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9 **IN THE UNITED STATES DISTRICT COURT**

10 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

11 DOUGLAS K. NEVITT, on behalf of
12 himself and all others similarly
13 situated,

14 Plaintiff,

15 v.

16 LPL FINANCIAL HOLDINGS INC.
17 and LPL FINANCIAL LLC,

18 Defendants.

Case No. '24CV1358 RBM KSC

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

19
20 Plaintiff, on behalf of himself and the proposed Class defined herein, seeks
21 redress for the harm caused by Defendants' conduct. In support of his Complaint,
22 Plaintiff alleges the following:

23 **I. NATURE OF ACTION**

24
25 1. This case concerns a simple ruse: in violation of its fiduciary duties and
26 a regulatory mandate to act only in the "best interests" of its clients, Defendants fail
27

1 to secure for their brokerage and advisory clients reasonable interest rates on their
2 clients' cash balances. Instead, Defendants implement a scheme whereby those
3 clients' cash balances are used by Defendants to generate massive profits for
4 themselves based primarily on prevailing market rates. During the rising interest rate
5 environment from March 2022 through the present, the spread between what
6 Defendants paid to or secured for its clients and what it made in the market, known
7 as "net interest income," has grown exponentially: from 2022 to 2023, Defendants'
8 net interest income increased by 107%.

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10
11
12 2. While that growth was and continues to be extremely lucrative for
13 Defendants, Defendants' scheme was and continues to be extremely detrimental to
14 its clients—in flagrant violation of its duties to its clients.

15 **II. JURISDICTION AND VENUE**

16
17 3. This Court has subject matter jurisdiction under the Class Action
18 Fairness Act, codified at 28 U.S.C. § 1332(d). Plaintiff is diverse from Defendants
19 and the amount in controversy exceeds five million dollars (\$5,000,000), exclusive
20 of interest and costs.

21
22 4. This Court has personal jurisdiction over Defendants because they
23 conduct substantial business in this district and have their principal places of
24 business here.

25
26 5. Venue is proper in this district under 28 U.S.C. § 1391.

1 **III. PARTIES**

2 **A. Plaintiff**

3
4 6. Plaintiff, Douglas Nevitt, is a 66-year-old Illinois resident who worked
5 most of his adult life in construction. Mr. Nevitt maintained an individual retirement
6 account (ending in 64) at LPL Financial LLC from 2020 through 2022. Mr. Nevitt’s
7 retirement account was a managed, advisory account. In the account maintained by
8 Mr. Nevitt with LPL Financial LLC, Mr. Nevitt’s cash balances were swept into
9 LPL’s cash sweep program.
10

11 **B. Defendants**

12
13 7. LPL Financial Holdings Inc. is a Delaware corporation with its
14 principal place of business in San Diego, California.
15

16 8. LPL Financial Holdings Inc. provides financial consulting, wealth
17 management, and advisory services to Plaintiff and other Class members (as defined
18 herein), and it substantially assisted, encouraged, directed, participated in, and
19 received the benefits of the wrongful conduct alleged herein that was conducted
20 primarily by LPL Financial LLC.
21

22
23 9. LPL Financial LLC is a Delaware limited liability company with its
24 principal place of business in San Diego, California.

25 10. LPL Financial LLC is a registered broker-dealer with the Securities and
26 Exchange Commission (“SEC”) and a registered investment adviser with the SEC,
27

1 and its relationship with its clients is subject to the fiduciary and regulatory
2 obligations imposed on investment advisers. It provides wealth management
3 services to Plaintiff and other Class members.
4

5 11. As used herein, the term “LPL” collectively refers to LPL Financial
6 Holdings Inc. and LPL Financial LLC.
7

8 IV. FACTUAL ALLEGATIONS

9 12. LPL is a Fortune 500 company that “serves the advisor-mediated
10 marketplace as the nation’s largest independent broker-dealer [and] a leading
11 investment advisory firm”¹
12

13 13. A significant source of income for LPL is net interest income, meaning
14 the difference between the amount of interest that LPL pays to or secures for its
15 brokerage and advisory clients and the amount of interest that LPL earns on those
16 cash balances.
17

18 14. LPL makes more money when its clients’ funds are invested in the LPL
19 cash sweep program rather than in similar cash options and equivalents.
20

21 15. When clients are in the LPL cash sweep program, LPL pays and/or
22 secures rates of interest on the client’s cash balances that are neither reasonable nor
23 in compliance with its legal duties.
24

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26 _____
27 ¹ LPL Financial Holdings Inc., 2023 Annual Report (Form 10-K) at p. 1 (Feb.
28 21, 2024).

