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12-0943-cv(CON), 12-0951-cv(CON), 12-0968-cv(CON), 12-0971-cv(CON), 12-4694-cv(CON),
12-4829-cv(CON), 12-4865-cv(CON)

United States Court of Appeals for the Second Circuit

NML CAPITAL, LTD., AURELIUS CAPITAL MASTER, LTD., ACP MASTER, LTD., BLUE
ANGEL CAPITAL I LLC, AURELIUS OPPORTUNITIES FUND II, LLC, PABLO ALBERTO
VARELA, LILA INES BURGUENO, MIRTA SUSANA DIEGUEZ, MARIA EVANGELINA
CARBALLO, LEANDRO DANIEL POMILIO, SUSANA AQUERRETA, MARIA ELENA
CORRAL, TERESA MUNOZ DE CORRAL, NORMA ELSA LAVORATO, CARMEN IRMA
LAVORATO, CESAR RUBEN VAZQUEZ, NORMA HAYDEE GINES, MARTA AZUCENA
VAZQUEZ, OLIFANT FUND, LTD.,

Plaintiffs-Appellees,

v.

THE REPUBLIC OF ARGENTINA,

Defendant-Appellant,

THE BANK OF NEW YORK MELLON, as Indenture Trustee, EXCHANGE BONDHOLDER
GROUP, ICE CANYON LLC, FINTECH ADVISORY INC.,

Non-Party Appellants,

EURO BONDHOLDERS,

Intervenor.

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

BRIEF FOR NON-PARTY APPELLANT FINTECH ADVISORY INC.

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CORPORATE DISCLOSURE STATEMENT

In accordance with Federal Rule of Appellate Procedure 26.1, Fintech Advisory Inc. states that it is a corporation organized under the laws of Delaware with its principal place of business in New York. There is neither a parent company to Fintech Advisory Inc., nor a publicly held corporation that owns 10% or more of its stock.

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JURISDICTIONAL STATEMENT

Pursuant to 28 U.S.C. § 1292(a)(1), this Court has jurisdiction over this appeal with respect to the injunctions set forth in the order issued by Judge Thomas P. Griesa of the District Court on November 21, 2012. In addition, the decision issued by this Court on October 26, 2012 which remanded to the District Court certain questions to which the November 21 Orders were directed expressly contemplated that the mandate would return to this Court for further consideration of the merits of the remedy imposed.

STATEMENT OF ISSUE PRESENTED FOR REVIEW

1. Whether the District Court erred when it issued orders on November 21, 2012 directed to the Republic of Argentina which, contrary to the direction of this Court, failed to adequately consider the interests of non-parties and which thus infringe upon the separate contractual and property rights of innocent non-parties such as Fintech in violation of the U.S. Constitution, trust and property law, the Uniform Commercial Code and principles of equity?

Fintech respectfully submits that the District Court erred in issuing its orders on November 21, 2012.

Non-Party Appellant and Intervenor Fintech Advisory Inc. (“Fintech”) respectfully submits this brief in support of its appeal of the Orders issued on November 21, 2012 by District Court Judge Thomas P. Griesa (the “November 21 Orders”).

STATEMENT OF THE CASE

I. Summary of Proceedings Before the District Court

Plaintiffs-Appellees (“Appellees”) are among 9% of bondholders that purchased bonds pursuant to a Fiscal Agency Agreement (the “Original Bonds”, the purchasers thereof the “Original Bondholders”) and refused to participate in the debt restructuring offered by the Republic of Argentina (the “Republic”) in 2005 and 2010 (the “2005 Exchange” or the “2010 Exchange” or the “2005 and 2010 Exchanges”) to exchange their Original Bonds for new bonds that were significantly decreased in value (the “Exchange Bonds”). Pursuant to the “moratorium” issued by the President of the Republic after its default in 2001, which has been renewed every year since then, and the “Lock Law” enacted by the Republic in 2005, the Republic is forbidden from making payments on the Original Bonds and thus it has not legally been in a position to make payments purportedly owed to Appellees under the Original Bonds since 2005. October 26, 2012 Decision pp. 5, 9 (the “October 26 Decision”).

On October 2010, Appellees filed a motion for partial summary judgment seeking injunctive relief precluding payments to participants of the 2005 or 2010 Exchanges (the “Exchange Bondholders”) unless Appellees were paid in full on their un-restructured debt. During the September 28, 2011 hearing on Appellees’ motions, the District Court denied Appellees’ motion for injunctive relief because such relief would have interfered with the Republic’s payments to the Exchange Bondholders (and non-parties) including Fintech. A-2162.¹ The District Court acknowledged at that time that an injunction requiring the Republic to pay Appellees ratably upon payment to the Exchange Bondholders “might interfere with an exchange offer” and “would prejudice the rights and opportunities of the people who want to make exchanges.” A-2156.

On December 7, 2011, the District Court granted Appellees’ motion for partial summary judgment, finding the Republic violated the *pari passu* clause in the Fiscal Agency Agreements entered into between the Republic and Appellees. On February 23, 2012, the District Court reversed the position it took on September 28, 2011 and issued an order directing that the Republic make a ratable payment to the Original Bondholders, despite the prohibitions of the Lock Law, and enjoining any payment to the Exchange Bondholders if the Republic did not pay the Original Bondholders prior to or at the same time. On March 5, 2012, the

¹ Citations to “A-” refer to the Joint Appendix.

District Court stayed the effect of the injunction issued by its February 23 order pending appeal to this Court.

On October 26, 2012, this Court affirmed in part and remanded in part the District Court's Order issued on February 23, 2012, affirming that the Republic had breached the *pari passu* clause of the Fiscal Agency Agreement entered into by and between the Republic and the Original Bondholders and affirming the entry of permanent injunctive relief with respect thereto. In its October 26 Decision, however, this Court remanded two specific issues to the District Court for consideration which have significant impact on the final remedy to be imposed: (i) the mechanics of the ratable payment formula (the "Formula"); and (ii) the impact of the injunction on third parties. As regards the Formula, this Court requested clarification from the District Court as to "how it intends this injunction to operate." Decision p. 11. With respect to third parties, this Court stated that "[o]ur concerns about the Injunctions' application to third parties do not end [with concerns expressed about the application to intermediary banks]" and that there was "some confusion as to how the challenged order will apply to third parties generally . . . [therefore] the district court should more precisely determine the third parties to which the Injunction will apply before we can decide whether the Injunctions' application to them is reasonable." *Id.* p. 28.

