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IN THE

United States Court of Appeals

FOR THE SECOND CIRCUIT

AURELIUS CAPITAL MASTER, LTD., ACP MASTER, LTD.,

Plaintiffs-Appellants,

—against—

REPUBLIC OF ARGENTINA,

Defendant-Appellee,

(*Caption continued on inside cover*)

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

BRIEF FOR *AMICI CURIAE* EURO BONDHOLDERS IN SUPPORT OF DEFENDANT-APPELLEE AND URGING AFFIRMANCE

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BANK OF AMERICA, N.A.,

Respondent,

BANCO BILBAO VIZCAYA ARGENTARIA, S.A.,
BBVA COMPASS BANCSHARES, INC., BBVA SECURITIES INC.,

Third-Party Defendants.

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Knighthead Capital Management, LLC is a Delaware limited liability company. There is neither a parent company to Knighthead Capital Management LLC, nor a publicly held corporation that owns 10% or more of its stock.

Perry Capital, LLC is a Delaware limited liability company. There is neither a parent company to Perry Capital, LLC, nor a publicly held corporation that owns 10% or more of its stock.

Monarch Master Funding 2 (Luxembourg) S.à r.l. is a Luxembourg private limited liability company that is 100% owned by Monarch Master Funding 1 (Luxembourg) S.à r.l. Monarch Master Funding 1 (Luxembourg) S.à r.l. is a Luxembourg private limited liability company that is 100% owned by Monarch Master Funding Ltd. Monarch Master Funding Ltd is a Cayman Islands corporation and has no parent corporation, nor does any publicly held corporation own 10% or more of its stock.

Centerbridge Partners, L.P. is a Delaware limited partnership, of which Centerbridge Partners Holdings, LLC is a general partner. There is neither a parent company to Centerbridge Partners, L.P., nor a publicly held corporation that owns 10% or more of its stock.

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INTEREST OF *AMICI CURIAE*[1]

The Euro Bondholders, a group of investors holding Euro-denominated bonds (the "Euro Bonds") issued by the Republic of Argentina (the "Republic") pursuant to 2005 and 2010 exchange offers (the "Exchange Offers"), submit this brief as *amici curiae*, in support of defendant-appellee the Republic of Argentina (the "Republic"). The Euro Bondholders are Knighthead Capital Management, LLC; Perry Capital, LLC, Monarch Master Funding 2 (Luxembourg) S.á.r.l.; and Centerbridge Partners LP (each on behalf of itself or one or more investment funds or accounts managed or advised by it). Since the injunction at issue in this appeal became effective on June 18, 2014, it has blocked the Euro Bondholders from receiving payments due pursuant to the Euro Bonds. Absent the injunction, the Euro Bondholders would be free to receive payments owed under those bonds. The Euro Bondholders were granted leave to file an *amici curiae* brief by this Court on March 18, 2016. *Aurelius Capital Master, Ltd. v. Republic of Arg.*, No. 16-628 (2d Cir. Mar. 18, 2016), Dkt. No. 381.

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[1] No party's counsel authored this brief in whole or in part. No party or party's counsel contributed money to fund preparing or submitting this brief. No person—other than *amici* or its counsel—contributed money to fund preparing or submitting the brief.

PRELIMINARY STATEMENT

Having successfully utilized the Injunction to pressure the Republic into agreeing to settle their longstanding claims, various holders of the Republic's defaulted debt ("the Holdout Creditors") finally achieved the victory they long sought. Faced with continuing economic isolation as a result of the injunctions issued by the District Court on November 21, 2012 and October 30, 2015 (collectively, the "Injunction"), the Republic's citizens elected a new governmental administration committed to negotiating and settling the Holdout Creditors' claims. Since that government took office, the Republic has moved quickly to conclude settlements, and has reached agreements accounting for over 85% of the claims held by Appellants—agreeing to pay the Holdout Creditors billions of dollars and bring this massive litigation to an end. Apparently unsatisfied with the generous terms of their settlements agreements—terms far more generous than those enjoyed by bondholders who agreed to accept the Republic's 2005 and 2010 exchange offers—Appellants now seek to undo an Order *necessary for Appellants' own settlements to be consummated*, in the hopes of pressuring the Republic into even better terms.

This Court should reject Appellants' gamesmanship and sharp dealing and affirm the District Court's March 2, 2016 Opinion and Order (the "Conditional Order"), which provides for vacatur of the Injunction only upon (among other

things) the Republic making *full payment* to settling Appellants. There is little doubt that the Conditional Order is essential to allow the Republic to raise the funds necessary to achieve a final resolution of this case by permitting it to pay the Holdout Creditors, as well as resume payments to innocent holders of "Exchange Bonds" like the Euro Bondholders,[2] who have been deprived billions of dollars of payments for nearly two years.

The District Court was well within its discretion to conclude that circumstances have dramatically changed so as to merit the conditional vacatur of the Injunction. The Republic's overtures to its creditors and the settlements it has consummated demonstrate that the circumstances that led to the Injunction no longer exist, and the extraordinary relief it provides is no longer necessary. The Holdout Creditors now seek to use the Injunction not to consummate their generous settlement, but to extract even better terms—while holding hostage the Republic's economy and the Euro Bondholders and other third parties. As such, the District Court properly concluded that the balance of the equities and the public interest now point decidedly in favor of the conditional vacatur of the Injunction.

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[2] The Euro Bondholders are Knighthead Capital Management, LLC, Perry Capital LLC, Monarch Master Funding 2 (Luxembourg) S.à r.l., and Centerbridge Partners LP (each on behalf of itself or one or more investment funds or accounts managed or advised by it).

BACKGROUND

I. The District Court's Injunction

The facts underlying the Injunction are well known to this Court and need not be repeated at length here. In 2001, the Republic defaulted on $80 billion of public external debt, including bonds issued pursuant to a 1994 Fiscal Agency Agreement ("FAA"). *NML Capital, Ltd. v. Banco Cent. de la Republica Arg.*, 652 F.3d 172, 175 (2d Cir. 2011). In 2005, and again in 2010, the Republic offered holders of bonds issued pursuant to the FAA new bonds with substantially less favorable terms (the "Exchange Bonds") in exchange for their defaulted bonds (the "Exchange Offers"). *See NML Capital, Ltd. v. Republic of Arg.*, No. 08-cv-6978, 2012 WL 5895786, at *1 (S.D.N.Y. Nov. 21, 2012), *aff'd*, 727 F.3d 230, 230 (2d Cir. 2013). Holders of Approximately 93% of FAA bonds participated in the Exchange Offers. Indicative Ruling at 2, *NML Capital, Ltd. v. Republic of Arg.*, No. 14-cv-8947 (Feb. 19, 2016), Dkt. No. 47 (SPA-48). The Euro Bondholders hold euro-denominated Exchange Bonds ("Euro Bonds") that are governed by English law. *Knighthead Master Fund LP v. The Bank of New York Mellon*, [2015] EWHC (Ch) 270 (Eng.) (Feb. 13, 2015) ("English Judgment") ¶ 13, *NML Capital, Ltd. v. Republic of Arg.*, No. 08-cv-6978 (S.D.N.Y. Feb. 29, 2016), Dkt. No. 907-3 at 16 (A-2186).

Other bondholders (the "Holdout Creditors"), including the Appellants, declined to accept the Exchange Offers and commenced legal action against the Republic, seeking payment in full under their defaulted bonds. After years of litigation, many obtained monetary judgments against the Republic, which the Republic refused to honor. Indicative Ruling at 3 (SPA-49). The Republic went so far as to enact laws signaling "its intention to defy any money judgment issued by [the District Court]." Injunction § 1(b), *NML Capital, Ltd. v. Republic of Arg.*, No. 08-cv-6978 (S.D.N.Y. Nov. 21, 2012), Dkt. No. 425 (SPA-2-3). The District Court ultimately issued an Injunction which today covers 62 breach of contract actions against the Republic, and provides that whenever the Republic fulfills its obligation to make a payment under the Exchange Bonds, it must also make a "ratable payment" to the Holdout Creditors. Injunction (SPA-1); Op. & Order, *NML Capital, Ltd. v. Republic of Arg.*, No. 14-cv-8601 (S.D.N.Y. Oct. 30, 2015), Dkt. No. 37 (SPA-70).

Rather than pay the Holdout Creditors, the Republic defaulted on the Exchange Bonds. Indicative Ruling at 5, 14 (SPA-51, 60). Since the Injunction took effect on June 18, 2014, the Republic has missed several interest payments on the Exchange Bonds, including hundreds of millions of dollars owed to the Euro

Bondholders.[3] Decl. of Christopher J. Clark ¶ 3, *NML Capital, Ltd. v. Republic of Arg.*, No. 08-cv-6978 (S.D.N.Y Feb. 29, 2016), Dkt. No. 896-1 (A-1790). The current total of blocked interest payments on all Exchange Bonds is approximately $3.1 billion, and if payments on the Exchange Bonds remain blocked through June 2016 that figure will grow to approximately $3.8 billion. Clark Decl. ¶ 4 (A-1791).

II. The Republic Moves To Reach Equitable Settlements And The District Court Responds To The Significantly Changed Circumstances

An impasse remained until late 2015 when the Argentine people elected a new President. As the District Court explained, the resulting change in administration "changed everything." Indicative Ruling at 13 (SPA-59). Reversing the prior government's hostility toward negotiations, President Macri made and (as the District Court found) "honored" a public commitment to settling with the Holdout Creditors. Indicative Ruling at 7-10, 13-14, 16 (SPA-53-56, 59-

[3] The Republic attempted to make the first payment due on the Exchange Bonds after the Injunction took effect when, on June 26, 2014, the Republic transferred €225 million and $230 million to the Bank of New York Mellon's ("BNYM") accounts at Banco Central de la República de Argentina in Buenos Aires, Argentina. June 27, 2014 Hr'g Tr. at 12:7-13:12, *NML Capital, Ltd. v. Republic of Arg.*, No. 08-cv-6978 (S.D.N.Y July 31, 2014), Dkt. No. 622 (ADD-12-13). While the Euro Bondholders have been blocked by the Injunction from receiving any of those funds, on February 13, 2015, the English High Court of Justice, Chancery Division reaffirmed that the Euro Bonds are governed by English law, and that under English law, the payments made on those bonds to BNYM are held on an English law trust for the benefit of the Euro Bondholders, for the purpose of making payments due on the bonds they hold. English Judgment ¶¶ 12-13, 36-47 (A-2185-86, 2191-93).

60, 62). The Republic immediately commenced good faith negotiations and extended generous settlement offers to Holdout Creditors. *Id.* at 13-14. Within a few months, the Republic has reached agreements in principle worth at least $6.2 billion, accounting for over 85% of plaintiffs who hold claims covered by the Injunction (the "Settling Plaintiffs"). Conditional Order at 4, *NML Capital, Ltd. v. Republic of Arg.*, No. 08-cv-6978 (S.D.N.Y Mar. 2, 2016), Dkt. No. 912 (SPA-83). The Special Master who has facilitated the settlements referred to them as a "historic breakthrough" that would "allow the Republic to return to the global financial markets to raise much-needed capital." Indicative Ruling at 8 (SPA-54). "The U.S. government has also signaled its support" for "the Republic's good-faith efforts to resolve the disputes." Indicative Ruling at 9 (SPA-55).

On February 11, 2016, the Republic moved to vacate the Injunction. On February 19, 2016, the District Court recognized, *inter alia*, that "circumstances have changed dramatically since the court first issued the injunctions in February 2012," and concluded that the public interest and balance of harms now strongly support vacating the Injunction. Indicative Ruling at 18 (SPA-64). In particular, the District Court noted that lifting the Injunction "would serve the public interest by ceasing the collateral effects [of the Injunction] on third parties," the "most notable" of which are the Exchange Bondholders, including the Euro Bondholders. *Id.* at 18. The District Court expressed that it "has repeatedly voiced its concern

about the exchange bondholders' plight," and acknowledged that, though it was not its intention, the Injunction has interfered with the interests of Exchange Bondholders. *Id.* at 18-19. The District Court explained that, if the Injunction were lifted, "the Republic may once again pay the exchange bondholders—something that has not happened for nearly two years," and in light of that ongoing harm to the Exchange Bondholders and the changed circumstances, "it is in the public interest for the Republic to resume paying its restructured debt." *Id.* at 19.

Accordingly, the District Court issued an Indicative Ruling that, upon remand of certain cases that the Republic had appealed, it would enter an order vacating the Injunction upon the occurrence of two conditions: (1) the Republic's repeal of legislative obstacles to settlements with all Holdout Creditors, including Argentine laws that specifically bar such settlements; and (2) the Republic's full payment to all plaintiffs that entered agreements in principle to settle on or before February 29, 2016. *Id.* at 23. The Republic dismissed its appeals, which were promptly remanded. Second Circuit Mandate (A-1721). On March 2, 2016, after additional briefing and a hearing at which all interested parties were afforded an opportunity to be heard, the District Court issued an order formalizing its Indicative Ruling and granted the Republic's motions to vacate the Injunction upon the occurrence of the two conditions in the Indicative Ruling. Conditional Order at 5 (SPA-84).

ARGUMENT

This Court should affirm the District Court's Conditional Order because the circumstances that gave rise to the Injunction no longer exist. The Injunction has fulfilled its purpose—"address[ing] the Republic's recalcitrance," and "steadfast refusal to pay the plaintiffs anything." Indicative Ruling at 4, 13 (SPA-50, 59). Since the new Argentine government was inaugurated, the Republic has engaged in good faith and bona fide settlement efforts that have led to agreements in principle to resolve the vast majority of the plaintiffs' claims. Together with the ever-increasing harm wrought by the Injunction on innocent third parties, including the Euro Bondholders and other Exchange Bondholders, recent developments have markedly shifted the balance of the equities and public interest in favor of vacating the Injunction. The Injunction was an extraordinary remedy born of extraordinary circumstances. *See* Indicative Ruling at 21 (SPA-67) (emphasizing that "[a]n injunction is an extraordinary measure that is not normally available for breach of contract"). Now that those extraordinary circumstances are significantly altered, the District Court, which is intimately familiar with these cases after presiding over them for nearly 15 years, acted within its "considerable latitude in fashioning the [appropriate] relief." *NML Capital Ltd. v. Republic of Arg.*, 699 F.3d 246, 261 (2d Cir. 2012).

