16-0628-cv(L),

16-0674-cv(MEM), 16-0675-cv(MEM), 16-0677-cv(MEM), 16-0681-cv(MEM), 16-0682-cv(MEM), 16-0683-cv(MEM), 16-0684-cv(MEM), 16-0686-cv(MEM), 16-0687-cv(MEM), 16-0688-cv(MEM), 16-0690-cv(MEM), 16-0691-cv(MEM), 16-0695-cv(MEM), 16-0696-cv(MEM), 16-0697-cv(MEM), 16-0698-cv(MEM)

United States Court of Appeals
for the
Second Circuit

AURELIUS CAPITAL MASTER, LTD., ACP MASTER, LTD., BLUE ANGEL CAPITAL I LLC, BANCA AMER SA, BRANTFORD, HOLDING SA, AURELIUS OPPORTUNITIES FUND II, LLC, FFI FUND, LTD., FYI LTD., NML CAPITAL, LTD.,

(Caption Continued on Next Page of Cover)

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

JOINT BRIEF FOR PLAINTIFFS-APPELLANTS ARAG-A LIMITED, ARAG-O LIMITED, ARAG-T LIMITED,

(Parties Continued on Last Page of Cover)

DUANE MORRIS LLP
Attorneys for the following Plaintiffs-Appellants: All Plaintiffs-Appellants in the Adami appeal, ARAG-A Limited, ARAG-O Limited, ARAG-T Limited, ARAG-V Limited, Attestor Value Master Fund, Bybrook Capital Hazelton Master Fund LP, Bybrook Capital Master Fund LP, Claridae Ltd., Maria Del Pilar De We Ferrer, MCHA Holdings, LLC, Stonehill Institutional Partners, L.P., Stonehill Master Fund Ltd., Trinity Investments Limited, and White Hawthorne, LLC, as well as Interested Plaintiffs Honero Fund I, LLC, White Hawthorne II, LLC, and Yellow Crane Holdings, LLC
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OLIFANT FUND, LIMITED, RICARDO PONS, OFELIA NELIDA GARCIA, NW GLOBAL STRATEGY, VIRGILIO LUIS FOGLIA, MARIA CRISTINA ARGENT BAMA, RICARDO AURELIO TRIAY, ADELA NOEMI JURI, TORTUS CAPITAL MASTER FUND, LP, HECTOR PEREZ, MARAND INTEMATIONAL SA, LIS CARINA MEDINA, M. ALEJANDRA TERRA RISSO, WITKRON SA, GOLSUN SA, JUAN ALBERTO JOSE, JOSE LUIS QUATRINI, MARIO ALBERTO RUIZ, FARIGOLD TRADE SA, CLAUDIO MARTINEZ, FRANCISCO DE GAMBOA, SILVIA ALCIRA MURILLO DE GEBERT, ENRIQUE ANTONIO JULIO GEBERT, LAYNEL CORPORATION, LIVIO MAZZOLA, BRADFORD PROMOTIONS SA, HAMBURG CONSULTING INC., PIERINO GARRAFA, CARIOS JESUS SENDIN, EDUARDO GIBSON, FRANCISCO BASSO, FRANCA ANTONIONE, FLORENCIO PEREZ, JUAN CARIOS GRECO, RAMON ZUBIELQUI, EDUARDO ANDRES FRANCHESCHI, GELLXON CORP., ENRIQUE COHEN, MARIA ISABEL BERRAONDO, GRACIELA ZUBASTI, ADOLFO SANCHEZ BLANCO, RAFAEL ANTONIO SALAMANCA, KINBURG TRUST SA, MAZZINI, JORGE MARCELO, GRACIELA ALEJANDRA, COMPANIA CALITECNO SA, ZUM FELDE, HEINRICH PETER BARAVALLE, ANA VALERIA, ALEJANDRO PABLO BARAVALLE, EZEQUIEL HEMAN BACLINI, PATRICIA RUTH CARONNA, JOSE ALBERTO LANDI, SALVADOR SADDEMI, MARIA TERESA LEPONE, HEMAN TABOADA, SUSANA FRASCA DE LAURIA, NORBERTO PABLO GIUDICE, SUSANA LAURIA, GUILLERMO DOIIO, JORGE MANUEL TABOADA, MARIA DEL CARMEN ESCUDERO, ROSAS DE COHEN, ESTRELLA BETY, CORBINS TRADE SA, LUIGI GIACOMAZZI, LUCIANA PEDROLLI, PATRIZIA GIACOMAZZI, MICHELE STAGNITTO, CLAUDIO MIGUEL MATHEOU, HUGO MASINI, VIVIANA NOEMI TUORON, GUILLERMO JORGE DOMATO, IMPERIAL BYLIDOL SA, DARIO ALBERTO PARDAL, PAULA MASTRONARDI, HORACIO ALBERTO VAZQUEZ, LILIANA CEBROWSKI, DIEGO PEDRO PELUFFO, JUAN OMAR GIOVACHINI, LILIA ANGELICA PARISI, TRALOVE COMPANY SA, MAURA MALETTI, GRACIELA ADRIANA GAMITO, ADRIAN CALEFFA, GUILLERMO ALMANZA, FELICITAS C. VON GROMANN, ROBERTO VIRGILIO SAURO, RITA LESO, RODOLFO ALBERTO GIL, VICENCIO, VIVIAN ORIANA VICENCIO SAAVEDRA, FELICITAS FLORENCIA FOX ANASAGASTI, FRANCISCO EDUARDO DE LA MERCED, ISABEL EVANGELINA BAVASSI, MAKAPYAN S.R.L., FRANCISCO JOSE MECHURA, GRACIELA DONNANTUONI, BEMARDO G. FERMAN, FRANCAISE COMPAGNIE, D'INVESTISSEMENTS SA, MARIA SUSANA PAGANO, CARIOS ALBERTO LAGOS, JULIO HECTOR KRASUK, MAZORAL SA, MIGUEL LIMOLI, LUCIO RAMON MUR, JESUS JORGE OTANI, ALEJANDRO ENRIQUE FEMANDEZ, GUIDO DEBIASI, ALLILIO DE ROSA, MANUEL G. GUILLEN, BEATRIZ M. CASTANO, MONICA HAYDEE GRACIOLLI, LISANDRO ROBERTO ARTURO MORA, ABEL VICENTE SANTANA, MARIA OAUDIA MANGIALAVORI, HORACIO ALBERTO M. SANC CABALLERO, RICARDO SANCHEZ CABALLERO, ELISA SANCHEZ CABALLERO, FIRST CITY SA, JORGE JORACIO ROSINI, ALICIA ESTER SALVADOR, DOLLY ESTHER CUBASSO, SANTA SORRENTINO, RODOLFO BURUL, LYDIA HAYDEE GIGAGLIA, ANSGAR NEUENHOFER, DORA RAQUEL MALEC, CLAUDIO OSCAR MAZZA, ADRIANA BEATRIZ POVEDA, ALBERTO SILVIO BURSZTYN, ANDREA FABIANA FUCITO, CARLOS ALBERTO LAGOS, MARIA DEL LAS MERCEDE LAGOS, MAURIZIO GIOVE, GUILLERMO CARLOS F. CENTENO, CARIOS ALBERTO MURACA, PATRIZIA VALERI, ANDREA RONZON, SILVA FALOMO, VITTORIO GIANNATTASIO, MONICA GIANNATTASIO, MARCELO EDUARDO PRIMA, RICARDO SANCHEZ CABALLERO, ELISA SANCHEZ CABALLERO, SUSANA MOLINA GOWLAND, THEA PINA GORGONE,