On November 9, 2012, Judge Griesa held a status conference specifically to address the two issues on remand, and at that time, set a briefing schedule for submissions from both parties and non-parties, including Fintech, concerning the impact of the October 26 Decision. Judge Griesa requested briefs by the Appellees on November 13, 2012, briefs by the Republic and non-parties including Fintech on November 16, 2012, and reply briefs on November 19, 2012. The November 16 submissions by non-party Exchange Bondholders were the first time they were heard as to the impact on them of the injunction imposed by the February 23 Order.

On November 21, 2012, Judge Griesa issued the November 21 Orders, which include: (i) the Amended February 23, 2012 Order (the “Injunction”); (ii) the Opinion related to the Amended February 23 Order (the “Injunction Opinion”); (iii) the Order Concerning the March 5, 2012 Order (the “Stay Order”); and (iv) the Opinion related to the Order Concerning the March 5, 2012 Order. The Injunction Opinion essentially adopted verbatim Appellees’ proposed language concerning the payment Formula and third parties, and ordered the Republic to make a ratable payment to Appellees of 100% “multiplied by the amount currently due.” SPE-1363.² The payment due to Appellees “arises when Argentina ‘pays any amount due’ *to the exchange bondholders.*” SPE-1364 (emphasis added). Moreover, the

² Citations to “SPE-” refer to the Supplemental Appendix.

injunctive relief ordered by the District Court requires payment on the Original Bonds in derogation of the Lock Law even though the Lock Law was an integral part of the restructuring of the Republic's bonds in 2005 and shaped the expectations of the Republic and the Exchange Bondholders. Notably, the Injunction Opinion failed to address this Court's "concerns" regarding third-parties by devoting little if any attention to the impact the Injunction would have on third parties, including the Exchange Bondholders. Decision p. 27. This omission is significant because the Injunction provides that if the Republic does not pay the Original Bondholders, it cannot make payments to Exchange Bondholders. SPE-1382 ("the Republic is ENJOINED from violating Paragraph 1(c) of the FAA, including by making any payment under the terms of the Exchange Bonds without complying with its obligation pursuant to Paragraph 1(c) of the FAA by concurrently or in advance making a Ratable Payment to NML") (emphasis in original). Also as a result of the Stay Order, the March Stay of the Injunction was lifted, and the Injunctive relief sought by Appellees was ordered to become effective on or around the December 15 payments due to the Exchange Bondholders.

II. Summary of Proceedings Before the Second Circuit

On November 27, 2012, the Republic, Fintech, and other non-party Exchange Bondholders (the "Exchange Bondholder Group") submitted emergency

motions for a stay pending appeal, seeking vacatur of the Stay Order issued by the District Court, which lifted the stay put in place by the March 5, 2012 Order. On the same day, Fintech filed its motion to intervene in this Court which was granted on November 30, 2012.³ On November 28, 2012, this Court stayed the November 21 Orders pending appeal. On December 28, 2012, this Court granted Fintech's application to be heard as a Non-Party Appellant.

STATEMENT OF RELEVANT FACTS

A. Fintech's Sizeable Holdings of Exchange Bonds

Fintech is an investment management firm organized under Delaware law with its principal place of business in New York. See SPE-1161 (Declaration of Andres Lederman) ¶ 2. Fintech was among the Original Bondholders and later purchased approximately \$834 million face value of the Original Bonds issued pursuant to the Fiscal Agency Agreement, with coupon rates ranging from 3.0% to 15.5% and dates of maturity ranging from April 2002 to September 2031. Id. ¶ 3. On December 24, 2001, the Republic defaulted on the Original Bonds. During the 2005 and 2010 Exchanges, the Republic offered the Original Bondholders the option to exchange their defaulted bonds for new, unsecured, subordinated bonds

³ The Exchange Bondholder Group, the Bank of New York (as Indenture Trustee), and various Exchange Bondholders from Europe (the "Euro Bondholders") also filed motions to intervene in this Court, which were ultimately granted. The Exchange Bondholder Group and Bank of New York have been designated as Non-Party Appellants.

at a substantially reduced exchange rate (separately, the “2005 Exchange Bonds” or the “2010 Exchange Bonds,” collectively, the “Exchange Bonds”). Id. ¶ 4.

Fintech, one of the largest holders participating in the 2005 Exchange, accepted the exchange to achieve certainty of payment and because it realized that the Republic required a reduction in aggregate liabilities that would allow its distressed economy to grow and restore a minimum level of creditworthiness to the Republic.

Id. ¶ 5. During the 2005 Exchange Fintech exchanged Original Bonds with a principal valued at roughly \$638 million. Id. ¶ 7. Fintech received new bonds during the 2005 Exchange worth 28% of the face value of its Original Bonds, resulting in a 72% reduction in principal.⁴ SPE-1162 ¶ 9. Additionally, the Republic owed Fintech no less than \$108 million in past due interest payments on the defaulted Original Bonds, for which Fintech received no additional consideration.⁵ Id. Accordingly, although Fintech finally began receiving regular interest payments from the Republic in 2005 pursuant to the terms of the 2005 Exchange Bonds, these distributions were considerably less than had been owed to

⁴ These figures do not take into account the collateral payments that the Republic made to Fintech pursuant to the Original Bonds. Id. ¶ 9.

⁵ The Republic also provided Fintech with contingent Gross Domestic Product (“GDP”) warrants. However, the GDP warrants do not allow Fintech to receive a fixed income on the Exchange Bonds and have had an average market value of 10% of the face value of the Original Bonds. Id. ¶ 9 n.1.

Fintech under the Original Bonds because the 2005 Exchange Bonds were deeply discounted.

In 2005, the Republic enacted the “Lock Law,” which prohibits the Republic from making payments to the Original Bondholders not participating in the 2005 Exchange. See Decision p. 20. Also in 2005, this Court specifically rejected efforts to block the restructuring, stating that the Court “cannot do something that would prejudice the rights and opportunities of the people who want[ed] to make exchanges.” EM Ltd. v. Republic of Argentina, 131 F. App’x 745, 747 (2d Cir. 2005) (affirming District Court’s rejection of NML’s attempt to block the Republic’s Exchange Offer because it was “obviously of critical importance to the economic health of a nation”).

