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11 **IN THE UNITED STATES DISTRICT COURT FOR THE**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 HIEU VU, individually and on behalf of all
14 others similarly situated,

15 Plaintiff,

16 v.

17 LPL FINANCIAL LLC,

18 Defendant.

19 Case No. **'24CV1484 AGS VET**

20 **CLASS ACTION COMPLAINT**

21 **JURY TRIAL DEMANDED**

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1 Plaintiff Hieu Vu, individually and on behalf of all others similarly situated, alleges
2 the following based on his personal experience and his counsel’s investigation:

3 **I. NATURE OF ACTION**

4 1. Plaintiff brings this proposed class action suit against Defendant LPL
5 Financial LLC (“LPL”) based on LPL’s actions and conduct with respect to the cash sweep
6 program it operates.

7 2. LPL automatically transfers its customers’ uninvested cash in what is known
8 as a “cash sweep account” where their cash can earn interest. The cash sweep accounts at
9 issue in this case are the LPL Deposit Cash Account (“DCA”) and the LPL Insured Cash
10 Account (“ICA”) (collectively, “LPL Sweep Program”). Plaintiff and Class members are
11 clients with LPL whose uninvested cash was automatically transferred into cash sweep
12 accounts pursuant to the LPL Sweep Program.

13 3. At all relevant times, LPL had a legal and contractual duty to act in the best
14 interests of Plaintiff and the proposed Class members. Unfortunately for Plaintiff and Class
15 members, LPL breached its legal and contractual duties to them. LPL automatically
16 deposited Plaintiff and Class members’ uninvested cash with banks (both affiliated and
17 unaffiliated) that pay low and unreasonable rates of return to LPL’s investment customers,
18 but paid LPL significant and higher fees at the expense of customers. As a result, LPL was
19 able to generate massive revenues while paying customers a pittance.

20 4. Plaintiff alleges that LPL’s conduct was unlawful, as described in further
21 detail below, and alleges on behalf of himself and all others similarly situated claims for
22 breach of fiduciary duty, breach of contract, gross negligence, breach of the implied
23 covenant of good faith and fair dealing, and unjust enrichment. Plaintiff seeks all available
24 monetary and equitable relief, including damages, disgorgement, restitution, and all other
25 appropriate relief.

26 **II. PARTIES**

27 5. Plaintiff Hieu Vu is a resident and citizen of Tustin, California.
28

1 6. Defendant LPL is headquartered in San Diego, California and incorporated
2 in Delaware. LPL is the largest, independent broker-dealer in the United States providing
3 financial planning products and services, including wealth and asset management, among
4 other things, and is the nation’s largest independent broker-dealer.

5 **III. JURISDICTION AND VENUE**

6 7. This Court has jurisdiction over this action under the Class Action Fairness
7 Act, 28 U.S.C. § 1332(d). There are at least 100 members in the proposed class, the
8 aggregated claims of the individual class members exceed the sum or value of \$5,000,000,
9 exclusive of interests and costs, and this is a class action in which one or more members of
10 the proposed Class, including Plaintiff, are citizens of a state different from Defendant. The
11 Court has supplemental jurisdiction over the alleged state law claims under 28 U.S.C. §
12 1367 because they form part of the same case or controversy.

13 8. This Court may exercise jurisdiction over Defendant because it is
14 headquartered in this District; has sufficient minimum contacts in District; and
15 intentionally avails itself of the markets within this District through the promotion, sale,
16 and marketing of its services, thus rendering the exercise of jurisdiction by this Court
17 proper and necessary.

18 9. Venue is proper in this District under 28 U.S.C. § 1391 because Defendant
19 resides in this District and a substantial part of the events or omissions giving rise to
20 Plaintiff’s claims emanated from this District.

21 **IV. FACTUAL ALLEGATIONS**

22 **A. Background on Cash Sweep Accounts**

23 10. A “cash sweep” or “sweep” account is typically linked to a brokerage account
24 and holds uninvested money, such as the initial cash deposits with LPL before the cash is
25 invested in a security, or cash customers prefer to remain uninvested. The uninvested cash
26 is “swept” into an interest-bearing account to ensure that the cash is not sitting idly not
27 generating income.

1 11. Today, cash sweep programs work by automatically “sweeping” uninvested
2 cash each day into one or more banks that are usually affiliated with the brokerage firm.
3 Historically, client uninvested cash sat with brokerage firms on their balance sheets, but in
4 the 1960s, brokerage firms started depositing the cash with banks in the form of certificates
5 of deposit. In early 2000, Merrill Lynch began offering the type of sweep accounts or
6 programs that are available today and later other brokerage firms, like Charles Schwab, did
7 the same.