1 **A. LPL’s Automatic Cash Sweep Program**

2 16. Under LPL’s automatic cash sweep program (“ACSP”), LPL, “acting
3 as [the client’s] agent, will automatically transfer (or ‘sweep’) available cash
4 balances in [the client’s] eligible cash—including proceeds of securities transactions,
5 dividend and interest payments, cash deposits, and other monies—into interest-
6 bearing deposit accounts”² The ACSP program consists of two available
7 programs, depending on the type of account the customer holds: (1) an Insured Cash
8 Account program (“ICA”) and (2) a Deposit Cash Account program (“DCA”).
9

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11
12 17. For its ACSP, LPL sweeps the clients’ cash into various “Program
13 Banks.” These banks have arrangements with LPL whereby they compensate LPL
14 for the clients’ cash which is “swept” into their banks.
15

16 18. Client cash balances are swept into one or more Program Banks with a
17 general limit into each bank being the limit of insurance coverage provided for by
18 the Federal Deposit Insurance Corporation (“FDIC”).
19

20 19. However, if a client’s cash exceeds FDIC limits at all Program Banks,
21 then the excess amount will be deposited in the cash sweep program’s “Excess Bank”
22 without regard to any FDIC limit.
23

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26 ² Insured Cash Account Disclosure Booklet, at p. 2, available at
27 [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)
28 [disclosure-booklet.pdf](https://www.lpl.com/content/dam/lpl-www/documents/disclosures/lpl-ica-disclosure-booklet.pdf) (accessed June 21, 2024).

1 20. LPL fails to pay or secure for its clients a reasonable rate of interest on
2 the cash balances in its ACSP.

3
4 21. LPL’s webpage that explains its ACSP links to the “Current Interest
5 Rate,” which forwards the client to an August 2, 2023, publication by LPL
6 identifying its ACSP’s rates.³

7
8 22. For example, the applicable rates as of August 2, 2023, were:⁴

| From | To | Annual Percentage Yield |
|---------------|-------------|-------------------------|
| \$0 | \$149,999 | 0.35% |
| \$150,000 | \$299,999 | 0.4% |
| \$300,000 | \$499,999 | 0.45% |
| \$500,000 | \$749,999 | 0.50% |
| \$750,000 | \$1,499,999 | 0.80% |
| \$1.5 million | \$4,999,999 | 1.15% |
| \$5 million | \$9,999,999 | 1.25% |
| \$10 million | and above | 2.20 % |

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18 23. The rates paid by LPL to its clients pursuant to its ACSP violate LPL’s
19 duties to its clients because these rates are not reasonable. LPL’s misconduct
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23
24 ³ LPL Financial Automatic Cash Sweep Programs, available at
25 <https://www.lpl.com/disclosures/lpl-financial-fdic-insured-bank-deposit-sweep-programs.html>, (accessed June 21, 2024).

26 ⁴ LPL Insured Cash Account Current Interest Tier Rates, available at
27 <https://www.lpl.com/content/dam/lpl-www/documents/disclosures/insured-cash-account-current-interest-rate-tiers.pdf>, (accessed June 21, 2024).
28

1 constitutes a breach of LPL’s fiduciary duties to its clients and a violation of
2 Regulation Best Interest, 17 CFR § 240.151-1 (2019) (hereinafter “Reg. BI”).
3

4 **B. LPL’s Duties to Its Clients**

5 24. LPL owes varying duties to each client based on the type of relationship
6 it has with the client, including the following:
7

8 a. for all retail advisory accounts, LPL was required to act as a fiduciary
9 to its clients, requiring it to only act for the benefit of its clients and not
10 its own self-interest;
11

12 b. for all retail client accounts, regardless of whether the account was
13 qualified or not, advisory or retail brokerage, LPL was required to
14 always act in the “best interests” of its clients; and
15

16 c. for all retail retirement accounts, including traditional, Roth, and
17 Simple Individual Retirement Accounts (“IRAs”), LPL was required
18 under the common law fiduciary standard, Reg. BI, and other applicable
19 federal laws to act in the best interests of its clients.
20

21 **1. LPL’s Fiduciary Duties**

22 25. Because it provides financial advisory and other services to its clients,
23 LPL must adhere to certain standards of conduct vis-a-vis its clients.
24

25 26. For example, when LPL is acting as an Investment Adviser for actively
26 managed funds, it owes its client a fiduciary duty. *See* Securities and Exchange
27

1 Commission Interpretation Regarding Standards of Conduct for Investment
2 Advisers, 84 Fed. Reg. 134, 17 CFR § 276 (July 12, 2019) (“Under federal law, an
3 investment adviser is a fiduciary.”) (hereinafter “Fiduciary Interpretation”).
4

5 27. “The Advisers Act establishes a federal fiduciary duty for investment
6 advisers. This fiduciary duty is based on equitable common law principles and is
7 fundamental to advisers’ relationships with their clients under the Advisers Act.” *Id.*
8

9 28. Under this federal duty, LPL “must, at all times, serve the best interest
10 of its client and not subordinate its client’s interest to its own. In other words, the
11 investment adviser cannot place its own interests ahead of the interests of its client.”
12 *Id.*
13

