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Founder and Dean

August 9, 2023

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***Re: SWC Response to Credit Suisse's July 31, 2023 Letter***

Dear Chairman Whitehouse and Ranking Member Grassley:

The Simon Wiesenthal Center ("SWC") and Father Patrick Desbois write to express our appreciation for the U.S. Senate Committee on the Budget's ("Committee") continuing investigation into the undisclosed Nazi assets ("Nazi Assets") at Credit Suisse AG (hereinafter "Credit Suisse" or "Bank"). To advance the Committee's investigation, we offer this response to Credit Suisse's July 31, 2023 letter from the Bank's General Counsel, Jake Scrivens, to clarify several factual misstatements and misrepresentations.<sup>1</sup>

**First**, Credit Suisse asserts that SWC has refused "any form of direct engagement" with the Bank about the Nazi Assets investigation.<sup>2</sup> This assertion is false. SWC repeatedly has offered to discuss or mediate the issues created by Credit Suisse's conduct, however, the Bank has been recalcitrant and litigious. As documented in the Independent Ombudsperson's Report, SWC initiated the Nazi Assets investigation by affirmatively engaging with Credit Suisse and seeking the Bank's cooperation.<sup>3</sup> SWC repeatedly requested or agreed to direct engagement with Credit Suisse since 2020, and there was a once "collaborative relationship [that] lasted

<sup>1</sup> July 31, 2023 Letter from J. Scrivens to Chairman Whitehouse and Ranking Member Grassley (hereinafter "Credit Suisse Letter").

<sup>2</sup> Credit Suisse Letter, at 2 (stating that "the bank has sought to engage directly and constructively with the Simon Wiesenthal Center. . . . Unfortunately, until last Friday, the SWC had declined to discuss any form of direct engagement with Credit Suisse").

<sup>3</sup> Report of the Independent Ombudsperson and Independent Advisor to Credit Suisse, at 32-36 (Feb. 15, 2023) (hereinafter "Independent Ombudsperson's Report").

until June 2022, when the Bank underwent a change in leadership over the investigation. . . .”<sup>4</sup> The Independent Ombudsperson’s Report notes that, shortly before the deterioration of the once cooperative relationship, “the Bank began to uncover important information about its historical relationships with Nazis that it described as not having been previously disclosed.”<sup>5</sup> In addition to the Independent Ombudsperson’s Report, the parties’ correspondence substantiates these facts and refutes the assertion that SWC has rebuffed any direct engagement with the Bank.<sup>6</sup>

In fact, even after Credit Suisse breached its agreement with SWC and terminated Neil Barofsky as its Independent Ombudsman (*see infra* Section I),<sup>7</sup> SWC continued to offer to directly engage with Credit Suisse. On or about February 21, 2023, Credit Suisse’s counsel, Gibson, Dunn & Crutcher LLP (“Gibson Dunn”), asked to present the “findings and conclusions of the independent investigation conducted by AlixPartners” at a meeting in Switzerland.<sup>8</sup> SWC, through our counsel at Stein Mitchell Beato & Missner LLP, offered to engage directly with the Bank, and we requested basic clarifications about the Independent Ombudsperson’s investigation as a predicate preparatory understanding.<sup>9</sup> SWC later reiterated its willingness to meet with Credit Suisse and requested that the Bank provide us with the Independent Ombudsperson’s Report to enhance the meeting’s productivity.<sup>10</sup> Even as recently as two weeks ago, SWC yet again contacted Credit Suisse to request direct discussions or private mediation, however, the Bank refused absent judicial intervention.<sup>11</sup>

**Second**, Credit Suisse mischaracterizes U.S. District Judge Edward R. Korman’s order as recommending the appointment of former Ambassador Stuart Eizenstat,<sup>12</sup> and fails to inform the Committee of the basis for SWC’s objections to court-appointed mediation.<sup>13</sup> Judge Korman’s order specifically directed SWC to inform the Court of any

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<sup>4</sup> Independent Ombudsperson’s Report, at 31.

<sup>5</sup> *Id.*

<sup>6</sup> The record of communications between SWC and Credit Suisse will be made available to the Committee upon request.

<sup>7</sup> Credit Suisse subsequently appointed its “go to” law firm of Clifford Chance as its alleged Independent Ombudsperson to complete the Nazi Asset investigation and issue a forthcoming report. The Committee should investigate the independence of Clifford Chance to perform this function. Clifford Chance represents Credit Suisse and UBS in numerous engagements, and the law firm reportedly is UBS’s Global Transition Counsel in the acquisition of Credit Suisse. <https://www.globallegalpost.com/news/cleary-gottlieb-sullivan-cromwell-and-freshfields-among-firms-called-in-for-ubs-landmark-credit-suisse-rescue-339330983>.

<sup>8</sup> February 21, 2023 Letter to from F. Joseph Warin to J. Missner.

