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17 UNITED STATES DISTRICT COURT
18 DISTRICT OF ARIZONA

19 Robert Gehring, Individually and on Behalf of)
20 All Others Similarly Situated,)

21 Plaintiff,)

22 v.)

23 Osaic Holdings, Inc., Osaic, Inc., Osaic)
24 Services, Inc., and Osaic Wealth, Inc.,)

25 Defendants.)

26 Case No.

27 CLASS ACTION COMPLAINT

28 DEMAND FOR JURY TRIAL

1 Plaintiff Robert Gehring (“Plaintiff”), by his undersigned counsel, individually and on
2 behalf of all members of the below-defined class (the “Class”), brings this action against Osaic
3 Holdings, Inc., Osaic, Inc., Osaic Services, Inc., and Osaic Wealth, Inc. (collectively,
4 “Defendants” or the “Osaic Defendants”), upon personal knowledge as to those allegations
5 concerning Plaintiff and, as to all other matters, upon the investigation of counsel, including,
6 without limitation, review and analysis of: (a) documents created and distributed by Defendants;
7 (b) public filings made by Osaic with the U.S. Securities and Exchange Commission (“SEC”); (c)
8 press releases disseminated by Defendants; and (d) news articles, websites, and other publicly
9 available information concerning Defendants. Plaintiff believes that substantial additional
10 evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for
11 discovery.

12 **I. INTRODUCTION**

13 1. This is a class action that arises out of the Osaic Defendants’ dramatic under-
14 payment of interest to their own customers in their cash sweeps programs (the “Cash Sweep
15 Programs”). As explained below, the Osaic Defendants have underpaid their customers in
16 violation of their fiduciary duties in order to enrich themselves at their customers’ expense. In
17 engineering the Cash Sweep Programs, the Osaic Defendants continue to breach their fiduciary
18 obligations by putting their own best interests ahead of their clients.

19 2. In a typical cash sweep program, the uninvested cash balance from a customer’s
20 account is transferred into an interest-bearing account that generates returns for the client,
21 consistent with market-based factors. The Osaic Defendants, however, have structured their Cash
22 Sweep Programs to ensure that they, in partnership with a network of banks and clearing firms,
23 generate the outsized returns for themselves.

24 3. The Cash Sweep Programs operate as follows. The Osaic Defendants take money
25 out of their client accounts and give it to a list of selected banks to loan out (the “Program Banks”
26 or “Participating Banks”). The Osaic Defendants and the Program Banks then reap the interest
27 that the banks earn by loaning their clients’ money to third parties. Only a fraction of that interest
28 gets paid out to the Osaic Defendants’ actual clients. Instead, the Osaic Defendants and the

1 Program Banks keep the “spread” or the difference between the market rates of interest the
2 Program Banks earn on their loans and investments and the rates paid out to the clients. This rate
3 of interest Defendants keep for themselves can be as high as *five to 21 times the rate paid to*
4 *customers*. Defendants call this scheme the Cash Sweep Programs. While remarkably profitable
5 for Defendants, the Cash Sweep Programs violate common law, federal law, and industry
6 regulations, including Defendants’ fiduciary obligations.

7 4. During the rising interest rate environment from March 2022 through the present,
8 the profits that the Osaic Defendants have earned on their customers’ cash have grown
9 exponentially. Rising interest rates should have presented an opportunity for Osaic’s customers
10 to earn more on their uninvested cash. However, Defendants continue to exploit this opportunity
11 for their own benefit, extracting the high rates of interest for themselves and thwarting their
12 customers from receiving the reasonable returns they were legally entitled to.

13 5. Similar cash sweep practices have drawn scrutiny from the SEC and resulted in tens
14 of millions of dollars in fines. According to a January 17, 2025 announcement, the SEC fined
15 Wells Fargo Advisors and Merrill Lynch a combined \$60 million for failing to pay advisory
16 customers a fair rate on cash sweeps. Wells Fargo agreed to pay \$35 million, including \$7 million
17 tied to violations at its independent Financial Network channel. Merrill paid a civil penalty of \$25
18 million. As the Osaic Defendants have done, Wells Fargo and Merrill Lynch automatically swept
19 customer cash to a bank deposit program with yields that were as much as 4% lower than
20 reasonable alternatives.

21 6. Nevertheless, Defendants continue to earn more money on their customers’ cash
22 than the customers earn. Defendants disguise the returns they keep as “fees” for administering the
23 Cash Sweep Programs. However, in reality, they receive kickbacks from the Program Banks on
24 the profits they are able to obtain by investing or loaning out customers’ cash at significantly higher
25 rates of interest. By improperly keeping the interest rates paid on the cash sweep accounts low
26 and sharing the interest profit with the Program Banks, Defendants continue to align themselves
27 with the banks to maximize their own profits, rather than the customers to which they owe
28 fiduciary duties.

1 7. Plaintiff, individually and on behalf of the other Class members, hereby brings this
2 class action to remedy the significant financial harm caused by the Osaic Defendants' use of the
3 Cash Sweep Programs to enrich themselves at the cost of their own clients.

4 **II. JURISDICTION AND VENUE**

5 8. This Court has subject-matter jurisdiction over this action under the Class Action
6 Fairness Act, 28 U.S.C. §1332(d)(2), as amended by the Class Action Fairness Act of 2005. There
7 are at least 100 members in the proposed class, the aggregated claims of the individual class
8 members exceed \$5,000,000, exclusive of interests and costs, and at least one or more members
9 of the proposed Class is a citizen of a different state than at least one Defendant.

10 9. The Court has personal jurisdiction and venue over Defendants because the Osaic
11 Defendants have their principal place of business and are headquartered in this District, and
12 regularly transact business here.

13 10. Venue is also proper in this District under 28 U.S.C. §1391(b) because a substantial
14 part of the events or omissions giving rise to the claims at issue occurred in this District and
15 because Defendants are subject to the personal jurisdiction of this Court.

16 **III. PARTIES**

17 **A. Plaintiff**

18 11. Plaintiff Robert Gehring is a citizen of New Hampshire, who maintained accounts
19 at American Portfolios companies and their successor-in-interest Osaic, including an investment
20 advisory individual retirement account ("IRA") and a brokerage account. The cash balances in
21 Plaintiff's accounts, were at times, automatically "swept" into the Cash Sweep Programs and
22 received yields that were a fraction of reasonable alternatives.

23 **B. Defendants**

24 12. Osaic Holdings, Inc. ("Osaic Holdings") operates as a holding company through
25 which its subsidiaries provide securities and investment advisory services. Osaic Holdings is
26 owned primarily by a consortium of investors through RCP Artemis Co-Invest, L.P. and RCP
27 Harvest Co-Invest, L.P., investment funds affiliated with Reverence Capital Partners LLC. The
28 consortium of investors includes RCP Genpar Holdco LLC, RCP Genpar L.P., RCP Opp Fund II

1 GP, L.P., and The Berliniski Family 2006 Trust. Osaic Holdings is a Delaware corporation with
2 its principal place of business in Scottsdale, Arizona.

3 13. Osaic, Inc., doing business as Osaic and formerly known as Advisor Group
4 Holdings, Inc. (“Osaic Inc.”), a portfolio company of Reverence Capital Partners, is one of the
5 nation’s largest providers of wealth management solutions, supporting approximately 11,000
6 financial professionals. Advisor Group acquired American Portfolios Financial Services in June
7 2022 and changed its name to Osaic in June 2023. Osaic is a Maryland corporation with its
8 principal place of business in Phoenix, Arizona and a wholly-owned subsidiary of Osaic Holdings.

9 14. Osaic Services, Inc. (“Osaic Services”) is a Delaware corporation with its
10 headquarters in Arizona and is registered with the SEC as a broker-dealer. Osaic Services also
11 was previously registered with the SEC as an investment adviser from October 2005 until
12 September 29, 2023, when its withdrawal of its registration on Form ADV-W became effective.
13 Osaic Services is a subsidiary of Osaic, Inc., a wholly-owned subsidiary of Osaic Holdings, Inc.

14 15. Osaic Wealth, Inc. (“Osaic Wealth”) is registered with the SEC as a broker-dealer
15 and investment adviser, and is a member of Financial Industry Regulatory Authority (“FINRA”).
16 Osaic Wealth is a subsidiary of Osaic, Inc., a wholly-owned subsidiary of Osaic Holdings, Inc. It
17 is a Delaware corporation with its principal place of business in Scottsdale, Arizona.

18 16. Osaic Holdings, Osaic, Inc., Osaic Services, and Osaic Wealth are collectively
19 referred to herein as “Osaic.”

20 (a) American Portfolios Holdings, Inc. (“APH”) operated as the holding
21 company through which its subsidiaries provided financial services. It was a Delaware corporation
22 with its principal place of business in Holbrook, New York.

23 (b) American Portfolio Advisors, Inc. (“APA”) was an investment adviser
24 registered with the SEC. APA offered personalized investment advisory services to individuals,
25 pension and profit-sharing plans, trusts, estates, charitable organizations, corporations, and other
26 business entities. APA was a wholly-owned subsidiary of American Portfolios Holdings, Inc. It
27 was a Delaware corporation with its principal place of business in Holbrook, New York.

28

1 (c) American Portfolios Financial Services (“APFS”) was a registered broker-
2 dealer that was wholly owned by APH and an affiliate of APA. APH, APFS, and APA (together,
3 “American Portfolios”) were acquired by Osaic on June 22, 2022. American Portfolios was
4 subsequently integrated and consolidated into Osaic’s subsidiary Osaic Wealth.

