

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SERGIO LOVATI, RUDI LOVATI,		:	
ALESSANDRA SARAGO LOVATI AND		:	
ALESSANDRA LOVATI,		:	
		:	
Plaintiffs,		:	CIVIL INDEX NO. 1:19-cv-04799
		:	
v.		:	
		:	
PETRÓLEOS DE VENEZUELA, S.A.		:	
Defendant.		:	
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COMPLAINT

Plaintiffs Sergio Lovati, Rudi Lovati, Alessandra Sarago Lovati and Alessandra Lovati (collectively, “Plaintiffs”), by their undersigned counsel, as and for their Complaint against Defendant Petróleos de Venezuela, S.A. (“PDVSA”), allege as follows:

NATURE OF THE ACTION

1. This is a breach of contract action arising from the failure of PDVSA to make contractually-mandated interest payments on certain notes (the “Notes”) held by Plaintiffs and issued by PDVSA pursuant to an Indenture, dated as of November 17, 2011, as amended (the “Indenture”), entered into by and among PDVSA, PDVSA Petróleo S.A., as guarantor, Wilmington Trust Company, as trustee (the “Trustee”), Citibank, N.A., as registrar, transfer agent and principal paying agent, and Dexia Banque Internationale à Luxembourg, Societe Anononyme, as Luxembourg listing agent and paying agent. For their relief, Plaintiffs seek payment of the accrued and unpaid interest on the Notes held by the Plaintiffs, as provided for in the Indenture, under the Notes and under New York law. A true and accurate copy of the Indenture, with the forms of the Notes attached as exhibits thereto, is attached as Exhibit A.

THE PARTIES

2. Plaintiff Sergio Lovati is a natural person residing in the Italian Republic (“Italy”).
3. Plaintiff Rudi Lovati is a natural person residing in Italy.
4. Plaintiff Alessandra Sarago Lovati is a natural person residing in Italy.
5. Plaintiff Alessandra Lovati a natural person residing in Italy.
6. Defendant PDVSA is a capital stock corporation organized under the laws of the Bolivarian Republic of Venezuela (the “Republic”), majority owned by the Republic, which is a Foreign State as defined in 28 U.S.C. § 1603, and PDVSA is therefore an Agency or Instrumentality of a Foreign State, as defined in 28 U.S.C. § 1603.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1330(a), as PDVSA is a foreign capital stock corporations owned directly by the Republic, which is a Foreign State. PDVSA has explicitly and unconditionally waived sovereign immunity under Section 10.10(c) of the Indenture with respect to actions arising out of or based on the Notes issued pursuant to the Indenture, or arising out of or based on the Indenture itself, by holders of the Notes issued thereunder, and is, therefore, not entitled to immunity under 28 U.S.C. §§ 1605-07 or under any applicable international agreement.

8. In addition, this Court has personal jurisdiction over PDVSA because PDVSA regularly conducts business in New York and PDVSA consented in the Indenture to submit to the jurisdiction of this Court, in respect to actions by holders of Notes issued under the Indenture, arising out of or based on such Notes, or arising out of or based on the Indenture itself.

9. Venue is proper in this district by agreement of the parties and pursuant to 28 U.S.C. § 1391(f).

10. PDVSA has appointed Corporation Service Company as its agent to receive and forward any writs, process and summonses in any suit, action or proceeding brought in connection with the Indenture or the Notes against PDVSA in any United States federal court sitting in the Borough of Manhattan, New York City.

FACTUAL ALLEGATIONS

The Non-Payment on Sergio Lovati's Notes by PDVSA

11. The following relates to Sergio Lovati's Notes:

a. Sergio Lovati is the owner of \$17,965,000.00 principal amount of Notes (the "Sergio Lovati Notes"), issued pursuant to the Indenture by PDVSA. The ISIN for the Sergio Lovati Notes is USP7807HAP03. The Sergio Lovati Notes have a coupon rate of 9% per annum and mature in equal installments on November 17, 2019, November 17, 2020 and November 17, 2021, the final maturity.

