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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AMERIPRISE FINANCIAL SERVICES, LLC, Plaintiff, v. LPL FINANCIAL LLC, Defendant.	Case Nos. 24-CV-01333-JO-MSB, 25-CV-00880-JO-MSB **INTERVENING ADVISORS' NOTICE OF *EX PARTE* MOTION, *EX PARTE* MOTION TO REOPEN CASE AND INTERVENE, AND MEMORANDUM IN SUPPORT**
LPL FINANCIAL LLC, Plaintiff, v. AMERIPRISE FINANCIAL SERVICES, LLC, Defendant.	**Hearing** Date: (Hearing date pending) Time: (Hearing time pending) Place: Courtroom of the Honorable Jinsook Ohta

NOTICE OF MOTION AND MOTION

TO THE HONORABLE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 24 of the Federal Rules of Civil Procedure and Local Civil Rule 83.3(g), non-parties [redacted] (the "Advisors") move *ex parte* before the Honorable Jinsook Ohta, in the United States District Court for the Southern District of California, located at 333 West Broadway, San Diego, California, 92101, for an order reopening Case No. 24-CV-01333 and allowing the Advisors to intervene in the above-captioned cases for the limited purpose of filing a motion to stay the above-captioned cases pending arbitration or, alternatively, to modify the Stipulated Order in Case No. 24-CV-01333 (Dkt. 53). Pursuant to Rule 24(c), the Advisors are attaching hereto their proposed Memorandum in Support of their planned Motion to Stay Cases Pending Arbitration or, Alternatively, to Modify the Stipulated Order.

Under Rule 24(a)(2) of the Federal Rules of Civil Procedure, the Advisors are entitled to intervene in these actions as a matter of right because: (i) they claim a material interest in the property that is the subject of this actions; (ii) disposition of the actions impairs and impedes their ability to protect their interests; and (iii) the existing parties do not adequately represent their interests. In the alternative, intervention is warranted under Rule 24(b)(1)(B) because the Advisors are asserting a defense in the underlying FINRA arbitration that overlaps with the key factual issue addressed by the Stipulated Order.

The motion is based on this Notice, the attached Memorandum of Points and Authorities, the attached Declarations of Collette Cummings and George Freeman, the Court's file and records in this action, and such other evidence and arguments as may be considered by the Court. An *ex parte* motion is necessary because a noticed

motion could not be filed in time for the Court's status conference with Ameriprise and LPL scheduled for tomorrow during which the parties will discuss, among other issues, LPL's progress towards compliance with the Stipulated Order. Without intervening immediately, the Advisors had no way to directly address the Court and to raise their concerns with the Stipulated Order, particularly the forensic review mandated by Paragraph 4.

Pursuant to Local Civil Rule 83.3(g) and this Court's Civil Chambers Rules, and as fully described in the Declaration of George C. Freeman, III filed concurrently herewith, on May 6, 2025 the Advisors' counsel informed counsel for both Ameriprise and LPL when and where this motion would be made and met and conferred with them in an attempt to resolve the parties' differences. Counsel for Ameriprise stated that Ameriprise opposes this motion. Counsel for LPL stated that LPL is not opposed to this motion.

DATED: May 7, 2025

BARRASSO USDIN KUPPERMAN FREEMAN & SARVER, L.L.C.

By: */s/ Janelle E. Sharer*
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

[redacted] ("Intervening Advisors" or "Advisors") submit the following Memorandum of Points and Authority in support of their *ex parte* motion to reopen Case No. 24-CV-01333 and intervene for the limited purpose of moving to stay the above-captioned cases pending arbitration or, alternatively, to modify the Stipulated Order entered at Docket No. 53 in Case No. 24-CV-01333. This Motion is brought under Rule 24 of the Federal Rules of Civil Procedure.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Intervening Advisors are caught between two corporate behemoths engaged in a massive and multi-front recruiting battle. Unfortunately, as a result, they risk the invasion of their privacy and the trampling of their rights. They are not parties to these cases. They did not agree to the Stipulated Order. Yet under Paragraph 4 of that Order, they are now being forced to submit their personal devices to a forensic review and to allow the deletion of customer information from those devices despite having had no voice in the process that led to its entry.

That alone would warrant concern. But the situation has become even more untenable. Shortly after the Order was entered, Ameriprise added the Intervening Advisors as respondents in its underlying FINRA arbitration with LPL. Ameriprise alleges that the Intervening Advisors misappropriated Ameriprise's trade secrets when they retained their customers' information upon their departure from Ameriprise years ago. In truth, the Advisors had the contractual *right* to retain that information—information that the *Advisors* obtained from *their* customers through relationships that *they* developed without Ameriprise's assistance.

The Advisors' right to, and ownership of, their customers' information is now directly at issue in the arbitration; indeed, it is *the* ultimate issue in dispute. The Stipulated Order prejudices the Advisors' right to mount their defense in the forum

where the parties' dispute will be litigated. The Advisors are being asked not only to hand over their personal property and to countenance an invasion of their privacy, but also to essentially permit Ameriprise an end-run around the arbitration process (including by obtaining intrusive and free-ranging discovery outside of arbitration).

The Intervening Advisors are entitled to intervene as of right—or, in the alternative, should be permitted to do so—to protect their significant and legally cognizable interests in their property, their privacy, and their due process right to defend themselves. And the Advisors are intervening to seek only limited and narrow relief: a stay of these cases pending arbitration or, alternatively, modification of the Stipulated Order to limit the contemplated forensic review of the Advisors' personal devices. That provision was agreed to by Ameriprise and LPL, not the Advisors, but it nevertheless subjects the Advisors (nonparties at the time) to an intrusive process that threatens their legal rights.

