

**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,

*Respondent.*

Civil Action No. 17-CV-02332-APM

**MEMORANDUM OF LAW IN SUPPORT OF PETITIONERS' SUPPLEMENTAL  
MOTION FOR SECOND JUDGMENT ON ACCRUED  
SANCTIONS AGAINST ROMANIA**

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## **PRELIMINARY STATEMENT**

In November 2021, this Court entered a \$1.5 million sanctions judgment against Romania for its continued contempt of a discovery order requiring it to respond to Petitioners' post-judgment interrogatories (the "First Sanctions Judgment"). ECF Nos. 174, 176. Romania appealed the First Sanctions Judgment, and the D.C. Circuit Court of Appeals (the "DC Circuit") affirmed on February 21, 2023. ECF No. 206.

Despite the Court's affirmed ruling, Romania continues to disobey the Court's discovery order. On May 26, 2023, Petitioners filed a motion for a second judgment on accrued sanctions because of Romania's continued non-compliance. ECF No. 210. Since that time, Romania has provided one additional set of supplemental interrogatory responses that are still deficient. Rather than focusing on its discovery obligations, it has continued to engage in meritless litigation in the DC Circuit and around the world in an effort to stymie Petitioners' enforcement efforts. Now that Romania has lost its fourth appeal in this action, *see* ECF No. 219, Petitioners respectfully seek to renew and supplement their May 26, 2023 motion to incorporate the subsequent events that have occurred and the additional sanctions that have accrued. Sanctions since those accounted for in the First Sanctions Judgment have been accruing at a rate of \$100,000 per week, and now amount to more than \$15 million. In light of Romania's continued failure to comply with this Court's discovery order and provide complete answers to the interrogatories, Petitioners request entry of this second sanctions judgment.

## **BACKGROUND**

On September 11 and 20, 2019, this Court confirmed an ICSID arbitration award (the "2013 Award" or "Award") rendered for Petitioners against Romania and entered judgment in the amount of \$356,439,727 (the "Judgment"). ECF Nos. 86, 88. Petitioners' efforts to enforce the

Judgment have been met with Romania's dilatory tactics at every turn, including with respect to Petitioners' efforts to seek post-judgment discovery.

Nearly five years ago, Petitioners served post-judgment interrogatories on Romania, seeking information concerning Romania's assets worldwide to aid in enforcement of the Judgment (the "Interrogatories"). ECF No. 98-3. Romania refused to answer them and, on March 11, 2020, the Court granted Petitioners' motion to compel and ordered Romania to respond to the Interrogatories (the "Discovery Order"). ECF No. 133. Instead of responding, Romania filed a motion for relief from the Judgment, and Petitioners moved for a contempt order. ECF Nos. 138, 151. On November 20, 2020, the Court granted Petitioners' motion (and denied Romania's motion) and ordered Romania to comply with the Discovery Order within 14 days, or else sanctions payable to Petitioners would accrue against Romania at the rate "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 . . . ." ECF No. 159 (the "Contempt Order") at 16. Romania appealed, and the DC Circuit affirmed the Contempt Order in all respects. *See* ECF No. 198-1 at 2 (rejecting Romania's argument that it was justified in disobeying this Court's Discovery Order and finding that the Contempt Order was not an abuse of discretion).

In the four months following the Contempt Order, Romania provided five sets of responses (collectively, the "Responses"), all of which failed to answer the Interrogatories and thereby comply with the Discovery Order. *See* ECF No. 167-2 ¶¶ 11, 14-28; *see also* ECF No. 174 at 5 ("Though Romania has answered some of Petitioners' interrogatories, its overall efforts have fallen short in multiple, material respects."). Accordingly, in November 2021, the Court entered the First

Sanctions Judgment, imposing sanctions that had accrued against Romania as of August 2, 2021 in the amount of \$1,500,000.<sup>1</sup> ECF Nos. 174 at 8, 176.

