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10

11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**
13

14 AMERIPRISE FINANCIAL
15 SERVICES, LLC,

16 Plaintiff,

17 v.

18 LPL FINANCIAL LLC,

19 Defendant.
20

Case No. 24-CV-01333 JO MSB

**DEFENDANT’S EVIDENTIARY
OBJECTIONS TO DECLARATION
OF MICHAEL S. TAAFFE**

Hearing

Date: October 31, 2024

Time: 9:30 a.m.

Place: Courtroom of the Honorable
Jinsook Ohta

1 Defendant LPL Financial LLC (“LPL”) hereby submits these evidentiary
2 objections to the Declaration of Michael S. Taaffe in Support of Plaintiff Ameriprise
3 Financial Services, LLC’s Motion for Preliminary Injunction [Dkt. 15-2] (the
4 “Taaffe Declaration”).¹

5 LPL objects to the entire Taaffe Declaration on grounds that (1) it violates the
6 advocate-witness rule, because Mr. Taaffe attempts to act as both an advocate and a
7 witness (*United States v. Prantil*, 764 F.2d 548, 552-53 (9th Cir. 1985) (“Attorneys
8 must elect in which capacity they intend to proceed, either as counsel or as a witness
9 and promptly withdraw from the conflicting role.”)); (2) Mr. Taaffe is not a
10 competent witness because he lacks personal knowledge of the facts he attests to;
11 and (3) it constitutes improper opinion testimony. The Court should give it no weight
12 and should not consider it.

13 Moreover, LPL objects to the following portions of the Taaffe Declaration for
14 the reasons stated:

- 15 • **Paragraph 2:**
- 16 • **Statement in Declaration:** “I have personal knowledge of the following facts
17 and, if called upon as a witness, could competently testify thereto.”
 - 18 ○ The witness makes this statement in violation of the advocate-witness
19 rule, because Mr. Taaffe attempts to act as both an advocate and a witness.
20 *See Prantil*, 764 F.2d at 552-53 (“Attorneys must elect in which capacity
21 they intend to proceed, either as counsel or as a witness and promptly
22 withdraw from the conflicting role.”); *Lucas v. Breg, Inc.*, No. 15-cv-258,
23 2015 U.S. Dist. LEXIS 53085, at *1 (S.D. Cal. Apr. 22, 2015) (striking
24

25 ¹ LPL reserves the right to move to disqualify Mr. Taaffe. *See, e.g., Caluori v. One*
26 *World Techs., Inc.*, No. 07-cv-2035, 2012 U.S. Dist. LEXIS 77924, at *15-16 (C.D.
27 Cal. June 4, 2012) (disqualifying counsel, despite client’s consent that he testify,
28 where his “testimony will not concern an uncontested issue or the nature and value
of his legal services”).

1 attorney declaration because “it violates the advocate-witness rule”);
2 *Cookie Dep’t, Inc. v. Hershey Co.*, No. 20-CV-09324, 2022 U.S. Dist.
3 LEXIS 168745, at *13 n.5 (N.D. Cal. Sept. 9, 2022) (“The Court agrees
4 that it is inappropriate for Attorney Indrajana to appear both as a witness
5 and as counsel in this case.”).

6 • **Paragraph 3:**

7 • **Statement in Declaration:** “I have been an attorney within the financial
8 industry for more than thirty years. As such, I have detailed knowledge
9 regarding the industry laws, rules, regulations, and standards.”

10 ○ The witness makes this statement in violation of the advocate-witness rule.

11 *See Prantil*, 764 F.2d at 552-53 (“Attorneys must elect in which capacity
12 they intend to proceed, either as counsel or as a witness and promptly
13 withdraw from the conflicting role.”); *Lucas*, 2015 U.S. Dist. LEXIS
14 53085, at *1 (striking attorney declaration because “it violates the
15 advocate-witness rule”); *Cookie Dep’t, Inc.*, 2022 U.S. Dist. LEXIS
16 168745, at *13 n.5 (“The Court agrees that it is inappropriate for Attorney
17 Indrajana to appear both as a witness and as counsel in this case.”).

18 ○ Fails to qualify Taaffe as an expert pursuant to FED. R. EVID. 702. *Erhart*
19 *v. Bofi Holding, Inc.*, 445 F.Supp.3d 831, 842 (S.D. Cal. 2020) (citing
20 *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, at 593 n.10
21 (1993) (noting the proponent of the expert testimony bears the burden to
22 establish its admissibility).

23 ○ Relevance. FED. R. EVID. 401.

24 • **Paragraph 7 and Exhibit C:**

25 • **Statement in Declaration:** “A true and correct copy of a Letter Of
26 Acceptance, Waiver And Consent issued by FINRA against Kestra
27 Investment Services LLC in 2020 is lodged herewith as Exhibit C.”

28 ○ Exhibit C is not relevant. FED. R. EVID. 401.