To be clear, the Intervening Advisors are *not* suggesting that concerns over unauthorized access to retail customer information will go unaddressed. Rather, those concerns will be directly addressed in the FINRA arbitration to which the Advisors are now parties. Staying these cases, or tailoring Paragraph 4 of the Stipulated Order, thus works no prejudice. And it accords with the Federal Arbitration and FINRA rules, which *require* arbitration of these disputes.

No one should be forced to surrender their privacy without notice, without consent, and without a say. The Advisors therefore ask this Court to reopen this case and grant them leave to intervene. Moreover, the Advisors have a right to mount a full defense to the claims against them in FINRA arbitration – the exclusive forum for resolution of *all* aspects of this dispute. The Stipulated Order intractably conflicts with that right and forces a portion of this dispute out of the exclusive forum for its resolution. Accordingly, pursuant to Rule 24(c), the Advisors are attaching as hereto their proposed Memorandum in Support of their planned Motion to Stay Cases Pending Arbitration or, Alternatively, to Modify the Stipulated Order.

II. FACTUAL BACKGROUND

A. The Advisors Leave Ameriprise for LPL While Retaining Their Customers' Information as Authorized

When financial advisors move between independent broker-dealers, they typically retain their clients' information as part of the transition. They do so because the great majority of their clients agree to transfer their assets to accounts held at the new broker-dealer. These clients (rightly) perceive their relationship to be with the advisor, not with the broker-dealer itself, and thus *want* to continue that relationship. *See* Declaration of Collette Cummings ¶¶ 3–5. Retaining clients' information allows advisors to efficiently open accounts at the new broker-dealer upon the clients' consent, thus ensuring that the clients experience minimal interruption to their investment needs. *See id.* ¶ 15. This practice is ubiquitous in the independent-broker-dealer space. And financial advisors, who are themselves licensed professionals subject to FINRA rules (along with other applicable securities regulations), know and understand the importance of keeping their clients' information safe and secure: after all, they are entrusted (and expected) to do so every day.

The Intervening Advisors transitioned from Ameriprise to LPL in exactly this manner. They retained their clients' information pursuant to the express terms of their contractual agreements with Ameriprise. And they did so with Ameriprise's knowledge and consent. Most of their clients followed them, and thus necessarily authorized the Advisors to have their personal information in connection with the opening and maintenance of accounts for them at LPL. To effectuate the efficient transfer of their customers' information, the Advisors utilized an Excel spreadsheet, known as the Bulk Upload Tool, into which they input their customers' information.

B. Ameriprise and LPL Enter Into a Stipulated Order, to Which the Advisors Are Not Parties and of Which They Had No Notice

Years after the Advisors' departures, Ameriprise decided to take issue with the way in which they left in an attempt to gain leverage over LPL in the parties'

ongoing recruiting dispute. But it did not first choose to sue the Advisors in FINRA arbitration. Instead, it sought a preliminary injunction against LPL in this Court.

The Advisors were not parties to this action. Nevertheless, on December 12, 2024, the parties entered into a Stipulated Order that fundamentally affects the Advisors' rights. Paragraph 4 of the Stipulated Order provides that a third-party forensic examiner will review "*the Advisors' personal devices and/or repository(ies)*" and delete information regarding their current or former customers from those devices and/or repositories. Dkt. 53 at 2:1–11 (emphasis added). In other words, Ameriprise and LPL agreed—without giving notice to the Advisors or providing them with any form of say—that the Advisors' own *personal property* would be subject to a forensic review and information that the Advisors contend they have a *legal right to possess* would be deleted.

The Advisors understand that the agreement in the Stipulated Order was reached out of the concern for potential unauthorized disclosure of customer information. But the *Advisors'* possession of the information was not unauthorized—it was *expressly* authorized by Ameriprise and approved by the Advisors' clients. *See* Declaration of Collette Cummings ¶ 15. And, moreover, there was no reason to believe that, years later, the information is suddenly at risk of being leaked. The Advisors are all experienced professionals with decades of experience in the industry, all of whom are familiar with industry and regulatory requirements regarding the safeguarding of customer information.

C. Ameriprise Sues the Advisors in FINRA Arbitration

In connection with its Complaint and Motion for a Preliminary Injunction in this Court, Ameriprise also filed a Statement of Claim in FINRA arbitration against LPL. Again, the Advisors were not originally parties to that action. However, on New Year's Eve, December 31, 2024—less than three weeks after entering into the Stipulated Order with LPL—Ameriprise filed an Amended Statement of Claim naming the Intervening Advisors (along with other advisors who left Ameriprise

under similar circumstances) as co-respondents in the arbitration. The Amended Statement of Claim accuses the individual respondents of misappropriating Ameriprise's "trade secrets" when they retained their ***own customers' information***.

The heart of the Advisors' defense in the FINRA arbitration is that they were contractually permitted to retain their customers' information. Moreover, the Advisors maintain that *they*—not Ameriprise—developed their client relationships and obtained the information at issue directly from their clients (often before they ever joined Ameriprise).

The Advisors believe that Ameriprise's sequencing has not been pure circumstance. Having obtained the Stipulated Order for forensic review of the Advisors' devices, it *then* sued the Advisors in the arbitration. The result is that the forensic review will not only invade the Advisors' privacy and property rights but also permit Ameriprise to conduct an "end-run" around the arbitration by obtaining broad and intrusive discovery outside of the arbitration itself.