A district court is afforded wide latitude in forging and modifying injunctive relief. It is "well established that a district court has the power, in the exercise of its discretion, to modify its past injunctive decrees in order to accommodate changed circumstances." *Davis v. N.Y.C. Hous. Auth.*, 278 F.3d 64, 88 (2d Cir. 2002); *New York State Ass'n for Retarded Children, Inc. v. Carey*, 706 F.2d 956, 967 (2d Cir. 1983) ("The power of a court of equity to modify a decree of injunctive relief is long-established, broad, and flexible."). The flexibility afforded to district courts to modify injunctive relief is particularly appropriate when such relief "reach[es] beyond the parties involved directly in the suit" and impacts "the public interest." *See Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 381-82 (1992).

When reviewing a district court's modification of an injunction, "the inquiry on appeal is whether there has been . . . a change in the circumstances as to make modification of the decree equitable." *Sierra Club v. U.S. Army Corps of Eng'rs*, 732 F.2d 253, 257 (2d Cir. 1984). Such a modification may "not be disturbed on appeal, absent a showing that the [district] court abused its discretion." *Id.* Abuse of discretion may be shown only where the district court's order (1) relied "on an error of law or a clearly erroneous factual finding," or (2) "cannot be found within the range of permissible decisions." *See, e.g.*, *In re Terrorist Attacks on Sept. 11, 2001*, 741 F.3d 353, 357 (2d Cir. 2013); *Nicholson v. Scoppetta*, 344 F.3d 154, 165

(2d Cir. 2003). In light of the significantly changed circumstances, the District Court's Conditional Order was not simply a proper exercise of its discretion, it was correct.

I. The Injunction Has Achieved Its Purpose And The Republic's Efforts To Resolve The Holdout Creditors' Claims Render It Unnecessary

The circumstances that gave rise to the Injunction—namely, the Republic's refusal to pay the Holdout Creditors and unwillingness to negotiate—no longer exist. *See* Injunction § 1(b) (SPA-2-3) ("There is no adequate remedy at law . . . because the Republic has made clear . . . its intention to defy any money judgment issued by this Court"). As the District Court recognized, the election of President Macri "marked a turning point in the Republic's attitude and actions." Indicative Ruling at 7 (SPA-53). In the last few months, the Republic has extended generous settlement offers to the Holdout Creditors and reached agreements in principle worth at least $6.2 billion to settle with over 85% of plaintiffs with claims covered by the Injunction. Conditional Order at 4 (SPA-83). "Even the objecting plaintiffs have recognized that the Republic's willingness to negotiate a settlement impacts the balance of the equities." Indicative Ruling at 16 (SPA-62). Accordingly, the Injunction has achieved its purpose of addressing the Republic's recalcitrance. *See Id.* at 13. As demonstrated by its ongoing and largely successful negotiation efforts, the Republic is committed to resolving the Holdout Creditors' claims.

In fact, effectuating payments by the Republic to the Holdout Creditors to resolve their claims is now best served by vacating the Injunction. As the Settling Plaintiffs and the Republic explained below, the Conditional Order is a necessary prerequisite for the Republic to obtain the Congressional approval required both to effectuate those settlements and to repeal legislative obstacles to settlement. *See* EM & Montreux Br. at 2-3 n.2, *EM Ltd. v. Republic of Arg.*, No. 14-cv-8303 (S.D.N.Y. Feb. 11, 2016), Dkt. No. 42 (ADD-59-60); Mar. 1, 2016 Hr'g Tr. at 16:3-17:2, *NML Capital, Ltd. v. Republic of Arg.*, No. 08-cv-6978 (S.D.N.Y.) (A-2267-68); *see also* Indicative Ruling at 19 (SPA-65) (noting regarding the Republic's settlement with a Holdout Creditor, "if another plaintiff, armed with an injunction in a different action could scupper that deal, [the settling Holdout Creditor]—as a third party to that action—would suffer").

In addition, affirmance of the Conditional Order is essential for the Republic to access the global capital markets, which it must do both to finance the settlements with the Holdout Creditors *and* to pay the ever-growing amount it owes to the Exchange Bondholders.[4] Under the District Court's Order, the

[4] The Republic is currently planning to issue $11.7 billion of New York law governed bonds to raise capital to fund settlements with the Holdout Creditors. *See* Carolina Millan & Charlie Deveraux, *Argentina Plans $11.7 Billion Bond Sale to Yield About 7.5%*, BLOOMBERG (Mar. 4, 2016), http://www.bloomberg.com/news/articles/2016-03-04/argentina-plans-11-7-billion-bond-sale-to-yield-about-7-5 (describing Argentine Finance Ministry presentation to Argentine Congress) (ADD-74).

Republic is required to take significant steps before the Injunction is vacated—including repealing existing Argentine law that prohibits settlements, raising the financing necessary to pay the settlements with the Holdout Creditors, and making *full payment* to all settling Holdout Creditors as of February 29, 2016. Only *then*—after billions of dollars covering the vast majority of Holdout Creditors' claims are paid—would the Injunction be lifted.

Potential investors in the new Argentine debt necessary to fund the settlements would not be comfortable purchasing new bonds without some assurance from the courts that the Injunction will be lifted. Without the ability to raise capital, however, the amounts owed to Exchange Bondholders will eventually grow so large that the Republic will be unable to pay them. While the Injunction may have originally been designed to encourage the Republic to address its obligations to its creditors, it now serves only to exacerbate the problem it was meant to address—the Republic's non-payment of defaulted debt. Rather than addressing the Republic's refusal to pay the Holdout Creditors, it now stands as an impediment to consummating agreements that would enable the Republic to make such payments.[5]

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[5] The Lead Appellants argue that the circumstances have not changed because the settlements that have been reached are merely agreements in principle, and not yet consummated. *See* NML Br. at 33, 39, Dkt. No. 275. The Injunction's purpose, however, was to address the Republic's recalcitrance, Indicative Ruling at 13

To the extent certain Appellants argue the District Court does not have the power to vacate the Injunction because its purpose has not been achieved, they are misguided. The District Court, which has supervised this massive litigation for nearly fifteen years, and fashioned the Injunction, has made clear that the Injunction was designed to address the Republic's "steadfast refusal to pay plaintiffs *anything*." Indicative Ruling at 4 (SPA-50) (emphasis added). Now that the Republic is committed to paying Appellants to resolve these disputes—at the same time the Injunction continues to cause substantial and ever-increasing harm to innocent third parties and is detrimental to the public interest, *see infra* at 16-20—the District Court was well within its discretion to conclude that the Injunction's purpose would be advanced best by a conditional order that incentivizes the Republic for the first time to make *billions* of dollars in payments to the Holdout Creditors that would otherwise be inconceivable. *See Sierra Club*, 732 F.2d at 257 (providing that discretion afforded to district court to modify

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(SPA-59), not to maintain a state of paralysis until each Holdout Creditor's claim is finally resolved. The Republic's good faith efforts to resolve these cases constitutes a significant change in circumstances that achieves the Injunction's purpose. Moreover, Appellants' argument misunderstands the sequence of events necessary to enable payment to Appellants. As explained, to obtain the necessary Congressional approval and raise adequate capital, the Conditional Order must be affirmed. Appellants insist that they "desire that this litigation be fully and finally resolved in short order." NML Br. at 39. For that to be possible, the Republic must raise funds to pay the Settling Plaintiffs, including the Lead Appellants, which depends on this Court's affirmance of the Conditional Order.

injunctive relief "is measured by whether the requested modification effectuates or thwarts the purpose behind the injunction").

Nevertheless, certain Appellants assert that the Injunction's purpose was solely to enforce the equal treatment obligations of the FAA's *pari passu* clause. *See* Aurelius Br. at 31, Dkt No. 271; Ricardo Pons Br. at 23, Dkt. No. 256. In turn, they argue that the District Court cannot lift the Injunction because it would permit the Republic to pay Exchange Bondholders without making pro rata payments to Holdout Creditors that would, in effect, guarantee them no less than the full amount of their claims. The argument amounts to the proposition that the Injunction was intended to provide the Holdout Creditors with absolute leverage *ad infinitum* to block payments by the Republic to Exchange Bondholders until all Holdout Creditors' receive the precise monetary compensation they demand. That conflicts with lead Appellants' own recognition, however, that if the Republic "settles the vast majority of claims against it by making the settlement payments it has promised," that "could" constitute "new circumstances that would warrant vacating the Injunctions." NML Br. at 3. It also reveals the true motivation of lead Appellants, who have already reached agreements in principle with the Republic—prolonging the Injunction's effectiveness to force further negotiations and extract even more favorable terms.

Moreover, any concern that the Republic has not yet settled with *all* Holdout Creditors is unwarranted. If the Injunction were lifted, the Republic's obligations to Holdout Creditors who have not settled do not vanish. As the Republic has noted, there is no deadline for Holdout Creditors to settle with the Republic, and "the Republic has continued to engage in substantive settlement discussions with numerous . . . bondholders in the weeks that have passed since [it] . . . announced" a settlement proposal. *See* Republic's Suppl. Mem. of Law at 3, *NML Capital, Ltd. v. Republic of Arg.*, No. 08-cv-6978 (S.D.N.Y. Feb. 29, 2016), Dkt. No. 904 (A-1879); Second Suppl. Decl. of Santiago Bausili ¶¶ 15-18, *NML Capital, Ltd. v. Republic of Arg.*, No. 08-cv-6978 (S.D.N.Y. Feb. 29, 2016), Dkt. No. 904-2 (A-1939-40). Indeed, The Republic remains bound by its contractual obligations, its counterparties remain free to enforce those obligations, and if it deems it necessary, the District Court remains free to reinstate the Injunction.[6]

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[6] Certain Appellants have expressed concerns that, if the Injunction were lifted, the Republic could alter the Exchange Bonds' payment process by replacing BNYM as trustee, and thus limit the effectiveness of the Injunction should it be reinstated. *See* Feb. 24, 2016 Hr'g Tr. at 22:24-23:6, 29:12-30:7, *Aurelius Opportunities Fund II, LLC v. Republic of Arg.*, No. 15-1060 (2d Cir.), *NML Capital, Ltd. v. Republic of Arg.*, No. 08-cv-6978 (S.D.N.Y. Feb. 29, 2016), Dkt. No. 902-1 (A-1826-27, 1833-34). The Republic, however, has unequivocally represented to the District Court that it commits to continue using BNYM or another New York-based financial institution as the trustee for the Exchange Bonds, and has been in active discussions with BNYM regarding the issue. Republic's Suppl. Mem. of Law at 2 (A-1878); Second Suppl. Bausili Decl. ¶ 19 (A-1940). Just as importantly, the Republic's cooperative attitude provides ample proof that it will not seek to skirt

In short, the Republic's ongoing desire and actions to resolve these cases, and the fact that the vast majority of Holdout Creditors have reached agreements in principle to settle, render the Injunction obsolete. At minimum, the District Court was well within its discretion to conclude that conditionally vacating the Injunction upon the Republic's *full payment* of billions of dollars to settling Appellants would constitute a changed circumstance warranting vacating the Injunction.

II. The Injunction Is Inequitable Because It Causes Ongoing Harm To Innocent Third Parties And Is Detrimental To The Public Interest

The inequity of the Injunction, which has now outlived its purpose, is highlighted by the fact that it has caused and continues to cause substantial injury to numerous third parties, including the Euro Bondholders, whose rights to be paid on the bonds they hold has never been contested. The District Court itself recognized that "[t]he most notable third parties affected by the injunctions" are Exchange Bondholders, including the Euro Bondholders, who have suffered "damage" at the hands of the Injunction. Indicative Ruling at 18 (SPA-64). Indeed, throughout this litigation, the District Court has consistently emphasized

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its obligations once the Injunction is lifted. Nonetheless, this concern would not warrant overturning the Conditional Order. If they wish to do so, the Appellants may seek separate *narrower* relief prohibiting the Republic from changing its payment process, which would permit payments to Exchange Bondholders. *See Califano v. Yamasaki*, 442 U.S. 682, 702 (1979) (holding that "the scope of injunctive relief is dictated by the extent of the violation established"); *ALPO Petfoods, Inc. v. Ralston Purina Co.*, 913 F.2d 958, 972 (D.C. Cir. 1990) ("The law requires that courts closely tailor injunctions to the harm that they address").

that "[i]t is important to get the people who are owed interest on their exchange bonds, get them paid." Aug. 1, 2014 Hr'g Tr. at 12:15-12:16, *NML Capital, Ltd. v. Republic of Arg.*, No. 08-cv-6978 (S.D.N.Y. Aug. 13, 2014), Dkt. No. 637 (ADD-49).[7] The Euro Bondholders have been denied hundreds of millions of euros in past due payments, and if the Injunction remains in place through June 2016, the amount of past due interest payments on all Exchange Bonds will continue to grow from the current amount of approximately $3.1 billion to $3.8 billion. Clark Decl. ¶¶ 3-4 (A-1790-91). Nevertheless, as long as the Injunction remains in place, the Euro Bondholders are prevented from receiving their legally owed money.[8] *See* Indicative Ruling at 19 (SPA-65) (noting that plaintiff armed with an injunction in one case could interfere with Exchange Bondholders' right to be paid and agreements with Settling Plaintiffs). On the other hand, if the Injunction is lifted they would begin receiving their contractually-owed payments—"something that has not happened for nearly two years." Indicative Ruling at 19 (SPA-65).

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[7] *See also, e.g.*, Aug. 8, 2014 Hr'g Tr. at 4:14-5:2, *NML Capital, Ltd. v. Republic of Arg.*, No. 08-cv-6978 (S.D.N.Y. Aug. 20, 2014), Dkt. No. 646 (noting that "[t]he Republic surely has obligations to [parties who exchanged their bonds], without any doubt") (A-579-80)

[8] The inequity of continuing to prevent Exchange Bondholders from receiving payments is especially noteworthy given that the generous settlement offers now available to Holdout Creditors would not be possible if the Exchange Bondholders had not settled their claims on much less favorable terms pursuant to the Exchange Offers. Without the Exchange Bondholders' cooperation, the Republic would simply not have the money to settle with the Holdout Creditors now.