14 29. If there is a conflict between its interests and its client’s interests, then
15 LPL is also required to “eliminate or make full and fair disclosure of all conflicts of
16 interest which might incline an adviser—consciously or unconsciously—to render
17 advice which is not disinterested such that a client can provide informed consent to
18 the conflict.” *Id.*
19
20

21 30. LPL “must make full and fair disclosure to its clients of all material
22 facts relating to the advisory relationship.” *Id.*
23

24 31. LPL’s fiduciary duties also include a duty of care to carry out its
25 responsibilities in an informed and considered manner and to act as an ordinary
26 prudent person would act in the management of his or her own affairs. In addition,
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28

1 because LPL becomes a fiduciary on the basis of representations of special skills or
2 expertise, it is under a duty to use those skills and expertise for the benefit of its
3 clients.
4

5 **2. LPL’s Duties Under Regulation Best Interest**

6 32. Even where LPL is not acting as an Investment Adviser and instead
7 plays a more passive role, it still must act in its clients’ best interests under Reg. BI.
8

9 33. While the Investment Adviser obligations apply to all investment
10 advisory clients, Reg. BI applies only to retail investors, defined as “a natural person,
11 or the legal representative of such person who (i) [r]eceives a recommendation of
12 any securities transaction or investment strategy” and “(ii) [u]ses the
13 recommendation primarily for personal, family, or household purposes.” 17 C.F.R.
14 § 240.151-1(b)(1).
15
16

17 34. Although there are technical differences between Reg. BI and an
18 Investment Adviser’s fiduciary obligations, “they generally yield substantially
19 similar results in terms of the ultimate responsibilities owed to retail investors.”⁵
20

21 35. Reg. BI was drafted “to draw on key principles underlying fiduciary
22 obligations, including those that apply to investment advisers under the Advisers
23 Act, while providing specific requirements to address certain aspects of the
24

25
26 ⁵ See SEC Staff Bulletin: Standards of Conduct for Broker-Dealers and
27 Investment Advisers Care Obligations, available at [www.sec.gov/tm/standards-
conduct-broker-dealers-and-investment-advisers](http://www.sec.gov/tm/standards-conduct-broker-dealers-and-investment-advisers) (accessed June 21, 2020).
28

1 relationships between broker-dealers and their retail clients.” 84 Fed. Reg. 33318,
2 33320.

3
4 36. Under Reg. BI, regardless of whether an investor chooses a broker-
5 dealer or an investment adviser (or both), the investor “will be entitled to a
6 recommendation . . . or advice . . . that is in the best interest of the retail investors
7 and that does not place the interests of the firm or the financial professional ahead
8 of the interests of the retail investor.” 84 Fed. Reg. 33318, 33321.

9
10 37. Reg. BI consists of a “General Obligation,” which states, “When
11 making a recommendation, a broker-dealer must act in the retail client’s best interest
12 and cannot place its own interests ahead of the client’s interests.” 84 Fed. Reg.
13 33318, 33320.

14
15 38. Within the General Obligation are more specific duties, including
16 disclosure duties and a duty to avoid and disclose conflicts of interest.

17
18 39. These latter duties require disclosure of “all material facts relating to
19 conflicts of interest . . . that might incline a broker-dealer to make a recommendation
20 that is not disinterested, including, for example, conflicts associated with proprietary
21 products, payments from third parties, and compensation arrangements.” 84 Fed.
22 Reg. 33318, 33321.

23
24 40. Part of a broker-dealer’s obligation under Reg. BI is to “consider
25 reasonable alternatives, if any, offered by the broker-dealer in determining whether
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1 it has a reasonable basis for making the recommendation.” 84 Fed. Reg. 33318,
2 33321.

3
4 41. One component of a broker-dealer’s duty to disclose conflicts of
5 interest concerns compensation. “The receipt of higher compensation for
6 recommending some products rather than others, whether received by the broker-
7 dealer, the associated person, or both, is a fundamental and powerful incentive to
8 favor one product over another.” 84 Fed. Reg. 33318, 33364.

9
10 42. Thus, under Reg. BI, LPL was and is obligated to elevate its clients’
11 interests above its own, to avoid conflicts with clients’ interests, and disclose
12 material facts concerning any conflicts that may exist.

13
14 **3. LPL’s Duty to Secure Reasonable Interest Rates for**
15 **Retirement Accounts**

16 43. For client cash balances maintained in retirement accounts (regardless
17 of whether the accounts are advisory or brokerage in nature), LPL may utilize those
18 cash balances for investments or loans but only if it pays the client a “reasonable
19 rate” of interest on those cash balances.