5 **IV. FACTUAL BACKGROUND**

6 **A. Background on Osaic**

7 17. Osaic is one of the nation’s largest providers of wealth management solutions, with
8 approximately 11,600 financial professionals managing more than \$653 billion in assets. During
9 the relevant time period, Osaic offered brokerage and investment advisory services to customers
10 nationwide. These services included cash sweep programs offered to customers through Osaic’s
11 subsidiaries.

12 **1. Growth and Acquisitions**

13 18. Osaic’s history traces back to SunAmerica Inc., a financial services company
14 founded in Baltimore, Maryland, to assist clients with financial and retirement planning.
15 SunAmerica, Inc. was thereafter acquired by global insurance and financial services firm,
16 American International Group (“AIG”), and then in 2002, AIG Advisor Group was formed.

17 19. In 2016, Lightyear Capital LLC and PSP Investments acquired AIG Advisor Group
18 and its subsidiaries, including its firms FSC Securities Corp., Royal Alliance Associates Inc.,
19 SagePoint Financial Inc., and Woodbury Financial Service, forming Advisor Group Holdings, Inc.
20 (“Advisor Group”).

21 20. In 2019, Reverence Capital Partners, a private equity firm, announced its
22 acquisition of Advisor Group from Lightyear Capital LLC and PSP Investments for \$2.3 billion
23 and a 75% stake. Lightyear Capital, PSP Investments, and all other shareholders maintained up to
24 a 25% share of Advisor Group.

25 21. In February 2020, Advisor Group acquired Ladenburg Thalmann Financial
26 (“LTF”) to become the second largest broker-dealer in America. The acquisition included LTF’s
27 independent broker-dealer firms: Securities America, Inc., Securities Service Network, LLC,
28 Investacorp, Inc.; Triad Advisors, LLC and KMS Financial Services, Inc.; their affiliated

1 investment adviser firms Securities America Advisors, Inc., Arbor Point Advisors, LLC, SSN
2 Advisory, Inc., Investacorp Advisory Services, Inc., and Triad Hybrid Solutions, LLC; as well as
3 Premier Trust, Inc., Ladenburg Thalmann Asset Management Inc., and Highland Capital
4 Brokerage, Inc.

5 22. In May 2022, Advisor Group acquired institution-focused broker-dealer Infinex
6 Financial Holdings.

7 23. In June 2022, Advisor Group continued its strategic growth with the acquisition of
8 American Portfolios Financial Services, an independent brokerage and registered investment
9 adviser supporting more than 850 financial professionals in nearly 400 branches across the
10 country.

11 2. Consolidation and Integration

12 24. In June 2023, Advisor Group announced its new name Osaic as part of a multi-
13 month strategy to rebrand its subsidiary firms into one cohesive entity.

14 25. As part of the rebrand, each of the wealth management firms previously under
15 Advisor Group transitioned into Osaic beginning in the fall of 2023. By October 2024, Dimple
16 Shah, Osaic's Head of Advisor Growth and Platform Solutions, reported that 90% of its
17 consolidation process, which Osaic calls its "Journey to One," had been complete. The firms
18 acquired by Osaic have been integrated and consolidated into Osaic's various subsidiaries. For
19 instance, APA has been integrated into Osaic Wealth.

20 26. By bringing all eight of its wealth management firms together under one brand,
21 Osaic stated it "will be better positioned to serve its financial professionals by offering them access
22 to the full breadth of capabilities and expertise that the firm's growing scale provides."

23 B. Defendants' Duties to Their Clients

24 1. Defendants Acting as Investment Advisers Owe Fiduciary 25 Duties to Their Clients

26 27. Osaic offers investment advisory services to retail or individual customers through
27 its subsidiaries, including Osaic Wealth, Inc., which are SEC-registered investment advisers.
28

1 28. Osaic Wealth is registered as an investment adviser with the SEC, SEC File No.
2 801-54859, in order to offer investment advisory products and services to its advisory clients.

3 29. APA was also registered with the SEC File No. 801-61065 while it was providing
4 investment advice to Plaintiff, until Osaic acquired it.

5 30. Under the Investment Advisers Act of 1940 (the “Advisers Act” or the “1940 Act”),
6 Osaic Wealth and APA owed fiduciary duties to Plaintiff and the proposed class, as Osaic
7 acknowledges:

8 When providing advisory services, *we are held to a fiduciary*
9 *standard that covers our investment advisory relationship with*
10 *you*. As fiduciaries, investment advisors are required to act in the
11 best interest of their clients and not place their own interests ahead
12 of their clients.¹

13 31. Osaic manages investment advisory accounts on either a discretionary or non-
14 discretionary basis, which are subject to the Cash Sweep Programs. In providing discretionary
15 advisory services, Osaic makes the decision regarding the purchase or sale of investments without
16 the client’s approval as to each transaction. In contrast, when providing non-discretionary
17 services, Osaic, “may recommend investments for your account, but the ultimate decisions
18 regarding what you buy or sell are yours.”

19 32. Investment advisers such as Osaic are fiduciaries under the 1940 Act. *See SEC v.*
20 *Cap. Gains Rsch. Bureau, Inc.*, 375 U.S. 180, 194 (1963); *see also* Securities and Exchange
21 Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Securities
22 Act Release No. 5248, Investment Company Act No. 5248, 2019 WL 3779889, at *1 (June 5,
23 2019) (“Under federal law, an investment adviser is a fiduciary.”).

24 33. The investment adviser’s fiduciary duty “is broad and applies to the entire adviser-
25 client relationship.” This fiduciary duty is “based on equitable common law principles and is
26 fundamental to advisers’ relationships with their clients under the Advisers Act.” *Id.* at *2.

27 _____
28 ¹ Form CRS: Customer Relationship Summary, OSAIC (2023),
https://files.brokercheck.finra.org/crs_23131.pdf. All emphasis is added unless otherwise stated.

1 34. The fiduciary duty an investment adviser owes to its client under the 1940 Act
2 specifically encompasses a duty of care and duty of loyalty.

3 35. As the SEC has stated, “[t]his means the adviser must, at all times, serve the best
4 interest of its client and not subordinate its client’s interest to its own. In other words, the
5 investment adviser cannot place its own interests ahead of the interests of its client.” *Id.* at *3.

6 36. Under an investment adviser’s duty of loyalty, “an investment adviser must
7 eliminate or make full and fair disclosure of all conflicts of interest which might incline an
8 investment adviser – consciously or unconsciously – to render advice which is not disinterested
9 such that a client can provide informed consent to the conflict.” If there is a conflict, an investment
10 adviser “must make full and fair disclosure to its clients of all material facts relating to the advisory
11 relationship.” *Id.* at *3, *8.

12 37. The investment adviser’s duty of care includes among other things: “(i) the duty to
13 provide advice that is in the best interest of the client, (ii) the duty to seek best execution of a
14 client’s transactions where the adviser has the responsibility to select broker-dealers to execute
15 client trades, and (iii) the duty to provide advice and monitoring over the course of the
16 relationship.” *Id.* at *4.

17 **2. Defendants as Broker-Dealers Owe Duties to Act in the Best**
18 **Interests of Their Clients**

19 38. Industry rules for registered broker-dealers impose duties on Defendants in their
20 capacities as broker-dealers, including a duty to act in the best interests of their clients, and to place
21 the best interests of their customers ahead of their own self-interest. Osaic Wealth acknowledges
22 these important duties it owes its clients in providing both brokerage its Form Client Relationship
23 Summary (“Form CRS”):

24 ***Brokerage Services***

25 * * *

26 One of our obligations to you when providing brokerage services is that *we*
27 ***must act in your best interest and not place our interests ahead of yours when we***
28 ***recommend an investment or an investment strategy involving securities.***

1 Additionally, when we provide any service to you, we must treat you fairly and
2 comply with a number of specific obligations.

3 When Osaic “provide[s] you [the customer] with a recommendation as your broker-dealer or act
4 as your investment advisor, [Osaic] ha[s] to act in your best interest and not put our interest ahead
5 of yours.”

6 39. Similar duties are imposed on Osaic under broker-dealer law. Assuming that Osaic
7 is not acting as an investment adviser but instead in its capacity as a broker-dealer, Osaic is still
8 obligated to act in its clients’ best interests under Regulation Best Interest: The Broker-Dealer
9 Standard of Conduct, 84 Fed. Reg. 33381-01 (July 12, 2014) (“Reg. BI”). *See* 17 C.F.R. §240.151-
10 1.

11 40. Although the specific application of Reg. BI and the fiduciary standard under the
12 1940 Act may differ in some respects, “they generally yield substantially similar results in terms
13 of the ultimate responsibilities owed to retail investors.”²

14 41. Under Reg. BI, “a broker-dealer must act in the retail customer’s best interest and
15 cannot place its own interests ahead of the customer’s interests” when making a recommendation.
16 84 Fed. Reg. at 33320.

17 **3. Defendants’ Duties to Secure a Reasonable Rate of Interest in**
18 **IRA Accounts**

19 42. Defendants also have a duty to secure a reasonable rate of interest for clients’
20 uninvested cash. The requirement to pay a reasonable rate of interest derives from the Internal
21 Revenue Code (“IRC”).

22 43. Section 4975 of the IRC – entitled “Tax on prohibited transactions” – applies to
23 Osaic and APFS’s IRA accounts, including Plaintiff’s. *See* 26 U.S.C. §4975(e)(1)(B) (defining
24 “plan” for purposes of this section to include “an individual retirement account described in [IRC]
25 section 408(a)”).

26
27 ² *See* SEC Staff Bulletin: Standards of Conduct for Broker-Dealers and Investment Advisers
28 Care Obligations, SEC (last updated Apr. 30, 2024), www.sec.gov/tm/standards-conduct-broker-dealers-and-investment-advisers.

