Teague I. Donahey (ISB #9963)
Christopher C. McCurdy (ISB #8552)
HOLLAND & HART LLP
800 W. Main Street, Suite 1750
Boise, ID 83702-7714
Telephone: 208.342.5000
TIDonahey@hollandhart.com
CCMcCurdy@hollandhart.com

Jill L. Rosenberg (*pro hac vice* motion forthcoming)
Daniel A. Rubens (*pro hac vice* motion forthcoming)
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 W. 52nd Street
New York, NY 10019-6142
Telephone: 212.506.5000
jrosenberg@orrick.com
drubens@orrick.com

Attorneys for Petitioner UBS Financial Services, Inc.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

UBS FINANCIAL SERVICES, INC., Petitioner. vs. RANDY S. ANDERSON, Respondent.	)	Case No. **PETITION AND MOTION TO VACATE ARBITRATION AWARD**

By this Petition and Motion to Vacate Arbitration Award pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 *et seq.*, Petitioner UBS Financial Services, Inc. ("UBS") seeks to vacate an arbitration award issued in *Randy S. Anderson v. UBS Financial Services, Inc.*, FINRA Case No. 21-02871 (the "Award," attached hereto as **Exhibit A**), and in support states as follows:

PARTIES

1. Petitioner UBS is a corporation organized and existing under the laws of Delaware with its principal places of business in New York, New York, and Weehawken, New Jersey. UBS is a nationwide registered and licensed full-service broker dealer and a subsidiary of UBS AG, a global bank headquartered in Zurich and Basel, Switzerland. UBS is registered with the United States Securities and Exchange Commission and is a member of the Financial Industry Regulatory Authority ("FINRA").

2. Respondent Randy S. Anderson formerly worked as a Financial Advisor in UBS's Boise, Idaho office. Anderson resides in Eagle, Idaho. Anderson brought claims in arbitration against UBS under FINRA's arbitration procedures.

JURISDICTION AND VENUE

3. "A federal court may entertain an action brought under the FAA only if the action has an independent jurisdictional basis." *Badgerow v. Walters,* 596 U.S. 1, 8 (2022) (quotation marks omitted).

4. To determine whether a court has independent subject-matter jurisdiction for an application to vacate an arbitration award under the FAA, 9 U.S.C. § 10, courts look to the application itself, not the underlying controversy that the parties arbitrated. *Badgerow,* 596 U.S. at 9-10.

5. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1). Section 1332 is satisfied when the amount in controversy in the civil action "exceeds the sum or value of $75,000, exclusive of interests and costs," and when the parties are citizens of different states. *Id.*

6. The amount-in-controversy requirement is satisfied. UBS seeks to vacate the Award, through which a majority of the arbitration panel found UBS liable for compensatory damages of $1,000,000.

7. The diversity requirement is also satisfied. UBS is headquartered or incorporated in New York, New Jersey, and Delaware. Anderson is a resident of Idaho.

8. This Court has personal jurisdiction over Anderson because he is a resident of the state of Idaho and received an arbitration award pursuant to an arbitration proceeding that took place in Boise, Idaho. *See* 9 U.S.C. § 9.

9. Venue is proper in this Court pursuant to 9 U.S.C. § 10(a) and 28 U.S.C. § 1391(b)(2). The FAA permits the federal court "in and for the district wherein the award was made" to enter an order vacating an arbitration award. 9 U.S.C. § 10(a). The general venue provision allows civil actions to be brought in a judicial district "in which a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. § 1391(b)(2). The Award was made in Boise, Idaho, where the arbitration hearing took place.

BACKGROUND

A. Anderson's Termination For Unauthorized Trading And Failure To Report A Customer Complaint.

10. On January 31, 2012, UBS hired Anderson as a Financial Advisor in its Boise, Idaho office. In connection with his employment, Anderson signed a Letter of Understanding setting forth employment terms. That letter expressly provides that Anderson's employment with UBS "would be 'at will'" and accordingly "could be terminated with or without cause and with or without notice at any time at the option of [Anderson] or UBS."

11. On January 14, 2020, Anderson executed two sell orders on a client account totaling $190,000. On January 16, 2020, Anderson executed four buy orders totaling $289,657 on the same client account. The client did not authorize any of the trades.

12. On January 17, 2020, Anderson emailed the client with a proposal for trades that he claimed they had previously discussed. Those trades correspond to the trades Anderson executed on January 14 and 16. The section of the email addressing the trades started with "My suggestion is…" and did not disclose that the trades had already been executed.

13. On January 23, 2020, the client emailed Anderson, expressing her displeasure that Anderson placed the trades without her consent. Anderson did not report this communication to UBS, as required, as a client complaint.

14. On November 2, 2020, following an internal investigation, UBS terminated Anderson.

15. Immediately thereafter, UBS filed the requisite Form U5 disclosure with FINRA, stating that Anderson was "[d]ischarged for violating firm policy by failing to obtain verbal authority from client in connection trades made in client's account and failure to report customer complaint when client complained about the trades."

16. Approximately one month after Anderson was terminated, he was hired to join a competitor firm.

B. The Arbitration And The Erroneous Award.

17. On November 21, 2012, Anderson initiated an arbitration against UBS before a FINRA arbitration panel, as required under FINRA Rule 13200.

18. Anderson's Statement of Claim asserted eight claims: (1) wrongful termination, (2) breach of duty of good faith and fair dealing, (3) breach of fiduciary duty, (4) breach of contract, (5) unfair competition/unjust enrichment, (6) discrimination based on age in violation of the Age

Discrimination in Employment Act ("ADEA"), 29 U.S.C. §§ 621-634, (7) equity, and (8) defamation.

19. On February 21, 2022, UBS filed a Statement of Answer denying Anderson's allegations, asserting affirmative defenses, and contending that each of Anderson's claims failed as a matter of law.

20. From April 30 through May 2, 2025, the parties presented their evidence to a three-person FINRA arbitration panel in Boise, Idaho.

21. The arbitration panel delivered its Award on June 3, 2025.

22. In the Award, a majority of the arbitration panel granted Anderson's age discrimination claim under the ADEA and awarded Anderson $1,000,000 in compensatory damages.

23. A majority of the panel also recommended expungement of certain information from the Form U5 that UBS filed, and that the following description of Anderson's conduct be substituted:

> Discharged for violating firm policy of obtaining verbal authority at time of trade and failure to timely report customer complaint within 2 days with mitigating circumstances: client previously agreed to the trades in principle, timing of trades intended to prevent the account converting to a brokerage account which would have resulted in commissions, firm concluded trades were in client's best interest, client ratified the trades, advisor made no profit, and advisor had clean multiple decade record.

24. In support of its Award, that panel majority offered findings that, *inter alia*, Anderson "raised serious questions about the termination process including a prolonged time to terminate, the severity of the offense, potential disparate treatment of [Anderson] as compared to others at [UBS], and potential financial motivations for termination," and that Anderson's "termination was wrongful." The findings do not, however, state or suggest that the termination was based on Anderson's age or otherwise discriminatory.