(Caption Continued on Next Page of Cover)

ALESSANDRA PADOAN, GLORIA PADOAN, PIERIUIGI PADOAN, THEA PINA GORGONE, LUIGI PADOAN, MASSIMILIANO MAZZANTI, MANUELA MAZZANTI, GIUSEPPINA FUSCHINI, MARTA GUERRINI, CORRADO GUERRINI, STEFANIA SIMONCINI, LUIGI PACIELLO, LERINERCO SA, AURELIO PESENTI, AMOLDO DOLECETTI, TELLADE NAVA, TOMMASINO VITIELLO, LUIGI VITIELLO, GABRIELLE DOLCELTI, GUISEPPE DOLCETTI, PABLO HUGO KALBERMANN, EVA SONDERMANN GELLER, PEDRO KALBERMANN, INTER PALMISANO SA, DORA RAQUEL MALEC, ANDREA SUSANA BURSZTYN, ALBERTO SILVIO BURSZTYN, ALFREDO PACHECO, FRANCES BROWN, ADOLFO MIGUEL MUSCHIETTI, JOSE ANTONIO MUSCHIELTI, MARIA CRISTINA BUENANO, ADOLFO MIGUEL MUSCHIETTI, MARIA CRISTINA BUENANO, RODRIGO FELIPE MUSCHIETTO, MARIA CRISTINA MUSCHIETTI, ALEJANDRO FEDERICO MUSCHIETTI, NELSON DANTE LUCIANO, DANTE LUCIANO, MERCEDES FELIU, DAVID ADRIAN LUCIANO, OSCAR PAUL CLAVIJO, ANA MARIA AURORA OTERO, CARIOS ALBERTO BRUZZONE, PEDRO KALBERMANN, EVA SONDERMANN, COLOMBO MASI, MARIA ELENA PELAYO, LUIS PEDRO BIVORT, VALENTINA ETCHART, MARIA FAUSTA CILLI, FIORENZO FACCIONI, LEONARDO HILARIO SIMONE, CARIOS ARTURO JOSE ULLA, PATRICIA STORARI, DECIO CARIOS FRANCISC ULLA, OSCAR SECCO, MERCEDES CALVO, DELFIN A. RABINOVICH, DIEGO PEDRO PELUFFO, ELVIRA DAGMAR BUZCAT, LEONIDAS RAUL BORDIGONI, ALEJANDRO FEMANDEZ BARBEITO, RAMON BARBEITO, LIDIA FEMANDEZ DE BARBEITO, MANUEL CALVO, MERCEDES CALVO, ALCIRA NOEMI ARDITI, CLAUDIO GABRIEL ARDITI, FEMANDO BARBEITO FEMANDEZ, SANDRO CONCELTINI, MARIA ASUNCION INMACU CASTELLI, JOSEFA AMBROSELLI, ROBERTO CARLOS PARADA, ROSA SARA POMPEYA LA DE PARADA, GUILLERMO PEDRO PARADA, MARIANO ROBERTO PARADA, ALICIA G. DE SONDERMANN, EVA SONDERMANN, SUSANA SONDERMANN, RICARDO SONDERMANN, PAULA ARMANDA AZCARATE, EDITH ELVIRA NICOLAS, FISEICO, - FINANCIAL SERVICES INTEMATIONAL CORPORATION, ENSENADA UNITED CORPORATION, LORENZO BIANCHI, GIORDANO ALLIEVI, GABRIELLA TOSCANO, AMBROGIO STUCCHI, GIUSEPPE STUCCHI, MARIA LUISA STUCCHI, MORENO LEGNARO, MARIO DAL TOE, DAVIDE CIALLELLA, BRAMANTE DAL TOE, LUCIA VETTORETTI, ALDO NAJ OLEARI, MARIA IDA MODENA, ADA DAL TREZZO, LUIS GARCIA TOBIO, ANTONIA MIRIAN MACIEL, KAZIMIERZ KOMAS, LUIGI GIACOMAZZI, LUCIANA PEDROLLI, AGOSTINO SCOCCHERA, MARCELO SPILLER, ROMINA MARIA BUSCAGLIA, NORA RAQUEL LOPEZ, GABRIEL MIGUEL, RAMON MIGUEL, MARCOS VANNI, ANA ANTONIA CABRERA, TERENCIANO DE JESUS CABRERA, CAlOS ALBERTO MARTINEZ, MONICA CRISTINA BARBERO, SIDNEY SUTTER, EDUARDO ARGENTIERI, CARLOS ADOLFO ESCATI, ARMANDO EDUARDO VALERIO, MIRTA ANTONIA PORTELA, ROQUE PEREZ VILLALBIA, GABRIEL FEDRICO LEIMGRUBER, FEDERICO HECTOR LEIMGRUBER, LAURA VICTORIA DEMIDOVICH, ALEJANDRO DEMIDOVICH, DIEGO WALTER CASTRILLI, DANIEL HORACIO ROLFO, ALICIA EVELIA GALIANI, SILVIA MABEL SACCONE, MARCELO RUBEN RIGUEIRO, ALFREDO ENRIQUE ZUCCHINI, NESTOR DE NICOLA, GRACIELA MARTA BERRETTI, PAULA DE NICOLA, SANTIAGO ROCCA, ANA MARIA SALDANA, ENRIQUE JORGE ROCCA, JOSEF SCHWALD, DENISE MARIE LAURETTE COLELLA, MICHELLE COLELLA, SUSANA LEONOR GATTI, MARTA BEATRIZ GATTI, LUIS ANGEL GATTI, GRISELDA TERESA DULEVICH,

(Caption Continued on Next Page of Cover)

