UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NML CAPITAL, LTD., Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	08 Civ. 6978 (TPG) 09 Civ. 1707 (TPG) 09 Civ. 1708 (TPG)
AURELIUS CAPITAL MASTER, LTD. and ACP MASTER, LTD., Plaintiffs, - against - THE REPUBLIC OF ARGENTINA, Defendant.	09 Civ. 8757 (TPG) 09 Civ. 10620 (TPG)
AURELIUS OPPORTUNITIES FUND II, LLC and AURELIUS CAPITAL MASTER, LTD., Plaintiffs, - against - THE REPUBLIC OF ARGENTINA, Defendant.	10 Civ. 1602 (TPG) 10 Civ. 3507 (TPG) 10 Civ. 3970 (TPG) 10 Civ. 8339 (TPG)

(captions continue on following page)

MEMORANDUM OF LAW OF CLEARY GOTTLIEB STEEN & HAMILTON LLP IN SUPPORT OF MOTION TO QUASH PLAINTIFFS' SUBPOENA AND IN OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL

BLUE ANGEL CAPITAL I LLC,		
Plaintiff,	:	10 Civ. 4101 (TPG)
	:	10 Civ. 4782 (TPG)
- against -		
THE REPUBLIC OF ARGENTINA,		
Defendant.		
OLIFANT FUND, LTD.,		
Plaintiff,	:	10 Civ. 9587 (TPG)
- against -		
THE REPUBLIC OF ARGENTINA,		
Defendant.		
PABLO ALBERTO VARELA, et al.,		
Plaintiffs,	:	10 Civ. 5338 (TPG)
- against -		
THE REPUBLIC OF ARGENTINA,		
Defendant.		

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Cleary Gottlieb Steen & Hamilton LLP ("Cleary Gottlieb"), counsel for defendant the Republic of Argentina (the "Republic") in the above-captioned cases, submits this Memorandum of Law in opposition to plaintiffs' motion, dated December 19, 2012, to compel Cleary Gottlieb to produce documents and designate a Rule 30(b)(6) deponent pursuant to a subpoena issued to Cleary Gottlieb on November 26, 2012 ("Cleary Subpoena" or "Subpoena") and, pursuant to Rule 45 of the Federal Rules of Civil Procedure, in support of its motion to quash the Subpoena.[1]

PRELIMINARY STATEMENT

The Court should grant Cleary Gottlieb's motion to quash the Subpoena and deny plaintiffs' motion to compel. Plaintiffs have repeatedly invoked the unsubstantiated specter of supposed "actions to evade the directives of the February 23, 2012 [pari passu] Orders" as part of their effort to cast in a negative light the Republic, and now, its counsel. As an initial matter, there is *no* scheme to "evade" this Court's March 5 Stay Order, and accordingly, Cleary Gottlieb is *not* in possession, custody or control of documents or information concerning any such purported evasion. That fact, which was explained to plaintiffs' counsel during the parties' meet and confer, should have been sufficient to end the matter, but has not.

Plaintiffs are no doubt trying to turn their discovery demands into a "live issue" because their demands – now served on 15 institutions – are part of their scorched earth campaign against any party that has the temerity to make submissions in this Court or in the Court of Appeals opposing plaintiffs in connection with this Court's November 21 Orders. Those orders, however, have been stayed by the Court of Appeals and accordingly provide no basis for discovery; indeed, the Court has no jurisdiction to entertain plaintiffs' demands for

[1] Plaintiffs' Memorandum of Law in Support of their Motion to Compel is referred to as "Pls. Br." and the accompanying declaration of Robert A. Cohen is referred to as the "Cohen Decl."

discovery in connection with those stayed orders. The Court of Appeals itself had before it plaintiffs' baseless accusations that a scheme to evade the November 21 Orders was somehow in the works, and nonetheless issued the stay and refused plaintiffs' subsequent demand that the stay be conditioned on the posting by the Republic of over $1 billion in security.