25. The panel majority stated that "[a]ny and all claims for relief not specifically addressed [in the Award], including any requests for punitive damages, treble damages, and attorneys' fees, are denied."

26. The dissenting arbitrator issued a statement disagreeing with the majority's findings.

27. The dissenting arbitrator emphasized that Anderson was an at-will employee that UBS was entitled to terminate "for any reason other than those protected by statute." The dissenting arbitrator would have found that the "reasons for [Anderson's] termination were not pretextual and were well within management's discretion for an 'at will' employee."

28. The dissent further noted that "[t]he only mention of the age discrimination claim [at the hearing] occurred when [Anderson] was asked … whether he had heard any remarks from [UBS] concerning his age and he answered 'no.'"

29. The dissent concluded, "[t]he panel does not have carte blanche to create a contract to which the parties have not agreed, and in doing so has displayed a manifest disregard of the law."

TIMELINESS AND GROUNDS FOR RELIEF

30. Pursuant to 9 U.S.C. § 12, UBS has brought this action within three months after the award was executed on June 3, 2025.

31. The FAA provides for vacatur of an arbitration award upon a finding that, among other bases, the arbitrators exceeded their authority. 9 U.S.C. § 10(a)(4). In addition, it is appropriate for a court to vacate an arbitration award when the award is "completely irrational" and when arbitrators have ruled in "manifest disregard of the law." *Comedy Club, Inc. v. Improv*

West Assocs., 553 F.3d 1277, 1281 (9th Cir. 2009); *Kyocera Corp. v. Prudential-Bache*, 341 F.3d 987, 998 (9th Cir. 2003).

32. UBS seeks vacatur of the award on the ground that the panel majority issued an award that is irrational on its face, in that its stated findings—that Anderson was wrongfully terminated—do not support the sole claim on which it purported to find UBS liable, which was for age discrimination.

33. Further, in finding Anderson liable for age discrimination, the panel majority manifestly disregarded the law and ignored undisputed, legally dispositive facts. At the arbitration hearing, Anderson did not provide any evidence or legal argument to support his age discrimination claim, and the panel did not identify any such evidence in its findings. Nor did Anderson or the panel majority make any attempt to apply the legal framework for age discrimination.

RELIEF REQUESTED

WHEREFORE, UBS respectfully requests that this Court:

1. Issue an order pursuant to 9 U.S.C. § 10 vacating the Award.

2. Grant such further relief as this Court deems just and proper.

DATED: July 3, 2025

HOLLAND & HART LLP

By: */s/Christopher C. McCurdy*
Teague I. Donahey
Christopher C. McCurdy

Jill Rosenberg (pro hac vice motion forthcoming)
Daniel A. Rubens (pro hac vice motion forthcoming)
ORRICK, HERRINGTON & SUTCLIFFE LLP

Attorneys for Petitioner UBS Financial Services, Inc.

35358443_v1

Exhibit A

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Randy S. Anderson

vs.

Respondent
UBS Financial Services, Inc.

Case Number: 21-02871

Hearing Site: Boise, Idaho

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Associated Person vs. Member

This matter was decided by an all-public panel pursuant to Rule 13802 of the Code of Arbitration Procedure ("Code").

REPRESENTATION OF PARTIES

For Claimant Randy S. Anderson ("Claimant"): Jarrod J. Malone, Esq. and Brandon Taaffe, Esq., Shumaker, Loop & Kendrick, LLP, Sarasota, Florida.

For Respondent UBS Financial Services, Inc. ("Respondent"): Robert H. Bernstein, Esq. and Michael J. Slocum, Esq., Greenberg Traurig LLP, Florham Park, New Jersey.

CASE INFORMATION

Statement of Claim filed on or about: November 18, 2021.
Claimant signed the Submission Agreement: November 15, 2021.

Statement of Answer filed by Respondent on or about: February 21, 2022.
Respondent signed the Submission Agreement: February 28, 2022.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: wrongful termination; breach of duty of good faith and fair dealing; breach of fiduciary duty; breach of contract; unfair competition/unjust enrichment; discrimination based on age in violation of the age discrimination in Employment Act, 29 U.S.C. §§ 621-634; equity; and defamation. In addition, Claimant asserted a claim alleging that the Form U5 filed by Respondent, as part of

registration records maintained by the Central Registration Depository ("CRD"), is defamatory in nature.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Compensatory damages for loss of income, business, deferred compensation, and for mental pain and anguish sustained by him (trebled);
2. Punitive damages in an amount to be determined by the Panel but sufficient to prevent a large firm like Respondent from acting in this manner in the future;
3. Pre-award interest;
4. Forum fees and costs, including expert witness fees;
5. Attorneys' fees;
6. Disgorgement of profit;
7. Expungement of Claimant's Form U5; and
8. Such other and further relief as may be appropriate.

In the Statement of Answer, Respondent requested:

1. Denial of Claimant's claim in its entirety;
2. Dismissal of Claimant's claim with prejudice;
3. Attorneys' fees; and
4. Such other relief as the Panel deems just and proper.

At the hearing, Claimant requested:

1. Past economic damages in an amount between $1,827,930.00 and $2,176,026.10;
2. Future damages in an amount between $1,827,930.00 and $2,176,026.10;
3. Emotional distress damages in unspecified amount; and
4. Punitive damages in the amount of a multiple economic damages.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On May 9, 2023, Claimant filed a Motion to Sanction Respondent. On May 19, 2023, Respondent filed an opposition to the motion. On May 24, 2023, Claimant filed a reply in support of the motion. On August 25, 2023, the Panel heard oral arguments on the motion. On August 28, 2023, the Panel denied the motion.

The Panel has provided an explanation of the decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

FINDINGS

A majority of the Panel concluded that Claimant raised serious questions about the termination

process including a prolonged time to terminate, the severity of the offense, potential disparate treatment of Claimant as compared to others at Respondent's firm, and potential financial motivations for termination. Against that backdrop, Respondent failed to present competent evidence of the actual reason for termination. While Respondent purported to terminate based upon unauthorized trading, it conducted an investigation for which it claimed it waived privilege but then produced only redacted documents in material respects. Most troublingly, Respondent informed the Panel and Claimant that a specific individual made the termination decision and that such individual would be testifying at the hearing. At the hearing, it became clear that the individual had long disagreed with the termination decision and only "agreed" with it and executed after being informed of the decision actually made by more senior members of management, none of which were present at the hearing. Additionally, Respondent produced no documents explaining the decision to terminate and also questions were raised about documents missing from Claimant's files left at Respondent's firm. All of this came after a period of repeated motions by Claimant attempting to get Respondent to comply with its obligations to provide discovery in good faith under applicable FINRA rules. In light of the lack of competent testimony to the termination decision and lack of transparency in the document exchange of documents and evidence, along with the serious questions raised above about the termination process, a majority of the Panel concluded that the termination was wrongful. A majority of the Panel further concluded that some of Respondent's practices after termination such as running advertisements suggesting members of Claimant's team still worked for Respondent and failure to timely take down Claimant's webpages from Respondent's site were unfair to Claimant as was the description of his termination in the U5.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, a majority of the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's statutory employment discrimination claims, pursuant to discrimination based on age in violation of the age discrimination in Employment Act, 29 U.S.C. §§ 621-634, are granted. Claimant was above 60 years and the termination was disproportionately severe.