8 12. The Security and Exchanges Commission (“SEC”) defines a sweep program
9 as a “service provided by a broker or dealer where it offers to its customers the option to
10 automatically transfer free credit balances in the securities account of the customer to either
11 a money market mutual fund product . . . or an account at a bank whose deposits are insured
12 by the Federal Deposit Insurance Corporation.” 17 C.F.R. 240.15c3-3(a)(17).

13 13. The amount of uninvested client cash that brokerage firms hold is around \$1
14 trillion dollars. It is estimated that LPL has about \$23 billion of client cash in its advisory
15 accounts.¹

16 14. Brokerage firms and affiliate banks earn significant net interest income (or
17 “spread”)—that is, the difference between the rate of interest earned by (1) custodians
18 loaning and investing the sweep deposits, and (2) the interest paid to brokerage customers.

19 15. The amounts that brokerage firms earn under sweep programs are based on
20 their agreements with the affiliated banks. The agreements generally provide compensation
21 based on the average daily deposits at the affiliated banks, and the total compensation is
22 generally based on the Federal Funds rate plus basis points.

23 16. For some time, Federal Fund rates—the interest rate at which banks lend each
24 other money and which is set by the Federal Open Market Committee—were low and so it
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27 _____
28 ¹ [https://www.investmentnews.com/broker-dealers/news/higher-rates-on-cash-could-cost-lpl-380-million-analyst-255549#:~:text=%E2%80%9CHowever %2C%20to%20the%20extent%20LPL, estimate%20from%20\\$19.75%20to%20\\$15.95. \(last accessed August 20, 2024\).](https://www.investmentnews.com/broker-dealers/news/higher-rates-on-cash-could-cost-lpl-380-million-analyst-255549#:~:text=%E2%80%9CHowever%2C%20to%20the%20extent%20LPL,estimate%20from%20$19.75%20to%20$15.95.(last%20accessed%20August%2020,2024).)

1 was expected that earned interest on cash sweeps would be low if not zero. But in 2022,
2 however, the Federal Funds rate significantly increased as the following chart shows:

YEAR	AVE. YIELD	YEAR HIGH	YEAR LOW	YEAR CLOSE	ANNUAL % CHANGE
2024	5.33%	5.33%	5.33%	5.33%	0.00%
2023	5.03%	5.33%	4.33%	5.33%	23.09%
2022	1.68%	4.33%	0.08%	4.33%	6085.71%

7 17. When the Federal Fund rate rose beginning in 2022, banks increased yields
8 and so brokerages should have been able to negotiate higher rates of return on uninvested
9 cash from affiliated banks. Unfortunately, that has not been the case with some firms such
10 as LPL. Instead, LPL places sweep deposits with affiliated banks that it negotiates with to
11 pay less than reasonable interest rates to customers and more money for itself.

12 18. The SEC has stepped up its investigations into brokerage cash sweep
13 programs. For example, according to a Wells Fargo & Company filing in November 2023,
14 the company disclosed that the SEC “has undertaken an investigation regarding the cash
15 sweep options that the company provides to investment advisory clients at account
16 opening.” Morgan Stanley reported a similar investigation in a quarterly earnings report:
17 “Since April 2024, the firm has been engaged with and is responding to requests for
18 information from the Enforcement Division of the SEC regarding advisory account cash
19 balances swept to affiliate bank deposit programs and compliance with the Investment
20 Advisers Act of 1940[.]”

21 19. As described in Part C below, brokerage firms owe legal and contractual
22 duties to act in the best interest of their customers, including with respect to their clients’
23 uninvested cash holdings.

24 **B. Defendant’s Cash Sweep Program**

25 20. By default, LPL assigns its customers to one of two different cash sweep
26 programs based on the type of account the customer has. The first program is the LPL
27 Deposit Cash Account (“DCA”) for individual retirement accounts (IRAs) and the second
28

1 is the LPL Insured Cash Account (“ICA”) for other individual, or business, accounts. LPL
2 automatically assigns customers to either a DCA or IRA account.

3 21. Under the LPL Sweep Program, each business day uninvested cash balances
4 will automatically sweep into interest bearing deposit accounts set by LPL following the
5 day of deposit and with the banks selected by LPL. The banks that participate in these
6 programs are set forth on LPL’s bank lists, which LPL may modify at any given time. The
7 lists include dozens of large financial institutions, like Citibank, Sallie Mae, and HSBC.

8 22. The terms of each of the LPL sweep accounts are set forth in the in the
9 Deposit Cash Account Disclosure Booklet and the Insured Cash Disclosure Booklet (“Cash
10 Sweep Disclosures”), as well as the LPL Master – Account Agreement and Relationship
11 Summary (together “Brokerage Agreement”).² The Brokerage Agreement provides that
12 uninvested cash balances in the LPL Sweep Program will have interest rates that are tiered
13 and that the amount paid is determined by the “amount the Banks are willing to pay on the
14 Deposit Accounts minus the fees paid to LPL and other parties . . . [.]”