When this Court first found that imposing the Injunction was within the District Court's discretion, it found unpersuasive the Republic's contention that the Injunction was unfair to Exchange Bondholders. *NML Capital, Ltd.*, 727 F.3d at 242. The Court observed that "harm threatened to third parties by a party subject to an injunction who vows not to obey it . . . does not make an otherwise lawful injunction 'inequitable.'" *Id.* The circumstances have changed, however, such that the harm to Exchange Bondholders is not simply threatened, but present and ongoing.[9] As the District Court recognized, notwithstanding Appellants' assurance when seeking the Injunction that there was "no evidence" that the injunctions would "stop or interfere or impair in any way those exchange offers . . . that is precisely what has happened." Indicative Ruling at 18-19 (SPA-64-65). Meanwhile, the Republic's efforts to resolve the Holdout Creditors' claims have rendered the Injunction unnecessary. While the Injunction may once have been a shield to protect the Holdout Creditors' rights to be paid, the Appellant Holdout Creditors are now using it as a sword to pressure the Republic for even more

[9] The harm Exchange Bondholders have suffered and the benefit they would enjoy if the Injunction were lifted is neither hypothetical nor uncertain. When the Injunction first took effect, the Republic attempted to make a payment to Exchange Bondholders by depositing hundreds of millions of dollars and euros in an account held by BNYM in Buenos Aires. An English Court of appropriate jurisdiction already has acknowledged the Euro Bondholders' interest in the deposited euros. *See* English Judgment ¶¶ 12-13, 36-47 (A-2185-86, 2191-93). As a result, if the Injunction were lifted, the Euro Bondholders would immediately take possession of substantial funds deposited for their benefit.

favorable settlement terms. In the process, they are unnecessarily prolonging the growing injury to innocent third parties such as the Euro Bondholders.

Moreover, Exchange Bondholders are not the only third parties harmed by the Injunction. As discussed above, the Injunction inhibits the Republic's ability to raise capital necessary to consummate agreements with the Settling Plaintiffs. *See Id.* at 20. If the Injunction remains in effect in a single case, it would prevent all other plaintiffs from resolving their claims. *See Id.* at 19 (observing regarding the Republic's agreement with a Settling Plaintiff, "if another plaintiff, armed with an injunction in a different action could scupper that deal, [the Settling Plaintiff]—as a third party to that action—would suffer," a result the District Court "never intended"). The District Court also explained, "there are others [injured], too: the financial intermediaries that the Republic engages to help it pay the exchange bondholders; the FAA bondholders who favor settlement but who are not parties to every single case; and the Argentine people generally. Each of these groups will benefit if the court vacates the injunctions." *Id.* at 18. Indeed, the Argentine people—who elected the current administration that worked to finally resolve the Holdout Creditors' claims—continue to suffer as a result of Appellants' gamesmanship and delay.

For all the reasons above, the Injunction is "inequitable and detrimental to the public interest." *Id.* at 13. In imposing the Injunction, the District Court

emphasized that it would serve "[t]he public interest of enforcing contracts and upholding the rule of law." Injunction at § 1(d) (SPA-3-4). Now, however, the Republic has demonstrated its desire to resolve these disputes, and the Injunction's primary effects are to interfere with the contractual rights of the Exchange Bondholders and the Republic's ability to pay the Settling Plaintiffs. Maintaining the Injunction therefore undermines, rather than upholds, the public interest in enforcing contracts and the rule of law. Thus, the Conditional Order should be affirmed.

CONCLUSION

For the foregoing reasons, the Euro Bondholders respectfully request that this Court affirm the District Court's Conditional Order.

Dated: March 21, 2016
New York, New York

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure because it contains 4,886 words, excluding the parts of the brief exempted by Rule 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times Roman 14-point font.

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CERTIFICATE OF SERVICE AND CM/ECF FILING

I hereby certify that March 21, 2016, the forgoing brief was electronically filed and served on all parties or their counsel of record via Electronic Mail generated by the Court's electronic filing system (CM/ECF) with a Notice of Docket Activity pursuant to Local Appellate Rule 25.

Dated: March 21, 2016
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ADDENDUM

ADDENDUM TO THE BRIEF

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

NML CAPITAL, LTD.,

Plaintiff,

v. 08 CV 6978 (TPG)

THE REPUBLIC OF ARGENTINA,

Defendant.

----------x

June 27, 2014
10:40 a.m.

Before:

HON. THOMAS P. GRIESA,

District Judge

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NEIL GRAY

THE LAW CLERK: All rise. You may be seated.

In the case of NML Capital versus the Republic of Argentina.

THE COURT: Good morning, everybody.

I think the best thing to do is to start with Mr. Cohen and see what you want to say about what's happening, the status.

I would ask everybody who speaks to go to the lectern. We don't pick things up too well at the microphones at the tables.

MR. COHEN: Good morning, your Honor, Robert Cohen from Dechert for plaintiff NML Capital.

THE COURT: Okay, go ahead.

MR. COHEN: Yesterday Argentina defiantly and contemptuously violated your Honor's orders by making a payment of more than $800 million on exchange bonds without paying NML or the other plaintiffs here today what they are owed, and without certifying to the Court, to the plaintiff's counsel and to others, that they had made the payment to NML and others.

THE COURT: When you say "made the payment" --

MR. COHEN: Yes, your Honor.

THE COURT: -- how far did that get?

MR. COHEN: Argentina believes they have done everything that was in their power to make the payment. They remitted at least $500 million to Bank of New York Mellon. We

understand that those funds are still with Bank of New York Mellon. And they're here today, and I think they're going to suggest that those funds be the subject of an interpleader. There's another $300 million that we're not sure where it is. Some of it may be with Citibank, which acts as a custodian for some of the bondholders, and acts as a paying agent or intermediary with respect to other bondholders. So funds may be with Citibank.

We are hoping that they, like Bank of New York, have acted prudently, respected this Court's order, and have held onto that money and not moved it to the next step in the payment chain.

So Argentina believes it has completed acts required of it to make payment. And as your Honor noted in your order earlier this week in which you dealt with Argentina's request for a stay, the injunction, the equal treatment pari passu injunction becomes effective upon that act.

So we're here today where Argentina has committed the very act that they were permitted from doing, paying, to the extent they can the exchange bondholders without paying NML and the other plaintiffs who are here today.

They knew, Argentina did, exactly what they were doing. They have repeatedly represented to this Court, to the Supreme Court and other courts that they would not violate that order.

THE COURT: That they would not?

MR. COHEN: Violate the pari passu order. They threatened to default. They said, if we don't get a stay, we may not pay anyone. We may not pay the exchange bondholders, we may not pay the plaintiffs here today.

They knew it would be a violation of your Honor's order to do exactly what they did, attempt to pay the exchange bondholders and ignore the plaintiffs before you.

Your Honor, they have issued a press release that shows their contempt of this Court. And if I may hand up, your Honor, a declaration that contains the English language version of this. Maybe we can give a copy to Mr. Boccuzzi and Mr. Blackman.

(Handing)

MR. COHEN: Your Honor, I'm going to read just a short piece from a translation of exhibit -- that's Exhibit B. It's part of a press conference held by Argentine officials. And at the top of the fourth page of that it says, "This sovereign decision by the Argentine Republic" -- and the decision that's being referred to is the violation of this Court's order by attempting to pay the exchange bondholders.

THE COURT: Where are you reading from?

MR. COHEN: It's the Exhibit C, page two.

THE COURT: I'm just not with you. Exhibit what?

MR. COHEN: B.

THE COURT: B?

MR. COHEN: Yes, your Honor. I'm terribly sorry, your Honor. Terribly sorry. Exhibit C, page two.

THE COURT: Let me get that. All right.

MR. COHEN: At the top of the page it says, "This sovereign decision," and that is the decision to pay the exchange bondholders and not to pay the plaintiffs here, "by the Argentine Republic implies a warning to the United States regarding the consequences of its act given the international responsibility it bears for the decisions" --

THE COURT: Wait a minute. Where are you? I'm not with you. What paragraph?

MR. COHEN: Could I hand this to you? I'm reading from that page.

THE COURT: All right, I'm with you. You can have this back.

MR. COHEN: Just to quickly recapitulate, your Honor. It says, "This sovereign decision, the decision to violate this Court's order by paying the exchange bondholders and not plaintiffs by the Republic of Argentina, implies a warning to the United States regarding the consequences of its acts given the international responsibility it bears for the decisions taken by its judicial branch to the fiduciary agent, to the financial entities involved, to the litigators and to Judge Thomas Griesa himself with regard to future court actions that

may allow us to legitimately enforce our rights."

In other words, your Honor, they are warning us that we may be sued, including your Honor, in some international forum to get redress for the process which they voluntarily participated in, and which they assured the Supreme Court of the United States they would abide by.

We can think of nothing that deserves a contempt citation more than that kind of behavior.

THE COURT: In what form did the assurance to the Supreme Court come?

MR. COHEN: Your Honor, when they petitioned for certiorari with respect to the Second Circuit's affirmance of your Honor's order, they urged the Supreme Court to take that case by saying they would comply with any order of the Court. There was an amicus brief submitted by several district court judges, retired district court judges, including Judge Mukasey, which urged the Court not to take the case because of the defiance that the President of Argentina had expressed with respect to obeying the Court's orders.

To respond to that argument, Argentina's counsel represented that they would, indeed, abide by any rulings of the Court. The Court denied certiorari nevertheless, but that representation was clearly made.

That representation has been made in this courtroom, your Honor, by counsel for Argentina, where they have

repeatedly said we will not violate the orders. We will not violate the orders.

Your Honor, they have directly violated the orders. They did not come to this Court for a variation of the injunction. They simply ignored it, thinking that they could maybe get away with it somehow. Fortunately, the people who received the money declined to pass it along, and we have an opportunity now to deal with it on an interpleader.

Our request, your Honor, in light of this conduct is that an order of contempt be entered. Our order does not impose sanctions. It says that what sanctions may be appropriate for this conduct will be determined in the future. And we request discovery so that we can find out how this came about, and also whether there are other plans afoot to violate your Honor's order in other means. And that's a request for prompt discovery from Argentina.

We also intend to serve subpoenas on third parties who may have some information about how else violations may occur. So what I ask your Honor is an order of contempt, and I can hand that up, and an order permitting expedited discovery from Argentina to find out how we got to the place we're at today.

THE COURT: All right. Who wishes to speak next?

MR. FRIEDMAN: Your Honor, before Mr. Boccuzzi speaks, this is Edward Friedman, Friedman Kaplan.

THE COURT: Go to the lectern, please.

MR. FRIEDMAN: Edward Friedman, Friedman Kaplan Seiler & Adelman for the Aurelius and Blue Angel plaintiffs.

I just would like to add one detail to what Mr. Cohen was saying. Mr. Cohen explained that Argentina has announced payments of $832 million on the exchange bonds. And we have confirmed, as Mr. Cohen said, that $539 million of those payments have reached the Bank of New York. And we are asking that those funds be the subject of an interpleader, and that those funds be deposited in New York. And counsel for the Bank of New York has confirmed that they are prepared to do that.

THE COURT: Look --

MR. FRIEDMAN: Sorry. I just wanted to.

THE COURT: What I want to do at this point is see that there is a proper record.

Now, what is the record in which the plaintiffs say there is a description of the activities we're discussing this morning? Is there an affidavit or is there -- what do we have as a matter of record?

MR. FRIEDMAN: There is, your Honor, a declaration of Robert Cohen that has been submitted to the Court. We have the press release from Argentina.

THE COURT: Now, look, you've got to understand. I'm supposed to be on vacation and I'm at home as much as possible, which isn't very much these days, but I arrived in court in time to come to this hearing. I have not gone over what has

been -- what may have been filed, but maybe -- Jordan, why don't you --

THE LAW CLERK: Is this the declaration you're referring to?

MR. COHEN: Yes, exhibit D.

THE LAW CLERK: It's the one you have in front of you, Judge.

THE COURT: Declaration of -- I'm sorry. Declaration of Robert Cohen, June 12th, 2014.

Now, where is there a description?

MR. COHEN: Exhibit C, your Honor, is an official press release from the Argentine government. It talks about it paying on the exchange bonds.

(Pause)

THE COURT: Well, I know this is to be taken of course very seriously, but is there something that literally shows in sort of transaction form, what has happened; in other words, if there was a payment made, who made the payment, to whom was the payment made, and --

MR. COHEN: Your Honor, counsel for Bank of New York Mellon I believe is here. They received the money.

MR. FRIEDMAN: Your Honor, we were yesterday in communication with counsel for Bank of New York. Bank of New York has confirmed the receipt of $539 million in its account.

THE COURT: Let me just -- who is here for the Bank of

New York?

MR. SCHAFFER: Your Honor --

THE COURT: Why don't you -- let's get directly to you. What has happened?

MR. FRIEDMAN: Your Honor, I apologize, but I did want to just add one sentence that --

THE COURT: I'll get back to you, but I want to get --

MR. FRIEDMAN: Okay.

THE COURT: I don't want to have a record created by press releases and so forth and discussion. I'd like to definitely have a proper record of the transactions which were made.

And your name, sir, is what?

MR. SCHAFFER: Your Honor, I'm Eric Schaffer from Reed Smith for the Bank of New York Mellon as indenture trustee.

THE COURT: Indenture trustee means what?

MR. SCHAFFER: Well, we act as indenture trustee for what's known as the exchange bonds.

In the ordinary course, Argentina sends money to Banco Central where it gets deposited into the account of the Bank of New York as indenture trustee. And, in the ordinary course, funds would go from there onto the clearing houses.

THE COURT: Now wait a minute. Let's step back.

MR. SCHAFFER: Yes, your Honor.

THE COURT: Go a little slower for me. You're the

indenture trustee for the exchange bonds.

MR. SCHAFFER: Yes.

THE COURT: Now, what -- and then I assume you know what happened as far as the transfer of money and so forth, right?

MR. SCHAFFER: Yes, your Honor.

THE COURT: Okay. Now can you just slowly and carefully describe for me what happened?

MR. SCHAFFER: Your Honor, deposits were made into our account at Banco Central in Argentina.

THE COURT: All right. Just a minute. Into the account of the Bank of New York.

MR. SCHAFFER: Yes, your Honor.

THE COURT: Just a second. In what bank in Argentina?

MR. SCHAFFER: Your Honor, I believe it's Banco Central, the Republica Argentina.

THE COURT: But it's an Argentine bank?

MR. SCHAFFER: Yes, your Honor.

THE COURT: And I'll say Banco Central until -- Banco Central. And then what happened?

MR. SCHAFFER: Your Honor, the deposits were U.S. dollars and euros.

THE COURT: All right, just a minute. Okay.