The lack of merit underlying plaintiffs' discovery demands is further demonstrated by their insistence that Cleary Gottlieb produce documents, dating back to June 2011, concerning information and communications about payments made on the exchange bonds. Cleary Gottlieb is not the Trustee for the exchange bondholders, it is not a clearing system and it does not process the payments to exchange bondholders – all obvious facts known to plaintiffs. Accordingly, it is not surprising that Cleary Gottlieb has no documents on this topic. Tellingly, plaintiffs persist in making this demand even though they have already obtained hundreds of pages of documents concerning the flow of funds to the exchange bondholders from Bank of New York Mellon, the Trustee for the exchange bondholders. When pressed as to why plaintiffs would still be demanding discovery here, even apart from the fact that Cleary Gottlieb has no documents on this topic, plaintiffs claimed that they needed to fill in gaps in the information. Plaintiffs have not and cannot identify any such gaps. *See EM Ltd. v. Republic of Argentina*, 865 F. Supp. 2d 415, 421 (S.D.N.Y. 2012) (finding plaintiffs' meritless claim that the Republic and third parties provided "incomplete [and] self-serving" information about payments on BODEN bonds insufficient to warrant discovery concerning those payments).

BACKGROUND

A. This Court's November 21 Orders and the Court of Appeals' Stay

On November 21, 2012, following the Court of Appeals' October 26, 2012 decision affirming in part and remanding in part this Court's orders dated February 23, 2012, this Court entered amended injunctions (the "Amended Injunctions") and related orders (together, the "November 21 Orders") purporting to enforce the pari passu clause contained in the Republic's defaulted debt documentation. The Court also vacated on November 21 the portion of its prior March 5, 2012 Order staying the effect of any injunctions. *See* Amended February 23, 2012 Order, *NML Capital, Ltd. v. Republic of Argentina*, No. 08 Civ. 6978 (TPG) (S.D.N.Y. Nov. 21, 2012) (Ex. P); Opinion, *NML Capital, Ltd. v. Republic of Argentina*, No. 08 Civ. 6978 (TPG) (S.D.N.Y. Nov. 21, 2012) (Ex. O); Order Pursuant to FRCP 62(c) ("March 5 Stay Order") ¶ 1, *NML Capital Ltd. v. Republic of Argentina*, No. 08 Civ. 6978 (TPG) (S.D.N.Y. Mar. 5, 2012) (Ex. W).[2] Citing newspaper articles, the Court concluded that the Republic had violated the condition in the March 5 Stay Order that "the Republic shall not during the pendency of the appeal to the Second Circuit take any action to evade the directives of the February 23, 2012 Orders in the event they are affirmed," *see* Opinion at 1, 3-4 (Ex. O), even though the only competent evidence on this point was the Republic's declaration, dated less than a week prior, unequivocally confirming that it "*has complied, is complying and will comply* with the terms of the March 5 Stay Order." *See* Declaration of Francisco Guillermo Eggers ("Eggers Decl.") ¶ 4, *NML Capital, Ltd. v. Republic of Argentina*, No. 08 Civ. 6978 (TPG) (S.D.N.Y. Nov. 16, 2012) (emphasis added) (Ex. Q).

The Republic, as well as third parties comprising the Exchange Bondholder Group ("EBG") and Fintech Advisory Inc., immediately moved on November 26 in the Court of Appeals

[2] All exhibits are attached to the accompanying declaration of Carmine D. Boccuzzi, dated January 2, 2013 ("Boccuzzi Decl.").

for a stay of the November 21 Orders. On November 28, the Court of Appeals – no doubt recognizing the grave and irreparable injury threatened by the November 21 Orders to the Republic, third party banks, financial institutions, bondholders and to New York as a financial center – stayed the November 21 Orders. *See* Order (the "Stay" or "November 28 Order"), *NML Capital, Ltd. v. Republic of Argentina*, 12-105-cv(L) (2d Cir. Nov. 28, 2012) (Ex. H).