In 2010, the Republic offered the Original Bondholders another opportunity to exchange their non-performing Original Bonds. SPE-1162 ¶ 10. Fintech again participated in the Republic’s voluntary debt restructuring, and offered the balance of its Original Bonds to the Republic. Id. During the 2010 Exchange, Fintech offered Original Bonds totaling \$196 million, which was the balance of Fintech’s holding of Original Bonds. Id. ¶ 11. After the 2010 Exchange, Fintech received new bonds equal to 33.7% of the total face value of the Original Bonds, resulting in a 66.3% reduction in principal through the 2010 Exchange Bonds. Id. ¶ 13. In addition, the Republic owed Fintech no less than \$110 million in past-due interest

on the Original Bonds Fintech offered during the 2010 Exchange for which there was no separate consideration. Id. As such, the aggregate haircut on the 2010 Exchange Bonds totaled 83% of the value of the total amount the Republic owed to Fintech under the Original Bonds. SPE-1163 ¶ 14. In connection with the 2010 Exchange, the Republic temporarily suspended the Lock Law solely to permit the 2010 Exchange and encourage the Original Bondholders to exchange their defaulted bonds. Otherwise, the prohibition on payment to the Original Bondholders, due to the Lock Law, continues through today. A-436; Decision p. 20.

In sum, Fintech's Original Bonds were worth approximately \$834 million face value with past-due interest payments of no less than \$218 million due in 2005 and 2010. SPE-1161-63 (Lederman Decl. ¶¶ 7, 9, 11, 13, 15). In good faith, seeking certainty and to benefit the then-distressed Argentine economy, Fintech accepted a reduction of roughly two-thirds of the face value of the Original Bonds in exchange for payment from the Republic pursuant to the terms of the Exchange Bonds. Fintech now holds the majority of the \$247 million face value of the Exchange Bonds it received as a result of participating in the 2005 and 2010 Exchanges. SPE-1163 ¶ 15. By 2010, Fintech, like 91% of the Original Bondholders, became an Exchange Bondholder and had taken a significant loss on its original investment. Id. ¶ 16.

B. The Effect of the Injunction on Fintech

As a participant in the 2005 and 2010 Exchanges, Fintech, as a beneficial owner of the Exchange Bonds, has received regular interest payments from the Republic since June 2005. SPE-1163 ¶ 19. These monies are paid in Argentina and are held in trust by The Bank of New York, as Indenture Trustee for the Exchange Bondholders, including Fintech (the “Trustee”). As Fintech understands it and as largely confirmed in the November 21 Orders, the funds ultimately distributed to beneficial owners such as Fintech originate with the Republic and are first transferred in Argentina to the Trustee, then to registered owners such as the Depository Trust & Clearing Corporation (“DTC”), then to the participant banks including J.P. Morgan and Citibank, and finally to the beneficial owners such as Fintech. SPE-1164 ¶ 21. The Injunction prevents the Trustee and DTC, among others, from disbursing the monies rightfully owed and belonging to the Exchange Bondholders including Fintech pursuant to the contracts they entered into as a result of voluntarily participating in the Republic’s debt restructurings unless the Republic also pays the Original Bondholders under separate and distinct contracts and in violation of the Lock Law. As a result of the November 21 Orders, Fintech’s right to receive monies that the Republic contractually owes to it pursuant to the Exchange Bonds has been placed in serious jeopardy and out of Fintech’s control.

STANDARD OF REVIEW

This Court reviews the entry of a permanent injunction issued by the District Court on November 21, 2012 for abuse of discretion, and reviews *de novo* questions of law concerning the District Court's authority to grant the injunction. See Starter Corp. v. Converse, Inc., 170 F.3d 286, 298 (2d Cir. 1999).

SUMMARY OF THE ARGUMENT

Fintech entered into contracts with the Republic of Argentina in 2005 and 2010 pursuant to which Fintech became a creditor for interest and principal on \$247 million face value of Exchange Bonds. SPE-1163 ¶ 15. Due to an extraordinary and unprecedented remedy imposed by the District Court in a dispute between the Original Bondholders and the Republic, Fintech will be unable to receive the sizeable payments still due to it unless the Republic complies with the lower court's order requiring it to violate its own sovereign laws and make payments to the entirely unrelated Original Bondholders on separate contracts. Indeed, the District Court's ruling "quarantines" Fintech's monies held in trust expressly for it by the Trustee unless and until the Republic pays the Original Bondholders in violation of the Lock Law. In sum, Fintech cannot obtain its own property unless the Republic violates its own law and makes a payment purportedly due to parties unrelated to Fintech. Neither Appellees nor the Court below have cited any precedent to support this result, and with good reason – as to

the Exchange Bondholders such as Fintech, it violates the U.S. Constitution, basic laws of trusts and property, the Uniform Commercial Code and any conceivable principle of equity. Respectfully, there is no basis for this Court to uphold a ruling which so clearly harms strangers to the underlying litigation such as Fintech, and the District Court's Orders must be vacated to the extent they in any way prevent Fintech and others similarly situated from receiving their own property.

In its October 26 Decision, this Court expressly asked the District Court to, among other things, "address the Injunctions' application to third parties" Decision p. 28. Notably, because the issue previously had not been addressed in a meaningful way, this Court itself was unable to assess the Injunction as it relates to third parties. Unfortunately, on remand, the District Court did not give any reasonable consideration to the impact on third parties and their interests. The Court permitted third parties such as Fintech only three days to make a submission to it, with no opportunity for an evidentiary hearing. Then, merely five days after Fintech's submission (and that of other Exchange Bondholders), the District Court issued its November 21 Orders which are the subject of this appeal, in which little to no attention was given to the interests of third parties impacted by the Injunctions. To the extent the November 21 Orders even acknowledge the Exchange Bondholders, it was through conclusory and unsubstantiated statements such as "there is no suggestion of interfering with what the exchange bondholders

are due to be paid.” SPE-1366. That statement cannot withstand scrutiny, because Fintech’s property will most certainly be “interfered with” and kept from Fintech unless the Republic violates its own sovereign Lock Law and pays unrelated parties in violation of that law. It is difficult to imagine how there could be any greater interference with Fintech’s property, which the Injunction has turned into a pawn in the dispute between Appellees and the Republic.

This Court should rectify this situation. As addressed below, the Injunction is improper in its impact on non-parties and the public at large. The payments owed to Fintech by the Republic become Fintech’s property the moment the money is in the hands of the Trustee, and the Injunction completely ignores this fact. The Injunction treats the Trustee as the Republic’s agent, when in fact the Trustee is Fintech’s agent with duties owed to Fintech. The Injunction also improperly casts the Trustee and other institutions such as DTC as “acting in concert” with the Republic, when in fact each of these entities is acting solely for the benefit of Fintech to get to Fintech its own property over which Appellees have no claim. The Injunction violates the Fifth Amendment of the U.S. Constitution as a taking of Fintech’s property without Due Process. The Injunction also violates the Uniform Commercial Code by enjoining entities which are in fact “intermediary banks” from fulfilling their obligation to transfer Fintech’s property to it. Finally, whatever equity the District Court wishes to render by finding a way

to force the Republic to pay Appellees is entirely outweighed by the inequity of putting Fintech and other Exchange Bondholders in harm's way and making their right to receive their own property contingent upon what the Republic does with respect to another party.