MARIA AGUSTINA SAUCO, MARIA GRISELDA SAUCO, MARIA FLORENCIA SAUCO, OSVALDO LORENZO SAUCO, ANGELA BUSI, RAMON EDUARDO NEBHEN, ANA CECILIA ALBOMOZ, BRUNO ITALIA, RUBEN UBALDO DI MARCO, MARIA LUCRECIA QUIROGA, JORGE ALBERTO ATILIO NEGRI, NICOLAS CARLOS AMADOR FARINOLA, JORGE CORADO FARINOLA, RENATE AMOLD, IRMA HAYDEE REDONDO DE NEGRI, MASSIMO BALDARI, LILLINA ROSSO, ALBERTO ANICETO GONZALEZ, DELIA ISABEL GONZALEZ, MARIANA GONZALEZ, ROBERTO FEDECOSTANTE, DINA DI TOMMASO, BRIGIDA ELVIRA DENIS, VILMA BURGIO, NAIBY ELIANA SORIA, MARIA MARTA DE LUCA, ALEXANDER STEM, NELIDA AMELIA GIUSTI DE BEHAR, INGEBORG STEM, SERGIO RODOLFO BERRI, STELLA MARIS BOFFELLI, MALCOLM GERALD BERRI, NELIDA ROSA PAOLINI, FRANCO MARIA CONTE, LINA LO VULLO, FRANCESCO MASSOLETTI, DIANA KLEIN, FERISMAR CORP. SA, CARLOS A. RIAL COTO, MARIA C. UNGARO TORRADO, COUNTY BAY INVESTMENTS LTD., GHIBLI INVESTMENTS LTD., SILVIO EDUARDO SAUCO, MIGUEL KAUFMANN, EDGARDO A. RAMOS, RIVKA SCHMUSKOVITS DE SCHUSTER, NICOLAS SCHUSTER, FLAVIA MARINA SCHUSTER, BEATRIZ LEONOR DE RAMOS, JORG ZAHN, ELENA PASQUALI, PORTICO CAPITAL INC., HARTMUT PETERS, SABINE ZAHN, WOLFGANG BOLLAND, BLIWAY INTEMATIONAL SA, RICARDO KAUFMANN, MIGUEL ANGEL BITTO, MARIA SILVIA CINQUEMANI, EUGENIO QUARTRINI, OLGA ALBA MARINI, SEBASTIAN QUATRINI, PEDRO MARCELO SEXE, SAMUEL OLDAK, ANNA OLDAK, DAVID OLDAK, URI OLDAK, TELINCOR SA, SOCRATE PASQUALI, ANNA MARIA CARDUCCI, NORFOLK INVESTMENT TRADE CO. LTD., GAMETOWN CORPORATION, NORBERTO ANGEL GARCIA MADEO, ANA MARIA SAENZ, GRACIELA CANDIDA CORIEIS SAENZ, WEGE ZU MOZART VERANSTALTUNGSGESEKKSCHAFT M.B.H, BOIM SA, STEFANO SPANICCIATI, NESTOR ALBERTO RUBIN, ANDREAS WILFRED SCHWALD, ANTONIO JUAN PAULETICH, FABIAN E. PAULETICH, FRANCO PERUZ, NORBERTO DARIO CASTELLA, STREET INVESTMENTS LIMITED, GUIDO SCANAVINO, LYDIA SCANAVINO, GIANCARLO GRASSI, HENDRIK BEYER, EDGARDO GERARDO A. SCLAFANI, LUCIA RAFAELA TASSO, ALEXIA BRANDES, FEMANDO EXPOSITO, MARA CAVANA, MAURIZIO DALLA, RENATO PALLADINI, ANDREA VIGNALI, FINCOMPANY SA, GLORIA GAGGIOLO, VALERIO CHIRIATTI, SIMONETTA BUCCIOLI, ATTILIO GAUDENZI, LORIS ZAVOLI, ELENA MARCACCINI, IIDEBRANDO MOTTI, TULLIA TURCHI, CARLO CIGOLINI, JUAN EDUARDO COLUMBO, ESTELA ISABEL DELGADO, CARLA NANNI, MAURIZIO PETRONI, ROBERTO AKMAN, LILIANA EDITH GENNI, AMOLDO DOLCETTI, MARCELLA DOLCETTI, LUCA MULAZZANI, ROBERTO BAUTISTA FRANCO BACCANELLI, ALFREDO CARTOS ALZAGA, MIGUEL ALBERTO BALESTRINI, BIBIANA DELLA FLORA, MARIA ISABEL BALESTRINI, MARIANA NOEMI TAUSS, ALEJANDRO R. LUPPI, ATILIO LUIS POCOSGNICH, ALICIA BEATRIZ GRACIAN, CAROLINA POCOSGNICH, BEATRIZ MARTI RATA, HORACIO TOMAS LIENDO, LUCIANA CEREDI, LUCIANO MILANASI, ALASIA MILANASI, PENG ZEYING, WOON CHEUNG LEUNG, RAUL ALEJANDRO GONZA MARTIN, GUSTAVO CARLOS FERREIRA, JOSE EMILIO CARTANA, RAUL HORACIO MENDEZ, MARIA MERCEDES MENDEZ FERRO, ROBERTO CLAUDIO PITRONA ELLE, ALBERTO GUILLERMO HILLCOAT, ELENA GRACIELA MARTINEZ, ENRIQUE SEBASTIAN PALAC MINETTI, SEBASTIAN JORGE PALACIO, MARIA ESTHER FERRER, AJU SA, CASIMIRO KOMAS, MICHAEL HEEB, LIDIA FLORINDA PIOLI, ANA LIDIA LEIVAS, JUAN DOMINGO BALESTRELLI, GUNTHER BRAUN,

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HWB RENTEN PORTFOLIO PLUS, HWB ALEXANDRA STRATEGIES PORTFOLIO, NW GLOBAL STRATEGY, VICTORIA STRATEGIES PORTFOLIO LTD., HWB VICTORIA STRATEGIES PORTFOLIO, HWB PORTFOLIO PLUS, CESARE DE JULIIS, MIRTA BEATRIZ MANDOLINO, EDUARDO HECTOR SORROCHE, SUSANA ALICIA COSTA, DIEGO MARCOS SORROCHE, VERONICA SORROCHE, CHRISTA ERB, RUDOLF ERB, SILVIA BEATRIZ OVEJERO, DAVID DE LAFUENTE, JOSE L. PELUSO, HWB ALEXANDRIA STRATEGIES PORTFOLIO, ZYLBERBERG FEIN LLC, U.VA VADUZ, KLAUS BOHRER, AMBER REED CORP., CONSULTORA KILSER SA, MICHAEL SCHMIDT, MARIE LAURETTE DUSSAULT, BURGHARD PILTZ, OSCAR REINALDO CARABAJAL, DORA LUISA SASAL, UTE KANTNER, SUSANA ALICIA MONKES, ALBERTO HABER, ALEJANDRO ALBERTO ETCHETO, CRISTA IRENE BRANDES, FRANCISCO MIGUEL MOLINARI, HELMUT HAGEMANN, HWB DACHFONDS-VENIVIDIVICI, HWB GOLD & SILBER PLUS, ROSA DELFINA CASTRO, GAMETOWN CORPORATION SA, CRISTOPH HAGEMANN, DRAWRAH LIMITED, MICHELE COLELLA, DENISE DUSSAULT, ANYE SALINOVICH, DEBORA REINA COHEN, FEYSOL SA, VANINA ANDREA EXPOSITO, BEATE NEUENHOFER, LERINERCO SA, ANDREA DE NICOLA, INAS DELIA EIDELMAN, DIEGO FABIAN TOPF, MODEM GROUP SA, LUCABRAS SA, CESAR CIVETTA, ALDO CIVETTA, AMANDA WIELIWIS, PABLO ALBERTO VARELA, LILA INES BURGUENO, MIRTA SUSANA DIEGUEZ, MARIA EVANGELINA CARBALLO, LEANDRO DANIEL POMILIO, SUSANA AQUERRETA, MARIA ELENA CORRAL, TERESA MUNOZ DE CORRAL, NORMA ELSA LAVORATO, CARMEN IRMA LAVORATO, CESAR RUBEN VAZQUEZ, NORMA HAYDEE GINES, MARTA AZUCENA VAZQUEZ, MAXIMO DORRA, OLGA DE DORRA DORRA, ANGEL EMILIO MOLINOS, RAUL RENNELLA AND SANDRA ELIZABETH SCHULER, ANA ZEMBORAIN ZEMOORAIN, MIGUEL ANGEL BELOQUI, HORACIO GUIBELALDE, MARTA MABEL FOLGADO, ARAG-A LIMITED, ARAG-O LIMITED, ARAG-V LIMITED, ARAG-T LIMITED, GRAZIANO ADAMI, GIANFRANCO AGOSTINI, MILENA AMPALLA, ALLAN APPLESTEIN TTEE FBO DCA GRANTOR TRUST, AUGUSTO ARCANGELI DE FELICIS, ANTONELLA BACCHIOCCHI, ALBERTO BACIUCCO, OIELIO BACIUCCO, FILIPPO BAGOLIN, SARA BARTOLOZZI, ANNELIESE GUNDA BECKER, SERENELLA BELLEGGIA, GIORGIO BENNATI, ROBERTO BERARDOCCO, GRAZIELLA BERCHI, ORSOLINA BERRA, ADRIANO BETTINELLI, MASSIMO BETTONI, STEFANO BISTAGNINO, GIORGIO BISTAGNINO, GRAZIELLA BONADIMAN, ANDREA BONAZZI, STEFANIA BONPENSIERE, RACHELE BONTEMPI, MARCO BORGRA, SERGIO BORGRA, RENATA BOSCARIOL, EMANUELE BOTTI, CARLO BRETTI, SUSANNA BRETTI, ANTONIATTA GUISEPPINA BRIOSCHI, MARCELLO CALANCA, BRUNO CALMASINI, ITALIA CAMATO, GIUSEPPINA CAPEZZERA, LAURA ANNA CAPURRO, VINCENZO CARBONE, CARIFIN SA, GIOVANNI CARLOTTA, ELETTRA CASALINI, DIEGO CASTAGNA, MARCO CAVALLI, CARMELINA CENSI, GIAN FRANCESCO CERCATO, ALBERTO COMPARE, GIOVANNA CONNENA, AGOSTINO CONSOLINI, CESARINO CONSOLINI, MARIA LUIGIA CONTI, SILVANA CORATO, GIANCARLO BARTOLOMEI CORSI, FRANCESCO CORSO, GIUSEPPINA CORSO, LAURA COSCI, ANGELO COTTONI, MONICA CROZZOLETTO, GRAZIELLA DACREEE, TARCISIA DALBOSCO, ALDO DAVID, ANTONIO DE FRANCESCO, ANTONELLA DE ROSA KUNDERFRANCO, MANUELA DE ROSA KUNDERFRANCO, EUFROSINA DE STEFANO, ADRIANA DELL'ERA,