With plaintiffs' goal of causing immediate market disruption and panic thwarted, plaintiffs sought an order from the Court of Appeals requiring the Republic to post security of $1.45 billion as a condition of the Stay. Plaintiffs' basis for that demand – like the purported basis for the discovery demanded here – were statements of Argentine officials expressing their consternation over the November 21 Orders, as well as unsubstantiated newspaper articles speculating that the Republic was developing a "scheme to attempt to evade the [Amended] Injunction[s]." Pls. Motion to Amend or Modify the Stay ("Pls. Mot. Amend") at 1-2, *NML Capital, Ltd. v. Republic of Argentina*, No. 12-105-cv(L) (2d Cir. Nov. 30, 2012) (Ex. F). The Court of Appeals *denied* plaintiffs' demand for security. *See* Order, *NML Capital Ltd. v. Republic of Argentina*, No. 12-105-cv(L) (2d Cir. Dec. 4, 2012) (Ex. D).

B. The Cleary Subpoena and Related Discovery Served by Plaintiffs

Plaintiffs propounded the Subpoena on Cleary Gottlieb on November 26, 2012, demanding that Cleary Gottlieb produce documents concerning, *inter alia*, (1) "any actions to evade the directives of the February 23, 2012 Orders" and "any steps taken to alter or amend the processes or specific transfer mechanism by which Argentina makes payments on the Exchange Offer Securities" including "documents concerning any plans, proposals, ideas, recommendations, or courses of action, whether or not consummated" with respect to such actions; (2) "all" documents concerning "all payments on the Exchange Offer Securities since

June 2011" including any documents reflecting communications about these payments and (3) "all documents concerning or reflecting transfers of funds in connection with such payments" since June 2011. Subpoena at 6 (Cohen Decl. Ex. A). The Subpoena included a 30(b)(6) deposition notice for December 5 and identified deposition topics substantially similar to the document requests. *Id.* at 7. (Cohen Decl. Ex. A).

Plaintiffs demanded a response to the Subpoena by December 3 – giving Cleary Gottlieb only *five* business days to respond – and insisted that they needed to know by noon the next day if Cleary Gottlieb would comply with their compressed timeline. *See* E-mail from D. Rapport to C. Boccuzzi, dated Nov. 26, 2012 (Ex. J). Cleary Gottlieb agreed to respond to the Subpoena by December 3, and informed plaintiffs that it did not agree to the proposed deposition, because there was "no need or bases for depositions." *See* E-mail from C. Boccuzzi to D. Rapport, dated Nov. 27, 2012 (Ex. I).

Plaintiffs' discovery requests did not end with Cleary. A wave of similar discovery seeking information about payments on the exchange bonds was served on the Republic, the Bank of New York Mellon ("BNYM"), the Trustee for the exchange bondholders, as well as the entities that process payments from BNYM to the exchange bondholders. *See* Exs. K-N. To date plaintiffs have received *four* document productions from BNYM with information ranging from June 2011 to December 2012 concerning payments to the exchange bondholders. These productions, in addition to confirming that BNYM is and remains the Trustee for the exchange bondholders, provide ample information concerning the manner in which the exchange bonds have been paid, and provide no support for plaintiffs' claim that any "action to evade" this Court's orders has or will be taken.

On December 3, Cleary Gottlieb served its responses and objections to the Subpoena and on December 12, Cleary Gottlieb, represented by Carmine Boccuzzi, met and conferred by telephone with plaintiffs' counsel concerning Cleary Gottlieb's responses and objections. During the meet and confer, Cleary Gottlieb noted that the requested discovery concerned orders that had been stayed by the Court of Appeals and stated that, consistent with its unawareness of any action to evade the Court's orders, it was not in possession, custody or control of documents responsive to the Subpoena. *See* Boccuzzi Decl. ¶ 2. Cleary Gottlieb referred plaintiffs to the Declaration of Francisco Guillermo Eggers confirming "that the Republic has complied, is complying, and will comply with the terms of the March 5 Stay Order."[3] *See id.* Cleary Gottlieb also voiced its concern that discovery directed toward it concerning its client, the Republic, obviously raised attorney-client privilege and confidentiality considerations and stated that it needed to analyze what further statements, if any, it could make consistent with its ethical obligations that would not endanger that privilege (concerns that are far from trivial given the aggressiveness with which plaintiffs consistently claim parties to this litigation have "waived" arguments and positions, *see e.g.*, Pls. Br. at 11-12). Cleary Gottlieb agreed to respond to plaintiffs concerning whether it would produce documents or stand on its objections to the Subpoena.