1 44. “Prohibited transactions” under IRC §4975 are defined to include when an IRA
2 plan sponsor engages in transactions with a “disqualified person who is a fiduciary whereby he
3 deals with the income or assets of a plan in his own interest or for his own account.” 26 U.S.C.
4 §4975(c)(1)(E). IRC §4975 also prohibits transactions that involve a “transfer to, or use by or for
5 the benefit of, a disqualified person of the income or assets” or “receipt of any consideration for
6 his own personal account by any disqualified person who is a fiduciary from any party dealing
7 with the plan in connection with a transaction involving the income or assets of the plan.” 26
8 U.S.C. §4975(c)(E)-(F).

9 45. To provide further clarification on distributions of IRAs, the U.S. Internal Revenue
10 Service (“IRS”) explains in Publication 590 that “[g]enerally, a prohibited transaction is any
11 improper use of your traditional IRA account or annuity by you, your beneficiary, or any
12 disqualified person.”

13 46. A “disqualified person” includes those “providing services to the plan.” 26 U.S.C.
14 §4975(e)(2)(B). This includes financial institutions that hold client assets and advisory firms that
15 determine which bank will hold those assets, such as Osaic and APA. As IRS Publication 590
16 explains, “[d]isqualified persons include your fiduciary,” such as anyone who “[e]xercises any
17 discretionary authority or discretionary control in managing your IRA or exercises any authority
18 or control in managing or disposing of its assets.”

19 47. Therefore, under the IRC, the Osaic Defendants were “disqualified person[s]” and
20 cash sweeps from IRA accounts were “prohibited transactions.”

21 48. IRC §4975(d)(4) provides several “exemptions,” or safe harbors, for otherwise
22 “prohibited transactions.” One safe harbor to the taxation of prohibited transactions is “the
23 investment of all or part of a plan’s assets in deposits *which bear a reasonable interest rate* in a
24 bank or similar financial institution.” 26 U.S.C. §4975(d)(4).

25 49. These provisions explicitly target situations where a firm might attempt to benefit
26 from holding its client funds by paying them unreasonably low interest rates, and instead requires
27 that the firm pay a “reasonable rate of interest.” See *McLaughlin v. Rowley*, 698 F. Supp. 1333,
28 1339 (N.D. Tex. 1988) (holding the reasonable rate of interest requirement under subsection (D)

1 of the exemption imposed “*an obligation to charge a reasonable rate of interest in light of the*
2 *prevailing or market rates then existing*”).

3 50. The U.S. Treasury regulations include a similar requirement where financial
4 institutions such as Osaic and APFS “invest[] plan assets in deposits in itself or its affiliates.” 26
5 C.F.R. §54.4975-6(b)(3)(i). In such circumstances, the parties’ agreement “must name” the bank
6 and “*must state* that such bank or similar financial institution may make investments in deposits
7 which *bear a reasonable rate of interest* in itself (or in an affiliate).” *Id.*

8 51. Section 408 of Employee Retirement Income Security Act of 1974 (“ERISA”)
9 similarly exempts interested party transactions involving the investment of IRA assets in bank
10 deposits only if they “bear a reasonable rate of interest.” *See* 29 U.S.C. §1108(b)(1)(D). The
11 statutory exemptions under ERISA and the IRC are effectively the same, except that the IRC
12 provisions substitute the term “disqualified person” for the term “party in interest.”

13 52. In sum, federal law requires that the Osaic Defendants pay their clients a
14 “reasonable” interest rate. Defendants violated those laws by failing to pay reasonable sweep
15 interest rates.

16 **4. The Defendants Were Contractually Obligated to Act in the**
17 **Clients’ Best Interest and Pay a Reasonable Rate of Interest**

18 53. Upon opening a new account with Osaic, each customer is provided with
19 standardized contractual documents, which expressly incorporate the same Osaic Cash Sweep
20 Program Documents (the “Account Agreements”). Pursuant to the Account Agreements and the
21 Osaic Cash Sweep Programs, Osaic’s customers agreed “to having [their] account, and all
22 subsequent and future account(s) opened for [them] by [Osaic], be automatically included in the
23 Sweep Program.”

24 54. The Osaic Defendants’ contractual agreements also reinforce their obligation to
25 provide reasonable rates of return on their customers’ cash balances. The Osaic Defendants
26 specifically recognize in their “Fiduciary Acknowledgement” for IRAs that when they provide
27 investment advice to IRA accountholders, they are fiduciaries under applicable laws:

28

1 American Portfolios

2 *Fiduciary Acknowledgement*

3 When American Portfolios provides investment advice, as defined
4 by the Department of Labor, to you regarding your retirement plan
5 account or individual retirement account (IRA) under ERISA,
6 ***American Portfolios is a fiduciary within the meaning of Title I of
the Employee Retirement Income Security Act and/or the Internal
Revenue Code, as applicable, which are laws governing retirement
accounts.***

7 Osaic

8 *Fiduciary Acknowledgment*

9 When the Firm and your financial professional provide “investment
10 advice” within the meaning of Title 1 of the Employee Retirement
11 Income Security Act and/or the Internal Revenue Code (“Retirement
12 Laws”) to you regarding your retirement plan account or individual
13 retirement account (“Retirement Account(s)”), ***we are fiduciaries
14 under the Retirement Laws with respect to such investment
15 advice.***³

16 55. The Osaic Defendants add that with respect to IRAs “[t]he way we make money
17 creates certain conflicts with your interest, ***“so we operate under a special rule that requires us
18 to act in your best interest and not put our interests ahead of yours.”*** Under these requirements,
19 Osaic provides that it must:

- 20 • Meet a professional standard of care (give prudent advice);
- 21 • Not put our financial interests ahead of yours;
- 22 • Avoid misleading statements about our conflicts of interest, fees,
23 and investments;
- 24 • Follow policies and procedures designed to ensure that we give
25 advice that is in your best interest;
- 26 • Charge no more than what is reasonable for our services; and
- 27 • Give you basic information about our conflicts of interest.

28 ³ See IRA Rollover Guide, OSAIC, <https://osaic.com/disclosures/ira-rollover-guide> (last visited Jan. 27, 2025).

1 **5. The Osaic Defendants’ Code of Conduct**

2 56. The Osaic Defendants’ fiduciary duties to their customers are further reflected in
3 their Code of Ethics (the “Code”).⁴ The Osaic Defendants were required to adopt the Code
4 pursuant to Rule 204-1 of the 1940 Act, which “set[s] forth standards of conduct and require[s]
5 compliance with federal securities laws.”

6 57. As Osaic acknowledges, it adopted the Code because “[t]he Firm has a fiduciary
7 obligation to [its] clients.” The Code “is intended to reflect and identify the fiduciary principles
8 of honesty, integrity, and fairness that are to be consistently applied across the RIA firms and their
9 dealings with clients.”

10 58. The Code states that the “[c]lients’ interests must always come first; they cannot
11 be compromised.”

12 59. Under the section titled “Our Fiduciary Obligation to Our Clients,” the Code
13 explains:

14 Fiduciary responsibility should be thought of as the duty to place the
15 interests of the Client before that of the person providing investment
16 advice. Failure to do so may render the Firm or its Supervised
Persons in violation of the anti- fraud provisions of the Advisers Act.

17 60. Further, Osaic “as a fiduciary, has an affirmative duty of care, loyalty, honesty, and
18 good faith to act in the best interests of its Clients.” This fiduciary responsibility “also includes
19 the duty to disclose material facts that might influence the Client’s decision to purchase or refrain
20 from purchasing a security recommended by the Firm or from engaging the Firm to manage the
21 Client’s investments.”

22 **C. Defendants’ Cash Sweep Programs**

23 61. In a typical cash sweep account for an investment advisory account customer, the
24 firm moves uninvested cash (*e.g.*, incoming cash deposits, dividends, or certain investment returns)
25 from the customer’s account to a money market mutual fund or a bank whose deposits are insured
26

27 _____
28 ⁴ See Code of Ethics, OSAIC (Aug 30, 2024),
<https://assets.osaic.com/m/5b81d3e5600ea3e1/original/Code-of-Ethics.pdf>.

1 by the Federal Deposit Insurance Corporation (“FDIC”). Cash sweep accounts are intended to
2 convert idle cash into interest-bearing investment vehicles.

3 **1. The AP Cash Sweep Program**

4 62. Prior to the acquisition by Osaic, American Portfolios operated a cash sweep
5 program (the “AP Cash Sweep Program”) through its affiliated broker-dealer APFS, whereby
6 uninvested cash balances were automatically swept into FDIC deposit accounts at multiple banks,
7 also known as the Participating Banks.

8 63. The terms and conditions of the AP Cash Sweep Program were set forth in
9 “American Portfolios FDIC Insured Bank Deposit Program Disclosure Statement” (the “AP Cash
10 Sweep Document”), which was posted on American Portfolio’s website.

11 64. As the AP Cash Sweep Document provides, uninvested cash balances were
12 automatically swept into the AP Cash Sweep Program by a matter of default upon the opening of
13 customers’ accounts:

14 Upon opening your Account, your Account will automatically have
15 the Bank Deposit Sweep Program established as the default cash
16 sweep option.

17 65. Pershing LLC (“Pershing”) acted as the “authorized agent” under the AP Cash
18 Sweep Program to “establish and maintain Deposit Accounts at various Participating Banks and
19 to effect deposits to, withdrawals from and transfers between the deposit accounts at the various
20 Participating Banks.”

