UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO COMPEL COMPLIANCE WITH SUBPOENAS DIRECTED TO THE INTERVENING BONDHOLDERS

AURELIUS CAPITAL MASTER, LTD. and AURELIUS OPPORTUNITIES FUND II, LLC,	:	
Plaintiffs,	:	10 Civ. 3970 (TPG)
	:	10 Civ. 8339 (TPG)
- against -	:	
THE REPUBLIC OF ARGENTINA,	:	
Defendant.	:	
BLUE ANGEL CAPITAL I LLC,	:	
Plaintiff,	:	10 Civ. 4101 (TPG)
	:	10 Civ. 4782 (TPG)
- against -	:	
THE REPUBLIC OF ARGENTINA,	:	
Defendant.	:	
PABLO ALBERTO VARELA, et al.,	:	
Plaintiff,	:	10 Civ. 5338 (TPG)
- against -	:	
THE REPUBLIC OF ARGENTINA,	:	
Defendant.	:	
OLIFANT FUND, LTD.,	:	
Plaintiff,	:	
	:	10 Civ. 9587 (TPG)
- against -	:	
THE REPUBLIC OF ARGENTINA,	:	
Defendant.	:	

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Plaintiffs NML Capital, Ltd. ("NML"); Aurelius Capital Master, Ltd., Aurelius Opportunities Fund II, LLC, ACP Master, Ltd., and Blue Angel Capital I LLC (collectively, the "Aurelius Plaintiffs"); Olifant Fund, Ltd. ("Olifant"); and Pablo Alberto Varela, et al. (the "Varela Plaintiffs," and together with NML, the Aurelius Plaintiffs, and Olifant, "Plaintiffs"), through their undersigned counsel, respectfully submit this memorandum of law in support of their motion, pursuant to Rules 26, 30, 37 and 45 of the Federal Rules of Civil Procedure, for an order compelling Gramercy Funds Management LLC, SW Asset Management, LLC, AllianceBernstein L.P., Massachusetts Financial Services Company d/b/a MFS Investment Management, Brevan Howard Management LLP, Knighthead Capital Management, LLC, Perry Capital LLC, Redwood Capital Management, LLC, and Fintech Advisory Inc. (collectively, the "Intervening Bondholders") to respond to subpoenas dated December 10, 2012 (the "Subpoenas") by producing all responsive documents and designating witnesses for deposition pursuant to Rule 30(b)(6).

PRELIMINARY STATEMENT

Plaintiffs seek to compel the production of documents and testimony from the Intervening Bondholders concerning matters of urgent importance as to which the Intervening Bondholders are likely to have relevant information. The Intervening Bondholders are nine holders of Exchange Bonds who have chosen to intervene in the proceedings in this Court or in the Court of Appeals. They have submitted extensive papers presenting not only their arguments concerning the issues remanded by the Second Circuit, but also their assertions of fact on matters that are relevant to issues as to which this Court has ongoing jurisdiction in connection with the Order of March 5, 2012 (the "March 5 Order")—an order that has not been stayed by the Court of Appeals and that remains in full force and effect.

The March 5 Order provides *inter alia* that during the pendency of the appeal to the Second Circuit, the Republic shall not take any action to evade the directives of this Court's February 23 Orders or render them ineffective in the event they are affirmed, including by altering or amending the processes by which Argentina makes payments on the Exchange Bonds. As the Court has recognized, Argentina has already stated that it does not intend to comply with the February 23 Orders, and Plaintiffs therefore have reason to believe that Argentina is currently engaged in planning to evade the February 23 Orders, which would itself be a violation of the March 5 Order. Some of the Intervening Bondholders have a history of working with Argentina on matters concerning the Exchange Bonds, and press reports indicate that these bondholders have been working with Argentina since the issuance of the February 23 Orders to devise a plan to change the payment process for the Exchange Bonds. Accordingly, it is reasonable for the Plaintiffs to pursue discovery from the Intervening Bondholders about the subjects set forth in the Subpoenas.

The Intervening Bondholders do not deny that they have documents and information responsive to the Subpoenas – indeed it defies credulity to suggest that the Intervening Bondholders who are aligned with Argentina in these proceedings have never communicated with Argentina about developing an alternative plan to pay the exchange bondholders—and the Intervening Bondholders do not so contend.