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[3] During July of 2012, plaintiffs similarly attempted to create a false sense of urgency where none existed in demanding that the Republic "explain in detail" any steps the Republic had taken to "evade the directives" of the March 5 Stay Order. *See* Letter from R. Cohen to C. Boccuzzi, dated July 13, 2012 (Ex. V). As here, plaintiffs only purported basis for such a demand was a hearsay article from an Argentine newspaper that made no mention whatever of any action by the Republic to evade the Court's order but at most, *speculated* that, if the Court of Appeals upheld the *pari passu* claims on appeal, the government might seek to make payments on its restructured debt through an Argentine local securities depository. *See id.* Despite the Republic's affirmance that it had complied with the March 5 Stay Order, *see* Letter from C. Boccuzzi to R. Cohen, dated July 16, 2012 (Ex. U), plaintiffs served document requests on the Republic (and other entities such as BNYM), seeking an expedited response. *See* E-mail from E. Kirsch to C. Boccuzzi, dated July 17, 2012 (Ex. T).

During the call, plaintiffs also pressed their demand that Cleary Gottlieb produce documents, going back to June 2011, concerning payments on exchange bonds. Given that plaintiffs have received information on this topic from BNYM plaintiffs predictably could not articulate any basis for this discovery other than the existence of purported gaps in the information. Plaintiffs provided no explanation – and fail to do so now – of what those gaps might be or how they could possibly be material to any issue before any court. Separate and apart from these basic problems underlying plaintiffs' demand for discovery, Cleary Gottlieb has no such documents. In light of privilege concerns as well as the fact that plaintiffs' demanded discovery is otherwise improper, Cleary Gottlieb reasserted its objections to the Subpoena in a letter to plaintiffs' counsel on December 18. *See* Letter from C. Boccuzzi to E. Kirsch, dated December 18, 2012 (Cohen Decl. Ex. D). The next day, plaintiffs filed their motion to compel.

ARGUMENT

POINT I

THE SUBPOENA MUST BE QUASHED BECAUSE IT CONCERNS ORDERS THAT HAVE BEEN STAYED BY THE COURT OF APPEALS

Plaintiffs' motion to compel seeks discovery from Cleary Gottlieb related to this Court's November 21 Orders, including the Amended Injunctions. Those orders have been stayed by the Court of Appeals. *See* November 28 Order (Ex. H). Indeed, the Court of Appeals issued its Stay – and refused plaintiffs' demand that the Republic post security as a condition for the Stay – in the face of the very same allegations trotted out by plaintiffs here, including the baseless charge that the Republic "is actively and aggressively attempting to create a plan to evade the [Amended Injunctions]," *see* Pls. Mot. Amend at 13 (Ex. F). Accordingly, the stayed orders cannot provide a basis in this Court for discovery.

Moreover, all issues related to the orders entered by this Court concerning plaintiffs' pari passu claims are the subject of the pending appeals in the Court of Appeals. The mandate (which in fact never returned to this Court) indisputably remains with the Court of Appeals, with the result that this Court lacks jurisdiction to enter an order concerning the issues raised by plaintiffs. *See*, *e.g.*, *Dague v. City of Burlington*, 976 F.2d 801, 805 (2d Cir. 1992) (holding that an order issued by the district court before the Court of Appeals issued its mandate was a "nullity"); *United States v. Timewell*, 387 F. App'x 23, 28 (2d Cir. 2010) (vacating order that was entered before mandate issued). Both the Stay and the pending appeals remove any basis, jurisdictional or otherwise, for plaintiffs' demands for discovery.