2. Respondent is liable for and shall pay to Claimant the sum of $1,000,000.00 in compensatory damages.

3. A majority of the Panel recommends the expungement of the Reason for Termination and Termination Explanation in Section 3 of Randy S. Anderson's (CRD Number 2702160) Form U5 filed by UBS Financial Services Inc. (CRD Number 8174) on November 25, 2020 and maintained by the CRD. The Reason for Termination shall be changed to "Other". The Termination Explanation shall be deleted in its entirety and replaced with the following language: "Discharged for violating firm policy of obtaining verbal authority at time of trade and failure to timely report customer complaint within 2 days with mitigating circumstances: client previously agreed to the trades in principle, timing of trades intended to prevent the account converting to a brokerage account which would have resulted in commissions, firm concluded trades were in client's best interest, client ratified the trades, advisor made no profit, and advisor had clean multiple decade record." This directive shall apply to all references to the Reason for Termination and Termination Explanation.

A majority of the Panel further recommends that the response to the "Allegation(s)" question (Question 4) of the Termination DRP related to Occurrence Number 2098033 maintained by the CRD for Randy S. Anderson be deleted in its entirety and replaced with the following language: "Discharged for violating firm policy of obtaining verbal authority at time of trade and failure to timely report customer complaint within 2 days with mitigating circumstances: client previously agreed to the trades in principle, timing of trades intended to prevent the account converting to a brokerage account which would have resulted in commissions, firm concluded trades were in client's best interest, client ratified the trades, advisor made no profit, and advisor had clean multiple decade record." This directive shall apply to all references to the "Allegation(s)" question.

A majority of the Panel further recommends that the response to the "Comment (Optional)" question (Question 6) of the Termination DRP related to Occurrence Number 2098033 maintained by the CRD for Randy S. Anderson should be deleted in its entirety and replaced with the following language: "Discharged for violating firm policy of obtaining verbal authority at time of trade and failure to timely report customer complaint within 2 days with mitigating circumstances: client previously agreed to the trades in principle, timing of trades intended to prevent the account converting to a brokerage account which would have resulted in commissions, firm concluded trades were in client's best interest, client ratified the trades, advisor made no profit, and advisor had clean multiple decade record." This directive shall apply to all references to the "Comment (Optional)" question.

The above recommendations are made with the understanding that the registration records are not automatically amended. Randy S. Anderson must obtain confirmation of this Award from a court of competent jurisdiction, before the CRD will execute the expungement directive, and must forward a copy of the Court Order to FINRA's Credentialing, Registration, Education and Disclosure Department for the amendments to be incorporated into the Registration Records.

4. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys' fees, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees
FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee	=$	1,600.00

**The filing fee is made up of a non-refundable and a refundable portion.*

Claimant is assessed a $200.00 filing fee in accordance with Rule 13802 of the Code. The balance of the non-refundable portion of the filing fee, in the amount of $200.00, is assessed to Respondent.

Member Fees
Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge	=$	2,000.00
Member Process Fee	=$	3,850.00

Late Pre-Hearing Cancellation Fees
Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

September 28, 2022 cancellation requested by parties	=	Waived

Postponement Fees
Postponements granted during these proceedings for which fees were assessed or waived:

December 12 – December 16, 2022, postponement requested by parties	=$	1,150.00
October 23 – October 27, 2023, postponement requested by parties	=	Waived
Total Postponement Fees	=$	1,150.00

The Panel has assessed the total postponement fees to Respondent.

Discovery-Related Motion Fees
Fees apply for each decision rendered on a discovery-related motion.

Two (2) decisions on discovery-related motions on the papers with one (1) Arbitrator @ $200.00/decision	=$	400.00

Claimant submitted one (1) discovery-related motion
Respondent submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees	=$	400.00

The Panel has assessed the total discovery-related motion fees to Respondent.

Hearing Session Fees and Assessments
The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions with a single Arbitrator @ $450.00/session		=$	900.00
Pre-Hearing Conferences:	October 28, 2022	1 session	
	April 4, 2025	1 session	
Four (4) pre-hearing sessions with the Panel @ $1,150.00/session		=$	4,600.00
Pre-Hearing Conferences:	March 22, 2022	1 session	

	August 25, 2023	1 session		
	March 20, 2024	1 session		
	December 5, 2024	1 session		
Five (5) hearing sessions @ $1,150.00/session			=$	5,750.00
Hearings:	April 30, 2025	2 sessions		
	May 1, 2025	2 sessions		
	May 2, 2025	1 session		
Total Hearing Session Fees			=$	11,250.00

The Panel has assessed the total hearing session fees to Respondent in accordance with Rule 13802 of the Code.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATION PANEL

Ethan Joseph Brown	-	Public Arbitrator, Presiding Chairperson
Dean J. Dietrich	-	Public Arbitrator
Michael D. Briggs	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

Concurring Arbitrators' Signatures

Ethan Joseph Brown — **06/03/2025**

Ethan Joseph Brown
Public Arbitrator, Presiding Chairperson

Signature Date

Michael D. Briggs — **05/29/2025**

Michael D. Briggs
Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

These are the undisputed facts as set forth in Claimant's State of Claim and Prehearing Brief: Claimant traded securities aggregating almost $500,000.00 on two separate days in his client's account without her authorization, though he claimed she had agreed in principle to the transactions some days before. Following these unauthorized trades, he wrote her a deceptive email "'suggesting" she should make these trades when in fact he had already made them. (On cross-examination, he described his duplicity as "my bad".) When she discovered this deception, she wrote back that she was "not pleased" with what he had done. Claimant failed to report her "displeasure" to his supervisor, claiming that this did not constitute a reportable complaint. The client did subsequently ratify the trades, but six weeks later she abruptly transferred her account to another firm, even though she had been Claimant's client for twenty years and had followed him from another firm. She also refused to respond to his emails and calls.

Following Claimant's termination, FINRA and the Certified Financial Planner Board investigated the incident and FINRA found that "[d]uring January 2020 you effected two sell transactions in the account of a customer using discretion without prior authorization". FINRA issued a cautionary letter.