D. Ameriprise Sends a "Data Breach Notice" to the Advisors' Clients and Others

Finally, on April 8, 2025, Ameriprise issued a "Notice of a Data Breach" to an unidentified number of the Advisors' customers. The Advisors do not know who received this letter. What they do know is that it falsely asserts that the Advisors shared their clients' information without authorization and, incredibly, warns of potential identity theft and unauthorized account activity based on their *own Advisor's retention of their information years ago*.

III. LEGAL STANDARD

Federal Rule of Civil Procedure 24(a)(2) provides:

> "On timely motion, the court must permit anyone to intervene who . . . claims an interest in the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest."

"While an applicant seeking to intervene has the burden to show that these four elements"—timeliness, interest, impediment, and inadequate representation—"are met, the requirements are broadly interpreted in favor of intervention." *Citizens for Balanced Use v. Montana Wilderness Ass'n*, 647 F.3d 893, 897 (9th Cir. 2011); *see also Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011) (courts apply "[a] liberal policy in favor of intervention"). "[R]eview is guided primarily by practical considerations, not technical distinctions." *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2011) (quotation marks, citation omitted); *accord Callahan v. Brookdale Senior Living Comms.*, 42 F.4th 1013, 1020 (9th Cir. 2022).

Finally, a party may also be permitted to intervene under Rule 24(b)(1)(B) where it "has a claim or defense that shares with the main action a common question of law or fact."

IV. ARGUMENT

The Intervening Advisors are entitled to timely intervene under Rule 24(a)(2) to protect their property, privacy, and due process rights, which are otherwise being impaired and not adequately represented. In the alternative, the Advisors should be permitted to intervene under Rule 24(b)(1)(B).

A. The Intervening Advisors Are Entitled to Intervene as of Right

In determining whether a proposed intervenor meets the requirements of Rule 24(a)(2), the Ninth Circuit applies a four-part test:

> (1) [T]he motion must be timely; (2) the applicant must claim a "significantly protectable" interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) the applicant's interest must be inadequately represented by the parties to the action.

Wilderness Soc'y v. U.S. Forest Serv., 630 F.3d 1173, 1177 (9th Cir. 2011). Each element of that test is met here.

1. The Intervening Advisors' Motion is Timely

"Timeliness is determined by the totality of the circumstances facing would-be intervenors, with a focus on three primary factors: (1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to other parties; and (3) the reason for and length of the delay." *Smith v. Los Angeles Unified Sch. Dist.*, 830 F.3d 843, 854 (9th Cir. 2016) (quotation marks, citation omitted). Of these, the second factor, prejudice to the other parties, is "the most important consideration in deciding whether a motion for intervention is untimely." *Id.* at 857.

The Intervening Advisors' motion is timely. Most critically, it works no prejudice to the other parties. Ameriprise chose to sue the Advisors in arbitration and place their right to retain their customers' information directly at issue. Should the arbitrators determine that forensic review and deletion of that information from the Advisors' devices is necessary, they can closely review and supervise that process. The work that Ameriprise and LPL has done thus far to coordinate the review—from the retention of the forensic examiner to the creation and dissemination of custodian surveys—could and would be leveraged as part of that process.

Indeed, should the arbitrators determine that a forensic review is necessary, their direction of that process would likely cause it to be accomplished *more* quickly than under the Stipulated Order. The arbitrators can quickly and decisively resolve any disputes that arise between the parties over issues like which devices should be reviewed, what search terms should be utilized, or what information ultimately requires deletion.

The remaining factors further support the timeliness of the Intervening Advisors' motion. The Advisors were sued on New Years' Eve. Undersigned counsel was not retained until late April. The pleadings in the arbitration are nearly complete, and a full arbitrator panel has recently been appointed, with an initial prehearing conference scheduled for May 19. Deferring questions related to the

ownership of, and right to, the customer information at issue in the underlying arbitration to the arbitrators would thus not disrupt the arbitral process in any way. And because this proceeding is closed, doing so similarly does not affect any aspect of the timing of this action.

2. The Intervening Advisors Have a Significant Protectable Interest in Their Property, Privacy, and Due Process Rights

"An applicant demonstrates a significantly protectable interest when the injunctive relief sought by the plaintiffs will have direct, immediate, and harmful effects upon a third party's legally protectable interests." *Sw. Ctr. for Biological Diversity*, 268 F.3d at 818 (quotation marks, citation omitted); *see also United States v. City of Los Angeles*, 288 F.3d 391, 398 (9th Cir. 2002) (noting "the relationship requirement is met if the resolution of the plaintiff's claims actually will affect the applicant") (quotation marks, citation omitted).

As a threshold matter, proceeding with the forensic review would require the Advisors to hand over their *personal property*—which *they* own, and which they do *not* use exclusively for LPL (or, previously, Ameriprise) business. The owner of real property plainly has a legally protectable interest in that property. *See Sierra Club v. E.P.A.*, 995 F.2d 1478, 1482 (9th Cir. 1993) ("[T]he lawsuit would affect the use of real property owned by the intervenor. . . . These interests are squarely in the class of interests traditionally protected by law.").

Moreover, the Advisors' personal cell phones and other devices obviously contain their personal, private information—such as family photographs, their own legal documents, and the like. The protectable privacy interest in these materials is evident. As the Ninth Circuit declared:

> Laptop computers, iPads and the like are simultaneously offices and personal diaries. They contain the most intimate details of our lives: financial records, confidential business documents, medical records, and private emails. This type of material implicates the Fourth Amendment's specific guarantee of the people's right to be secure in their "papers." U.S. Const. amend. IV. The express listing of papers

> reflects the Founders' deep concern with safeguarding the privacy of thoughts and ideas. . . . These records are expected to be kept private[.]

