

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

In the Matter of the Application of

IOAN MICULA,
VIOREL MICULA,
S.C. EUROPEAN FOOD S.A.,
S.C. STARMILL S.R.L., and
S.C. MULTIPACK S.R.L.,

Petitioners,

v.

THE GOVERNMENT OF ROMANIA,

Romania.

Civil Action No. 17-CV-02332-APM

**DECLARATION OF FRANCIS A. VASQUEZ, JR. IN SUPPORT OF PETITIONERS'
SUPPLEMENTAL MOTION FOR SECOND JUDGMENT ON
ACCRUED SANCTIONS AGAINST ROMANIA**

I, Francis A. Vasquez, Jr., declare:

1. I am counsel for Petitioners Ioan Micula, S.C. European Food S.A., S.C. Starmill S.R.L., and S.C. Multipack S.R.L. in the above-captioned matter. I submit this declaration in support of Petitioners' Supplemental Motion for Second Judgment on Accrued Sanctions Against Romania, pursuant to this Court's Order of November 20, 2020, entering civil contempt sanctions against Romania and awarding Petitioners the fees and costs associated with seeking that civil contempt order. ECF No. 159 at 16. I have personal knowledge of the following facts, and if called as a witness, I could and would competently testify thereto.

2. Nearly five years ago, on October 1, 2019, Petitioners served a set of fifteen post-judgment interrogatories (the "Interrogatories") on Romania, which Romania refused to answer. ECF Nos. 98-3, 98-4. Petitioners were therefore forced to file a motion to compel Romania to

respond to the Interrogatories and this Court granted the motion on March 11, 2020 (the “Discovery Order”). ECF Nos. 98, 133.

3. For nearly three months after the Discovery Order, Petitioners sought Romania’s responses to the Interrogatories to no avail. ECF No. 167-2 ¶¶ 6-9. On June 4, 2020, still without any substantive responses to the Interrogatories from Romania, Petitioners moved the Court to hold Romania in contempt for its failure to comply with the Discovery Order. ECF No. 151. On November 20, 2020, this Court granted Petitioners’ motion (the “Contempt Order”). ECF No. 159 at 16.

4. The Contempt Order provided that “[i]f Romania fails to answer the post-judgment interrogatories within 14 days of entry of this Order, it shall pay Petitioners a fine in the amount of \$25,000 per week, which shall double every four weeks reaching a maximum of \$100,000 per week, until such time as Romania complies with the March 11, 2020 Order” *Id.* The Court also directed Romania to “pay Petitioners the attorneys’ fees and costs associated with seeking a civil contempt order.” *Id.*

5. While Romania provided five sets of “responses” following the Contempt Order, they were largely devoid of responsive information. *See* ECF No. 174 at 2-3. For example, Romania failed to provide information about any bank accounts located in the United States or information about other U.S. assets, some of which are already known to exist. *Id.* at 5-6; *see also* ECF No. 206 at 4. Romania also failed to produce information regarding assets held by several subdivisions of the Romanian government. ECF No. 174 at 5-6. Further, Romania failed to specifically identify assets located worldwide, even though the Interrogatories request this information and the Court has ordered that the discovery requests be complied with in full. *Id.*; *see also* ECF No. 206 at 4.

6. On December 17, 2020, Romania appealed the Contempt Order to the D.C. Circuit Court of Appeals (the “DC Circuit”).¹ The DC Circuit affirmed the Contempt Order in all respects on June 24, 2022. ECF Nos. 164, 198-1.

7. Romania’s Fourth Amended Response on March 29, 2021 remained deficient and Romania never responded to Petitioners’ third deficiency letter detailing the persisting deficiencies in the Responses. ECF No. 167-2 ¶¶ 24-28, ECF No. 174 at 3-4.

8. Accordingly, on July 12, 2021, Petitioners filed their Motion for Judgment on Accrued Sanctions Against Romania (the “Motion for Sanctions Judgment”) and requested that the Court enter \$2,900,000 in sanctions that had accrued as of August 2, 2021 (the anticipated date by which briefing on that motion would conclude). ECF No. 167.