(Caption Continued on Next Page of Cover)

CARLO FARIOLI, ANNA FERRI, GIOVANNA FERRO, FRANCESCO FOGGIATO, DONATELLA ZANOTTI FRAGONARA, RINALDO FRISINGHELLI, ANGIOLINO FUSATO, GABRIELE FUSATO, FELICINA GAIOLI, MADDALENA GAIOLI, GIAN CARTO GANAPINI, FRANCESCO MAURO GHEZZI, MARIO GIACOMETTI, GIOVANNI GIARDINA, CELESTINO GOGLIA, GIULIA GREGGIO, VEMA GUALANDI, LUISELLA GUARDINCERRI, GIANFRANCO GUARINI, RAIMONDO LALLONARDO, INNOVAMEDICA S.PA, FKA MATIVA S.R.I., MARITZA LENTI, ANGELO LEONI, PAOLO LISI, UGO LORENZI, SERGIO LOVATI, FEMANDA ANGELA LOVERO, CARMELO MAIO, CLAUDIO MANGANO, ELIDE MARGNELLI, CARTA MARINI DE FELICIS ARCANGLI, ROMANO MARTON, MIRCO MASINA, GUGLIELMINA MASSARA, BRUNA MATTIOLI, SALVATORE MELCHIONDA, MASINA MIRCO MIRCO, SIMONETTA MONTANARI, GIAMPAOLO MONTINO, CARLA MORATA, ALESSANDRO MORATA, MARIA RITA MORETTO, AMATO MORI, BRUNO PAPPACODA, SABRINA PARODI, ALFREDO PELLI, FRANCO PEZZE, VALERIO PIACENZA, PERI LUIGI LUCIBELLO PIANI, EUGENIA RE, ALEESSANDRA REGOLI, BARBARA RICCHI, MARIA ROBBIATI, PAOLA ROSA, ADRIANO ROSATO, GIUSEPPE SILVIO ROSSINI, LAURA ROSSINI, RAFFAELE ROSSINI, RUGGERO ROSSINI, INES ROTA, HILDA RUPPRECHT, VINCENZA SABATELLI, ANGELINA SALMISTRARO, TIZIANO SASSELLI, MARINELLA SCALVI, MAURIZIO SERGI, SIMONA STACCIOLI, LICIA STAMPFLI-ROSA, SANTE STEFANI, ANNA STORCHI, STUDIO LEGALE BENNATI, RENATE TIELMAN, MANUELITO TOSO, VALERIA TOSO, FRANCO TRENTIN, STEFANIA TRENTIN, MARTINO VEMA, MARIO VICINI, LUCA VITALI, VITO ZANCANER, GIOVANNI ZANICHELLI, MATTEO ZANICHELLI, TRINITY INVESTMENTS LIMITED, EGAR RAMON LAMBERTINI, ANA DORATELLI, SCOGGIN CAPITAL MANAGEMENT II LLC, JUANA BONAIUTI, SCOGGIN INTEMATIONAL FUND LTD., SCOGGIN WORLDWIDE FUND LTD., TITO SIENA, MCHA HOLDINGS, LLC, ATTESTOR MASTER VALUE FUND LP, ARMANDO RUBEN FAZZOLARI, JULIO ROBERTO PEREZ, WHITE HAWTHORNE, LLC, JOSE PEDRO ANGULO, PEDRO TIMOTEO ANGULO, FEMANDO CROSTELLI, JUAN CARLOS CROSTELLI, MARTINA CROSTELLI, VIVIANA CROSTELLI, PATRICIO HANSEN, CLAREN CORPORATION, BYBROOK CAPITAL MASTER FUND LP, BYBROOK CAPITAL HAZELTON MASTER FUND LP, ANDRAREX, LTD., CLARIDAE LTD, MARIA DEL PILAR DE WE FERRER, STONEHILL INSTITUTIONAL PARTNERS, LP, STONEHILL MASTER FUND LTD.,

Plaintiffs-Appellants,

GIOVANNI BOTTI, CLAUDIO MORI, SILVIA REGOLI,

Plaintiffs,

– v. –

REPUBLIC OF ARGENTINA,

Defendant-Appellee,

BANK OF AMERICA, N.A.,

Respondent,

BANCO BILBAO VIZCAYA ARGENTARIA, SA, BBVA COMPASS BANCSHARES, INC., BBVA SECURITIES INC.,

Third-Party-Defendants,

ADMINISTRACION NACIONAL DE SEGURIDAD SOCIAL, UNION DE ADMINISTRADORAS DE FONDOS DE JUBILACIONS Y PENSIONES, CONSOLIDAR AFJP SA, ARAUCA BIT AFJP SA, FUTURA AFJP SA, MAXIMA AFJP SA, MET AFJP SA, ORIGENES AFJP SA, PROFESION+AUGE AFJP SA, UNIDOS SA AFJP,

Defendants.

