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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

DEAN DECKER,

Petitioner,

v.

JEFFERIES LLC,

Respondent.

CASE NO.

**NOTICE OF PETITION AND
PETITION TO VACATE
ARBITRATION AWARD**

[FINRA Arbitration No.: 18-00553]

Arbitration Award Service Date:

[Filed concurrently with: Memorandum
of Law; Declaration of David Jacobs;
Civil Case Cover Sheet; Certificate of
Interested Parties; Compendium; and
Proposed Order]

**DATE: TBD
TIME: TBD
CTRM: TBD**

1 **PETITION TO VACATE ARBITRATION AWARD**

2 Petitioner Dean Decker (“Mr. Decker”), as and for his Petition to Vacate
3 Arbitration Award (the “Petition”) entered in favor of Respondent Jefferies LLC
4 (“Jefferies”), states as follows:

5 **PRELIMINARY STATEMENT**

6 1. This is an action to vacate an arbitration award brought pursuant to the
7 Federal Arbitration Act (“FAA”), 9 U.S.C. § 10. This Petition seeks to vacate an
8 Award issued by a FINRA Arbitration Panel (the “Arbitration Panel”) in *Jefferies*
9 *LLC v. Dean Decker*, FINRA Case No.: 18-00553 (the “Award”), on the grounds
10 that the Arbitration Panel’s Award was issued in manifest disregard of the law and
11 that the Arbitration Panel exceeded its authority in issuing an Award that violates a
12 well-defined California public policy embodied in California Business and
13 Professions Code Section 16600. *See* 9 U.S.C. § 10(a)(4). A copy of that Award is
14 attached as **Exhibit A** to the Declaration of David Jacobs (“Jacobs Declaration” or
15 “Jacobs Decl.”).

16 **JURISDICTION**

17 2. This Court has subject matter jurisdiction over this action pursuant to
18 28 U.S.C. § 1332(a)(1) because the parties to this dispute are citizens of different
19 states and the amount in controversy exceeds \$75,000.00, exclusive of interest and
20 costs.

21 **THE PARTIES**

22 3. Mr. Decker is a resident of the state of California who resides in Los
23 Angeles County, California.

24 4. Upon information and belief, Respondent Jefferies LLC (“Jefferies”)
25 is a Delaware Limited Liability Corporation with its headquarters and principal
26 place of business located at 520 Madison Avenue, New York, New York. Jefferies
27 LLC is wholly owned by Jefferies Group LLC, which is wholly owned by Jefferies
28

1 Financial Group, Inc., which is a New York corporation with its principal place of
2 business at 520 Madison Avenue, New York, New York 10022.

3 5. Pursuant to the terms of Mr. Decker's January 2, 2017 offer letter with
4 Jefferies (the "Offer Letter"), the parties agreed to arbitrate any disputes related to
5 the Offer Letter before the Financial Industry Regulatory Authority ("FINRA"). A
6 copy of the Offer Letter is attached as **Exhibit B** to the Jacobs Declaration.

7 **VENUE**

8 6. Venue is proper in this district under 9 U.S.C. § 10. The arbitration
9 award at issue was rendered within the Central District of California. Mr. Decker
10 resides within the Central District of California. Furthermore, pursuant to the Offer
11 Letter, the parties consented to "the personal jurisdiction of the state and federal
12 courts sitting in the City and State of California with respect to matters related to
13 [Mr. Decker's] employment or the [Offer Letter], and agree[d] that any action with
14 respect thereto shall be brought in such courts." Jacobs Decl., **Exhibit B**, Section
15 V.M.

16 **FACTS**

17 **A. Jefferies' Liquidated Damages Clause**

18 7. On January 2, 2017, Mr. Decker signed an offer letter for prospective
19 at-will employment in Jefferies' Investment Banking Division in Los Angeles,
20 California.