15 23. The deposit accounts in the LPL Sweep Program have historically had very
16 low rates of return. From 2022 through August 2024, the rate of return for LPL’s DCA
17 accounts ranged from 0.16% to 0.35% today.

18 24. As of August 9, 2024, the interest rates LPL paid to its ICA customers with LPL’s
19 sweep program deposits ranged as follows:³

Household Value	Rate
\$0 to <\$150k	0.35%
\$150k to <\$300k	0.40%
\$300k to <\$500k	0.45%
\$500k to <\$750k	0.50%
\$750k to <\$1.5m	0.80%

25 ² [https://www.lpl.com/content/dam/lpl-www/documents/disclosures/lpl_dca-disclosure-](https://www.lpl.com/content/dam/lpl-www/documents/disclosures/lpl_dca-disclosure-booklet.pdf)
26 [booklet.pdf](https://www.lpl.com/content/dam/lpl-www/documents/disclosures/lpl_ica-disclosure-booklet.pdf); [https://www.lpl.com/content/dam/lpl-www/documents/disclosures/lpl_ica-](https://www.lpl.com/content/dam/lpl-www/documents/disclosures/lpl_ica-disclosure-booklet.pdf)
27 [disclosure-booklet.pdf](https://www.lpl.com/content/dam/lpl-www/documents/disclosures/AP-LPL.pdf); and [https://www.lpl.com/content/dam/lpl-](https://www.lpl.com/content/dam/lpl-www/documents/disclosures/AP-LPL.pdf)
28 [www/documents/disclosures/AP-LPL.pdf](https://www.lpl.com/content/dam/lpl-www/documents/disclosures/AP-LPL.pdf) (last accessed August 20, 2024).

³ Rates available as of August 9, 2024, at [https://www.lpl.com/content/dam/lpl-](https://www.lpl.com/content/dam/lpl-www/documents/disclosures/insured-cash-account-current-interest-rate-tiers.pdf)
[www/documents/disclosures/insured-cash-account-current-interest-rate-tiers.pdf](https://www.lpl.com/content/dam/lpl-www/documents/disclosures/insured-cash-account-current-interest-rate-tiers.pdf).

\$1.5m to <\$5m	1.15%
\$5m to <\$10m	1.25%
>\$10m	2.20%

25. Rates in 2022 for LPL's ICA customers ranged from 0.10% to 0.30%.

26. While LPL customers have earned low rates of return on their uninvested case, in contrast, LPL has earned significant net interest income from its cash sweep program.

27. For example, in its 2016 Annual Report, LPL reported that its asset-based revenue for the year ending December 31, 2016, had increased by \$62.8 million from the same period the year before, and that most of that increase was attributable to its cash sweep programs.⁴

28. By 2024, the profits the firm makes from holding clients' cash are now greater than the combined earnings from advisory fees, commissions, and interest combined.⁵ In other words, to generate profits, LPL is uniquely dependent on net interest income from its cash sweep program.

29. Analysts have estimated that raising rates could cost LPL around \$380 million in spread interest.⁶

30. LPL has been able to earn massive revenues because it places its interests above those of Plaintiff and Class members by depositing cash sweep deposits with affiliated banks that pay little interest to customers and pays larger fees and interest to itself and the affiliated banks. Moreover, LPL negotiated these arrangements with the affiliated banks. There are no provisions in the Brokerage Agreement, however, that allow LPL to place its financial interests above its customers' best interests in this manner.

⁴LPL 2016 Form 10-K Report at p. 47, available

https://www.annualreports.com/HostedData/AnnualReportArchive/l/NASDAQ_LPLA_2016.pdf (last accessed August 9, 2024).

⁵ LPL Q1 2024 Earnings Key Metrics Presentation at p. 11, available at

<https://www.lpl.com/content/dam/lpl-www/documents/lpl-financial-q1-2024-key-metrics-presentation.pdf> (last accessed August 9, 2024).

⁶ [https://www.investmentnews.com/broker-dealers/news/higher-rates-on-cash-could-cost-lpl-380-million-analyst-](https://www.investmentnews.com/broker-dealers/news/higher-rates-on-cash-could-cost-lpl-380-million-analyst-255549#:~:text=%E2%80%9CHowever%2C%20to%20the%20extent%20LPL,estimate%20fro)

[255549#:~:text=%E2%80%9CHowever%2C%20to%20the%20extent%20LPL,estimate%20fro](https://www.investmentnews.com/broker-dealers/news/higher-rates-on-cash-could-cost-lpl-380-million-analyst-255549#:~:text=%E2%80%9CHowever%2C%20to%20the%20extent%20LPL,estimate%20fro) m%20\$19.75%20to%20\$15.95 (last accessed August 20, 2024).

