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12-109-cv (CON), 12-111-cv (CON), 12-157-cv (CON), 12-158-cv (CON), 12-163-cv (CON), 12-164-cv (CON), 12-170-cv (CON), 12-176-cv (CON), 12-185-cv (CON), 12-189-cv (CON), 12-214-cv (CON), 12-909-cv (CON), 12-914-cv (CON), 12-916-cv (CON), 12-919-cv (CON), 12-920-cv (CON), 12-923-cv (CON), 12-924-cv (CON), 12-926-cv (CON), 12-939-cv (CON), 12-943-cv (CON), 12-951-cv (CON), 12-968-cv (CON), 12-971-cv (CON)

United States Court of Appeals

for the

Second Circuit

NML CAPITAL, LTD., AURELIUS CAPITAL MASTER, LTD.,

Plaintiffs-Appellees,

(continued on inside cover)

— v. —

REPUBLIC OF ARGENTINA,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

EMERGENCY MOTION BY DEFENDANT-APPELLANT
THE REPUBLIC OF ARGENTINA FOR STAY PENDING APPEAL

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Defendant-Appellant the Republic of Argentina (the "Republic") submits this emergency motion pursuant to FRAP 8 and 27 in support of its request for an immediate stay of the district court's Amended February 23, 2012 Order (the "Amended Injunctions") (Ex. D),[1] the Opinion (Ex. E) and the Stay Opinion (Ex. F) entered on November 21, 2012 (together, the "Orders"),[2] pending appellate review of the Orders and the resolution of the Republic's petition for panel rehearing and rehearing *en banc* (the "Rehearing Petition") (Ex. O) of this Court's October 26, 2012 decision (the "October 26 Decision") (Ex. Q). As set forth in the declaration of Carmine D. Boccuzzi, a stay is needed urgently.

STATEMENT OF EMERGENCY

The Republic brings this emergency motion to stay the Amended Injunctions that would imperil debt service on $24 billion of performing debt. That is because the district court, in response to this Court's direction to conduct further proceedings following the October 26 Decision, issued the Orders conditioning the Republic's payment of its restructured debt on its paying over $1.3 billion (the full face amount of these pre-judgment plaintiffs' defaulted debt, plus interest) *into an escrow account*, thus ordering the Republic to turn over funds that are immune under the

---

[1]Exhibits are attached to the declaration of Carmine D. Boccuzzi, dated November 26, 2012. A-numbers refer to the Joint Appendix filed March 21, 2012.

[2]The district court on November 26, 2012 began to enter substantially identical Orders in the "me too" cases in this litigation (Exs. A-B). The Republic also moves to stay these Orders and any related "me too" Orders of the district court.

FSIA, contrary to the Republic's own law and public policy. The district court – which rushed to issue the Orders, despite serious arguments from the Republic and third parties – made the Orders effective immediately and lifted the Stay that protects litigants while an appellate process is ongoing.

Far from following this Court's direction to "more precisely determine the third parties to which the [Amended] Injunctions [should] apply," Oct. 26 Decision at 28, the district court extended the coercive force of the Amended Injunctions to broad, catch-all categories of third parties, including all "the indenture trustees," the registered owners of the Republic's performing debt, and the clearing corporations, as well as all of the agents of these entities. *See* Amended Injunctions ¶ 2(f). The inequitable result of the Orders, unless a stay is entered and they are ultimately corrected, is patent: the destruction of the debt restructuring conducted by the Republic (and upheld by this Court) as part of its efforts to emerge from its historic and tragic economic collapse, and extreme harm to numerous third parties. If the court had adopted a "Ratable Payment" formula that treated plaintiffs and those similarly situated on the same terms as the Republic extended in its 2010 Exchange Offer, then that would be a "remedy" consistent with Argentine law and public policy. Under Argentine law, the Argentine Executive could present that proposal to Congress, but it cannot present a proposal that treats some creditors better than others, and it cannot fund an escrow.