MR. SCHAFFER: The deposits, euros was in the amount of 225,852,000 --

THE COURT: In euros?

MR. SCHAFFER: Yes, in euros it's 225,852.

THE COURT: 225,852.

MR. SCHAFFER: 475.66.

THE COURT: Meaning 225,852,475.66; is that right?

MR. SCHAFFER: Yes, your Honor.

THE COURT: And that's euros. And how about dollars?

MR. SCHAFFER: In dollars $230,922,521.14.

THE COURT: Now, are you able to give me the total dollar equivalent?

MR. SCHAFFER: The dollar equivalent, your Honor, would be approximately $539 million.

THE COURT: All right. Now, after the deposits were made in the Banco Central, what happened then?

MR. SCHAFFER: Really nothing, your Honor. We have received this Court's orders, and consistent with this Court's orders the money remains in the accounts at Banco Central.

THE COURT: And it's the account of the Bank of New York.

MR. SCHAFFER: Yes, your Honor.

THE COURT: All right. I want to make a note of that.

Now, when the Bank of New York received these funds as you've described in the Argentine bank, were there any instructions from the Republic of Argentina as to what to do further?

MR. SCHAFFER: Your Honor, to my knowledge, there are no instructions beyond what is set forth in the indenture. The indenture provides how funds will move in the ordinary course. But, again, we're aware of this court's order.

THE COURT: Well, let's slow down a little bit.

MR. SCHAFFER: Your Honor, under the terms of the indenture that governs the rights and obligations of the Bank of New York Mellon as indenture trustee, in the ordinary course Argentina transfers funds to the account of Bank of New York Mellon at Banco Central. Thereafter, funds would be distributed through the clearing houses to the beneficial owners of the exchange bonds.

THE COURT: In other words, that would be the regular course of things.

MR. SCHAFFER: Yes, your Honor.

THE COURT: If there were no other problems.

MR. SCHAFFER: Correct.

THE COURT: In other words, you don't receive money simply to have it deposited with you.

MR. SCHAFFER: Your Honor, the money under the indenture is held in trust for the Bank of New York Mellon as trustee and the bondholders.

THE COURT: And the bondholders.

MR. SCHAFFER: Yes.

THE COURT: And so if money is received, am I correct,

it is your understanding that in the normal course of events, the money would ultimately go to the bondholders?

MR. SCHAFFER: Yes, your Honor.

THE COURT: All right. And now, you've said this two or three times, but please repeat it, what occurred here and why?

MR. SCHAFFER: Your Honor, funds were deposited into the Bank of New York Mellon's account at Banco Central. Those funds remain in that account. Nothing more has happened.

THE COURT: And the reason for that is what?

MR. SCHAFFER: We have read this Court's order, orders with regard to any distributions of funds. The orders of this Court expressly reference the Bank of New York Mellon as trustee, and in accordance with this Court's order we have not further transferred or distributed any funds.

THE COURT: Okay. I think that unless you want to add something, that answers the questions I would have for you.

MR. SCHAFFER: Nothing to add, your Honor.

THE COURT: All right. Let's go back to whoever was speaking.

MR. FRIEDMAN: Your Honor, the one point of clarification I had wanted to offer previously is that I was advised by counsel for Citibank this morning, just before the hearing began, that Citibank has not received funds from Argentina. So the knowledge that we have at the present time

is that, as Bank of New York's counsel said, Bank of New York has 539 million representing a payment by Argentina with respect to the exchange bonds, but Citibank does not have funds at this time. That's what we're being told.

And the one other thing, your Honor, is that I would call the Court's attention to exhibit D to Mr. Cohen's declaration.

THE COURT: Could I get this turned down a little bit? I'm trying to -- it was so loud.

MR. FRIEDMAN: I apologize, your Honor.

THE COURT: No, no. Now it's okay.

Okay, go ahead.

MR. FRIEDMAN: Exhibit D is an announcement by Argentina saying it has fulfilled its obligations to pay the holders of the exchange bonds.

THE COURT: All right, let me get that. This is the Exhibit B to Mr. Cohen's declaration or exhibit D; am I right?

MR. FRIEDMAN: Yes, exhibit D, your Honor.

THE COURT: What is exhibit D?

MR. FRIEDMAN: Exhibit D is an announcement dated today by Argentina. It's one, just one page in English, your Honor. It's the last couple of pages of the Cohen declaration.

MR. COHEN: If I could clarify, your Honor. My declaration has exhibit D. The first page is a Bloomberg summary of the second page, which is a Spanish announcement,

official announcement by the government of Argentina. We didn't have time to translate it, your Honor, because it came out this morning. But Bloomberg summarizes it, and that's the first English language page to exhibit D.

THE COURT: Back to Mr. Friedman.

MR. FRIEDMAN: Yes.

THE COURT: Can you just summarize the summary, it'll help me?

MR. FRIEDMAN: Yes. Exhibit D says Argentina says it has fulfilled its obligations on the restructured debt. Restructured debt means the exchange bonds. If your Honor looks at that page, you will see a series of bullet points. The second bullet point reflects Argentina's statement that, according to Argentina, Bank of New York Mellon has a duty to deliver funds to the bondholders.

As counsel for the Bank of New York explained to the Court a moment ago, the payment by Argentina to the Bank of New York is the normal regular course of payment by Argentina when making payment on exchange bonds for which the Bank of New York is the indenture trustee. The significance of this --

THE COURT: Now, can we go down -- the next bullet point starts at note.

MR. FRIEDMAN: Yes. That bullet point --

THE COURT: Let me just read that. Argentina today deposited $1 billion for restructured bond payments, including

539 million to trustee Bank of New York Mellon.

So they're saying they have made a deposit as they refer to it to it of $1 billion.

MR. FRIEDMAN: We understand, your Honor, that the $1 billion is a round figure as to which the undisputed fact is 539 million has been paid to Bank of New York Mellon as indenture trustee on certain exchange bonds.

We do not have information at this time as to where the balance of the approximate $1 billion has been paid.

THE COURT: All right, thank you. Anything else?

MR. FRIEDMAN: Thank you, your Honor.

THE COURT: All right, let's hear from the Republic.

MR. BOCCUZZI: Good morning, your Honor, Carmen Boccuzzi from Cleary Gottlieb for the Republic of Argentina.

The Republic, consistent with its announcements, had hoped to be able to, and still hopes to be able to engage in discussions with plaintiffs and all the hold out creditors to resolve this dispute and resolve the litigation.

The reason for the letters that we submitted this week requested breathing space for the upcoming June 30th payment, was to have the ability to have those discussions.

THE COURT: I want to comment on those letters. In the course of two letters there -- I don't have them before me -- there is a very abbreviated request to have a stay of the injunctions. Now, you're a very good lawyer and your colleague

is a very good lawyer. That isn't way you make any application to a Court. You can't do it that way. You can't just throw a phrase into a letter. If you're going to apply for something, you apply. And you know how to apply. And what you do is to state what you're applying for, what would be affected by the application and the reason and so forth. Nothing of even approaching that was contained in the letters.

Now, I wrote a little ruling denying the application, but I never really received any proper application. And, in any event, there was nothing in there to indicate any real need for assistance or relief or timing in connection with settlement negotiations.

Now, why haven't the settlement negotiations gone forward? Surely that little application -- I mean, nobody could reasonably believe that that little application would have any effect. Why haven't the settlement negotiations gone forward? Why aren't they going forward today instead of having us sit in court?

MR. BOCCUZZI: The hope, your Honor, was to have those discussions with the parties, but without the threat of the default that would result if the payments were made on June 30th. And so the request, the application was for that breathing space so that as --

THE COURT: Now, look, I'm going to interrupt you.

We all knew that if there was to be fruitful

settlement negotiations, they probably weren't going to be concluded this week, maybe not next week. Everybody knew that. And what goes on in settlement negotiations is the people who are participating arrange to maintain a status quo, status quo. That's what's done over and over and over in litigation.

Now, what was necessary, if anybody wanted to negotiate, was to figure out a way to maintain a status quo so there would not be a default on June 30, but the situation would remain -- and I'm using the phrase over and over again forgive me, in status quo.

You had a Special Master who could have assisted a discussion of how that would be done. But it doesn't take any rocket scientist to figure out how to do that. This is done in litigation every day in the world in this country to figure out a way to maintain the status quo.

Now, the Republic does not need to engage in settlement negotiations, and it doesn't even need to give excuses. If it doesn't want to engage in settlement negotiations, don't. It doesn't have to. But in the strongest way they indicated they wanted to. They said they were going to send a delegation to see me. Well, I can't participate. I appointed a special master, a very talented special master to assist. So I set up the circumstances under which there could be settlement negotiations.

Now, what needs to be done -- and it can be done

beginning now -- is to figure out a way to get through the weekend and June 30, and maintain -- I'm using the term the status quo. That was what was, what any litigating, any litigator would know had to be done.

And there were discussions, I am informed -- and I'm not fully informed because I'm not the special master -- but I believe there were discussions along that line, and that's the line that was needed to be taken. And then all of a sudden we have this payment. This is a disruption. Can we get back on track and have settlement negotiations?

MR. BOCCUZZI: I hope so, your Honor.

THE COURT: And how will that be done?

MR. BOCCUZZI: What is the situation that was facing the Republic this week with the approaching June 30th payment, the need for time is the constraints on the Republic that they have to deal with and are trying to deal with imposed both by local, law Argentine law where you need legislative action or otherwise a nonpayment on the June 30th is not authorized by Argentine law, and I am informed by my client, would subject the officials or the employees, the government employees involved with that payment, potentially subject to criminal prosecution.

THE COURT: Now, look -- look here.

MR. BOCCUZZI: I'm just -- your Honor, just -- that's why we need time, as well as the obligations that are owed

under the so-called rights upon future offer that's in the performing document papers. That's why it's a request for time. I hear your Honor on the status quo. The difficulty of the status quo is that the status quo now is the nonpayment on June 30th, which we're not -- they were not prepared for, unless there's a payment to the plaintiffs in that amount which sweeps in, of course, all the me toos and all the other defaulted that we've been talking about. So that's the situation the Republic found itself in. It's obvious that discussions have to happen, but that was what was behind --

THE COURT: If the Republic --

MR. BOCCUZZI: -- the request.

THE COURT: -- and the others had continued discussions with the Special Master, you could've solved all of the problems you're talking about.

You know, and every litigating lawyer in this Court, knows that there are ways to facilitate discussions. There are ways to preserve the rights of the parties while discussions are going on. There are ways to do that. It's done all the time. And if you had continued to meet with the Special Master, bring up the points you're talking about -- of course you're bringing up legitimate points -- but the thing is how to resolve them without some explosive actions such as has been taken by the Republic here. And experience litigating lawyers, and that includes you and Mr. Blackman, know how to do this.

What I think is a problem is that really there was a failure to follow through and work with the Special Master, work on these problems, but don't have a blowup of the kind we've had just now.

And I'll come very quickly. The payment, any payment to exchange bondholders which does not comply with -- I've got to find what I'm looking for, so give me just a minute, please. I'm referring to paragraph two of the amended February 23, 2012 order. This sets forth the rules and that means -- I'll read it. Whenever the Republic pays any amount due under terms of the bonds or other obligations issued pursuant to the exchange offers, the Republic shall concurrently or in advance make a rateable payment to NML as defined below, and as further defined in the Court's opinion of November 21, 2012

Now, just a minute. I imagine there's more language, but I don't -- but that is the essential language. And what that means is that any attempt now to make a payment to the exchange bondholders, without complying with paragraph two, is illegal. It cannot be done and will not be permitted by this Court. And I want the banks and all concerned to know that, and I'll come right down to it right now and state that. That is the effect of what is now in place. Therefore, this payment cannot be made, and anybody who attempts to make it will be in contempt of court by the express terms of this order.

Now, where do we go from here? We have disposed of

the fact about -- we have disposed of this payment. This payment is illegal and will not be made.

MR. BOCCUZZI: Yes, your Honor.

THE COURT: Now, where to go?

MR. COHEN: Your Honor -- sorry.

MR. BOCCUZZI: I think the hope would be to have discussions.

THE COURT: Let me just finish.

MR. BOCCUZZI: Yes. I think --

THE COURT: Let me just finish.

MR. BOCCUZZI: Yes, please.

THE COURT: I want to get back to you, of course, of course.

Look, it would be desirable, if it is possible, to have a settlement. And I don't think I want to go too much farther in that, but I didn't appoint a Special Master. I didn't do that without being very seriously interested in seeing that there would be settlement negotiations. I would hope that all parties would participate, and I would obviously hope that the Republic would participate, although participating in settlement negotiations is a voluntary thing and nobody has to do it, but I would hope that that would be done. And I would hope that there would be a way to make it clear to whoever is interested in what goes on on June 30, that the settlement negotiations are going on and they are

important. They are important. They're more important than the details of this or that that might be invoked or put in place around the events of June 30th.

The important thing are the settlement negotiations. There is a lot of litigation still out there. And if there is a default, there's going to be a lot more. It would be very desirable to reach a settlement. But that's not going to happen by Sunday or Monday.

I want to say this to Mr. Boccuzzi and Mr. Blackman. I've had trouble, and I've expressed it, with the Republic, but both of you have been fair and square in every way before me, and I appreciate that.

Now, what I would like to do is to really -- I will enter whatever order is appropriate nullifying this purported payment. But I would hope, I would hope that the Republic does not find barriers and difficulties in the circumstances which would prevent settlement discussions. I would hope they would start this afternoon and continue according to the schedule that can be worked out with the Special Master. And I'm going to tell you, it being 11:30, time is better spent arranging for settlement negotiations than having continued argument here in court, and I'm ready to adjourn.

MS. WAGNER: Your Honor, may I be heard, please?

MR. BETCHELER: I'd also like to be heard, your Honor.

MS. WAGNER: Good morning, your Honor, Karen Wagner

from Davis Polk representing Citibank.

Your Honor, we made a motion last week which has become extremely urgent. Citibank Argentina is a branch bank in Argentina, and it expects to receive a payment on some bonds shortly. It has not received the payment yet. The bonds for which it is custodian are internal Argentine bonds.

THE COURT: Can I just interrupt you?

MS. WAGNER: Sure.

THE COURT: I apologize for not getting to your motion. There are other things. I want to get to it. Is there any opposition to that motion?

MR. FRIEDMAN: Your Honor, this is Edward Friedman on behalf of the Aurelius and Blue Angel plaintiffs.