- 1 ○ The probative value of Exhibit C is substantially outweighed by a danger
- 2 of unfair prejudice and confusing the issues. FED. R. EVID. 403.
- 3 ○ The statements made in Exhibit C do not support the proposition cited in
- 4 the Motion. FED. R. CIV. P. 106.
- 5 ○ Exhibit C is inadmissible hearsay. FED. R. EVID. 801.
- 6 • **Paragraph 8 and Exhibit D:**
- 7 • **Statement in Declaration:** “A true and correct copy of the affidavit filed by
- 8 a corporate representative of Morgan Stanley Smith Barney LLC (“Morgan
- 9 Stanley”) in aid of Morgan Stanley’s application for injunctive relief in
- 10 *Morgan Stanley Smith Barney LLC v. Lonnie Friedman*, Case No. 1:23-cv-
- 11 00413-JPW (M.D. Pa. Mar. 9, 2023) is lodged herewith as Exhibit D.”
- 12 ○ Exhibit D is not relevant. FED. R. EVID. 401.
- 13 ○ The probative value of Exhibit D is substantially outweighed by a danger
- 14 of unfair prejudice and confusing the issues. FED. R. EVID. 403.
- 15 ○ The statements made in Exhibit D are incomplete evidence taken out of
- 16 context. FED. R. EVID. 106.
- 17 ○ Exhibit D is inadmissible hearsay. FED. R. EVID. 801.
- 18 ○ Exhibit D is being offered as improper character evidence. FED. R. EVID.
- 19 404.
- 20 • **Paragraphs 10-11:**
- 21 • **Statements in Declaration:** “Among those substantial regulations are strict
- 22 requirements regarding protection of confidential client information. In
- 23 addition, beyond the applicable laws, rules, and regulations, the component of
- 24 trust is highly important to the relationship between a financial firm and its
- 25 clients.”
- 26 ○ The witness makes this statement in violation of the advocate-witness rule.
- 27 *See Prantil*, 764 F.2d at 552-53 (“Attorneys must elect in which capacity
- 28 they intend to proceed, either as counsel or as a witness and promptly

1 withdraw from the conflicting role.”); *Lucas*, 2015 U.S. Dist. LEXIS
2 53085, at *1 (striking attorney declaration because “it violates the
3 advocate-witness rule”); *Cookie Dep’t, Inc.*, 2022 U.S. Dist. LEXIS
4 168745, at *13 n.5 (“The Court agrees that it is inappropriate for Attorney
5 Indrajana to appear both as a witness and as counsel in this case.”).

- 6 ○ The statements constitute improper lay opinions. FED. R. EVID. 701.
- 7 ○ The statements lack foundation, such as identification of the relevant laws
8 and regulations. FED. R. EVID. 901.
- 9 ○ The witness lacks personal knowledge of what is important to the
10 relationship between a financial firm and its clients. FED. R. EVID. 602.

11 • **Paragraph 12:**

- 12 • **Statement in Declaration:** “I have reviewed the books and records of
13 Ameriprise with respect to the following and therefore have personal
14 knowledge regarding the statements below.”

- 15 ○ The statements that follow constitute multiple layers of inadmissible
16 hearsay. FED. R. EVID. 801, 802; *Overstreet ex rel. Nat’l Lab. Relations*
17 *Bd. v. W. Prof’l Hockey League, Inc.*, No. CV-09-0591, 2009 WL
18 2905554, at *5 (D. Ariz. Sept. 4, 2009) (noting “triple hearsay” submitted
19 by plaintiff in support of preliminary injunction was of “limited value”).
- 20 ○ The statements that follow constitute improper lay opinions. FED. R. EVID.
21 701; *Erhart*, 445 F. Supp. 3d at 842 (noting the proponent of the expert
22 testimony bears the burden to establish its admissibility).
- 23 ○ The statements that follow are not properly authenticated because the
24 witness does not identify the books and records that form the basis for the
25 statements. FED. R. EVID. 901.
- 26 ○ The witness lacks personal knowledge of the statements that follow, given
27 that the witness is relying on unidentified books and records FED. R. EVID.
28 602; *Bank Melli Iran v. Pahlavi*, 58 F.3d 1406, 1412 (9th Cir. 1995)

1 (holding an attorney declaration made without personal knowledge is
 2 entitled to “no weight”); *see also Finjan, Inc. v. Check Point Software*
 3 *Techs., Inc.*, No. 18-cv-02621, 2019 U.S. Dist. LEXIS 226183, *31 (N.D.
 4 Cal. Aug. 12, 2019) (granting motion to strike attorney declaration for lack
 5 of personal knowledge under Fed. R. Evid. 602); *Sunsauce Foods Indus.*
 6 *Corp. v. Son Fish Sauce USA Corp.*, 22-cv-08973, 2024 U.S. Dist. LEXIS
 7 87026, *5 (N.D. Cal. May 14, 2024) (holding “[b]y premising its motion
 8 solely upon an unverified complaint and two declarations from attorneys
 9 lacking personal knowledge, [movant] has failed to provide the Court with
 10 the kind of probative evidence required to justify the extraordinary remedy
 11 of a preliminary injunction”).