<sup>9</sup> March 6, 2023 Letter from J. Missner to F. Joseph Warin.

<sup>10</sup> March 31, 2023 Letter from J. Missner to F. Joseph Warin (“As we have stated in prior correspondence, the Simon Wiesenthal Center is prepared to meet with Credit Suisse.”).

<sup>11</sup> August 4, 2023 Letter from J. Selendy to F. Joseph Warin.

<sup>12</sup> Credit Suisse Letter, at 2.

<sup>13</sup> Credit Suisse Letter, at 2. Credit Suisse requested judicial intervention by Judge Korman on March 16, 2023, by alleging that SWC’s actions with respect to uncovering and investigating the Nazi Assets breached an organizational endorsement of the 1999 Global Settlement Agreement and negatively affected or threatened to impair the bank’s rights. SWC disputes the Bank’s allegations.

objections to court-ordered mediation or the appointment of former Ambassador Eizenstat. In response to the Court's order, SWC objected to the need for court-appointed mediation, offered to directly engage with Credit Suisse, and raised concerns with the involvement of Covington & Burling LLP ("Covington") where former Ambassador Eizenstat is Senior Counsel. While fully acknowledging the credentials of former Ambassador Eizenstat, SWC noted that Covington and/or he previously represented Credit Suisse, including before the U.S. Congress in connection with Credit Suisse's 2014 guilty plea to aiding and abetting taxpayers filing false income tax returns. SWC therefore informed the Court of these concerns based on the issues that arise from the client relationship with Credit Suisse.<sup>14</sup> Regardless, it is unacceptable for Credit Suisse's Letter to not provide the Committee with the basis of SWC's concerns in a manner that falsely implies that we are obstructing discussions or that we do not recognize the tremendous contributions of former Ambassador Eizenstat to the 1999 Settlement Agreement.

### **I. The Present Dispute Concerns a New Agreement Between SWC and Credit Suisse.**

Because Credit Suisse's Letter places into controversy the role of SWC in this investigation, SWC believes the Committee would benefit from understanding the facts giving rise to the dispute.

SWC is a preeminent, global Jewish human rights organization that researches the Holocaust and anti-Semitism in historical and contemporary contexts. This mission contributed to SWC's Organizational Endorsement of the 1999 Settlement Agreement between Swiss banks and Holocaust survivors. But SWC's non-profit mission did not end at the 1999 Settlement Agreement. The 1999 Settlement Agreement did not terminate the right of SWC, as an Organizational Endorser, to conduct and publish new research about the Holocaust, even if that research and investigation implicates Swiss banks.<sup>15</sup> Since 1999, SWC has engaged in numerous investigations about myriad issues related to the Holocaust and published its findings, none of which raised any concern from Swiss banks, including Credit Suisse.

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<sup>14</sup> Mr. Eizenstat also was a core participant in the negotiations of the 1999 Settlement Agreement, which potentially renders him a fact witness to the claims asserted by Credit Suisse against SWC. *See* Testimony of Stuart E. Eizenstat Before United States Senate Committee on Indian Affairs and United States House Of Representatives Committee on Resources, Washington, D.C. Mar. 1, 2006, *available at* <https://www.indian.senate.gov/sites/default/files/upload/files/Eizenstat.pdf> ("In the Swiss case, I employed a stratagem of asking each side for a range of their maximum and minimum and for what they believed the other side's maximum and minimum would be. I worked within those numbers and actually proposed a figure very close to the one Judge Korman later used to settle the cases").

<sup>15</sup> The World Jewish Congress, another Organizational Endorser to the 1999 Settlement Agreement, also has made public statements concerning Credit Suisse's actions in the current matter. *See, e.g.,* WJC Troubled by Credit Suisse's Firing of Neil Barofsky, Ira Forman, Who Were Investigating Scope of Bank's Ties to Nazis (Apr. 24, 2023), <https://www.worldjewishcongress.org/en/news/wjc-troubled-by-credit-suisse-firing-of-neil-barofsky-ira-forman-who-were-investigating-scope-of-banks-ties-to-nazis>.

In March 2020, more than twenty years after the 1999 Settlement Agreement, and as part of its ongoing mission to uncover the truth, SWC revealed its discovery of undisclosed information about Nazi Assets at Swiss banks.<sup>16</sup> This information was identified in an SWC investigation joined by renowned and heroic Roman Catholic priest Father Patrick Desbois – a Chargé de mission of the Cardinal of Paris, the Secretary for Jewish Relations for Cardinals, the Secretary for the French Conference of Bishops for Relations with the Jewish Community, and a long-standing Vatican Advisor on relations with Judaism. Father Desbois, who authored the acclaimed “Holocaust by Bullets,” has spent decades bringing to light human rights abuses and genocides, including locating, investigating, and excavating more than 3,000 mass execution sites of more than two million Jews murdered by the Nazis.