BACKGROUND

A. The Court's October 26 Decision. This Court affirmed in part and remanded in part the district court's orders dated February 23, 2012 (the "Injunctions") granting plaintiff NML and the various "me too" plaintiffs permanent injunctive relief purporting to remedy the Republic's alleged violation of the pari passu clause. Oct. 26 Decision at 28-29. The Court remanded to the district court for further analysis and proceedings concerning two critical aspects of the Injunctions. First, the Court asked the district court to clarify precisely how to calculate the "Ratable Payments" owed to plaintiffs when the Republic makes a scheduled payment on its performing debt. *Id.* at 11. Second, the Court, expressing serious concerns about the effect of the Injunctions on third parties, directed the district court to "determine the third parties to which the Injunctions will apply" so that this Court could assess "whether the Injunctions' application to them is reasonable." *Id.* at 28. The Court thus questioned whether the Injunctions' sweeping application to third parties was appropriate at all – a concern also raised by the panel during oral argument. *See* July 23, 2012 Hr'g Tr. at 56:12-14 ("I'm not sure that courts [can] enter injunctions primarily for the purpose of taking action against such third parties.") (Ex. R).

B. The District Court's November 21 Orders. On November 21, three business days after receiving powerful briefs from third parties, which were given one week to file papers – a schedule that shut out other parties that wanted to be heard – and,

as the district court itself recognized, with the mandate still with this Court and the Republic's Rehearing Petition still pending, Nov. 9, 2012 Hr'g Tr. at 19:20-21 (Ex. P), the district court entered the Orders. In the Amended Injunctions the court adopted the exact "Ratable Payment" language used in the Injunctions, requiring the Republic to pay plaintiffs all principal and interest as a precondition to making a single interest payment to the exchange bondholders on their discounted debt. *See* Amended Injunctions ¶ 2; Op. at 4. Moreover, the district court all but ignored the seriousness of the third parties' papers. The district court appeared less inclined to heed the significant legal concerns and policies raised by these parties than to be goaded by plaintiffs to disregard applicable law in order to punish Argentina.

Notwithstanding this Court's concerns about the application of the Injunctions to third parties, the district court *expanded* the coercive reach of the Injunctions, and in the Amended Injunctions bound specific individual entities that are "participants in the payment process of the Exchange Bonds," *see* Amended Injunctions ¶ 2(e), *as well as* countless other unspecified entities and individuals, some of which (*i.e.*, the Euroclear and Clearstream entities) are not even within the court's jurisdiction:

> "(1) the indenture trustees and/or registrars under the Exchange Bonds (including but not limited to The Bank of New York Mellon . . .);
>
> (2) the registered owners of the Exchange Bonds and nominees of the depositaries for the Exchange Bonds (including but not limited to Cede & Co. and The Bank of New York Depositary (Nominees) Limited) and any institutions which act as nominees;

> (3) the clearing corporations and systems, depositaries, operators of clearing systems, and settlement agents for the Exchange Bonds (including but not limited to the Depositary Trust Company, Clearstream Banking S.A., Euroclear Bank S.A./N.V. and the Euroclear System);
>
> (4) trustee paying agents and transfer agents for the Exchange Bonds (including but not limited to The Bank of New York (Luxembourg) S.A. and The Bank of New York Mellon (including but not limited to the Bank of New York Mellon (London)); and
>
> (5) attorneys and other agents engaged by any of the foregoing or the Republic in connection with their obligations under the Exchange Bonds." Amended Injunctions ¶ 2(f).

In entering the Amended Injunctions without jurisdiction to do so, the district court ignored the interests and positions of numerous third parties. The third parties that filed papers include The Bank of New York Mellon ("BNYM"), the Trustee for holders of approximately $24 billion of the Republic's restructured debt, as well as significant holders of the restructured debt, including a group of exchange bondholders comprising a wide segment of the investing public and including such organizations as pension funds, charitable foundations, and endowments (Exs. I-K). In addition, the New York Clearing House, which represents the world's largest commercial banks, DTC, whose shareholders are made up of approximately 525 banks and brokerage houses, and the Federal Reserve Bank of New York each submitted letters to the court opposing the application of any injunctions to them and other entities involved in the funds transfer process (Exs. L-N).