21 8. Section V.J. of the Offer Letter contains an unlawful restrictive
22 covenant, disguised as a "liquidated damages" clause. It provides:

23 If during the period beginning from the date you execute this
24 Agreement until April 7, 2017 (the "Interim Period"), you fail to
25 commence employment by the Start Date, you agree to pay Jefferies
26 \$4,000,000 as liquidated damages ("Liquidated Damages"), which
27 represent only an approximation of a portion of the anticipated loss
28 created by such a violation. **For the avoidance of doubt, this**

Liquidated Damages provision is applicable only if you voluntarily fail to commence employment with Jefferies: (a) because you return as an employee of Credit Suisse Securities (USA) LLC or (b) to engage in Competitive Activity (as defined in the Jefferies Employee Handbook). You agree the Liquidated Damages are reasonable and do not operate as a penalty, but reflect Jefferies' reasonable approximation of a portion of its anticipated loss as a result of Jefferies' reliance on your commitment to render services pursuant to this Agreement by your Start Date, Jefferies' forbearance in holding the aforementioned position of Managing Director in the Investment Banking Division open for you and not hiring another individual for this position during the Interim Period, and all costs incurred by Jefferies to fill the Managing Director position. Nothing in this section shall prevent Jefferies from recovering its actual damages exceeding the Liquidated Damages, and Jefferies shall have the right to avail itself of all other available remedies.

Id. at V.J. (emphasis added).

9. On January 6, 2017, Mr. Decker informed Jefferies that he intended to remain with his current long-time employer, Credit Suisse Securities (USA) LLC ("Credit Suisse"), rather than join Jefferies. Jefferies had already known as early as January 3, 2017, just 24-hours after he signed the Offer Letter, that Mr. Decker would likely remain at Credit Suisse.

B. Jefferies Commences A FINRA Arbitration Against Mr. Decker

10. On February 9, 2018, Jefferies filed a Statement of Claim in FINRA seeking to enforce the terms of Section V.J. of the Offer Letter. A copy of Jefferies' Statement of Claim, together with the Submission Agreement it executed

1 consenting to FINRA jurisdiction, is attached as **Exhibit C** to the Jacobs
2 Declaration.

3 11. On April 12, 2018, Mr. Decker filed an Answer and Counterclaim to
4 Jefferies' Statement of Claim. Among the defenses Mr. Decker asserted in his
5 Answer and Counterclaim were that Paragraph V.J. of the Offer Letter (a)
6 constitutes an unlawful and unenforceable restraint on Mr. Decker's right to
7 engage in a lawful profession, trade, or business in violation of California Business
8 and Professions Code Section 16600 ("Section 16600"); and (b) is an illegal and
9 unenforceable penalty. A copy of Mr. Decker's Answer and Counterclaim to
10 Jefferies' Statement of Claim, together with his Submission Agreement, is attached
11 as **Exhibit D** to the Jacobs Declaration.

12 12. On May 2, 2018, Jefferies filed its Answer to Mr. Decker's
13 Counterclaims. A copy of Jefferies' Answer to Mr. Decker's Counterclaims is
14 attached as **Exhibit E** to the Jacobs Declaration.

15 **C. The Arbitration Proceedings**

16 13. On February 9, 2021, the parties submitted Pre-Hearing Briefs,
17 addressing the sole issue of the legality and/or enforceability of the Liquidated
18 Damages Provision.¹ A copy of Mr. Decker's Pre-Hearing Brief is attached as
19 **Exhibit J** to the Jacobs Declaration. A copy of Jefferies' Pre-Hearing Brief is
20 attached as **Exhibit K** to the Jacobs Declaration.

21 14. From March 1, 2021 through March 4, 2021, the Arbitration Panel,
22 which was comprised of three arbitrators, presided over the FINRA arbitration via
23 Zoom videoconference. The hearing transcript, encompassing the hearing days on
24

25 ¹ Initially, the case was bifurcated; if the liquidated damages clause was found to
26 be enforceable, then the case was over, and if it was found to be unenforceable,
27 then the arbitration would continue to potential actual damages. Since the panel
28 wrongly found the clause to be enforceable, the arbitration was over and the Award
was issued.