9. On November 8, 2021, the Court granted Petitioners’ Motion for Sanctions Judgment and entered a separate judgment against Romania in the amount of \$1,500,000 (the “Sanctions Judgment”). ECF Nos. 174, 176. The Court found that Romania “failed to fulfill the ‘purgation conditions’ that would allow Romania to avoid imposition of at least some amount of accrued sanctions.” ECF No. 174 at 5. In its determination of the appropriate amount of sanctions to issue against Romania, the Court recognized that Romania’s production, while deficient, constituted partial compliance. *Id.* at 8.

10. Instead of providing complete responses to the Interrogatories, on December 6, 2021, Romania appealed the Sanctions Judgment. ECF No. 177. The DC Circuit affirmed the Sanctions Judgment in full on February 21, 2023. ECF No. 206.

11. On April 7, 2023, at the request of the Court, *see* Min. Order (Apr. 3, 2023), the

¹ Romania’s first appeal in this matter was of this Court’s confirmation judgment of the underlying arbitral award. ECF Nos. 86, 88, 89. To date, Romania has appealed four of this Court’s decisions, all of which the DC Circuit has affirmed. ECF Nos. 154-1, 198-1, 206, 219.

parties submitted a joint status report in which they advised the Court that they had engaged in discussions concerning the outstanding discovery requests and intended to have additional discussions within the month of April. ECF No. 208 ¶ 3. Petitioners additionally stated that, if discussions with Romania were not satisfactory, they planned to move for an additional judgment on accrued sanctions. *Id.* ¶ 4.

12. On April 10, 2023, the Court ordered the parties to file an additional joint status report updating the Court on the status of the discussions by May 10, 2023. Min. Order (Apr. 10, 2023). On April 24, 2023, Petitioners' counsel again inquired whether Romania intended to comply with this Court's discovery orders. *See Exhibit 1* (a true and correct copy of email correspondence between counsel for Petitioners and counsel for Romania). After no response for more than one week, Petitioners' counsel followed up on May 4, to which Romania's counsel responded that "[t]he discussion with Romania about this continues" and requested a "specific list" of the information Petitioners believe is missing. *Id.* Petitioners' counsel reminded counsel for Romania of Petitioners' previous deficiency letters and informed Romania that Petitioners intended to request additional relief from the Court absent further production from Romania. *Id.*

13. In the parties' May 10, 2023 joint status report to the Court, Romania stated that its counsel was "preparing a document that hopefully can be used to identify and clarify a roadmap and/or objective" regarding the "priority of information and main objectives of [Petitioners'] requests." ECF No. 209 ¶ 4. To date, Romania has not provided Petitioners with the document it claimed it was preparing. In the joint status report, Petitioners confirmed that they planned to request a judgment for additional sanctions. *Id.* ¶ 3.

14. On May 26, 2023, Petitioners moved for a second judgment on accrued sanctions against Romania. ECF Nos. 210, 216. Petitioners requested the \$9,900,000 in sanctions that had

accrued against Romania since the Sanctions Judgment² at the rate of \$100,000 per week as of June 30, 2023 (the date by which briefing on motion concluded). ECF No. 216.

15. On June 12, 2023, at the request of the Court, *see* Min. Order (May 15, 2023), the parties filed an additional joint status report updating the Court on the status of parties' discussions concerning outstanding discovery. ECF No. 214. Parties informed the Court that there had been no further discussions between parties regarding outstanding discovery. *Id.* ¶ 2.

16. On July 21, 2023, counsel for Romania informed Petitioners that Romania would produce "certain documents" by "early next week." *See Exhibit 2* (a true and correct copy of email correspondence between counsel for Petitioners and counsel for Romania). Romania did not make any production the next week.

17. Instead, on October 31, 2023, more than five months after Petitioners filed their original motion for second judgment on accrued sanctions, Romania served its Fifth Amended Response to the Interrogatories. *Id.*; *see Exhibit 3* (a true and correct copy of Romania's Fifth Amended Response).

18. Twelve out of fifteen responses in the Fifth Amended Response are identical to those in Romania's Fourth Amended Response, which the Court and the DC Circuit already ruled were deficient. *See* ECF No. 167-2 Ex. 8; *see also* ECF Nos. 174, 206. While Romania's Fifth Amended Response purports to contain new "information" about the tangible assets of its consular entities within the United States, Romania failed to provide specific identifying information requested such as specific addresses of various Romanian entities and listed tangible assets, and information about its assets worldwide. Ex. 3. Despite receiving three deficiency letters from

² The Sanctions Judgment calculated the amount of accrued sanctions as of August 2, 2021 (the date on which briefings on the Motion for Sanctions Judgment concluded) and Petitioners' calculations of additional accrued sanctions are made as of this date. ECF No. 174 at 8.