Finally, the district court vacated its March 5, 2012 stay of the Injunctions pending appeal (the "Stay") (Ex. U), and required the Republic to pay into an escrow account over $1.3 billion prior to making a December 15 scheduled payment to holders of its restructured debt – thereby significantly prejudicing the Republic's right to seek rehearing of the October 26 Decision, as well as the Republic's ability to appeal the Orders. *See* Stay Op. at 4-5. In vacating the Stay, the court acted with respect to extra-territorial, immune assets (as opposed to property located in the United States to which the court's enforcement jurisdiction is limited), and to compel the Republic to violate its own laws – the very laws that enabled the Republic to implement its debt restructuring on a principle of creditor equity. Argentine law – including Law 26,017 (A-436) and budget laws carrying out the Republic's sovereign decision to defer the servicing of defaulted debt until the restructuring process is complete – forbids payment of plaintiffs on better terms than the restructured debt. These laws are not intended to discriminate, but to enact internationally accepted principles of inter-creditor equity, as advanced by the United States and all leading countries of the world vested in orderly sovereign debt restructuring.

Citing newspaper articles, the district court concluded that its lifting of the Stay was justified because the Republic's President and Minister of Economy had publicly manifested shock and indignation. From this, the court concluded that the

Republic had violated the Stay's condition 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," Stay Op. at 4, 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 [Stay]." *See* Decl. of Francisco Eggers ¶ 4, Nov. 16, 2012 ("Eggers Decl.") (emphasis added) (Ex. H).

ARGUMENT

The Court should stay the effect of the Orders pending appeal because all four factors weigh in favor of granting a stay: (1) there is a substantial possibility of success on appeal; (2) there is a risk of irreparable injury to the Republic and third parties if a stay is denied; (3) plaintiffs would not be substantially harmed by a stay; and (4) a stay is in the public interest. *See Mohammed v. Reno*, 309 F.3d 95, 101 (2d Cir. 2002); *McCue v. City of New York (In re World Trade Ctr. Disaster Site Litig.)*, 503 F.3d 167, 170 (2d Cir. 2007) (stay factors to be applied flexibly).

I. A STAY IS CRITICALLY NECESSARY TO AVOID IRREPARABLE HARM TO THE REPUBLIC AND NUMEROUS THIRD PARTIES

Even if the district court had jurisdiction to enter its unprecedented Amended Injunctions – which it did not, *see infra* II.A – the Orders should be stayed, because by ordering the Republic to pay into an "escrow" over $1.3 billion by December 15,

and refusing to stay that directive pending review by this Court, the Orders will cause irreparable harm to the Republic and numerous third parties for three reasons.

First, the Orders have deprived the Republic of its appellate rights. As of the filing of this motion, the Republic's Rehearing Petition is still pending before this Court. The right to file such petitions is expressly provided to the Republic by Congress pursuant FRAP 35 and 40. Further, even if the petition is denied and the mandate issues, this Court clearly expressed in the October 26 Decision that it intended to review the district court's Amended Injunctions *before* they took effect. This intent is clear both from the Court's use of the procedure set forth in *United States v. Jacobson*, 15 F.3d 19 (2d Cir. 1994), which dictates that the mandate (once issued) will return to the Court of Appeals without the need to file a notice of appeal, and by this Court's expressly stated concern as to how the Injunctions would function. *See* Oct. 26 Decision at 28 (instructing district court to clarify "precisely" how the Injunctions will apply to third parties so this Court can "decide whether the Injunctions' application to them is reasonable"). By vacating the Stay, the district court has prevented the Court from conducting that review.

Second, by simultaneously entering the sweeping Amended Injunctions and vacating the Stay, the district court has placed the Republic in an impossible position. The Republic faces the threat of being prevented from servicing its legitimate debts, although it cannot legally comply with the court's "Ratable Payment" formula or an

order to "turn over" into an escrow[3] over $1.3 billion in immune assets to pay plaintiffs. If the court had adopted an equitable "Ratable Payment" formula, the Argentine Executive would have proposed treating plaintiffs in the same manner as participants in the 2010 Exchange Offer, but this would take time and be subject to Congressional approval. The Order for an immediate *escrow* under these threats is impossible to comply with and disregards the many third party interests involved as well as the Republic's sovereignty.

