UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 21-23400-cv-MARTINEZ

ODETTE BLANCO DE FERNANDEZ
née BLANCO ROSELL; *et al.*

Plaintiffs,

v.

MSC MEDITERRANEAN SHIPPING
COMPANY SA;

Defendant.
_____ /

JOINT STIPULATION REGARDING WAIVER OF SERVICE OF SUMMONS, SET ASIDE OF THE ENTRY OF DEFAULT, AND RESPONSE TO THE COMPLAINT

WHEREAS on September 22, 2021, Plaintiffs, Odette Blanco de Fernandez, et al. ("Plaintiffs"), filed a complaint against Defendant MSC Mediterranean Shipping Company SA ("MSC"); and

WHEREAS on January 24, 2022, Plaintiffs filed a Hague Certificate of Service; and

WHEREAS Plaintiffs moved for a Clerk's Entry of Default on January 24, 2022, for MSC's purported failure to timely respond to the complaint; and

WHEREAS the Clerk entered default on January 25, 2022; and

WHEREAS the Court entered an Order on Final Default Judgment Procedure on January 28, 2022, directing MSC to show good cause by February 7, 2022, for failure to timely respond to the complaint; and

WHEREAS Defendant MSC represents that it was not served with the summons and complaint under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, due to an administrative error on the part of the Swiss authorities; and

WHEREAS MSC has authorized MSC's U.S. counsel Arnold & Porter to execute a waiver of the service of summons on behalf of MSC, dated February 7, 2022, and Arnold & Porter has done so on behalf of its client MSC in the form attached as Exhibit A; and

WHEREAS Plaintiffs will re-initiate supplemental service of the original summons and complaint via Hague Convention Service following entry of this order and intend to file a proof of service relating thereto, and MSC has agreed to promptly notify Plaintiffs upon receipt of such service; and

WHEREAS this joint stipulation will promote the efficient and orderly administration of justice;

WHEREFORE, the Plaintiffs and Defendant MSC, through their undersigned counsel, hereby agree, stipulate and respectfully request that the Court enter an Order as follows:

1. The parties stipulate that good cause exists to set aside the Clerk's Entry of Default (Dkt. No. 22) for the reasons set forth above.
2. The Waiver of Service attached as Exhibit A shall be filed on the record in this case.
3. The Clerk's Entry of Default should be vacated and the Clerk directed to reopen the case.

4. MSC reserves and maintains all defenses or objections to the lawsuit, to the Court's jurisdiction, and to the venue of the action, but waives any objections as to insufficiency of service.

5. MSC's response to the complaint shall be due on May 9, 2022.

6. MSC agrees not to seek an extension to respond to the complaint beyond May 9, 2022, absent compelling and unforeseen circumstances.

Dated: February 7, 2022

/s/ John S. Gaebe

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Counsel for Defendant

EXHIBIT A

AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

Odette Blanco de Fernandez et al.	)	
Plaintiff	)	
v.	)	Civil Action No. 1:21-cv-23400
MSC Mediterranean Shipping Company SA	)	
Defendant	)	

WAIVER OF THE SERVICE OF SUMMONS

To: Mr. David A. Baron

(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from 02/07/2022, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: 02/07/2022

Signature of the attorney or unrepresented party

MSC Mediterranean Shipping Company SA

Printed name of party waiving service of summons

R. Reeves Anderson

Printed name

Arnold & Porter Kaye Scholer
1144 Fifteenth Street, Suite 3100
Denver, CO 80202

Address

reeves.anderson@arnoldporter.com

E-mail address

(303) 863-1000

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.