Instead, the Intervening Bondholders contend that this Court lacks jurisdiction to enforce the subpoenas or conduct other proceedings because the case is now in the Court of Appeals—but the fact is that this Court properly and specifically retained jurisdiction pending appeal, in the March 5 Order, to monitor and ensure compliance with the terms of that order. Although the Second Circuit has stayed this Court's November 21 Orders pending appeal, the

Second Circuit has not stayed the March 5 Order and has not questioned this Court's retention of jurisdiction pending appeal therein. In light of that retention of jurisdiction, Plaintiffs were within their rights to serve the Subpoenas on the Intervening Bondholders in order to obtain information related to Argentina's compliance with or violation of the March 5 Order, and the Court has the jurisdiction to enforce the Subpoenas in the face of the Intervening Bondholders stonewalling and delay.

The Intervening Bondholders also complain that Plaintiffs are requesting documents and depositions on a schedule that is too expedited— but, of course, their position is that they will not produce anything at all, at any time, in response to the Subpoenas—and the due date for production of documents has now passed, and not one of the Intervening Bondholders has produced anything. So, without any right to do so, the Intervening Bondholders have succeeded in changing the schedule, and delaying the discovery to which Plaintiffs are entitled.

In fact, the schedule for discovery set in the Subpoenas was and is reasonable—Plaintiffs have a need for the information requested in the Subpoenas and the Intervening Bondholders have no justification for delay. Discovery without further delay is appropriate to fulfill the purposes of the March 5 Order. In the March 5 Order, this Court specifically retained the power to "modify, amend, or extend" the March 5 Order "as justice requires to achieve its equitable purposes and to account for materially changed circumstances, including any failure by the Republic to abide" its obligation not to evade the February 23 Orders. If discovery should demonstrate, as Plaintiffs believe that it will, that Argentina is engaged in planning to evade the February 23 Orders in contravention of the March 5 Order, and that justice requires the Court to

amend the March 5 Order or any other order to prevent further evasion and defiance, Plaintiffs should have the ability to return to this Court to obtain such further relief as soon as possible.[1]

STATEMENT OF FACTS

The Court's Equal Treatment Orders

On February 23, 2012, the Court entered Orders in favor of Plaintiffs requiring Argentina to make ratable payments to Plaintiffs (the "February 23 Orders") whenever it makes payments on the securities that were issued in its 2005 and 2010 exchange offers (the "Exchange Bonds"). (Rapport Decl. Exs. 1(a-d).) The Court also ordered that Argentina is:

> permanently PROHIBITED from taking action to evade the directives of this ORDER, render it ineffective, or to take any steps to diminish the Court's ability to supervise compliance with the ORDER, including, but not limited to, altering or amending the processes or specific transfer mechanisms by which it makes payments on the Exchange Bonds, without obtaining prior approval of the Court.

February 23 Orders at 5.

On March 5, 2012, the Court stayed the February 23 Orders pending appeal (the "March 5 Order"), and ordered that:

> [T]he 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, render them ineffective in the event they are affirmed, or diminish the Court's ability to supervise compliance with the February 23, 2012 Orders in the event they are affirmed, including without limitation, altering or amending the processes or specific transfer mechanisms

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[1] Various of the Intervening Bondholders advance other arguments that are addressed below. The subpoenas to two of the nine intervening bondholders, SW and MFS, were issued out of the Central District of California and the District of Massachusetts, respectively. If those Intervening Bondholders are not consenting to the jurisdiction of this Court for purposes of enforcement of the subpoenas, even though they have chosen to intervene here and are represented by New York counsel in these proceedings, they can so state in their response to this motion.

> by which it makes payments on the Exchange Bonds, without prior approval of the Court.

March 5 Order (Rapport Decl. Ex. 2) at 2. The Court also "retain[ed] jurisdiction to monitor and enforce this ORDER, and, on notice to the parties, to modify, amend, or extend it as justice requires to achieve its equitable purposes and to account for materially changed circumstances, including any failure by the Republic to abide" by its obligation not to evade the February 23 Orders. (*Id.* at 3.)

On October 26, 2012, the United States Court of Appeals for the Second Circuit affirmed the February 23 Orders in part, and remanded two issues for further consideration by this Court. *NML Capital, Ltd. v. Republic of Argentina*, 699 F.3d 246 (2d Cir. 2012).

On or about November 21, 2012, the Court issued an Opinion addressing the remanded issues (the "Remand Opinion") and Amended February 23 Orders, which amended the original February 23 Orders so as to reflect the Court's ruling on the remand issues. (Rapport Decl. Exs. 3, 4(a-d).) The Court also issued an Opinion regarding the stay imposed by the March 5, 2012 Order (the "Stay Opinion") and an Order Concerning the March 5, 2012 Order (the "November Stay Order"), which vacated the portion of the March 5 Order staying Argentina's obligation to make ratable payments, but did not vacate or change ***either*** the provisions in the March 5 Order prohibiting Argentina's efforts to attempt to evade the February 23 Orders, ***or*** this Court's retention of jurisdiction to monitor compliance with that obligation. (Rapport Decl. Exs. 5-6.)