20
21 44. For example, section 4975 of the Internal Revenue Code concerns
22 “prohibited transactions” and applies when a plan sponsor for an IRA engages in
23 transactions with a “disqualified person who is a fiduciary whereby he deals with
24 the income or assets of a plan in his own interest or for his own account.” 26 U.S.C.
25 § 4975.
26
27
28

1 45. A “disqualified person” includes companies or individuals “providing
2 services to the plan.” 26 U.S.C. § 4975(e)(2)(B).

3
4 46. Regarding these “prohibited transactions,” the IRS code provides
5 several safe harbors, one of which is “the investment of all or part of a plan’s assets
6 in deposits which bear a reasonable interest rate in a bank or similar financial
7 institution.” 26 U.S.C. § 4975(d)(4).

8
9 47. Thus, while LPL is allowed to invest all or part of a client’s cash
10 balances maintained in retirement accounts, those cash balances must “bear a
11 reasonable interest rate.” 29 U.S.C. § 4975(d)(4); 26 CFR § 54.4975-6. The objective
12 of this provision is to ensure that related party transactions—i.e., transactions
13 between a plan sponsor (LPL) and a service provider (Program Banks)—involving
14 retirement accounts are priced at fair market rates.
15
16

17 48. Treasury regulations extend this same obligation to situations when
18 LPL “invests plan assets in deposits in itself or its affiliates.” 26 CFR § 54.5975-
19 6(b)(3)(i). When this occurs, the client’s authorization “must name” the institution
20 and “must state that [the bank] may make investments in deposits which bear a
21 reasonable rate of interest in itself (or in an affiliate).” *Id.*
22
23

24 49. Similarly, and like the IRS Code, ERISA also exempts from prohibition
25 various interested party transactions that “bear a reasonable rate of interest.” 29
26 U.S.C. § 1108(b)(1)(D).
27
28

1 50. In sum, under the common law fiduciary standard, Reg. BI, and other
2 applicable federal laws, LPL has a duty to act in the best interests of its clients and
3
4 to secure reasonable interest rates for its clients’ cash balances through a reasonable
5 cash sweep program or reasonable cash equivalents—such as government money
6 market funds available to LPL clients.
7

8 **C. LPL Breaches Its Duties and Profits Thereby**

9 51. LPL breaches its duties by failing to secure reasonable interest rates for
10 its clients’ deposits.
11

12 52. The term “reasonable” is defined in the dictionary as being synonymous
13 with “fair” and “proper.”⁶
14

15 53. IRS regulations define an “arm’s-length interest rate” as:
16
17 a rate of interest which was charged, or would have been charged,
18 at the time the indebtedness arose, in independent transactions
19 with or between unrelated parties under similar circumstances.
20
21 26 CFR § 1.482-2(a)(2).
22

23 54. In 2003, the Department of Labor issued an exemption to certain
24 transactions and, in granting the exemption, gave the following definition of a
25 “reasonable” rate of interest:
26

27 A “reasonable” rate of interest means a rate of interest
28 determinable by reference to short-term rates available to other
clients of the bank, those offered by other banks, those available
from money market funds, those applicable to short-term

⁶ See Reasonable, Black’s Law Dictionary (12th ed.).

1 instruments such as repurchase agreements, or by reference to a
2 benchmark such as sovereign short term debt (*e.g.*, in the U.S.,
3 treasury bills), all in the jurisdiction where the rate is being
4 evaluated.

5 68 Fed. Reg. 34646, at 34648 (June 10, 2003).

6 **1. Sweep Account Rates Paid by Other Institutions**

7 55. The rates offered by LPL through its ACSP are significantly lower than
8 sweep programs at other brokerage and advisory firms. For example, the following
9 chart compares LPL’s ACSP’s sweep rates with those of two comparable programs:
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| Cash Balance | LPL's ACSP Rate ⁷ | Vanguard Sweep Rate ⁸ | InteractiveBrokers Sweep Rate ⁹ |
|---------------------------------------|------------------------------|----------------------------------|--|
| Less than \$150,000 | 0.35% | 4.6% | 4.83% |
| Between \$150,000 and \$299,999 | 0.40% | 4.6% | 4.83% |
| Between \$300,000 and \$499,999 | 0.45% | 4.6% | 4.83% |
| Between \$500,00 and \$749,999 | 0.50% | 4.6% | 4.83% |
| Between \$750,000 and \$1,499,999 | .80% | 4.6% | 4.83% |
| Between \$1.5 million and \$4,999,999 | 1.15% | 4.6% | 4.83% |
| Between \$5 million and \$9,999,999 | 1.25% | 4.6% | 4.83% |
| \$10 million and above | 2.20% | 4.6% | 4.83% |

56. Thus, other brokerage and advisory financial institutions that use sweep programs pay or secure significantly higher rates than LPL.

⁷ See LPL Insured Cash Account Current Interest Tier Rates, available at <https://www.lpl.com/content/dam/lpl-www/documents/disclosures/insured-cash-account-current-interest-rate-tiers.pdf>, (accessed June 21, 2024).