United States v. Cotterman, 709 F.3d 952, 964 (9th Cir. 2013) (quotation marks, citations omitted). That interest is heightened where, as here, the individual whose privacy will be infringed upon is not a party to the action and had no opportunity to object to the contemplated infringement. Accordingly, courts repeatedly recognize the propriety of intervention to protect these personal privacy interests. *See, e.g.*, *Gov't Accountability Project v. Food & Drug Admin.*, 181 F. Supp. 3d 94 (D.D.C. 2015) (Jackson, J.) (granting motion to intervene seeking to prevent disclosure of confidential information by the defendant pursuant to FOIA request); *100Reporters LLC v. United States Dep't of Just.*, 307 F.R.D. 269, 275 (D.D.C. 2014) (same) (collecting cases).

The Stipulated Order also directly implicates, and affects, the Intervening Advisors' due-process rights. The Advisors were not previously parties to this action and had no opportunity to be heard prior to the entry of the Order. *See Martin v. Wilks*, 490 U.S. 755, 762 (1989) ("[E]veryone should have his own day in court. A judgment or decree among parties to a lawsuit resolves issues as among them, but it does not conclude the rights of strangers to those proceedings.") (quotation marks, citation omitted). While the Advisors are registered representatives of LPL, that relationship does not extinguish their personal right to contest an invasive search of the data on their own devices. *See Stoner v. State of Cal.*, 376 U.S. 483, 488 (1964) ("Our decisions make clear that the rights protected by the Fourth Amendment are not to be eroded by strained applications of the law of agency or by unrealistic doctrines of 'apparent authority.'").

The Intervening Advisors' due-process rights are also affected because the information being reviewed for contemplated deletion is directly at issue in the pending arbitration. Allowing Ameriprise to rummage through the Advisors' personal devices would grant it de facto "free discovery" outside the metes and

bounds of the arbitration, thus potentially compromising the field of play and the Advisors' ability to mount their defense. *See JPMorgan Sec. v. Vallery*, No. CV-23-0065, 2023 WL 3160988, at *7 (D. Ariz. Apr. 28, 2023) ("[T]he Court is not inclined to allow discovery because such discovery appears to circumvent the FINRA rules[.]").

3. The Forensic Review Impairs the Intervening Advisors' Ability to Protect Their Interests

"If an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene." *Citizens for Balanced Use*, 647 F.3d at 898 (quoting Fed. R. Civ. P. 24 Advisory Cmte. Notes (1966 Amendment)). "[I]ntervention of right does not require an absolute certainty that a party's interests will be impaired"; rather, *potential* threat to their interest is sufficient. *Id.*; *see also City of Los Angeles*, 288 F.3d at 401 ("[T]he relevant inquiry is whether the consent decree 'may' impair rights 'as a practical matter' rather than whether the decree will 'necessarily' impair them.") (citing Fed. R. Civ. P. 24(a)(2)).

As set forth above, proceeding with the forensic review required by Paragraph 4 of the Stipulated Order—which the Intervening Advisors had no input into, and did not consent to—substantially impairs the Advisors' interests. The Intervening Advisors have interests in their property, their own privacy, their due-process rights, and a full and fair defense on a level playing field in the arbitration. The forensic review clearly and directly impairs those interests. *See id.* (granting intervention to Police League where consent decree altered its rights "notwithstanding the fact that the Police League has never consented to those changes").

4. The Existing Parties Do Not Adequately Represent the Intervening Advisors' Interests

The final requirement of Rule 24(a)(2), inadequate representation, "is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and

the burden of making that showing should be treated as minimal." *Trbovich v. United Mine Works of Am.*, 404 U.S. 528, 538 n.10 (1972). Here, while LPL and the Intervening Advisors may share certain interests, those interests are not identical; as a result, LPL cannot (and does not) fully and completely represent the Intervening Advisors' interests. Although both LPL and the Intervening Advisors oppose unfettered and overly broad forensic review, LPL's primary concern—as a party to the Stipulated Order—is compliance with the Order itself, not necessarily safeguarding the Advisors' individual property, privacy, and procedural rights. That divergence of interest renders LPL's representation of the Intervening Advisors' interests potentially inadequate. *See City of Los Angeles*, 288 F.3d at 401 (granting intervention to party whose rights are affected by consent decree because "it is clear that the existing parties do not adequately represent the Police League").

B. Intervention Is Also Appropriate Under Rule 24(b)(1)(B).

The Intervening Advisors are entitled to intervene as of right for the reasons set forth above. But even if they were not, permissive intervention under Rule 24(b)(1)(B) would be appropriate because the Advisors have "a claim or defense that shares with the main action a common question of law or fact." The Advisors' principal defense in the FINRA arbitration is that they have the *right* to the customer information at issue. That defense plainly overlaps with the issue that the Stipulated Order is designed to address. For that reason, the Intervening Advisors should be permitted to intervene under Rule 24(b)(1)(B) even if they were not entitled to do so under Rule 24(a)(2).

V. CONCLUSION

For the reasons set forth above, the Intervening Advisors respectfully request that the Court reopen this case and grant them leave to intervene for the limited purpose of filing the attached motion to stay this case pending arbitration or, alternatively, to modify the Stipulated Order.