1 31. In April 2023, FinancialPlanning reported on conflicts of interests arising
2 from cash sweep programs and posed the following questions to LPL and other brokerage
3 firms:

4 a. In terms of percentage points or basis points, what are the latest available
5 figures for the yields to clients from sweep accounts and the yields to the firm?

6 b. How would the firm explain this line of business to clients asking how it's in
7 their best interest?

8 c. How can financial advisors using your firm's brokerage and/or custodial
9 services make use of higher-yield cash solutions for their clients?

10 d. What else should financial advisors know about your firm's cash sweep
11 accounts?

12 32. LPL did not provide answers to FinancialPlanning or that could be publicly
13 shared.

14 33. While LPL customers received artificially and unreasonably low rates, LPL
15 received a larger share of the spread at its customers' expense. Had LPL obtained
16 reasonable rates for its customers like other brokerages, however, it would have earned
17 less. LPL put its financial interests ahead of that of its customers instead and was able to
18 handsomely line its pockets with massive revenues.

19 34. In failing to obtain reasonable rates for its customers, LPL breached its
20 contractual and fiduciary obligations to its customers, as alleged and described herein.
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1 C. **LPL's Duties to Plaintiff and Class Members**

2 **1. Contractual Duties**

3 35. In operating its cash sweep program, LPL agreed to act as an agent on behalf
4 of its advisory clients. The Brokerage Agreement states that, "As your agent, LPL will
5 sweep cash out of your LPL Account and into the participating banks . . . [.]” Thus, in
6 establishing the cash sweep program, LPL had to put the best interests of its customers first
7 and deposit the uninvested balances in banks that paid reasonable interest rates.

8 36. Moreover, LPL acknowledges in the Brokerage Agreement that it owes
9 fiduciary duties to its customers:

10 *When we provide you with a recommendation as your broker-dealer*
11 *or act as your investment adviser, we have to act in your best*
12 **interest and not put our interest ahead of yours.** (emphasis added)

13 37. Additionally, Regulation Best Interest ("Reg. BI") governs the scope of
14 LPL's relationship with Plaintiff and Class members. Reg. BI applies to retail investors,
15 i.e., natural persons, or their legal representatives, who receive recommendations primarily
16 for personal, family, or household purposes. 17 C.F.R. § 240.15l-1(b)(1).

17 38. Pursuant to Reg. BI, in its role as a broker-dealer, LPL must act in its clients'
18 best interests when it makes recommendations to them, "without placing the financial or
19 other interest of the broker-dealer ahead of the interests of the retail customer[.]”

20 39. As its customers' agent and pursuant to its contractual obligations, LPL must
21 act in their best interests and not put its own personal gain ahead of its clients.

22 40. In failing to negotiate higher and pay reasonable rates for its customers
23 during the operation of its cash sweep program, LPL breached its contractual duties to
24 customers.

25 **2. Duties Imposed on LPL by Law**

26 41. In acting as an investment adviser, LPL owes its clients a fiduciary duty
27 under federal law. *See* Securities and Exchange Commission Interpretation Regarding
28 Standards of Conduct for Investment Advisers, 84 Fed. Reg. 134, 17 CFR § 276 (July 12,
2019) ("Under federal law, an investment adviser is a fiduciary.").

1 42. Pursuant to these regulations, LPL was obligated to “serve the best interest
2 of its client and not subordinate its client’s interests to its own.” *Id.* And LPL cannot “place
3 its own interests ahead of the interests of its client.” *Id.*

4 43. LPL must also use its skills and expertise for the benefit of its clients.

5 44. LPL owes a similar duty of care to its retail clients pursuant Reg. BI, 17
6 C.F.R. § 240.151-1. Again, LPL acknowledges in the Brokerage Agreement that the Reg.
7 BI governs the scope of LPL’s relationship with Plaintiff and Class members.

8 45. Like SEC conduct rules, Reg. BI also requires LPL to “act in the retail
9 customer’s best interest and cannot place its own interests ahead of its customer’s
10 interests.” 84 Fed. Reg. 33318, 33320.

11 46. Reg. BI “draw[s] on key principles underlying fiduciary obligations,
12 including those that apply to investment advisers under the Advisers Act, while providing
13 specific requirements to address certain aspects of the relationships between broker-dealers
14 and their retail clients.” 84 Fed. Reg. 33318, 33320 (July 12, 2019).

15 47. As described and alleged herein, LPL failed to abide by its fiduciary duties
16 and failed to act in the best interest of its customers as set forth under federal law.

17 **D. LPL Breached Its Legal and Contractual Duties to Its Customers**

18 48. LPL breached its fiduciary and contractual duties by failing to negotiate
19 higher and reasonable interest rates for its customers’ uninvested cash in operating the LPL
20 Sweep Program.