Finally, the most irreparable injury of all: by conditioning payment of performing debt, currently in the amount of some $24 billion, on the payment of immune assets into an unprecedented escrow, the Orders would imperil payment on the Republic's performing debt without the Republic having had any opportunity for appellate review. The third party bondholders holding that debt raised these concerns to the court below, but the court summarily dismissed their concerns. Under the court's interpretation, payment in full to plaintiffs, in escrow or otherwise, would open the floodgates of other bondholders claiming "pari passu rights."

[3] The district court declined to explain the particulars of the escrow account. This aspect of the Orders has no support anywhere in the law and clearly violates the limitation in the FSIA that immunizes sovereign assets unless they are located in the United States and used for a commercial activity here. *See* Rehearing Petition at 4-10; US Amicus Br. at 22-28, dated Apr. 4, 2012 ("US Br.") (Ex. T).

II. THE REPUBLIC IS LIKELY TO SUCCEED ON THE MERITS

A. The District Court Lacked Jurisdiction To Enter The Amended Injunctions

As an initial matter, the Republic will succeed on the merits of its appeal because the district court entered the Amended Injunctions before this Court issued the mandate from the Republic's appeal of the February 23 Orders. The court thus lacked jurisdiction to enter any substantive relief and its Amended Injunctions are accordingly void. *See Dague v. City of Burlington*, 976 F.2d 801, 805 (2d Cir. 1992) (order issued by the district court prior to mandate being issued by Court of Appeals was a "nullity"); *United States v. Timewell*, 387 F. App'x 23, 25, 28 (2d Cir. 2010) (summary order) (same); *Doe v. Gonzales*, 449 F.3d 415, 420 (2d Cir. 2006) (same). Although the Republic presented this authority to the district court, and the district court agreed that the mandate had not issued, it nonetheless improperly entered the Amended Injunctions. *See* Nov. 9, 2012 Hr'g Tr. at 19:20-21 (THE COURT: "[The Court of Appeals] . . . *hasn't issued its mandate*.") (emphasis added).

Plaintiffs' only rebuttal below was that, because the Court in its October 26 Decision remanded to the district court for further proceedings pursuant to *Jacobson*, the Court's "dictation of the mandate's journey" in the October 26 Decision meant that this Court had actually issued the mandate. But regardless of whether the Court "dictated the mandate's journey," the fact remains that that "journey" has not yet begun, because the mandate has not yet issued and will not

issue until after the Republic's Rehearing Petition is no longer pending. *See* Fed. R. App. P. 41(d)(1); *United States v. Rivera*, 844 F.2d 916, 921 (2d Cir. 1998) (stating that the mandate does not issue "merely upon the filing of an opinion or summary order . . . [because] it is the clerk, not the judges, who 'issues' it").[4] The district court therefore lacked jurisdiction to enter the Amended Injunctions.

B. The Amended Injunctions Purport To Bind Numerous Third Parties In Violation Of Rule 65 And All Applicable Law

The Republic will also prevail on the merits because there is no basis for binding to the Amended Injunctions the numerous third parties and categories of third parties targeted by the district court, including BNYM (the Trustee for holders of the Republic's debt), the many financial institutions that transfer payments en route from BNYM to the exchange bondholders, the book-entry depository system and the exchange bondholders and their nominee. This conclusion of the district court conflicts with two clear aspects of the Court's October 26 Decision.

First, notwithstanding this Court's observation that the Injunctions could not be interpreted to mean that "plaintiffs would 'execute upon' any funds, much less those held in trust for the exchange bondholders," Oct. 26 Decision at 25 n.14, the

[4] *Jacobson* makes clear that the better practice when remanding is to require the issuance of the mandate before the district court may take any action, and, more fundamentally, that there *must* be a mandate issued to give a district court jurisdiction for the "enforcement of compulsory process," which an injunction that imposes its coercive effect on hundreds of third parties clearly is, since such process is not "normally within the power of a district court when the court of appeals has 'retained' jurisdiction." 15 F.3d at 22.