Fintech took a very substantial haircut in entering into the 2005 and 2010 Exchanges in part to obtain "certainty" as to payment, as the District Court acknowledged. SPE-1367. The November 21 Orders entirely destroyed that certainty by placing the Exchange Bondholders in what is an unfathomable position of having their right to be paid under their reduced holdings contingent upon the Republic paying others who refused to make a sacrifice. Indeed, Fintech, and presumably all of the other Exchange Bondholders, never would have participated in the 2005 and 2010 Exchanges if it understood that the same Courts which permitted those Exchanges to proceed would later issue a ruling which prevents Fintech from being paid these lesser amounts unless the parties who did not join the Exchanges are paid 100% of their original and un-restructured debt. No one would have made such a deal, and there was no basis to believe this Court would condone such a result. Thus, despite the frustration the District Court had in seeking to cause the Republic to pay the Original Bondholders, the November 21 Orders must be vacated to the extent they appropriate Fintech's and other Exchange Bondholders' property to be used as a "carrot and stick" to seek to have

the Republic make payments to these unrelated parties, a result beyond any reasonable logic or contemplation of the Exchange Bondholders.

ARGUMENT

The two issues this Court remanded for consideration by the District Court are: (i) the mechanics of the Formula; and (ii) the impact of the Injunction on third parties. Respectfully, the District Court did not sufficiently address the concerns presented by this Court in the October 26 Decision and did not give proper credence to the arguments submitted regarding either issue, particularly as to the impact of the Injunction on third parties. As a result, the November 21 Orders present significant harm to non-parties and adversely affect the international financial markets at large.

I. The District Court's Flawed and Incomplete Analysis Warrants Reversal of the November 21 Orders

A. The District Court Failed to Comply With the Second Circuit's Instructions By Ignoring the Third Party Exchange Bondholders

The October 26 Decision explicitly instructed the District Court to evaluate the impact of its Decision on third parties. Decision p. 28. In so doing, this Court implicitly recognized the fundamental principle that courts place great consideration on the effects of injunctions on non-parties. See generally Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 110-12 (1969) (court cannot enjoin non-party); Duct-O-Wire Co. v. U.S. Crane, Inc., 31 F.3d 506, 509

(7th Cir. 1994) (courts “must also consider the public interest in terms of the consequences of granting or denying the injunction to non-parties”); Eli Lilly & Co. v. Premo Pharma. Labs, Inc., 630 F.2d 120, 136 (3rd Cir.), cert. den., 449 U.S. 1014 (1980) (third party interests are one of four major considerations in granting an injunction); Forry, Inc. v. Neudorfer, Inc., 837 F.2d 259, 262 (6th Cir. 1988); Loenheim v. Iroquois Brands, Ltd., 618 F. Supp. 554, 561 (D.D.C. 1985) (a court must consider “whether issuance of the requested relief will substantially harm other parties, and the public interest”).⁶

Moreover, this Court’s October 26 remand to the lower court is consistent with the well-settled doctrine that courts may not impose a remedy affecting non-parties without carefully weighing the interests of all the affected parties. See Wilder v. Bernstein, 645 F. Supp. 1292, 1321 (S.D.N.Y. 1986) aff’d, 848 F.2d

⁶ See Progressive Cas. Ins. Co. v. C.A. Reaseguradora Nacional De Venez., 991 F.2d 42, 47 (2d Cir. 1993) (“[W]e have held that “an arbitration agreement restricted to the immediate parties does not bind a non-party, notwithstanding words of incorporation or reference in a separate contract by which that non-party is bound”) (citation omitted). Nor should the Injunction impact the Exchange Bondholders. See New York ex rel. Vacco v. Operation Rescue Nat’l, 80 F.3d 64, 70 (2d Cir. 1996) (stating that the party seeking to enforce the injunction bears the burden of proving the third party is within the scope of the injunction and a court may not enjoin the world); Alemite Mfg. Corp. v. Staff, 42 F.2d 832 (2d Cir. 1930) (L. Hand, J.) (“a court of equity is as much so limited as a court of law; it cannot lawfully enjoin the world at large, no matter how broadly it words its decree”). See also Dan B. Dobbs, Dobbs Law of Remedies: Damages-Equity-Restitution, at 27 (2d ed. 1993) (“if the right is against A, then the remedy must not run against B. B may be unavoidably affected by what happens to A, but no remedy should run against B when B has violated no rights”).

1338 (2d Cir. 1988) (“far-reaching impact . . . requires this Court to consider its impact on the nonparties affected”); Bell v. DuPont Dow Elastomers, LLC, 640 F. Supp. 2d 890, 899 (W.D. Ky. 2009) (“To the extent the injunction purports to bind non-parties, however, its provisions seem quite unfair and, indeed, beyond the Court’s power to enforce. . . Accordingly, the Court will not approve or enter an injunction of this type which purports to bar the rights or action of those who are not parties to this case”); Lundeen v. Kelly, No. 1:12-cv-00696, 2012 U.S. Dist. LEXIS 126669, at *10 (S.D. Ind. Sept. 6, 2012) (in determining whether to grant injunctive relief, the court must consider the “effects of the relief on non-parties”).

This Court expressly stated that its “concerns about the Injunctions’ application to third parties do not end” with the points addressed in the October 26 Decision regarding intermediary banks. Decision pp. 27-28. Despite the “concerns” in the October 26 Decision “as to how the challenged order will apply to third parties generally” and the entrenched case law requiring solicitude towards third parties adversely affected by an injunction, the November 21 Orders make virtually no reference to third parties *beyond* the issue of intermediary banks and a brief, conclusory discussion of the impact on the Trustee (discussed in Point II below). Id. p. 28. Indeed, the District Court apparently did not consider the merits of the Exchange Bondholders’ arguments in any significant way in the November 21 Orders. The District Court did not conduct an evidentiary hearing with the non-

parties, nor did it schedule oral argument, but rather, it granted non-parties only three days to respond to briefing by Appellees as to the impact the October 26 Decision would have on the Exchange Bondholders' holdings of hundreds of millions of dollars in contractual rights.

The few mentions of the Exchange Bondholders in the November 21 Orders are conclusory and unsupported. For example, the District Court states that "there is no suggestion of interfering with what the exchange bondholders are due to be paid" (SPE-1366). This bald assertion is unsupported by any analysis, and disregards the reality of the impact of the Injunction on the Exchange Bondholders as addressed herein.