Plaintiffs' claim that the Court's March 5 Stay Order provides the basis for their ill-timed discovery is flat wrong. The March 5 Stay Order makes no mention of discovery. *See* March 5 Stay Order (Ex. W). The *only* orders in place that provide for discovery are the *stayed* November 21 Amended Injunctions. *See* Amended February 23, 2012 Order ¶ 3 (Ex. P) ("[Plaintiffs] shall be entitled to discovery to confirm the timing and amounts of the Republic's payments under the terms of the Exchange Bonds; the amounts the Republic owes on these and other obligations; and such other information as appropriate to confirm compliance with this ORDER.").

POINT II

EVEN IF CLEARY GOTTLIEB HAD RESPONSIVE DOCUMENTS, PLAINTIFFS WOULD NOT BE ENTITLED TO THIS IMPROPER DISCOVERY

In light of the fact that plaintiffs are proceeding solely on speculation, it is not surprising that Cleary Gottlieb has no responsive documents or information. *See* Boccuzzi Decl. ¶ 3. The Republic has otherwise provided to the Court and plaintiffs the sworn declaration of Francisco Guillermo Eggers stating that "the Republic has complied, is complying, and will

comply with the terms of the March 5 Stay Order." Eggers Decl. ¶ 4 (Ex. Q). Plaintiffs have also obtained discovery from BNYM, which remains the Trustee for the exchange bondholders (a fact demonstrated by its involvement as an appellant in the appeals of the November 21 Orders), and which itself has no documents supporting any "evasion" of the Court's orders.

As Cleary Gottlieb does not have any responsive documents and is not aware of any scheme to evade this Court's orders, plaintiffs' arguments concerning the scope of the crime-fraud exception and the deliberative process privilege are academic. We write briefly to address them however, because plaintiffs' interpretation of the law is wrong.

First, by demanding discovery from Cleary Gottlieb, a law firm representing a party in this litigation, plaintiffs tread into an area frowned upon by courts because it raises particular concern for the adversary system and the attorney-client relationship. *See In re Subpoena Issued to Dennis Friedman*, 350 F.3d 65, 70 (2d Cir. 2003) ("Courts have been especially concerned about the burdens imposed on the adversary process when lawyers themselves have been the subject of discovery requests, and have resisted the idea that lawyers should routinely be subject to broad discovery."); *United States v. Yonkers Bd. of Educ.*, 946 F.2d 180, 185 (2d Cir. 1991) ("depositions of opposing counsel are disfavored"); *Sea Tow Int'l, Inc. v. Pontin*, 246 F.R.D. 421, 424 (E.D.N.Y. 2007) (rationale in limiting discovery of an attorney "is that even a deposition of counsel limited to relevant . . . information risks disrupting the attorney-client relationship and impeding the litigation.") (citation and internal quotations marks omitted). While discovery may in certain situations be allowed against a party's attorneys involved in litigation to overcome the significant privileges that inhere in attorney-client communications, it must be supported by a sufficient basis, and of course – discoverable material must exist in the first place. *See Bruce v. Christian*, 113 F.R.D. 554, 561 (S.D.N.Y. 1987)

(recognizing that "bare allegations are insufficient to challenge the privilege that protects [memoranda prepared by attorneys] from discovery"); Fed. R. Civ. P. 26(b)(1) (discovery must encompass matters that are "nonprivileged [and] relevant to any party's claim or defense").

Courts accordingly routinely deny discovery where privileged information is demanded. *See Sea Tow Int'l Inc.*, 246 F.R.D. at 427 (denying deposition of party's counsel where "it [could] not be concluded with certainty that subjects" for deposition would "not raise issues of attorney-client privilege"); *ResQNet.com v. Lansa, Inc.*, No. 01 Civ. 3578 (RWS), 2004 WL 1627170, at *6 (S.D.N.Y. July 21, 2004) (finding that "the risk that privilege and attorney work-product issues might arise were [plaintiff's counsel's] deposition to go forward [was] not negligible").