Claimant had an "at will "employment agreement with Respondent, which is standard in the industry, that permitted Respondent to terminate Claimant for any reason other than those

protected by statute. Nevertheless, Claimant argued “that he was not terminated for two trades executed for the client’s benefit. He was terminated because UBS feared he would leave and take the majority of his clients with him”. (Statement of Claim) Claimant’s own testimony proved this claim to be spurious. He conceded that movement from firm to firm in the industry was very common. Indeed, he testified he received about two solicitations per week from competitors and they were so numerous that he asked his assistant to fend them off as spam. He also testified it was common for employees from different firms to socialize with one another. To this point, Mr. Anderson stated in his prehearing brief that he “believes that UBS management … terminated him ... because they found out he was going golfing with a competing firm’s manager.” But on cross-examination, he conceded that he didn’t know if anyone at UBS was aware of his golf date and postulated that his allegation was a “theory”. He also agreed that when management is concerned about the departure of a valuable employee to a competitor, the customary response is not to fire the employee but to discuss the matter with him and attempt to dissuade him. The only mention of the age discrimination claim occurred when Claimant was asked at the hearing whether he had heard any remarks from Respondent concerning his age and he answered “no”.

If Claimant’s employment could only have been terminated for cause, his spurious claims at least would have survived a motion to dismiss in court. But because he was an at will employee, the majority of the panel decided to rewrite the employment agreement between the parties to require termination for cause. The panel then usurped management’s judgment as to what constitutes “cause” by declaring that respondent UBS violated this rewritten contract. Finally, adding insult to injury, the panel assessed one million dollars in damages for the violation of a contract it had written and the terms of which neither party had entered into.

If Claimant could only have been terminated for cause, was Respondent’s decision to terminate Claimant appropriate? While Claimant did not financially benefit from the unauthorized trades because they were made in a fee based account, his attempt to cover up his actions by suggesting to the client she should make these trades when they had already occurred and his failure to report her displeasure surely weighed in management’s decision. While much was made of the fact that Claimant was terminated ten months after the unauthorized trades and middle management had recommended “heightened supervision” instead of termination, the final decision was apparently made by the CEO, who could have been influenced by Claimant's lies to his client and her subsequent departure from the firm. In any case, it is apparent that the reasons for Claimant’s termination were not pretextual and were well within management’s discretion for an "at will" employee.

If I had been the decision maker, I would probably not have terminated Claimant. But that is a decision for management to make under the existing contract, not by the panel under a contract devised by it. The panel does not have carte blanche to create a contract to which the parties have not agreed, and in doing so has displayed a manifest disregard of the law.

I respectfully dissent.

Dean J. Dietrich **05/29/2025**

Dean J. Dietrich
Public Arbitrator

Signature Date

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

June 03, 2025
Date of Service (For FINRA Dispute Resolution Services use only)

Teague I. Donahey (ISB #9963)
Christopher C. McCurdy (ISB #8552)
HOLLAND & HART LLP
800 W. Main Street, Suite 1750
Boise, ID 83702-7714
Telephone: 208.342.5000
TIDonahey@hollandhart.com
CCMcCurdy@hollandhart.com

Jill L. Rosenberg (*pro hac vice* motion forthcoming)
Daniel A. Rubens (*pro hac vice* motion forthcoming)
ORRICK, HERRINGTON & SUTCLIFFE LLP
51 W. 52nd Street
New York, NY 10019-6142
Telephone: 212.506.5000
jrosenberg@orrick.com
drubens@orrick.com

Attorneys for Petitioner UBS Financial Services, Inc.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

UBS FINANCIAL SERVICES, INC., Petitioner. vs. RANDY S. ANDERSON, Respondent.	)	Case No. **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO VACATE ARBITRATION AWARD**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

PRELIMINARY STATEMENT

Moving to vacate an arbitration award is not a step that UBS takes lightly. But the award here was in no way ordinary. Arbitration awards entered by the Financial Industry Regulatory Authority ("FINRA") are typically unreasoned and unanimous. The panel majority here, however, chose to provide an explanation of its decision finding in favor of respondent Randy Anderson, a former UBS financial advisor, on his claim for discrimination in violation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §§ 621-634. Based on that purported violation, the panel majority awarded Anderson $1 million in compensatory damages. Yet none of the majority's findings so much as hinted that UBS fired Anderson because of his age. Instead, the majority questioned UBS's investigation into Anderson's undisputed misconduct—unauthorized trading in a client account followed by his failure to report the client's dissatisfaction with those unauthorized trades—and concluded that termination was too severe a sanction. But those issues pertain to Anderson's claim for wrongful termination—a claim on which the majority found that UBS was *not* liable. Indeed, Anderson all but abandoned his ADEA claim at the hearing, resting instead on his submission that UBS fired him for an entirely different reason: because it suspected he would join a competitor firm and take clients with him.

As the dissenting arbitrator correctly concluded, the majority's findings reflected "manifest disregard of the law." Ex. 1 at 8.[1] For one thing, the majority ignored the fact that Anderson was an at-will employee subject to termination for any reason not prohibited by statute. The panel was able to find that UBS terminated Anderson without cause only by rewriting his employment agreement to incorporate a for-cause standard the parties never agreed to. Just as importantly, Anderson

[1] Citations to "Ex." refer to exhibits to the accompanying Declaration of Christopher C. McCurdy filed in support of this motion.

adduced no evidence of age discrimination—zero—and the panel made no effort to apply the ADEA's legal framework to the undisputed facts as to the sole claim on which it based its $1 million award.

The upshot is an arbitration award that is irrational on its face, ignores the controlling legal framework for ADEA claims, and overrides Anderson's own decision to rest his case solely on a theory that UBS wrongfully terminated him for reasons that, while allegedly improper, had nothing to do with his age. As deferential as judicial review of arbitration awards may be, this award cannot pass muster. The award should be vacated.

BACKGROUND

A. UBS Hires Anderson As An At-Will Employee, And Anderson Agrees To Comply With UBS's Policies.

In 2012, UBS hired Anderson as a Financial Advisor in its Boise, Idaho office. Ex. 6 at 3. Anderson's offer letter provided that his employment with UBS would be "at will" and could be terminated without cause or notice at any time. Ex. 7 ¶ 24. In connection with his employment, Anderson also signed a written acknowledgement confirming his access to, and obligation to comply with, UBS's policies. Ex. 8 at 1. Those policies included UBS's Code of Conduct and Ethics, which provides that UBS is committed to "a culture where responsible behavior is ingrained" in its work and in its employees' interactions with clients. Ex. 9 at 3. As part of that commitment, UBS employees, including Anderson, agreed to maintain "high standards of ethical behavior" and "act fairly, honestly, and in good faith with everyone." *Id*. at 8. UBS employees "don't stretch, distort, or try to hide the facts or the truth." *Id*. at 8. Anderson agreed that failure to abide by UBS policies could result in consequences "from reprimands and warnings to dismissal." *Id*. at 17; *see also* Ex. 10 (Communications Policy) at 1.