Amended Injunctions in fact restrain any and all funds "*held in trust for the exchange bondholders*," and hold third parties liable for any payments to those bondholders. The Amended Injunctions therefore function in the *precise manner* as a CPLR § 5222 restraining notice, including with extraterritorial effect on funds that are not in the United States and thus absolutely immune from restraint under the FSIA. *See Aurelius Capital Partners, LP v. Republic of Argentina*, 584 F.3d 120, 130 (2d Cir. 2009). The district court cited no case, and we are aware of none, for the proposition that a plaintiff can indefinitely restrain, based upon the actions of a separate obligor, the property of a third party in which plaintiff can assert *no* right.

Second, the district court failed to address this Court's express "concerns" about the application of the injunctions to third parties, Oct. 26 Decision at 27, and simply ruled that the injunctions *must* bind the third parties involved in transferring funds to exchange bondholders. Op. at 9. The court sweepingly held – *citing no caselaw and without explanation* – that each and every entity within each broad category in the Amended Injunctions is bound under Rule 65(d) because each entity is "'in active concert or participation' with Argentina." *Id.* at 11.

In fact, as the Republic – and the third parties themselves – established below, these targeted entities cannot be bound by the Amended Injunctions because, as the district court itself previously recognized, they are not under any theory "aiders and abettors" of any violation by the Republic. *See* Feb. 23, 2012 Hr'g Tr. at 7:22-24

(THE COURT: "The banks wouldn't be aiding and abetting. The banks only pay the exchange offer people. That's what they do.") (A-2296). It is unprecedented – and unwarranted – to hold liable as aiders and abettors participants in the financial markets doing no more than carrying out their normal business functions and fulfilling their *own* obligations to third parties. *See Alemite Mfg. Corp. v. Staff*, 42 F.2d 832, 833 (2d Cir. 1930) ("[T]he only occasion when a person not a party may be punished, is when he has helped to bring about, not merely what the decree has forbidden . . . but what it has power to forbid, an act of a party.").

Bank of New York Mellon. BNYM is the Trustee for, and so owes fiduciary duties to, the holders of the Republic's restructured debt. Under the governing Indenture, the Republic pays the holders of that debt in Argentina when it pays the Trustee, which receives, holds, and transfers the funds in trust for the beneficial owners of the restructured debt. Trust Indenture § 3.1, dated June 2, 2005 (A-2282-3). Once that transfer takes place, the funds are no longer property of the Republic, which then has no right to the funds. *See id.* § 3.5(a) (A-2284). It would thus be manifestly *unreasonable* to apply the Amended Injunctions to the Trustee, who holds funds (in which the Republic and plaintiffs have no interest) for the exchange bondholders.

Financial Institutions. The various financial institutions caught up by the Amended Injunctions transfer payments en route from the Trustee to the restructured

debt holders, which payments *at all times remain in trust for the restructured debt holders*. These institutions are protected by Article 4-A of the U.C.C. (the precise body of law identified by this Court as an area of concern, Oct. 26 Decision at 27-28), which determines the rights, duties and liabilities of entities involved in the funds transfer process in New York and the rest of the country. *Grain Traders, Inc. v. Citibank, N.A.*, 160 F.3d 97, 102 (2d Cir. 1998). Article 4-A provides, *inter alia*, that creditor process be directed only *to the bank of the party that owes the creditor the debt*. *See, e.g.*, N.Y. U.C.C. § 4-A-502 cmt. 4. Thus, because the financial institutions are not the "Republic's banks," the U.C.C. bars the injunctions from binding them. The district court acknowledged the U.C.C., but then proceeded to ignore it. Under the U.C.C., no injunction may issue against BNYM and financial intermediaries. BNYM's account as a funds transfer beneficiary is located offshore, and will in any event contain solely assets belonging to third parties and not to Argentina. Those assets are not available for execution by the Republic's creditors. Other intermediaries are caught in the Amended Injunctions, although they fulfill only ministerial roles and are not in any way agents of the Republic.

Clearing Systems and Nominees. Book-entry depository systems, such as DTC and its nominee Cede & Co., indisputably owe no obligations to plaintiffs, and are not agents of the Republic. Application of the injunctions to DTC and other depositories and clearing systems is thus unreasonable on its face. Plaintiffs have no

claim against these entities, no interest in the amounts that depositories transfer to their Participants, and no basis to bind them to the injunctions.