1 March 1, 2021 through March 4, 2021, is attached to the Jacobs Declaration as
 2 **Exhibit L**. On March 18, 2021, the parties submitted post-hearing briefs. A copy
 3 of Mr. Decker's Closing Brief is attached as **Exhibit M** to the Jacobs Declaration.
 4 A copy of Jefferies' Closing Brief is attached as **Exhibit N** to the Jacobs
 5 Declaration.

6 **D. The Arbitration Panel Issues Its Award**

7 15. On September 30, 2021, the three-member FINRA Arbitration Panel
 8 issued its Award in favor of Jefferies, finding Section V.J. of the Offer Letter to be
 9 enforceable in California, with one arbitrator dissenting. The Award is ripe for
 10 review by the Court because it constitutes the FINRA Panel's final determination
 11 of the issues presented to the Panel. *See Exhibit A*.

12 **THE ARBITRATION PANEL'S AWARD WAS ISSUED**
 13 **IN MANIFEST DISREGARD OF CALIFORNIA LAW**

14 16. A court may vacate an arbitration award under the FAA where the
 15 arbitration panel manifestly disregarded the law. *See Comedy Club, Inc. v. Improv*
 16 *W. Assocs.*, 553 F.3d 1277, 1290 (9th Cir. 2009) ("[T]he manifest disregard ground
 17 for vacatur is shorthand for a statutory ground under the FAA, specifically 9
 18 U.S.C. § 10(a)(4), which states that the court may vacate 'where the arbitrators
 19 exceeded their powers.'") (quoting *Kyocera Corp. v. Prudential-Bache T. Servs.*,
 20 341 F.3d 987, 997 (9th Cir. 2003)). To satisfy this standard, it must be clear from
 21 the record that an arbitration panel "recognized the applicable law and then ignored
 22 it." *Id.* (quoting *Mich. Mut. Ins. Co. v. Unigard Sec. Ins. Co.*, 44 F.3d 826, 832 (9th
 23 Cir. 1995)).

24 17. Here, the Panel's Award was issued in manifest disregard of
 25 California law, because Mr. Decker made clear to the Panel in his Pre-Hearing
 26 Brief, opening and closing statements, and Post-Hearing Brief that Section V.J.
 27 violates Section 16600, but the Panel ignored that applicable law.
 28

1 18. Mr. Decker presented argument and controlling California law to the
2 Arbitration Panel, and the Panel was aware of, *inter alia*, the following applicable
3 facts and law:

- 4 a. That the Arbitration Panel was required to apply California law under
5 Section V.M. of the Offer Letter, which provides that “[t]his
6 Agreement shall be governed by, and construed in accordance with,
7 the laws of the State of California,” *see* Jacobs Decl., **Exhibit B** at 7;
8 b. That Cal. Bus. and Prof. Code Section 16600 “prohibits employee
9 noncompetition agreements unless the agreement falls within a
10 statutory exception,”² *see* Jacobs Decl., **Exhibit D** at 5, ¶ 48; Jacobs
11 Decl., **Exhibit J** at 1, 12; Jacobs Decl., **Exhibit L** at 176:9-18 &
12 1055:21-1056:8; Jacobs Decl., **Exhibit M** at 7;
13 c. That California courts have consistently applied Section 16600 to
14 invalidate clauses in employment agreements labeled “liquidated
15 damages” where such clauses impose a restraint on a person’s lawful
16 profession and choice of employer, *see* Jacobs Decl., **Exhibit J** at 12-
17 13; Jacobs Decl., **Exhibit L**, at 181:10-14 and 187:24-188:12; Jacobs
18 Decl., **Exhibit M** at 10-12;
19 d. That California courts have consistently applied Section 16600 to
20 invalidate provisions in employment contracts that impose a penalty
21 for engaging in competition, *see* Jacobs Decl., **Exhibit J** at 1-2, 12-13,
22 17-18 & 21-23; Jacobs Decl., **Exhibit L** at 181:10-14, 182:22-184:15,
23 187:24-188:12 & 1059:16-22; Jacobs Decl., **Exhibit M** at 8, 10-14 &
24 30; and