On November 28, 2012, the Second Circuit stayed all of this Court's November 21, 2012 orders pending appeal of the remanded issues (the "Second Circuit's Stay Order"). (Rapport Decl. Ex. 7.) The Second Circuit did not, however, stay this Court's March 5 order, nor did the Second Circuit diminish Argentina's continuing obligations under the March 5 Order,

or this Court's retention of jurisdiction pending appeal to monitor compliance with those obligations, and to amend the order as appropriate.

Argentina's Stated Intention to Violate the February 23 Orders

This Court has already found that Argentina has stated an intention to violate the February 23 Orders:

> From the moment of the October 26, 2012 Court of Appeals' decision, the highest officials in Argentina have declared that Argentina would pay the exchange bondholders but would not pay one dollar to holders of the original FAA Bonds. President Cristina Kirchner made such a statement. The Minister of Economy, Lorenzino, declared that despite any ruling to come out of any jurisdiction, Argentina would not pay the FAA bondholders.
>
> On November 9, 2012, the court met with counsel and asked the attorney for Argentina if the press reports of the above statements were correct. In response, the attorney turned to other subjects, meaning that the press reports were not denied. At the November 9, 2012 meeting, the court reminded all concerned that Argentina is subject to the jurisdiction of the federal courts in New York, to which Argentina has consented. For the past ten years Argentina has repeatedly submitted matters to the District Court and the Court of Appeals, and received what was undoubtedly fair treatment, since Argentina prevailed in most matters. The court went on to urge that the Argentine government should back away from these ill-advised threats to defy the current court rulings, and that any defiance of the rulings of the courts would not only be illegal but would represent the worst kind of irresponsibility in dealing with the judiciary.
>
> This did not stop the highest Argentine officials who have continued to the present time their inflammatory declarations that the court rulings will not be obeyed.

Stay Opinion (Rapport Decl. Ex. 5) at 2-3.

Argentina implicitly acknowledged this intention when it submitted the Declaration of Francisco Guillermo Eggers, dated November 16, 2012 (the "Eggers Declaration"), which states in a conclusory manner that Argentina is complying with the March 5 Order. The Eggers Declaration does not address whether (let alone deny that) Argentina is

making plans to attempt to evade the February 23 Orders, which would itself be a violation of the March 5 Order. The Eggers Declaration also fails to state that Argentina would comply with the February 23 Orders in the event that they are affirmed. (*See* Rapport Decl. Ex. 45.)

The Submissions of the Intervening Bondholders

The Intervening Bondholders are not third parties who have been dragged into this case by Plaintiffs seeking discovery. On the contrary, the Intervening Bondholders have chosen to inject themselves into this case and have sought to have their voices heard and their positions considered. They have filed multiple memoranda and other papers with this Court and the Second Circuit, all challenging the February 23 Orders. Their filings contain their self-serving allegations as to their communications with Argentina, their role in the 2005 and 2010 Exchange Offers, the harm they purportedly suffered as a result of Argentina's default and the Exchange Offers, and their past and present holding of Exchange Bonds.

For example, Gramercy, SW, MFS and Brevan Howard – acting as the self-styled "Exchange Bondholder Group" – filed a joint submission in this Court, including various declarations concerning their interests in the Exchange Bonds. (Rapport Decl. Ex. 8.) The EBG submission included the declaration of Robert S. Koenisgberger, Gramercy's founder and Chief Investment Officer, who explained Gramercy's role as an organizer of the 2010 Exchange Offer. (Rapport Decl. Ex. 9.) With respect to the various press reports concerning communications between Argentina and Exchange Bondholders to devise an alternative payment mechanism for the Exchange Bonds that would permit payment in France or Switzerland, in violation of the Court's orders, Koenigsberger offered a conclusory, unsubstantiated denial "as to Gramercy, and, to the best of my knowledge, as to all other Exchange Bondholders." (*Id.* ¶ 5.) Koenigsberger did not explain the basis for his knowledge, or deny that Exchange Bondholders

(including the Intervening Bondholders) had been in communication with Argentina regarding plans to evade the February 23 Orders.