True to our mission of tolerance, SWC sought out Credit Suisse to express our concerns, discuss our findings, and offer the opportunity to work cooperatively and transparently to disclose the truth related to the Nazi Assets. In response, the SWC received written assurances in 2021 from Credit Suisse AG’s Senior Advisor to the CEO, Mindy Silverstein, then Global Head of Compliance, Thomas Grotzer, and former General Counsel, Romeo Cerutti, affirming the Bank’s “pledge to working collaboratively” and “we are committed to finding the truth.” As you know, Credit Suisse was the architect of the plan to retain Independent Ombudsperson, Neil Barofsky, and Independent Advisor, Ira Forman, and requested that SWC engage with them and disclose our confidential investigation findings privately to Messrs. Barofsky and Forman.

Credit Suisse repeatedly acknowledged the significance of SWC’s information.<sup>17</sup> Rather than assert a breach of the 1999 Settlement Agreement which it now alleges before U.S. District Court Judge Edward R. Korman, Credit Suisse asked SWC to engage in a non-public investigative process. After extensive negotiations, SWC agreed. To be clear, Credit Suisse never asserted that SWC breached the 1999 Settlement Agreement nor did it claim that the collaborative process the Bank proposed would entrap SWC in subsequent claims of such a breach by the Bank. If it had, SWC never would have agreed to the collaborative process proposed by the Bank.

Contemporaneous documents demonstrate that Credit Suisse and SWC entered into a *new* agreement. The substance of that agreement was clear – Credit Suisse pledged its full support for a transparent and thorough investigation by an independent and respected third party leading to a published report. In return, SWC agreed to collaborate with Credit Suisse and the independent third party in good faith and disclose its confidential investigation work product.

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<sup>16</sup> See <https://www.wiesenthal.com/about/news/wiesenthal-center-argentina-nazi.html>.

<sup>17</sup> See March 4, 2020 Letter from Credit Suisse’s Romeo Cerutti and Lydie Hudson to SWC’s Dr. Shimon Samuels and Dr. Ariel Gelblung (“We would like to acknowledge the importance of the concerns that you have raised in your email of March 2, 2020. Credit Suisse is committed to finding the truth as best we can using the information and means available still today. We are prepared to investigate the information you have provided to us and lay open – to the extent we are legally permitted – the results.”).

As part of the new agreement, Credit Suisse unilaterally selected Neil Barofsky, a partner at Jenner & Block LLP and government-appointed monitor of Credit Suisse, to oversee a forensic investigation into the full scope of Nazi assets at Credit Suisse as an Independent Ombudsman. Mr. Barofsky's assignments included, among others, (1) overseeing the forensic accountants to ensure accountability and transparency, (2) ensuring the investigation's scope was sufficient, (3) liaising with SWC to obtain SWC's information and performing proper diligence within Credit Suisse's archives, and (4) preparing a report of his findings. SWC initially expressed reluctance to agree to this investigative process, but negotiations with Credit Suisse ultimately led SWC to agree to Credit Suisse's terms. A core element of that agreement was Mr. Barofsky's contractual retention by Credit Suisse as the Independent Ombudsperson.

In or around November 2021, Mr. Barofsky provided Credit Suisse's Executive Board with a comprehensive investigative plan. The Executive Board approved the plan, which defined the scope of the investigation to include information SWC publicly revealed in March 2020, other SWC information on Nazi assets, and additional leads that Mr. Barofsky identified such as newly discovered Ratlines. Mr. Barofsky spent six months intensively investigating Nazi assets at the Bank. Among other findings, the Independent Ombudsman located incriminatory evidence about Credit Suisse's Nazi clients that it kept quiet during and well after the 1990s. Soon thereafter, newly appointed Credit Suisse management terminated Mr. Barofsky and breached the new agreement with SWC.

In April 2022, Credit Suisse terminated its then-General Counsel, Romeo Cerutti, and replaced him with Markus Diethelm. Mr. Cerutti previously oversaw Mr. Barofsky's investigation. Mr. Diethelm informed Messrs. Barofsky and Forman to cease all work in connection with Credit Suisse's investigation into Nazi assets and that the agreed upon investigation would be put on "hold."<sup>18</sup> Although sparse details were relayed, SWC was informed that Credit Suisse's investigation into Nazi assets was not completed, and SWC's information was not fully addressed despite the Board of Directors' resolution and assurances to the contrary. Credit Suisse then went a step further and violated its agreement with SWC by terminating Messrs. Barofsky and Forman and indicating that the Bank would not share its final report, prepared without Barofsky's independent oversight, unless SWC traveled to Switzerland.<sup>19</sup> To date, Credit Suisse has not provided SWC with any cogent explanation for terminating the investigation of Messrs. Barofsky and Forman, merely offering nonspecific concerns about their "performance."