The opposition to that motion is, to begin with, that your Honor's amended February 23 orders are clear that the orders cover exchange bonds, and Citibank is now asking the Court to modify the amended February 23 orders so that --

THE COURT: Let me interrupt you. It is my understanding, Ms. Wagner, correct me if I'm wrong --

MS. WAGNER: Certainly, your Honor.

THE COURT: -- because we've been at this before.

MS. WAGNER: Yes, we have, your Honor.

THE COURT: And it is my understanding that the bonds you're talking about have been treated differently --

MS. WAGNER: Completely --

THE COURT: -- all along.

MS. WAGNER: Completely differently, your Honor. Yes.

THE COURT: And I think that to grant your motion -- and I may have granted a similar motion before -- to grant your motion does not affect the other bonds of concern at all.

MS. WAGNER: That's correct, your Honor.

THE COURT: All right. I will grant your --

MR. FRIEDMAN: Your Honor, may I be heard, please?

THE COURT: What?

MR. FRIEDMAN: With all respect, the Citibank motion addresses bonds that are clearly within the scope of exchange bonds. It is illegal under your Honor's orders that have been affirmed for Argentina to pay those bonds, and it is illegal for Citibank to facilitate those payments. This is a very serious matter as far --

THE COURT: I simply disagree with everything you're now saying. I will grant Ms. Wagner's motion.

MS. WAGNER: Thank you very much, your Honor.

THE COURT: Now, what do I need to sign?

MS. WAGNER: We'll hand up an order, your Honor.

THE COURT: Good.

MS. WAGNER: Thank you.

THE COURT: I'll do it, I'll do it.

MS. WAGNER: Thank you, your Honor.

Anything else?

MR. BATCHELOR: Yes, your Honor. May I be heard?

THE COURT: Yes.

MR. BATCHELOR: Good morning, your Honor. I'm Craig Batchelor from Latham & Watkins, and I represent the so-called euro bondholders. This is a group of holders of the Republic's exchange bonds that were issued in the 2005 and 2006.

THE COURT: Holders of what? Say it again?

MR. BATCHELOR: I represent a group of holders that hold exchange bonds denominated in euros.

And I just wanted to clarify a couple of points that were raised by the lawyer for the Bank of New York.

As he recognized, there are payments, there are bonds that are denominated in U.S. dollars under the exchanges, and there are also bonds that are denominated in euros. And one thing that's been overlooked in this litigation up until this point is that the payments on those two sets, two different sets of bonds are made very differently. The Bank of New York issued a -- submitted an affidavit in November of 2012, prior to your Court ordering, issuing the amended February 23rd injunctions that clarified that the payments made on the euro bonds are made outside the United States, they're made in euros, and they're processed through foreign entities. These payments never flow through the United States at all. They are paid in Argentina. The money is then transferred to Belgium or to Germany, excuse me, and then to clearing houses in Belgium

or Luxembourg. And these bonds are also governed by English law. They are not governed by New York law.

So I don't know the details on the payments that were made, but if those payments were made as Bank of New York's affidavit states, and consistent with the indenture, those payments were made to a Bank of New York Luxembourg entity in Argentina.

THE COURT: I've got to confess to you, I'm just not following this.

MR. BATCHELOR: I'll try to simplify it.

THE COURT: Try to do that.

MR. BATCHELOR: The reason this makes a difference, your Honor, is because I believe right now the payments that were made in euros are being held by a foreign entity, Bank of New York Luxembourg outside the United States and governed by a trust under English law. And so I think there are serious questions whether this Court has jurisdiction to issue an order nullifying that payment or perhaps ordering the return of those funds, and we'd like to be heard on that. I think there's serious issues about that and we'd be prepared to submit a motion very quickly on those issues.

In addition, any payments that flow through that chain, whether to Euro Clear, Clear Extreme or other entities, are outside this Court's jurisdiction and those parties are bound by foreign law. These are very serious issues. We

raised these in the Second Circuit and submissions to the Supreme Court.

THE COURT: What did the Second Circuit do?

MR. BATCHELOR: The Second Circuit said that we should come back to the district court and raise these issues.

And as noted in your Honor's November or amended February 23rd order, you said that any clarification of the scope of the injunction on third parties would be given by this Court promptly. The Second Circuit, consistent with that, said we should come back to this Court for clarification.

So, like Citibank, we have a motion ready to clarify the scope of the injunction on foreign third parties who process payments on the euro bonds.

THE COURT: What would that provide?

MR. BATCHELOR: That motion would make clear that under the record before your Honor, and consistent with the Bank of New York affidavit which was submitted earlier, that the payments made are made entirely outside the United States through foreign entities beyond this Court's jurisdiction.

THE COURT: Payments are made by whom?

MR. BATCHELOR: The payments are made by Argentina.

THE COURT: All right. That's the crucial thing. The payments are made by the Republic of Argentina, and.

MR. BATCHELOR: And, your Honor, in regard --

THE COURT: I wasn't finished.

MR. BATCHELOR: Oh.

THE COURT: Nothing that you have said indicates to me that paragraph two of the amended February 23, 2012 order does not apply to payments made by the Republic, and I'll read that again. Whenever the Republic pays any amount due under terms of the bonds or other obligations issued pursuant to the Republic's 2005 or 2010 exchange offer, or any subsequent exchange or substitution for and so forth, the Republic shall, concurrently or in advance, make a rateable payment to NML. In other words, it's talking about, as you know, the pari passu requirement that the Court of Appeals has -- I held applied and the Court of Appeals has affirmed on that.

Now, what is governed by the overriding rules and regulations is the obligation of the Republic. Now, if the Republic makes payments in a way that involves Luxembourg or Denmark or whatever, it's still a payment by the Republic, and paragraph two of the order applies, and it applies to the Republic. The Republic is within the jurisdiction of the Court, the Republic agreed to the jurisdiction of the Court, and the bonds which were originally issued. And we've been through that a million times.

MR. BATCHELOR: Your Honor, just to --

THE COURT: Therefore, I'm telling you that it may be, there may be a need for a sort of special language in any order.

But I am not departing from the basic proposition that the Republic cannot make the payments or the payment that it is purported to set in motion. And that is -- that's all. I will have to leave it at that. Thank you very much.

MR. BATCHELOR: Your Honor --

THE COURT: Thank you very much.

MR. BATCHELOR: -- we respectfully object to any --

THE COURT: All right.

MR. BATCHELOR: -- any order --

THE COURT: I'm sure you object, and thank you very much.

Is there anyone else who wishes to speak?

MR. SCHAFFER: Your Honor, Eric Schaffer for Bank of New York Mellon.

THE COURT: Right.

MR. SCHAFFER: Your Honor, we're holding onto a lot of money right now in an account in Argentina. We need to figure out what to do with it; either to keep it in that account, to move it to an account in New York, and perhaps what's most appropriate procedurally is that we file an interpleader action so that all of this is properly before you and the Court can determine.

THE COURT: There is no need for an interpleader action. What is needed is this. The Republic had no business making any payment to your bank in the way and for the purpose

that it did. It was improper. It was a violation of court orders binding on the Republic, and the Republic in making a payment to you or your bank was in violation. Your bank didn't do anything wrong. Your bank simply received it and then properly held onto it.

MR. SCHAFFER: Yes, your Honor.

THE COURT: That's very very good that you did. But I would think that the money should simply be returned to the Republic, simple as that. They had no business paying. And, obviously, I imagine you like a deposit in your bank of a few hundred million dollars, and that's great, but it shouldn't even be there. And I will count on Mr. Cohen to draft an order. That money should be returned. It should never have been paid, and it should be returned.

Now I'm going to leave it at that. Thank you very much.

MR. SCHAFFER: Yes, your Honor.

MR. COHEN: Your Honor, could I conclude with just two thoughts? One is --

THE COURT: What did --

MR. COHEN: This is Robert Cohen, your Honor.

THE COURT: Someone else was standing.

MR. COHEN: I'm very sorry.

MR. SPENCER: Your Honor, Michael Spencer from Milberg. I think your Honor will recall that we had a brief

conference in the robing room after last week's court conference regarding five small actions by bondholders. I am simply asking your Honor to conclude the discussion we had, and I request that you sign the orders that we have submitted to the Court with respect to those five matters.

THE COURT: I don't recall, what do they provide?

MR. SPENCER: Your Honor, they provide for equivalent parallel injunctive relief for five bondholder plaintiffs in prejudgment cases. And you may remember that Mr. Boccuzzi at the time said that he didn't see any reason that those cases should be treated differently from the cases your Honor has already ruled in; he needed to check with his client.

He raised some problems this week, which have been addressed to the Court in two letters. And we could either see your Honor again or allow you and your assistants to resolve it on the papers that the Court has.

MR. BOCCUZZI: Your Honor, just briefly. We were in the robing room and I just received the papers or got them the day before. They're basically more me too applications by Mr. --

THE COURT: Now what is meant by that?

MR. BOCCUZZI: The pari passu injunctions that we've been talking about, it's just additional folks that Mr. Spencer represents saying I want that injunction too for me. And so --

THE COURT: Why shouldn't he get them?

MR. BOCCUZZI: Well, when I looked at the papers, one of the plaintiffs didn't even put in proof that they owned a bond. Another one has -- so there are just some issues that I spotted.

And I also noted in my letter opposing it that there is no need at this point to add on additional injunctions, because part of our issue has been this whole situation of having to deal with all the hold outs.

And so at this point the equities seem to counsel just keep the status quo. He's already in the room in terms of he's got some clients with pari passu injunctions. But at this point one me too among, there are others in the wings, it's just opening the flood gates and it seems unnecessary.

THE COURT: I tend to agree with that.

MR. SPENCER: Your Honor --

THE COURT: Let me finish.

MR. SPENCER: yes.

THE COURT: We all know that NML and the other, NML and what is the other?

MR. SPENCER: Aurelius.

THE COURT: Aurelius. NML and Aurelius are not the only parties who may have rights under the pari passu clause. We know that.

But at this point -- and their rights aren't going to go away. But at this point in order to have some sensible

organization of settlement discussions and so forth, it seems to me that it is not a good thing for me to start signing additional orders. So your clients have their rights, but I'm not going to sign additional orders. Thank you very much.

I think we'll adjourn now.

MR. SCHAFFER: Your Honor, if I may? Your Honor, Eric Schaffer for Bank of New York.

We understand the Court does not want to subject us to any conflicting obligations under Argentine law or to the bondholders.

What I would propose, your Honor, is we will work with Mr. Cohen as best as we can to see if we can't craft something that truly leaves the Bank of New York Mellon not exposed to any liability where it has complied with your Honor's order.

THE COURT: Well, you should do that.

MR. SCHAFFER: Yes.

MR. COHEN: Your Honor, we've imposed on your vacation time more than we should have, and I apologize for that.

We, for my clients and the others plaintiffs assure you we are available at any time, principals and lawyers, to meet with the Special Master to engage in negotiations. That has always been our posture, and we hope that Argentina and its principals will make themselves available, your Honor.

THE COURT: Look, I'm going to just urge, hope, whatever you can say to Mr. Blackman and Mr. Boccuzzi to get

the Republic to the table.

And let's adjourn at that. Thank you.

MR. BOCCUZZI: Thank you, your Honor.

(Adjourned)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

NML CAPITAL, LTD., et al.,

Plaintiffs,

v. 08 CV 6978 (TPG)

THE REPUBLIC OF ARGENTINA,

Defendant.

----------x

New York, N.Y.
August 1, 2014
11:00 a.m.

Before:

HON. THOMAS P. GRIESA,

District Judge

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Special Master

(In open court; case called)

THE DEPUTY CLERK: In the matter of *NML Capital v. The Republic of Argentina.*

THE COURT: Good morning everyone.

I felt that in view of the events this week there should be a meeting in court to clarify where we go from here. This week the Republic of Argentina did not make the payments of interest to what we refer to as the exchange bondholders. That meant that there was no invocation of the *pari passu* provision and certain requirements which would have to be carried out if the payment to the exchange bondholders had been made. Such payment was not made.

Now, whether that is called a default in language which bears upon the interests of insurance companies, etc., that is not a matter that I want to get into as far as definition and linguistics. The main thing is the payment of interest was not made to the exchange bondholders. However, the obligations of the Republic of Argentina remain, and I say "obligations," plural, and I want to come back to that. But what occurred this week did not distinguish or reduce the obligations of the Republic of Argentina. We did not have a bankrupcy proceeding or an insolvency proceeding or anything which would remove or change the obligations.

Now, the Republic has issued public statements which have been highly misleading and that must be stopped and I am

counting on their counsel, Cleary Gottlieb, to monitor that and to stop that or help stop that by giving good advice to their client.

What I have in mind is this: The Republic has two basic contractual obligations, debt obligations. Two. Not one, but two. The first is the obligation to the parties who exchanged their bonds for new bonds and those exchanges occurred in 2005 and 2010. The second obligation is the obligation to the parties who did not make exchanges, who I believe either have judgments or are entitled to judgments and for shorthand purposes today I will call them "judgment creditors." The obligation to the judgment creditors is their -- I almost, and then I stopped myself, I almost talked about something like the importance of the substantiality. That is not anything for the Court to discuss. These are obligations, judgment creditor obligations, and they are there. So the Republic has two kinds of obligations that are essential for purposes of the discussion now: first, the obligation to the exchange bondholders; and, second, the obligation to the judgment creditors.

Now, what has occurred in recent times are public statements of one kind or another in which the Republic talks about its willingness and desire to pay its debts, but in those public statements only one of the debts is talked about. Maybe there is some indirect cryptic reference to something else, but

the thing that is talked about are the obligations to the exchange bondholders, and the Republic lays emphasis on its willingness and desire to pay those exchange bondholders, obviously pay the interest to them. All of that, as presented by the Republic in public statements, is highly misleading.

In the first place, half-truths are not the same as the truth. People who take an oath on the witness stand swear to tell the whole truth. So half-truths are false and misleading and that is what has been going on in the public releases of the Republic of Argentina. The Republic has talked about, with considerable emphasis and so forth, its readiness and willingness to make payment of its debt, but all it is talking about is the payment to the exchange bondholders. To put it in simple language, that is a half-truth. Half-truths do not comply with the law, which requires disclosure of facts. Any disclosure of facts about the obligations of the Republic of Argentina must talk about the two obligations that the Republic has. Anything short of that is false and misleading, and I am counting on the counsel for the Republic to take steps to stop the false and misleading material issued by the Republic. Obviously the Republic can disagree with the Court, can criticize the Court. I am talking about factual misrepresentations, and that must stop.