Subsequently, before the Court of Appeals, the "Exchange Bondholder Group" (now joined by AllianceBernstein) filed a second Koenigsberger declaration. (Rapport Decl. Exs. 12-13, 16-17.) This second declaration also contained a conclusory, unsubstantiated denial that the Republic had attempted to discuss with Gramercy (or to Koenigsberger's knowledge, other Exchange Bondholders although again, Koenigsberger does not provide the basis for his supposed knowledge) certain specific evasion tactics—i.e., modification of the payment mechanism for the Exchange Bonds, changing the Trustee for the Exchange Bonds, or a further exchange involving local law bonds. (Rapport Decl. Ex. 17 ¶¶ 3, 5.) Once again, Koenigsberger did not deny that Exchange Bondholders had been in communication with Argentina, or that other plans to evade the Court's orders had been discussed.

Fintech submitted the declaration of Managing Director Andres Lederman, who made allegations regarding Fintech's: (i) role and reason for participating in the Exchange Offers, (ii) the harms it allegedly suffered as a result of Argentina's default and Exchange Offers, (iii) its past and present holdings of Exchange Bonds, and (iv) its role as creditor in the Argentine economy. (Rapport Decl. Ex. 11; *see id.* Exs. 10, 14-15, 18.) The Fintech submission did not deny that Fintech had been in communication with Argentina, or had discussed plans to evade the February 23 Orders.

The remaining Intervening Bondholders—Knighthead, Redwood and Perry (the self-styled "Euro Bondholders") —submitted the declaration of their counsel Christopher Clark asserting that the "Euro Bondholders, together with other interested holders, hold more than €1.2 billion of Euro Bonds." (Rapport Decl. Ex. 20 ¶ 12; *see id.* Ex. 19.) Like the submissions of the

Exchange Bondholder Group and Fintech, the Euro Bondholder submission did not deny that they had been in communication with Argentina, or had discussed plans to evade the February 23 Orders.

Plaintiffs' Subpoenas to the Intervening Bondholders

The Subpoenas ask all of the Intervening Bondholders to produce the following limited categories of documents:

1. All documents concerning – during the period after February 22, 2012 – any actions, or any plans, proposals, ideas, recommendations for or consideration of actions, whether or not consummated (i) to evade the directives of the February 23, 2012 Orders, including in the event such stay is lifted or orders affirmed on appeal, (ii) to diminish the Court's ability to supervise compliance with such Orders, or (iii) to alter or amend the processes or specific transfer mechanism by which Argentina makes payments on the Exchange Offer Securities, including but not limited to any consideration of (x) a change in any Trustee for the Exchange Offer Securities, (y) a further exchange of the Exchange Offer Securities, or (z) any change in the place or manner of or institutions involved in the procedures for payments on any Exchange Offer Securities.

2. All documents concerning communications with Argentina concerning (i) the February 23, 2012 orders or any subsequent decisions or rulings of the District Court or U.S. Court of Appeals for the Second Circuit in this matter, or (ii) payments on the Exchange Offer Securities.

3. Documents sufficient to identify all Exchange Offer Securities that were purchased by you at any time after February 22, 2012, whether or not still held, including but not limited to documents sufficient to identify, by entity or account, (i) the securities purchased (including ISIN or CUSIP number), (ii) the face amount purchased, and (iii) the date of purchase.

4. To the extent you claim to have suffered any monetary loss or damage as a result of the Republic's 2001 debt default or either the 2005 or 2010 Exchange Offers, documents sufficient to show the basis for such claim, and the calculation of any such monetary loss or damage, and documents sufficient to substantiate each element of such calculation.

(Rapport Decl. Exs. 21-29.) Each subpoena also set forth four deposition topics that tracked the document requests.

Some of the Subpoenas included additional requests (and corresponding deposition topics) based upon specific allegations asserted in that particular Intervening Bondholder's submissions. For example, the subpoena to Gramercy (Rapport Decl. Ex. 21) included one additional category of documents:

- Paragraph 3 of the Koenigsberger Declaration states *inter alia* that "Gramercy organized …the 2010 debt exchange offered by the Republic…." Please produce all documents concerning the nature and extent of Gramercy's involvement in the 2005 and 2010 Exchange Offers, including, without limitation, any fees or other consideration received by Gramercy in connection therewith.

The subpoena to Fintech, (Rapport Decl. Ex. 29), included two additional categories of documents:

- All documents concerning the allegation in paragraph 5 of the Lederman Declaration that "Fintech elected to participate in the debt restructurings of 2005 and 2010 because it realized that the only way the Republic would fully recover from a distressed economic situation was by a reduction in aggregate liabilities that would allow the economy to grow and restore a minimum level of creditworthiness," including documents concerning any other reasons Fintech had for such participation.