25
26 ² The statutory exceptions to Section 16600 are for the sale of goodwill or of
27 ownership interest in a business (Section 16601) and upon the dissolution or
28 dissociation from a partnership (Section 16602) or limited liability corporation
(Section 16602.5). None of these exceptions are applicable here.

e. That Section V.J. is a non-compete on its face and a restraint on Mr. Decker because it imposes on him a \$4 million penalty for competing with Jefferies and/or remaining with his long-time employer Credit Suisse, and is therefore void under Section 16600, *see* Jacobs Decl., **Exhibit M** at 4-12; Jacobs Decl., **Exhibit L** at 177:8-188:8.

19. Therefore, the Panel was aware of but ignored the law by issuing the Award enforcing Section V.J., which violates Section 16600. Accordingly, the Award should be vacated because it was issued in manifest disregard of the law.

20. The Award is contrary to the only other known FINRA awards that have analyzed this very same liquidated damages clause under California law. On March 5, 2021, a FINRA panel in the related case *Jefferies LLC v. Edward Swigert*, FINRA Case No. 18-00556, issued a unanimous award in Mr. Swigert's favor, rejecting both Jefferies' claim for "liquidated damages" and its claim for actual damages. The *Swigert* panel expressly found that the "liquidated damages" clause violated Section 16600, stating, "[t]he Panel finds that the involved liquidated damages clause violates California Business and Professions Code section 16600." In the *Swigert* arbitration, the parties were represented by the same counsel, the "liquidated damages" clause was identical to the one at issue in this case (except for the dollar amount and start date), and Jefferies put forth the same arguments regarding the purported lawfulness and enforceability of its so-called liquidated damages clause as it did in this case. Messrs. Swigert and Decker are both California residents who had California choice-of-law provisions in their offer letters. The *Swigert* Award is attached to the Jacobs Declaration as **Exhibit O**.

**THE ARBITRATION PANEL'S AWARD VIOLATES
WELL-DEFINED CALIFORNIA PUBLIC POLICY**

21. The U.S. Supreme Court has recognized that the usual deferential standard for review of an arbitrator's award is not applied "[i]f the contract as interpreted by [the arbitrator] violates some explicit public policy"; in that

1 circumstance, the courts “are obliged to refrain from enforcing it.” *W.R. Grace &*
2 *Co. v. Local Union 759, Int’l Union of United Rubber, Cork, Linoleum and Plastic*
3 *Workers of Am.*, 461 U.S. 757, 766 (1983).

4 22. Section 16600 is an unwaivable statutory right and an explicit, well-
5 established legislative expression of public policy favoring employee mobility. *Id.*
6 As the California Court of Appeal recently stated, Section 16600 “expresses
7 California’s strong public policy of protecting the right of its citizens to pursue any
8 lawful employment and enterprise of their choice. California courts ‘have
9 consistently affirmed that section 16600 evinces a settled legislative policy in favor
10 of open competition and employee mobility.’” *Brown v. TGS Mgmt. Co., LLC*, 57
11 Cal. App. 5th 303, 312 (2020) modified (Nov. 12, 2020) review denied (Feb. 24,
12 2021) (internal citations omitted); *see also Edwards v. Arthur Andersen LLP*, 44
13 Cal.4th 937, 949 (2008) (“California courts have been clear in their expression that
14 section 16600 represents a strong public policy of the state which should not be
15 diluted by judicial fiat.”) (internal citation and quotation omitted).

16 23. The Arbitration Panel exceeded its powers by issuing the Award
17 enforcing Section V.J., which violates Mr. Decker’s unwaivable statutory rights
18 and an explicit legislative expression of public policy found in Section 16600. *See*
19 *Brown*, 57 Cal. App. 5th at 312 (recognizing that arbitrators exceed their powers
20 “by issuing an award that violates a party’s unwaivable statutory rights or that
21 contravenes an explicit legislative expression of public policy.”).

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