- 12 ○ A conclusory statement that a declarant has personal knowledge cannot
 13 establish that they *actually have* such knowledge. *See XI7, Inc. v.*
 14 *Lavandeira*, No. CV 06-7608, 2007 U.S. Dist. LEXIS 17279, *3, 6-7 (C.D.
 15 Cal. Mar. 8, 2007) (denying preliminary injunction and disregarding
 16 statements where declaration failed to establish foundation for witness’s
 17 purported knowledge).

- 18 • **Paragraph 13:**

- 19 • **Statement in Declaration:** “Ameriprise employs various and substantial
 20 methods to protect its client information including for example . . .”

- 21 ○ The statement is improper lay opinion. FED. R. EVID. 701; *Erhart*, 445 F.
 22 Supp. 3d at 842 (noting the proponent of the expert testimony bears the
 23 burden to establish its admissibility).
- 24 ○ The witness lacks personal knowledge. FED. R. EVID. 602; *Finjan, Inc.*,
 25 2019 U.S. Dist. LEXIS 226183, at *31 (granting motion to strike attorney
 26 declaration for lack of personal knowledge under Fed. R. Evid. 602);
 27 *Sunsauce Foods Indus. Corp.*, 2024 U.S. Dist. LEXIS 87026, at *5
 28 (holding “[b]y premising its motion solely upon an unverified complaint

1 and two declarations from attorneys lacking personal knowledge, [movant]
2 has failed to provide the Court with the kind of probative evidence required
3 to justify the extraordinary remedy of a preliminary injunction”).

- 4 ○ The witness is not qualified as an expert and therefore cannot base his
5 statements on the company’s books and records. FED. R. EVID. 602, 703.
- 6 ○ The witness is not qualified as an expert and the witness’s statements are
7 based on hearsay. FED. R. EVID. 602, 703, 802.
- 8 ○ The witness makes this statement in violation of the advocate-witness rule.
9 *See Prantil*, 764 F.2d at 552-53 (“Attorneys must elect in which capacity
10 they intend to proceed, either as counsel or as a witness and promptly
11 withdraw from the conflicting role.”); *Lucas*, 2015 U.S. Dist. LEXIS
12 53085, at *1 (striking attorney declaration because “it violates the
13 advocate-witness rule”); *Cookie Dep’t, Inc.*, 2022 U.S. Dist. LEXIS
14 168745, at *13 n.5 (“The Court agrees that it is inappropriate for Attorney
15 Indrajana to appear both as a witness and as counsel in this case.”).

16 • **Paragraph 14:**

- 17 • **Statement in Declaration:** “LPL has engaged in a pattern and practice of
18 misappropriating Ameriprise confidential information through its recruitment
19 of financial advisors from Ameriprise. Since February of this year, I have
20 discovered multiple instances of such misappropriate by LPL.”

- 21 ○ The witness lacks personal knowledge of the alleged misappropriation and
22 lays no foundation for his statements. FED. R. EVID. 602; *Pahlavi*, 58 F.3d
23 at 1412 (holding an attorney declaration made without personal knowledge
24 is entitled to “no weight”); *X17, Inc.* 2007 U.S. Dist. LEXIS 17279, at *6-
25 7 (denying preliminary injunction and disregarding statements where
26 declaration failed to establish foundation for witness’s purported
27 knowledge); *Loc. Union No. 490 v. Kirkhill Rubber Co.*, 367 F.2d 956, 958
28 (9th Cir. 1966) (describing motion as “fatally defective” when “[t]he

1 supporting affidavits were made by an attorney and presented facts not
 2 within his personal knowledge”)); *Finjan, Inc.*, 2019 U.S. Dist. LEXIS
 3 226183, at *31 (granting motion to strike attorney declaration for lack of
 4 personal knowledge under Fed. R. Evid. 602); *Sunsauce Foods Indus.*
 5 *Corp.*, 2024 U.S. Dist. LEXIS 87026, at *5 (holding “[b]y premising its
 6 motion solely upon an unverified complaint and two declarations from
 7 attorneys lacking personal knowledge, [movant] has failed to provide the
 8 Court with the kind of probative evidence required to justify the
 9 extraordinary remedy of a preliminary injunction”).