⁸ See Vanguard Cash Plus Account, available at <https://investor.vanguard.com/accounts-plans/vanguard-cash-plus-account> (accessed June 21, 2024).

⁹ See Safeguard Your Assets with Our Insured Bank Deposit Sweep Program, <https://www.interactivebrokers.com/en/accounts/sweep-program.php> (accessed June 21, 2024); Interest Rates, available at <https://www.interactivebrokers.com/en/accounts/fees/pricing-interest-rates.php>, (accessed June 21, 2024).

1 **2. Money Market Fund Rates**

2 57. Money market fund rates also provide a benchmark for determining
3 what constitutes a “reasonable rate.”
4

5 58. As discussed below, until recently, LPL swept its client cash into the
6 LPL money market fund after the maximum cash levels were reached at LPL’s
7 Program Banks.
8

9 59. Some of LPL’s competitors automatically sweep any uninvested cash
10 deposited into its clients’ brokerage accounts into money market funds that earn
11 comparably high rates of interest.
12

13 60. For example, by default, Fidelity sweeps uninvested cash in their
14 client’s brokerage accounts into a money market fund earning approximately 5%.¹⁰
15

16 61. On April 1, 2019, LPL made the decision to eliminate the option of
17 using a money market as a cash sweep option. As a result, client yields were reduced
18 and LPL’s profits were increased.
19

20 **3. Violation of Duties**

21 62. LPL breaches its fiduciary duties and violates Reg. BI by failing to pay
22 to or secure for its clients reasonable rates on client cash balances.
23
24
25

26 _____
27 ¹⁰ See Help your cash work harder, available at
28 <https://www.fidelity.com/go/manage-cash-rising-costs>, (accessed June 21, 2024).

1 63. LPL further breaches its fiduciary duties and violates Reg. BI by (1)
2 failing to make adequate disclosures to its clients; (2) failing to elevate its clients'
3 interests above its own; (3) failing to avoid or—at the very least disclose—its
4 conflicts of interest with its clients; (4) failing to disclose to clients other viable
5 options that may benefit them; and (5) failing to demonstrate loyalty to its clients.
6
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8 **D. LPL Benefits from Its Misconduct**

9 64. LPL earns interest revenue on non-trading assets that it holds for its
10 clients; this includes cash deposits and other capital that is not deployed for trading
11 purposes. Much of LPL's net interest income is generated by its wealth management
12 business—a business unit that provides investment-related services for client funds
13 and serves as a broker-dealer for LPL clients.
14
15

16 65. LPL boasts that, “We generate compelling economics on client cash
17 balances.”¹¹
18

19 66. During the rising interest rate environment from March 2022 through
20 the present, LPL's net interest spread has grown exponentially: from 2022 to 2023
21 LPL's net interest income increased by 107%.
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26 ¹¹ LPL Financial Holdings Inc. Q1 2024 Earnings Key Metrics, at p. 14,
27 available at <https://investor.lpl.com/static-files/f6bdb29-b1df-429e-83cd-6851fc81c19b>, (accessed June 21, 2024).
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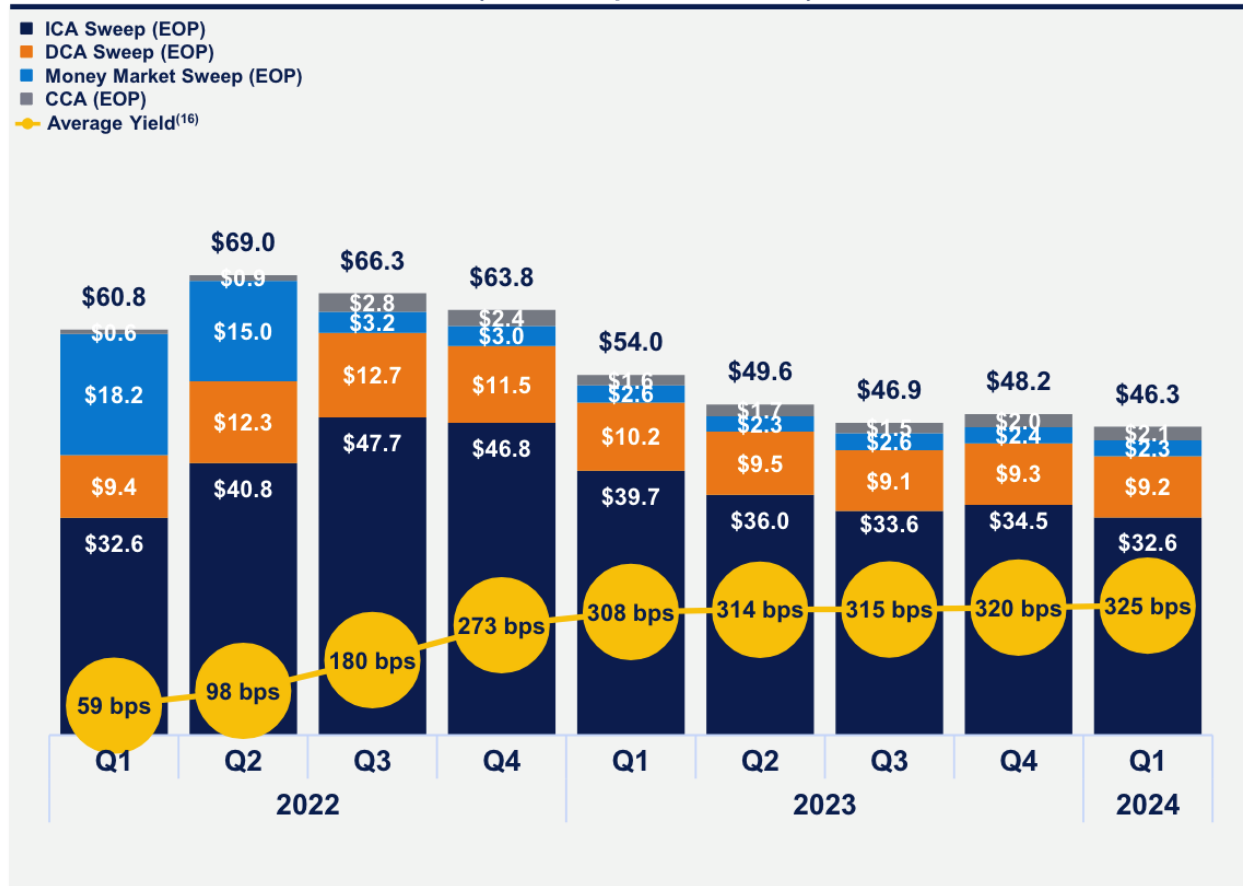
1 67. LPL earns revenue under its ACSP based on agreements with its
2 Program Banks, where each bank compensates LPL based on the average daily
3 deposit balances at the Program Bank, and that total compensation paid is based on
4 an annual interest rate of up to an average of 6%.

