UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:20-cv-20078-RNS

MARIA DOLORES CANTO MARTI, as personal representative of the Estates of Dolores Marti Mercade and Fernando Canto Bory,

Plaintiff,

v.

IBEROSTAR HOTELES Y APARTAMENTOS, S.L., a Spanish limited liability company,

Defendant.
_____/

DEFENDANT'S STATUS REPORT

Defendant IBEROSTAR HOTELES Y APARTAMENTOS, S.L.U. ("Iberostar") submits[1] this status report pursuant to this Court's Order Granting Defendant's Motion to Stay Proceedings dated April 24, 2020 (D.E. 17), directing Defendant to submit status reports every 30 days on its request for authorization to the European Union Commission. Defendant states as follows:

1. Since the last update filed on August 9, 2022, Iberostar continues to await a decision on its application for authorization to the European Commission to respond to the Complaint in this action which was filed with the European Commission on April 15, 2020 (the "Application"). Defendant's Motion to Stay, ¶ 2. (D.E. 16).

[1] Iberostar reserves all its rights and will move to dismiss based on its Rule 12 defenses when it receives authorization to do so from the European Commission.

2. The European Commission acknowledged receipt of Defendant's Application on May 19, 2020.

3. On June 15, 2020, Iberostar requested the European Commission to provide an update on the status of the Application.

4. On June 22, 2020, the European Commission confirmed that it is "currently assessing [Defendant's] application," and that the Commission does "[its] utmost to ensure that a decision is taken in due course."

5. On August 10, 2020, the European Commission informed Iberostar regarding the procedures involved in the consideration of the pending Application. They explained that it requires "extensive consultation of both the Commission's services and Member States' authorities."

6. On September 23, 2020, the Commission replied that its "services are actively assessing [Iberostar's] application." The Commission highlighted that the "complexity of [Iberostar's] request requires careful consideration, including extensive consultation of both the Commission services and Member States' authorities." Finally, the Commission confirmed that, "[d]espite the challenges presented by the current health situation, [they] do [their] utmost to ensure that a decision is taken in due course."

7. On November 19, 2020, the European Commission informed Iberostar regarding the status of its pending Application. They explained that "challenges presented by the current health situation [have] lengthened the process." Further, it confirmed they "are doing [their] utmost to ensure a timely response."

8. On December 20, 2020, the European Commission sent a communication to Iberostar in which it confirmed the Commission has "been actively liaising to complete the

required consultations of both the Commission Services and Member States' authorities, as required." The Commission "trust[s] any such assessments and investigations will shortly be completed and the authorization process will pursue its course."

9. On February 18, 2021, the European Commission sent a new communication to Iberostar in which it confirmed Iberostar's "application is still undergoing assessment by [the Commission] services." The Commission added that "the consultation of the Commission services raised questions and possible gaps of information that require further investigation."

10. On March 16, 2021, Iberostar sent a new communication to the European Commission, requesting an update on the status of the Application "and the likely timeframe for the resolution." Defendant also requested more detail in connection with the procedure the European Commission is following to resolve the Application. The European Commission responded on March 22, 2021 confirming that the application is still undergoing assessment. It further stated, "[t]his application gives rise to unprecedented questions that require careful consideration. The complexity of the case accounts for the duration of the administrative procedure and attentive preparation of a decision." It further indicated they will be providing additional information regarding the procedure.

11. On March 30, 2021, Iberostar received a response from the European Commission, in which it emphasized that the Application "gives rise to unprecedented questions that require careful consideration." This is because "Applications referring to the possibility for an EU company to appear in front of a U.S. court in the context of a legal action pursuant to Title III of the Cuban Liberty Democratic and Solidarity Act of 1996 are exceptional, hence they raise specific issues." The Commission also noted that, "the services of the Commission are in charge of assessing the complexities of this request and balancing the large array of interests at hand. These

internal dialogues are dynamic and the assessment multifaceted. Naturally, this requires extensive research, appraisals as well as analyses, both legal and factual." Further, because every decision the Commission takes may set a precedent for future cases, "These systemic implications also require careful consideration, going beyond the individual case under assessment." With regards to the authorization procedure, the Commission explained in its letter that, "a committee composed of representatives of the Member States assists the Commission in the assessment of authorisation demands. This consultation is subject to the comitology procedure for which representatives of the Member States examine the measures and must provide a formal opinion. The consultation of the 27 Member States calls for conscientious coordination and is an expression of the values that guide the European Union, even more so when questions of foreign policy and sovereignty are at stake." All these elements, "account for the duration of the procedure." The Commission nonetheless confirmed once again that, "Our services are active in pursuing the assessment and the mandatory consultations. All services are making their best efforts to move forward promptly."

12. On May 18, 2021, the European Commission sent a new communication to Iberostar in which the Commission confirmed that "[f]or the reasons we detailed in the letter dated 30 March 2021, the procedure is ongoing as we move forward on the assessment and the mandatory consultations."

13. On June 16, 2021, the European Commission sent a new communication to Iberostar in which it confirmed that "the Commission is actively evaluating [Iberostar's] application."

14. On July 16, 2021, Iberostar received two communications on this matter requesting specific information on the status and the parties and stating that the information requested is necessary for its evaluation to enter the final stages of the Commission's assessment.

15. On September 6, 2021, Iberostar submitted its responses to the Commission's request of specific information.

16. On July 26, 2022, Iberostar requested an update on its application. The Commission responded on August 1, 2022, and stated the Application was "particularly complex," and required "an extended evaluation." The Commission stated that it was about to conclude its assessment and it will deliver its response "by mid-September 2022" after the summer recess.

17. Since then Defendant has had additional communications with the Commission, which has reiterated it will issue a decision soon.

18. Defendant will keep this Court duly apprised of any further developments regarding the request for authorization from the European Commission.

Filed on September 8, 2022.

Respectfully Submitted,

Counsel for Iberostar

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 8, 2022, a true and correct copy of DEFENDANT'S STATUS REPORT was filed with the Clerk of Court using the CM/ECF system which will send a notification of the filing to all counsel and parties of record.

/s/Adolfo E. Jiménez
Adolfo E. Jiménez

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