Now, I want to go into a little history. The reason I am doing it is that in the history of this litigation, which

goes back 10 or so years, the law has been applied. Why do I even talk about such a thing? The reason is to make sure that we have a little idea of the history of the application of the law in the case and that we continue applying the law in the case. Maybe that does not need to be said, but I think a little history would be in order.

After the default in around 2002, judgments were entered pursuant to the agreement that such agreements would be entered in the event of a default. So there were people to whom the Republic owed money who had rights accruing at that time and certain rights were reduced to judgments, some not quite so soon and so forth. But there were the creditors who had their rights that accrued at the time of what is admittedly a default that occurred around 2002. What occurred after that was various efforts by the plaintiffs to recover on their judgments and this took the form of efforts to find what could be considered to be assets of the Republic and efforts to in effect execute on those assets. One prominent illustration of that was the fact that -- I think I have this right, if not subject to minor correction -- the Central Bank had a deposit with the Federal Reserve of about a hundred million dollars and the plaintiffs sought to recover that and apply it to their judgments, contending that the Central Bank was the alter ego of the Republic and so forth. I held in favor of the plaintiffs and I was reversed by the Court of Appeals. So that

effort failed.

Other efforts were made through the years to find assets which could be taken and applied to the judgments, and on each occasion the Republic invoked the law in order to defeat those efforts. The Republic was in court with briefs and arguments invoking the law to defeat the efforts of the plaintiffs to recover on their judgments either in the District Court or the Court of Appeals or both. The Republic was largely successful. More than largely. I think it was successful except in one small instance. The reason I mention this is that the Republic was in court repeatedly over those years invoking the law. There was no name calling. There was simply a professional process in several cases, several instances to brief and argue the law and the facts in a thoroughly professional way.

Now, a major change occurred, and I think it started around 2010, and that is that the plaintiffs invoked what is known as the *pari passu* theory or clause or whatever it was, meaning that if the Republic was making payments to certain classes of creditors, the *pari passu* clause required some payment under that clause or that theory to the plaintiffs. I won't try to get into technicalities or definitions or ratios or anything, but that was the basic idea. If the Republic was making payments to exchange bondholders, the *pari passu* clause or concept required some payment *pari passu* to the plaintiffs.

The District Court held that the *pari passu* concept did indeed apply under the existing contractual arrangements as they were phrased and drafted and the Court of Appeals affirmed. This produced a very large change in the handling of the various claims of the various parties.

Unfortunately during the eight or ten years or so before the appearance in our discussions of the *pari passu* clause, the Republic had treated the judgment creditor debt as basically nonexistent. There were statements of high officials, and I think there was even some legislation in the Argentine Congress, to the effect that debt would not be paid. This was most unfortunate because it was lawless. The judgment debts were valid debts validly entered pursuant to the original contractual provisions in the bonds. So to treat those judgment debts in the way the Republic did was lawless. But we arrived at a new regime with the *pari passu* matter being a very important part of the consideration of the parties and the Court, so things changed.

On November 21, 2012, the Court entered an order carrying out previous rulings of the Court and rulings of the Court of Appeals in which there was a provision carrying out what I described, and in the form of a provision, that in the event of payment by the Republic to the exchange bondholders of interest or principal, there would need to be payment under the *pari passu* provision to the plaintiffs.

Now, I have talked about the Republic's reliance on the law and I didn't really need to do that, but the thing that to be emphasized is that the law was put into effect in dealing with the relationship between the Republic and its bondholders on the one hand and the plaintiffs with their rights under the *pari passu* concept on the other hand. That sounds awfully complicated, but basically what is required is to deal with two sets of rights. Obviously people who exchanged their bonds and should be paid interest by the Republic have their rights; but the people who have a judgment or judgment creditors and have judgments have their rights. Judgments confer rights. Should that need to be said? Yes, it needs to be said because the Republic in both practice and in public statements has attempted to ignore that.

Now, what was going to be done with the various obligations of the Republic and the rights of other parties? What was to be done with all of that? There weren't going to be anymore judgments. We're not dealing with new lawsuits. We're dealing with recovery on judgments in lawsuits or recovery on settlement agreements. So what was going to be done? Well, if the Republic had wanted and had been able to pay off all of its obligations, that would have ended things there, but that was not going to happen. Consequently, it was evident that the only thing that would resolve the problems created by the various rights and obligations was an attempt to

reach a settlement. It was the only avenue.

I should say I got word somehow that the Republic wanted to send up a delegation to meet with me about settlement. Well, as a judge, I could not do that because I might be talking about settlement one day and having to make a ruling the next day. So it is out of the question for me personally to get involved in settlement. But the idea of settlement was of course a good one. What I did was to appoint a special master to deal with settlement discussions, Daniel Pollack. He has done so. He has worked with the parties for some weeks now to try to work out a settlement. He is a highly competent attorney and, despite some absolutely fallacious references in some forms of the press, he is completely impartial. If he weren't, I would remove him or I would have never appointed him. But he is completely impartial and has demonstrated his impartiality in trying to work with the parties to come up with a settlement.

No settlement was arrived at as of this week, as of June 30, not for want of a great deal of hard work on the part of the Special Master. Where does that leave us? It leaves us to keep going. The debts are not extinguished. There is no bankruptcy, no insolvency proceeding. The debts are still there. The obligation and really the desirability of having interest payments made to the Republic's exchangers is there. The obligation and really the desirability of dealing with the

lawfully acquired judgment debts or the lawfully acquired judgments -- judgments -- all of that should be dealt with. It can't be left hanging. What is to happen, another 10 years of irresolution? No.

Consequently, I want to make it clear that the order appointing Daniel Pollack as special master is still in effect. The requirement of the parties to cooperate with him contained in that order is still in effect, and nothing that has happened this week has removed the necessity for working out a settlement and working with Mr. Pollack to effectuate such a settlement.

Everyone in this court knows that sometime somehow these issues will be settled. That is what happens in the legal world. But it is very important to proceed as promptly as possible with that. It is important to get the people who are owed interest on their exchange bonds, get them paid. It is important to have the rights of the judgment creditors taken care of. But it is not a matter of saying, as the Republic does, We're ready to pay the interest to the exchangers, as if that were the end of the story. It is not the end of the story. There is law which comes into play, law which comes into play which imposes certain requirements. The Court of course is not going to depart from the law, but within the law there can be a settlement.

So the purpose of the Court is simply to keep going in

the work that is necessary to resolve the issues and not stop.

MR. BLACKMAN: Your Honor, Jonathan Blackman on behalf of the Republic of Argentina. We appreciate everything that the Court has said. I assure the Court, and anyone who is listening, that the Republic of Argentina is committed to a process of dialogue. We agree with the Court that ultimately a settlement is the only way to resolve all of this. I want to make some remarks to just put the Republic's position on this into perspective for the Court.

First, the Court mentioned and defined the class, if you will, "judgment creditors." That group, which is often called "holdouts," actually consist of persons who hold judgments and persons who have claims but do not yet have judgments. I think when your Honor said everyone is already here, unfortunately that is not true. This week alone two new complaints were filed by holdouts. In those complaints, among other things, there were requests to enforce their alleged *pari passu* rights. So we have said from the beginning that what is needed is a resolution not just with these plaintiffs -- obviously there needs to be a resolution with them -- but with the entire group of holdouts whose claims are roughly estimated with interest at approximately $20 billion and all of of them are at least asserting the same *pari passu* rights. What makes it so difficult is your Honor said that *pari passu* meant "some payment," but unfortunately the Court's ruling, as affirmed by

the Court of Appeals, makes some payment equal 100 percent payment. We all know that 100 percent can't be a settlement, but that is a quite heavy hammer to be wielding and it needs to be somehow addressed in the context of a settlement discussion. That is one major issue and one major constraint on the settlement process.

The other is the RUFO clause, which we have discussed. The fact that for the Republic even to make any offer to the holdout universe until the end of this year would trigger RUFO rights on behalf of that other group that the Court mentioned, the exchange bondholders. As the Court rightly said, the Republic has obligations to them, and those obligations until the end of the year are not simply to pay interest when due, but also to respect the RUFO clause. So we really have a situation where the old image of upper and nether millstone crushing is very real, because we have engaged with the Special Master over the last weeks in extensive discussions, the Minister of Economy of Argentine has come New York several times, the Attorney General of Argentina has come to New York several times, and these are unprecedented actions in the world of sovereign debt. The government of Argentina has sought to find a solution in the time available, which is really very short. Given the global and potential *pari passu* claim (upper millstone) and the RUFO (nether millstone), we couldn't get there; but we intend in good faith to pursue this dialogue,

which has to be a dialogue that actually does resolve all of this. It is not enough to say, Well, let's just sort of reach an agreement, even if we could, with these four plaintiffs. It has to be global and it has to involve all of the debt, including obviously meeting obligations to the exchange bondholders and also dealing with pending and an everyday increasing number of claims in this court and claims that have not been brought. Everyone I think is going to do their best to get there.

I have to raise another point, which is supported and instructed by my client to do so, so I will do so. These are the instructions of the Republic of Argentina. At the end of the discussions on Thursday, the Special Master issued a press release, which I think was unfortunate. It was unlike other press releases, obviously not in consultation of the parties and certainly not in consultation with my client. The Republic of Argentina believes that it does not give a full picture of the situation and that it was frankly harmful and prejudicial to the Republic in its impact on the market, in the situation that it created for other persons such as holders of credit default swaps. That has caused deep concern, which I have been instructed to convey to the Court. Obviously a dialogue with an intermediary appointed by the Court has to be one that is conducted with full confidence and openness, and I have been instructed to inform the Court that the Republic of Argentina

no longer has that confidence in the process as currently constituted under the Special Master and would ask the Court to consider other means of facilitating dialogue because dialogue is critically important. The dialogue does require trust. It is the trust that brought the Minister of Economy here on several occasions and has been in, I think, almost daily contact with the Special Master and has brought the Attorney General here. We need to have a feeling of confidence in going forward with this process to which the Republic is very much committed.

Thank you.

THE COURT: You made very valid points, which we all take very seriously. Before I respond any further, I will be back to you, Mr. Blackman.

MR. COHEN: Robert Cohen from Dechert for plaintiff NML. For these purposes, I am speaking for all of the plaintiffs.

We were going to come here this morning, your Honor, and ask you to do exactly what you have directed, that the negotiations that have been conducted by Special Master Pollack continue. We're hopeful that a resolution can be reached. Mr. Pollack has managed after 13 years to get the parties in the same room. Only in the last three days did that happen, notwithstanding about four weeks of discussions. We actually sat in the same room with the Minister of Economy and had a

dialogue. The only reason that the Republic has now objected to continuing with Mr. Pollack is the press release that merely recorded the facts. He reflected the circumstances and the fact that default has occurred. The Republic wants to characterize these events as a technical default because they attempted to make an illegal payment to the Bank of New York. The fact is, and the world knows, that they are in default. To choose another mediator at this crucial moment would derail what we think has been effective negotiations. We urge you not to replace the Special Master. We think that any difficulties can be overcome very quickly.

With respect to the other issues that Mr. Blackman has raised that we need to deal with, the whole universe of other issues, I think we ought to let the Special Master resolve the matters that are before him and we have a strong expectation that the rest will follow if we can do that.

Thank you.

THE COURT: Let me respond to both of you. I know of nothing that the Special Master has done except to negotiate with the parties and he has made progress. Something had to be said to the public. If the word "default" was used, well, it can hardly be said to be inaccurate when payments were due to exchange bondholders, payments of interest, and such payments were not made. So it is hardly anomalous to call that a default.

What I have done today, and Mr. Blackman was very gracious about indicating the cooperation to do what I talked about, and that is regardless of what happened at midnight or didn't happen at midnight Wednesday, or whenever the day was, regardless of that, regardless of whether it is called a default or not, regardless of that, the important thing -- the important thing -- is that the obligations remain and have to be dealt with. That is the essential thing. There is no reason whatever to even contemplate bringing somebody in as a new special master. I am not sure that Mr. Blackman even voiced such a thing, but I suppose it was implied. That would be about as poor a way to administer a court as I could even conceive.

Now, if -- I am sure this is true -- Mr. Blackman is talking about the desires of his client to negotiate in good faith, the only sensible way to do that is to go forward in the path that has been started, and let's cool down any ideas of mistrust or whatever. What can be trusted is facts. What can be trusted is proposals. What can be trusted is recommendations. That is what is important. This is not a personality contest or anything like that. This is a matter where substance is important and substance is difficult. So let's get back to work on matters of substance, and I will expect to hear that you are back to work.

With that, we will adjourn our hearing.

MR. COHEN: Thank you, your Honor.

THE COURT: Wait a minute. One minute. One minute. I think I left something out.

I have signed a jointly proposed order and copies are available. Thank you.

MR. FARBER: Your Honor, what is the subject matter of the order?

THE COURT: Regarding Clearstream and Euroclear.

MS. WEISS: Your Honor, before the Court adjourns, may I be heard briefly on behalf of J.P. Morgan with respect to the order that the Court has signed?

THE COURT: Sure.

Sit down everybody, please.

MS. WEISS: Thank you, your Honor. My name is Andrea Weiss. I represent J.P. Morgan.

J.P. Morgan has also filed a letter request for clarification with respect to the Court's orders relating to the payment of the Argentine local law U.S. dollar bonds. The order that the Court signed today would permit Citibank, Euroclear, and Clearstream to pay on those bonds. However, the order that the Court signed does not give J.P. Morgan that permission. In fact, it limits payment to Citibank, Euroclear, and Clearstream. J.P. Morgan is a downstream payer and will get some portion of those funds, and we would request that the Court make clear in an order that downstream payers of the

Argentine local law U.S. dollar bonds can be paid.

THE COURT: Let me say this: I will be back in the office on Monday. Be in touch with my law clerk about what you need. That is all I can say. I don't want to do anything more today.

MS. WEISS: We'll do that, your Honor. We'll try to submit a proposed order on consent.

THE COURT: Thank you.

