UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CREDIT SUISSE SECURITIES (USA) LLC;
UBS GROUP AG, *as successor-in-interest to*
CREDIT SUISSE GROUP AG,

Petitioners,

v.

MATTHEW MITCHELL,

Respondent.

Civil Action No. 26-cv-6729

PETITION TO VACATE ARBITRAL AWARD IN PART AND CONFIRM AWARD IN PART

Petitioners Credit Suisse Securities (USA) LLC ("CSSU") and UBS Group AG, as successor-in-interest to Credit Suisse Group AG (together with CSSU, "Petitioners"), respectfully petition this Court, pursuant to Sections 10 and 207 of the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 10, 207, for an order vacating in part and confirming in part the Partial Final Award dated May 8, 2026 (the "Award") in their arbitration against Respondent Matthew Mitchell, International Chamber of Commerce ("ICC") Case No. 29548/ICA9. Petitioners respectfully request that the Court (1) vacate the portion of the Award requiring them to violate Swiss law by paying Respondent certain deferred compensation awards that were written down on the instructions of the Swiss government, and (2) confirm the portion of the Award requiring Respondent to honor the term of his separation agreement that required him to repay a retention award to CSSU.

In support of this Petition, Petitioners allege as follows:

INTRODUCTION

1. The Award puts Petitioners CSSU and UBS to an impossible choice: Either disobey binding Decrees of the Swiss government, or disobey an arbitral award. The FAA does not countenance that result. Petitioners thus ask this Court to vacate the portion of the Award requiring them to make payments the Swiss government has expressly forbidden, while confirming the separate and unobjectionable portion of the Award requiring Respondent Matthew Mitchell to honor his own contractual repayment obligation to Petitioners.[1]

2. In March 2023, Credit Suisse stood on the brink of collapse. Following two sudden bank failures in the United States, Credit Suisse—one of the world's largest banks—faced imminent insolvency, which in turn threatened to trigger a global financial crisis with especially severe consequences for the Swiss economy. To avoid collapse, Swiss authorities responded with extraordinary measures, including providing hundreds of billions of Swiss francs in public support, and ultimately coordinating the emergency merger of Credit Suisse with its longtime rival, UBS.

3. As an essential part of the rescue efforts, the Swiss government instructed Credit Suisse to write down its Additional Tier 1 instruments ("AT1s") and Contingent Capital Awards ("CCAs"). AT1s were publicly traded bonds that were designed to be written down in the event

[1] Mitchell's arbitration was one of four initiated by former Credit Suisse executives requesting the same relief. *See* Ex. 1, Award ¶¶ 29, 31. UBS has petitioned to confirm an award resulting from one of the other arbitrations, in which the arbitrator recognized that FINMA's Decrees prohibited UBS from paying the CCAs. Ex. 12, Petition, *UBS Grp. AG v. Gishen*, No. 26-cv-970 (D. Del. Aug. 6, 2026). UBS has standing to confirm that award because the arbitrator awarded nearly $400,000 in attorney's fees and costs to UBS. Ex. 13, Final Award ¶ 254, *Gishen v. UBS Grp. AG*, ICC Case No. 29547/ICA9 (May 29, 2026) ("*Gishen* Award"). No petitions to vacate or confirm are pending in the other two arbitrations.

All exhibits cited in this Petition are attached to the Declaration of Andrew G.I. Kilberg ("Kilberg Decl."), which is being filed concurrently.

of a crisis, while CCAs were a form of deferred compensation for senior bank executives that were modeled closely on AT1s.

4. On March 19 and 22, Switzerland's Financial Market Supervisory Authority ("FINMA") issued Decrees requiring Credit Suisse to write down the AT1s and CCAs. Those Decrees carry the force of law and remain binding today.

5. Mitchell is a former Credit Suisse executive who was awarded CCAs. Although his CCAs were written down pursuant to the Swiss government's binding Decrees, he initiated arbitration to compel Petitioners to pay them. Petitioners filed a counterclaim to recover a retention award (known as an Upfront Cash Award, or "UCA") that Mitchell had agreed to repay when he voluntarily separated from CSSU in 2022.