Plaintiffs' contention that the crime-fraud exception applies to vitiate the protections afforded by the attorney-client privilege is meritless. As made clear to plaintiffs, no crime or fraud has occurred, and plaintiffs provide no basis for their invocation of this exception to the attorney-client privilege. *See* Letter from C. Boccuzzi to E. Kirsch at 2, dated Dec. 18, 2012 (Cohen Decl. Ex. D). Plaintiffs rely heavily on *Marc Rich & Co., A.G. v. United States (In re Grand Jury Subpoena Duces Tecum Dated Sept. 15, 1983)*, 731 F.2d 1032 (2d Cir. 1984), which states that "a prudent person [must] have a reasonable basis to suspect the perpetration or attempted perpetration of a crime or fraud, and that the communications were in furtherance thereof." *In re Grand Jury Subpoena Duces Tecum Dated Sept. 15, 1983*, 731 F.2d at 1039. To overcome privilege however, plaintiffs must put forth more than their baseless speculation concerning an alleged "scheme to evade." *See In re Grand Jury Investigation*, 599 F.2d 1224, 1232 (3d Cir. 1979) (finding plaintiff's "naked assertion" and "general, unsubstantiated allegation" that it might discover a cover-up if granted access to privileged material was not

sufficient to overcome the privilege); *Bruce*, 113 F.R.D. at 561 ("Plaintiff's allegations . . . would, if supported by more than hopeful speculation, establish [the crime-fraud] exception to the attorney-client privilege. But plaintiff offers no more than allegations that such proof would be found . . . . Such bare allegations are insufficient to challenge the privilege that protects these documents from discovery."). Here, of course, there is no basis for plaintiffs' speculation concerning an alleged "scheme to evade," much less for their charge that Cleary Gottlieb has in any way aided or participated in any such scheme.

Second, plaintiffs are wrong that their demands do not implicate the deliberative process privilege, which, contrary to plaintiffs' argument, *see* Pls. Br. at 7, has long been held to apply to foreign sovereigns. *See LNC Invs., Inc. v. Republic of Nicaragua*, No. 96 Civ. 6360 (JFK) (RLE), 1997 WL 729106, at *6 (S.D.N.Y. Nov. 21, 1997) ("Courts have long held that foreign governments are entitled to protect their executive deliberations."); *Kessler v. Best*, 121 F. 439, 439 (C.C.S.D.N.Y. 1903) (recognizing privilege of German government).

The privilege protects documents and discussions that are predecisional and deliberative in nature, and would thus squarely apply to protect from disclosure the information requested by plaintiffs. *See Fox News Network, LLC v. U.S. Dep't of the Treasury*, No. 09 Civ. 3045 (FM), 2012 WL 5931808, at *5, *10 (S.D.N.Y. Nov. 26, 2012) (applying the deliberative process privilege to protect documents whose "disclosure would reveal the evolution of [the government agency's] thinking regarding" a proposed restructuring of investments); *N.Y.C. Managerial Emp. Ass'n v. Dinkins*, 807 F. Supp. 955, 957 (S.D.N.Y. 1992) (ruling that the deliberative process privilege applied to documents that "memorilaliz[ed] communications among and within City agencies [and] . . . express[ed] ideas . . . to a governmental decisionmaker"). Indeed, plaintiffs appear to be trying to broaden this Court's prohibition on

"actions" taken to evade the Court's orders to encompass *any* consideration of the legal effect of the Court's orders. To allow a private litigant to intrude into the thought processes of the government of a foreign state – as plaintiffs seek to do here – would turn the deliberative process privilege on its head and directly contravene the considerations of comity underscoring its application to foreign sovereigns. *See Wultz v. Bank of China Ltd.*, No. 11 Civ. 1266 (SAS), 2012 WL 5378961, at *5 (S.D.N.Y. Oct. 29, 2012) ("Ordering the production of the non-public regulatory documents of a foreign government may infringe the sovereignty of the foreign state and violate principles of international comity . . . .").