ARAG-V LIMITED, ATTESTOR VALUE MASTER FUND, BYBROOK CAPITAL HAZELTON MASTER FUND LP, BYBROOK CAPITAL MASTER FUND LP, CLARIDAE LTD., MARIA DEL PILAR DE WE FERRER, MCHA HOLDINGS, LLC, STONEHILL INSTITUTIONAL PARTNERS, LP, STONEHILL MASTER FUND LTD., TRINITY INVESTMENTS LIMITED, WHITE HAWTHORNE, LLC, AND ALL PLAINTIFFS-APPELLANTS IN THE ADAMI APPEAL

CORPORATE DISCLOSURE STATEMENT

Plaintiff-Appellant ARAG-A Limited ("ARAG-A"), a Cayman Islands corporation, certifies through its undersigned counsel that, pursuant to Rule 26.1(a) of the Federal Rules of Appellate Procedure ("FRAP"), AGBPI Fund, Ltd. is the parent of ARAG-A, and that no publicly held corporation owns 10% or more of the stock of ARAG-A.

Plaintiff-Appellant ARAG-O Limited ("ARAG-O"), a Cayman Islands corporation, certifies through its undersigned counsel that, pursuant to FRAP 26.1(a), Alden Global Opportunities Master Fund, L.P. is the parent of ARAG-O, and that no publicly held corporation owns 10% or more of the stock of ARAG-O.

Plaintiff-Appellant ARAG-T Limited ("ARAG-T"), a Cayman Islands corporation, certifies through its undersigned counsel that, pursuant to FRAP 26.1(a), Turnpike Limited is the parent of ARAG-T, and that no publicly held corporation owns 10% or more of the stock of ARAG-T.

Plaintiff-Appellant ARAG-V Limited ("ARAG-V"), a Cayman Islands corporation, certifies through its undersigned counsel that, pursuant to FRAP 26.1(a), that Alden Global Value Recovery Master Fund, L.P. is the parent of ARAG-V, and that no publicly held corporation owns 10% or more of the stock of ARAG-V.

Plaintiff-Appellant Attestor Master Value Fund LP ("Attestor") is a limited

partnership organized under the laws of the Cayman Islands. Attestor is not a corporation and therefore FRAP 26.1 does not require any disclosures with respect to it.

Plaintiff-Appellant Bybrook Capital Hazelton Master Fund LP ("Bybrook Hazelton") is a limited partnership organized under the laws of the Cayman Islands. Bybrook Hazelton is not a corporation and therefore FRAP 26.1 does not require any disclosures with respect to it.

Plaintiff-Appellant Bybrook Capital Master Fund LP ("Bybrook") is a limited partnership organized under the laws of the Cayman Islands. Bybrook is not a corporation and therefore FRAP 26.1 does not require any disclosures with respect to it.

Plaintiff-Appellant MCHA Holdings, LLC ("MCHA") is a limited liability company organized under the laws of the state of Delaware. MCHA is not a corporation and therefore FRAP 26.1 does not require any disclosures with respect to it.

Plaintiff-Appellant Trinity Investments Limited ("Trinity"), a limited company organized under the laws of Ireland, certifies through its undersigned counsel that, pursuant to FRAP 26.1(a), neither a parent corporation nor a publicly held corporation owns 10% or more of the stock of Trinity.

Plaintiff-Appellant White Hawthorne, LLC ("White Hawthorne") is a

limited liability company organized under the laws of the state of Delaware. White Hawthorne is not a corporation and therefore FRAP 26.1 does not require any disclosures with respect to it.

Plaintiff-Appellant Stonehill Institutional Partners, L.P. ("Stonehill Institutional") is a limited partnership organized under the laws of the State of Delaware. Stonehill Institutional is not a corporation and therefore FRAP 26.1 does not require any disclosures with respect to it.

Plaintiff-Appellant Stonehill Master Fund Ltd. ("Stonehill Master"), an exempted company organized under the laws of the Cayman Islands, certifies through its undersigned counsel that, pursuant to FRAP 26.1(a), neither a parent corporation nor a publicly held corporation owns 10% or more of the stock of Stonehill Master.

Plaintiff-Appellant Claridae Ltd ("Claridae"), a British Virgin Islands corporation, certifies through its undersigned counsel that, pursuant to FRAP 26.1(a), neither a parent corporation nor a publicly held corporation owns 10% or more of the stock of Claridae.

Plaintiff-Appellant Carifin S.A. ("Carifin"), a corporation formed under the laws of the Republic of San Marino, certifies through its undersigned counsel that, pursuant to FRAP 26.1(a), neither a parent corporation nor a publicly held corporation owns 10% or more of the stock of Carifin.

Plaintiff-Appellant Innovamedica S.P.A., formerly known as Mativa S.R.L., ("Innovamedica") a corporation formed under the laws of Italy, certifies through its undersigned counsel that, pursuant to FRAP 26.1(a), neither a parent corporation nor a publicly held corporation owns 10% or more of the stock of Innovamedica.

Interested Plaintiff Honero Fund I, LLC ("Honero") is a limited liability company organized under the laws of the State of Delaware. Honero is not a corporation and therefore FRAP 26.1 does not require any disclosures with respect to it.

Interested Plaintiff White Hawthorne II, LLC ("White Hawthorne") is a limited liability company organized under the laws of the state of Delaware. White Hawthorne II is not a corporation and therefore FRAP 26.1 does not require any disclosures with respect to it.

Interested Plaintiff Yellow Crane Holdings, L.L.C. ("Yellow Crane"), a limited liability company organized under the laws of the State of Delaware. Yellow Crane is not a corporation and therefore FRAP 26.1 does not require any disclosures with respect to it.

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PRELIMINARY STATEMENT

The District Court's order lifting the numerous permanent injunctions previously affirmed by this Court – which were designed to prevent the Republic of Argentina from continuing to violate its contractual obligations to thousands of bondholders, including the undersigned plaintiffs-appellants and interested plaintiffs (collectively, the "Appellants") – should be reversed because the circumstances that led to the issuance of the injunctions have not changed from the perspective of equity.[1] As detailed below, dissolving these carefully-constructed injunctions at the warp speed requested by Argentina and endorsed by the District Court invites Argentina to continue to act with impunity from the law, and relegates Appellants and many other bondholders to the prospect of continued, seemingly endless litigation. And, this is of no small concern: Appellants collectively hold more than $1.6 billion in unpaid claims against Argentina.

In fact, Argentina's recent behavior is just more of the same. Since Argentina defaulted on its sovereign indebtedness in 2001, it repeatedly has attempted to force holders of the defaulted bonds to restructure them on unilaterally proposed terms and at severe discounts to what Argentina was

[1] Appellants are both judgment creditors and non-judgment creditors, and include approximately 115 individual bondholders in addition to institutional bondholders. *See* Joint Appendix ("A-"), A-2282. References to the Special Appendix are denoted as "SPA-."

contractually obligated to pay. In both 2005 and 2010, Argentina presented bondholders with take-it-or-leave-it offers to exchange their defaulted bonds with new bonds on terms favorable to Argentina (the "Exchange Bonds") and passed (or renewed) legislation preventing settlement with bondholders on any other terms. As this Court has held, the payments Argentina thereafter made on the Exchange Bonds openly violated the *pari passu*, or equal treatment, provision in the governing indenture, the 1994 Fiscal Agency Agreement (the "FAA"). That provision provides that *all* holders of Argentina's non-subordinated FAA securities, which are the bonds here at issue, "shall at all times" be treated equally. Numerous bondholders, including Appellants, thus turned to the American court system to pursue protection for this violation of their contractual rights.

