IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Clorox Spain S.L., *Petitioner*, v. The Bolivarian Republic of Venezuela, *Respondent.*	**Civil Action No. 1:24-cv-02060**

Petitioner's Response to the Court's Order to Show Cause

Petitioner Clorox Spain S.L. ("Clorox Spain") respectfully submits the following response to the Court's November 18, 2024 Order directing Clorox Spain to show cause as to why this case should not be dismissed for failure to prosecute and to inform the court of its efforts to serve Defendant Bolivarian Republic of Venezuela ("Venezuela"). ECF. No. 4.

INTRODUCTION

Clorox Spain has complied with its service obligations and has been diligent in its attempts to serve Venezuela. As a foreign sovereign, Venezuela is subject to unique service requirements and timelines that are not applicable to ordinary defendants or respondents. Pursuant to the Foreign Sovereign Immunities Act ("FSIA") and the Hague Conference on Private International Law, Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters ("Hague Convention"), Clorox Spain promptly served papers on Venezuela's designated authority for service of process ("Central Authority") after filing this action and any delay in advancing this proceeding is the result of Venezuela's Central Authority, which has failed to complete service of Clorox Spain's papers on Venezuela itself. Unfortunately, such delay is commonplace with respect to Venezuela.

ARGUMENT

I. Clorox Spain Has Been Diligent In Its Attempts To Serve Venezuela Under The FSIA And The Hague Convention

As an initial matter, because Venezuela is a foreign state the typical requirement that service be completed within 90 days does not apply. Rather, as Rule 4(m) states, the standard 90-day time limit for service of a complaint on a domestic defendant does not apply to actions against foreign states. Fed. R. Civ. P. 4(m) ("subdivision (m) does not apply to service in a foreign country under Rule 4(f) or 4(j)(1)"). The Federal Rules provide no alternative deadline for completing or filing proof of service. The absence of strict time periods makes sense given that plaintiffs and petitioners have limited control over the completion of service of process on a foreign sovereign.

Because this case is governed by the FSIA, service on Venezuela must be made by attempting the methods of service listed in descending order of preference in 28 U.S.C. § 1608(a)(1)-(4). The first method applies where there is a "special arrangement for service" between plaintiff and the foreign sovereign. Here there is no such arrangement between Clorox Spain and Venezuela, so service under Section 1608(a)(1) is not an option. *See Trapote v. Bolivarian Republic of Venezuela*, 2024 WL 1549146, at *1 (D.D.C. Apr. 10, 2024).

Instead, Petitioner has initiated service under Section 1608(a)(2), which calls for service "in accordance with an applicable international convention on service of judicial documents." Venezuela is a signatory to the Hague Convention, and Petitioner has initiated service pursuant to that Convention. The Hague Convention requires foreign states to designate a "Central Authority" to receive requests for service within their territory and to forward the papers to the party to be served. Hague Convention, 20 U.S.T. 361, T.I.A.S. No. 6638, Art. 2. Venezuela has designated its Ministry of Foreign Affairs in Caracas as its Central Authority, so that the Ministry

serves both as the entity responsible for effecting service within Venezuela's territory and as the entity on which service is to be effected by the petitioner. *Koch Minerals SARL v. Bolivarian Republic of Venezuela*, 514 F. Supp. 3d 20, 33-35, 35 n.7 (D.D.C. 2020).

A petitioner complies with its obligations under the Hague Convention by filing a formal request for service form with the Central Authority along with copies of the summons, complaint and any other case initiating papers. Hague Convention, Art. 3. Prior to mailing, the petitioner must ensure that these documents meet various technical requirements, translate them into the country's official language, and create hard copies in duplicate. *Id*.

Thus, as the petitioner, Clorox Spain has the power to begin this process by sending a request for service and the associated service documents to Venezuela's Central Authority. And it has done so. The summons was issued on July 7, 2024. Clorox Spain then completed the requisite service forms, translated the requisite forms as well as the case initiating documents, including the petition, supporting declaration and exhibits, and transmitted them to the Central Authority on August 16, 2016. The papers were received by the Central Authority in Caracas on August 21, 2024. However, once the request for service is sent to the Central Authority, Clorox Spain is forced to rely on the Central Authority complying with its obligations under the Hague Convention and effectuating service.[1]

Accordingly, Clorox Spain has diligently pursued its claim. Unfortunately, as courts in this District have previously recognized, Venezuela "has a documented history of playing a shell game: circumventing service by refusing to issue a certificate when the party to be served is the

[1] Article Six of the Hague Convention expressly states that the proof of service form is to be completed by the Central Authority. Accordingly, Clorox Spain cannot submit proof of failed or successful service until the Central Authority completes service, completes the Hague Convention service form and returns it to Clorox Spain.

same entity that it has designated as its Central Authority." *Koch Minerals*, 514 F. Supp. 3d at 34; *see also Trapote*, 2024 WL 1549146 at *1 (accepting statement that "'Venezuela does not comply with its obligations' under the Hague Convention, particularly for cases from the United States."). Indeed, this Court previously recognized that service on Venezuela can be complicated and time consuming. In *OI European Group B.V. v. Bolivarian Republic of Venezuela*, Case No. 1:16-cv-1533, the Court discharged a similar order to show cause where the Central Authority had failed to serve Venezuela promptly and OI European Group was ultimately forced to effect service via diplomatic channels pursuant to 28 U.S.C. § 1608(a)(4). Case No. 1:16-cv-1533, November 4, 2016 Minute Order (discharging order to show cause); Case No. 1:16-cv-1533, August 22, 2017 Status Report, ECF. No. 15 (detailing service by diplomatic means in response to court order). As in *OI European Group*, absent a prompt response from Venezuela's Central Authority, Clorox Spain will proceed to service by diplomatic means in short order. *See also Trapote*, 2024 WL 1549146 at *2 (authorizing service by diplomatic channels where Venezuela's Central Authority had failed to effect service for nearly six months).

CONCLUSION

For the reasons set forth above, Clorox Spain respectfully requests that this Court not enter an order dismissing this matter for lack of service.

Dated: December 9, 2024

Respectfully submitted,

/s/ Miguel A. Estrada

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