

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SERGIO LOVATI AND RUDI LOVATI,

Plaintiffs,

v.

PETRÓLEOS DE VENEZUELA, S.A.

Defendant.

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CIVIL INDEX NO.

**COMPLAINT**

Plaintiffs, Sergio Lovati and Rudi 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 its 8.50% Senior Secured Notes due 2020 (the “Notes”) held by Plaintiffs and issued by PDVSA pursuant to an Indenture, dated as of October 28, 2016, as amended (the “Indenture”), entered into by and among PDVSA, PDVSA Petróleo S.A., as guarantor, MUFG Union Bank, N.A., as trustee (the “Trustee”), GLAS Americas LLC, as collateral agent, Law Debenture Trust Company of New York, as registrar, transfer agent and principal paying agent, and Banque Internationale à Luxembourg, Société Anonyme, as Luxembourg paying agent. For their relief, Plaintiffs seek payment of the accrued and unpaid principal and interest on the Notes held by the Plaintiffs, as provided 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 hereto as **Exhibit A**, and made a part hereof.

### **THE PARTIES**

2. Plaintiff, Sergio Lovati, is a natural person residing in the Republic of Italy (“Italy”).

3. Plaintiff, Rudi Lovati, is a natural person residing in Italy.

4. Defendant, PDVSA, is a capital stock corporation organized under the laws of the Bolivarian Republic of Venezuela (the “Republic”), majority-owned by the Republic. The Republic 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**

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1330(a), as PDVSA is a foreign capital stock corporation owned directly by the Republic, which is a Foreign State. PDVSA has explicitly and unconditionally waived sovereign immunity under Section 10.12(a) and Section 10.12(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 otherwise applicable international agreement.

6. In addition, this Court has personal jurisdiction over PDVSA because: (a) PDVSA regularly conducts business in New York; and (b) PDVSA consented in Section 10.12(a) of 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.

7. Venue is proper in this district by agreement of the parties in Section 10.12(a) of the Indenture and pursuant to 28 U.S.C. § 1391(f).

8. PDVSA has, in Section 10.12(b) of the Indenture, 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**

#### **PDVSA has Alleged that the Notes are Invalid**

9. On October 29, 2019, PDVSA filed a Complaint in the United States District Court for the Southern District of New York (Case 1:19-cv-10023 KPF), commencing a case (the “Indenture Case”) against MUFG Union Bank, N.A. and GLAS Americas LLC (collectively, the “Indenture Defendants”), alleging that the Notes are invalid, illegal, null and void *ab initio* and unenforceable, and that the pledge agreement securing the Notes is invalid, illegal, null and void *ab initio* and unenforceable. The Indenture Case, being filed within two days after the October 27, 2019 due date for payments of principal and interest on the Notes, makes it clear that no normal required periodic payments will be made by PDVSA on the Notes.

#### **The Notes Have Been Accelerated by Notice of over 25% of the Notes after Default**

10. According to paragraphs 110 and 169 of the Defendants’ Answer and Counterclaim (the “Indenture Case Answer”) filed by the Indenture Defendants on December 19, 2019 in the Indenture Case, on December 18, 2019, the holders of at least 25% in principal amount of Outstanding Notes (as defined in the Indenture), sent an Acceleration Notice (as defined in the Indenture) to PDVSA and the Trustee pursuant to Section 5.01(b) of the Indenture.

11. Pursuant to Section 5.01(b) of the Indenture, an Acceleration Notice in accordance with the Indenture renders the principal of, and premium, if any, accrued interest, and Additional Amounts (as defined in the Indenture), if any, on all the Notes immediately due and payable, which provision is also set forth in paragraph 215 of the Indenture Case Answer.

**PDVSA Has Failed to Make Payments on Sergio Lovati's Notes**

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

a. Sergio Lovati is the owner of \$2,211,000.00 in principal amount of Notes (the "Sergio Lovati Notes"), issued pursuant to the Indenture by PDVSA. The ISIN for the Sergio Lovati Notes is USP7807HAV70. The Sergio Lovati Notes have a coupon rate of 8.50% per annum and mature in remaining equal installments of \$1,105,500.00 on October 27, 2019, and \$1,105,500.00 on October 27, 2020, the final maturity date.

b. Principal of the Sergio Lovati Notes in the amount of \$1,105,500.00, due on October 27, 2019, has not been paid to Sergio Lovati by PDVSA.

c. Principal of the Sergio Lovati Notes in the amount of \$1,105,500.00, originally due on October 27, 2020 (the "Sergio Lovati 2020 Notes"), now due instead on December 18, 2019 by virtue of the acceleration notice delivered to PDVSA and the Trustee, has not been paid to Sergio Lovati by PDVSA.