Romania appealed the First Sanctions Judgment and, in March 2022, filed its second motion for relief from judgment in these proceedings (the “Second Motion for Relief”), which the Court denied. *See* ECF Nos. 177, 181, 203. Romania likewise appealed this denial. *See* ECF No. 204. On February 21, 2023, the DC Circuit affirmed the First Sanctions Judgment in full, holding that this Court retained jurisdiction to enter the First Sanctions Judgment while the Contempt Order was on appeal and finding that this Court “did not err in its factual finding that Romania’s interrogatory answers were materially unresponsive” and “did not abuse its discretion in assessing sanctions.” ECF No. 206 at 3-4. Specifically, the DC Circuit affirmed this Court’s finding that “Romania’s answers were ‘incomplete in critical ways that would enable Petitioners to enforce the judgment’” because, for example, “Romania did not (i) identify any bank account information or deny the existence of such accounts; (ii) identify any tangible assets in the United States or deny owning such assets; or (iii) provide a complete list of assets held worldwide.” *Id.* at 4. The DC Circuit also noted that “nothing in law or logic entitled Romania to yet another round of motions and orders to compel” before the issuance of the First Sanctions Judgment, given that Romania “had already been held in contempt, given purgation conditions, and warned of the consequences of noncompliance,” and “[b]ecause Romania cannot plausibly claim that it lacked sufficient notice of its obligation to fully answer the interrogatories . . . the district court did not err in imposing sanctions on Romania.” *Id.* Romania has not paid the First Sanctions Judgment to date.

Despite actively litigating this case in multiple fora, as explained in more detail below, Romania still has not complied with this Court’s discovery orders since the issuance of the First

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<sup>1</sup> This amount represented approximately half of the sanctions that had accrued against Romania pursuant to the Contempt Order (\$2,900,000), in recognition of Romania’s “partial compliance.” ECF No. 174 at 8.

Sanctions Judgment. Between April and May of 2023, the parties exchanged email communications regarding Romania’s non-compliant discovery Responses to date, and Romania’s counsel indicated in a status update to the Court that he 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 requests” in Petitioners’ Interrogatories. *See* Declaration of Francis A. Vasquez, Jr. In Support of Petitioners’ Supplemental Motion for Second Judgment on Accrued Sanctions Against Romania (hereinafter, “Vasquez Decl.”) ¶¶ 12-13, Ex. 1; ECF No. 209 ¶ 4. To date, Romania has never provided such a document. Months later, on July 21, 2023, Romania advised Petitioners that it anticipated producing “certain documents . . . early next week.” Vasquez Decl. ¶ 16, Ex. 2. Romania likewise failed to follow through with its commitment to produce additional documents.

On October 31, 2023, Romania served its Fifth Amended Response to Petitioners’ Interrogatories—Romania’s first responses since March 29, 2021. Vasquez Decl. ¶ 17, Ex. 3; *see* ECF 167- 2 ¶ 21, Ex. 8. Like its prior Responses, Romania’s Fifth Amended Response is woefully inadequate and does not reflect a serious attempt to comply with this Court’s affirmed discovery orders. Twelve out of fifteen responses in the Fifth Amended Response are identical to responses in Romania’s Fourth Amended Response, which this Court and the DC Circuit, and Petitioners’ last three deficiency letters, have already explained are deficient. *Compare* ECF No. 167-2 Ex. 8, *with* Vasquez Decl. Ex. 3. As such, Romania has still failed to (1) identify any bank account information, whether in the United States or worldwide, or deny the existence of such, (2) identify the specific addresses of all tangible assets that it owns in the United States, or any assets that it owns elsewhere, and (3) provide complete and responsive information from all its government ministries. Romania’s Fifth Amended Response attaches a listing of assets or real property

apparently belonging to various consular entities. However, the list does not include clear or complete identifying information such as specific addresses of certain consular entities or specific addresses of their tangible assets. On March 25, 2024, Petitioners sent Romania a fourth deficiency letter, describing the failings of Romania's Fifth Amended Response. *See* Vasquez Decl. ¶¶ 17-20, Ex. 4. 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.