Ironically, in discussing the payment Formula, the District Court acknowledges that the Exchange Bondholders "bargained for certainty" when they accepted the 2005 and 2010 Exchange offers. SPE-1367. That is a true statement. The problem, however, is that the District Court entirely has undone that acknowledged "bargained for certainty" by making the Exchange Bondholders' "certain" rights to be paid these sums dependent upon the Republic paying the Original Bondholders who did not "bargain for [that] certainty." This is a completely irrational result.

Finally, in the context of discussing the payment Formula, the District Court makes reference to the Exchange Bondholders and states that it is "hardly an

injustice” for the Original Bondholders to be paid in full while the Exchange Bondholders receive thirty cents on the dollar. SPE-1367. The premise for this statement was the Court’s view that “the exchange bondholders were able to watch year after year while plaintiffs in the litigation pursued methods of recovery against Argentina.” *Id.* Passing the propriety of that conclusion in the context of the Formula, it glosses over the key point as regards third parties that the District Court has ignored – that the Exchange Bondholders never contemplated and had no reason to contemplate that their right to be paid on their separate contracts would be contingent upon the Republic’s payment to the Original Bondholders, whether the amount was 1% or 100% of what is purportedly due to the Original Bondholders.⁷ The District Court has failed to address this impact on the third party Exchange Bondholders and particularly the disruption of the expectations of those Bondholders, including the certainty for which they had bargained.

Accordingly, the District Court’s failure to properly address concerns as to the impact on third parties such as Fintech warrants vacating the November 21 Orders and a remand to address and protect the rights of third parties, including the Exchange Bondholders. See CFTC v. Walsh, 658 F.3d 194, 200 (2d Cir. 2011)

⁷ In particular, this Court has acknowledged that the lower court’s interpretation of the *pari passu* clause could not have been within the contemplation of the Exchange Bondholders. “[N]o one seems quite sure what the clause really means, at least in the context of a loan to a sovereign borrower.” NML Capital, Ltd. v. Republic of Argentina, 699 F.3d 246, 258 (2d Cir. 2012) (quoting Lee C. Buchheit, The Pari Passu Clause Sub Specie Aeternitatis, 10 Int’l Fin. L. Rev. 11, 11 (1991)).

(remanding where, after clarification of governing legal standards, it was not clear that district court had reached proper questions); In re Iridium Operating LLC, 478 F.3d 452, 466 (2d Cir. 2007) (remanding where record contained no articulation of reasoning on key equitable factor); Burnett v. Physician’s Online, Inc., 99 F.3d 72, 77 (2d Cir. 1996) (remanding where district court’s “lucid statement of practical and equitable considerations” did not address relevant factors “in a way that allows this court to review it” under the standard).

B. The District Court’s Scant Analysis of the Application of the Injunction to Certain Third Parties Does Not Withstand Scrutiny

To the extent it addresses third parties at all, the Injunction Opinion cursorily states that third parties, including the Trustee and DTC, “surely are in ‘active concert or participation’ with Argentina in processing the payments from Argentina to the Exchange Bondholders,” and thus are properly subject to the Injunction under Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 65(d). SPE-1370-71. That conclusion is inaccurate, and is not supported by proper analysis. For this reason, too, reversal of the November 21 Orders is warranted.⁸

⁸ There is no question that the Trustee, DTC and the other financial institutions cannot be considered “agents” of the Republic under Fed. R. Civ. P. 65(d)(2)(B). The lower court acknowledged that it is “probably true” that many of these institutions are not agents of the Republic. SPE-1369-70. Indeed, the Trust Indenture between the Republic and the Trustee, dated as of June 2, 2005 (the “Indenture”) demonstrates that no agency relationship between the Republic and the Trustee exists. Under the Indenture, the Trustee explicitly agreed to act on behalf of and for the benefit of the Exchange Bondholders. SPE-650. In the event

First, any payments to the Exchange Bondholders are distributed pursuant to contractual arrangements made years ago with the Trustee, and such arms-length transactions cannot be said to aid and abet violations of an Injunction issued only last month. See, e.g., Paramount Pictures Corp.v. Carol Publ’g Grp., Inc., 25 F. Supp. 2d 372, 375 (S.D.N.Y 1998) (citing United Pharm. Corp. v. United States, 306 F.2d 515, 517 (1st Cir. 1962)); Herrlein v. Kanakis, 526 F.2d 252, 254-55 (7th Cir. 1971)); see also O & L Assoc. v. Del Conte, 601 F. Supp. 1463, 1464-65 (S.D.N.Y. 1985) (where a non-party acquired from defendants the “universal right, in perpetuity” to use a name before defendants were enjoined from using the name in any manner, the court found that “an arm’s length transaction involving totally distinct entities” and occurring eight months prior to the entry of the court’s order failed to demonstrate that the nonparty acted in concert with defendants). By definition, proceeding with pre-existing contracts involving property of third parties, and which do not deal at all with Appellees’ money, cannot be acting “in concert” with the Republic for purposes of the Injunction. Regal Knitwear Co. v. NLRB, 324 U.S. 9, 13 (1945) (court may not grant “injunction so broad as to make punishable the conduct of persons who act independently and whose rights have

of a default by the Republic, the Trustee’s interests would become adverse to that of the Republic. SPE-654-55. Moreover, the non-party banks function as “paying agents” of the Trustee, as opposed to “agents” of the Republic. SPE-650-51 (“[A]ny trustee paying agents appointed pursuant to this Indenture shall be agents solely of the Trustee, and the Republic shall have no authority over or any direct relationship with any such trustee paying agent or agents”).

not been adjudged according to law”); Alemite, 42 F.2d at 832 (“no court can make a decree which will bind any one but a party”); Hoover v. Wagner, 47 F.3d 845, 847 (7th Cir. 1995) (citing Alemite); Herrlein v. Kanakis, 526 F.2d 252, 253–54 (7th Cir. 1975) (same).