6 68. For clients that have deposited cash with the company, however, LPL
7 pays only the paltry yield reflected in its ACSP. The difference between what LPL
8 earns on the deposits and what it pays its clients is the company's net interest income.
9

10 69. LPL's ACSP's cash holdings represent the largest percentage of client
11 cash balances for LPL's clients. Since the first quarter of 2022, LPL's clients held an
12 average of \$48.6 billion in its ACSP:¹²
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27 ¹² *Id.*

Client Cash Balances⁽¹⁵⁾ (end of period, \$B)



70. LPL also earns an additional \$30 million in profits each time the Federal

Reserve increases interest rates:¹³

¹³ *Id.*

1 **Interest Rate Impact**
2

- 3 • Since Q1 2022, as the Fed started to increase interest rates, our deposit
4 beta averaged ~15%
 - 5 – Deposit betas averaged ~2.5% over the first 4 hikes, and ~20% on
6 subsequent hikes, including a peak of ~25% on the final hike
- 7 • Applying historical deposit betas to our current cash balances would
8 yield:
 - 9 – ~\$30M of Annual Gross Profit* per subsequent rate adjustment, at a
10 ~25% deposit beta

11 71. LPL is continuing to increase its own yields on its clients’ cash balances
12 in the ACSP, while continuing to maintain unreasonably low interest rates for its
13 clients.
14

15 72. For the first quarter of 2024, LPL secured for itself a half billion dollars
16 of fixed rate balances in the ICA portion of its ACSP at an interest rate of 4.45%—
17 an increase of 1.05% in the interest rate from the prior period.¹⁴
18

19 73. Thus, LPL is continuing to increase the spread between its huge revenue
20 numbers and the returns it pays to or secures for its clients.
21

22 74. Fluctuating interest rates present a revenue risk for LPL. According to
23 the company’s own analysis, a change in interest rates may cause significant change
24 in the company’s net interest income derived specifically from its ACSP. As LPL
25
26

27 ¹⁴ *Id.*
28

1 has explained: “[o]ur revenue is exposed to interest rate risk primarily from changes
2 in fees payable to us from banks participating in our client cash programs and
3 changes in interest income earned on deposits.”¹⁵
4

5 75. Changes in interest rates also mean that LPL’s clients may decrease
6 their cash deposits. According to LPL, if interest rates decline, it could experience
7 “decreases in client cash balances or mix shifts among the current or future deposit
8 sweep vehicles”¹⁶
9

10 76. Thus, LPL has a significant financial interest in (1) not paying its clients
11 a reasonable interest rate and keeping as much of the “spread” as it can, and
12 simultaneously (2) not disclosing to its clients the unreasonable interest rates paid
13 by the company (as well as the company’s inherent conflicts of interest), lest the
14 clients pursue accounts with more lucrative rates at other institutions.
15
16

17 **V. CLASS ACTION ALLEGATIONS**

18 77. Plaintiff re-alleges and incorporates by reference the allegations set
19 forth above.
20

21 78. Plaintiff brings this class action and seeks certification of the following
22

23 Class:

24 **Retail clients of LPL who had cash deposits or balances in**
25 **LPL’s Automatic Cash Sweep Program.**

26 ¹⁵ LPL Annual Report, at p. 15.