21 66. APFS exercised control and discretion over the eligibility, terms, and conditions,
22 as well as the parameters and characteristics of the AP Cash Sweep Program, including changing,
23 modifying or deleting aspects of the program:

24 Upon prior notice, APFS may change, add or delete the sweep
25 options available in your Account, or the terms and conditions of its
26 Bank Deposit Sweep Program. Furthermore, APFS may, upon prior
27 notice to you, change the sweep option in which you participate
28 from one option to another, including changes between money
 market funds and bank deposit sweep programs.

1 67. After Osaic’s acquisition of American Portfolios, the AP Cash Sweep Program
2 continued until APA and APFS were integrated into Osaic, at which point the AP Cash Sweep
3 Program was subsumed by the Osaic Cash Sweep Programs.

4 **D. Osaic’s Cash Sweep Program**

5 68. Under Osaic’s Cash Sweep Programs, “cash balances . . . [are] transferred to a bank
6 deposit sweep product, which allocates swept balances to participant banks whose deposits are
7 insured by the Federal Deposit Insurance Corporation (‘FDIC’) up to allowable limits and subject
8 to certain conditions” (the “Osaic Cash Sweep Programs,” and together with the AP Cash Sweep
9 Program, the “Cash Sweep Programs”).

10 69. Osaic refers to the uninvested cash eligible to be swept as “Free Credit Balance,”
11 *i.e.*, the credit balance that remains in a client’s account “after all purchases are made and are free
12 from withdrawal restrictions.” A customer’s free credit balance “generally originates from
13 dividends, interest payments, and/ or security sales and may be used at any time to purchase more
14 securities.”

15 70. Osaic, through its affiliated broker-dealer, offers cash sweep programs for accounts
16 introduced to their two respective clearing firms: (1) Pershing and (2) National Financial Services
17 LLC (“NFS”). Pershing and NFS (the “Clearing Firms”) act as the customers’ agents with respect
18 to the programs. The Clearing Firms, respectively, are responsible for establishing the Deposit
19 Accounts at each Program Bank, depositing cash into the Deposit Accounts, withdrawing cash
20 from Deposit Accounts, and transferring cash between Deposit Accounts.

21 71. The clearing firm for the Osaic Cash Sweep Programs are selected based on where
22 the customer’s investment account is maintained. As with the AP Cash Sweep Program, Pershing
23 is appointed as the clearing firm for: “accounts introduced to” Pershing. Whereas NFS is appointed
24 as the clearing firm for accounts “introduced by [Osaic] to and held by . . . NFS.”

25 72. Osaic published two disclosure document for accounts introduced at NFS and
26 Pershing, respectively: (1) “Sweep Program Disclosure Document: For accounts introduced to
27 National Financial Services LLC” (the “NFS Cash Sweep Document”) and (2) the “Sweep
28 Program Disclosure Document: Pershing, LLC” (the “Pershing Cash Sweep Document,” and

1 together with the NFS Cash Sweep Document and the AP Cash Sweep Document, the “Cash
2 Sweep Program Documents.”) The Cash Sweep Program Documents are incorporated into Osaic’s
3 contractual agreements.

4 73. Regardless of the clearing firm selected by Osaic, “free credit balances” were
5 automatically swept pursuant to two deposit programs: (1) the Bank Deposit Sweep Program
6 (“BDSP”) and (2) the Insured Cash Account Program (“ICAP”).

7 74. The BDSP has broad applicability. The BDSP operates as the “default” cash sweep
8 program for “[a]ll advisory and commission-based retail account types, and commission-based
9 IRA’s.” The BDSP includes investment advisory accounts where the Osaic Defendants owed
10 fiduciary duties to their clients under the 1940 Act.

11 75. The Insured Cash Account Program is the default cash sweep program for all
12 advisory, fee-based IRA accounts (“Advisory IRAs”). Eligibility for ICAP is limited to Advisory
13 IRA accounts, where an “advisory fee is charged” by Osaic or an affiliated investment adviser.
14 Thus, the eligibility criteria for ICAP triggers Osaic’s strict fiduciary duties as an investment
15 adviser under the 1940 Act.

16 76. Despite different eligibility criteria, the BDSP and ICAP programs function largely
17 the same. Pershing or NFS, as authorized agents, sweep the free credit balances into deposit
18 accounts with one or more Program Banks listed on the applicable program bank list (“Program
19 Bank List”). Like the Participating Banks under the AP Cash Sweep Program, the Program Banks
20 are a network of banks selected by Defendants where cash gets swept into.

21 77. The Program Bank List is updated from time to time and all changes are “posted to
22 the website listed in Appendix A, along with the date on which the most recent update was made.”
23 As the Cash Sweep Program Documents provide, one or more of the Program Banks “may be
24 replaced” or “deleted” or the order of Program Banks on the Program Bank List may change at
25 any time by the Osaic Defendants. As with the AP Cash Sweep Program, a “nondiscretionary”
26 methodology is purportedly used to determine how swept cash is allocated to each Program Bank
27 subject to “deposit capacity limits.”

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1 78. While Pershing or NFS acted as the respective agent, the Osaic Defendants, and to
2 an extent the Clearing Firms, exercised control and discretion over eligibility and the
3 characteristics and parameters of the Cash Sweep Programs, including making any changes or
4 modifications. As the NFS Cash Sweep Disclosure states, “[e]ligibility for the BDSP is subject to
5 the other limitations described herein and as determined by us and NFS.” Osaic and NFS also
6 “retain the right to modify the eligibility for the BDS and ICAP and” “make changes” to the
7 Program List “at any time.” Osaic and NFS further provide that circumstances, “*will require* that
8 we or NFS make certain modifications or changes to the Cash Sweep Program, including changing
9 the core account investment vehicles.”

10 79. Osaic, rather than the Clearing Firms, has the sole authority to set the fees and rates
11 of interest. Osaic specifically had the control and discretion to: (1) “establish and change interest
12 rates” set by the Program Banks; (2) “determine the tier levels (if applicable) at which interest
13 rates are paid”; and (3) determine “the amount of fees received by [the Clearing Firms], Osaic
14 Wealth, and any other service provider.”⁵ The Cash Sweep Agreements make clear that: “*we*
15 *[Osaic] determine the rate of interest you receive on your Deposit Accounts.*” The Form ADV
16 further provides that: “[t]he interest rate payable to you [the customer] is determined by us
17 [Osaic].”

18 80. The rate is purportedly set by Osaic’s Cash Review Committee, which considers a
19 number of market-based factors:

20 Our Cash Review Committee meets periodically to review the
21 interest rates paid to clients in the [Bank Deposit Sweep Program]
22 and determine whether and when the rates will change. Factors
23 considered include the rates paid by Program Banks [to obtain
24 deposits from the Sweep Program], expected changes in interest
25 rates, interest rates paid by market competitors, and program
26 expenses.

27 _____
28 ⁵ Osaic Wealth, Inc., Form ADV Part 2A (Jan. 24, 2025),
<https://assets.osaic.com/m/2e9b66b68b4df36c/original/Form-ADV-Part-2A.pdf> (“Form ADV”).

1 81. Due to applicable law, industry standards and the Osaic Defendants' control and
 2 discretion over investors' cash sweep holdings and the returns on such holdings, the Osaic
 3 Defendants owe a fiduciary duty to all of their customers with cash in sweep accounts, which
 4 includes a duty to act in their best interests, and to place such best interests ahead of their own self-
 5 interest. Defendants breached that fiduciary duty when they swept client cash into Cash Sweep
 6 Programs vehicles that paid customers unreasonably low interest rates.

7 **E. Defendants Breached Their Fiduciary Duties**

8 82. The Osaic Defendants breached and continue to breach their duties to secure
 9 reasonable interest rates for their clients' deposits, because the interest paid on their clients' cash
 10 deposits and the so-called "fee" extracted for themselves was and is not reasonable.

11 83. Prior to the acquisition by Osaic, the interest rates paid by American Portfolios
 12 under the AP Cash Sweep Program were as low as 0.01% in 2022 – virtually nothing.

13 84. After the APA acquisition, Defendants continued to pay their clients paltry rates of
 14 interest that were exceedingly lower than market-based indicators.

15 85. Below is a chart of the interest rates paid in Osaic's Bank Deposit Sweep Program
 16 as of January 17, 2025, which is based on the amount of assets deposited in accounts custodied by
 17 Pershing and NFS:

Tiers	Deposit Range	Rate
1	\$0 – \$24,999	.15%
2	\$25,000 – \$49,999	.15%
3	\$50,000 – \$99,999	.15%
4	\$100,000 – \$249,999	.20%
5	\$250,000 – \$499,999	.30%
6	\$500,000 – \$749,999	.40%
7	\$750,000 – \$999,999	.75%
8	\$1,000,000 – \$1,499,999	1.00%
9	\$1,500,000 – \$4,999,999	1.25%
10	\$5,000,000 – MAX	1.50%

1 86. Below is a chart of the interest rates paid in Osaic's Insured Cash Account Program
2 in accounts custodied by Pershing and NFS, respectively:

3 NFS

4 Eligible Accounts	5 Rate	6 Monthly Per Account
7 Investment Advisory/ 8 fee-based IRAs accounts	9 .65%	10 \$19.60

11 Pershing

12 Eligible Accounts	13 Rate	14 Monthly Per Account
15 Investment Advisory/fee-based 16 IRAs accounts	17 0.60%	18 \$23.30

19 87. As set forth above, for customers with up to \$999,999 in assets at Osaic, Osaic is
20 currently paying as little as 0.15% in interest, and only up to 1.5%.

21 88. As explained below, the rates paid by Osaic were unreasonable even in a low
22 interest rate environment and were far less rates offered by competing sweep accounts.

23 89. Moreover, the rates of interest paid to Osaic customers were net of "fees" or the
24 rates of interest paid by the Program Banks to the Osaic Defendants and the Clearing Firms. These
25 "fees" that the Defendants reaped off of their clients' cash were significantly higher than the rate
26 of interest paid to those clients.