On May 14, 2024, the DC Circuit affirmed this Court's denial of Romania's Second Motion for Relief. ECF No. 219. In a July 8, 2024 status report, Petitioners notified the Court of their intention to submit this supplemental motion for a second sanctions judgment. ECF No. 220 ¶¶ 3-4, 7-8.

In addition to failing to comply with its discovery obligations and pay the First Sanctions Judgment, Romania has continued to challenge its obligation to pay the 2013 Award in other jurisdictions around the world. *First*, on February 18, 2022, Romania belatedly filed an application for interpretation of the 2013 Award under Article 50 of the ICSID Convention. *See* ECF No. 181-6. Following a hearing on this application, the ICSID tribunal denied Romania's request for interpretation and awarded Petitioners fees (the "2023 Interpretation Decision"), which Romania has resisted paying. Vasquez Decl. ¶ 24, Ex. 5. *Second*, Romania has sought to claw back Award payments that it made in Romanian enforcement proceedings in 2019 and 2020, and is currently appealing a decision from the Satu Mare Court in Romania annulling Romania's claw-back request. Vasquez Decl. ¶ 24. *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.



Vasquez Decl. ¶ 24, Ex. 6. Romania has already used this new order to set off its payment obligation imposed 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 (the “EC State Aid Decision”). Vasquez Decl. ¶ 24; *see* ECF No. 51-2.

Relatedly, in March 2024, the General Court of the European Union heard oral argument concerning the European Commission’s challenge, on state aid grounds, of Romania’s authority to pay the Award. A decision from the General Court is pending and is expected in October 2024. Vasquez Decl. ¶ 24.

## ARGUMENT

### **I. Romania Has Failed to Purge its Contempt and the Court Should Enter Judgment on the Amount of Sanctions that Have Accrued Since the First Sanctions Judgment**

Civil contempt “is a remedial sanction used to obtain compliance with a court order or to compensate for damage sustained as a result of noncompliance.” *NLRB v. Blevins Popcorn Co.*, 659 F.2d 1173, 1184 (D.C. Cir. 1981). There are three stages of civil contempt proceedings: (1) “issuance of an order,” (2) after disobedience of that order, “issuance of a conditional order finding the recalcitrant party in contempt and threatening to impose a specified penalty unless the recalcitrant party purges itself of contempt by complying with prescribed purgation conditions,” and (3) “exaction of the threatened penalty if the purgation conditions are not fulfilled.” *Id.* During the third “exaction” stage, a court “determines whether the party has fulfilled the purgation conditions,” thereby “escap[ing] the threatened penalty” or, if the party failed to do so, such that “the penalty is imposed.” *Id.* at 1185. Because civil contempt is a remedial sanction, “the intent of the recalcitrant party is irrelevant.” *Food Lion, Inc. v. United Food & Com. Workers Int’l Union, AFL-CIO-CLC*, 103 F.3d 1007, 1016 (D.C. Cir. 1997). Where a contemnor raises a defense for its failure to comply, it has the burden of showing “good faith and substantial compliance,”

demonstrating that it “took all reasonable steps within its power to comply with the court’s order.” *Id.* at 1017. “[G]ood faith is not entirely irrelevant to the ultimate determination of contempt.” *Id.* While a showing of good faith “may be considered in mitigation of damages, good faith alone is not sufficient to excuse contempt.” *Id.* at 1017-18. Exaction of contempt sanctions is warranted where the court finds by clear and convincing evidence that a contemnor has failed to satisfy the purgation conditions of a contempt order. *Blevins*, 659 F.2d at 1186.