6. Notwithstanding FINMA's Decrees, the Award ordered Petitioners to "pay" the CCAs—thereby requiring Petitioners to do precisely what the Swiss government has forbidden. Award ¶ 219(a). This portion of the Award thus "compels the violation of law" and must be vacated under 9 U.S.C. § 10 and well-established Second Circuit precedent. *Perma-Line Corp. of Am. v. Sign Pictorial Union, Local 230*, 639 F.2d 890, 895 (2d Cir. 1981) (citation omitted).

7. The arbitral Award also determined that Mitchell breached his separation agreement with CSSU and ordered him to repay a pro-rata share of the UCA. Award ¶ 219(d). That decision stands on entirely different footing, and there is no ground for declining to enforce it. Accordingly, this portion of the Award must be confirmed under 9 U.S.C. § 207.

THE PARTIES

8. Petitioner Credit Suisse Securities (USA) LLC is a limited liability company organized under the laws of Delaware with its principal place of business at 11 Madison Avenue in New York, New York. Award ¶ 5.

9. Petitioner UBS Group AG is a publicly held corporation organized under the laws of Switzerland with its principal place of business at Bahnhofstrasse 45 in Zurich, Switzerland. Award ¶ 5. UBS is successor-in-interest to Credit Suisse Group AG. *Id.*

10. Respondent Matthew Mitchell is an individual who is domiciled in Salt Point, New York. Award ¶ 3. Mitchell is a former managing director of CSSU.

JURISDICTION AND VENUE

11. This Petition falls under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 (the "New York Convention"), 21 U.S.T. 2517, T.I.A.S. No. 6997, 330 U.N.T.S. 38, and Chapter 2 of the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 201-208, because the Award resolves a commercial dispute that is not entirely between citizens of the United States. *See* 9 U.S.C. § 202; *CBF Industria de Gusa S/A v. AMCI Holdings, Inc.*, 850 F.3d 58, 71 (2d Cir. 2017); *Bergesen v. Joseph Muller Corp.*, 710 F.2d 928, 932 (2d Cir. 1983).

12. This Court has subject-matter jurisdiction over the Petition under 28 U.S.C. § 1331 because an action or proceeding falling under the Convention is deemed to arise under the laws and treaties of the United States. 9 U.S.C. § 203.

13. This Court has general personal jurisdiction over Mitchell because he is domiciled in Salt Point, New York. Award ¶ 3.

14. Venue is also proper in this Court. Among other reasons, Mitchell resides in the Southern District of New York, Award ¶ 3, and consented to participate in an arbitration seated in that district, Ex. 9, Supplemental Arbitration Agreement at 1. *See* 28 U.S.C. § 1391(b)(1); *Doctor's Assocs., Inc. v. Stuart*, 85 F.3d 975, 983 (2d Cir. 1996).

RELEVANT FACTS

I. The Credit Suisse Crisis and FINMA's Write-Down Orders

15. In March 2023, Credit Suisse was on the verge of collapse after years of setbacks that deeply undermined market confidence in the bank. Award ¶ 87.

16. The Swiss government took extraordinary action to avoid collapse, and assembled a massive rescue package for Credit Suisse over the weekend of March 18-19. Award ¶¶ 90-107.

17. A critical piece of the government's rescue package involved the write-down of Credit Suisse's AT1s, including the CCAs. Switzerland's Financial Market Supervisory Authority ("FINMA") issued a Decree on March 19 that "instructed" Credit Suisse "to immediately initiate the complete write-off of the AT1 instruments by notification to the AT1 creditors." *Gishen* Award ¶ 198 (quoting March 19 Decree ¶ 25); *see also* Award ¶ 107. After Credit Suisse asked FINMA to reconsider whether the March 19 Decree covered the CCAs, FINMA issued a second Decree on March 22 confirming that the CCAs were "included in the write-off of all AT1 instruments pursuant to the decree of March 19, 2023." *Gishen* Award ¶ 129 (quoting March 22 Decree ¶ 16); *see also* Award ¶ 109.