b. Interest under the Sergio Lovati Notes is payable semi-annually in arrears on each May 17 and November 17 until the principal thereof is paid or fully provided for. Interest on the Sergio Lovati Notes in the amount of \$2,425,275.00 was due on November 17, 2017, and has not been paid to Sergio Lovati by PDVSA. Interest on the Sergio Lovati Notes in the amount of \$808,425.00 was due on May 17, 2018, and has not been paid to Sergio Lovati by PDVSA. Interest on the Sergio Lovati Notes in the amount of \$808,425.00 was due on November 17, 2018, and has not been paid to Sergio Lovati by PDVSA. Interest on the Sergio Lovati Notes in the amount of \$808,425.00 was due on May 17, 2019, and has not been paid to Sergio Lovati by PDVSA. The total amount of interest on the Sergio Lovati Notes owed to Sergio Lovati, which has not been paid by PDVSA, is \$4,850,550.00.

c. On February 8, 2019, Sergio Lovati delivered to PDVSA and the Trustee a demand for the payment of the overdue and unpaid interest on the Sergio Lovati Notes with respect to the interest payments due on November 17, 2017, May 17, 2018 and November 17, 2018. A true and accurate copy of said demand is set forth as **Exhibit B**.

The Non-Payment on Rudi Lovati's Notes by PDVSA

12. The following relates to Rudi Lovati's Notes:

a. Rudi Lovati is the owner of \$17,965,000.00 principal amount of Notes (the "Rudi Lovati Notes"), issued pursuant to the Indenture by PDVSA. The ISIN for the Rudi Lovati Notes is USP7807HAP03. The Rudi Lovati Notes have a coupon rate of 9% per annum and mature in equal installments on November 17, 2019, November 17, 2020 and November 17, 2021, the final maturity.

b. Interest under the Rudi Lovati Notes is payable semi-annually in arrears on each May 17 and November 17 until the principal thereof is paid or fully provided for. Interest on the Rudi Lovati Notes in the amount of \$808,425.00 was due on May 17, 2018, and has not been paid to Rudi Lovati by PDVSA. Interest on the Rudi Lovati Notes in the amount of \$808,425.00 was due on November 17, 2018, and has not been paid to Rudi Lovati by PDVSA. Interest on the Rudi Lovati Notes in the amount of \$808,425.00 was due on May 17, 2019, and has not been paid to Rudi Lovati by PDVSA. The total amount of interest on the Rudi Lovati Notes owed to Rudi Lovati, which has not been paid by PDVSA, is \$2,425,275.00.

c. On February 8, 2019, Rudi Lovati delivered to PDVSA and the Trustee a demand for the payment of the overdue and unpaid interest on the Rudi Lovati Notes with respect to the interest payments due on May 17, 2018 and November 17, 2018. A true and accurate copy of said demand is set forth as **Exhibit C**.

The Non-Payment on Alessandra Sarago Lovati's Notes by PDVSA

13. The following relates to Alessandra Sarago Lovati's Notes:

a. Alessandra Sarago Lovati is the owner of \$19,470,000.00 principal amount of Notes (the "Alessandra Sarago Lovati Notes"), issued pursuant to the Indenture by PDVSA. The ISIN for the Alessandra Sarago Lovati Notes is USP7807HAP03. The Alessandra Sarago Lovati Notes have a coupon rate of 9% per annum and mature in equal installments on November 17, 2019, November 17, 2020 and November 17, 2021, the final maturity.

b. Interest under the Alessandra Sarago Lovati Notes is payable semi-annually in arrears on each May 17 and November 17 until the principal thereof is paid or fully provided for. Interest on the Alessandra Sarago Lovati Notes in the amount of \$876,150.00 was due on November 17, 2017, and has not been paid to Alessandra Sarago Lovati by PDVSA. Interest on the Alessandra Sarago Lovati Notes in the amount of \$876,150.00 was due on May 17, 2018, and has not been paid to Alessandra Sarago Lovati by PDVSA. Interest on the Alessandra Sarago Lovati Notes in the amount of \$876,150.00 was due on November 17, 2018, and has not been paid to Alessandra Sarago Lovati by PDVSA. Interest on the Alessandra Sarago Lovati Notes in the amount of \$876,150.00 was due on May 17, 2019, and has not been paid to Alessandra Sarago Lovati by PDVSA. The total amount of interest on the Alessandra Sarago Lovati Notes owed to Alessandra Sarago Lovati, which has not been paid by PDVSA, is \$3,504,600.00.

c. On February 8, 2019, Alessandra Sarago Lovati delivered to PDVSA and the Trustee a demand for the payment of the overdue and unpaid interest on the Alessandra Sarago Lovati Notes with respect to the interest payments due on November 17, 2017, May 17, 2018 and November 17, 2018. A true and accurate copy of said demand is set forth as **Exhibit D**.