When the contemnor remains non-compliant, the entry of interim orders on accrued sanctions is warranted. *See Agudas Chasidei Chabad v. Russian Fed’n*, 128 F. Supp. 3d 242, 249 (D.D.C. 2015) (granting plaintiff’s motion for judgment of accrued contempt sanctions against Russia in the amount of \$43.7 million and permitting plaintiff to “petition the clerk for additional judgment every 90 days until defendants comply”); *see also Agudas Chasidei Chabad v. Russian Fed’n*, No. 05-cv-01548 (“*Chabad*”), Dkt. No. 201 (D.D.C. Dec. 20, 2019) (order granting motion for second interim judgment for an additional \$78.3 million in accrued sanctions); *Chabad*, Dkt. No. 263 (D.D.C. Jan. 13, 2023) (order granting motion for third interim judgment and updating accrued sanctions of \$78.3 million to \$178.8 million); *Sistem Muhendislik Insaat Sanayi Ve Ticaret, A.S. v. Kyrgyz Republic*, 624 F. Supp. 3d 432, 435 (S.D.N.Y. 2022), *R. & R. adopted*, No. 12-CV-4502 (ALC), 2022 WL 5246422 (S.D.N.Y. Oct. 6, 2022) (entering second interim judgment for \$8.56 million against Kyrgyzstan who, since entry of first interim judgment, “ha[d] done nothing to purge its contempt or pay any of the judgments issued in Sistem’s favor”); *CE Int’l Res. Holdings LLC v. S.A. Mins. Ltd. P’ship*, No. 12 Civ. 8087(CM), 2013 WL 324061, at \*3 (S.D.N.Y. Jan. 24, 2013) (noting that judgment may be entered “from time to time for the accrued amounts of [contempt] fines.”).

This Court has already found that Romania's Responses failed to satisfy the Contempt Order's purgation conditions and entered a first interim judgment on accrued sanctions, which the DC Circuit affirmed. ECF Nos. 174 at 5-6, 206. Having no other motive than to delay these proceedings and evade its payment obligations, for almost two years following the First Sanctions Judgment, Romania made no genuine attempt to supplement its insufficient Responses, pay the First Sanctions Judgment, or pay the remaining amount owed on the Judgment. *See, e.g., Sistem*, 624 F. Supp. 3d at 435 (entering a second interim judgment on accrued sanctions where Kyrgyzstan "ha[d] done nothing to purge its contempt or pay any of the judgments issued in Sistem's favor" since the first interim judgment on accrued sanctions). Romania has even used a new order from the Romanian Ministry of Finance to set off its payment obligations arising from the 2023 Interpretation Decision against prior Award payments that Romania claims must be clawed back pursuant to the EC State Aid Decision. Vasquez Decl. ¶ 24, Ex. 6.

While Romania served its Fifth Amended Responses on October 31, 2023, these responses largely mimicked prior Responses that this Court and the DC Circuit made clear were inadequate. *See* ECF Nos. 174, 206. Romania's decision to provide the same deficient responses after more than two years since the First Sanctions Judgment demonstrates that Romania still has not abided with the Court's order to fully answer Petitioners' Interrogatories, and that Romania has no regard for its obligations, the compounded burdens it places on Petitioners, or this Court's authority. The purported "information" Romania has supplemented in its Fifth Amended Response suffers from the same deficiencies as its prior Responses in that it does not provide any meaningful details about Romania's assets. Like the Responses before them, Romania's Fifth Amended Response is "incomplete in critical ways that would enable Petitioners to enforce the judgment." ECF No.

174; *see* 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 . . .”).

Having three clear decisions from this Court and two from the DC Circuit, three detailed deficiency letters about the inadequacy of Romania’s prior Responses, and more than enough time, Romania has no excuse for failing to provide adequate discovery responses on its sixth try. *See* ECF Nos. 133 at 2-3 (“Petitioner attempted to obtain discovery in good faith . . . Petitioners’ Motion to Compel Romania to Answer Post-Judgment Interrogatories is granted”), 159 at 16 (“If 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”), 198-1 (affirming the Court’s Contempt Order); 174 at 6 (“Romania’s answers are therefore incomplete in critical ways that would enable Petitioners to enforce the judgment”); 206 at 4 (“There was no ambiguity in the Contempt Order’s requirement that Romania answer fully the post-judgment interrogatories, which themselves left no reasonable doubt as to Romania’s obligation to disclose bank accounts used to finance Romanian consular operations in the United States and real property held by Romania.”).