Among UBS's policies are guidelines for responding to client complaints. The relevant policy provides that if UBS employees receive such a complaint, they must "immediately report it to" the appropriate supervisor. The employee must also "submit the complaint and supporting documentation to the Client Relations Group within two (2) business days." Ex. 11 at 4.

As a Financial Advisor, Anderson provided clients guidance on how best to manage their money, providing tailored investment strategies that aligned with the clients' financial goals. But it was the clients' decision whether to take his advice with respect to their investment accounts. UBS's Order Entry Policy thus provides that Financial Advisors "must speak directly to clients and obtain the client's consent prior to entering each order, unless the [Financial Advisor] has permissible discretionary authority." Ex. 13 at 4.

B. UBS Terminates Anderson After He Makes Unauthorized Trades In A Client's Account And Fails To Report The Client's Complaint.

On January 14 and January 16, 2020, Anderson made unauthorized trades in a longtime client's account over which he did not have firm-approved investment discretion. Specifically, he executed two sell orders totaling $190,000, followed by four buy orders totaling $289,657—all without informing the client. Ex. 6 at 4. According to Anderson, he placed these trades without authorization because doing so was necessary to prevent UBS from terminating the client's account from a non-discretionary advisory program based on low trading activity, which in turn would have resulted in additional fees. Anderson thus maintained that he placed the trades on January 14 because he could not reach the client prior to the termination deadline of January 16. Yet Anderson had already received multiple notices of that impending termination, including a 60-day notice that dated back to November 16, 2019. Ex. 14 at 1.

On January 17, 2020, the day after executing the last set of trades, Anderson emailed the client with a purported "proposal" for several trades that he claimed they had previously discussed.

The email began: "My suggestion is … ," and then proceeded to "suggest" the trades he had already executed. Ex. 6 at 4. The client did not respond to his proposal.

Instead, almost a week later, the client discovered that the trades had already been executed without her approval, likely because she received trade confirmations in the mail. *See* Ex. 6 at 4. The client reported her displeasure, telling Anderson: "[I]t looks as though [you have] already completed the transfer without my approval, which I am not pleased with. We [will] need to discuss this when I have a chance to review my options." Ex. 19 at 3. Anderson did not report the client's dissatisfaction with his unauthorized trading to UBS as a client complaint. Ex. 6 at 4. Six weeks later, the client terminated her 20-year relationship with Anderson and transferred her account from UBS. Ex. 1 at 7.

UBS conducted an internal investigation into the unreported client complaint, interviewing Anderson about the unauthorized trades. Ex. 6 at 5. Anderson admitted that he had made them without client approval, and that he had failed to report the client's email expressing her displeasure with his unauthorized trading. *Id*. at 5. After the investigation concluded, UBS terminated Anderson's employment on November 2, 2020. *Id*. at 6. Approximately one month later, Anderson was hired by a competitor firm. Ex. 16 at 6.

FINRA requires broker-dealer firms like UBS to report terminations and provide the reasons on a Form U5. UBS did so, explaining that Anderson was "[d]ischarged for violating firm policy by failing to obtain verbal authority from client in connection trades made in client's account and failure to report customer complaint when client complained about the trades." Ex. 12 at 1. After the termination, FINRA and the Certified Financial Planner Board each investigated Anderson and the unauthorized trades. FINRA ultimately issued a Cautionary Action Letter to

Anderson and found that he "effected two sell transactions in the account of a customer using discretion without prior authorization." Ex. 1 at 7.

C. Anderson Initiates Arbitration Challenging His Termination But Adduces No Evidence Of Age Discrimination And Fails To Develop Any Legal Argument On That Claim.

1. Anderson's Statement of Claim and UBS's Statement of Answer

On November 21, 2021, Anderson commenced a FINRA arbitration by filing a Statement of Claim asserting eight causes of action: (1) wrongful termination, (2) breach of duty of good faith and fair dealing, (3) breach of fiduciary duty, (4) breach of contract, (5) unfair competition/unjust enrichment, (6) discrimination based on age in violation of the ADEA, (7) equity, and (8) defamation. Ex. 2 at 17-20. In the Statement of Claim, Anderson argued at length that he was terminated without cause and based on an improper reason: "because [UBS] suspected he was moving to another firm." *Id*. at 2; *see also id.* at 16 ("Anderson was not terminated for two trades executed for the client's benefit. He was terminated because UBS feared he would leave and take the majority of his clients with him."). Anderson contended that his unauthorized trading was a minor mistake that UBS should not have treated as a terminable offense.

The Statement of Claim also asserted in conclusory terms that UBS engaged in age discrimination. It alleged at one point that Anderson's Branch Manager "conspired with other UBS employees to terminate Mr. Anderson because of his age." *Id*. at 14. And in pleading a cause of action for age discrimination in violation of the ADEA, the Statement of Claim asserted no factual basis other than the statement that Anderson was 61 years old at the time of termination and that "[u]nder information and belief, Anderson was terminated due to his age." *Id*. at 19.

On February 21, 2022, UBS filed its Statement of Answer denying Anderson's allegations, raising affirmative defenses, and explaining that Anderson's claims fail as a matter of law. As for

Anderson's principal claim regarding his alleged wrongful termination, UBS responded that Anderson was an at-will employee who could be terminated for any reason not prohibited by statute. With respect to the conclusory age discrimination claim, UBS noted that the claim was "baseless," as "UBS terminated [Anderson] for his admitted misconduct, not due to his age." Ex. 6 at 3. UBS further explained that ADEA claims are "analyzed under the *McDonnell Douglas* framework," and "[t]o establish a prima facie case of discrimination, a plaintiff must allege in her complaint that: (1) she was at least forty years old; (2) she was performing her job satisfactorily; (3) discharged; and (4) either replaced by a substantially younger employee with equal or inferior qualifications or discharged under circumstances otherwise giving rise to an inference of age." *Id*. at 11-12 (quoting *Sheppard v. David Evans & Assoc*., 694 F.3d 1045, 1049 (9th Cir. 2012)). Applying that standard, UBS pointed out that the claim failed from the outset for lack of evidence:

> Here, the facts preclude a finding that [Anderson's] termination occurred "under circumstances otherwise giving rise to an inference of discrimination," that age discrimination was the "but-for" cause of his termination, or that he was otherwise subjected to invidious discriminatory conduct. UBS terminated [Anderson] after he violated its policies and did not admit to wrongdoing until after UBS discovered the unauthorized trades and misleading client communications. Apart from [Anderson's] age, no facts exist to support his theory.

Id. at 12.