- 10 ○ The statement is a conclusory and improper lay opinion. FED. R. EVID. 701;
 11 *Erhart*, 445 F. Supp. 3d at 842 (noting the proponent of the expert
 12 testimony bears the burden to establish its admissibility).
- 13 ○ To the extent the witness purports to base this statement on Ameriprise’s
 14 unidentified “books and records,” it is inadmissible hearsay. FED. R. EVID.
 15 802.
- 16 ○ Any probative value of the evidence is substantially outweighed by the
 17 danger of unfair prejudice, and confusion of the issues. FED. R. EVID. 403.
- 18 ○ The witness makes this statement in violation of the advocate-witness rule.
 19 *See Prantil*, 764 F.2d at 552-53 (“Attorneys must elect in which capacity
 20 they intend to proceed, either as counsel or as a witness and promptly
 21 withdraw from the conflicting role.”); *Lucas*, 2015 U.S. Dist. LEXIS
 22 53085, at *1 (striking attorney declaration because “it violates the
 23 advocate-witness rule”); *Cookie Dep’t, Inc.*, 2022 U.S. Dist. LEXIS
 24 168745, at *13 n.5 (“The Court agrees that it is inappropriate for Attorney
 25 Indrajana to appear both as a witness and as counsel in this case.”).

26 • **Paragraph 15:**

- 27 • **Statement in Declaration:** “The recruits moving to LPL have taken, for
 28 example, contact information, social security numbers, account numbers,

1 account information, routing numbers, client dates of birth, client ID numbers,
2 account values, securities values, funds available, Money Market balance,
3 Margin Available, Product Class, Plan ID and positions held.”

4 ○ The witness lacks personal knowledge of the information allegedly taken
5 provides no foundation for his statements. FED. R. EVID. 602; *Pahlavi*, 58
6 F.3d at 1412 (holding an attorney declaration made without personal
7 knowledge is entitled to “no weight”); *X17, Inc.*, 2007 U.S. Dist. LEXIS
8 17279, at *6-7 (denying preliminary injunction and disregarding
9 statements where declaration failed to establish foundation for witness’s
10 purported knowledge); *Loc. Union No. 490*, 367 F.2d at 958 (describing
11 motion as “fatally defective” when “[t]he supporting affidavits were made
12 by an attorney and presented facts not within his personal knowledge”);
13 *Finjan, Inc.*, 2019 U.S. Dist. LEXIS 226183, at *31 (granting motion to
14 strike attorney declaration for lack of personal knowledge under Fed. R.
15 Evid. 602); *Sunsauce Foods Indus. Corp.*, 2024 U.S. Dist. LEXIS 87026,
16 at *5 (holding “[b]y premising its motion solely upon an unverified
17 complaint and two declarations from attorneys lacking personal
18 knowledge, [movant] has failed to provide the Court with the kind of
19 probative evidence required to justify the extraordinary remedy of a
20 preliminary injunction”).

21 ○ To the extent the witness purports to base this statement on Ameriprise’s
22 unidentified “books and records,” it is inadmissible hearsay. FED. R. EVID.
23 802.

24 ○ Any probative value of the evidence is substantially outweighed by the
25 danger of unfair prejudice, and confusion of the issues. FED. R. EVID. 403.

26 ○ The witness makes this statement in violation of the advocate-witness rule.
27 *See Prantil*, 764 F.2d at 552-53 (“Attorneys must elect in which capacity
28 they intend to proceed, either as counsel or as a witness and promptly

1 withdraw from the conflicting role.”); *Lucas*, 2015 U.S. Dist. LEXIS
2 53085, at *1 (striking attorney declaration because “it violates the
3 advocate-witness rule”); *Cookie Dep’t, Inc.*, 2022 U.S. Dist. LEXIS
4 168745, at *13 n.5 (“The Court agrees that it is inappropriate for Attorney
5 Indrajana to appear both as a witness and as counsel in this case.”).

- 6 • **Statement in Declaration**: “These categories of confidential information are
7 well beyond what is permissible under the Protocol.”
 - 8 ○ The statement is improper lay opinion. FED. R. EVID. 701; *Erhart*, 445 F.
9 Supp. 3d at 842 (noting the proponent of the expert testimony bears the
10 burden to establish its admissibility).
 - 11 ○ The witness is not qualified as an expert. FED. R. EVID. 703.
 - 12 ○ The witness is not qualified as an expert, and the witness’s statements are
13 based on hearsay. FED. R. EVID. 602, 703, 802.
 - 14 ○ The witness lacks personal knowledge of the information allegedly taken
15 and provides no foundation for his statements. FED. R. EVID. 602; *Pahlavi*,
16 58 F.3d at 1412 (holding an attorney declaration made without personal
17 knowledge is entitled to “no weight”); *X17, Inc.*, 2007 U.S. Dist. LEXIS
18 17279, at *6-7 (denying preliminary injunction and disregarding
19 statements where declaration failed to establish foundation for witness’s
20 purported knowledge); *Loc. Union No. 490*, 367 F.2d at 958 (describing
21 motion as “fatally defective” when “[t]he supporting affidavits were made
22 by an attorney and presented facts not within his personal knowledge”).
 - 23 ○ To the extent the witness purports to base this statement on Ameriprise’s
24 unidentified “books and records,” it is inadmissible hearsay. FED. R. EVID.
25 802.
 - 26 ○ Any probative value of the evidence is substantially outweighed by the
27 danger of unfair prejudice and confusion of the issues. FED. R. EVID. 403.
 - 28 ○ The witness makes this statement in violation of the advocate-witness rule.