Finally, despite plaintiffs' characterization of their discovery demands as limited in scope, *see* E-mail from E. Kirsch to C. Boccuzzi, dated Dec. 14, 2012 (Cohen Decl. Ex. C), their requests are broad and vaguely worded to cover any "plans," "proposals," "*ideas*," "recommendations," and "courses of action" "*whether or not consummated*." *See* Subpoena at 6 (Cohen Decl. Ex. A) (emphasis added). What constitutes an "unconsummated idea" of an individual, much less an entire government, remains undefined and indefinable with the obvious result that plaintiffs will perpetually complain that their suspicions somehow remain valid.[4]

[4] Of course, no amount of confirmation or actual facts seems sufficient for plaintiffs. The EBG has provided two declarations confirming that no efforts have been made to "evade" the Court's November 21 Orders, noting that articles cited by plaintiffs "suggesting that some Exchange Bondholders are attempting to receive payments in France or Switzerland . . . are categorically false," *see* Declaration of Robert S. Koenigsberger ¶ 5, *NML Capital, Ltd. v. Republic of Argentina*, No. 08 Civ. 6978 (TPG) (S.D.N.Y. Nov. 16, 2012) (Ex. R) and that "[t]o the best of my knowledge, the Republic has made no attempt to discuss with Gramercy – nor, to my knowledge, any other EBH – any modification of the payment mechanism for the Exchange Bonds, any proposal to change the Trustee for the Exchange Bonds, or any potential offer to undertake a further exchange that might involve local law bonds." *See* Declaration of Robert S. Koenigsberger ¶ 5, *NML Capital Ltd. v. Republic of Argentina*, No. 12-105-cv(L) (2d Cir. Dec. 3, 2012) (Ex. E). The EBG also provided the expert declaration of Stephen Choi, establishing that it would be practically impossible for the Republic to circumvent the Court's orders. *See* Declaration of Stephen Choi ¶ 5, *NML Capital, Ltd. v. Republic of Argentina*, No. 08 Civ. 6978 (TPG) (S.D.N.Y. Nov. 16, 2012) (Ex. S). Despite these confirmations, plaintiffs dismissed these declarations as "carefully worded," *see* Pls. Opposition to the Non-Party Appellants' Motion to Stay Discovery Pending Appeal at 11, *NML Capital, Ltd. v. Republic of Argentina*, No. 12-105-

Plaintiffs' requests concerning payments on the exchange bonds, in addition to demanding "all documents concerning such payments, including . . . all documents . . . reflecting communications" about these payments, date back to June 2011, a period of over 1.5 years. *See id.* (Cohen Decl. Ex. A). Subpoenas containing such overbroad requests are consistently quashed by courts. *See Nova Biomedical Corp. v. i-STAT Corp. (In re Nova Biomedical Corp.)*, 182 F.R.D. 419, 423 (S.D.N.Y. 1998) (affirming order of magistrate judge quashing subpoenas containing overbroad document requests); *Sea Tow Int'l, Inc.*, 246 F.R.D. at 428 (granting motion to quash where subpoena sought "any and all" records and documents) (internal quotation marks omitted).

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cv(L) (2d Cir. Dec. 26, 2012) (Ex. B), and continue to demand discovery from the EBG as well as all the other exchange bondholders who dared come to this Court seeking to be heard in connection with their rights and who are now participating in the appeals as appellants or intervenors. *See* Order, *NML Capital, Ltd. v. Republic of Argentina*, 12-105-cv(L) (2d Cir. Nov. 28, 2012) (Ex. G); Order, *NML Capital, Ltd. v. Republic of Argentina*, 12-105-cv(L) (2d Cir. Dec. 6, 2012) (Ex. C); Order, *NML Capital, Ltd. v. Republic of Argentina*, 12-105-cv(L) (2d Cir. Dec. 28, 2012) (Ex. A).

CONCLUSION

For the foregoing reasons, Cleary Gottlieb's motion to quash should be granted and plaintiffs' motion to compel should be denied.

Dated: New York, New York
January 2, 2013

Respectfully submitted,

CLEARY GOTTLIEB STEEN & HAMILTON LLP

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