21 49. Through its contractual and legal duties, LPL was obligated to act in the best
22 interest of its clients consistent with the Brokerage Agreement. LPL’s practice of extracting
23 excessive fees from its customers’ cash sweep deposits, through the negotiation of
24 unreasonably low interest rates with affiliated banks, was against its customers’ interests.

25 50. LPL did not negotiate higher and reasonable rates of interest for its
26 customers’ cash sweep deposits, but instead it worked in consultation with its affiliated
27 bank partners to set artificially and unreasonably low interest rates.

1 51. The Department of Labor defined a “reasonable” rate of interest in 2003 and
2 suggested one way of determining a “reasonable” rate is to refer to rates “offered by other
3 banks” or by “money market funds.”⁷

4 52. Compared to its competitors, the LPL Sweep Program’s interest rates are
5 substantially lower than similar sweep products offered by other financial institutions.

6 53. The rates of four of LPL’s competitors are in the table below:

LPL Competitor	Cash Interest Rate	Sweep
Interactive Brokers⁸	4.83%	
MooMoo⁹	5.1%	
Vanguard¹⁰	4.5%	
Webull¹¹	5.0%	

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13 54. Not only are LPL’s interest rates significantly lower than its competitors, but
14 they are also substantially lower than interest rates for money market fund rates.

15 55. Many of LPL’s competitors offer programs that sweep uninvested cash into
16 money market funds where their customers receive higher returns on their cash, while LPL
17 eliminated use of money market funds as a cash sweep option for accounts eligible for its
18 DCA and ICA cash sweep programs.

19 56. For example, LPL competitor Fidelity offers a program that sweeps
20 uninvested cash into money market funds that earn approximately 5%.¹² Vanguard’s sweep
21 program offers money market funds as an option as well, with yield rates also around 5%.¹³

22
23 ⁷ 68 Fed. Reg. 34646, at 34648 (June 10, 2003)

24 ⁸ <https://www.interactivebrokers.com/en/accounts/fees/pricing-interest-rates.php> (last accessed
25 August 7, 2024).

26 ⁹ <https://www.moomoo.com/us/invest/cashsweep> (last accessed August 7, 2024).

27 ¹⁰ <https://investor.vanguard.com/accounts-plans/vanguard-cash-plus-account> (last accessed
28 August 7, 2024).

¹¹ <https://www.webull.com/cash-management> (last accessed August 7, 2024).

¹² <https://www.fidelity.com/go/manage-cash-rising-costs> (last accessed August 20, 2024).

¹³ <https://investor.vanguard.com/accounts-plans/vanguard-cash-plus-account> and
<https://investor.vanguard.com/investment-products/money-markets> (last accessed August 20,
2024).

1 But LPL automatically places customers into the cash sweep programs it has developed
2 with low yield rates that it negotiated with its affiliated banks.

3 57. According to one expert analyst, “LPL allocates uninvested client cash to
4 third-party banks to generate higher yields than it pays out to clients through sweep
5 accounts . . . Current sweep rates average around 0.85%, including under 0.80% for
6 accounts with less than \$1.5 million of assets. These rates are materially lower than yields
7 on money market funds available to clients in the market.”¹⁴

8 58. By negotiating significantly lower rates for the cash sweep programs it
9 automatically placed Plaintiff and Class members in, LPL did not act in its customers best
10 interests but put its own interests above theirs, making substantial net income revenue at
11 its customers’ expense.

12 **E. Plaintiff’s Experience**

13 59. Plaintiff Vu has an Investment Account and a Strategic Asset Management
14 Account with LPL Financial and has been an LPL Financial customer since on or around
15 2021. Plaintiff Vu was enrolled automatically in LPL’s Cash Sweep Program, and so for
16 years his uninvested cash has been automatically swept into the affiliated banks that LPL
17 selects in its discretion at rates ranging as low as 0.35%. LPL negotiated these low rates so
18 that it could generate more profits for its benefit pursuant to the LPL Sweep Program.

19 **V. CLASS ACTION ALLEGATIONS**

20 60. Plaintiff brings this action individually and on behalf of all other persons
21 similarly situated (the “Nationwide Class”) pursuant to the Federal Rule of Civil Procedure
22 23(b)(2), (b)(3), and (c)(4) initially defined as follows:

23 All persons who had cash deposits or balances in the LPL Sweep Program.

24 61. The Nationwide Class is referred to herein as “Class.”

25 62. Excluded from the proposed Class are Defendant, any entity in which
26 Defendant has a controlling interest, is a parent or subsidiary, or which is controlled by
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28 ¹⁴<https://www.investmentnews.com/broker-dealers/news/higher-rates-on-cash-could-cost-lpl-380-million-analyst-255549> (last accessed August 20, 2024).