1 *See Prantil*, 764 F.2d at 552-53 (“Attorneys must elect in which capacity
 2 they intend to proceed, either as counsel or as a witness and promptly
 3 withdraw from the conflicting role.”); *Lucas*, 2015 U.S. Dist. LEXIS
 4 53085, at *1 (striking attorney declaration because “it violates the
 5 advocate-witness rule”); *Cookie Dep’t, Inc.*, 2022 U.S. Dist. LEXIS
 6 168745, at *13 n.5 (“The Court agrees that it is inappropriate for Attorney
 7 Indrajana to appear both as a witness and as counsel in this case.”).

8 • **Paragraph 16(a)-(d):**

9 • **Statements in Declaration:** “In certain instances, the recruits took this highly
 10 confidential information and sent it to unsecure email addresses and/or stored
 11 the highly confidential information on unsecured devices and networks.
 12 There are multiple examples of LPL’s misconduct of which I have firsthand
 13 knowledge as counsel...”

14 ○ The witness lacks personal knowledge and does not lay a foundation for
 15 his statements. FED. R. EVID. 602; *Pahlavi*, 58 F.3d at 1412 (holding an
 16 attorney declaration made without personal knowledge is entitled to “no
 17 weight”); *Loc. Union No. 490*, 367 F.2d at 958 (describing motion as
 18 “fatally defective” when “[t]he supporting affidavits were made by an
 19 attorney and presented facts not within his personal knowledge”); *Finjan,*
 20 *Inc.*, 2019 U.S. Dist. LEXIS 226183, at *31 (granting motion to strike
 21 attorney declaration for lack of personal knowledge under Fed. R. Evid.
 22 602); *Sunsauce Foods Indus. Corp.*, 2024 U.S. Dist. LEXIS 87026, at *5
 23 (holding “[b]y premising its motion solely upon an unverified complaint
 24 and two declarations from attorneys lacking personal knowledge, [movant]
 25 has failed to provide the Court with the kind of probative evidence required
 26 to justify the extraordinary remedy of a preliminary injunction”).

27 ○ A conclusory statement that a declarant has personal knowledge cannot
 28 establish that they *actually have* such knowledge. *See XI7, Inc.*, 2007 U.S.

1 Dist. LEXIS 17279, at *6-7 (denying preliminary injunction and
2 disregarding statements where declaration failed to establish foundation
3 for witness’s purported knowledge).

- 4 ○ The statement is improper lay opinion. FED. R. EVID. 701; *Erhart*, 445 F.
5 Supp. 3d at 842 (noting the proponent of the expert testimony bears the
6 burden to establish its admissibility).
- 7 ○ The witness is not qualified as an expert. FED. R. EVID. 703.
- 8 ○ To the extent the witness purports to base this statement on Ameriprise’s
9 unidentified “books and records,” it is inadmissible hearsay. FED. R. EVID.
10 802.
- 11 ○ The witness is not qualified as an expert and the witness’s statements are
12 based on hearsay. FED. R. EVID. 602, 703, 802.
- 13 ○ Any probative value of the evidence is substantially outweighed by the
14 danger of unfair prejudice, and confusion of the issues. FED. R. EVID. 403.
- 15 ○ The witness makes this statement in violation of the advocate-witness rule.
16 *See Prantil*, 764 F.2d at 552-53 (“Attorneys must elect in which capacity
17 they intend to proceed, either as counsel or as a witness and promptly
18 withdraw from the conflicting role.”); *Lucas*, 2015 U.S. Dist. LEXIS
19 53085, at *1 (striking attorney declaration because “it violates the
20 advocate-witness rule”); *Cookie Dep’t, Inc.*, 2022 U.S. Dist. LEXIS
21 168745, at *13 n.5 (“The Court agrees that it is inappropriate for Attorney
22 Indrajana to appear both as a witness and as counsel in this case.”).

23 • **Paragraph 17:**

- 24 • **Statement in Declaration:** “In addition, Ameriprise is aware that LPL
25 provided dozens of recruits with a “bulk upload spreadsheet” for them
26 use[sic]to harvest Ameriprise’s confidential information prior to their
27 departure. The bulk upload spreadsheet contained columns for voluminous
28 confidential information. In many instances, the recruits completed these

1 spreadsheets and returned the confidential information to LPL.”