Indeed, Romania’s continued, years-long non-compliance in the face of rulings by both this Court and the DC Circuit has been willful. It feigns a commitment to engaging in discovery discussions to stall these proceedings while at the same time pouring its efforts into meritless and repetitive litigations in various other jurisdictions. *See* ECF No. 209 ¶ 4 (Romania representing to the Court that it 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 requests” in Petitioners’ Interrogatories although never providing such document to Petitioners); *See* ECF

No. 220 ¶ 13 (Romania representing to the Court that “Romania intends to describe the further information provided to Petitioners already, and the status of Romania’s efforts to locate further responsive information during that briefing [on Petitioners’ supplemental motion for a second sanctions judgment],” though Romania has not even responded to Petitioners’ fourth deficiency letter).

In sum, under the plain terms of the Discovery Order, Romania was required to fully answer the Interrogatories and, under the plain terms of the Contempt Order, as affirmed by the DC Circuit, was required to pay Petitioners the monetary sanctions specified therein if it did not. *See* ECF No. 159 at 16 (“If Romania fails to answer the post-judgment interrogatories within 14 days of entry of this order, it shall pay Petitioners [the fines specified herein] until such time as Romania complies with the March 11, 2020 Order.”). Romania, for reasons of its own, made the deliberate decision not to answer the Interrogatories—such that the monetary sanctions consequent to that decision must now be imposed.

Given Romania’s failure to purge its contempt over the last two and a half years, the Court should therefore enter the full amount of sanctions that have continued to accrue against Romania since August 2, 2021, which amount to \$15,900,000 as of August 23, 2024 (the anticipated date by which briefing on this motion will conclude). *See* Vasquez Decl. ¶ 23.

### **CONCLUSION**

For the foregoing reasons, Petitioners respectfully request that this Court enter judgment in the amount of \$15,900,000 as of August 23, 2024, to be supplemented at the time judgment is entered. Petitioners reserve the right to seek additional judgments on the sanctions that will continue to accrue against Romania as long as it remains in noncompliance with the Court’s orders.

Dated: August 2, 2024  
Washington, D.C.

By: /s/ Francis A. Vasquez, Jr.  
Francis A. Vasquez, Jr. [Bar # 442161]  
F.A. VASQUEZ CONSULTING  
2109 Arrowleaf Drive  
Vienna, VA 22182  
Telephone: (571) 363-7747  
frank@favasquez.com

By: /s/ Hansel T. Pham  
Hansel T. Pham [Bar # 489203]  
WHITE & CASE LLP  
701 Thirteenth Street, N.W.  
Washington, DC 20005  
Telephone: (202) 626-3600  
hpham@whitecase.com

-and-

Jacqueline L. Chung [Bar # NY0581]  
WHITE & CASE LLP  
1221 Avenue of the Americas  
New York, NY 10020  
Telephone: (212) 819-8200  
jacqueline.chung@whitecase.com

*Counsel for Petitioners Ioan Micula, S.C.  
European Food S.A., S.C. Starmill S.R.L.,  
and S.C. Multipack S.R.L.*

By: /s/ Anthony B. Ullman  
Drew Marrocco [Bar # 453205]  
Catharine Luo (admitted pro hac vice)  
DENTONS US LLP  
1900 K Street, NW  
Washington, DC 20006  
Telephone: (202) 496-7500  
Facsimile: (202) 408-6399  
drew.marrocco@dentons.com  
catharine.luo@dentons.com

-and-

Anthony B. Ullman (admitted *pro hac vice*)  
John J. Hay (admitted *pro hac vice*)  
DENTONS US LLP  
1221 Avenue of the Americas  
New York, NY 10020  
Telephone: (212) 768-6800  
anthony.ullman@dentons.com  
john.hay@dentons.com

*Counsel for Petitioner Viorel Micula*