1 Defendant, as well as the officers, directors, affiliates, legal representatives, heirs,
2 predecessors, successors, and assigns of Defendant; and judicial officers to whom this case
3 is assigned and their immediate family members.

4 63. Plaintiff reserves the right to re-define the Class definition after conducting
5 discovery.

6 64. **Numerosity (Fed. R. Civ. P. 23(a)(1)).** The Class members are so numerous
7 that joinder of all members is impracticable. The precise number of Class members and
8 their identities are unknown to Plaintiff currently. LPL is a financial services firm with over
9 22,000 financial advisors offering investment advising services nationwide. The parties will be
10 able to identify Class members and the exact size of the Class through discovery and
11 Defendant's records.

12 65. **Commonality and Predominance (Fed. R. Civ. P. 23(a)(2); 23(b)(3)).**
13 Common questions of law and fact exist for each of the claims and predominate over
14 questions affecting only individual members of the Class. Questions common include, but
15 are not limited to, the following:

- 16 a. Whether Defendant owed fiduciary duties to Plaintiff and Class members in
17 the operation of the LPL Sweep Program;
 - 18 b. Whether Defendant breached its fiduciary duties to Plaintiff and Class
19 members in the operation of the LPL Sweep Program;
 - 20 c. Whether Defendant breached the contract with Plaintiff and Class members
21 in the operation of the LPL Sweep Program;
 - 22 d. Whether Defendant's interest rates paid to Plaintiff and Class members were
23 reasonable;
 - 24 e. Whether the fees Defendant collected from the LPL Sweep Program were
25 unreasonable;
 - 26 f. Whether Defendant breached the implied covenant of good faith and fair
27 dealing;
- 28

- 1 g. Whether Defendant is liable for gross negligence to Plaintiff and Class
- 2 members in the operation of the LPL Sweep Program;
- 3 h. Whether Defendant was unjustly enriched because of the conduct
- 4 complained of herein; and
- 5 i. Whether Plaintiff and Class members are entitled to relief, including
- 6 damages and equitable relief.

7 **66. Typicality (Fed. R. Civ. P. 23(a)(3)).** Pursuant to Rule 23(a)(3), Plaintiff's
8 claims are typical of the claims of the Class members. Plaintiff, like all Class members,
9 was paid an unreasonably low interest rate in connection with the LPL Sweep Program.
10 Accordingly, Plaintiff's claims are typical of other Class member's claims because they
11 arise from the same course of conduct by Defendant, and the relief sought is common to
12 Class members.

13 **67. Adequacy of Representation (Fed. R. Civ. P. 23(a)(4)).** Pursuant to Rule
14 23(a)(4), Plaintiff and his counsel will fairly and adequately protect the interests of the
15 Class. Plaintiff has no interest antagonistic to, or in conflict with, the interests of the Class
16 members. Plaintiff has retained counsel experienced in prosecuting class actions and
17 breach of fiduciary cases.

18 **68. Superiority (Fed. R. Civ. P. 23(b)(3)).** Pursuant to Rule 23(b)(3), a class
19 action is superior to individual adjudications of this controversy. Litigation is not
20 economically feasible for individual Class members because the amount of monetary relief
21 available to individual plaintiffs is insufficient in the absence of the class action procedure.
22 Separate litigation could yield inconsistent or contradictory judgments and increase the
23 delay and expense to all parties and the court system. A class action presents fewer
24 management difficulties and provides the benefits of a single adjudication, economy of
25 scale, and comprehensive supervision by a single court.

1 69. **Risk of Inconsistent or Dispositive Adjudications and the**
 2 **Appropriateness of Final Injunctive or Declaratory Relief (Fed. R. Civ. P. 23(b)(1)**
 3 **and (2)).** In the alternative, this action may be properly maintained as a class action,
 4 because:

- 5 a. the prosecution of separate actions by individual members of the Class would
 6 create a risk of inconsistent or varying adjudication with respect to individual
 7 Class members which would establish incompatible standards of conduct for
 8 Defendant; or
- 9 b. the prosecution of separate actions by individual Class members would
 10 create a risk of adjudications with respect to individual Class members which
 11 would, as a practical matter, be dispositive of the interests of other Class
 12 members not parties to the adjudications, or substantially impair or impede
 13 their ability to protect their interests; or
- 14 c. Defendant has acted or refused to act on grounds generally applicable to the
 15 Class, thereby making appropriate final injunctive or corresponding
 16 declaratory relief with respect to the Class as a whole.

17 70. **Issue Certification (Fed. R. Civ. P. 23(c)(4)).** In the alternative, the common
 18 questions of fact and law, set forth in Paragraph 65, are appropriate for issue certification
 19 on behalf of the proposed Class.

