc, Assistant Vice President of Marketing for LPL Financial.¹⁰

108. In the article *supra*, LPL’s marketing department advised, “Joining Twitter is like walking into a room full of the most influential folks in your community.”

109. When LPL terminated Eileen Cure “for cause,” it flagged Eileen Cure’s broker (Series 7 – general securities representative) license with FINRA.

110. LPL flagged Eileen Cure’s Series-7 license for “racism.”

111. As a FINRA Series 7 license-holder, Eileen Cure was authorized to purchase and sell securities, but her license was required to be registered with a FINRA-registered broker-dealer firm.

112. Although this flag is not visible to the public, it is provided to any firm with whom Eileen Cure seeks to register her Series 7 license.

113. If a Series 7 license-holder’s license is not registered with a firm for a period of time, the license expires/lapses.

114. After taking Eileen Cure’s 56-million-dollar book of business from her, LPL also effectively took her Series 7 license, by flagging her license.

115. Eileen Cure attempted to register her Series 7 license, engaging in negotiations with multiple firms.

116. Based on Cure’s track record over three decades in the industry - her proven

¹⁰ posted on September 4, 2019; *see* <https://www.lpl.com/news-media/marketing-blog/three-reasons-financial-advisors-need-twitter.html>, last visited January 30, 2022.

record of success and integrity – any of the firms with whom Cure attempted to register would have been happy to have her registered and working with them, if not for Defendant’s action against her license.

117. In fact, some negotiations with prospective firms were promising at the outset, such that Cure engaged in discussions for days, weeks, and months at a time – but all ultimately failed, due to the controversy created by Defendant and its action against her licensure.

118. Under the terms of Cure’s Agreement with LPL, either party was permitted to terminate the Agreement with 30 days’ notice, with or without cause. Plaintiff requested a thirty (30) day period to transition the clients to a new firm. This request was denied; instead, Defendant immediately took action to make Cure’s clients and book of business their own.

119. On several occasions, Defendant refused or failed to allow Plaintiff’s clients to access or control their own funds, despite Plaintiff’s and her clients’ requests.

120. After Defendant publicly stated that Plaintiff Eileen Cure was a racist, Plaintiff attempted to take action to secure her clients and save her, and her businesses’, reputation, and mitigate damages, including, i) the attempted sale of the business, which would include the book of business. This attempt was blocked by Defendant; ii) placing the book of business with other agencies, which was blocked by Defendant; iii) attempting to register her series 7 license with other firms, all of which attempts would have been successful, but for LPL’s having flagged her license with FINRA.

121. As a result of Defendant’s having flagged her Series 7 license, Plaintiff Eileen Cure was unable to register with another firm; accordingly, her Series 7 license is no longer valid.

122. Texas, the domicile of Plaintiffs Eileen Cure; Cure & Associates; and Premier

Financial, recognizes the federal law, and has incorporated the small business exemption from equal employment opportunity laws, into Texas law.

123. When the Civil Rights Act of 1964 was passed, Congress debated the application of any anti-discrimination laws to small businesses and religious institutions, even if those institutions affected interstate commerce.

124. Title VII of the Civil Rights Act of 1964 defines “employers” and thus, with its passage, created a small business exemption. The 1964 Act had a twenty-five-employee threshold, which was later lowered to a fifteen-employee threshold by the Equal Employment Act of 1972.

125. Plaintiffs have never employed the requisite number of employees to bring them within the purview of employment discrimination laws, as applicable under federal law and/or under the law of the State of Texas.

126. Albeit Plaintiff has hired a diversity of employees in her businesses, like all small businesses – whether the business is a family-based Italian, Jewish, Indian, Mexican, African American business – or any other race, nationality, or ethnicity - or whether the business is simply, by virtue of its small size, benefitted by catering to its clientele, by hiring employees who are of the same race as its clientele, and whether those clientele are African-American, Latinx, Asian, Caucasian, or any other race - Plaintiff has retained the legal right under the law to hire and fire at-will.

127. Plaintiff’s office manager was aware of the problems with the employee (receptionist/clerk) who was terminated and the “fit” necessary in the Nederland office.

IV. CAUSES OF ACTION

EILEEN CURE & PREMIER WEALTH & RETIREMENT MANAGEMENT,
LLC

Breach of contract

- a. Defendant breached its contract with Eileen Cure by not following the explicit terms of the contract by its failure to treat the Plaintiff's separate hiring in her accounting business as her own, separate issue (*i.e.*, treating Eileen Cure as an employee, rather than an independent contractor).
- b. Defendant failed to provide thirty-day notice consistent with terms and conditions found in the contract. This would have permitted Plaintiff to protect and place her book of business.
- c. Breach of its fiduciary duty to Plaintiff Eileen Cure, as custodian of Plaintiff's book of business, to return Plaintiff's book of business to her at the conclusion of the relationship between Plaintiff and Defendant.
- d. Breach of its fiduciary duty to Plaintiff Eileen Cure's clients, by cutting off clients' ability to communicate with Plaintiff Eileen Cure and/or Plaintiff Premier, and by refusing to allow clients access to their own assets.