- All documents concerning the allegation in paragraph 17 of the Lederman Declaration that "Fintech contributes monetarily to the economic growth of Argentina as a creditor to the Republic as well as other companies in the country," including documents sufficient to identify all instances in which it has acted as a creditor to the Republic or companies in the country.

And the subpoenas to the Euro Bondholder group, (Rapport Decl. Exs. 26-28), included the following additional request:

- Documents sufficient to identify the holders of the "more than €1.2 billion of Euro Bonds" referenced in paragraph 12 of the Clark Declaration, and for each such holder documents sufficient to identify all Exchange Offer Securities that were purchased by such holder at any time after February 22, 2012, whether or not still held, including but not limited to documents sufficient to identify, by entity or account, (i) the securities purchased (including ISIN or CUSIP number), (ii) the face amount purchased, and (iii) the date of purchase.

The Subpoenas set December 20, 2012 as the due date for responsive documents, and required each Intervening Bondholder to designate a witnesses to be deposed pursuant to Fed Rule of Civ. P. 30(b)(6) on either December 21, 27, or 28, 2012.

Stonewalling and Delay by the Intervening Bondholders

The day the Subpoenas were served, the Intervening Bondholders began their campaign of stonewalling and delay.

The Exchange Bondholder Group wrote to Plaintiffs on December 11, asserting—incorrectly—that the Second Circuit had stayed this Court's injunctions pending appeal and that there is thus no basis for the issuance of the District Court subpoenas to these Intervening Bondholders. (Rapport Decl. Ex. 30.) In fact, as Plaintiffs explained in a letter the next day, the Second Circuit had not stayed the March 5 Order, which contained both injunctive relief and this Court's retention of jurisdiction to enforce, modify or amend its order. (Rapport Decl. Ex. 31.) Plaintiffs also pointed out that the discovery sought by the Subpoenas was both necessary and appropriate to enable this Court to enforce its orders and protect Plaintiffs in accordance with the jurisdiction retained by the Court in the March 5 Order. (*Id.*) Plaintiffs also explained that the schedule set in the Subpoenas was appropriate because of the irreparable harm to Plaintiffs threatened by Argentina's progress toward implementation of a plan to evade its obligations under the orders of this court. (*Id.*) Plaintiffs exchanged more correspondence with the Exchange Bondholder Group on these issues, and similar correspondence with counsel for the Euro Bondholders. (Rapport Decl. Exs. 32-35)

On December 20, the Intervening Bondholders objected to the Subpoenas. All of the Intervening Bondholders objected on the grounds that: (i) the Court has no jurisdiction with respect to the Subpoenas and discovery should await further decision from the Second Circuit;

(ii) documents and information should be sought in the first instance from Argentina; and (iii) certain information requested is relevant only to the issues on appeal or are not relevant to the actions at all. (*See* Rapport Decl. Exs. 36-42.)

The papers filed by the Intervening Bondholders, and their letters to Plaintiffs' counsel, establish clearly that they are not willing to produce any documents or provide witnesses absent an order from this Court compelling them to do so.

ARGUMENT

PLAINTIFFS ARE ENTITLED TO THE DISCOVERY REQUESTED IN THE SUBPOENAS

A. The Court Has Jurisdiction to Issue and Enforce the Subpoenas

The Intervening Bondholders contend that they do not have to comply with the Subpoenas because this Court lacks jurisdiction to issue and enforce the Subpoenas because the issues remanded by the Second Circuit are now back before that court and the Second Circuit has stayed the November 21 Orders issued by this Court. (Rapport Decl. Exs. 30, 32, 34, 36-42.) What the Intervening Bondholders overlook is that the injunctive relief provisions contained in the March 5 Order remain in full force and effect pending appeal, and the Court specifically retained jurisdiction to enforce the March 5 Order, which would include the issuance and enforcement of the Subpoenas.

Paragraph 2 of the March 5 Order provides:

> To secure Plaintiffs' rights during the pendency of the Republic's appeals of the February 23, 2012 Orders to the Second Circuit, it is ordered 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, render them ineffective in the event they are affirmed, or diminish the Court's ability to supervise compliance with the February 23, 2012 Orders in the event they are affirmed, including without limitation, altering or amending the processes or specific transfer

> mechanisms by which it makes payments on the Exchange Bonds, without prior approval of the Court.