d. Interest under the Sergio Lovati Notes is payable semi-annually in arrears on April 27 and October 27 of each year until the principal thereof is paid or fully provided for. Interest on the Sergio Lovati Notes in the amount of \$46,983.75 was due on October 27, 2019, and has not been paid to Sergio Lovati by PDVSA.

e. Additional interest under the Sergio Lovati Notes, representing interest on such Sergio Lovati Notes which became payable on December 18, 2019 by virtue of the above-

mentioned acceleration of the Sergio Lovati 2020 Notes (the “Sergio Lovati Accelerated Interest”), has not been paid to Sergio Lovati by PDVSA.

f. The total amount of principal and interest on the Sergio Lovati Notes owed to Sergio Lovati, which has not been paid by PDVSA, is \$2,257,983.75, together with the Sergio Lovati Accelerated Interest.

**PDVSA Has Failed to Make Payments on Rudi Lovati’s Notes**

13. The following relates to Rudi Lovati’s Notes:

a. Rudi Lovati is the owner of \$2,866,000.00 in principal amount of Notes (the “Rudi Lovati Notes”), issued pursuant to the Indenture by PDVSA. The ISIN for the Rudi Lovati Notes is USP7807HAV70. The Rudi Lovati Notes have a coupon rate of 8.50% per annum and mature in remaining equal installments of \$1,433,000.00 on October 27, 2019, and \$1,433,000.00 on October 27, 2020, the final maturity date.

b. Principal of the Rudi Lovati Notes in the amount of \$1,433,000.00, due on October 27, 2019, has not been paid to Rudi Lovati by PDVSA.

c. Principal of the Rudi Lovati Notes in the amount of \$1,433,000.00, originally due on October 27, 2020 (the “Rudi Lovati 2020 Notes”), now due instead on December 18, 2019 by virtue of the acceleration notice delivered to PDVSA and the Trustee, has not been paid to Rudi Lovati by PDVSA.

d. Interest under the Rudi Lovati Notes is payable semi-annually in arrears on April 27 and October 27 of each year until the principal thereof is paid or fully provided for. Interest on the Rudi Lovati Notes in the amount of \$60,902.50 was due on October 27, 2018, and has not been paid to Rudi Lovati by PDVSA.

e. Additional interest under the Rudi Lovati Notes, representing interest on such Rudi Lovati Notes which became payable on December 18, 2019 by virtue of the above-mentioned acceleration of the Rudi Lovati 2020 Notes (the “Rudi Lovati Accelerated Interest”), has not been paid to Rudi Lovati by PDVSA.

f. The total amount of principal and interest on the Rudi Lovati Notes owed to Rudi Lovati, which has not been paid by PDVSA, is \$2,626,902.50, together with the Rudi Lovati Accelerated Interest.

**FIRST CLAIM FOR RELIEF**

(For Breach of Contract on the Sergio Lovati Notes)

14. Sergio Lovati repeats and realleges the allegations set forth in paragraphs 1 through 13 herein.

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

16. On October 29, 2019, PDVSA filed suit to contest the validity of the Notes.

17. PDVSA has failed to make the payments of principal and interest due to Sergio Lovati on the Sergio Lovati Notes.

18. 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 principal and interest in the amount of \$2,257,983.75, together with the Sergio Lovati Accelerated Interest, 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, and interest thereon.

**SECOND CLAIM FOR RELIEF**

(For Breach of Contract on the Rudi Lovati Notes)

19. Rudi Lovati repeats and realleges the allegations set forth in paragraphs 1 through 13 herein.

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

21. On October 29, 2019, PDVSA filed suit to contest the validity of the Notes.

22. PDVSA has failed to make the payments of principal and interest due to Rudi Lovati on the Rudi Lovati Notes.

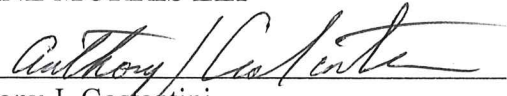
23. By reason of the foregoing, PDVSA has breached its contractual obligations to Rudi Lovati, and PDVSA is liable to Rudi Lovati for the amount of unpaid principal and interest in the amount of \$2,626,902.50, together with the Rudi Lovati Accelerated Interest, additional amounts of principal of, and interest on, the Rudi Lovati Notes that shall in the future become due and remain unpaid by PDVSA to Rudi Lovati, and interest thereon.

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

- i. On Count One, awarding Sergio Lovati damages against PDVSA in the amount of at least \$2,257,983.75 plus the Sergio Lovati Accelerated Interest, plus interest;
- ii. On Count Two, awarding Rudi Lovati damages against PDVSA in the amount of at least \$2,626,902.50 plus the Rudi Lovati Accelerated Interest, plus interest;
- iii. 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  
January 10, 2020

**DUANE MORRIS LLP**

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