DATED: May 7, 2025

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AMERIPRISE FINANCIAL SERVICES, LLC, Plaintiff, v. LPL FINANCIAL LLC, Defendant.	Case Nos. 24-CV-01333-JO-MSB, 25-CV-00880-JO-MSB **[PROPOSED] INTERVENING ADVISORS' MEMORANDUM IN SUPPORT OF MOTION TO STAY CASES PENDING ARBITRATION OR, ALTERNATIVELY, TO MODIFY STIPULATED ORDER** **Hearing** Date: (Hearing date pending) Time: (Hearing time pending) Place: Courtroom of the Honorable Jinsook Ohta
LPL FINANCIAL LLC, Plaintiff, v. AMERIPRISE FINANCIAL SERVICES, LLC, Defendant.	

Intervenors [redacted] ("Intervening Advisors" or "Advisors") submit the following Memorandum of Points and Authority in support of their motion to stay these cases pending arbitration or, alternatively, to modify the Stipulated Order entered at Docket No. 53 in Case No. 24-CV-01333.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Intervening Advisors have never been parties to these cases. They were not represented in the preliminary-injunction proceedings in Case No. 24-CV-01333. They had no notice of the proposed Stipulated Order. They had no opportunity to object to the burdensome obligations the Stipulated Order imposes upon them and the harm it causes their customers.

The Stipulated Order allows a forensic examiner to search the devices the Advisors used over many years, in some instances decades, and to "[p]ermanently delete the Customer and Non-Customer Information from" those devices. Dkt. 53 at 3:10–11. Deletions are allowed regardless of whether the Advisor properly possesses the information. The Stipulated Order allows this even though the issue of who owns that information and how it may be used is now the central issue in a FINRA arbitration in which Ameriprise, LPL, and the Advisors are all parties.

Shortly after the Stipulated Order was entered, Ameriprise added the Intervening Advisors as respondents in its underlying FINRA arbitration against LPL. This means the use, protection, and ownership of the customer information that is the subject of the forensic review mandated by the Stipulated Order can be promptly and properly addressed by the arbitration panel FINRA has now established to resolve the case. Because the Stipulated Order invades the Advisors' privacy, tramples on their rights, harms their customers, and conflicts with their right to have FINRA arbitrators determine who owns the customer information and how

it may be used, the Court should stay these cases in favor of the pending FINRA arbitration.

The Federal Arbitration Act embodies a strong national policy favoring arbitration. FINRA's rules, which Ameriprise, LPL, and the Intervening Advisors have agreed to comply with and are bound by, mandate arbitration of all controversies between member firms and associated persons, including the dispute here. FINRA arbitrators have been empaneled and stand ready to tailor any necessary forensic review to protect third parties' privacy interests and to preserve privilege. Indeed, the arbitrators—given their familiarity with the unique nature of the securities industry—are best positioned to do so. Assigning that responsibility to the Forensic Examiner would be improper, highly inefficient, and unfairly prejudicial to the Advisors and their clients, as it would provide Ameriprise with an end-run around the arbitration process (including by obtaining intrusive and free-ranging discovery outside of FINRA rules) and prevent the Advisors from properly servicing their clients while the arbitration proceeding is pending. The Federal Arbitration Act requires this Court to defer to the FINRA arbitrators on this issue.

Alternatively, and at minimum, the Court should modify the Stipulated Order so that Paragraph 4 applies only to information concerning customers who did *not* move with the Advisors from Ameriprise to LPL, which is defined as "Non-Customer Information" therein. Although the Advisors do not believe that *any* enforcement of the Stipulated Order is warranted, this modification would at least permit the Advisors to have access to information concerning their current customers—information that those customers *want* and *need* the Advisors to have so that they can continue to service their accounts.

II. LEGAL STANDARDS

Under Section 3 of the Federal Arbitration Act:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an

> agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had . . . .

9 U.S.C. § 3. This provision "creates an obligation impervious to judicial discretion." *Smith v. Spizzirri*, 601 U.S. 472, 476 (2024). "When a district court finds that a lawsuit involves an arbitrable dispute, and a party requests a stay pending arbitration, § 3 of the FAA compels the court to stay the proceeding." *Id.* at 478.

Separately, courts may provide relief from a stipulated order pursuant to Federal Rule of Civil Procedure 60(b). *Hook v. Arizona*, 972 F.2d 1012, 1016 (9th Cir. 1992). Rule 60(b), in turn, provides: "On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding" due, *inter alia*, to "mistake," because "applying it prospectively is no longer equitable," or for "any other reason that justifies relief."

III. ARGUMENT.

The Intervening Advisors move to stay these cases in favor resolving the parties' disputes in arbitration, as required by the parties' agreements and by the Federal Arbitration Act. In the alternative, the Intervening Advisors move to modify the Stipulated Order under Rule 60(b).

A. Pursuant to the Federal Arbitration Act, the Court must stay these cases because, among other reasons, the question whether forensic review is necessary—and, if so, how to conduct such a review—is subject to binding arbitration.

The Federal Arbitration Act (9 U.S.C. §§ 1–16) embodies "a strong public policy in favor of arbitration agreements." *Ingle v. Cir. City Stores, Inc.*, 328 F.3d 1165, 1180 (9th Cir. 2003). This policy is so strong that the Supreme Court has directed courts to "rigorously enforce arbitration agreements according to their terms." *Am. Exp. Co. v. Italian Colors Rest.*, 570 U.S. 228, 233 (2013) (quotation

marks and citation omitted). Under the statute, if a federal court proceeding involves "any issue referable to arbitration under an agreement in writing for such arbitration," the court "*shall* on application of one of the parties stay . . . the action until such arbitration has been had in accordance with the terms of the agreement." 9 U.S.C. § 3 (emphasis added). As the Supreme Court recently explained, "the use of the word 'shall' [in Section 3] creates an obligation impervious to judicial discretion." *Smith v. Spizzirri*, 601 U.S. 472, 476 (2024).