2. Anderson's Pre-Hearing Brief

In December 2024, Anderson filed a pre-hearing brief doubling down on his theory that he was terminated because UBS was worried that he would move over to a competitor. Specifically, Anderson argued that "UBS management … terminated him … because they found out he was going golfing with a competing firm's manager." Ex. 15 at 16. Meanwhile, Anderson admitted in this brief that he "violated a UBS policy by conducting the trades without final verbal confirmation," concocted a "proposal" to the client "to imply the trades had not yet occurred when they

had," and that "he did not timely forward" the client's expression of displeasure to firm management. *Id*. at 3, 7.

As for the age discrimination claim, Anderson asserted merely that he "was terminated for conduct for which others have not been terminated and UBS knew that he was a protected age class and close to retirement." *Id*. at 18. But Anderson made no other attempt to prove that UBS terminated him because of his age. Instead, Anderson complained about the arbitration panel's decisions on prior discovery motions, which he argued had deprived him of "discovery relating to others in his region who committed similar wrongs." *Id*. at 20. And in concluding the age discrimination section of his brief, he again argued—wholly inconsistent with the notion that he was terminated based on his age—that he was fired "so that UBS could better retain his clients when they thought he was leaving." *Id*. at 22.

3. Anderson's Case at the Arbitration Hearing

The arbitration hearing took place between April 30 and May 2, 2025. At the arbitration hearing, Anderson made no effort to argue, introduce evidence of, or prove his age-discrimination claim. His counsel did not mention that claim in his opening or closing statement, instead arguing that the case "is one of wrongful termination … [based on a] clearly shoddy and faulty investigation." Ex. 16 at 5. Indeed, the only references to "age discrimination" or similar concepts during the hearing testimony were from a UBS witness who denied that age had anything to do with UBS's termination decision, Ex. 17 at 2, and when Anderson confirmed that he had never heard an "ageist remark" while at UBS, Ex. 20 at 2. There was literally no other reference at the hearing suggesting that UBS terminated Anderson because of his age. Moreover, Anderson again conceded at the hearing that he engaged in misconduct by trading without client authorization. Ex. 18

at 2-3. When asked why he sent the client an email "suggesti[ng]" trades that Anderson had already made, Anderson responded, "it's my bad." Ex. 19 at 2. Instead of attempting to prove that Anderson was fired because of his age, Anderson's counsel focused his presentation on proving the termination lacked "just cause," attacking UBS's investigation and choice to terminate Anderson as opposed to imposing some lesser sanction.

C. A Divided Panel Awards Anderson $1 Million For His Age Discrimination Claim Upon Concluding That His Termination Was Wrongful, But Without Finding That UBS Terminated Anderson Because Of His Age.

The arbitration panel issued its Award on June 3, 2025. Two arbitrators on the panel voted to grant Anderson's age discrimination claim under the ADEA, noting only that Anderson "was above 60 years and the termination was disproportionately severe," and awarded Anderson $1,000,000 in compensatory damages. Ex. 1 at 3. In support of that Award, the panel majority included a findings section in which it concluded that Anderson "raised serious questions about the termination process including a prolonged time to terminate, the severity of the offense, potential disparate treatment of [Anderson] as compared to others at [UBS], and potential financial motivations for termination." *Id*. at 2-3. The findings further concluded that Anderson's "termination was wrongful." *Id*. at 3. The findings do not, however, state or suggest that the termination was based on Anderson's age or otherwise discriminatory or reference any facts or evidence adduced at the hearing that would support such a conclusion.

The panel majority also recommended expungement of certain information from the Form U5 that UBS filed, and substituting the following description of Anderson's conduct:

> Discharged for violating firm policy of obtaining verbal authority at time of trade and failure to timely report customer complaint within 2 days with mitigating circumstances: client previously agreed to the trades in principle, timing of trades intended to prevent the account converting to a brokerage account which would have resulted in commissions, firm concluded trades were in client's best interest, client

> ratified the trades, advisor made no profit, and advisor had clean multiple decade record.

Id. at 3. The panel majority then concluded that "[a]ny and all claims for relief not specifically addressed [in the Award], including any requests for punitive damages, treble damages, and attorneys' fees, are denied." *Id*. at 4.

The dissenting arbitrator issued a statement disagreeing with the panel majority's findings, emphasizing that Anderson was an at-will employee that UBS was entitled to terminate "for any reason other than those protected by statute." *Id*. at 7-8. Based on the "undisputed" facts, the dissenting arbitrator would have found that UBS's "reasons for [Anderson's] termination were not pretextual and were well within management's discretion for an 'at will' employee." *Id*. at 7-8. Significantly, with respect to the age discrimination claim, the dissent further noted that "[t]he only mention of the age discrimination claim [at the hearing] occurred when [Anderson] was asked … whether he had heard any remarks from [UBS] concerning his age and he answered 'no.'" *Id*. at 8. Instead, the dissent noted that the hearing had centered on Anderson's "spurious" claim that "UBS feared he would leave and take the majority of his clients with him." *Id*. The dissent concluded: "The panel does not have carte blanche to create a contract to which the parties have not agreed, and in doing so has displayed a manifest disregard of the law." *Id*.

LEGAL STANDARD

The Federal Arbitration Act ("FAA") applies whenever there is a "written provision in … a contract evidencing a transaction involving [interstate] commerce to settle by arbitration a controversy thereafter arising out of such contract." 9 U.S.C. § 2. Although courts must afford significant deference to arbitration awards, that deference has its limits. The FAA specifically provides that awards may be vacated upon a finding that the arbitrators exceeded their authority, or so imperfectly executed them that a "mutual, final and definite award" on the subject matter was

not made. *Id.* § 10(a); *Collins v. D.R. Horton, Inc.*, 505 F.3d 874, 879 (9th Cir. 2007); *see also United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 42-44 (1987); *Comedy Club, Inc. v. Improv W. Assocs.*, 553 F.3d 1277, 1281 (9th Cir. 2009). In addition, it is settled law in this Circuit that arbitrators have "exceeded their powers" when they exhibit a "manifest disregard of the law," or when they issue an award that is "completely irrational." *Comedy Club, Inc.*, 553 F.3d at 1290. And in applying that standard, the Ninth Circuit has held that "a federal court will not confirm an arbitration award that is legally irreconcilable with the undisputed facts." *Coutee v. Barington Cap. Grp., L.P.*, 336 F.3d 1128, 1133 (9th Cir. 2003).

ARGUMENT

I. The Award Should Be Vacated As Irrational On Its Face.

This Court need look no further than the face of the Award to recognize that it cannot be sustained, even under the FAA's forgiving standard. The Award rests on a fundamental disconnect between the cause of action upon which it held UBS liable for $1 million in compensatory damages—age discrimination in violation of the ADEA—and the findings it offered in support of that determination. The panel majority analyzed the claim solely as one of wrongful termination: It found "serious questions about the termination process including a prolonged time to terminate, the severity of the offense, potential disparate treatment of [Anderson] as compared to others at Respondent's firm, and potential financial motivations for termination"; discerned a lack of "evidence of the actual reason for termination"; questioned UBS's approach to pre-hearing discovery and the hearing testimony of a manager who participated in the termination decision; and accordingly concluded that "the termination was wrongful." Ex. 1 at 2-3. But the Award goes on to make clear that "[a]ny and all claims for relief not specifically addressed … , including any requests for punitive damages, treble damages, and attorneys' fees, are denied." *Id.* at 4. Thus, the

panel majority *dismissed* the same wrongful termination claim that it offered as the basis for its purported age discrimination finding—an outcome that cannot be defended as rational.