18. As the Second Circuit has observed, FINMA thus "ordered Credit Suisse to write their [AT1s] down to zero." *Creditincome Ltd. v. Swiss Confederation*, --- F.4th ---, 2026 WL 2050977, at *1 (2d Cir. July 16, 2026). FINMA's Decrees were also "mandatory directives" that reflected Switzerland's "sovereign authority." *Id.* at *4, *6.

19. Credit Suisse complied with FINMA's binding Decrees and wrote down the AT1s and CCAs to zero, as ordered. Award ¶¶ 111-12.

20. The Swiss government's intervention was successful: Credit Suisse was kept afloat long enough to finalize the emergency rescue package and the merger with UBS, and the global market averted a broader crisis. *See* Award ¶ 108.

II. The Underlying Dispute

21. Mitchell joined CSSU in 2016 as a managing director. Award ¶ 74. During his time at CSSU, he was compensated handsomely. His compensation packages included several different forms of variable and deferred awards. *Id.* ¶ 75. CCAs amounted to less than 10% of his total compensation over the relevant period.

22. At issue here are three CCAs awarded between 2020 and 2022. Award ¶¶ 75-78. These CCAs were governed by materially identical contracts known as CCA Certificates, which were governed by New York contract law. *See* Ex. 5, U.S. Dollar Series 2020-1 CCA Grant Notice & Award Certificate § 10(o); Ex. 6, U.S. Dollar Series 2021-1 CCA Grant Notice & Award Certificate § 10(o); Ex. 7, U.S. Dollar Series 2022-1 CCA Grant Notice & Award Certificate § 10(o).

23. In 2022, Credit Suisse was experiencing a particularly difficult period in which attrition among key personnel was high. Ex. 11, Witness Statement of Colleen Henry ¶ 5. Credit Suisse issued UCAs to certain employees to incentivize them to remain at the bank. *Id.* ¶ 6. Mitchell lobbied CSSU to provide him a UCA, and CSSU ultimately agreed to provide him a UCA in the amount of $480,000. *Id.* ¶¶ 7-8; *see* Award ¶ 196.

24. Despite this, shortly after receiving the UCA, Mitchell informed his supervisors that he planned to leave the bank for a different firm. Award ¶¶ 80, 82.

25. Credit Suisse agreed to a mutual termination of Mitchell's employment through a Separation Agreement. Ex. 8, Separation Agreement. This agreement allowed Mitchell to keep

much of the unvested and deferred compensation he would have otherwise forfeited upon a voluntary departure, including the three CCAs at issue here. Award ¶¶ 82-83.

26. In return, Mitchell agreed to forfeit several other compensation awards and to repay a pro-rata portion of the UCA he had received just a few weeks earlier. Award ¶¶ 82-83.

27. Despite repeated reminders, Mitchell never paid back a pro-rata portion of his 2022 UCA as required by his Separation Agreement. Award ¶¶ 84, 197.

28. As required by FINMA's Decrees, Credit Suisse in May 2023 wrote down the three CCAs that it had permitted Mitchell to keep under the Separation Agreement. Award ¶¶ 111-12.

29. Following unsuccessful mediation efforts, Mitchell initiated arbitration against Petitioners to force them to pay his CCAs notwithstanding FINMA's Decrees. Award ¶ 24. Petitioners brought a counterclaim against Mitchell to require him to repay a pro-rata share of his 2022 UCA. *Id.* ¶ 35.

III. The Arbitration Agreement

30. Mitchell agreed to Credit Suisse's Employment Dispute Resolution Program, under which Mitchell and Petitioners agreed to arbitrate any employment-related disputes. *See* Ex. 10, Credit Suisse Employment Dispute Resolution Program at 1.[2]

31. After mediation of this dispute failed, the Parties entered a Supplemental Arbitration Agreement specifying that the Parties would submit their dispute to a sole arbitrator in New York, New York, under the Expedited Procedure Rules of the ICC. Ex. 9, Supplemental Arbitration Agreement at 1.

[2] Credit Suisse's Master Share Plan, which is applicable to the CCAs and UCAs, also includes an arbitration clause stating that "any dispute under the Plan or any Award Certificate[ ] shall be finally settled in accordance with [Credit Suisse's] alternative dispute resolution policy applicable to" the employee. Ex. 4, Credit Suisse Master Share Plan § 15(j).