27 ¹⁶ *Id.*

1
2 79. Plaintiff reserves the right to amend the Class definition if further
3 investigation and discovery indicates that the Class definition should be narrowed,
4 expanded, or otherwise modified.

5
6 80. Excluded from the Class are governmental entities, institutional and
7 other non-retail investors; LPL and any of its affiliates, legal representatives,
8 employees, or officers; the judicial officer(s) and any judicial staff overseeing this
9 litigation; and counsel for Plaintiff and the proposed Class, including other attorneys
10 and staff at each respective firm.

11
12 81. This action has been brought and may be maintained as a class action
13 under Federal Rule of Civil Procedure 23.
14

15 **Numerosity**
16 **Rule 23(a)(1)**

17 82. Class members are so numerous that their individual joinder is
18 impracticable. The precise number of Class members and their identities are
19 unknown to Plaintiff at this time. However, LPL's wealth management services
20 provide financial planning and advisory services to over 4.5 million client accounts
21 through the work of over 22,000 financial advisors.¹⁷ Accordingly, the Class satisfies
22
23
24

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26 ¹⁷ About LPL Financial, available at <https://www.lpl.com/about-us.html#:~:text=San%20Diego%2C%20CA,the%20University%20Town%20Center%20area> (accessed June 21, 2024).
27
28

1 the numerosity requirement of Rule 23. Class members may be notified of the
2 pendency of this action by mail, published notice, or other appropriate methods.

3
4 **Existence and Predominance of Common Questions of Law and Fact**
5 **Rule 23(a)(2), 23(b)(3)**

6 83. Common questions of law and fact exist as to all Class members and
7 predominate over questions affecting only individual Class members. These
8 common legal and factual questions, each of which may also be certified under Rule
9 23(c)(4), include the following:
10

- 11 a. whether LPL’s interest rates are “reasonable”;
- 12 b. the existence of LPL’s fiduciary duties to the Class, and whether LPL
13 violated those duties;
- 14 c. the duties imposed on LPL by Reg. BI, and whether LPL violated those
15 duties;
- 16 d. the duties imposed on LPL related to its IRA programs offered to retail
17 clients), and whether LPL violated those duties;
- 18 e. whether LPL was unjustly enriched by its wrongful conduct;
- 19 f. whether this case may be maintained as a class action under Fed. R.
20 Civ. P. 23;
- 21 g. whether and to what extent Class members are entitled to damages and
22 other monetary relief; and
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1 h. whether and to what extent Class members are entitled to attorneys' fees
2 and costs.

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4 **Typicality**
5 **Rule 23(a)(3)**

6 84. Plaintiff's claims are typical of the claims of the Class because he was
7 a retail account holder with LPL that was paid an unreasonable interest rate by the
8 company. Thus, Plaintiff's claims are typical of the claims of the Class members as
9 the claims arise from the same course of conduct by Defendants, and the relief sought
10 within the Class is common to the Class members.

11
12 **Adequacy of Representation**
13 **Rule 23(a)(4)**

14 85. Plaintiff will fairly and adequately protect the interests of Class
15 members. Plaintiff has retained counsel competent and experienced in complex class
16 action litigation, and Plaintiff will prosecute this action vigorously. Plaintiff has no
17 interests adverse or antagonistic to those of the Class.

18
19 **Superiority**
20 **Rule 23(b)(3)**

21 86. A class action is superior to all other available means for the fair and
22 efficient adjudication of this controversy. The damages or other financial detriment
23 suffered by individual Class members are small compared with the burden and
24 expense that would be entailed by individual litigation of their claims against
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1 Defendants. It would thus be virtually impossible for Class members, on an
2 individual basis, to obtain effective redress for the wrongs done them.

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4 87. Even if Class members could afford individualized litigation, the court
5 system could not. Individualized litigation would create the danger of inconsistent
6 or contradictory judgments arising from the same set of facts. Individualized
7 litigation would also increase the delay and expense to all parties and the court
8 system from the issues raised by this action. By contrast, the class action device
9 provides the benefits of adjudication of these issues in a single proceeding,
10 economies of scale, and comprehensive supervision by a single court, and presents
11 no unusual management difficulties under the circumstances here.

12
13
14 88. Superiority is particularly satisfied in a circumstance such as this where
15 the law of a single state will apply. Under the uniform contract terms with LPL, the
16 law of Massachusetts will apply to each Class member's claims, allowing the Court
17 to adjudicate the claims of all Class members under a single state analysis.