None of these entities has any role, "causal" or otherwise, in the Republic not paying plaintiffs. *See Stanfield Offshore Leveraged Assets, Ltd. v. Metro. Life Ins. Co.*, 883 N.Y.S.2d 486, 489 (1st Dep't 2009) (actions of the aider/abettor must proximately cause alleged harm). These entities act no differently with respect to the performing debt than they have for the past seven years, *i.e.*, since the Republic's Exchange Offers in 2005 (or 2010) – transactions which this Court noted did not violate the pari passu clause. *See* Oct. 26 Decision at 19 n.10. If left to stand, the district court's ruling – which calls into doubt long-settled New York law and practice – will both hugely impair the use of New York law to govern sovereign and corporate issuances and severely disadvantage New York financial institutions with respect to such issuances. Jonathan Wheatley, *New York law: not what it used to be*, Fin. Times, Nov. 23, 2012 (effect of injunctions was to "wipe[] out the New York law premium" for sovereign debt) (Ex. C); *see also* Ex. W.

C. The District Court's Interpretation Of "Ratable Payment" Is Inequitable Because It Severely Harms Third Parties And Grants Plaintiffs Relief That Is Untethered From Their Injury

The Republic is also likely to succeed on the merits of its claim that the district court's interpretation of "Ratable Payment" is patently inequitable. As the Court noted in its October 26 Decision, "Ratable Payment" is an equitable remedy

(as opposed to actual contractual performance required by the clause itself). *See* Oct. 26 Decision at 11, 19 n.10. And when fashioning an equitable remedy, "[e]specially when immediate implementation of an equitable remedy threatens to impinge upon the expectations of innocent [third] parties, the courts must look to the practical realities and necessities inescapably involved in reconciling competing interests, in order to determine the special blend of what is necessary, what is fair, and what is workable." *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 375 (1977). In adopting wholesale plaintiffs' proposed definition of "Ratable Payment," the district court's action clearly infringed on the "expectations of innocent third parties" and was not "fair," "necessary," or "workable."

The inequity of the district court's "Ratable Payment" definition is demonstrated by the fact that the periodic payments to holders of restructured debt represent only a small percentage of the entire amount owed to the restructured debt holders, which amount itself is but a fraction – "30 cents on the dollar" as NML conceded – of the exchange bondholders' original debt. *See* Brief for Plaintiff-Appellant NML Capital, Ltd. at 17, dated Apr. 7, 2005 (Ex. V); *see also id.* at 8.[5] Whereas exchange bondholders are due to receive small interest payments until *up to 2038*, under the district court's interpretation of "Ratable Payment," plaintiffs are

[5]In affirming the district court's rejection of NML's attempt to disrupt the 2005 Exchange Offer, this Court explained that the Republic's "[debt] restructuring [was] obviously of critical importance to the economic health of a nation," *EM Ltd. v. Republic of Argentina*, 131 F. App'x 745, 747 (2d Cir. 2005) (summary order).

immediately entitled to a one-time payment in full of 100 cents on the dollar on their non-performing debt in *2012*. A workable interpretation of "Ratable Payment" would afford plaintiffs equitable treatment to the 2010 exchange bondholders.

The district court rationalized its definition of "Ratable Payment" by concluding that the exchange bondholders "knew full well that other owners of FAA Bonds were seeking to obtain *full payment* of the amounts due on such bonds through persisting in the litigation." Op. at 8. But exchange bondholders could not have foreseen that a court would enjoin independent third parties, disable trustees, and disregard settled aspects of New York law and the territorial limits to its own jurisdiction in order to condition payment of restructured debt on payment in full to holdout creditors. Like everyone else in the market, exchange bondholders could not have anticipated this outcome, since the theory on which it is based had no prior support in decades of market practice. Had the exchange bondholders remotely understood that their contracts supported this extraordinary result, no one would have entered into an exchange offer in the first place. *See* US Br. at 17 (the Injunctions incentivize bondholders not to restructure their debt).