32. The Parties thereafter confirmed to the ICC that the seat of the arbitration would be New York, New York, and participated in a rank-and-strike procedure for selecting the sole arbitrator. Award ¶¶ 23, 33-34, 39-40.

33. Following the production of documents and extensive written submissions from the Parties, the arbitrator and the Parties agreed that oral argument would be held in lieu of an evidentiary hearing. Award ¶¶ 63-64. Argument was heard in New York, New York, on March 16, 2026. *Id.* ¶ 71.

IV. The Award

34. The arbitrator issued the Award on May 8, 2026.

35. The arbitrator determined that Mitchell was "entitled to recover" the CCAs. Award ¶ 188. Although he stated that it was "a very close question," he opined that the write-down condition in the CCAs had not been triggered during the March 2023 crisis. *Id.* ¶ 153. He therefore ordered Petitioners to "pay" the CCAs with pre-award interest, together worth a total of $1,060,130.81. *Id.* ¶ 219(a).

36. The arbitrator rejected Petitioners' argument that FINMA's Decrees excused their performance under the contract-law doctrines of illegality and impossibility. Award ¶¶ 171-81. But he reached that conclusion only after adopting a strained reading of FINMA's Decrees—namely, that FINMA did not actually order Credit Suisse to write down the CCAs, but instead merely to exhaust its contractual options under the CCA Certificates. *Id.* ¶¶ 144, 175.

37. Separately, the arbitrator concluded that Petitioners were entitled to recover a pro-rata share of the 2022 UCA. Award ¶ 201. Mitchell's failure to repay that compensation was "a material breach of the Separation Agreement," and he lacked "a valid defense to justify his non-payment." *Id.* ¶¶ 201, 207. The arbitrator thus ordered Mitchell to repay a pro-rata share of the

2022 UCA with pre-award interest, together worth a total of $557,498.08. *Id.* ¶ 219(d); *see also* Ex. 2, Addendum ¶ 21(b) (correcting the interest calculation).

38. Since the conclusion of the arbitral proceedings, Mitchell has neither paid Petitioners nor expressed any intention to do so. Kilberg Decl. ¶ 18.

LEGAL BACKGROUND

39. The New York Convention is a treaty governing the recognition and enforcement of international arbitral awards. The Convention has been ratified by the United States and is implemented through Chapter 2 of the FAA, which governs the recognition and enforcement of foreign arbitral awards in the United States. *See* 9 U.S.C. § 201. As relevant here, Chapter 2 applies whenever one of the parties to the award is a foreign citizen, such as an entity (like UBS) that is incorporated and has its principal place of business outside the United States. 9 U.S.C. § 202.

40. Article V(1)(e) of the Convention permits a court in the jurisdiction in which the award was made to vacate the award. Such petitions are filed under Section 10 of the FAA, which is codified at 9 U.S.C. § 10. *Yusuf Ahmed Alghanim & Sons v. Toys "R" Us, Inc.*, 126 F.3d 15, 21, 23 (2d Cir. 1997); *see also* 9 U.S.C. § 208 ("Chapter 1 applies to actions and proceedings brought under this chapter to the extent that chapter is not in conflict with this chapter or the Convention as ratified by the United States.").

41. As the Second Circuit has long recognized, Section 10 empowers courts to vacate an arbitral award that is "contrary to a well accepted and deep rooted public policy"—such as an award that "compels the violation of law." *Perma-Line Corp. of Am. v. Sign Pictorial Union, Local 230*, 639 F.2d 890, 895 (2d Cir. 1981) (citation omitted). Awards that compel a party to violate the law transgress Section 10(a)(4) because they reflect "manifest disregard of the law." *N.Y. Tel. Co. v. CWA Local 1100*, 256 F.3d 89, 91 (2d Cir. 2001) (per curiam) (citation omitted);

George Watts & Son, Inc. v. Tiffany & Co., 248 F.3d 577, 580 (7th Cir. 2001). Arbitrators also "exceed[ ] their powers" by issuing awards that require parties to affirmatively contravene government edicts, 9 U.S.C. § 10(a)(4), because no arbitrator has the power to require parties to break the law, *see, e.g.*, *Duferco Int'l Steel Trading v. T. Klaveness Shipping A/S*, 333 F.3d 383, 389 (2d Cir. 2003).

