

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

_____)	
IOAN MICULA, et al.,)	
)	
Petitioners,)	
)	
v.)	Civil No. 17-cv-2332 (APM)
)	
GOVERNMENT OF ROMANIA,)	
)	
Defendant.)	
_____)	

ORDER AND JUDGMENT

This long-running matter is once more before the court, this time on Petitioners’ Motion for Second Judgment on Accrued Sanctions Against Romania, ECF No. 210 [hereinafter Pet’rs.’ Mot.], and their Supplemental Motion for Second Judgment on Accrued Sanctions Against Romania, ECF No. 224 [hereinafter Pet’rs.’ Suppl. Mot.]. Petitioners seek entry of judgment against Romania in the amount of \$15.9 million, which represents the total amount of civil sanctions that have accumulated against Romania between August 2, 2021, and August 23, 2024. Pet’rs.’ Suppl. Mot. at 1. Their motion is granted in part.

On November 20, 2020, the court entered an order of civil contempt sanctions against Romania for its failure to fully respond to Petitioners’ post-judgment interrogatories. Mem. Op. and Order, ECF No. 159, at 16. The court warned Romania that, if it “fail[ed] 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” fully answers the interrogatories. *Id.* After failing to heed that warning for over a year, the court entered a judgment of accrued sanctions against

Romania in the amount of \$1.5 million. *See* Sep. Judg., ECF No. 176. The D.C. Circuit affirmed both rulings. *See Micula v. Gov't of Romania*, No. 21-7139, 2023 WL 2127741 (D.C. Cir. Feb. 21, 2023) [hereinafter *Micula I*] (affirming accrued sanctions order); *Micula v. Gov't of Romania*, No. 20-7116, 2022 WL 2281645 (D.C. Cir. June 24, 2022) (affirming civil contempt and sanctions order).

Romania still has not purged itself of contempt by fully answering Petitioners' post-judgment interrogatories. On October 31, 2023, seven months after the mandate issued in *Micula I*, Romania served its Fifth Amended Response to Petitioners' Interrogatories—its first responses since March 29, 2021. Pet'rs.' Suppl. Mot., Decl. of Francis A. Vasquez, ECF No. 224-2 [hereinafter Vasquez Decl.], ¶ 17; *id.*, Ex. 3, ECF No. 224-5. Nearly five months later, Petitioners sent Romania a deficiency letter regarding the responses. *Id.* ¶ 20; *id.*, Ex. 4, ECF No. 224-6. Romania never answered. *Id.* ¶ 20. Nor did it ask the court to evaluate its compliance with the sanctions order. A second judgment on accrued sanctions therefore is appropriate, as the purgation condition remains unsatisfied. *See Micula I*, 2023 WL 2127741, at *3.

Romania makes various arguments to avoid a second judgment, but none are convincing.¹ First, it contends that assessing sanctions from the time period of December 2021 until April 2023 would be “inequitable” because “Petitioners' failure to pursue discovery issues [during that time] underscores that the parties simply focused other matters related to this dispute.” Resp.'s Opp'n to Pet'rs.' Mot., ECF No. 215 [hereinafter Resp.'s Opp'n], at 3–4. But that argument has it precisely backwards. The burden is on Romania to purge itself of contempt, not Petitioners to continue to insist on compliance. *See Food Lion, Inc. v. United Food & Com. Workers Int'l Union, AFL-CIO-CLC*, 103 F.3d 1007, 1017–18 (D.C. Cir. 1997). That Petitioners turned instead to

¹ Notably, Romania has *not* argued that its Fifth Amended Response satisfies its outstanding discovery obligations.

defending Romania's continued efforts to undo the arbitration award and this court's judgments did not relieve Romania of its obligations.

Second, Romania asserts that a second judgment of accrued sanctions in the sum requested would be tantamount to a criminal penalty. Resp.'s Opp'n at 4–5. Not so. Unlike a criminal sanction, the contemnor can purge itself of contempt to avoid the accumulation of penalties. *See Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 828 (1994). Romania has never done so. The size of the judgment sought is one of Romania's own making.

Third, Romania claims that imposing more sanctions would be inconsistent with its recent agreement to attempt to resolve outstanding discovery disputes through mediation. Resp.'s Mem. in Opp'n to Pet'rs.' Suppl. Mot., ECF No. 225 [hereinafter Opp'n to Pet'rs.' Suppl.], at 5–7. Although Romania's willingness to mediate was a small step forward, those efforts did not produce a resolution and the purgation condition remains unfulfilled. *See Joint Status Rep.*, ECF No. 228. Imposing sanctions to compel compliance is therefore warranted.

Fourth, Romania says it does not know what it takes to purge itself of contempt. *See Opp'n to Pet'rs.' Suppl.* at 7–8. That argument is disingenuous. The court made specific findings about how Romania's interrogatory responses were “materially unresponsive,” and the D.C. Circuit affirmed those determinations. *Micula I*, 2023 WL 2127741, at 3. If Romania still has doubts about how to cure its non-compliance, it could have sought guidance from the court, which it has never done. Meanwhile, the interrogatories remain unanswered fully and completely, making additional sanctions appropriate.

Finally, Romania complains that Petitioners did not meet and confer about the supplemental motion before filing it. *See Opp'n to Pet'rs.' Suppl.* at 3–4. Apparently, irony is lost on Romania. It is Romania's intransigence that motivated Petitioners to seek entry of a second

judgment. Denying that request for failing to meet and confer would be pointless. *Cf. Mannina v. District of Columbia*, 437 F. Supp. 3d 1, 7 (D.D.C. 2020) (“[Plaintiff’s] failure to meet and confer did not prejudice [Defendant], . . . as [Plaintiff] has repeatedly informed [Defendant] of her objections.”)

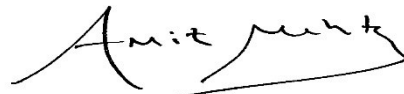
The court is not, however, prepared to enter judgment in the full amount requested by Petitioners. Sanctions are not warranted for the almost five-month period during which Petitioners delayed in responding to Romania’s Fifth Amended Response to Petitioners’ Interrogatories. *See Vasquez Decl.* ¶¶ 17, 20. Petitioners’ non-responsiveness should not be held against Romania. Accordingly, the court will deduct accrued sanctions for the nearly 22 weeks between October 31, 2023, when Romania provided its responses, and April 1, 2024, which is seven days after Romania received the deficiency letter. The deducted sum will be \$2.2 million (22 x \$100,000).

The court declines, at this time, to award attorney’s fees incurred in filing the motions. Petitioners made those requests only in their reply briefs. *See Reply in Supp. of Pet’rs.’ Mot.*, ECF No. 216, at 9–10; *Reply in Supp. of Pet’rs.’ Suppl. Mot.*, ECF No. 226, at 11–13. That is too late. *See Thong v. Andre Chreky Salon*, 247 F.R.D. 193, 198 (D.D.C. 2008) (“This Court will refrain from ruling on plaintiff’s request since attorney’s fees are improperly raised for the first time in a reply brief, thereby precluding any opportunity to respond.”). The court’s denial is without prejudice.

For the reasons stated, Petitioners’ motion and supplemental motion, ECF Nos. 210, 224, are granted in part. The court enters judgment of accrued sanctions in the amount of \$13.7 million

with the possibility of additional sanctions if Romania continues to remain non-compliant with the court's orders.

Dated: November 7, 2024

A handwritten signature in black ink that reads "Amit Mehta". The signature is written in a cursive style with a large initial "A" and a long horizontal stroke at the end.

Amit P. Mehta
United States District Court Judge