27 90. An interest rate is reasonable if it is based on a fair market valuation. As defined
28 in the Oxford English Dictionary, the term "reasonable" is synonymous with "fair" and
"equitable."

91. The U.S. Department of Labor defines a "reasonable" rate of interest as:
a rate of interest determinable by reference to short-term rates available to other
customers of the bank, those offered by other banks, those available from money
market funds, those applicable to short-term instruments such as repurchase
agreements, or by reference to a benchmark such as sovereign short term debt
(e.g., in the U.S., treasury bills), all in the jurisdiction where the rate is being
evaluated.

1 92. Similarly, the IRS defines an “arm’s length interest rate” as “a rate of interest which
2 was charged, or would have been charged, at the time the indebtedness arose, in independent
3 transactions with or between unrelated parties under similar circumstances.”

4 93. Thus, under these terms, and any fair interpretation of what a “reasonable” rate of
5 interest is, Defendants have not secured or paid a reasonable rate of interest to their customers,
6 including Plaintiff and the Class. The Cash Sweep Programs have paid well below the prevailing
7 or market interest rates.

8 94. Defendants’ rates of interest in the Cash Sweep Programs were also below
9 objectives measures of reasonableness, including the leading indicators set forth below. These
10 benchmarks demonstrate that the rates of interest in the Cash Sweep Programs were unreasonable.
11 As a result, Plaintiff and the Class suffered damages by receiving far lower interest payments than
12 they would have received if the sweep interest rates were reasonable.

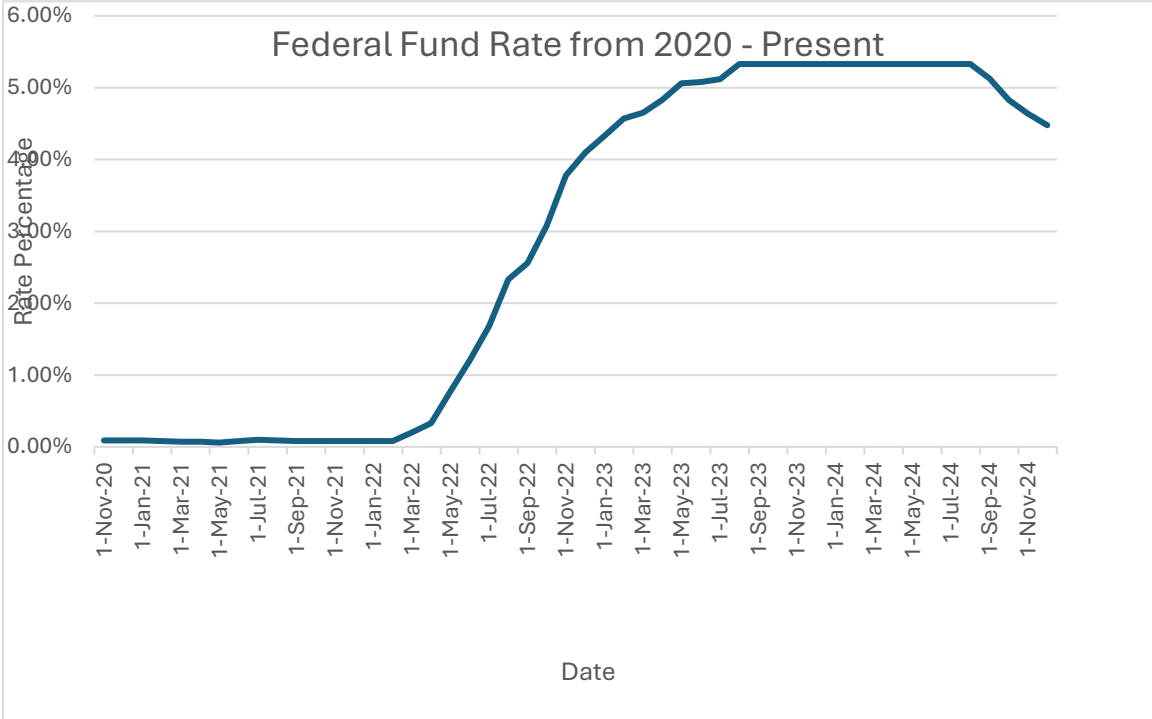
13 **1. The Federal Funds Rate**

14 95. The federal funds market consists of domestic unsecured borrowings in U.S. dollars
15 by depository institutions from other depository institutions and certain other entities, primarily
16 government-sponsored enterprises. In other words, the Federal Funds Rate is the interest rate
17 charged by banks to borrow from each other overnight. The effective Federal Funds Rate is
18 calculated as a volume-weighted median of such overnight federal funds transactions (the “Federal
19 Funds Rate”).

20 96. From 2018 to 2019, and again from March 2022 to August 2024, the Federal
21 Reserve began significantly raising the effective federal funds rate.

22 97. By August 2024, the effective Federal Funds Rate had risen to 5.33%. As the chart
23 below shows, while the Federal Reserve began raising the federal rate beginning in 2018 through
24 2024 – up from 0.08% in February 2022 to 5.33% in August 2024 – Defendants kept the interest
25 paid to Osaic cash sweep account holders drastically lower:
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98. While the Federal Funds Rate has declined moderately since the summer of 2024, it is still hovering above 4.40% – significantly above the rates of interest paid by Defendants to their clients under the Cash Sweep Programs.

2. Interest on Short-Term U.S. Treasury Bills

99. The yield on short-term U.S. Treasury Bills further demonstrates that the rates Osaic paid on the Cash Sweep Programs were unreasonably low. U.S. Treasury Bills (“T-Bills”) are short-term securities issued by the U.S. Department of the Treasury with maturities ranging from four to 52 weeks. T-Bills are issued at a discount from the face value, and when they mature, the investor is paid the face value.

100. Treasury Bills are considered safe investments because they are backed by the U.S. government, but generally carry low rates of return. Nevertheless, the yield on the shortest term (one month) U.S. Treasury Bill has steadily increased from close to zero in 2021 to approximately 5.5% in mid-2023. Currently, as of December 31, 2024, the one-month treasury rate was set at 4.42% and the three-month rate at 4.309%.

101. By contrast, the interest rate Osaic paid under the Cash Sweep Programs has remained a fraction of the T-Bill rate.

1 **3. Money Market Rates, Including Those Offered by Osaic**

2 102. Money market rates are another benchmark for determining a reasonable rate of
3 interest.

4 103. Money market funds are a type of mutual fund that invests in high-quality, short-
5 term debt instruments and cash equivalents, such as U.S. Treasury Bills.

6 104. The rate of return for a money market mutual fund is typically shown for a seven-
7 day period, referred to as the “7-day yield,” and is typically expressed as an annual percentage
8 rate.

9 105. Outside of the Cash Sweep Programs, Osaic offered money market mutual funds
10 through accounts custodied at both Pershing and NFS (the “Money Market Funds”). However,
11 the Money Market Funds were only the default product or “available for use as a core account
12 investment vehicle” for a very narrow set of account types not held by many individual investors:
13 ERISA Title I accounts, 403(b)(7) plans, and Keogh Plans.

14 106. Osaic’s Money Market Funds offered significantly higher rates of interest than what
15 it paid to investors under the Cash Sweep Programs. For example, the Federated Hermes
16 Government Reserves Fund for Osaic accounts custodied at Pershing currently provides a 7-day
17 yield of 3.43% and the Fidelity Government Cash Reserves Fund for Osaic accounts custodied at
18 NFS provides a yield of 4.19%.

19 **4. Other Institutions’ Cash Sweep Account Interest Rates**

20 107. The sweep interest rates paid by Osaic’s competitors, who offered FDIC-insured
21 sweep accounts similar to those in the Osaic Cash Sweep Programs, demonstrate that the rates
22 offered by Defendants were unreasonably low.

23 108. For example, as the Federal Reserve raised the Federal Fund Rate, Fidelity
24 Investments and R.W. Baird increased the rates of interest they pay to customers from 2022 to
25 2024, offering significantly higher rates than Osaic for similar cash sweep programs.

26 109. Currently, competitor Moomoo Financial Inc.’s rate for cash swept is 4.1%,
27 Webull’s rate is 3.75%, Vanguard’s rate is 3.65%, Fidelity’s rate is 2.19%, and Robert W. Baird’s
28 rate is between 1.45% and 2.89%. Osaic is paying as little as 0.15%.

1 110. As these competitor rates show, other brokerage and advisory financial institutions
2 that have cash sweep programs pay or secure significantly higher interest rates than Osaic.

3
4 **5. The Interest Rate Applicable to Short-term Instruments, Such
as Repurchase Agreements**

5 111. A repurchase agreement (“repo”) is a short-term secured loan, where one party sells
6 securities to another and agrees to repurchase those securities later at a higher price. In simple
7 terms, a repo is an exchange of a security (which acts as collateral) for cash.

8 112. Banks, dealers, other financial institutions, and corporate investors commonly use
9 repos to finance their securities inventories, obtain short-term funding, and/or meet regulatory
10 requirements. Typically, high-quality debt securities are used as the collateral in a repo, such as
11 government bonds, agency bonds, supranational bonds, corporate bonds, convertible bonds, and
12 emerging market bonds.

13 113. The U.S. overnight repo rate, set by the Federal Reserve, represents the interest rate
14 at which different market participants swap treasuries for cash to cover short-term cash needs.
15 From April of 2023 through April of 2024, the overnight repo rate in the United States ranged
16 from approximately 4.83% in April 2023 to high of 5.55% in December 2023. Currently, the U.S.
17 overnight repo rate is 4.25% as of January 8, 2025, which is significantly above the interest rate
18 paid by Defendants to account holders in the Cash Sweep Programs.