The Non-Payment on Alessandra Lovati's Notes by PDVSA

14. The following relates to Alessandra Lovati's Notes:

a. Alessandra Lovati is the owner of \$55,000.00 principal amount of Notes (the "Alessandra Lovati Notes"), issued pursuant to the Indenture by PDVSA. The ISIN for the Alessandra Lovati Notes is USP7807HAP03. The Alessandra Lovati Notes have a coupon rate of 9% per annum and mature in equal installments on November 17, 2019, November 17, 2020 and November 17, 2021, the final maturity.

b. Interest under the Alessandra Lovati Notes is payable semi-annually in arrears on each May 17 and November 17 until the principal thereof is paid or fully provided for. Interest on the Alessandra Lovati Notes in the amount of \$2,475.00 was due on November 17, 2017, and has not been paid to Alessandra Lovati by PDVSA. Interest on the Alessandra Lovati Notes in the amount of \$2,475.00 was due on May 17, 2018, and has not been paid to Alessandra Lovati by PDVSA. Interest on the Alessandra Lovati Notes in the amount of \$2,475.00 was due on November 17, 2018, and has not been paid to Alessandra Lovati by PDVSA. Interest on the Alessandra Lovati Notes in the amount of \$2,475.00 was due on May 17, 2019, and has not been paid to Sergio Lovati by PDVSA. The total amount of interest on the Alessandra Lovati Notes owed to Alessandra Lovati, which has not been paid by PDVSA, is \$9,900.00.

c. On February 8, 2019, Alessandra Lovati delivered to PDVSA and the Trustee a demand for the payment of the overdue and unpaid interest on the Alessandra Lovati Notes with respect to the interest payments due on November 17, 2017, May 17, 2018 and November 17, 2018. A true and accurate copy of said demand is set forth as **Exhibit E**.

FIRST CLAIM FOR RELIEF

(For Breach of Contract on the Sergio Lovati Notes)

15. Sergio Lovati repeats and realleges the allegations set forth in paragraphs 1 through 14 herein.

16. The Sergio Lovati Notes are Notes outstanding under the terms of the Indenture.

17. On or about February 8, 2019, Sergio Lovati delivered a demand to PDVSA and the Trustee for the payment to Sergio Lovati of the overdue and unpaid interest on the Sergio Lovati Notes in the amount of \$3,233,700.00.

18. Despite these notices, PDVSA has failed to make any payments of interest on the Sergio Lovati Notes to Sergio Lovati.

19. Since the delivery of the notices to PDVSA and the Trustee, PDVSA has failed to make the additional payments of interest due on the Sergio Lovati Notes to Sergio Lovati, including the payment of \$808,425.00 due on May 17, 2019.

20. By reason of the foregoing, PDVSA has breached its contractual obligations to Sergio Lovati, and PDVSA is liable to Sergio Lovati for the amount of unpaid interest in the amount of \$4,850,550.00, plus additional amounts of principal of, and interest on, the Sergio Lovati Notes that shall in the future become due and remain unpaid by PDVSA to Sergio Lovati, plus interest thereon.

SECOND CLAIM FOR RELIEF

(For Breach of Contract on the Rudi Lovati Notes)

21. Rudi Lovati repeats and realleges the allegations set forth in paragraphs 1 through 14 herein.

22. The Rudi Lovati Notes are Notes outstanding under the terms of the Indenture.

23. On or about February 8, 2019, Rudi Lovati delivered a demand to PDVSA and the Trustee for the payment to Rudi Lovati of the overdue and unpaid interest on the Rudi Lovati Notes in the amount of \$1,616,850.00.