20 **VI. CAUSES OF ACTION**
 21 **COUNT I**
 22 **BREACH OF FIDUCIARY DUTY**

23 71. Plaintiff re-alleges and incorporates by reference all paragraphs as if fully set
 24 forth herein.

25 72. Defendant owes fiduciary duties to Plaintiff and Class members arising out
 26 the Brokerage Agreement, and pursuant to Regulation Best Interest and 84 Fed. Reg. 134,
 27 17 CFR § 276. Defendant's fiduciary duties arose out of Defendant's recommendations
 28 made to Plaintiff and Class members via automatic enrollment of Plaintiff and Class

1 members into the LPL Sweep Program and from Defendant's contractual obligation to
2 serve as Plaintiff and Class members' agent under the Brokerage Agreement, including
3 Defendant's holding and control over uninvested cash that belonged to its clients, such as
4 Plaintiff and Class members.

5 73. In connection with the operation of the LPL Sweep Program and the
6 governing Brokerage Agreement, Defendant owed duties to Plaintiff and Class members
7 who had advisory, traditional and retirement brokerage accounts. Defendant's duties to
8 Plaintiff and Class members, include, but are not limited to: (a) a duty of care to act in their
9 best interests; (b) a duty to not place Defendant's interests above Plaintiff's and Class
10 members; (c) a duty to use reasonable diligence, care, and skill when making
11 recommendations; (d) a duty to avoid conflicts of interest; and (e) a duty to disclose
12 conflicts of interests.

13 74. Defendant breached its duties to Plaintiff and Class members by, among
14 other things: (a) failing to act in their best interests, which was to negotiate and pay a higher
15 and reasonable interest rate on Plaintiff and Class members' cash balances; (b) placing its
16 own interests ahead of Plaintiff and Class members' interests by securing increased net
17 interest income for itself at the expense of Plaintiff and Class members; (c) failing to use
18 reasonable diligence, care, and skill when operating the LPL Sweep Program; (d) failing
19 to avoid or sufficiently mitigate conflicts of interests; and (e) failing to disclose
20 Defendant's conflict of interest.

21 75. As a direct and proximate result of Defendant's misconduct as alleged herein,
22 Plaintiff and Class members suffered damages in that they did not earn higher and
23 reasonable rates of interests in amounts to be determined at trial. Plaintiff seeks damages,
24 disgorgement of any undue and unjust gains of Defendant, punitive damages, as well as all
25 other equitable relief deemed just and proper.

26 76. Defendant's conduct also warrants a punitive damage award because
27 Defendant is guilty of oppression and engaged in conduct that is outrageous and exhibited
28 reckless indifference to the rights of its clients, including Plaintiff and Class members.

1 **COUNT II**
2 **GROSS NEGLIGENCE**

3 77. Plaintiff re-alleges and incorporates by reference all paragraphs as if fully set
4 forth herein.

5 78. Defendant owed Plaintiff and Class members the duty to exercise reasonable
6 diligence, care, and skill in recommending the LPL Sweep Program.

7 79. Defendant breached their duties by failing to act in the best interests of
8 Plaintiff and Class members, including by not negotiating and paying the available
9 reasonable interest rates on the cash balances in their clients' accounts; and by placing their
10 own interests ahead of Plaintiffs' and Class members' interests by securing increased net
11 interest income at the expense of their clients.

12 80. Defendant's conduct as alleged in this Complaint was grossly negligent
13 because their self-serving conduct demonstrates a complete lack of care and reckless
14 disregard for their clients' interests. Defendant's conduct also demonstrates an extreme
15 departure from the ordinary standard of care.

16 81. Defendant's gross negligence directly and proximately caused harm to
17 Plaintiff and the Class members. As a result, Plaintiff and Class members suffered damages
18 in an amount to be determined at trial.

19 **COUNT III**
20 **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

21 82. Plaintiff re-alleges and incorporates by reference all paragraphs as if fully set
22 forth herein.

23 83. Under California common law, a covenant of good faith and fair dealing is
24 implied into every contract.

25 84. Plaintiff and Class members contracted with Defendant to provide them with
26 financial and/or investment services pursuant to the Brokerage Agreement. Under the
27 Brokerage Agreement, Defendant was an agent of Plaintiff and Class members and owed
28

1 them fiduciary duties, including to act in their best interests. Defendant failed to obtain for
2 Plaintiff and Class members higher and reasonable rates of return on their cash balances
3 and instead acted in its own interests. Moreover, under the Broker Agreement, as broker-
4 dealers, and pursuant to Reg. BI and 84 Fed. Reg. 134, 17 CFR § 276, Defendant had a
5 duty to act in the best interests of Plaintiff and Class members and not put its interests
6 above Plaintiff and Class members.