(Rapport Decl. Ex. 2.) In Paragraph 4 of the March 5 Order, this Court expressly retained the power to monitor Argentina's compliance with its obligation not to take any actions to evade, diminish, or render ineffective the February 23 Orders. (*Id.*) Nothing in the Second Circuit's Stay Order purported to stay any aspect of the March 5 Order, including Argentina's obligations pursuant to that Order and this Court's ability to monitor Argentina's compliance with those obligations. The Court retains the jurisdiction to enforce an unstayed order, such as the March 5 Order, notwithstanding the pendency of an appeal. *See Morisseau v. DLA Piper*, 707 F. Supp. 2d 460, 461-62 (S.D.N.Y. 2010) (court has jurisdiction to enforce contempt of unstayed order during pendency of appeal).[2]

The Exchange Bondholder Group contends that discovery is not authorized under the March 5 Order because only the February 23 Orders specifically authorized discovery. (Rapport Decl. Exs. 34, 38.) While it is true that the February 23 Orders expressly permit discovery, it is not necessary that the March 5 Order have included such a provision in order for Plaintiffs to serve discovery. When a court retains jurisdiction to monitor and enforce compliance with its orders, as the Court did here with respect to the March 5 Order, it presumptively also has the jurisdiction to oversee the discovery necessary to determine whether there has in fact been compliance with the order. *See New York v. Shore Realty Corp.*, 763 F.2d

[2] The contention by Intervening Bondholders that the March 5 Order applies only in the event the February 23 Orders are affirmed is a misreading of that order. In the March 5 Order, this Court unquestionably spelled out what constitutes prohibited conduct during the pendency of the appeal. It is not true, as the Intervening Bondholders contend, that the March 5 Order only governs what is prohibited at some future time when the February 23 Orders are affirmed. (Rapport Decl. Exs. 38 at 2, 39 at 7-8, 40 at 7, 41 at 7.) The whole point of the March 5 Order is that, by its terms, it governs conduct pending appeal.

49, 53 (2d Cir. 1985) (court has authority to order discovery concerning party's compliance with order for injunctive relief).

B. Plaintiffs' Subpoenas Seek Information Relevant to Enforcement and Compliance with This Court's Orders

This Court has previously explained that officials at the highest levels of the Argentine government, including President Cristina Fernández de Kirchner, have stated that Argentina will violate the February 23 Orders if they are affirmed on appeal – itself a violation of the March 5 Order. Stay Opinion (Rapport Decl. Ex. 5) at 2-3. Discovery concerning Argentina's efforts to plan an evasion of the February 23 Orders (also a violation of the March 5 Order) is therefore both necessary and appropriate to enable this Court to enforce its orders and to protect the rights of Plaintiffs.

To that end, Plaintiffs' Subpoenas to the Intervening Bondholders seek relevant information concerning Argentina's plans to evade the Court's orders, communications with Argentina concerning the orders, payments on the Exchange Bonds covered by the orders, and the Intervening Bondholders' motivations and incentives to oppose the orders and participate in a plan to evade them (e.g., the harm they purportedly suffered as a result of Argentina's default and Exchange Offers and their purchases of Exchange Bonds since the issuance of the February 23 Orders). Indeed, under Rule 26(b)(1), "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense…" Here, all of the discovery requested in the Subpoenas is relevant within the meaning of Rule 26.

Request No. 1 asks for documents concerning any actions to evade the directives of the February 23 Orders or any actions that would otherwise violate the March 5 Order as to which this Court has ongoing jurisdiction. Request No. 2 is limited to documents concerning communications that the Intervening Bondholders had with Argentina concerning two subjects

—the rulings of this Court and the Court of Appeals on or after February 23 2012, or payments on the Exchange Bonds—information which also bears on Argentina's plans to evade those orders by making payments on the Exchange Bonds without paying Plaintiffs.

Request Nos. 3 and 4 ask for very limited production of documents relevant to showing the interest and motivation of the Intervening Bondholders to participate in a scheme with Argentina to evade the February 23 Orders. Specifically, Request No. 3 simply asks for documents sufficient to identify the Exchange Bonds (whether or not still held) that were purchased on or after February 23, 2012, the date that this Court issued its ruling providing for injunctive relief to enforce the equal treatment provisions in the Fiscal Agency Agreement governing Plaintiffs bonds. To the extent that these Intervening Bondholders purchased their Exchange Bonds after this date, there is no legitimate reason to conceal that information from the Court and such purchases would suggest that the Intervening Bondholders chose to affirmatively insert themselves into an ongoing litigation and thus were more likely, especially given their past associations with Argentina, to be in discussions with Argentina regarding an alternative payment mechanism for the Exchange Bonds.