In determining whether an award is so irrational as to require vacatur, courts consider whether the "arbitration decision fails to draw its essence from the agreement," *Comedy Club*, *Inc.*, 553 F.3d at 1288. Thus, arbitration awards on breach-of-contract claims must be vacated when they "disregard contract provisions to achieve a desired result." *Aspic Eng'g & Constr. Co. v. ECC Centcom Constructors LLC*, 913 F.3d 1162, 1167 (9th Cir. 2019). Put differently, an arbitrator may not "dispense his own brand of industrial justice by disregard[ing] a specific contract provision to correct what he perceived as an injustice." *Id.* (quoting *United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 597 (1960)) (quotation marks omitted); *accord Pac. Motor Trucking Co. v. Auto. Machinists Union*, 702 F.2d 176, 177 (9th Cir. 1983) (affirming vacatur of award on this basis).

Dispensing "its own brand of industrial justice" is precisely what the panel majority did here, as the dissenting arbitrator explained (and the majority ignored). It is undisputed that Anderson was an at-will employee of UBS. Yet "the majority of the panel decided to rewrite the employment agreement between the parties to require termination for cause." Ex. 1 at 8. As the dissent emphasized, "[t]he panel does not have carte blanche to create a contract to which the parties have not agreed." *Id.* By imposing a for-cause standard on an agreement that provides otherwise, the majority "disregard[ed] the plain text of a contract without legal justification," thereby committing an error requiring vacatur. *Aspic*, 913 F.3d at 1169; *cf.* Ex. 1 at 8 (Award) ("[A]dding insult to injury, the panel assessed one million dollars in damages for the violation of a contract it had written and the terms of which neither party had entered into.").

Indeed, the error here is even worse than the one that led to vacatur in *Aspic*. The panel majority did not just impose a termination standard that lacked any basis in the parties' agreement or prevailing law. It then found for Anderson on a discrimination claim that required far more than proving that UBS violated the (invented) contractual standard of termination for cause. If an arbitrator's issuance of an award that fails to "draw its essence" from a contract is enough to vacate it as irrational, it follows *a fortiori* that a statutory finding of age discrimination cannot be sustained on that same basis.

II. The Award Should Be Vacated For Manifest Disregard Of The ADEA And Failure To Heed Legally Dispositive, Undisputed Facts.

If the Court is inclined to look beyond the face of the Award, the arbitration record confirms that the Award ignores undisputed facts and manifestly disregards the law.

UBS does not dispute that the manifest disregard standard is demanding. It requires "something more than just an error in the law or a failure on the part of the arbitrators to understand or apply the law. It must be clear from the record that the arbitrators recognized the applicable law and then ignored it." *Mich. Mut. Ins. Co. v. Unigard Sec. Ins. Co.*, 44 F.3d 826, 832 (9th Cir. 1995). Further, "[t]he governing law alleged to have been ignored by the arbitrators must be *well defined, explicit, and clearly applicable*." *Collins*, 505 F.3d at 879-80.

But this is one of the rare cases where an arbitration panel committed such an error, in that it disregarded the controlling legal framework for age discrimination claims under the ADEA. There is no question that the panel was presented with this framework, which UBS set out in its Statement of Answer. Specifically, UBS explained to the panel that ADEA claims are subject to a burden-shifting analysis:

> [T]he employee must first establish a prima facie case of age discrimination. If the employee has justified a presumption of discrimination, the burden shifts to the

> employer to articulate a legitimate, nondiscriminatory reason for its adverse employment action. If the employer satisfies its burden, the employee must then prove that the reason advanced by the employer constitutes mere pretext for unlawful discrimination.

Ex. 6 at 11 (quoting *Sheppard*, 694 F.3d at 1049). UBS further elaborated: "To establish a prima facie case of discrimination, a plaintiff must allege in her complaint that: (1) she was at least forty years old; (2) she was performing her job satisfactorily; (3) discharged; and (4) either replaced by a substantially younger employee with equal or inferior qualifications or discharged under circumstances otherwise giving rise to an inference of age discrimination." *Id.* at 11-12. Such an inference, UBS noted, "can be established by showing the employer had a continuing need for the employee's skills and services in that their various duties were still being performed … or by showing that others not in their protected class were treated more favorably." *Id.* at 12.

Presented with this controlling legal framework, the panel majority nonetheless cast it aside in expressly granting Anderson's ADEA claim, remarking merely that Anderson "was above 60 years and the termination was disproportionately severe." Ex. 1 at 3. That formulation reveals that the panel was aware of the ADEA burden-shifting framework, which looks to an employee's age and termination in deciding whether the plaintiff made a prima facie case. But it also reveals that the panel majority chose to ignore the law. By describing the termination as "*disproportionately* severe" and by raising similar questions of proportionality in its accompanying findings, the majority recognized that Anderson's undisputed conduct warranted discipline. But by then shifting its focus to the distinct question of whether Anderson's termination was overly harsh, the panel majority abdicated its obligation to consider the other legal elements necessary to find a prima facie case. To the contrary, by accepting that Anderson committed misconduct, the panel majority

refuted any notion that Anderson was performing his job satisfactorily, as would have been required for his ADEA claim to proceed.

Nor did the panel majority make any attempt to apply the remaining aspects of the burden-shifting framework. Again, the panel majority's own recognition that Anderson made unauthorized trades worthy of discipline demonstrates that UBS "articulate[d] a legitimate, non-discriminatory reason" for its actions. *Diaz v. Eagle Produce Ltd. P'ship*, 521 F.3d 1201, 1207 (9th Cir. 2008). On the undisputed facts, Anderson violated at least four UBS policies. The panel majority likewise failed to heed the final step of the burden-shifting framework: While faulting UBS for failing to "present competent evidence of the actual reason" that it fired Anderson, Ex. 1 at 3, it ignored the requirement that Anderson make some showing that UBS's stated reason was a "mere pretext *for unlawful discrimination*." *Diaz*, 521 F.3d at 1207 (emphasis added).