MS. WEISS: Thank you.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EM LTD., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	No. 14 Civ. 8303 (TPG)
MONTREUX PARTNERS L.P., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	No. 14 Civ. 7171 (TPG)
LOS ANGELES CAPITAL, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	No. 14 Civ. 7169 (TPG)

CORDOBA CAPITAL, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	No. 14 Civ. 7164 (TPG)
WILTON CAPITAL, LTD., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	No. 14 Civ. 7166 (TPG)

MEMORANDUM OF LAW IN FURTHER SUPPORT OF DEFENDANT THE REPUBLIC OF ARGENTINA'S MOTION FOR AN INDICATIVE RULING THAT THE COURT WOULD GRANT RELIEF FROM THE *PARI PASSU* INJUNCTION

Plaintiffs EM Ltd. and Montreux[1] (collectively, the "Settling Plaintiffs") respectfully submit this Memorandum of Law in support of Defendant the Republic of Argentina's Motion for an Indicative Ruling under Federal Rule of Civil Procedure 62.1 that the Court would grant Argentina relief from all of the *pari passu* injunctions entered in these and related actions (referred to as the "*Pari Passu* Injunction").[2]

[1] Montreux Partners, L.P., Los Angeles Capital, Cordoba Capital, and Wilton Capital, Ltd.

[2] Settling Plaintiffs support Argentina's motion provided that the relief Argentina seeks is granted in all the actions in which Argentina has brought its motion. That is so because if the relief Argentina seeks is not finally granted in all actions (including

PRELIMINARY STATEMENT

On October 30, 2015, this Court issued the *Pari Passu* Injunction against Argentina. *NML Capital, Ltd. v. Republic of Argentina*, ___ F. Supp. 3d ___, 2015 WL 6656573 (S.D.N.Y. Oct. 30, 2015). Settling Plaintiffs sought this remedy as a last resort, in response to Argentina's longstanding and repeated defiance of this Court's orders, and Argentina's continual efforts to frustrate satisfaction of the judgments the Settling Plaintiffs secured. Indeed, until recently, "Argentina ha[d] been a uniquely recalcitrant debtor," making "clear its intention to defy any money judgment issued by this court" and "engag[ing] in a scheme of making payments on other external indebtedness after repudiating its payment obligations to plaintiffs." *Id.* at *4, *5 (quoting *NML Capital, Ltd. v. Republic of Argentina*, 727 F.3d 230, 262 (2d Cir. 2013)). For these reasons, the Court granted the injunctive and other relief the Settling Plaintiffs sought. *Id.*

But circumstances have now changed. Argentina recently elected a new president, Mauricio Macri, who campaigned on a platform of resolving Argentina's disputes with its creditors. Shortly after President Macri's election, Argentina sent to New York a sophisticated team of senior advisors, headed by Luis Caputo, Secretary of Public Finance, and Mario Quintana, the President's Cabinet Chief, to conduct for the first time in years full and frank discussions with Argentina's creditors. Given the mandate to resolve Argentina's outstanding debt obligations, the Argentine delegation

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the actions in which Argentina is currently seeking an indicative ruling), it is the Settling Plaintiffs' understanding that Argentina will not be in a position to obtain approval of the settlements from the Argentine Congress and to complete Argentina's settlements with the Settling Plaintiffs.

initiated and participated in good faith settlement negotiations under the auspices of Daniel Pollack, the Court-appointed Special Master.

In the course of just two weeks, the delegation successfully negotiated agreements in principle with the Settling Plaintiffs which, if effectuated, would resolve a substantial percentage of the outstanding claims arising from Argentina's 2001 default. Argentina also published a proposal for settlements on very favorable terms with *all* bondholders who are covered by the *Pari Passu* Injunction. In the nearly fifteen years since Argentina's default, the events of the past several weeks demonstrate an unprecedented level of commitment by Argentina to resolving this dispute.

Given the dramatic change in circumstances, the *Pari Passu* Injunction should now be conditionally lifted in its entirety. More specifically, the *Pari Passu* Injunction should be dissolved on the condition that, and as soon as, (1) Argentina's legislature repeals legislation that has been blocking the settlement of these disputes, and (2) Argentina satisfies its payment obligations to Settling Plaintiffs and any other settling plaintiffs. By conditioning relief from the *Pari Passu* Injunction in this fashion, the Court can ensure that the injunctions will remain in place for as long as is necessary, but not a moment *longer*, to bring about a fair and equitable resolution of this long-running litigation.

The *Pari Passu* Injunction has served its purpose of forcing Argentina to "entertain meaningful settlement discussions." *NML Capital, Ltd.*, 2015 WL 6656573, at *5. Yet, without the limited relief that Argentina seeks, the *Pari Passu* Injunction will now stand as an obstacle to the resolution of these disputes. The Court should therefore

issue an indicative ruling stating that, if the Second Circuit remands the case to this Court, this Court would conditionally lift the *Pari Passu* Injunction.

FACTUAL BACKGROUND

The Settling Plaintiffs are bondholders who were the owners of debt issued by Argentina under the Fiscal Agency Agreement dated October 19, 1994 (the "1994 FAA").[3] Following an economic crisis, Argentina defaulted on its sovereign debt, including the bonds held by the Settling Plaintiffs, and the Settling Plaintiffs commenced litigation in this Court to recover on their defaulted bonds.[4] EM first brought its action in 2003 and received a final judgment in the amount of $724,801,662.56 on October 27, 2003.[5] Montreux brought actions beginning in 2005 and received final judgments in the aggregate amount of $411,950,915 in June 2009.[6] Post-judgment interest was awarded

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3 *EM Ltd. v. Republic of Argentina*, No. 03 Civ. 2507 (TPG) (Memorandum Opinion, ECF No. 30); Declaration of Kenneth E. Johns, Jr. in Support of Plaintiff's Memorandum of Law, dated Feb. 11, 2016 ("Johns Decl.") ¶ 5; *EM Ltd. v. Republic of Argentina*, No. 14 Civ. 8303 (TPG) (ECF No. 1, Annex A – 1994 FAA).

4 Johns Decl. ¶¶ 6–7; Declaration of Michael Straus in Support of the Motion of Defendant The Republic of Argentina For Indicative Ruling and For Relief From An Injunction, dated Feb. 10, 2016 ("Straus Decl.") ¶ 8.

5 *EM Ltd. v. Republic of Argentina*, No. 03 Civ. 2507 (TPG) (Amended Final Judgment, ECF No. 38), 2003 WL 22454934, (S.D.N.Y. Oct. 27, 2003) *aff'd*, 382 F.3d 291 (2d Cir. 2004).

6 *Montreux Partners, L.P. v. Republic of Argentina*, No. 05 Civ. 4239 (TPG) (Final Judgment of $48,621,544, ECF No. 30); *Cordoba Capital v. Republic of Argentina*, 06 Civ. 5887 (TPG) (Final Judgment of $100,033,967, ECF No. 31); *Los Angeles Capital v. Republic of Argentina*, No. 05 Civ. 10201 (TPG) (Final Judgment of $82,160,690, ECF No. 33); *Los Angeles Capital v. Republic of Argentina*, No. 07 Civ. 2349 (TPG) (Final Judgment of $75,139,739, ECF No. 26); *Wilton Capital, Ltd. v. Republic of Argentina*, No. 07 Civ. 1797 (TPG) (Final Judgment of $39,869,672,

on all the foregoing judgments. Argentina has not made a single voluntary payment on any judgment held by Settling Plaintiffs. Johns Decl. ¶ 6; Straus Decl. ¶¶ 10, 12, 14, 17, 19, 21–22.

Separately, Argentina has attempted two debt restructurings, one in 2005 and one in 2010. Declaration of Charles Platto in Support of Motion for Partial Summary Judgment ("Platto Decl.") Ex. A-5, Prospectuses for 2010 Exchange Offer, ECF Nos. 11-6, 11-7, 11-8, and Ex. A-7, Prospectus for 2005 Exchange Offer, ECF No. 11-10.[7] The terms of these restructurings were extremely unfavorable to the defaulted debt holders (including Settling Plaintiffs) and were presented as "take-it-or-leave-it" offers with non-negotiable terms. As part of its coercive tactics, Argentina made clear that any creditor who failed to accept these offers would receive no payment on any of its defaulted debt. Argentina also passed legislation known as the "Lock Law" to prevent negotiation with or payment to creditors who refused to accept Argentina's offers. Platto Decl. Ex. A-8, Law 26,017 with Certified English Translation, ECF No. 11-11. The Lock Law and other similar laws enacted with the same purpose are still in effect. *See NML Capital, Ltd.*, 2015 WL 6656573, at *1, *3.

In 2009 and 2010, a group of creditors who did not exchange their bonds and had not yet received judgments on that debt (the "Pre-Judgment Plaintiffs") filed suit to enforce the so-called *pari passu* clause of the 1994 FAA, whereby Argentina promised to

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ECF No. 27); *Wilton Capital v. Republic of Argentina*, No. 09 Civ. 401 (TPG) (Amended Judgment of $66,125,303, ECF No. 7).

[7] For ease of reference, all docket citations are to *EM Ltd. v. Republic of Argentina*, No. 14 Civ. 8303 (TPG), unless otherwise noted.

rank its payment obligations on the bonds issued under the 1994 FAA equally with all other present and future external indebtedness.[8] The Court held that Argentina had violated the *pari passu* clause by making payments on other external indebtedness, such as the Exchange Bonds, while repudiating its obligations on the defaulted 1994 FAA debt. *E.g.*, *NML Capital, Ltd v. Republic of Argentina*, No. 08 Civ. 6978 (TPG) (Order dated Dec. 7, 2011, ECF No. 353).

In accordance with these rulings, on November 21, 2012, the Court issued an injunction requiring that Argentina make a "ratable payment" to the Pre-Judgment Plaintiffs whenever it made any payment to the Exchange Bondholders (referred to herein as the "Original *Pari Passu* Injunction"). *NML Capital, Ltd. v. Republic of Argentina*, Nos. 08 Civ. 6978 (TPG), 09 Civ. 1707 (TPG), 09 Civ. 1708 (TPG), 2012 WL 5895786 (S.D.N.Y. Nov. 21, 2012). After affirmance by the Second Circuit and denial of Argentina's petition for *certiorari*, the Original *Pari Passu* Injunction entered into full force and effect on June 16, 2014. *NML Capital, Ltd. v. Republic of Argentina*, 727 F.3d 230 (2d Cir. 2013), *cert. denied*, 134 S. Ct. 2819 (2014).

Rather than complying with these orders, Argentina, then under the leadership of President Cristina Fernández de Kirchner, characterized the Original *Pari Passu*

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[8] *NML Capital, Ltd v. Republic of Argentina*, Nos. 08 Civ. 6978 (TPG), 09 Civ. 1707 (TPG), 09 Civ. 1708 (TPG); *Aurelius Capital Master, Ltd. and ACP Master, Ltd. v. Republic of Argentina*, Nos. 09 Civ. 8757 (TPG), 09 Civ. 10620 (TPG); *Aurelius Opportunities Fund II, LLC and Aurelius Capital Master, Ltd. v. Republic of Argentina*, No. 10 Civ. 1602 (TPG); *Aurelius Capital Master, Ltd. and Aurelius Opportunities Fund II, LLC v. Republic of Argentina*, Nos. 10 Civ. 3507 (TPG); 10 Civ. 3970 (TPG), 10 Civ. 8339 (TPG); *Blue Angel Capital I LLC v. Republic of Argentina*, Nos. 10 Civ. 4101 (TPG), 10 Civ. 4782 (TPG); *Olifant Fund, Ltd. v. Republic of Argentina*, No. 10 Civ. 9587 (TPG); *Varela. v. Republic of Argentina*, No. 10 Civ. 5338 (TPG).

Injunction as "extortion," and repeatedly announced plans to evade these injunctions by paying the Exchange Bondholders outside of this Court's jurisdiction. Platto Decl. Ex. A-22 at 5, Statement by President Cristina Fernández de Kirchner issued on June 16, 2014, with Certified English Translation, ECF No. 11-25. In response, the Court issued orders that expressly prohibited the Republic from taking steps to evade its obligations under the Original *Pari Passu* Injunction. *NML Capital, Ltd v. Republic of Argentina*, No. 08 Civ. 6978 (TPG) (Amended February 23, 2012 Order, ECF No. 425). Despite those orders and the Original *Pari Passu* Injunction, Argentina continued to attempt to make payments on other external indebtedness without paying the Pre-Judgment Plaintiffs or other creditors. It also frequently issued inflammatory public statements criticizing the rulings of this Court and the Second Circuit, and making clear that Argentina intended to defy the orders of the U.S. courts. Johns Decl. ¶¶ 8, 10; Straus Decl. ¶¶ 23, 25.

On October 16, 2014, faced with continued recalcitrance on the part of Argentina and consistent refusals to honor its obligations, EM and Montreux filed new complaints and motions for summary judgment in this Court seeking the same relief as the Pre-Judgment Plaintiffs under the *pari passu* clause of the 1994 FAA.[9] On June 5, 2015, the

[9] *EM Ltd. v. Republic of Argentina*, No. 14 Civ. 8303 (TPG) (Motion for Partial Summary Judgment, ECF No. 8), *Montreux Partners, L.P. v. Republic of Argentina*, No. 14 Civ. 7171 (Motion for Summary Judgment, ECF No. 8); *Los Angeles Capital v. Republic of Argentina*, No. 14 Civ. 7169 (TPG) (Motion for Partial Summary Judgment, ECF No. 7); *Cordoba Capital v. Republic of Argentina*, No. 14 Civ. 7164 (TPG) (Motion for Partial Summary Judgment, ECF No. 8); *Wilton Capital, Ltd. v. Republic of Argentina*, No. 14 Civ. 7166 (TPG) (Motion for Partial Summary Judgment, ECF No. 8).

Court granted the motions for summary judgment[10] and, on October 30, 2015, the Court issued the *Pari Passu* Injunction, requiring Argentina to make a ratable payment to the Settling Plaintiffs and nearly fifty other creditors whenever it paid other holders of unsecured and unsubordinated external indebtedness, such as the Exchange Bondholders.[11] On November 10, 2015, Argentina appealed this Court's October 30, 2015 order. This appeal is currently pending before the Second Circuit.[12]

In December of 2015, Mauricio Macri was elected president of Argentina, ending a twelve-year period of governance by the previous ruling party led by former President Kirchner. Johns Decl. ¶ 13; Straus Decl. ¶ 28. President Macri's election marked a sharp turning point in both the attitude and actions of the Republic with regard to its unpaid judgments and unfulfilled debt obligations. Johns Decl. ¶ 14, 17; Straus Decl. ¶¶ 29–30. Since his election, President Macri's government has consistently stated that Argentina wishes to bring an end to this debt dispute and reopen Argentina to foreign investors. *See*

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[10] *NML Capital, Ltd. v. Republic of Argentina*, 2015 WL 3542535 (S.D.N.Y. June 5, 2015).