Similarly, as to Request No. 4, to the extent that the Intervening Bondholders claim as the predicate for their arguments that they have suffered loss and damage, it is reasonable for them to be directed to provide documents sufficient to show the basis for their claim and calculation, which of course would also bear on their incentive to participate in a scheme with Argentina to evade the February 23 Orders.

Finally, for those of the Intervening Bondholders, such as Gramercy, that have trumpeted in their submissions to the Court, their relationship with Argentina and their involvement in the Exchange Offers, it is highly relevant to have the documents concerning

those matters – where, as here, the crux of the inquiry relates to who has been collaborating with Argentina in connection with its efforts, in violation of the March 5 Order, to evade the directives of the February 23 Orders if they are affirmed on appeal.

Gramercy attempts to hide behind a summary Koenigsberger declaration that "to the best of [his] knowledge, the Republic has made no attempt to discuss with Gramercy—nor to [his] knowledge, any other [Exchange Bondholder] —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." (Rapport Decl. Ex. 17 ¶ 5.) No other Intervening Bondholder has submitted even this type of cursory declaration, and the Gramercy declaration is more notable for what it omits, than what it includes. The Gramercy declarant does not explain the basis for his knowledge (especially with respect to his purported knowledge of other Exchange Bondholders); he does not deny that Intervening Bondholders have been in communication with Argentina; and although he cites certain specific examples of evasion tactics, he never directly denies any communications or discussions concerning plans to evade the Court's orders. In all events, Plaintiffs are not obligated to rely upon Gramercy's flimsy and self-serving declaration; they are entitled to discovery to test the veracity of this and the other assertions made by the Intervening Bondholders in their various court filings.

Intervening Bondholders also point to the Eggers Declaration, as if that should suffice to assuage any concerns about Argentina's bona fides. (Rapport Decl. Exs. 34, 42 at 4.) The Eggers Declaration, which states in a conclusory manner that Argentina is complying with the March 5 Order, does not address whether (let alone deny that) Argentina is making plans to attempt to evade the February 23 Orders, which would itself be a violation of the March 5 Order.

Nor does the Eggers Declaration rebut the public declarations of Argentina's President and Finance Minister that Argentina would not comply with the February 23 Orders in the event that they are affirmed—statements which this Court has already recognized to be defiant repudiation and violations of the rulings of this Court. Thus, the Eggers Declaration provides no basis for objecting to the Subpoenas.

C. Plaintiffs Are Entitled to Seek Discovery from the Intervening Bondholders

It is entirely appropriate for Plaintiffs to seek discovery from the Intervening Bondholders. Gramercy and Fintech have a long working relationship with Argentina, and participated in or spearheaded the 2005 and 2010 Exchange Offers. (*See, e.g.*, Rapport Decl. Exs. 8 at 4; 9 ¶¶ 3-4; 10 at 3-4; 11 ¶¶ 6, 10; 14 at 2-3.) Recent news reports indicate that Gramercy, SW, AllianceBernstein, MFS and Brevan Howard are "considering collecting interest payments in France or Switzerland" beyond the reach of U.S. courts in contravention of the Court's orders. (Rapport Decl. Ex. 43.) Other news reports indicate that Argentina is considering evading the injunction by offering Exchange Bondholders the opportunity to exchange their "NY Law bonds into local law bonds." (Rapport Decl. Ex. 44.) The Intervening Bondholders' own submissions make repeated assertions about their history with Argentina, their holdings of Exchange Bonds, and their motivation for opposing the February 23 Orders. (*See, e.g.*, Rapport Decl. Exs. 8-20.)

The Intervening Bondholders contend that they are mere third-parties and that Plaintiffs should be left with whatever discovery Argentina might provide. (*See, e.g.*, Rapport Decl. Exs. 36, 37, 39-41, 42 at 4.) Plaintiffs are entitled to seek discovery from all appropriate sources, which undoubtedly includes the Intervening Bondholders, who have affirmatively sought to insert themselves into this litigation and have been granted leave to intervene by the

Second Circuit. Moreover, Argentina and its counsel have refused to respond to similar discovery Plaintiffs served on them, so Plaintiffs must at the same time turn to other sources of information to determine if Argentina is violating the Court's orders. Of course, the Intervening Bondholders are noticeably silent as to whether they have responsive documents or information, from which it is reasonable to assume that they do and which further supports the appropriateness of serving the Subpoenas on them.