Argentina, however, refused to honor numerous money judgments on the defaulted bonds, and began paying on the subsequently issued Exchange Bonds in blatant violation of the *pari passu* provision of the FAA. The District Court granted a series of permanent injunctions, the first set of which this Court twice affirmed. But, at every turn, Argentina has treated the rulings of this Court and the District Court – and the bondholders' contractual rights – with total disdain and contempt, and actively sought to evade them.

Now, after years of such arrogance, obstinacy, and delay, Argentina professes to have changed course. Argentina's actions, however, remain distressingly reminiscent of its ways of the past, as this Court has noted. A-1836 (Raggi, J.) ("[w]hile [Argentina] professes to have a new view of all of this, those of us who've been involved in the supervision of the ligation for 14 years know that there've been changes of heart over time"). Far from heralding a "new Argentina," Argentina's most-recently chosen means of restructuring its FAA debts – a needlessly coercive and accelerated unilateral settlement offer that, in the words of Judge Walker, smacks of a "cram down"[2] – as well as its apparent efforts to renege on that offer following its success before the District Court, belie any true change in behavior. Moreover, only certain plaintiff bondholders were invited to negotiate meaningfully with Argentina and the District Court's appointed Special Master, while others (such as Appellants) had to choose whether to accept the take-it-or-leave-it, cram down offer, or to be ignored.[3] This strategy forced many bondholders, including certain Appellants, to accept Argentina's inequitable,

[2] *See* A-1815 at 11:3-12 (Walker, J.).

[3] Certain plaintiff bondholders (not these Appellants) recently filed a motion to remove the Special Master due to the pressure tactics he allegedly employed against them and the Special Master's alleged aligning himself with Argentina, including based on their having been "purposefully frozen out of the ongoing settlement discussions between Argentina and certain other plaintiffs." *See Mohammad Ladjevardian v. The Republic of Argentina*, 1:06-cv-03276-TPG, Dkt. No. 32 (Mar. 11, 2016).

unilateral settlement offer rather than be left without the protections of injunctive relief (as forecasted by the District Court's Indicative Ruling (discussed below)) and without assurance that Argentina would actually continue to negotiate, or pay any settlements, following Argentina's self-selected February 29, 2016 deadline.

Nevertheless, acting on an under-developed record and with stunning haste, which suggested a wholesale lack of concern for due process, the District Court issued an Opinion and Order on March 2, 2016 (the "March 2 Order"), adopting its February 19, 2016 indicative ruling (the "Indicative Ruling"). The March 2 Order prospectively vacated the multiple *pari passu* injunctions previously ordered by the District Court and twice affirmed by this Court upon the occurrence of two conditions precedent, both wholly within Argentina's control. As set forth below, the March 2 Order runs directly contrary to the law of the case, as it cannot be reconciled with multiple decisions of this Court and the District Court itself interpreting the *pari passu* clause as requiring equal treatment for *all* bondholders, and it otherwise fails to satisfy the applicable standards.

As set forth below, by dissolving, in virtually a blink of an eye, the permanent injunctions that had taken years for the District Court and this Court to construct, the District Court made multiple legal and factual errors. Among other things, Argentina failed to demonstrate the "exceptional" change in circumstances that is required to vacate a permanent injunction under Fed. R. Civ. P. 60(b). *See*

Motorola Corp. v. Uzan, 561 F.3d 123, 126 (2d Cir. 2009). While the District Court relied on its conclusion that Argentina has shown a "completely changed attitude" (SPA-83), Argentina's cram down settlement offer – and its inequitable conduct towards certain Appellants following its success before the District Court (as detailed below) – reflects no such change of attitude. In fact, Argentina's unilateral settlement offer failed to treat all bondholders equally as required by the *pari passu* provision, instead grouping bondholders into different tiers and differentiating among similarly-situated bondholders based on artificial criteria. As developed further below, there has been no real change in any of the factors cited by this Court in twice affirming the injunctions.

The District Court also ignored undisputed showings that, apparently emboldened by the District Court's embrace of its cram down settlement offer in the Indicative Ruling, Argentina: (i) refused to meaningfully negotiate with hundreds of willing bondholders; and (ii) inconsistently and inequitably applied its own unilateral settlement offer to similarly-situated bondholders once the District Court rendered its initial decision. Most glaringly, the District Court ignored arguments that Argentina was engaging in an after-the-fact attempt to discriminate against certain of the Appellants, who felt compelled to accept the cram down offer following the Indicative Ruling's endorsement of Argentina's settlement conduct. In a remarkable about-face, Argentina submitted settlement agreements to the

District Court with certain bondholders, only to then question the acceptances by certain Appellants *who held the exact same bonds*. Argentina thus seems to be trying to impose new, post-Indicative Ruling limiting terms that appear nowhere in the unilateral settlement offer and which it did not assert in various settlement agreements that it *presented to the District Court as evidence of its change in behavior*.

Simply put, Argentina cannot be allowed to re-trade or renege on its unilateral settlement offer. Certainly, it should not be *rewarded* by a court of equity with the lifting of the permanent *pari passu* injunctions for such pernicious behavior.

In sum, while Appellants desire to resolve this 15-year-old dispute and be paid the monies Argentina is contractually obligated to pay them per their settlement agreements or otherwise, a resolution should not come at such reckless haste that it denies Appellants and other bondholders their hard-won equitable protections, particularly given Argentina's continuing inequitable conduct. Maintaining the injunctions until Argentina meets or otherwise resolves its contractual obligations will serve the public interest by promoting the rule of law. Lifting the injunctions prematurely, as Argentina and the District Court contemplate, will only result in further litigation between the bondholders and Argentina, a country that remains a "uniquely recalcitrant debtor." *NML Capital*,

Ltd. v. Republic of Argentina, 727 F.3d 230, 238 (2d Cir. 2013) ("*NML II*").

STATEMENT OF JURISDICTION

The District Court had jurisdiction over these actions pursuant to 28 U.S.C. § 1605(a)(1) and 28 U.S.C. § 1330 because Argentina is a foreign sovereign that has waived its immunity with respect to actions to collect missed payments on the defaulted FAA bonds beneficially owned by Appellants. *NML Capital, Ltd. v. Republic of Argentina*, 699 F.3d 246, 263 (2d Cir. 2012) ("*NML I*").