Petitioners detailing the inadequacies of Romania's prior responses, *see* ECF No. 167-5, 167-9, 167-11, Romania did not cure any of those deficiencies with its Fifth Amended Response.

19. To date, Romania has still failed to (1) provide complete and responsive information from all its government ministries, (2) identify U.S. bank accounts or deny the existence of such, and (3) identify assets located in Romania or worldwide or deny the existence of such. Like the Court and the DC Circuit recognized with Romania's prior responses, Romania's Fifth Amended Response provide none of the meaningful and requested information that would aid in enforcement of the underlying confirmation judgment. *See* ECF No. 174 at 6 ("Romania's answers are therefore incomplete in critical ways that would enable Petitioners to enforce the judgment."); ECF No. 206 at 4 ("The district court did not err in its factual finding that Romania's interrogatory answers were materially unresponsive . . . the needed substance was missing . . .").

20. On March 25, 2024 Petitioners sent Romania a letter detailing the continuing deficiencies in the Fifth Amended Response (the "Fourth Deficiency Letter"). *See Exhibit 4* (a true and correct copy of the Fourth Deficiency Letter). To date, Romania has not responded despite the Court encouraging it to do so in due course during a July 2024 status conference. ECF No. 223.

21. On May 14, 2024, the DC Circuit affirmed this Court's denial of Romania's second motion for relief from judgment in these proceedings. ECF No. 219.

22. On July 8, 2024, the parties filed a joint status report informing the Court of their respective positions as to next steps in this matter, pursuant to the Court's June 24, 2024 Minute Order. *See* Min. Order (June 24, 2024); ECF No. 220. In the joint status report, Petitioners stated their intention to submit a supplemental motion for second judgment on accrued sanction based on Romania's continued discovery non-compliance. ECF No. 220 ¶¶ 3-4, 7-8. Romania stated its

intention to file a third motion for relief from judgment. *Id.* ¶ 16.

23. Due to Romania's continued non-compliance with the Court's discovery orders, as of August 23, 2024 (the anticipated date by which briefing on the instant supplemental motion will conclude), sanctions against Romania have continued to accrue at the rate of \$100,000 per week since August 2, 2021. Therefore, Petitioners seek \$15,900,000 in additional sanctions for three years and three weeks of Romania's non-compliance with the Discovery Order.

24. Outside of the proceedings before this Court and the DC Circuit, the parties have been engaged in litigation in various jurisdictions as a result of Romania's attempts to re-litigate arguments before different courts and tribunals. *First*, on May 15, 2023, an ICSID tribunal held a hearing on Romania's belated February 18, 2022 request for interpretation of the 2013 Award under Article 50 of the ICSID Convention. *See* ECF No. 181-6. On December 7, 2023, the ICSID tribunal denied Romania's request for interpretation and awarded Petitioners fees (the "2023 Interpretation Decision"), which Romania has resisted paying. *See Exhibit 5* (a true and correct copy of the 2023 Interpretation Decision). *Second*, Romania has attempted to claw back its prior payments of the Award in Romanian enforcement proceedings and has appealed a decision from the Satu Mare Court in Romania annulling Romania's attempt to claw back these payments. *Third*, notwithstanding the decision of the Satu Mare Court, the Romanian Ministry of Finance recently issued an order, Order No. 502/19.03.2024, purporting to authorize it to assert rights to claw-back and to net amounts owed by Romania in related national and international proceedings against the total amount subject to the claw-back. *See Exhibit 6* (a true and correct copy of Order No. 502/19.03.2024). Already, Romania has used the new order to set off the payment obligations imposed on it by the 2023 Interpretation Decision against prior Award payments that Romania claims must be clawed back pursuant to the European Commission's decision on state aid.

Relatedly, in March 2024, the General Court of the European Union heard oral argument on the European Commission's challenge, on state aid grounds, of Romania's authority to pay the Award. A decision is expected in October 2024.

25. Despite its active participation in litigation in various jurisdictions, Romania has not complied with this Court's order to fully answer Petitioners' Interrogatories and has delayed carrying out its discovery obligations.

* * *

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

Dated: August 2, 2024

Respectfully submitted,

/s/ Francis A. Vasquez, Jr.
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