19 **F. The Cash Sweep Program Unfairly Benefits the Osaic Defendants**

20 114. The Osaic Defendants have intentionally structured the Cash Sweep Programs with
21 the Program Banks for their own financial benefits, to the detriment of Osaic’s clients, by keeping
22 the interest rates for their cash sweep accounts artificially low, while earning higher interest rates
23 on those deposits in the form of “fees” paid by the Program Banks.

24 115. First, the Program Banks benefit from the “significant amount of cash” the Osaic
25 Defendants make available to them through the Cash Sweep Program, which is “*generally in the*
26 *billions of dollars.*” This massive cash in-flow provides the Program Banks with a “relatively
27 stable source of deposits.” Program Banks in turn use the deposited cash for their investment or
28 lending activities, thus driving substantial revenue for the Program Banks.

1 116. Second, the Osaic Defendants profit from the “spread,” a significant portion of
2 which they continue to keep for themselves, at the expense of their customers, as “fees” charged
3 for the Cash Sweep Programs. Osaic, NFS, Pershing, and the third-party administrator all share
4 in the “fees” or “income” paid by the Program Banks. These fees are “*net of,*” *and reduce the*
5 *interest paid on customers’ cash balances* in the Cash Sweep Program.

6 117. As Osaic acknowledges in its Form ADV, “[b]ecause the Sweep Program generates
7 significant payments from third parties (*i.e.*, the Program Banks that participate in BDSP and/or
8 ICAP) to [Osaic’s affiliated broker-dealers], a conflict of interest exists.”

9 118. The conflict of interest is exemplified by the significant profits the Osaic
10 Defendants are able to generate from the Cash Sweep Programs in comparison to other types of
11 products. While the Osaic Defendants profit from “fees” paid by the Program Banks under the
12 Cash Sweep Programs, they do not receive any fees from the Money Market Funds. This helps
13 explain why the Cash Sweep Programs, and not the Money Market Funds or other higher interest-
14 bearing products were the default option for many Osaic accountholders.

15 119. A conflict of interest further arises for advisory accounts, because Osaic “earn[s]
16 more compensation from cash balances being swept to or maintained in the Sweep Program than
17 if you purchase other investment funds or securities.” *See* Form ADV at 27. As to Advisory IRA
18 Accounts and other investment advisory accounts, Osaic earned two layers of fees on the same
19 cash balances: compensation from the Cash Sweep Programs *and* advisory fees paid to Osaic’s
20 affiliated investment adviser. Unfortunately, this incentivizes the Osaic Defendants to keep their
21 clients’ cash idle, because they make more money through the Cash Sweep Programs than
22 fulfilling their fiduciary duties to invest that cash in the markets on behalf of their clients.

23 120. The “fees” that Defendants collect under the Cash Sweep Programs are, in effect,
24 profit shared by the Program Banks. While the structure of the “fees” vary based on the type of
25 Cash Sweep Program, the end result is the same: Defendants profit from the difference in rates of
26 interest, at the expense of their customers. Defendants also receive additional compensation from
27 “Priority Banks,” *i.e.*, Program Banks placed ahead of other Program Banks, because they have
28

1 “agreed to pay additional compensation to [Osaic] to receive preferential ordering in the allocation
2 sequence.”

3 **1. Defendants’ Profits Under the Bank Deposit Sweep Program**

4 121. For the Bank Deposit Sweep Program, the fee that Defendants receive is based on
5 the “spread” or the difference between the interest paid out to the Osaic clients and the rate earned
6 by the Program Banks on their investment activities (the “BDSP Fee”). This spread is also known
7 as net interest income. The Cash Sweep Program Documents provide:

8 The Program Banks thus have an incentive to pay a rate for Program
9 Deposits that is higher than the rate received by you, and the
10 *difference is the fee we [Osaic] and NFS collect for administering
the Sweep Program and related services.*

11 * * *

12 For the BDSP, *the difference between the rate paid* by a Program
13 Bank and the rate you receive as interest *is the total fee that we,
Pershing, and the third-party administrator collect for
14 administering the BDSP and related services.*

15 122. Defendants’ BDSP Fee is paid by the Program Banks for “provid[ing] . . . a
16 significant source of steady deposits.” The payment is “equal to a percentage of *all* participants’
17 average daily deposits at all Program Banks.”

18 123. Because Defendants received the difference between the interest rate paid to the
19 client and the rate secured by the Program Banks, they continue to align themselves with the
20 Program Banks, rather than the customers to which they owed fiduciary duties. The greater the
21 difference between the interest secured by the Program Banks and interest paid to the Osaic clients,
22 the greater the profit for the Osaic Defendants.

23 124. Indeed, the interest rate that Osaic earned as its “BDSP Fee” on its clients’ cash
24 was, at all relevant times, *significantly above* the rates of interest paid out to those clients:
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Pershing:

Year	Quarter	BDSP Fee*
2024	Q3	3.87%
	Q2	4.19%
	Q1	4.27%
2023	Q4	4.08%
	Q3	4.17%
	Q2	3.95%
	Q1	3.36%
2022	Q4	1.85%
	Q3	1.79%
	Q2	0.59%
	Q1	0.18%

NFS:

Year	Quarter	BDSP Fee*
2024	Q3	4.33%
	Q2	3.65%
	Q1	3.65%
2023	Q4	3.44%
	Q3	3.59%
	Q2	3.35%
	Q1	3.03%
2022	Q4	1.44%
	Q3	1.28%
	Q2	0.48%
	Q1	0.29%

125. To put this in perspective, customers who deposited their cash under the Cash Sweep Program received only 0.20% to 0.75% in interest for assets below one million as of November 25, 2024. By contrast, Defendants received a BDSP Fee equal to a rate of interest of 4.33% in the third quarter of 2024 – *five to 21 times the rate paid to its customers.*

1 126. Osaic Defendants knew that their customers in the Cash Sweep Program received
2 artificially depressed rates of interest, as low as 0.15%, and yet, purposefully designed the Cash
3 Sweep Programs to maximize the returns they received, at the expense of their clients. For
4 instance, Osaic Defendants set the maximum rate of interest they could receive as their BDSP Fee
5 as high as 600 basis points or 6.00% per year (the Maximum Fee).

6
7 **2. Defendants’ Profits Under the AP Cash Sweep Program and
Insured Cash Account Program**

8 127. Osaic Defendants structured the fees they received under the Insured Cash Account
9 Program functionally the same as those previously generated by American Portfolios under the AP
10 Cash Sweep Program. Both American Portfolios and its successor-in-interest Osaic Defendants
11 received or receive “monthly per account fees” from the Program Banks for administering the
12 programs.

13 128. Under the AP Cash Sweep Program, APFS was “paid a maximum monthly per
14 account fee of \$22.50 for its services in connection with maintaining and administering the
15 program.” This fee was “paid to APFS by the Participating Banks” (the “AP Fee”).

16 129. Under the Insured Cash Account Program, Defendants charge a “monthly fee for
17 each Advisory IRA Account that participates in the ICAP” (“the ICAP Fee.”) The monthly fee is
18 a fixed dollar amount that “does not vary by the actual amount of cash in a particular account,”
19 thereby creating a conflict of interest between “clients with larger cash balances and clients with
20 smaller cash balances.” In contrast to AP Cash Sweep Program, Osaic never capped their per
21 account fee at a maximum amount, allowing it to earn unlimited interest based on the Federal Fund
22 Rate.

23 130. Despite Osaic and American Portfolio’s attempts to characterize these fees as a
24 monthly fixed amount, in reality, Defendants are paid a market rate of interest by the Program
25 Banks, as with BDSP. The amount of the ICAP Fee paid by the Program Banks is “determined
26 based on a fee schedule indexed to the Federal Fund Target Rate” (“FFT”). The formula for the
27 AP Fee was similarly “based on the Federal Funds Target (FFT) Rate” and paid by the Participating
28 Banks:

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Example 1	
Federal Funds Target Rate range = 150 - 175 basis points	
Midpoint of range is 162.50 basis points > round up to nearest whole number = 163 basis points	
Monthly per account fee = \$1 + (\$0.052255 x 163) = \$9.52	
Example 2	
Federal Funds Target Rate range = 450 - 475 basis points	
Midpoint of range is 462.50 basis points > round up to nearest whole number = 463 basis points	
Monthly per account fee = \$1 + (\$0.052255 x 463) = \$25.19	
Since \$25.19 is greater than the stated maximum monthly fee of \$22.50, the actual fee would be \$22.50	

131. As the Federal Fund Target Rate increases, the monthly fee and the compensation that the Osaic Defendants receive also increase. Thus, the Osaic Defendants profit from the spread or difference between the Federal Fund Target Rate and the interest rate paid to clients.