Second, it cannot be meaningfully disputed that the Trustee, DTC, and the other non-parties are independent, arms-length actors which do not act on behalf of the Republic. Instead of doing the Republic’s bidding, each of these actors is seeking to enforce its own independent contractual rights and meet its own contractual obligations having nothing to do with Appellees, most notably the process of holding in Trust and then transferring the monies belonging to the Exchange Bondholders in which Appellees have no legal interest. Under such circumstances, the Trustee, DTC and other non-parties are simply not “in active concert or participation with Argentina” and thus, cannot be bound pursuant to Fed. R. Civ. P. 65(d). SPE-1369-70. Accordingly, the District Court cannot exercise jurisdiction over these non-parties under Fed. R. Civ. P. 65(d). See Parker v. Ryan, 960 F.2d 543, 546 (5th Cir. 1992) (“if a nonparty asserts an independent interest in the subject property and is not merely acting on behalf of the defendant, then Rule 65(d) does not authorize jurisdiction over the party”) (citing, *inter alia*, Heyman v. Kline, 444 F.2d 65 (2d Cir. 1971)); E.A. Renfroe & Co. Inc. v. Moran, 338 Fed. App’x 836, 840 (11th Cir. 2000) (“The law is clear that a court may not

enforce an injunction against a nonparty who acts independently of the enjoined party”) (internal quotations and citation omitted) (holding non-party attorney’s actions in delivering documents to attorney general did not constitute aiding and abetting employees who were enjoined to return documents, which would subject the attorney to contempt jurisdiction of district court for failing to comply with injunction, since attorney acted on his own and independently of enjoined employees); Microsystems Software Inc. v. Scandinavia Online AB, 226 F.3d 35, 43 (1st Cir. 2000) (“A nonparty who has acted independently of the enjoined defendant will not be bound by the injunction”).⁹

Despite the foregoing, the District Court apparently found it proper to subject the Trustee to the Injunction despite being Indenture Trustee and agents for the Exchange Bondholders because “if Argentina attempts to make payments to the exchange bondholders, contrary to the ruling of the Court of Appeals and thus

⁹ Any significance Appellees place on Reliance Insurance Co. v. Mast Construction Co., 84 F.3d 372 (10th Cir. 1996) is misguided. In Reliance, the enjoined party’s bank actively assisted the enjoined party in diverting enjoined funds which were supposed to be held for the benefit of the party which obtained the Injunction. The 10th Circuit found that if the enjoined party’s bank aided and abetted the withdrawal of funds in violation of an injunction, such bank could be deemed to fall within the confines of Fed. R. Civ. P. 65. Reliance, 84 F.3d at 377. The Trustee and any of its paying agents, however, are not the Republic’s banks and any funds they may be holding or will hold belong to the Exchange Bondholders, not the Republic or the Appellees. Thus, Reliance is inapposite. Moreover, the Seventh Circuit specifically has held that Reliance has no application to a defendant which acts pursuant to a contract with the defendants entered into “long before the injunction was issued.” Blockowicz v. Williams, 630 F.3d 563, 569 (7th Cir 2010) (distinguishing Reliance).

contrary to law, this would not involve the normal and proper situation dealt with by BNY under the indenture, and dealt with by others in the chain.” SPE-1370-71. It is unclear what “normal and proper” situation to which the Court is citing under the Indenture, because the Indenture does not contemplate the Republic’s obligations to the Appellees. Said differently, the “normal and proper” situation under the Indenture and for the Trustee and paying agents is to transfer the Exchange Bondholders’ property to them without any consideration as to Appellees. Accordingly, the District Court’s analysis regarding the Trustee, DTC and the other banks as being subject to the Injunction is unfounded.

Finally, at most, the Trustee, paying agents and DTC would be liable for failing to persuade the Republic to comply with the Injunction before those parties transferred Fintech’s property to it. But such alleged inaction does not satisfy the “active concert” requirement of Fed. R. Civ. P. 65(d)(2)(C), which requires at minimum a showing of aiding and abetting E.g., E.A. Renfroe, 338 Fed. App’x at 840. It is well settled that aiding and abetting liability requires a showing of “substantial assistance,” in committing the violation of the injunctive order. See Alemite, 42 F.2d at 832 (one who “knowingly assists a defendant in violating an injunction subjects himself to contempt proceedings”); see also SEC v. DiBella, 587 F.3d 553, 566 (2d Cir. 2009); In re Sharp Int’l. Corp., 403 F.3d 43, 49 (2d Cir. 2005). “Inaction on the part of an aider and abettor is not sufficient to satisfy the

substantial assistance prong of the standard unless ‘it was designed intentionally to aid the primary fraud or it was in conscious or reckless violation of a duty to act.’” SEC v. Treadway, 430 F. Supp. 2d 293, 339 (S.D.N.Y. 2006) (quoting Armstrong v. McAlpin, 699 F.2d 79, 91 (2d Cir. 1983)). Measured against this standard, there is no basis to find that the Trustee or other third parties are aiding and abetting the Republic in its underlying decision to pay or not to pay the Original Bondholders in violation of the Lock Law. The conduct of these third parties is not active concert or participation in the Republic’s wholly separate and independent decision to pay or refrain from paying the Original Bondholders. Moreover, conduct of these third parties is not taken to help, benefit, or assist the Republic, Alemite, 42 F.2d at 833, nor can it rise to the level of “affirmative assistance” or “concealment” of the Republic’s separate failure to pay Appellees that would lead to a finding of aiding and abetting that failure. In re Sharp, 403 F.3d at 50.

II. The Remedy Implemented By The November 21 Orders Is Contrary to Law and Equity And Must Be Vacated

A. The November 21 Orders Improperly Seize Property Owned By the Exchange Bondholders

The Injunction crafted by the District Court improperly subjects the Exchange Bondholders’ property to restraint if the Republic does not violate the Lock Law and pay the Original Bondholders. There can be no dispute that the property subject to restraint in the hands of the Trustee belongs to the Exchange

Bondholders such as Fintech. The mechanics for payment under the Exchange Bonds are set forth in the Indenture, which states that the Trustee holds all monies paid to it under the Indenture “in trust” for itself and the Exchange Bondholders. SPE-648 (§ 3.1); SPE-650 (§ 3.5(a)); SPE-665 (§ 5.5); SPE-682-83 (§ 11.2). The beneficial owners of the Exchange Bonds, such as Fintech, hold equitable title to the Trust assets and are the “real owners” of the Trust property. See United States v. Coluccio, 51 F.3d 337, 341-42 (2d Cir. 1995) (“If she were the beneficiary of such a trust, then she would be “the equitable owner” of those funds”) (citing William F. Fratcher, Scott on Trusts, § 12.1 (4th ed. 1987)); In re Gans, 75 B.R. 474, 490 (Bankr. S.D.N.Y. 1987) (“The beneficiary of the trust has an equitable interest in the trust property and is, in fact, its equitable owner”) (citation omitted) (rev’d on other grounds); Wellpoint, Inc. v. C.I.R., 599 F.3d 641, 648 (7th Cir. 2010); In re Schwarzkopf, 626 F.3d 1032, 1039 (9th Cir. 2010). Accordingly, any payments made by the Republic into the Trust cannot be restrained from being distributed to the Exchange Bondholders in an effort to “assist” the Appellees because the funds maintained in the Trust belong to the beneficial owners, such as Fintech, and not the Republic or Appellees. See SPE-650 (Indenture § 3.5) (“Republic’s payment of amounts due in respect of the Debt Securities of any Series for the exclusive benefit of the Holders of such Debt Securities”).