When a party asserts that a dispute before the court is subject to binding arbitration under the FAA, as the Advisors are asserting here, the court's inquiry "is limited to determining (1) whether a valid arbitration agreement exists and, if so, (2) whether the scope of the agreement encompasses the dispute at issue." *Fagerstron v. Amazon.com, Inc.,* 141 F. Supp. 3d 1051, 1059 (S.D. Cal. 2015) (citing *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000)). If the court concludes that both prongs of this test have been satisfied, "§ 3 of the FAA compels the court to stay the proceeding." *Smith*, 601 U.S. at 478. That is the circumstance here. The Intervening Advisors easily satisfy both parts of the inquiry.

To begin, Ameriprise, LPL, and the Intervening Advisors all have "an agreement in writing" for arbitration. *See* 9 U.S.C. § 3. Ameriprise and LPL are both members of FINRA.[1] In becoming FINRA members, both agreed in writing "to adhere to FINRA's rules and regulations, including its Code and relevant arbitration provisions contained therein." *Laver v. Credit Suisse Sec. (USA), LLC*, 976 F.3d 841, 844 (9th Cir. 2020) (quotation marks and citations omitted). The same is true for the Intervening Advisors. When they registered with FINRA, they agreed "to arbitrate any dispute, claim or controversy that may arise between me and my firm, or a customer, or any other person, that is required to be arbitrated under the rules,

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[1] *See* FINRA: Broker-Dealer Firms We Regulate (last visited May 4, 2025), *https://www.finra.org/about/entities-we-regulate/broker-dealer-firms-we-regulate*.

constitutions, or by-laws of" FINRA.[2] Indeed, the Ninth Circuit has expressly recognized that the mandatory-arbitration provision in the FINRA Code of Arbitration "constitutes an 'agreement in writing' under the FAA." *Goldman, Sachs & Co. v. City of Reno*, 747 F.3d 733, 739 n.1 (9th Cir. 2014). The parties have thus agreed to arbitrate all disputes that fall under the FINRA rules.

The dispute here fits that description. The dispute concerns the propriety of the burdensome and invasive forensic-review process imposed by the Stipulated Order. FINRA's Code of Arbitration Procedure for Industry Disputes provides: "a dispute *must* be arbitrated . . . if the dispute arises out of the **business activities** of a member or an associated person and is between or among . . . Members and Associated Persons." FINRA Rule 13200 (emphases added). Ameriprise and LPL are "Members" (which is defined as "any broker or dealer admitted to membership in FINRA") and the Advisors are "Associated Persons" (which is defined to include all individuals who are "registered under FINRA rules" or otherwise "associated with a member"). FINRA Rules 1011, 13100. The dispute over the Stipulated Order "arises out of the [parties'] business activities"—namely, the Intervening Advisors' retention of customer information during their move from Ameriprise to LPL and their right to use that information to service those customers following the move. This is a dispute, moreover, "between or among" Members and Associated Persons—namely, Ameriprise (a "Member"), LPL (a "Member") and the Advisors ("Associated Persons"). It therefore falls squarely within the scope of matters required to be arbitrated under FINRA Rule 13200.[3]

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[2] *See* Rev. Form U4 at 16, available at https://www.finra.org/sites/default/files/form-u4.pdf. Copies of the Intervening Advisors' executed Form U4s are available to the Court upon request.

[3] Although this case initially proceeded in this forum under the narrow exception to FINRA Rule 13804—which provides (in relevant part) that "[i]n industry or clearing

While the Court need not go beyond the clear language of FINRA Rule 13200 to find that the pending dispute must be arbitrated, it bears mention that "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Leicht v. Bateman Eichler, Hill Richards, Inc.*, 848 F.2d 130, 133 (9th Cir. 1988). "The weight of this presumption is heavy: arbitration should not be denied unless it can be said with *positive assurance* that an arbitration clause is *not susceptible of an interpretation* that could cover the dispute at issue." *Downer v. Siegel,* 489 F.3d 623, 626 (5th Cir. 2007) (emphases added) (quotation marks and citation omitted). The presumption is necessary "to ensure the enforcement of arbitration agreements according to their terms so as to facilitate streamlined proceedings," which is "[t]he overarching purpose of the FAA." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 344 (2011). This dispute is the perfect example.

The Stipulated Order was entered at a time when the Intervening Advisors were not parties to the underlying FINRA arbitration between Ameriprise and LPL. Only three weeks after the Stipulated Order went into effect, however, Ameriprise added the Advisors as co-respondents in that arbitration, alleging the Advisors "misappropriated" Ameriprise's "trade secrets" when the Advisors retained their customers' information upon their departure from Ameriprise. Thus, the ownership

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disputes required to be submitted to arbitration under the Code, parties may seek a temporary injunctive order from a court of competent jurisdiction"—this limited carve-out only applies in cases of true exigency, when the arbitral forum cannot identify and empanel arbitrators in time to preserve the status quo and to prevent imminent irreparable harm. *See, e.g.*, *Toyo Tire Holdings of Am. v. Cont'l Tire N. Am.*, 609 F.3d 975, 981 (9th Cir. 2010) (holding similar provision in International Chamber of Commerce rules permits a district court to issue "interim injunctive relief on arbitrable claims if interim relief is necessary to preserve the status quo and the meaningfulness of the arbitration process"). Here, any such exigency (if it ever existed) has long since passed. The confidentiality of the customer information at issue has been, and will continue to be, maintained. FINRA, moreover, has empaneled arbitrators, who stand ready to promptly resolve this dispute.