42. Because the question of public policy is "for resolution by the courts," *W.R. Grace & Co. v. Local 759, Int'l Union of United Rubber Workers of Am.*, 461 U.S. 757, 766 (1983), an arbitrator's "findings as to questions of law" with respect to whether an award would require a party to break the law are "subject to *de novo* review by a district court," *Int'l Bhd. of Elec. Workers, Local 97 v. Niagara Mohawk Power Corp.*, 143 F.3d 704, 726 (2d Cir. 1998). That includes whether the arbitrator has correctly construed the law that the award allegedly would compel a party to violate. *Perma-Line*, 639 F.2d at 894-96.

43. A petition to vacate an award under Section 10 is timely if it is "served … within three months after the award is filed or delivered." 9 U.S.C. § 12.

44. Separately, Chapter 2 also allows a party to petition "for an order confirming the award as against any other party to the arbitration." 9 U.S.C. § 207. "The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the [New York] Convention." *Id.*

45. A petition to confirm the award must be filed "[w]ithin three years after" the award was "made." 9 U.S.C. § 207.

46. A court "can confirm and/or vacate the award, either in whole or in part." *Scandinavian Reinsurance Co. v. Saint Paul Fire & Marine Ins. Co.*, 668 F.3d 60, 71 (2d Cir. 2012).

CLAIMS FOR RELIEF

COUNT ONE
(Partial Vacatur of Arbitral Award as to Mitchell's Claim)
(9 U.S.C. §§ 10, 203; Violation of Public Policy and Manifest Disregard of Law; New York Convention)

47. Petitioners repeat and reallege each of the foregoing paragraphs.

48. This Petition is timely under 9 U.S.C. § 12 because it is being served within three months after the Award was delivered on May 8, 2026.

49. On March 19, 2023, FINMA issued a Decree "instruct[ing]" Credit Suisse "to immediately initiate the complete write-off of the AT1 instruments by notification to the AT1 creditors." *Gishen* Award ¶ 198 (quoting March 19 Decree ¶ 25); *see also* Award ¶ 107.

50. On March 22, 2023, FINMA issued a second Decree confirming that the CCAs were "included in the write-off of all AT1 instruments pursuant to the decree of March 19, 2023." *Gishen* Award ¶ 129 (quoting March 22 Decree ¶ 16); *see also* Award ¶ 109.

51. The Award nonetheless requires Petitioners to "pay" the CCAs. Award ¶ 219(a).

52. The New York Convention, Chapter 2 of the FAA, and Section 10 of the FAA apply to the Award. *Supra* ¶¶ 11, 39-40.

53. FINMA's Decrees required Credit Suisse to write down the CCAs, not merely to exercise its contractual options. *See, e.g.*, *Creditincome*, 2026 WL 2050977, at *1. The arbitrator's contrary and erroneous interpretation of FINMA's Decrees is not entitled to deference by this Court. *Niagara Mohawk*, 143 F.3d at 716; *Perma-Line*, 639 F.2d at 894-96.

54. FINMA's Decrees carry the force of law and are binding on Petitioners. *See, e.g.*, *Creditincome*, 2026 WL 2050977, at *4, *6.

55. By requiring Petitioners to "pay" the CCAs, Award ¶ 219(a), the Award "compels the violation of law" in violation of "public policy," *Perma-Line*, 639 F.2d at 895 (citation

omitted), and in "manifest disregard of the law," *N.Y. Tel. Co.*, 256 F.3d at 91 (citation omitted); *see also George Watts*, 248 F.3d at 580.

56. Accordingly, the arbitrator also exceeded his authority, 9 U.S.C. § 10(a)(4), because an arbitrator can neither require a party to break the law, *Duferco*, 333 F.3d at 389, nor act in manifest disregard of the law.

57. This Court should vacate the Award insofar as it requires Petitioners to pay Mitchell the amounts awarded on his 2020-1, 2021-1, and 2022-1 CCAs plus interest.