- 2 ○ The witness lacks personal knowledge and does not lay a foundation for
3 his statements. FED. R. EVID. 602; *Pahlavi*, 58 F.3d at 1412 (holding an
4 attorney declaration made without personal knowledge is entitled to “no
5 weight”); *X17, Inc.*, 2007 U.S. Dist. LEXIS 17279, at *6-7 (denying
6 preliminary injunction and disregarding statements where declaration
7 failed to establish foundation for witness’s purported knowledge); *Loc.*
8 *Union No. 490*, 367 F.2d at 958 (describing motion as “fatally defective”
9 when “[t]he supporting affidavits were made by an attorney and presented
10 facts not within his personal knowledge”).
- 11 ○ The statement is improper lay opinion. FED. R. EVID. 701; *Erhart*, 445 F.
12 Supp. 3d at 842 (noting the proponent of the expert testimony bears the
13 burden to establish its admissibility).
- 14 ○ The witness is not qualified as an expert. FED. R. EVID. 703.
- 15 ○ The witness is not qualified as an expert and the witness’s statements are
16 based on hearsay. FED. R. EVID. 602, 703, 802.
- 17 ○ To the extent the witness purports to base this statement on Ameriprise’s
18 unidentified “books and records,” it is inadmissible hearsay. FED. R. EVID.
19 802.
- 20 ○ Any probative value of the evidence is substantially outweighed by the
21 danger of unfair prejudice, and confusion of the issues. FED. R. EVID. 403.
- 22 ○ The witness makes this statement in violation of the advocate-witness rule.
23 *See Prantil*, 764 F.2d at 552-53 (“Attorneys must elect in which capacity
24 they intend to proceed, either as counsel or as a witness and promptly
25 withdraw from the conflicting role.”); *Lucas*, 2015 U.S. Dist. LEXIS
26 53085, at *1 (striking attorney declaration because “it violates the
27 advocate-witness rule”); *Cookie Dep’t, Inc.*, 2022 U.S. Dist. LEXIS
28 168745, at *13 n.5 (“The Court agrees that it is inappropriate for Attorney

1 Indrajana to appear both as a witness and as counsel in this case.”).

2 • **Paragraph 18:**

3 • **Statement in Declaration:** “Notably, within a matter of days after the filing
4 of the Complaint in this matter, I was contacted directly by at least one other
5 firm to voice substantially similar current issues with LPL – this supports the
6 contention that LPL’s misconduct is ongoing and pervasive across the entire
7 industry.”

8 ○ The witness lacks personal knowledge and does not lay a foundation for
9 his statements. FED. R. EVID. 602; *Pahlavi*, 58 F.3d at 1412 (holding an
10 attorney declaration made without personal knowledge is entitled to “no
11 weight”); *X17, Inc.*, 2007 U.S. Dist. LEXIS 17279, at *6-7 (denying
12 preliminary injunction and disregarding statements where declaration
13 failed to establish foundation for witness’s purported knowledge); *Loc.*
14 *Union No. 490*, 367 F.2d at 958 (describing motion as “fatally defective”
15 when “[t]he supporting affidavits were made by an attorney and presented
16 facts not within his personal knowledge”).

17 ○ The statements about LPL’s purported misconduct are improper lay
18 opinion. FED. R. EVID. 701; *Erhart*, 445 F. Supp. 3d at 842 (noting the
19 proponent of the expert testimony bears the burden to establish its
20 admissibility).

21 ○ The witness is not qualified as an expert and the witness’s statements are
22 based on multiple levels of hearsay. FED. R. EVID. 602, 703, 802.

23 ○ Any probative value of the evidence is substantially outweighed by the
24 danger of unfair prejudice, and confusion of the issues. FED. R. EVID. 403.

25 ○ The witness makes this statement in violation of the advocate-witness rule.
26 *See Prantil*, 764 F.2d at 552-53 (“Attorneys must elect in which capacity
27 they intend to proceed, either as counsel or as a witness and promptly
28 withdraw from the conflicting role.”); *Lucas*, 2015 U.S. Dist. LEXIS

1 53085, at *1 (striking attorney declaration because “it violates the
2 advocate-witness rule”); *Cookie Dep’t, Inc.*, 2022 U.S. Dist. LEXIS
3 168745, at *13 n.5 (“The Court agrees that it is inappropriate for Attorney
4 Indrajana to appear both as a witness and as counsel in this case.”).

5 • **Paragraph 19:**

- 6 • **Statement in Declaration:** “LPL encourages the recruits to provide LPL with
7 the confidential information harvested from Ameriprise’s system immediately
8 upon affiliation with LPL and, in some cases, even prior to the recruits’
9 industry licenses transferring to LPL.”

10 ○ The witness lacks personal knowledge and does not lay a foundation for
11 his statements. FED. R. EVID. 602; *Pahlavi*, 58 F.3d at 1412 (holding an
12 attorney declaration made without personal knowledge is entitled to “no
13 weight”); *X17, Inc.*, 2007 U.S. Dist. LEXIS 17279, at *6-7 (denying
14 preliminary injunction and disregarding statements where declaration
15 failed to establish foundation for witness’s purported knowledge); *Loc.*
16 *Union No. 490*, 367 F.2d at 958 (describing motion as “fatally defective”
17 when “[t]he supporting affidavits were made by an attorney and presented
18 facts not within his personal knowledge”); *Finjan, Inc.*, 2019 U.S. Dist.
19 LEXIS 226183, at *31 (granting motion to strike attorney declaration for
20 lack of personal knowledge under Fed. R. Evid. 602); *Sunsauce Foods*
21 *Indus. Corp.*, 2024 U.S. Dist. LEXIS 87026, at *5 (holding “[b]y
22 premising its motion solely upon an unverified complaint and two
23 declarations from attorneys lacking personal knowledge, [movant] has
24 failed to provide the Court with the kind of probative evidence required to
25 justify the extraordinary remedy of a preliminary injunction”).