[11] *EM Ltd. v. Republic of Argentina*, No. 14 Civ. 8303 (TPG) (October 30, 2015 Opinion and Order, ECF No. 32); *Montreux Partners, L.P. v. Republic of Argentina*, No. 14 Civ. 7171) (October 30, 2015 Opinion and Order, ECF No. 26); *Los Angeles Capital v. Republic of Argentina*, No. 14 Civ. 7169 (TPG) (October 30, 2015 Opinion and Order, ECF No. 26); *Cordoba Capital v. Republic of Argentina*, No. 14 Civ. 7164 (TPG) (October 30, 2015 Opinion and Order, ECF No. 26); *Wilton Capital, Ltd. v. Republic of Argentina*, No. 14 Civ. 7166 (TPG) (October 30, 2015 Opinion and Order, ECF No. 26).

[12] *EM Ltd. v. Republic of Argentina*, No. 14 Civ. 8303 (TPG) (Notice of Appeal, ECF No. 33); *Montreux Partners, L.P. v. Republic of Argentina*, No. 14 Civ. 7171 (Notice of Appeal, ECF No. 27); *Los Angeles Capital v. Republic of Argentina*, No. 14 Civ. 7169 (TPG) (Notice of Appeal, ECF No. 27); *Cordoba Capital v. Republic of Argentina*, No. 14 Civ. 7164 (TPG) (Notice of Appeal, ECF No. 27); *Wilton Capital, Ltd. v. Republic of Argentina*, No. 14 Civ. 7166 (TPG) (Notice of Appeal, ECF No. 27).

Johns Decl. ¶ 13, Straus Decl. ¶ 28. In January of 2016, President Macri's government reopened debt negotiations with its creditors, including the Settling Plaintiffs, by sending a delegation of senior government officials to commence negotiations under the auspices of the Court-appointed Special Master. Johns Decl. ¶ 14; Straus Decl. ¶¶ 29–30.

On February 3, 2016, each of the Settling Plaintiffs reached an agreement in principle with Argentina to settle the outstanding dispute. Johns Decl. ¶ 15; Straus Decl. ¶ 30. Each agreement is contingent upon (1) Argentina's repeal of the Lock Law, and (2) lifting of the *Pari Passu* Injunction and the Original *Pari Passu* Injunction in all cases. *Id.*

In addition, on February 5, 2016, Argentina publicly released a proposal which, if approved by the Argentine Congress, would extend a settlement offer to all holders of defaulted bonds covered by the 1994 FAA. Johns Decl. Exhibit A, Copy and Certified Translation of Settlement Proposal of Feb. 5, 2016. The offer, which is also contingent on the repeal of the Lock Law and the lifting of the *Pari Passu* Injunction and Original *Pari Passu* Injunction, is extremely attractive to Argentina's creditors. Argentina's new approach has attracted the attention of commentators, who have applauded Argentina's public proposal and urged Argentina's creditors to accept it.[13]

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[13] *E.g.*, Reynolds Holding and Martin Langfield, *Argentine Offer Opens Way for a Debt Settlement*, N.Y. Times, Feb. 8, 2016, *available at* http://www.nytimes.com/2016/02/09/business/dealbook/argentine-offer-opens-the-way-for-a-debt-settlement.html?_r=0; Paul Kilby, *Argentina Debt Outperforms on Holdout Offer*, Reuters, Feb. 8, 2016, *available at* http://www.reuters.com/article/argentina-bonds-idUSL8N15N34O; *A reasonable deal to end Argentina's debt saga*, Financial Times, Feb. 8, 2016, *available at* http://www.ft.com/intl/cms/s/0/d1efd5aa-ce5d-11e5-92a1-c5e23ef99c77.html#axzz3zmKjghrj.

ARGUMENT

I. This Court Has The Authority To Issue An Indicative Ruling.

Federal Rule of Civil Procedure 62.1 gives this Court authority to issue an indicative ruling where, as here, a party wishes to modify an injunction that is presently on appeal. The rule states that: "[i]f a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may: (1) defer considering the motion; (2) deny the motion; or (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue." Fed. R. Civ. P. 62.1(a). Rule 62.1 thus provides a "clear procedure [which] is helpful whenever relief is sought from an order that the court cannot reconsider because the order is the subject of a pending appeal." Fed. R. Civ. P. 62.1 Advisory Committee Notes (2009). Here, of course, the Court lacks authority to modify the *Pari Passu* Injunction because Argentina appealed the Court's October 30, 2015 order, and the matter remains on appeal. But for the reasons set forth below, the Court can and should issue an indicative ruling that it would conditionally lift the *Pari Passu* Injunction if the Court of Appeals were to remand the case to the Court for that purpose.

II. This Court Should Issue An Indicative Ruling That It Would Lift The *Pari Passu* Injunction Because The Factual Circumstances Justifying That Injunction Have Fundamentally Changed.

The Court should indicate to the Second Circuit that, if the case were remanded to it, it would conditionally lift the *Pari Passu* Injunction. The Court has the inherent authority to modify injunctive decrees like the *Pari Passu* Injunction, while Rule 60(b) permits the Court to grant relief from a final order on specified grounds, including, as here, when "applying [the Order] prospectively is no longer equitable." Fed. R. Civ. P.

60(b)(5), (6). That is demonstrably the case here, because the circumstances that justified issuance of the *Pari Passu* Injunction have now dramatically changed.

The *Pari Passu* Injunction succeeded in incentivizing Argentina to return to the negotiating table and address its payment obligations, and has therefore served its purpose. The public interest is consequently best served by conditionally lifting that extraordinary relief, thereby permitting Argentina to settle its disputes with Settling Plaintiffs and other creditors willing to engage in good-faith negotiations with Argentina. In the circumstances, "continued enforcement of the [*Pari Passu* Injunction] is not only unnecessary, but improper." *See Horne v. Flores*, 557 U.S. 433 (2009).

A. Argentina Has Demonstrated That It Is No Longer Repudiating Its Payment Obligations.

In entering the *Pari Passu* Injunction, this Court emphasized that Argentina had caused plaintiffs irreparable harm by violating its contractual obligations under the 1994 FAA and by "ma[king] clear its intention to defy any money judgment issued by this court." *NML Capital, Ltd.*, 2015 WL 6656573, at *4. The Court further stressed Argentina's "reluctance to entertain meaningful settlement discussions before the Special Master." *Id.* at *5.

But these circumstances no longer exist. Instead, shortly after the election of President Macri, Argentina deployed a sophisticated team of senior economic and political advisors led by Luis Caputo, Secretary of Public Finance, and Mario Quintana, the President's Cabinet Chief. That team engaged, for the first time in years, in full and frank discussions with external creditors with a view to realizing the President's commitment to resolving its outstanding debt obligations. Further, abandoning its past

defiance, Argentina honored this Court's appointment of a highly experienced Special Master by submitting to his oversight and entering into good faith, confidential negotiations, all as facilitated by him with firmness, thoughtfulness, and patience. These negotiations ultimately resulted in agreements in principle with the Settling Plaintiffs, representing resolution of a substantial portion of existing creditors' claims. Johns Decl. ¶¶ 14-15; Straus Decl. ¶ 30.

In addition, Argentina has publicly proposed to all bondholders to pay 100 percent of outstanding principal of the defaulted bonds and a significant percentage of the interest owed, which in some cases is many times the underlying principal of the bonds. Johns Decl., Exhibit A. This proposal will result in a full recovery for many bondholders and a substantial recovery for all bondholders who accept the proposed settlement with Argentina. Argentina's proposal is exactly the type of conduct that should "alleviate the . . . concerns" that the Court articulated when it issued the *Pari Passu* Injunction. *NML Capital, Ltd.*, 2015 WL 6656573, at *4.

B. The Relief Being Sought From The *Pari Passu* Injunction Is Conditioned On Further Concrete Action By Argentina.

It is also significant that Argentina has not requested the immediate and unconditional lifting of the *Pari Passu* Injunction. To the contrary, if the Court enters the proposed order being sought by Argentina, the *Pari Passu* Injunction would remain in effect until Argentina actually *performs* on its commitment to settle unpaid judgments and claims. Specifically:

1. Argentina must repeal or abrogate the Lock Laws, which have prohibited Argentina from entering into settlements or recognizing this Court's

judgments. Def.'s Proposed Order, ECF No. 34-2, at 15–16. Argentina's past decision to enact those laws — which will be repealed prior to the lifting of the injunction — was an important reason cited by the Court for granting the *Pari Passu* Injunction. *NML Capital, Ltd.*, 2015 WL 6656573, at *1, *3.

2. Argentina must pay in full the Settling Plaintiffs and any other creditors that accept the proposed settlement offer. Def.'s Proposed Order, ECF No. 34-2, at 15–16. Again, in issuing the *Pari Passu* Injunction, the Court sought to remedy Argentina's past refusal to honor its commitments to its creditors. *NML Capital, Ltd.*, 2015 WL 6656573, at *4-5.

Argentina has proposed significant conditions. Its willingness to condition relief from the *Pari Passu* Injunction on the payment in full of substantial monetary settlements is compelling evidence of its sincerity and good faith, and stands in stark contrast to the contumacious policies of the prior administration. And the Court's retention of jurisdiction should allay any concern that Argentina may return to its old ways.

C. The *Pari Passu* Injunction No Longer Serves The Public Interest, And The Balance Of The Equities Favors Lifting The Injunction.

The *Pari Passu* Injunction has, up to now, served the public interest. It provided bondholders with protection from unequal treatment in light of Argentina's repeated attempts to pay the Exchange Bondholders in contravention of court orders. It also created conditions that encouraged settlement negotiations among the parties. Further, the *Pari Passu* Injunction succeeded in "serv[ing] the public interest of enforcing

contracts, maintaining confidence in debt markets, and upholding the rule of law." *NML Capital, Ltd.*, 2015 WL 6656573, at *5. Argentina's recent settlement proposals demonstrate that the *Pari Passu* Injunction has furthered the goal described by the Second Circuit of "maintaining New York's status as one of the foremost commercial centers, [which] is advanced by requiring debtors, including foreign debtors, to pay their debts." *Id.* (quoting *NML Capital, Ltd. v. Republic of Argentina*, 727 F.3d 230, 248 (2d Cir. 2013)).

At this point, however, maintaining the *Pari Passu* Injunction would disserve the public interest and contravene the strong public policy favoring the settlement of disputes. *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005). Argentina has a new regime and has taken decisive action to resolve these pending disputes by proposing very reasonable settlement terms to all bondholders. Johns Decl. ¶¶ 15–16; Straus Decl. ¶¶ 30–31. In this changed landscape, the balance of the equities now favors conditionally lifting the *Pari Passu* Injunction, to facilitate completion of the settlements in principle among Argentina and the Settling Plaintiffs and to facilitate settlements with other bondholders who may accept Argentina's proposal. Maintaining the *Pari Passu* Injunction at this stage would substantially prejudice both the Settling Plaintiffs and other bondholders who may wish to settle with Argentina but cannot do so because the *Pari Passu* Injunction remains in force.

CONCLUSION

For the foregoing reasons, the Settling Plaintiffs respectfully request that this Court issue an indicative ruling under Federal Rule of Civil Procedure 62.1 that it would

grant Argentina's motion to lift the *Pari Passu* Injunction, subject to the conditions set forth in the proposed order.

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Respectfully submitted,

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BloombergBusiness

Argentina Plans $11.7 Billion Bond Sale to Yield About 7.5%

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- Country will issue 3 bonds with maturities of 5, 10, 30 years
- Argentina won't make blanket offer on expired bonds: Prat-Gay

Argentina plans to mark its return to global capital markets in mid-April by issuing $11.68 billion of bonds to yield 7.5 to 8 percent, Finance Ministry officials told Congress while presenting a debt bill to clear the way for a settlement with most holdout creditors.

After reaching a milestone deal with the largest holdout creditors led by billionaire Paul Singer, Argentina must repeal debt laws that prevent it from reopening previous bond restructurings and paying bondholders abroad. U.S. District Judge Thomas Griesa said this week that he'll lift an injunction blocking the country from paying foreign debt once Congress acts and the settlements are paid.

South America's second-largest country will issue three bonds with maturities of 5, 10 and 30 years in mid-April, close to the April 14 deadline set to make good on payments to creditors, Finance Secretary Luis Caputo said. The government, which will sell the bonds under New York law, expects yields to fall to about 6 percent in the short term on ratings upgrades and on improving outlooks for the country's fiscal and monetary situation, he said.

"We're not exempt from what happens in the world but given the current situation, there is a phenomenal demand for Argentine credit," Caputo said. "We're not going to have any problem, according to banks and investors, in attracting this money in order to normalize payments."

President Mauricio Macri has moved swiftly to regain market access and untangle economic controls on the peso and trade since taking office on Dec. 10 in a bid to stoke growth in South America's second-largest economy. The nation has been locked out of global markets since a record $95 billion default in

2001 and has been unable to pay holders of restructured foreign law bonds since another cessation of payments in July 2014 due to the court orders.

Congress must repeal the so-called Lock Law, which prevents the nation from offering better conditions than those offered in debt restructurings in 2005 and 2010 as well as the Sovereign Payment Law, promoted by former President Cristina Fernandez de Kirchner in 2014 to change the domicile of payment to Argentina. Lawmakers must also approve the accord with holdouts and the debt issuance.

The country wants to “leave the path open for provinces which also need credit,” Caputo said, when asked about the dangers of crowding out other issuers from companies to regional governments. The Province of Buenos Aires is among those looking to issue debt, and began investors meetings in the U.K. on Friday.

Finance Minister Alfonso Prat-Gay said Argentina won’t make a blanket offer on expired bonds and isn’t concerned about new litigation on those securities.

Former Economy Minister Axel Kicillof criticized the agreement as being “rushed” and questioned why the government plans to use international banks to issue the bonds. He also disputed Prat-Gay’s argument that access to credit would allow the government to fund the deficit and avoid a severe economic adjustment.

• Argentina • Debt • Bonds • Congress