24. Despite these notices, PDVSA has failed to make any payments of interest on the Rudi Lovati Notes to Rudi Lovati.

25. Since the delivery of the notices to PDVSA and the Trustee, PDVSA has failed to make the additional payments of interest due on the Rudi Lovati Notes to Rudi Lovati, including the payment of \$808,425.00 due on May 17, 2019.

26. By reason of the foregoing, PDVSA has breached its contractual obligations to Rudi Lovati, and PDVSA is liable to Rudi Lovati for the amount of unpaid interest in the amount of \$2,425,275.00, plus additional amounts of principal of, and interest on, the Rudi Lovati Notes that shall in the future become due and remain unpaid by PDVSA to Rudi Lovati, plus interest thereon.

THIRD CLAIM FOR RELIEF

(For Breach of Contract on the Alessandra Sarago Lovati Notes)

27. Alessandra Sarago Lovati repeats and realleges the allegations set forth in paragraphs 1 through 14 herein.

28. The Alessandra Sarago Lovati Notes are Notes outstanding under the terms of the Indenture.

29. On or about February 8, 2019, Alessandra Sarago Lovati delivered a demand to PDVSA and the Trustee for the payment to Alessandra Sarago Lovati of the overdue and unpaid interest on the Alessandra Sarago Lovati Notes in the amount of \$2,628,450.00.

30. Despite these notices, PDVSA has failed to make any payments of interest on the Alessandra Sarago Lovati Notes to Alessandra Sarago Lovati.

31. Since the delivery of the notices to PDVSA and the Trustee, PDVSA has failed to make the additional payments of interest due on the Alessandra Sarago Lovati Notes to Alessandra Sarago Lovati, including the payment of \$876,150.00 due on May 17, 2019.

32. By reason of the foregoing, PDVSA has breached its contractual obligations to Alessandra Sarago Lovati, and PDVSA is liable to Alessandra Sarago Lovati for the amount of unpaid interest in the amount of \$3,504,600.00, plus additional amounts of principal of, and interest on, the Alessandra Sarago Lovati Notes that shall in the future become due and remain unpaid by PDVSA to Alessandra Sarago Lovati, plus interest thereon.

FOURTH CLAIM FOR RELIEF

(For Breach of Contract on the Alessandra Lovati Notes)

33. Alessandra Lovati repeats and realleges the allegations set forth in paragraphs 1 through 14 herein.

34. The Alessandra Lovati Notes are Notes outstanding under the terms of the Indenture.

35. On or about February 8, 2019, Alessandra Lovati delivered a demand to PDVSA and the Trustee for the payment to Alessandra Lovati of the overdue and unpaid interest on the Alessandra Lovati Notes in the amount of \$7,425.00.

36. Despite these notices, PDVSA has failed to make any payments of interest on the Alessandra Lovati Notes to Alessandra Lovati.

37. Since the delivery of the notices to PDVSA and the Trustee, PDVSA has failed to make the additional payments of interest due on the Alessandra Lovati Notes to Alessandra Lovati, including the payment of \$2,475.00 due on May 17, 2019.

38. By reason of the foregoing, PDVSA has breached its contractual obligations to Alessandra Lovati, and PDVSA is liable to Alessandra Lovati for the amount of unpaid interest

in the amount of \$9,900.00, plus additional amounts of principal of, and interest on, the Alessandra Lovati Notes that shall in the future become due and remain unpaid by PDVSA to Alessandra Lovati, plus interest thereon.

WHEREFORE, Plaintiffs Sergio Lovati, Rudi Lovati, Alessandra Sarago Lovati and Alessandra Lovati demand judgment against PDVSA, as follows:

- i. On Count One, awarding Sergio Lovati damages against PDVSA in the amount of at least \$4,850,550.00, plus interest;
- ii. On Count Two, awarding Rudi Lovati damages against PDVSA in the amount of at least \$2,425,275.00, plus interest;
- iii. On Count Three, awarding Alessandra Sarago Lovati damages against PDVSA in the amount of at least \$3,504,600.00, plus interest;
- iv. On Count Four, awarding Alessandra Lovati damages against PDVSA in the amount of at least \$9,900.00, plus interest;
- v. Awarding Plaintiffs their costs, attorneys' fees and such other and further relief as this Court shall deem just and proper.

Dated: New York, New York
May 23, 2019

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