132. The current Osaic monthly per account fee schedule based on the FFT rate is as follows:

FFT Rate (basis points)	Monthly Per Account Fee
0 to 25	\$8.55
25 to 50	\$9.00
50 to 75	\$9.60
75 to 100	\$10.20
100 to 125	\$10.85
125 to 150	\$11.55
150 to 175	\$12.20
175 to 200	\$12.75
200 to 225	\$13.30
225 to 250	\$14.00
250 to 275	\$14.70
275 to 300	\$15.40
300 to 325	\$16.10
325 to 350	\$16.80
350 to 375	\$17.50
375 to 400	\$18.20
400 to 425	\$18.90
425 to 450	\$19.60
450 to 475	\$20.25
475 to 500	\$20.75
500 to 525	\$21.25
525 to 550	\$21.75
550 to 575	\$22.50
575 to 600	\$23.75
600 +	\$25.00

133. Currently, the ICAP monthly per account fee that Osaic receives and the rate of interest they pay their clients is as follows:

NFS:

Eligible Accounts	Rate	Monthly Per Account
Investment Advisory/ fee-based IRAs accounts	.65%	\$19.60

Pershing:

Eligible Accounts	Rate	Monthly Per Account
Investment Advisory/fee-based IRAs accounts	0.45%	\$23.30

134. Startlingly, while the ICAP Fee and AP Fees are pegged to the Federal Fund Target Rate, *the rate of interest paid to Osaic accountholders was and still is at all relevant times, substantially less than the Federal Fund Target Rate.* Indeed, as indicated above, the rates of interest paid to clients under the Insured Cash Program have no correlation whatsoever to the Federal Fund Target Rate. For example, ICAP clients currently receive a rate of interest of 0.45% to 0.65%, while the Osaic Defendants earn a rate of interest as high as 4.25% to 4.50%.

135. Defendants continue to set the ICAP Fee to the FFT rate, because they know they can receive significantly higher profits from the Program Banks tied to prevailing market rates, especially when the rates of interest paid to the Osaic customers are artificially depressed. Consequently, the “monthly fixed fee,” is significantly “offset” by the “total amounts paid to [Osaic] by the Program Banks,” in connection with ICAP as well as BDSP. Moreover, if whatever reason the [ICAP] fee was not “sufficient,” Osaic “*reserve[d] the right to debit your Advisory IRA Account for the amount of any shortfall* [to the Program Banks].”

136. Thus, the AP Cash Sweep Program, as well as ICAP, together with BDSP, were purposefully engineered to ensure Defendants’ profit, at the expense of their customers. Defendants continue to orchestrate the ICAP Program to maximize their overall return, rather than the accountholders to which they owe fiduciary duties. By extracting excessive rates of interest (disguised as fees) for themselves and not sharing any of those fees to which the customers were entitled, Defendants breached and continue to breach their fiduciary duties.

1 137. The Program Fees provide a very meaningful source of revenue for Defendants, at
2 the direct cost to Osaic customers. As the Cash Sweep Program documents acknowledge, “[t]he
3 *income we [Osaic] earn from Program Banks based on your balances in BDSP and ICAP will*
4 *in almost all circumstances be substantially greater than the amount of interest you earn from*
5 *the same balances.*”

6 138. The Osaic Defendants earn interest that is similar or even above the prevailing or
7 market rates, while Osaic customers earn a tiny fraction of that interest. The Clearing Firm
8 Defendants “earn interest, or a return, based on short-term market interest rates prevailing at the
9 time,” and then “share[] a portion of this compensation with [Osaic].” However, Defendants earn
10 even greater returns as they receive “*a substantially greater . . . portion of the Program Fees*”
11 than those paid the Clearing Firms or other service providers. As a result, Defendants receive a
12 “substantially higher percentage of the interest” than the interest credited to customer accounts.

13 139. An example of the benefits Defendants received from the setting of cash sweep
14 interest rates on cash sweep accounts is reflected in net interest income and EBITDA growth from
15 2019 to present.

16 140. In November 2023, Osaic posted an EBITDA – earnings before interest, taxes,
17 depreciation and amortization – margin of 14.6% as of midyear on a trailing 12-month basis, which
18 was significantly higher than its average EBITDA margin of 11% from 2019 to 2022. As
19 *InvestmentNews* observed, the substantial boost in Osaic’s EBITDA is at least partially attributable
20 to net income interest growth:

21 “Osaic’s net interest income – NII – on cash balances held
22 in sweep accounts improved year-over-year due to the higher rate
23 environment, which has partially offset lower commission-based
24 revenues and revenues linked to market performance,” according to
 the Fitch report from October.”

25 141. As these record profits show, Defendants were financially incentivized to maintain
26 the artificially low interest rates on sweep accounts to keep the spread as high as possible,
27 thwarting Plaintiff and the Class from receiving a reasonable rate of interest.

28

1 **G. Defendants Make Materially Misleading Statements and Omit**
2 **Material Facts Regarding the Cash Sweep Program**

3 142. As an investment adviser and as a broker-dealer, the Osaic Defendants have a
4 fiduciary duty to not make any untrue statements or omissions of material fact that are otherwise
5 false or misleading. *See* FINRA Rule 2210(d)(1)(B) – Communications with the Public (“No
6 member may publish, circulate or distribute any communication that the member knows or has
7 reason to know contains any untrue statement of a material fact or is otherwise false or
8 misleading.”).

9 143. The Member Firm Regulation Division of the New York Stock Exchange
10 (“NYSE”) emphasized the particular importance of adequate disclosures of cash sweep programs
11 in its Information Memo 05-11, dated February 15, 2005 (the “Information Memo”). The
12 Information Memo states “[i]n some cases . . . cash sweep account programs at member
13 organizations *may have been instituted or changed without fully appropriate levels of disclosure*
14 *and customer consent.*” NYSE expressed concern that certain Cash Sweep Programs changes
15 “*may be so significant and beyond the contemplation and reasonable expectations of the*
16 *customer*” that “*effective subsequent disclosure*” was required.

17 144. The Cash Sweep Program Documents contain material omissions by failing to
18 disclose that Defendants established and maintained the Cash Sweep Programs to enrich
19 themselves by paying unreasonably low interest rates to customers.

20 145. As the NYSE explains, this disclosure is critical due to the potential conflict
21 between investment advisers’ fiduciary obligations and its financial incentives:

22 While a registered investment company is bound by fiduciary
23 obligations to its shareholders (customers of the member organization) to
24 seek the highest rates prudently available (less disclosed fees and expenses),
when customer funds are swept to an affiliated bank *it is in the interest of*
the member organization and its affiliates to pay as low a rate as possible.

25 146. The SEC similarly highlighted that “cash sweep programs” are a “common source[]
26 of conflicts of interest” in its Staff Bulletin: Standards of Conduct for Broker-Dealers and
27 Investment Advisers Conflicts of Interest, issued August 3, 2022.

1 147. The Information Memo recommended a series of “best practices” – based on NYSE
2 Rules – that were “designed to safeguard investor interests for [cash sweep] programs currently in
3 place.” According to the NYSE, failure to follow the practices set forth in the Information Memo
4 may be deemed “conduct inconsistent with good business practice” and/or “with just and equitable
5 principles of trade.”

6 148. The Information Memo specifically provided that member organizations “*must*
7 *include in their agreements or disclosure documents any conflicts of interest* in connection with
8 the cash sweep program,” including the following:

9 whether the member organization receives compensation or other benefits
10 for customer balances maintained at the bank, and if so the expected range
11 of such compensation, as well as a disclosure of the difference, if any,
between the rates of return at the existing money market fund and the
proposed bank sweep fund.

12 149. Defendants failed to disclose they were operating under the exact conflicts of
13 interest that the Information Memo warned against. The Osaic Cash Program Documents state:

14 Our Cash Review Committee meets periodically to review the
15 interest rates paid to clients in the [Bank Deposit Sweep Program]
16 and to determine whether and when the rates will change. Factors
17 considered include the rates paid by Program Banks to obtain
18 deposits from the Sweep Program, expected changes in interest
rates, interest rates paid by market competitors, and program
expenses.

19 150. This statement was misleading and omitted material facts because, in reality, the
20 rates of interest set by Defendants for the Cash Sweep Programs were not based on market factors.
21 In actuality, the Cash Sweep Programs always paid below-market and unreasonably low interest
22 rates rather than “market” interest rates. Unbeknownst to customers, Defendants were not
23 reviewing and setting customers’ interest rates based on “expected changes in interest rates” or
24 “rates paid by market competitors,” but rather, Defendants set the rates to maximize their own
25 profits.

26 151. The Cash Sweep Program Documents also omit material information regarding the
27 Defendants’ actual benefit from the Cash Sweep Programs. In contravention of the Information
28 Memo, absent from the Cash Sweep Documents is the actual or expected range of benefits or

1 compensation that the Osaic Defendants, the Program Banks, and the Clearing Firms stood to
2 receive.

3 152. The Cash Sweep Program Documents also contain materially misleading
4 information and omissions regarding the “fees” that Defendants charge under the Cash Sweep
5 Programs. These disclosures were misleading because they implied that Defendants received
6 “monthly fixed” fees for administering services under ICAP and AP Cash Sweep Program, when
7 in reality, Defendants have been profiting from the difference between the prevailing market rates
8 and what they pay out to customers.

9 153. The ICAP Fees and AP Fees were omitted completely from accountholders
10 monthly statements, leading accountholders to believe they were not adversely impacted by such
11 fees or were not being charged fees at all. In reality, however, these fees were rates of return that
12 belonged to Defendants’ customers, but which Defendants siphoned for themselves.

13 **V. CLASS ACTION ALLEGATIONS**

14 154. Plaintiff realleges and incorporates by reference the allegations set forth in ¶¶1-156,
15 above. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure
16 23(a), 23(b)(1), 23(b)(2), and 23(b)(3), on behalf of:

17 **The Class:**

18 All persons who held cash positions in accounts custodied in the United States by
19 Defendants, and whose cash was subject to the Cash Sweep Programs.

20 155. Excluded from the Class are Defendants, including any of their affiliates, officers
21 and directors, members of their immediate families and their legal representatives, heirs,
22 successors, or assigns, and any entity in which the Defendants have or had a controlling interest.

23 156. Plaintiff reserves the right to amend the Class definition upon conducting further
24 investigation or discovery.

25 157. The members of the Class are so numerous that joinder of all members is
26 impracticable and the disposition of their claims in a class action will provide substantial benefits
27 to the parties and the Court.