This Court has jurisdiction pursuant to 28 U.S.C § 1292(a)(1) because the order being appealed from is an interlocutory order of the District Court "dissolving injunctions" that it previously entered. SPA-70-119 (March 2 Order). Additionally, a mandate issued by this Court on February 24, 2016 (the "Mandate") provided that any appeal of the District Court's (then prospective) March 2 Order would be consolidated for review by this Court. A-1721.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Did the District Court err by vacating the permanent "*pari passu*" injunctions it entered in 2012 (twice affirmed by this Court on bases not addressed by the District Court in the Indicative Ruling or the March 2 Order) and in 2015 based on its determination that Argentina's recent settlement strategy amounted to "changed circumstances" rendering those injunctions "no longer equitable" under Fed. R. Civ. P. 60(b), or should this Court reverse and keep the injunctions in place

until Argentina meets or otherwise resolves its obligations under the defaulted bonds at issue, including its obligations under agreements reached with those bondholders who accepted Argentina's unilateral settlement offer?

2. Should this Court in the alternative require the District Court to hold a full evidentiary hearing on (a) what settlements have been agreed to prior to such hearing; (b) whether Argentina has paid what it owes on all settlements entered into prior to such hearing; and/or (c) whether Argentina has engaged in good faith settlement negotiations with all non-settling plaintiffs who have requested such opportunity?

STATEMENT OF THE CASE AND FACTS

This long-running litigation stems from Argentina's default on its sovereign indebtedness in 2001. Thereafter, Argentina blatantly violated the "*pari passu*" – or equal treatment – clause of the FAA, as interpreted by this Court, by failing to pay interest owed to Appellants and other FAA bondholders and suggesting that it may never pay the principal owed on such bonds, while at the same time paying the Exchange Bondholders on subsequently-issued bonds stemming from the 2005 and 2010 coercive exchange offer restructurings.

These consolidated appeals are from the March 2 Order, a Decision and Order of the Southern District of New York (Griesa, J.) granting Argentina's motions (dated February 11, 2016, and February 25, 2016) to vacate the permanent

pari passu injunctions entered by the District Court on November 21, 2012, and October 30, 2015, in sixty-two actions. The District Court ordered that such injunctions will be lifted solely upon the occurrence of two conditions precedent (detailed below), even though the bondholders' contractual rights, which formed the bases of this Court's prior affirmances of the injunctions, have not changed.

The March 2 Order effectively adopted the District Court's Indicative Ruling which provided that, pursuant to Fed. R. Civ. P. 62.1, it would vacate the *pari passu* injunctions if jurisdiction were returned to it from Argentina's then-pending appeals to this Court. *See* SPA-84. After Argentina agreed to dismiss those prior appeals with prejudice, this Court ordered in the Mandate that Argentina should move to have the injunctions lifted following remand, and the District Court must give all opponents an opportunity to be heard. This Court further ordered that any notice of appeal from an order formalizing the Indicative Ruling should be filed in two days, the District Court order would be subject to a two week stay, and all appeals would be consolidated before this Court. The District Court then hurriedly entered the March 2 Order formalizing the Indicative Ruling, to the extent stated therein, as an appealable Order.

The vacatur of the injunctions has been stayed pending this Court's determination of the appeal. The Indicative Ruling is not yet reported in the

Federal Supplement, but is available at 2016 WL 715732; the March 2 Order is available at 2016 WL 836773.

Given that these appeals must be considered in the context of the underlying facts and overall history of this litigation, we set forth below such background in summary fashion.

A. Argentina's Continuing Refusal To Meet Its Contractual Obligations And Repeated Breaches Of The *Pari Passu* Clause

In 1994, Argentina began issuing debt securities pursuant to the FAA. In doing so, Argentina pledged to protect holders of FAA bonds from subordination and guaranteed them equal treatment, including through the following provision:

> The[se] Securities will constitute . . . direct, unconditional, unsecured and *unsubordinated* obligations of the Republic and *shall at all times rank pari passu and without any preference among themselves*. The *payment obligations* of the Republic under the Securities *shall at all times rank at least equally with all its other present and future unsecured and unsubordinated External Indebtedness* . . . .

A-482 at § l(c) (emphasis supplied).

In 2001, Argentina defaulted on all of its public debts, including the FAA bonds; that year, and every year thereafter, Argentina enacted or renewed a moratorium prohibiting payments on debt issued prior to December 2001 and not restructured. *See NML I*, 699 F.3d at 251; *see also* A-733-807, A-845-1032.

In 2005, Argentina attempted to impose new terms on the holders of its defaulted bonds. After first promising that it would "engage in constructive

negotiations" with its creditors, *see* A-1034-1059 at A-1037, Argentina instead presented bondholders with an unfavorable, take-it-or-leave-it offer to exchange their defaulted FAA bonds for new bonds at a rate of 25 to 29 cents on the dollar (the "2005 Exchange Offer"). *NML I*, 699 F.3d at 252. Argentina expressly warned holders of the defaulted bonds that, if they declined to accept the 2005 Exchange Offer, there was no assurance that they ever would be paid. *Id.*

To further pressure creditors into accepting the 2005 Exchange Offer, Argentina enacted Law 26,017, which came to be known as the "Lock Law," which prohibited Argentina from reopening the 2005 Exchange Offer or accepting any type of settlement involving untendered bonds that were eligible to participate in the 2005 Exchange Offer. *Id.* Argentina began issuing bonds under the 2005 Exchange Offer, carved them out from its payment moratorium, and began to make regular payments on them without making any payments on the FAA bonds. It did so even though these actions were directly prohibited by the *pari passu* provision in the FAA. When some bondholders obtained money judgments on the defaulted FAA bond, Argentina refused to pay, and its courts refused to enforce the U.S. judgments.

In 2010, Argentina again sought to exchange still outstanding FAA bonds that had not been tendered in the 2005 Exchange Offer with new, lower-valued bonds. In fact, the terms of this new offer (the "2010 Exchange Offer," and

together with the 2005 Exchange Offer, the "Exchange Offers") were essentially identical to those of the 2005 Exchange Offer. *NML I*, 699 F.3d at 252. To facilitate the 2010 Exchange Offer (and again showing contempt for the American judicial system notwithstanding its consent to jurisdiction here in the FAA), Argentina passed Law 26,547, which temporarily suspended the Lock Law (the "Lock Law Suspension"), but prohibited Argentina from paying "the holders of government bonds who may have initiated judicial . . . action more favorable treatment than what is offered to those who have not done so." *Id.* at 252 n.3; *see also* A-1119 at art. 1. Certain holders tendered their FAA bonds into the 2010 Exchange Offer and Argentina thereafter made regular payments – totaling billions of dollars – on these new bonds without making any payments on the outstanding FAA bonds. *NML I*, 699 F.3d at 254; SPA-49 (Indicative Ruling at 3) ("For many years, [Argentina] never paid anything on the FAA bonds").

B. The Original *Pari Passu* Injunctions And Their Affirmation By This Court

Confronted with Argentina's continuing breach of its obligations under the FAA bonds, a group of FAA bondholders, including NML Capital, Ltd., sued Argentina for breaching the *pari passu* clause, which requires Argentina "at all times" to meet its "payment obligations" under the FAA Bonds "at least equally with all its other present and future unsecured and unsubordinated External Indebtedness." A-482 at § l(c). Plaintiffs alleged that Argentina's making of

payments under the Exchange Bonds, while it failed to make payments on the FAA bonds, blatantly violated the *pari passu* clause.