COUNT TWO
(Partial Confirmation of Arbitral Award as to Petitioners' Counterclaim)
(9 U.S.C. §§ 203, 207; New York Convention)

58. Petitioners repeat and reallege each of the foregoing paragraphs.

59. This Petition is timely under 9 U.S.C. § 207 because it is being filed within three years after the Award was made on May 8, 2026.

60. Mitchell has failed to repay a pro-rata share of his 2022 UCA despite promising to do so in the Separation Agreement. Award ¶¶ 84, 197.

61. The arbitrator concluded that Mitchell's failure to repay that compensation was "a material breach of the Separation Agreement" and that Mitchell lacked "a valid defense to justify his non-payment." *Id.* ¶¶ 201, 207. The arbitrator therefore ordered Mitchell to repay a pro-rata share of the 2022 UCA with pre-award interest, together worth a total of $557,498.08. *Id.* ¶ 219(d); *see also* Addendum ¶ 21(b) (correcting the interest calculation).

62. Since the conclusion of the arbitral proceedings, Mitchell has neither paid Petitioners nor expressed any intention to do so. Kilberg Decl. ¶ 18.

63. The New York Convention and Chapter 2 of the FAA apply. *Supra* ¶¶ 11, 39.

64. Under Chapter 2, a court "shall confirm the award unless it finds one of the grounds" for refusing or deferring to do so in the New York Convention. 9 U.S.C. § 207.

65. None of those grounds applies to the portion of the Award resolving Petitioners' counterclaim and ordering Mitchell to repay a pro-rata share of the 2022 UCA.

a. The Parties' agreement to arbitrate was "valid." N.Y. Convention, art. V(1)(a).

b. Mitchell had "proper notice" of the arbitral proceedings and was given an opportunity to "present his case." N.Y. Convention, art. V(1)(b).

c. The dispute over the 2022 UCA was "within the terms of the submission to arbitration." N.Y. Convention, art. V(1)(c).

d. "The composition of the arbitral authority" and "the arbitral procedure" were "in accordance" with the Parties' arbitration agreement. N.Y. Convention, art. V(1)(d).

e. The relevant portion of the Award has not been "set aside or suspended." N.Y. Convention, art. V(1)(e).

f. The "subject matter" of the Parties' dispute is "capable of settlement by arbitration." N.Y. Convention, art. V(2)(a).

g. Enforcing Mitchell's promise to Credit Suisse is not "contrary to the public policy" of the United States. N.Y. Convention, art. V(2)(b). That distinguishes this portion of the Award from the portion resolving Mitchell's claim, which violates U.S. public policy by compelling Petitioners to violate the law.

66. This Court should confirm the Award insofar as it requires Mitchell to repay a pro-rata share of his 2022 UCA, together with the pre-award interest awarded by the arbitrator as corrected by the Addendum.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court:

A. Vacate the Award pursuant to 9 U.S.C. § 10 insofar as it requires Petitioners to pay Mitchell his 2020-1, 2021-1, and 2022-1 Contingent Capital Awards, together with any associated interest;

B. Confirm the Award pursuant to 9 U.S.C. § 207 insofar as it requires Mitchell to repay a pro-rata share of his 2022 Upfront Cash Award, together with the pre-award interest awarded by the arbitrator as corrected by the Addendum;

C. Enter judgment in favor of Petitioners and against Mitchell, including applicable post-award, pre-judgment interest and post-judgment interest;

D. Award Petitioners their taxable costs; and

E. Grant such other relief as this Court deems just and proper.

Dated: August 6, 2026

Respectfully submitted,

/s/ Nina Meyer

Eugene Scalia (*pro hac vice forthcoming*)
Andrew G.I. Kilberg (*pro hac vice forthcoming*)
GIBSON, DUNN & CRUTCHER LLP
1700 M Street, N.W.
Washington, DC 20036
Telephone: 202.955.8500
EScalia@gibsondunn.com
AKilberg@gibsondunn.com

Nina Meyer
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, NY 10166
Telephone: 212.351.4000
NMeyer@gibsondunn.com

Counsel for Petitioners