26 ○ To the extent the witness purports to base this statement on Ameriprise’s
27 unidentified “books and records,” it is inadmissible hearsay. FED. R. EVID.
28 802.

- 1 ○ Any probative value of the evidence is substantially outweighed by the
- 2 danger of unfair prejudice, and confusion of the issues. FED. R. EVID. 403.
- 3 ○ The witness makes this statement in violation of the advocate-witness rule.
- 4 *See Prantil*, 764 F.2d at 552-53 (“Attorneys must elect in which capacity
- 5 they intend to proceed, either as counsel or as a witness and promptly
- 6 withdraw from the conflicting role.”); *Lucas*, 2015 U.S. Dist. LEXIS
- 7 53085, at *1 (striking attorney declaration because “it violates the
- 8 advocate-witness rule”); *Cookie Dep’t, Inc.*, 2022 U.S. Dist. LEXIS
- 9 168745, at *13 n.5 (“The Court agrees that it is inappropriate for Attorney
- 10 Indrajana to appear both as a witness and as counsel in this case.”).

11 • **Paragraph 20:**

- 12 • **Statement in Declaration:** “LPL utilizes the Ameriprise confidential
- 13 information it harvests through its recruits to unfairly compete in the financial
- 14 industry. The confidential information assists LPL in streamlining its
- 15 solicitation and transfer of Ameriprise clients.”

- 16 ○ The witness lacks personal knowledge and does not lay a foundation for
- 17 his statements. FED. R. EVID. 602; *Pahlavi*, 58 F.3d at 1412 (holding an
- 18 attorney declaration made without personal knowledge is entitled to “no
- 19 weight”); *X17, Inc.*, 2007 U.S. Dist. LEXIS 17279, at *6-7 (denying
- 20 preliminary injunction and disregarding statements where declaration
- 21 failed to establish foundation for witness’s purported knowledge); *Loc.*
- 22 *Union No. 490*, 367 F.2d at 958 (describing motion as “fatally defective”
- 23 when “[t]he supporting affidavits were made by an attorney and presented
- 24 facts not within his personal knowledge”); *Finjan, Inc.*, 2019 U.S. Dist.
- 25 LEXIS 226183, at *31 (granting motion to strike attorney declaration for
- 26 lack of personal knowledge under Fed. R. Evid. 602); *Sunsauce Foods*
- 27 *Indus. Corp.*, 2024 U.S. Dist. LEXIS 87026, at *5 (holding “[b]y
- 28 premising its motion solely upon an unverified complaint and two

1 declarations from attorneys lacking personal knowledge, [movant] has
 2 failed to provide the Court with the kind of probative evidence required to
 3 justify the extraordinary remedy of a preliminary injunction”).

- 4 ○ The statement is improper lay opinion. FED. R. EVID. 701; *Erhart*, 445 F.
 5 Supp. 3d at 842 (noting the proponent of the expert testimony bears the
 6 burden to establish its admissibility).
- 7 ○ The witness is not qualified as an expert. FED. R. EVID. 703.
- 8 ○ The witness is not qualified as an expert and the witness’s statements are
 9 based on hearsay. FED. R. EVID. 602, 703, 802.
- 10 ○ To the extent the witness purports to base this statement on Ameriprise’s
 11 unidentified “books and records,” it is inadmissible hearsay. FED. R. EVID.
 12 802.
- 13 ○ Any probative value of the evidence is substantially outweighed by the
 14 danger of unfair prejudice, and confusion of the issues. FED. R. EVID. 403.
- 15 ○ The witness makes this statement in violation of the advocate-witness rule.
 16 *See Prantil*, 764 F.2d at 552-53 (“Attorneys must elect in which capacity
 17 they intend to proceed, either as counsel or as a witness and promptly
 18 withdraw from the conflicting role.”); *Lucas*, 2015 U.S. Dist. LEXIS
 19 53085, at *1 (striking attorney declaration because “it violates the
 20 advocate-witness rule”); *Cookie Dep’t, Inc.*, 2022 U.S. Dist. LEXIS
 21 168745, at *13 n.5 (“The Court agrees that it is inappropriate for Attorney
 22 Indrajana to appear both as a witness and as counsel in this case.”).