Business Disparagement – Premier Wealth; defamation – Eileen Cure

- e. The tort of business disparagement encompasses falsehoods concerning the condition or quality of a business's products or services that are intended to, and do in fact, cause financial harm. See RESTATEMENT (SECOND) OF TORTS § 629. Its elements are more stringent than those of defamation because business disparagement protects against pecuniary loss. The publication of a disparaging statement concerning the product of another is actionable when (1) the statement is false, (2) published with malice, (3) with the intent that the publication cause pecuniary loss or the reasonable recognition that it will, and (4) pecuniary loss does in fact result. *See Forbes, Inc. v. Granada Biosciences, Inc.*, 124 S.W.3d 167, 170 (Tex. 2003) (listing

elements as the publication of false and disparaging information with malice, and without privilege, causing special damages).

f. The societal debate which waged after the TikTok user asserted Eileen Cure was racist was thrust into the national news, and into various industry publications, by Defendant LPL stating and confirming as much in the financial news, including, but not limited to, the CEO of LPL's authorship of an article for Fortune 500 magazine.

g. This publication of false information – that LPL had conducted an investigation and had concluded Eileen Cure was racist, and that she had engaged in illegal hiring practices, and had therefore terminated their relationship with her, worked to eviscerate Plaintiff Premier's business model, and the personal and professional reputation of Plaintiff Eileen Cure.

h. LPL's statements worked to defame and blacken the name of Eileen Cure, and subject her to public hatred, shame, disgrace, contempt, and ridicule.

i. Defendant disparaged Plaintiff Premier's business; defamed Eileen Cure's reputation; and actively (and successfully) worked to destroy her ability to work as a general securities representative, casting her in a dark and negative light, flagging her license without just cause or lawful basis, preventing Eileen Cure from retaining her book of business, and enriching Defendant.

Tortious inference with Eileen Cure's contract(s) with others

j. Defendant interfered with Plaintiff's contracts with third parties by sending out letters limiting the clients' options (liquidating the portfolio or remaining with LPL, by contracting a person/entity other than Eileen Cure). As the parties existed in an independent contractor relationship, Defendant did not have the right to treat Plaintiff's clients as their own.

k. Defendant rendered it impossible for Plaintiff to sell her book of business to any

third party.

l. Defendant rendered Plaintiff's Series 7 license useless, and created a situation in which it is now almost impossible for Plaintiff to continue to work in the securities industry.

CURE & ASSOCIATES

m. Cure & Associates is not a signatory to the Agreement between Eileen Cure and Defendant LPL.

n. Cure & Associates is a separate legal entity/person from Premier Wealth & Retirement, LLC.

o. Cure & Associates' hiring process was legal.

p. Cure & Associates' hiring process was unrelated to Defendant.

q. Defendant's global language pertaining to its investigation and findings interfered with Plaintiff's clients and employees causing Plaintiff damages, particularly when Defendant labelled the employment actions of Cure & Associates as racist.

r. Labeling Cure & Associates and/or any entity as racist presents devastating reputational and economic consequences in the diversity of the marketplace, and is intolerable, particularly in light of the fact that Cure & Associates' hiring practices were, and remain, legal.

s. Instead of Defendant following its normal protocol and not commenting on a third party's actions, Defendant took action, speaking out against Plaintiffs, exponentially increasing the damage to Plaintiffs.

t. Cure & Associates is not subject to the terms of the arbitration agreement, if any.

u. Defendant's actions worked to interfere with Plaintiff's contract with its employees and third parties, causing Plaintiff damages.

v. Defendant's actions constitutes business disparagement to Cure & Associates, and worked to sully Cure & Associates' reputation in the business community.

V. PRAYER FOR RELIEF AND DAMAGES

w. Plaintiff Eileen Cure and Premier Wealth & Retirement Management, LLC sue for damages in the following respects:

- i. Because of Defendant's wrongful acts Plaintiff has been able to retain only a small fraction of her book of business, representing a loss of forty-five to fifty-five million dollars (\$45,000,000.00 - \$55,000,000.00).
- ii. Plaintiff sues for damages for her reputation in the financial industry in the amount of ten million dollars (\$10,000,000.00).
- iii. Plaintiff sues for loss of income incurred as a direct result of Defendant's actions, to date and in the future, in the amount of twenty million dollars (\$20,000,000.00).
- iv. Plaintiff also sues in equity, and prays an order be entered directing Defendant to remove the false posting with FINRA.
- x. Plaintiff Cure & Associates due for damages in the following respects:
 - i. Loss of income associated with Defendant's tortious interference, in the amount of fifty million (\$50,000,000.00), past, present, and future loss of income.
 - ii. Damages associated with professional defamation in the amount of fifteen million (\$15,000,000.00).
- y. Plaintiff Eileen Cure sues for reasonable and necessary attorneys' fees and costs.
- z. All Plaintiffs sue for pre-and post-judgment interest, and for any and all relief under law or in equity to which Plaintiffs may be deemed entitled.

DATE: August 4, 2022.

Respectfully submitted,

/s/ ELLYN J. CLEVINGER

Ellyn J. Clevenger
Texas Bar Roll Number 24058662
1115 Moody Avenue
Galveston, Texas 77550
409.621.6440

ATTORNEY FOR EILEEN CURE;
PREMIER WEALTH & RETIREMENT
MANAGEMENT, LLC.; AND
CURE & ASSOCIATES, P.C.

A JURY TRIAL IS DEMANDED

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS Eileen Law Cure; Cure & Associates, P.C.; Premier Wealth & Retirement Management, LLC.</p> <p>(b) County of Residence of First Listed Plaintiff <u>Montgomery</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Ellyn Julia Clevenger, Attorney at Law; 1115 Moody Avenue, Galveston, Texas, 77550; 409.621.6440</p>	<p>DEFENDANTS LPL Financial, LLC</p> <p>County of Residence of First Listed Defendant <u>San Diego, California</u> (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">PTF</td> <td style="width:33%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">PTF</td> <td style="width:33%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input checked="" type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p style="text-align: center;">INTELLECTUAL PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 <p style="text-align: center;">SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p style="text-align: center;">FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 U.S.C. § 1332

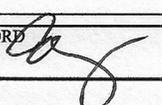
Brief description of cause:
 Defamation; Business Disparagement; Tortious Interference

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** \$150,000,000.00 **CHECK YES only if demanded in complaint:**
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE: 8/4/2022 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____