The Indenture makes clear that the Republic has “no interest whatsoever” in the monies it transfers to the Trust for the benefit of the Exchange Bondholders, and that such property in the Trustee’s possession belongs to the Exchange Bondholders. See SPE-650 (Indenture § 3.5(a) (“such amounts shall be held in trust by the Trustee for the exclusive benefit of the Trustee and the Holders entitled thereto in accordance with their respective interests and the Republic shall have no interest whatsoever in such amounts”)); see also In re Carrozzella & Richardson, 278 B.R. 691, 694-95 (Bankr. D. Conn. 2001) (“It is axiomatic that funds held in trust by one entity for another do not constitute the beneficial property of the former. Rather, title to the trust property is held by the former as trustee for the benefit of the latter”) (citing Restatement (Second) of Trusts § 2 (1959)); Henning v. Rando Mach. Corp., 207 A.D.2d 106, 110, 620 N.Y.S.2d 867 (4th Dep’t 1994) (beneficiaries of express trust hold equitable claim to trust property).

In the event that the Republic does not make payment to the Original Bondholders, the November 21 Orders would prevent the money held in the Trust from flowing to its rightful owners, the Exchange Bondholders including Fintech, resulting in a seizure of money that no longer belongs to the Republic for the benefit of Appellees. See Petrohawk Energy Corp. v. Law Debenture Trust Co. of N.Y., 2007 WL 211096, at *5 (S.D.N.Y. Jan. 29, 2007) (bond issuer relinquished control over funds earmarked for the payment of principal and interest to the

noteholders when it deposited such funds with the paying agent). See also Willis Mgmt. (Vt.), Ltd. v. United States, 652 F.3d 236, 245 (2d Cir. 2011) (“... if a constructive trust properly should be imposed on particular property that was in the possession of the defendant, it was never truly the defendant’s property and is not subject to forfeiture to the United States in the first instance”); Brown v. J.P. Morgan & Co., 265 A.D. 631, 635, 40 N.Y.S. 2d 229, 233 (1st Dep’t 1943) (bondholder cannot attach money in the hands of trustee for other bondholders because the money “belongs to the [other] bondholders”), aff’d, 295 N.Y. 867, 67 N.E.2d 263 (1946). Thus, the Injunction penalizes the Exchange Bondholders by restraining their money in the hands of their Trustee if the Republic does not violate the Lock Law and pay Appellees despite the fact that the Exchange Bondholders have no responsibility for, or involvement in, the Republic’s decision as to whether it pays the Original Bondholders. This result violates basic trust and property law principles, and, as discussed below, the U.S. Constitution.

B. The Injunction Violates the Fifth Amendment

The November 21 Orders plainly seize the funds of the Exchange Bondholders that are in the hands of their agents, including the Trustee, and do so without just compensation in violation of the Fifth Amendment. The Fifth Amendment states that “. . . nor shall private property be taken for public use, without just compensation.” U.S. Const. Amend. V. The “private property” at

issue here consists of the payments the Republic regularly has been distributing to the Exchange Bondholders for years under the Exchange Bonds. The maintenance of these property rights (and the “certainty” of payment, see e.g., pp.14, 18, supra) is a “legitimate expectation” of the Exchange Bondholders and the District Court cannot make those rights contingent upon whether a sovereign nation elects to break its own laws to satisfy an Order issued by the District Court concerning unrelated parties. As a constitutional matter, this cannot be upheld because Fintech’s rights and expectations under its valid contracts with the Republic are “property” protected by the Fifth Amendment. See Ascom Hasler Mailing Sys., Inc. v. U.S. Postal Serv., 815 F. Supp. 2d 148, 173-76 (D.D.C. 2011) (citing Cienega Gardens v. United States, 331 F.3d 1319, 1330 (Fed. Cir. 2003) (quoting Lynch v. United States, 292 U.S. 571, 579, 54 S. Ct. 840, 78 L. Ed. 1434 (1934) (“The Fifth Amendment commands that property be not taken without making just compensation. Valid contracts are property, whether the obligor be a private individual, a municipality, a state or the United States”)). Moreover, four justices of the Supreme Court would recognize a compensable taking whenever “a court declares that what was once an established right of private property no longer exists.” Stop the Beach Renourishment, Inc. v. Fla. Dept. of Env’tl. Prot., 130 S. Ct. 2592, 2602 (2010)

The District Court's use of the scheduled payments to be distributed to the Exchange Bondholders as a mechanism to try to coerce the Republic to pay the Original Bondholders under separate contracts presents the possibility of elimination of, or at minimum, a substantial change to, the non-parties' property rights that is prohibited under the Due Process Clause as being "arbitrary or irrational." Stop the Beach, 130 S. Ct. at 2614-15 (Kennedy, J., concurring) ("The Court would be on strong footing in ruling that a judicial decision that eliminates or substantially changes established property rights, which are a legitimate expectation of the owner, is 'arbitrary or irrational' under the Due Process Clause") (citations omitted). Before the District Court's ruling, Fintech had an unfettered contractual right to be paid by the Republic on the Exchange Bonds. The District Court's ruling, however, has substantially changed, and likely has eliminated, that contractual right. Now, Fintech will only be paid if the Republic decides to pay an unrelated party in violation of the Republic's laws which prohibit such a payment. Accordingly, this ruling does not pass muster under the Fifth Amendment. See Stop the Beach, 130 S. Ct. at 2614-15, 2602.

C. The Injunction Violates the Uniform Commercial Code ("U.C.C.")

The remedy fashioned by the District Court to address payments to the Original Bondholders runs afoul of Article 4 of the U.C.C. The District Court asserts that Appellees have resolved the "problem under Article 4A" regarding

intermediary banks by simply implementing a carve-out whereby “intermediary banks” are not bound by the Injunctions. SPE-1370. The District Court’s analysis, however, has failed to address various relevant provisions of the U.C.C. and the definition of “intermediary banks,” because parties subject to restraint such as the Trustee, its paying agents and DTC are acting in the roles of “intermediary banks” in this situation.