The Argentine Executive could appeal to Argentina's Congress to treat plaintiffs and others similarly situated in an equitable manner, but Argentina is a sovereign subject to a balance of powers. It cannot fulfill the district court's demand, particularly while under this threat to its performing debt and debt holders.

III. A STAY WILL NOT HARM PLAINTIFFS

Staying the enforcement of the Amended Injunctions can cause no conceivable harm to plaintiffs. Exchange bondholders have been paid for years (while plaintiffs were perfectly content to let those payments occur), *and regular payments on exchange debt are scheduled for periodic intervals extending up to 2038.* *See, e.g.*, 2005 Prospectus Supplement (A-669). The Court should not accept the false urgency plaintiffs created, and should allow the Republic and all interested third parties to prosecute their appeal rights before the Amended Injunctions – which *will* cause massive harm to the Republic and third parties – go into effect.

Moreover, *clear and convincing evidence* is necessary to find an injunction has been violated, but the district court relied solely on newspaper hearsay. *Latino Officers Ass'n of N.Y. v. City of New York*, 558 F.3d 159, 164 (2d Cir. 2009). The only evidence properly before the court stated the opposite of the court's conclusion and affirmed that the Republic has complied, is complying and will comply with the Stay, which should be reinstated immediately. Eggers Decl. ¶ 4.

IV. THE PUBLIC INTEREST STRONGLY SUPPORTS A STAY

A stay is simply the only way to protect the significant interests of the public and third parties. By restructuring nearly 92% of its defaulted debt in 2005 and 2010, the Republic resolved thousands of claims that would otherwise be in the federal courts, and cleared the dockets of actions that had been brought on defaulted

debt. It is clearly not in the public interest to prevent a party from resolving the vast majority of the claims against it, and potentially subject it to new claims, only because it has been unable to resolve *all* claims against it. *See In re Tamoxifen Citrate Antitrust Litig*., 466 F.3d 187, 202 (2d Cir. 2006) (noting the Second Circuit's "longstanding adherence to the principal that courts are bound to encourage the settlement of litigation") (citation and quotation marks omitted).

The third party submissions below demonstrated that the court lacked any legal basis to bind to the Amended Injunctions potentially hundreds of entities, and that the result of that ruling will be to disrupt an untold number of unrelated payment transfers and compel the Trustee to violate its fiduciary duties to exchange bondholders. In addition, the Amended Injunctions will no doubt prompt pari passu claims by other debt holders who will potentially claim that the clause is violated unless *they* are immediately paid in full when *plaintiffs* are paid, or that they should share, pari passu, in plaintiffs' recovery.

In brief, absent a stay, the Amended Injunctions will result in increased litigation and inject more confusion and uncertainty into New York's payment system and future debt restructurings. *See* Clearing House Amicus Br. at 26, dated Apr. 4, 2012 (noting "deleterious long-term impact on New York's financial institutions and its preeminence as a financial center") (Ex. S); James Mackintosh, *Argentina's battle with Elliott*, Fin. Times, Nov. 22, 2012 (the October 26 Decision

and Orders "increase[] the incentive to reject future restructurings, even those with collective action clauses. . . . [F]uture borrowers would be well advised to avoid issuing bonds under New York law, unless they are happy to run the risk of ending up in the sovereign equivalent of a 19th-century debtors' prison.") (Ex. G); Mario Blejer, Op-Ed, Fin. Times, Nov. 25, 2012 (the Orders, if upheld, would "limit the tools available to policy makers in Europe and beyond") (Ex. X). These are important issues affecting the Republic and numerous third parties, the interests of which, we respectfully submit, were not fully considered by the district court in the extremely brief amount of time it allowed for briefing and its decision – a fact highlighted by the apparent weight given by the court to statements made by Argentine officials expressing shock and strong disagreement with the court's rulings (which as leaders of a sovereign nation they have a right to do), as opposed to the legal briefing and declaration submitted by the Republic, as well as the submissions of third parties in the proceedings below.

CONCLUSION

For the foregoing reasons, this Court should grant the Republic's emergency motion for a stay.

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Respectfully submitted,

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