28

1 158. Defendants have thousands of customers nationwide and oversee more than \$500
2 billion in client assets through thousands of financial advisors. The Class thus satisfies the
3 numerosity requirement of Rule 23.

4 159. While the exact number of Class members is unknown to Plaintiff at this time and
5 can only be ascertained through appropriate discovery, members of the Class may be identified
6 from records maintained by Defendants and may be notified of the pendency of this action by mail
7 or electronically. Defendants regularly communicate with the Class by mail and/or electronically.

8 160. There is a well-defined community of interest in the questions of law and fact
9 involved in this case. Common questions of law and fact exist as to all members of the Class and
10 predominate over questions affecting only individual Class members. These common legal and
11 factual questions, each of which may also be certified under Rule 23(c)(4), include the following:

12 (a) Whether Defendants owed fiduciary duties to Plaintiff and the other Class
13 members, as alleged herein;

14 (b) Whether Defendants breached their fiduciary duties to Plaintiff and the
15 other Class members, as alleged herein;

16 (c) Whether Defendants' disclosures about the Cash Sweep Programs
17 contained material misrepresentations or omissions;

18 (d) Whether Defendants were unjustly enriched by their wrongful conduct;

19 (e) Whether Defendants committed gross negligence;

20 (f) Whether this case may be maintained as a class action under Federal Rule
21 of Civil Procedure 23;

22 (g) Whether and to what extent Plaintiff and the other Class members have
23 sustained damages and the proper measure of damages; and

24 (h) Whether and to what extent Plaintiff and the other Class members are
25 entitled to attorneys' fees and costs.

26 161. Plaintiff's claims are typical of the other Class members' claims because Plaintiff
27 and the Class sustained damages as a result of Defendants' wrongful conduct since Plaintiff was a
28 customer of Defendants and had his cash balances improperly managed by Defendants through

1 their administration of the Cash Sweep Program. Thus, Plaintiff's claims are typical of the claims
2 of the other Class members, because all Class members are similarly affected by Defendants'
3 wrongful conduct, and the relief Plaintiff seeks for the Class is common to all Class members.

4 162. Plaintiff will fairly and adequately protect the interests of other Class members.
5 Plaintiff has retained counsel competent and experienced in complex class action litigation.
6 Plaintiff has no interests adverse or antagonistic to those of the Class.

7 163. A class action is superior to all other available methods for the fair and efficient
8 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
9 damages suffered by individual Class members may be relatively small, the expense and burden
10 of individual litigation make it impossible for members of the Class to individually redress the
11 wrongs done to them. There will be no difficulty in the management of this action as a class action.

12 164. Additionally, the Class may be certified under Rule 23(b)(1) and/or (b)(2) because:

13 (a) the prosecution of separate actions by individual Class members would
14 create a risk of inconsistent or varying adjudications with respect to individual Class members that
15 would establish incompatible standards of conduct for Defendants;

16 (b) the prosecution of separate actions by individual Class members would
17 create a risk of adjudications with respect to them which would, as a practical matter, be dispositive
18 of the interests of other Class members not parties to the adjudications, or may substantially impair
19 or impede their ability to protect their interests; and/or

20 (c) Defendants have acted or refused to act on grounds generally applicable to
21 the Class, thereby making appropriate final and injunctive relief with respect to the Class members
22 as a whole.

23 **VI. CLAIMS ALLEGED**

24 **FIRST CAUSE OF ACTION**
25 **Breach of Fiduciary Duty**
(Against All Defendants)

26 165. Plaintiff repeats and incorporates by reference ¶¶1-164, as if fully set forth herein.

27 166. At all relevant times, the Osaic Defendants, as investment advisers and/or broker-
28 dealers, owed fiduciary duties to Plaintiff and the other Class members in connection with the Cash

1 Sweep Programs. Such duties arose out of applicable law and industry standards and the Osaic
2 Defendants' exercise of control and discretion over the Cash Sweep Programs.

3 167. As fiduciaries, the Osaic Defendants owed Plaintiff and the other Class members a
4 duty of loyalty, a duty of care, good faith, candor, and disclosure. Moreover, the Osaic Defendants
5 owed Plaintiff and the other Class members a duty to act in their best interest, including by placing
6 the interests of their clients ahead of Osaic Defendants' own best interests.

7 168. Defendants breached their fiduciary duties by the conduct alleged herein, including
8 by: designing, structuring, maintaining, and/or operating the Cash Sweep Programs to benefit
9 themselves at the expense of their fiduciary customers, providing a lower rate of interest to their
10 customers than they were receiving for themselves, making material misrepresentations and
11 omissions regarding the Cash Sweep Programs, violating their duty of care, and acting in their own
12 – not their customers' – best interest with respect to the Cash Sweep Programs.

13 169. As a direct and proximate consequence of the Osaic Defendants' conduct as alleged
14 herein, Plaintiff and the other Class members suffered damages in an amount to be determined at
15 trial, and seek disgorgement of any undue and unjust gains of the Osaic Defendants, punitive
16 damages, as well as all other equitable relief deemed just and proper.

17 **SECOND CAUSE OF ACTION**
18 **Gross Negligence**
(Against All Defendants)

19 170. Plaintiff repeats and incorporates by reference ¶¶1-164, as if fully set forth herein.

20 171. As set forth above, Defendants owed fiduciary duties to Plaintiff and the other Class
21 members in the operation of the Cash Sweep Program.

22 172. Defendants breached their duties by the conduct alleged herein, including by:
23 designing, structuring, maintaining, and/or operating the Cash Sweep Program to benefit
24 themselves at the expense of their fiduciary customers, providing a lower rate of interest to their
25 customers than they were receiving for themselves, making material misrepresentations and
26 omissions regarding the Cash Sweep Program, violating their duty of care, and acting in their own
27 – not their customers' – best interest with respect to the Cash Sweep Programs.

28

1 173. Defendants' misconduct was grossly negligent because it constituted a reckless
2 disregard for their clients' best interests, and represented an extreme departure from the ordinary
3 standard of care.

4 174. The Defendants' misconduct directly and proximately caused financial harm to
5 Plaintiff and the other Class members. As a result, Plaintiff and the other Class members are
6 entitled to damages from the Defendants, plus prejudgment interest thereon.

7 **THIRD CAUSE OF ACTION**
8 **Unjust Enrichment**
9 **(Against All Defendants)**

10 175. Plaintiff repeats and incorporates by reference ¶¶1-164, as if fully set forth herein.

11 176. Defendants, through their wrongful conduct of sweeping available cash balance
12 from customer accounts into accounts at Program Banks that provided customers with
13 inappropriately low interest rates, received net interest income, fees, and other financial benefits.

14 177. As a result, Defendants were unjustly enriched by their misconduct. Plaintiff,
15 individually and on behalf of the other Class members, alleges that it is inequitable and unjust for
16 Defendants to retain these benefits, including the Program Fees and the net interest income they
17 earned at the expense of their own clients.

18 178. Plaintiff and the other Class members suffered financial harm from Defendants'
19 misconduct and are entitled to damages, including the restitution and disgorgement of the profits
20 and other financial benefits unjustly obtained by Defendants.

21 **FOURTH CAUSE OF ACTION**
22 **Violation of the Investment Advisers Act of 1940**
23 **(Against All Defendants)**

24 179. Plaintiff repeats and incorporates by reference ¶¶1-164, as if fully set forth herein.

25 180. APA was registered as an investment adviser under the Advisers Act. Osaic owns
26 and controls APA. Osaic Wealth is a registered investment adviser under the Advisers Act. Osaic
27 owns and controls Osaic Wealth.

28 181. For the reasons alleged herein, APA and Osaic Wealth violated §206 of the
Advisers Act in connection with their operations of the Cash Sweep Programs by failing to serve
the best interests of their clients, by placing their own interests ahead of the interests of its clients,

1 and by failing to adopt and implement written policies and procedures reasonably designed to
2 prevent violations of the Advisers Act. *See* 15 U.S.C. §80b-6; Commission Interpretation
3 Regarding Standard of Conduct for Investment Advisers, Investment Advisers Act Release No.
4 5248, 84 Fed. Reg. 33669 (July 12, 2019).

5 182. The Account Agreement should be deemed void pursuant to §215(b) of the
6 Advisers Act. *See* 15 U.S.C. §80b-15.

7 183. Accordingly, Plaintiff and the Class seek rescission of the Account Agreements and
8 restitution of the consideration given pursuant to its purported terms.

9 **VII. REQUEST FOR RELIEF**

10 Plaintiff, individually and on behalf of the other Class members, requests relief as follows:

- 11 A. Declaring that this action is a proper class action, certifying the Class as requested
12 herein, designating Plaintiff as Class Representative, and appointing Plaintiff's
13 counsel as Class Counsel;
- 14 B. Ordering Defendants to pay actual damages (including punitive damages) and
15 restitution to Plaintiff and the other Class members, as allowable by law;
- 16 C. Ordering disgorgement of profits obtained by Defendants as a result of
17 Defendants' wrongdoing, in an amount to be proven at trial, including interest
18 thereon;
- 19 D. Ordering injunctive relief prohibiting Defendants from continuing to engage in
20 the conduct alleged herein;
- 21 E. Ordering Defendants to pay both pre- and post-judgment interest on any amounts
22 awarded;
- 23 F. Ordering Defendants to pay attorneys' fees and costs of suit; and
24 G. Ordering such other and further relief as may be just and proper.

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1 **VIII. DEMAND FOR JURY TRIAL**

2 Plaintiff demands a trial by jury on all claims so triable.

3 DATED: February 4, 2025

4

 s/ Travis P. Roberts

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