23 • **Paragraph 21:**

- 24 • **Statement in Declaration:** “In the absence of an injunction, Ameriprise will
 25 suffer significant and irreparable harm in the form of, *inter alia*, use and
 26 disclosure of Ameriprise’s confidential client information, present economic
 27 loss which is unascertainable at this time, future economic loss which is
 28 presently incalculable, and loss of client goodwill.”

- 1 ○ The witness lacks personal knowledge and does not lay a foundation for
2 his conclusory statements. FED. R. EVID. 602; *Pahlavi*, 58 F.3d at 1412
3 (holding an attorney declaration made without personal knowledge is
4 entitled to “no weight”); *X17, Inc.*, 2007 U.S. Dist. LEXIS 17279, at *6-7
5 (denying preliminary injunction and disregarding statements where
6 declaration failed to establish foundation for witness’s purported
7 knowledge); *Loc. Union No. 490*, 367 F.2d at 958 (describing motion as
8 “fatally defective” when “[t]he supporting affidavits were made by an
9 attorney and presented facts not within his personal knowledge”); *Finjan,*
10 *Inc.*, 2019 U.S. Dist. LEXIS 226183, at *31 (granting motion to strike
11 attorney declaration for lack of personal knowledge under Fed. R. Evid.
12 602); *Sunsauce Foods Indus. Corp.*, 2024 U.S. Dist. LEXIS 87026, at *5
13 (holding “[b]y premising its motion solely upon an unverified complaint
14 and two declarations from attorneys lacking personal knowledge, [movant]
15 has failed to provide the Court with the kind of probative evidence required
16 to justify the extraordinary remedy of a preliminary injunction”).
- 17 ○ The statement is improper lay opinion. FED. R. EVID. 701; *Erhart*, 445 F.
18 Supp. 3d at 842 (noting the proponent of the expert testimony bears the
19 burden to establish its admissibility).
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- 21 ○ The witness is not qualified as an expert and the witness’s statements are
22 based on hearsay. FED. R. EVID. 602, 703, 802.
- 23 ○ To the extent the witness purports to base this statement on Ameriprise’s
24 unidentified “books and records,” it is inadmissible hearsay. FED. R. EVID.
25 802.
- 26 ○ Any probative value of the evidence is substantially outweighed by the
27 danger of unfair prejudice, and confusion of the issues. FED. R. EVID. 403.
- 28 ○ The witness makes this statement in violation of the advocate-witness rule.

1 *See Prantil*, 764 F.2d at 552-53 (“Attorneys must elect in which capacity
 2 they intend to proceed, either as counsel or as a witness and promptly
 3 withdraw from the conflicting role.”); *Lucas*, 2015 U.S. Dist. LEXIS
 4 53085, at *1 (striking attorney declaration because “it violates the
 5 advocate-witness rule”); *Cookie Dep’t, Inc.*, 2022 U.S. Dist. LEXIS
 6 168745, at *13 n.5 (“The Court agrees that it is inappropriate for Attorney
 7 Indrajana to appear both as a witness and as counsel in this case.”).

8 • **Paragraph 22:**

9 • **Statement in Declaration:** “By contrast, the injunction requested by
 10 Ameriprise would impose little to no burden upon LPL as it simply requires
 11 LPL to comply with existing law, rules, and regulations.”

- 12 ○ The witness lacks personal knowledge and does not lay a foundation for
 13 his conclusory statements. FED. R. EVID. 602; *Pahlavi*, 58 F.3d at 1412
 14 (holding an attorney declaration made without personal knowledge is
 15 entitled to “no weight”); *X17, Inc.*, 2007 U.S. Dist. LEXIS 17279, at *6-7
 16 (denying preliminary injunction and disregarding statements where
 17 declaration failed to establish foundation for witness’s purported
 18 knowledge); *Loc. Union No. 490*, 367 F.2d at 958 (describing motion as
 19 “fatally defective” when “[t]he supporting affidavits were made by an
 20 attorney and presented facts not within his personal knowledge”); *Finjan,*
 21 *Inc.*, 2019 U.S. Dist. LEXIS 226183, at *31 (granting motion to strike
 22 attorney declaration for lack of personal knowledge under Fed. R. Evid.
 23 602); *Sunsauce Foods Indus. Corp.*, 2024 U.S. Dist. LEXIS 87026, at *5
 24 (holding “[b]y premising its motion solely upon an unverified complaint
 25 and two declarations from attorneys lacking personal knowledge, [movant]
 26 has failed to provide the Court with the kind of probative evidence required
 27 to justify the extraordinary remedy of a preliminary injunction”).
 28 ○ The statement is improper lay opinion. FED. R. EVID. 701; *Erhart*, 445 F.

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CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2024, a copy of the foregoing document entitled **DEFENDANT’S EVIDENTIARY OBJECTIONS TO DECLARATION OF MICHAEL S. TAAFFE** with the Clerk of the Court for the United States District Court, Southern District of California using the CM/ECF system and served a copy of same upon all counsel of record via the Court’s electronic filing system.

/s/ Molly M. White
Molly M. White