of the customer information at issue in the Stipulated Order is now the ultimate merits issue for the arbitration panel to resolve. In the course of resolving that question, the panel will decide how best in the interim to safeguard customers' information. The arbitrators not only have the authority to order a forensic review if deemed necessary; they also are best situated to define the scope of the review, including which devices are subject to review, what the applicable search terms should be, and who may access the results. Indeed, during the preliminary-injunction hearing, this Court wisely recognized the need to defer to those, like the arbitrators, who have expertise on "what [the securities] industry is like and what the information technology systems are like," and who can therefore "figur[e] out something . . . fine-tuned and tailored" with respect to any necessary forensic review. *See* Dkt. 48 at 20:19–22. Under the FAA, this deference is not only prudent; it is also required.

What's more, FINRA has its own set of discovery rules. *See* FINRA Rules 13505–11. The Stipulated Order provides Ameriprise—and only Ameriprise—with special access to discovery outside the strictures of the FINRA discovery process. Staying this case will enable the arbitrators to establish discovery parameters that are uniformly applicable to all parties and within the scope of FINRA rules. *See JPMorgan Sec. v. Vallery*, No. CV-23-0065, 2023 WL 3160988, at *7 (D. Ariz. Apr. 28, 2023) (declining to "allow discovery" that would enable a party to "circumvent the FINRA rules").[4]

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[4] For these reasons, the Court could also stay this case under the Court's inherent power "to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Pursuant to this power, "[a] trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case." *Leyva v. Certified Grocers of California, Ltd.,* 593 F.2d 857, 863 (9th Cir. 1979).

In sum, Ameriprise, LPL, and the Intervening Advisors contractually agreed to submit all business disputes between and among them to binding FINRA arbitration. That includes the pending dispute over whether the Advisors must turn over their electronic devices so a Forensic Examiner can comb through them and "permanently delete" information the Advisors claim a legal right to possess. Under Section 3 of the Federal Arbitration Act, this Court must stay these cases so the FINRA arbitrators can determine whether forensic review is necessary and, if so, define its parameters. *Smith*, 601 U.S. at 476 ("When a district court finds that a lawsuit involves an arbitrable dispute, and a party requests a stay pending arbitration, § 3 of the FAA compels the court to stay the proceeding.").

B. Alternatively, and at minimum, the Court should modify Paragraph 4 of the Stipulated Order.

If the Court declines to stay the cases, it should, at a minimum, modify the Stipulated Order pursuant to Rule 60(b) to protect the interests of the Advisors and their customers. Modification is required to ensure the Advisors maintain ready access to critical information concerning their *current* customers, and to allow the Advisors to search their devices and to certify in writing that they have deleted all "Non-Customer Information," if any, before requiring invasive searches and deletions.

Under Rule 60(b)—which is the proper means for seeking relief from a stipulated order, *Hook v. Arizona*, 972 F.2d 1012, 1016 (9th Cir. 1992)—"the court may relieve a party or its legal representative from a final judgment, order, or proceeding" due to, *inter alia*, "mistake," if "applying it prospectively is no longer equitable," or for "any other reason that justifies relief." Each reason justifies relief here.

As the Stipulated Order itself explains, "the Parties dispute the Advisors' and/or LPL's right to possess or retain *the Non-Customer Information*"—that is, "non-public personally identifiable information" concerning "individuals whose

information was retained by the Advisors [who] have not opened any account at LPL and/or never became customers of LPL." Dkt. 53 at 2:4–12 (emphasis added). That makes sense. Although the Advisors contend that they had the legal right to retain *all* of their customers' information when they left Ameriprise, it is reasonable to assume that some customers who, for whatever reason, are no longer serviced by the Advisors at LPL may not want the Advisors to still have access to their confidential information. Yet, for unexplained reasons, Paragraph 4 of the Stipulated Order was not limited to Non-Customer Information. Instead, Paragraph 4 requires deletion of *all* customer information, including information concerning the Advisors' current customers, who voluntarily moved their accounts to LPL and are still being serviced by the Advisors. Dkt. 53 at 2:25–3:11. That is either a mistake or patently unfair. Either way, the language of Paragraph 4 warrants correction.

It seems likely that the overbroad scope of Paragraph 4 is the result of a drafting "mistake," warranting relief under Rule 60(b)(1). Paragraph 4, as written, requires the deletion of all "Customer and Non-Customer Information from the Advisor's personal device(s) and/or repository(ies)." Dkt. 53 at 3:10–11. But only "Non-Customer Information" is defined in the Stipulated Order; there is no definition of "Customer Information." *See generally* Dkt. 53. Nonetheless, because the term "Customers" is defined to include all individuals who "*were or* are still customers of Ameriprise," Dkt. 53 at 2:2 (emphasis added), Paragraph 4 appears to require the deletion of information concerning *all* customers who "were" serviced by the Advisors at Ameriprise even if those customers have since closed their accounts at Ameriprise and moved to LPL, where they are still serviced by the Advisors. That makes no sense given that the Stipulated Order is specific to the dispute concerning the Advisors' "right to possess or retain the Non-Customer Information" and says nothing about any dispute over the Advisors' right to possess information concerning customers that they continue to service at LPL.