18
19
20 89. Additionally, the Class may be certified under Rule 23(b)(1) and/or
21 (b)(2) because:

- 22
23 a. The prosecution of separate actions by individual Class members would
24 create a risk of inconsistent or varying adjudications with respect to
25 individual Class members that would establish incompatible standards
26 of conduct for Defendant;

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- b. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and/or
- c. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final and injunctive relief with respect to the Class members as a whole.

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

**Breach of Fiduciary Duty
Brought on behalf of the Class against All Defendants**

90. Plaintiff, on behalf of himself and the Class, hereby re-alleges the paragraphs above as if fully set forth herein.

91. Under the Investment Advisers Act and at common law, LPL owed fiduciary duties to the Class members who maintained managed accounts within the purview of the Investment Advisers Act.

92. Under Reg. BI, LPL owed duties to the Class members who maintained non-managed accounts (including IRAs), and those duties are tantamount to fiduciary obligations for the purposes of this litigation.

93. LPL’s duties include, but are not limited to:

- 1 a. a duty of undivided loyalty;
- 2 b. a duty to act in the best interests of its clients;
- 3 c. a duty of care;
- 4 d. a duty not to place LPL's interests above those of its clients;
- 5 e. a duty to avoid conflicts of interest; and
- 6 f. a duty to disclose any conflicts of interest.

9 94. LPL violated each of the foregoing duties when it (1) failed to pay the
10 Class members a reasonable rate of interest; (2) failed to act in the Class's best
11 interests by not providing a reasonable default for cash balances that paid its clients
12 a fair and reasonable rate of interest on cash balances; (3) placed its own interests in
13 realizing financial gain from net interest income ahead of the Class's interest in
14 obtaining a reasonable rate of interest; (4) maintained and failed to disclose its
15 conflict of interest in securing increased net interest income at the expense of its
16 clients.
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20 95. LPL's conduct damaged Plaintiff and the Class.

21 96. Plaintiff, individually and on behalf of the Class, seeks all damages
22 permitted by law.
23

24 **SECOND CLAIM FOR RELIEF**
25 **Unjust Enrichment**
26 **Brought on behalf of the Class against All Defendants**

27 97. Plaintiff, on behalf of himself and the Class, hereby re-alleges the
28

1 paragraphs above as if fully set forth herein.

2 98. Plaintiff conferred a benefit upon LPL when, as a result of LPL's
3 wrongful conduct, Plaintiff and the Class received lower interest payments on their
4 cash and other deposits than they would have in a reasonable and fair market.
5

6 99. As a result of LPL's wrongful conduct, LPL was unjustly enriched
7 because it received significantly greater net interest income than it would have but
8 for its wrongful conduct.
9

10 100. LPL knew of the benefit it received from Plaintiff and the Class, and it
11 appreciated, accepted, and retained the non-gratuitous benefits conferred by Plaintiff
12 and the Class.
13

14 101. It would be inequitable and unjust for LPL to retain these wrongfully
15 obtained profits.
16

17 102. LPL's retention of this wrongfully-obtained net interest income would
18 violate the fundamental principles of justice, equity, and good conscience.
19

20 103. Plaintiff and the Class are entitled to restitution and disgorgement of
21 the profits unjustly obtained, plus interest.
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23 **VII. DEMAND FOR RELIEF**

24 WHEREFORE, Plaintiff, on behalf of himself and the Class, demands
25 judgment and relief as follows:
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- 1. For an order certifying the proposed Class, and appointing Plaintiff and his counsel to represent the proposed Class;
- 2. For an order awarding Plaintiff and Class members damages in an amount to be proven at trial, together with pre-trial and post-trial interest thereon;
- 3. For an order awarding Plaintiff and Class members restitution, disgorgement, or such other and further relief as the Court deems proper; and
- 4. For an order awarding Plaintiff and the Class reasonable attorneys’ fees and costs of suit, including expert witness fees.

VIII. JURY TRIAL DEMAND

Plaintiff, on behalf of himself and the Class, demands a trial by jury on all issues so triable.

DATED: July 31, 2024

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 Deborah Rosenthal Cal. Bar No. 184241
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Counsel for Plaintiff and the Proposed Class

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Douglas K. Nevitt

(b) County of Residence of First Listed Plaintiff Peoria County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

See Attachment

DEFENDANTS

LPL Financial Holdings Inc., LPL Financial LLC

County of Residence of First Listed Defendant San Diego County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

24CV1358 RBM KSC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 210 Land Condemnation, 310 Airplane, etc.

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(d) Brief description of cause: Breach of Fiduciary Duty, Unjust Enrichment

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 07/31/2024 SIGNATURE OF ATTORNEY OF RECORD /s/ Deborah Rosenthal

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

CIVIL COVER SHEET ATTACHMENT

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