U.C.C. § 4-A-104 defines “intermediary bank” as “a receiving bank other than the originator’s bank or the beneficiary’s bank.” U.C.C. § 4-A-104 (2012). The scenario described by the District Court at p. 10 of the Injunction Order, however, illustrates that the registered owners and clearing corporations are in fact “intermediary banks.” SPE-1369-70. See Navalmar (U.K.) Ltd. v. Welspun Gujarat Stahl Rohren, Ltd., 485 F. Supp. 2d 399, 408 (S.D.N.Y. 2007) (intermediaries are in “temporary possession” of the funds, which are “subject to [the] rights of another” “to possess, use, and enjoy”) (citations omitted); Shipping Corp. of India Ltd. v. Jaldhi Overseas Pte Ltd., 585 F.3d 58, 67 (2d Cir. 2009) (describing Bank of New York, through which funds were transferred, as “intermediary bank”). “Article 4-A approaches each funds transfer not as a single payment order, but rather as a series of transactions each of which involves only the parties to the individual payment order.” Grain Traders, Inc. v. Citibank, N.A., 960 F. Supp. 784, 789 (S.D.N.Y. 1997), aff’d, 160 F.3d 97 (2d Cir. 1998). Indeed,

“[f]or any given funds transfer, there can be only one originator, originator’s bank, beneficiary, and beneficiary’s bank, but there can be several senders and receiving banks, one of each for every payment order required to complete the funds transfer.” Grain Traders, 160 F.3d at 100 (citing U.C.C. § 4-A-103). In this case, the Republic and its bank serve as the originator, and Fintech and its bank serve as the beneficiary, and the various sending and receiving banks in the process are the intermediaries.

The Injunction Opinion expressly describes a process in which funds are transferred from one financial institution to another (namely, the intermediary banks), and ultimately to the beneficial owners of the bonds. SPE-1369. However, as the Appellees and the District Court have conceded, intermediary banks cannot be enjoined by the Courts. See SPE-1370-71; October 26 Decision at pp. 27-28; Grain Traders, 160 F.3d at 102. Despite this acknowledgment, the November 21 Orders discuss the U.C.C. and the intermediate bank problem cursorily without a single citation to authority.

The District Court also failed to acknowledge U.C.C. § 4-A-503 in its Injunction Opinion, which states that “[a] court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer.” U.C.C. § 4-A-503. Indeed, “[o]ne of Article 4-A’s primary goals [is] promot[ing] certainty and finality so that

the various parties to funds transfers [will] be able to predict risk with certainty, to insure against risk, to adjust operational and security procedures, and to price funds transfer services appropriately.” Grain Traders, 160 F.3d at 102 (internal quotations omitted). The November 21 Orders undermine this goal and cause uncertainty.

D. The Injunction Violates Principles of Equity

Principles of equity require that the District Court “mould each decree to the necessities of the particular case.” Forschner Group v. Arrow Trading Co., 124 F.3d 402, 406 (2d Cir. 1997). Remedies must be narrowly tailored to fit specific legal violations. See Patsy’s Brand, Inc. v. I.O.B. Realty, Inc., 317 F.3d 209, 220 (2d Cir. 2003). But the November 21 Injunctions fail to reflect a “narrowly tailored” remedy. The District Court simply could have issued an order compelling the Republic to pay the Original Bondholders without infringing upon the rights of the Exchange Bondholders. A remedy to this effect would properly have addressed the concerns raised in the October 26 Decision in a targeted manner without jeopardizing the rights of innocent non-parties such as Fintech.

Nor can the interference with the Exchange Bondholders’ rights be justified by abstract principles of “proportionality.” In fact, the lower court’s remedy as to the Formula runs afoul of principles of equity and is wholly *disproportionate* because it requires that the Original Bondholders receive full payment for the

entire principal and full interest that would otherwise have been due over the *entire life* of the Original Bonds when the Exchange Bondholders receive only their next single periodic interest payment. SPE-1366. Thus, the District Court's Formula is precisely the opposite of "proportional," as it hands the Original Bondholders a wholly disproportionate windfall. Indeed, where a "proportionate" remedy lacks proper analysis, it can be reversed. See, e.g., U.S. v. Pesses, No. 90-654, 1994 WL 741277, at *16-17 (W.D. Pa. Nov. 7, 1994) (refusing to impose proportionate remedy when record contained no indication of comparative responsibility and lacked guidelines from which to assess whether similarly situated parties will be treated similarly).

The Injunction Order also is not "moulded to the necessities" of this case because it conspicuously fails to consider the practical, global, and economic ramifications that will occur no matter what steps the Republic takes in response thereto. If the Republic fails to comply with the November 21 Orders and pays no one, what had been a \$1.3 billion dispute between the Republic and Appellees likely will grow to a substantially larger dispute with the Exchange Bondholders who hold approximately \$24 billion of Exchange Bonds and who will not be paid the significant amounts owed to them. On the other hand, if the Republic does pay the Original Bondholders in violation of the Lock Law, the consequences include a potential destabilization of the entire market for sovereign debt and a threat to the

restructuring of sovereign debt around the world, because the incentive to restructure by bondholders may disappear because those bondholders who hold out are rewarded at the expense of those that participate. The District Court's failure to properly consider these various consequences warrants reversal. See Walsh, 658 F.3d at 199-200; In re Iridium, 478 F.3d at 466; Duct-O-Wire Co., 31 F.3d at 509; Eli Lilly & Co., 630 F.2d at 136; Forry, 837 F.2d at 262; Loenheim, 618 F. Supp. at 561.

The November 21 Orders effectively leave non-parties such as Fintech at the mercy of whether the Republic determines to violate the Lock Law. If the Republic does not do so and thus the Republic does not pay the Exchange bondholders, the Exchange Bondholders are left with the sole remedy of commencing litigation, including perhaps against the Republic and the Trustee, to seek relief. Such a result would lead to an influx of litigation in the courts and would only delay the Exchange Bondholders' right to interest payments by the Republic under the Exchange Bonds. Indeed, the unprecedented impact of the November 21 Orders would have the collateral effect of instigating litigation from a multitude of non-parties and could singlehandedly reshape international financial expectations and understandings. Accordingly, equity dictates that the November 21 Orders must be reversed.

CONCLUSION

For the reasons set forth herein, Fintech respectfully requests that this Court reverse and vacate the November 21 Orders and (i) remand for further proceedings which eliminate the harm to the third party Exchange Bondholders such as Fintech, or, in the alternative, (ii) provide a remedy in furtherance of the October 26 Decision that does not present any possible disruption to payments due and owing by the Republic to Fintech and the other Exchange Bondholders.

Dated: New York, New York
December 28, 2012

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with Fed. R. App. P. 32(a)(7)(b) which requires that the principal brief contain no more than 14,000 words, because it contains 10,196 words, inclusive of the sections that do not count toward the limitation.
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word in 14-point Times New Roman font.

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Respectfully submitted,

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