Insofar as the majority concluded (without saying so) that UBS nonetheless fired Anderson because of his age, that unstated conclusion is insufficient to sustain the award. That is so because it would rest on a finding "that is legally irreconcilable with the undisputed facts." *Coutee v. Barington Cap. Grp., L.P.*, 336 F.3d 1128, 1133 (9th Cir. 2003); *see Am. Postal Workers Union AFL-CIO v. U.S. Postal Serv.*, 682 F.2d 1280 (9th Cir. 1982) (affirming decision declining to enforce arbitrator's award when undisputed facts showed that an employee participated in a strike, which carried legal significance that the arbitrator's award disregarded). The record was not only devoid of any evidence of discriminatory, age-based animus, but Anderson himself abandoned any such claim and, in fact, argued to the contrary, attributing his termination to other, non-discriminatory reasons.

Indeed, as explained above, *see supra* 5-8, from his Statement of Claim through the arbitration hearing, Anderson failed to present any evidence that UBS engaged in age discrimination.

The only age-related facts he adduced were that certain managers were aware of his age and that he may have been approaching retirement. Anderson denied ever having heard age-related remarks during his employment. Ex. 20 at 2. And a manager who participated in his termination, who was himself turning 60 at the time, likewise denied that Anderson's age had anything to do with the decision. Ex. 17 at 2.

Indeed, by the time of the hearing, Anderson insisted that UBS terminated him for an entirely different reason: because it thought he might join a competitor firm and take clients with him. He constructed his pre-hearing brief around that theory, mentioning it 5 times. Ex. 15 at 15-17, 22, 29. To the limited extent that Anderson's brief addressed UBS's purported "Disparate Impact/Discrimination," it did so in service of a different, inconsistent claim: that he was "terminated without just cause so that UBS could better retain his clients when they thought he was leaving." *Id.* at 22. And it is equally telling that Anderson's counsel said not a word about age discrimination in his opening or closing statements at the arbitration.

In sum, Anderson made a strategic choice to retreat from the age discrimination claim that he had obviously included as an afterthought to his pleading. Anderson instead tried to convince the arbitrators that UBS terminated him without cause for improper, albeit nondiscriminatory, reasons. But that strategic choice does not permit the panel to award $1 million on an age discrimination claim that Anderson himself repudiated.

In the end, the panel majority's decision can only be explained by a desire to impose rough justice, based on its view that termination was too harsh a consequence for Anderson's misconduct. Despite Anderson's invitations for the arbitration panel to "do what it thinks is right," regardless of the law, *id*. at 2, that is not what the law of arbitration permits. The parties agreed to conduct arbitration consistent with FINRA's rules, and subject to the "applicable law" of arbitration. Ex.

5 at 3-4. Under that law, arbitrators may not ignore controlling legal principles even when they think doing so is necessary to accomplish "industrial justice." *See Aspic*, 913 F. 3d at 1167. Instead, such awards must be vacated under 9 U.S.C. § 10.

CONCLUSION

This Court should vacate the award.

DATED: July 3, 2025

HOLLAND & HART LLP

By: */s/ Christopher C. McCurdy*
Teague I. Donahey
Christopher C. McCurdy

Jill Rosenberg (pro hac vice motion forthcoming)
Daniel A. Rubens (pro hac vice motion forthcoming)
Orrick, Herrington & Sutcliffe LLP

Attorneys for Petitioner UBS Financial Services, Inc.

35361558_v1

Teague I. Donahey (ISB #9963)
Christopher C. McCurdy (ISB #8552)
HOLLAND & HART LLP
800 W. Main Street, Suite 1750
Boise, ID 83702-7714
Telephone: 208.342.5000
TIDonahey@hollandhart.com
CCMcCurdy@hollandhart.com

Jill L. Rosenberg (*pro hac vice* motion forthcoming)
Daniel A. Rubens (*pro hac vice* motion forthcoming)
Orrick, Herrington & Sutcliffe LLP
51 W. 52nd Street
New York, NY 10019
Telephone: 212.506-5000
jrosenberg@orrick.com
drubens@orrick.com

Attorneys for Petitioner UBS Financial Services, Inc.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

UBS FINANCIAL SERVICES, INC., Petitioner. vs. RANDY S. ANDERSON, Respondent.	)	Case No. **DECLARATION OF CHRISTOPHER C. MCCURDY IN SUPPORT OF MOTION TO VACATE ARBITRATION AWARD**

I, Christopher C. McCurdy, declare as follows:

1. I am over eighteen (18) years of age, fully competent to make this declaration, and do so based on my personal knowledge of the facts set forth herein.

2. I am counsel at Holland & Hart LLP and appear on behalf of Petitioner UBS Financial Services, Inc. ("UBS") and am authorized to make this declaration on its behalf, submitted in support of UBS's Motion to Vacate Arbitration Award, filed herewith.

3. Attached as **Exhibit 1** is a true and correct copy of the Award issued in *Randy S. Anderson v. UBS Financial Services, Inc.*, FINRA Case No. 21-02871 (the "Arbitration") (Boise, Idaho June 3, 2025).

4. Attached as **Exhibit 2** is a true and correct copy of Respondent Randy S. Anderson's Corrected Statement of Claim, dated December 1, 2021, and filed in the Arbitration. Attached as **Exhibits 3 through 5** are true and correct copies of Exhibits A through C of Respondent Randy S. Anderson's Corrected Statement of Claim.

5. Attached as **Exhibit 6** is a true and correct copy of UBS's Answer And Defenses to Statement of Claim, dated February 21, 2022, and filed in the Arbitration. Attached as **Exhibits 7 through 12** are true and correct copies of Exhibits A (excerpts) and B through F of UBS's Answer And Defenses to Statement of Claim.

6. Attached as **Exhibit 13** is a true and correct copy of UBS's Order Entry Policy, published May 28, 2019, which UBS submitted as an exhibit in the Arbitration.

7. Attached as **Exhibit 14** is a true and correct copy of a November 16, 2019 automated email sent to Randy Anderson, re: "Action Required- SA program violation may result in client account(s) termination within 60 days," which UBS submitted as an exhibit in the Arbitration.

8. Attached as **Exhibit 15** is a true and correct copy of Anderson's Pre-Hearing Brief, dated December 23, 2024, and filed in the Arbitration.

9. Attached as **Exhibit 16** are excerpts of the transcript of the hearing held in the Arbitration from April 30 through May 2, 2025, in Boise, Idaho (the "Arbitration Hearing Transcript"), containing the parties' opening statements.[1]

10. Attached as **Exhibit 17** are excerpts of the Arbitration Hearing Transcript containing testimony from Charles Powers, a UBS financial advisor and Managing Director.

11. Attached as **Exhibits 18-20** are excerpts from the Arbitration Hearing Transcript containing testimony from Anderson.

12. Attached as **Exhibit 21** are excerpts of the Arbitration Hearing Transcript containing the parties' closing statements.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 3, 2025

By: */s/Christopher C. McCurdy*
Christopher C. McCurdy

35343040_v3

[1] Under FINRA Rule 12606, the "digital or other recording" of the proceeding is the "official record of the proceeding." The parties here obtained a written transcript of the proceedings, excerpts of which are being filed as exhibits hereto.