Further, Mr. Barofsky's engagement required him to present Credit Suisse with a draft of his report. In or around December 2022, Credit Suisse took the position that its termination of Messrs. Barofsky and Forman precluded issuing a report. That position conflicted with the terms of the engagement contract previously approved at the highest levels of the Bank, and Mr. Barofsky complied with the terms of his retention and

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<sup>18</sup> Independent Ombudsperson's Report, at 31.

<sup>19</sup> February 21, 2023 Letter from F. Joseph Warin to J. Missner.

officially submitted the report to the Bank. Importantly, Credit Suisse did not initially contest the content or subject matter addressed within Mr. Barofsky's report. Moreover, Credit Suisse refused SWC's repeated requests for a copy of Mr. Barofsky's report as promised by Credit Suisse's leadership.

As this Committee is aware, and has itself stated, Mr. Barofsky's report revealed "nearly 100 previously undisclosed Nazi-linked accounts and related information," and "raise[ed] new questions about the bank's potential support for Nazis fleeing justice following World War II." Concurrently the Bank widely disseminated a press statement falsely asserting that there was "no evidence to support SWC's allegations."<sup>20</sup> Regardless, the present dispute is not about the 1999 Settlement Agreement—it is about a new agreement expressly approved by Credit Suisse's Executive Board only to be unilaterally and unjustifiably dismantled when SWC's suspicions about the Bank's violations were independently validated.

The present dispute between SWC and Credit Suisse was created by Credit Suisse's breach of its new agreement to transparently investigate SWC's allegations regarding Nazi Assets as overseen by the Independent Ombudsman, and to share the resulting independent report with SWC. Credit Suisse professed a shared commitment to historical fact finding and transparency, noting that it made a "pledge to working collaboratively with [SWC] to address the issues raised in [SWC's] March 2020 press release, as well as any additional issues for which you provide specific information to us."<sup>21</sup> Credit Suisse also pledged to share a copy of the final report prepared under the supervision of the Independent Ombudsman.<sup>22</sup> SWC complied with the agreed upon terms. Credit Suisse did not. Instead, SWC believes that Credit Suisse has tried to suppress the independent factual findings of Mr. Barofsky and wrongfully discredit SWC's evidence of the Nazi assets in the Bank – while walking away from the Bank's agreement.

## **II. Credit Suisse's Counsel Concurrently Represented SWC and Credit Suisse During the Pendency of this Dispute.**

Credit Suisse's Letter also places into controversy SWC's alleged blanket refusal to discuss the dispute with the Bank and its counsel at Gibson Dunn which, as noted above, is not accurate. In proper context, SWC has raised concerns with Gibson Dunn's role in this dispute that are justified. Credit Suisse failed to inform the Committee that its counsel, Gibson Dunn, has represented Credit Suisse before Judge Korman and this Committee while simultaneously representing SWC.<sup>23</sup> Gibson Dunn represented SWC from 2021 until the firm terminated SWC as a client in 2023. That termination was in

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<sup>20</sup> March 18, 2023, Credit Suisse Press Statement, "Credit Suisse Group announces that key findings of investigation sought by Simon Wiesenthal Center did not support the Center's claims," *available at* <https://www.credit-suisse.com/about-us-news/en/articles/media-releases/csg-announces-key-findings-investigation-simon-wiesenthal-center-did-not-support-claims-202304.html>.

<sup>21</sup> July 21, 2021, Letter from Thomas Grotzer and Mindy Silverstein to Rabbi Hier.

<sup>22</sup> *Id.*

<sup>23</sup> SWC has raised this conflict with Judge Korman.

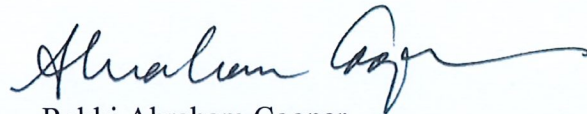
reaction to SWC raising concerns about Gibson Dunn's simultaneous representation of the two clients, potential conflicts, and access to SWC's client confidences bearing directly or indirectly on the personnel, decision makers, and issues here.

We appreciate the opportunity to respond to Credit Suisse's Letter so the Committee is aware of the facts. SWC is prepared to provide any additional information that the Committee believes relevant to the advancement of this investigation and transparent accounting of the Bank's role with the Nazi Assets as memorialized in the Independent Ombudsman report and SWC's investigation.

Respectfully submitted,



Rabbi Marvin Hier  
CEO and Founder  
Simon Wiesenthal Center



Rabbi Abraham Cooper  
Associate Dean & Director, Global Social  
Action Agenda  
Simon Wiesenthal Center



Father Patrick Desbois

cc: Stein Mitchell Beato & Missner LLP  
Selendy Gay Elsberg PLLC