7 85. These contracts were subject to implied covenants of good faith and fair
8 dealing that all parties would act in good faith and with reasonable efforts to perform their
9 contractual duties (both explicit and implied) and not to impair the rights of other parties
10 to receive the rights, benefits, and reasonable expectations under the contracts. These
11 included the covenants that Defendant would act fairly and in good faith in carrying out
12 their contractual obligations to provide Plaintiff and Class member with fair and reasonable
13 rates of return on their cash sweep balances.

14 86. Defendant breached these implied covenants of good faith and fair dealing
15 by failing to provide Plaintiff and Class member with fair and reasonable rates of return on
16 their cash sweep balances. Defendant, instead of providing fair and reasonable rates of
17 return on their clients' cash sweep balances, provided far below market rates of return that
18 their clients could have otherwise earned on their cash. Defendant acted dishonestly and
19 failed to exercise its discretion reasonably in selecting the banks which would hold Plaintiff
20 and Class members' cash balances and in failing to negotiate reasonable rates of interest
21 but instead negotiated higher rates of interest and fees for itself.

22 87. Plaintiff and Class members fulfilled all the terms and obligations of their
23 contract, including paying for Defendant's services.

24 88. Defendant's failure to act in good faith in providing fair and reasonable rates
25 of return on their customers' cash sweep balances denied Plaintiff and Class members the
26 full benefit of their bargain. Plaintiff and Class members received a minimal return on their
27 cash sweep balances that were less than what they could have otherwise earned and less
28 than their reasonable expectations under their contract with Defendant.

1 89. As a result of Defendant’s breach of the implied covenant of good faith and
2 fair dealing, Plaintiff and Class members sustained damages in an amount to be determined
3 by this Court, including interest on all liquidated sums.

4 **COUNT IV**
5 **BREACH OF CONTRACT**

6 90. Plaintiff re-alleges and incorporates by reference all paragraphs as if fully set
7 forth herein.

8 91. Plaintiff and Class members entered into the Broker Agreement, whereby
9 Defendant is obligated to provide Plaintiff and Class members with financial services,
10 including a contractual obligation to negotiate for Plaintiff and Class members rates of
11 return on their cash balances that are reasonable and to otherwise act in the best interest of
12 the clients in the operation of the LPL Sweep Program.

13 92. Pursuant to the Broker Agreement, Defendant was and continues to be
14 contractually obligated to obtain for Plaintiff and Class members rates of return on their
15 cash sweep balances that are reasonable and to otherwise act in the best interests of the
16 clients in the operation of the LPL Sweep Program.

17 93. As alleged herein, the rates of return paid to Plaintiff and Class members on
18 their cash sweep balances were not fair and reasonable, and neither were the increased
19 interest payments and fees that Defendant extracted for itself when negotiating with the
20 affiliated banks. As a result, Defendant breached the contract with Plaintiff and Class
21 members.

22 94. Accordingly, Plaintiffs and Class members were harmed by Defendant’s
23 breach; and sustained damages in an amount to be determined at trial.

24 **COUNT V**
25 **UNJUST ENRICHMENT**

26 95. Plaintiff re-alleges and incorporates by reference all paragraphs as if fully set
27 forth herein.

1 96. Because of Defendant’s wrongful conduct as alleged herein, Plaintiff and
2 Class members received lower interest payments on their cash sweep balances than they
3 would have in a reasonable and fair market.

4 97. Because of Defendant’s wrongful conduct as alleged herein, Defendant
5 unjustly received a benefit at the expense of Plaintiff and Class members in the form of
6 increased interest income that belonged to Plaintiff and Class members.

7 98. It would be unjust and inequitable to allow Defendant to retain these
8 wrongfully obtained benefits.

9 99. Plaintiff and Class members are entitled to restitution and disgorgement of
10 the benefits unjustly obtained, plus interest, in an amount to be proven at trial.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff, individually and on behalf of the members of the Class
13 defined above, respectfully request that this Court enter:

- 14 (a) An order certifying this case as a class action under Federal Rule of Civil
15 Procedure 23, appointing Plaintiff as the Class representative, and appointing the
16 undersigned as Class counsel;
- 17 (b) A judgment awarding Plaintiff and Class members appropriate monetary relief,
18 including actual damages, equitable relief, restitution, and disgorgement;
- 19 (c) An order entering injunctive and declaratory relief as appropriate under the
20 applicable law;
- 21 (d) An order awarding Plaintiff and the Class pre-judgment and/or post-judgment
22 interest as prescribed by law;
- 23 (e) An order awarding reasonable attorneys’ fees and costs as permitted by law; and
24 (f) All other and further relief as may be just and proper.

25 **DEMAND FOR JURY TRIAL**

26 Plaintiff hereby demands a jury trial.

27 Dated: August 20, 2024

GIBBS LAW GROUP LLP

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