D. Discovery Should Be Expedited

The Intervening Bondholders complain about the schedule set forth in the Subpoenas. These cases are proceeding in an expedited manner – this Court addressed the remanded issues within a month, and the Second Circuit set an expedited schedule with oral argument on February 27 (just two months from now), in advance of the next payment date for the Exchange Bonds on March 31, 2013 (barely three months from now).

In entering the March 5 Order, the Court specifically anticipated that it might need to modify or extend the injunctive relief in the March 5 Order as justice requires, including to account for changed circumstances pending appeal. For example, if it turned out that Argentina was making plans to evade the Court's orders in a way not previously anticipated, Plaintiffs could return to the Court for further relief to protect the effectiveness of the Court's orders and their rights pursuant to those orders.

Plaintiffs do not know what plans Argentina is making to evade the Court's orders—although Plaintiffs are reasonable in being concerned that Argentina is making such plans given that the President of Argentina has repeatedly stated (in violation of the March 5 Order) that Argentina will not comply with the February 23 Orders. In order to protect their rights, Plaintiffs served the Subpoenas on the Intervening Bondholders so that they can obtain

relevant information concerning Argentina's evasion plans. Plaintiffs need that information as soon as possible so that they will have time to return to the Court and if necessary seek a modification of the Court's orders.

The deadlines in the Subpoenas are reasonable and not burdensome in light of the limited scope of the requests and deposition topics. Nonetheless, the Intervening Bondholders have engaged in letter writing campaigns and stonewalled Plaintiffs' discovery efforts. Because of the irreparable harm to Plaintiffs threatened by Argentina's violation of the March 5 Order and the progress it is making toward implementation of a plan to evade its obligations under the February 23 Orders if affirmed, Plaintiffs respectfully request that Court order the Intervening Bondholders to produce responsive documents and information (which the Intervening Bondholders implicitly concede they have) without further delay.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court issue an order compelling the Intervening Bondholders to produce all documents responsive to the Subpoenas, and to designate witnesses to be deposed pursuant to Rule 30(b)(6).

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DECHERT LLP

By: /s/ Robert A. Cohen
Robert A. Cohen
(robert.cohen@dechert.com)
Dennis H. Hranitzky
(dennis.hranitzky@dechert.com)
Eric C. Kirsch
(eric.kirsch@dechert.com)

1095 Avenue of the Americas
New York, New York 10036
Telephone: (212) 698-3500
Facsimile: (212) 698-3599

Attorneys for Plaintiff NML Capital, Ltd. only with respect to the subpoenas to SW Asset Management, LLC, Brevan Howard Asset Management LLP, Redwood Capital Management, LLC, and Fintech Advisory Inc.

QUINN EMANUAL URQUART & SULLIVAN, LLP

By: /s/ Kevin S. Reed
Kevin S. Reed
(kevinreed@quinnemanuel.com)

51 Madison Avenue, 22nd Floor
New York, New York 10010
Telephone: (212) 849-7000
Facsimile: (212) 849-7100

Attorneys for Plaintiff NML Capital, Ltd. only with respect to the subpoenas to Gramercy Funds Management LLC, AllianceBernstein L.P., Massachusetts Financial Services Company, Knighthead Capital Management, LLC, and Perry Capital LLC

FRIEDMAN KAPLAN SEILER & ADELMAN LLP

By: /s/ Edward A. Friedman
Edward A. Friedman
(efriedman@fklaw.com)
Daniel B. Rapport
(drapport@fklaw.com)

7 Times Square
New York, New York 10036
Telephone: (212) 833-1100
Facsimile: (212) 833-1250

Attorneys for Plaintiffs Aurelius Capital Master, Ltd., Aurelius Opportunities Fund II, LLC, ACP Master, Ltd., Blue Angel Capital I LLC

MILBERG LLP

By: s/ Michael C. Spencer
Michael C. Spencer
(mspencer@milberg.com)
Gary Snitow
(gsnitow@milberg.com)

One Pennsylvania Plaza, 49th Floor
New York, New York 10119
Telephone: (212) 594-5300
Facsimile: (212) 868-1229

Attorneys for Plaintiffs Pablo Alberto Varela, et al.

SIMON LESSER, P.C.

By: /s/ Leonard F. Lesser
Leonard F. Lesser
(llesser@simonlesser.com)

420 Lexington Avenue
New York, New York 10170
Telephone: (212) 599-5455
Facsimile: (212) 599-5459

Attorney for Plaintiff Olifant Fund, Ltd