Even if Ameriprise and LPL *intended* the draconian consequences of

Paragraph 4 of the Stipulated Order, this Court should still modify Paragraph 4 under Rule 60(b)(5) and/or (6). Surely, the "interest in ensuring customer privacy" that animated the Stipulated Order is not furthered by depriving the Advisors of information needed to protect the interests of their *current customers*. *See* Dkt. 53 at 2:12. To the contrary, and as set forth in the attached Declaration of Collette Cummings, who was a customer of [redacted] before he was affiliated with Ameriprise, while he was affiliated at Ameriprise, and now while he is affiliated with LPL, current customers *want* and *need* their Advisors to have access to their information so that the Advisors can fully service their accounts. Depriving the Advisors of this information and thereby harming the pecuniary interests of innocent customers is inequitable (warranting relief under Rule 60(b)(5)) and unjust (warranting relief under Rule 60(b)(6)). *See Klapprott v. United States*, 335 U.S. 601, 614–15 (1949) ("[T]he 'other reason' clause [of Rule 60(b)(6)] vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice."). The interests of Non-Customers can be adequately protected by requiring the Advisors to search their devices and to provide Ameriprise with a written certification that the Advisors have deleted all "Non-Customer Information" and by providing Ameriprise with the option of pursuing a forensic review in the absence of a written certification.

IV. CONCLUSION

For the reasons set forth above, the Intervening Advisors respectfully request that the Court stay these cases pending FINRA arbitration. Alternatively, and at minimum, the Intervening Advisors request that the Court modify the Stipulated Order so that Paragraph 4 applies only to "Non-Customer Information" as defined therein, and that the forensic examination may proceed only if the financial advisors who are subject to Paragraph 4 do not provide Ameriprise with a written certification that they have deleted all "Non-Customer Information."

DATED: May ___, 2025

By: _____

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AMERIPRISE FINANCIAL SERVICES, LLC, Plaintiff, v. LPL FINANCIAL LLC, Defendant.	Case Nos. 24-CV-01333-JO-MSB, 25-CV-00880-JO-MSB **DECLARATION OF GEORGE C. FREEMAN, III IN SUPPORT OF INTERVENING ADVISORS' *EX PARTE* MOTION TO REOPEN CASE AND INTERVENE**
LPL FINANCIAL LLC, Plaintiff, v. AMERIPRISE FINANCIAL SERVICES, LLC, Defendant.	**Hearing** Date: (Hearing date pending) Time: (Hearing time pending) Place: Courtroom of the Honorable Jinsook Ohta

I, George C. Freeman, III, hereby declare as follows:

1. I am a partner with Barrasso Usdin Kupperman Freeman & Sarver, L.L.C. and counsel for [redacted] (the "Advisors") in the underlying FINRA arbitration related to this matter. I have personal knowledge of the facts stated herein and, if called upon, could competently testify thereto. I submit this declaration in support of the Advisors' *ex parte* application to intervene in these actions.

2. On May 6, 2025, I informed counsel for Ameriprise and LPL when and where the Advisors' *ex parte* motion would be made.

3. Also on May 6, 2025, I met and conferred with counsel for Ameriprise and LPL over the telephone in a good faith effort to resolve any differences concerning the Advisors' *ex parte* motion. Today, counsel for Ameriprise stated that Ameriprise opposes the Advisors' *ex parte* motion to intervene. Counsel for LPL has stated that LPL does not oppose the motion.

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

Executed this 7th day of May 2025 in New Orleans, Louisiana.

/s/ George C. Freeman, III
George C. Freeman, III

Declaration of Collette Cummings

I, Collette Cummings, declare the following under penalty of perjury pursuant to the laws of the United States of America:

1. I am over the age of 18 and competent to make this declaration.

2. I have personal knowledge of the facts set forth herein and if called as a witness, my testimony would be consistent with the statements in this declaration.

3. I am a client of [redacted]

4. I have been a client of [redacted] for at least 17 years, including before [redacted] was affiliated with Ameriprise, during his affiliation with Ameriprise, and now while he is affiliated with LPL.

5. I rely on [redacted] to provide me with financial advice and guidance.

6. I expect and rely on [redacted] to keep my sensitive personal information safe and secure and not to disclose it to anyone who should not have it.

7. I have learned that Ameriprise seeks to collect, image and review many of [redacted] devices.

8. These devices likely contain my confidential information that I have sent him, including information I sent after he informed me that he had left Ameriprise.

9. I have several concerns about Ameriprise searching [redacted] devices.

10. First, a search of [redacted] devices could reveal my confidential information, including my estate plans, tax documents, and financial planning notes. This is information I have sent [redacted] expecting it to not be disclosed to third-parties without my consent.

11. Second, I am concerned that a search of [redacted] devices could result in Ameriprise obtaining my confidential information. I followed [redacted] in leaving Ameriprise, and do not consent to Ameriprise's retention or acquisition of any of my confidential information.

12. A search of [redacted] devices could also result in the deletion of my confidential information. I occasionally send [redacted] information which I expect him to retain, and accordingly have deleted. As this confidential information is no longer in my possession, its

deletion in any review of [redacted] devices would permanently destroy the confidential information I expected would be maintained.

13. I have told [redacted] these concerns I have about any search of his devices.

14. I do not consent to Ameriprise—or any third party acting at its direction—reviewing, accessing, or deleting any of my financial records or confidential information.

15. Finally, I also recently received a "Notice of Data Breach" from Ameriprise, which falsely suggested that my information had been improperly shared. I believe this letter was misleading and inaccurate. I knowingly authorized the transfer of my information so that I could continue working with [redacted] at LPL.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 6 day of May 2025.

COLLETTE CUMMINGS