In a December 2011 decision, the District Court agreed. It found that Argentina "breached (and continue[d] to breach) its contractual duty" under the *pari passu* clause by, among other things, relegating the FAA bondholders to a "non-paying class," and "failing to pay the obligations currently due under [the FAA] Bonds while at the same time making payments currently due to holders of other unsecured and unsubordinated External Indebtedness." *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 TPG, 2011 WL 9522565, at *2 (S.D.N.Y. Dec. 7, 2011). Because of Argentina's refusal to honor money judgments on the defaulted FAA bonds, the District Court, in a series of rulings, fashioned an injunctive remedy that required Argentina to make ratable payments to *pari passu* bondholders whenever it made payments on bonds issued under the Exchange Offers. *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 TPG, 2012 WL 5895786, at *1 (S.D.N.Y. Nov. 21, 2012).

Argentina appealed. On October 26, 2012, this Court affirmed the District Court's issuance of the injunctions, holding that the FAA's *pari passu* clause "bars Argentina from discriminating against plaintiffs' bonds in favor of bonds issued in connection with the [Exchange Offers] and that Argentina violated that provision by ranking its payment obligations on the defaulted debt below its obligations to

the holders of its restructured debt." *NML I*, 699 F.3d at 250. This Court further found that "the combination of Argentina's executive declarations and legislative enactments have ensured that [the FAA bondholders'] beneficial interests do *not* remain direct, unconditional, unsecured and unsubordinated obligations of [Argentina]"—all in violation of the *pari passu* clause. *Id.* at 259-60. These "legislative enactments" included both the Lock Law and the Lock Law Suspension, as well as Argentina's annual payment moratoria. *Id.* at 252 & n.3, 254-55, 257.

After a limited remand to the District Court to clarify two issues regarding the injunctions, this Court re-affirmed the injunctions, as amended, in their entirety. *NML II*, 727 F.3d at 238. On the second appeal, this Court held that the "district court's decision does no more than hold Argentina to its contractual obligation of equal treatment." *Id.* at 241. This Court again recounted Argentina's serial breaches of the *pari passu* clause, its "extraordinary behavior" in defying the American court system, and its resulting status as a "uniquely recalcitrant debtor." *Id.* at 247. Perhaps most importantly, this Court held that the injunctions "affirm[] a proposition essential to the integrity of the capital markets: borrowers and lenders may, under New York law, negotiate mutually agreeable terms for their transactions, *but they will be held to those terms*." *Id.* at 248 (emphasis added). Argentina subsequently filed a petition for a writ of certiorari that the Supreme

Court denied. *Republic of Argentina v. NML Capital, Ltd.*, 134 S. Ct. 2819 (2014). As discussed below, the District Court recently has effectively decided that Argentina need not be "held to those terms" anymore, thereby disregarding this Court's earlier rulings in this case.

C. Certain Appellants And Others Also Obtain *Pari Passu* Injunctions

In 2015, many Appellants and other plaintiff bondholders – referred to below as the "me too plaintiffs" – sought (i) partial summary judgment for breach of the FAA and (ii) "equitable relief akin to the injunctions obtained in the original thirteen actions." SPA-52. The District Court granted those motions in June and October, 2015, respectively, resulting in the issuance of *pari passu* injunctions in a total of sixty-two actions. *See NML Capital, Ltd. v. Republic of Argentina*, No. 14 Civ. 8601(TPG), 2015 WL 3542535 (S.D.N.Y. June 5, 2015); *Trinity Invest. Ltd. v. Republic of* Argentina, No. 15 Civ. 2611(TPG), 2015 WL 6447731 (S.D.N.Y. Oct. 22, 2015); *NML Capital, Ltd. v. Republic of Argentina*, No. 14 Civ. 8601(TPG), 2015 WL 6656573 (S.D.N.Y. Oct. 30, 2015) (the "October 30 Order") (detailing Argentina's post-injunction obstinacy and evasion of prior court rulings

and finding that Argentina's "ongoing violations of the *pari passu* clause cause plaintiffs irreparable harm for which there is no adequate remedy at law").[4]

Thus, as recently as six months ago, the District Court recognized that Argentina's continued "violations of the *pari passu* clause" resulted in irreparable harm to plaintiffs. October 30 Order, 2015 WL 6656573 at *4. This has not changed.

Other bondholders (including the undersigned Interested Plaintiffs as well as certain Appellants in other actions that are not on appeal) have filed similar motions for partial summary judgment and/or specific performance on the exact same bonds. *The District Court, however, inexplicably has not ruled on such motions, potentially resulting in a lower settlement payment under the (inequitable) terms of Argentina's subsequent unilateral settlement offer, as discussed immediately below*.

D. Argentina's February 2016 "Cram Down" Settlement Offer

In December 2015, Mauricio Macri took office as President of Argentina. A-1164. In the following months, government officials met with some of the holders of Argentina's defaulted FAA bonds and reached agreements with a small number of them. *See* SPA-53 (Indicative Ruling at 7) (talks took place in January

[4] Although Argentina appealed the above orders in the "me too" cases, it since "voluntarily" abandoned them in order to obtain a remand to the District Court when a panel of this Court so suggested. *See* A-1721 (Mandate).

2016 between "senior government officials" and "*lead plaintiffs*," and noting that agreements in principle were reached with only five plaintiffs) (emphasis added).

Argentina did not engage in good-faith negotiations with the vast majority of holders of defaulted FAA bonds. Instead, on February 5, 2016, Argentina publicly issued a unilateral settlement proposal (the "Unilateral Proposal"). A-645-649. The Unilateral Proposal was a new violation of the *pari passu* clause because it re-ranked the FAA bondholders into three tiers, to which Argentina would pay differing consideration, rather than treat them all equally as the FAA requires: (i) creditors with money judgments and a *pari passu* injunction, who were offered the amount of their judgment, reduced by a thirty percent (30%) discount; (ii) creditors with a *pari passu* injunction but without money judgments, who were offered the "accrued value" of their claims, less a thirty percent (30%) discount; and (iii) all other FAA bondholders, who were offered a "base offer" of 150% of the principal amount of their bonds. *Id.* [5]

[5] Notably, in a further attempt to stampede bondholders into accepting its unilateral settlement terms without time for real deliberation or negotiation, Argentina offered to pay a higher settlement amount to bondholders who accepted the settlement by February 19, 2016, only a matter of days later. *See* A-646. Moreover, because there was no mechanism to accept the settlement generally described in the Unilateral Proposal, it was not until Argentina published its formal settlement offer with acceptance instructions on its website on February 17, 2016, that it was possible to accept the settlement. *See* A-728. Argentina thus essentially gave bondholders barely a 48-hour window to obtain the "premium" pricing, an obvious attempt by Argentina to maximize the coercion.

Argentina's Unilateral Proposal thus sought to subordinate two classes of FAA bondholders—including those who had fully briefed injunction motions pending before the District Court. *See* A-1181-1187 at A-1182 (commentary from Argentinian press that Argentina's Unilateral Proposal was designed to "divide" its creditors into competing groups).[6]

On February 17, 2016, Argentina published online a formal settlement offer, consisting of a "Master Settlement Agreement," an agreement schedule that could be executed by *any* holder of defaulted Argentina FAA bonds (with a pre-signed acceptance on Argentina's signature line ("/s/")) (the "Agreement Schedule"), as well as a set of acceptance instructions that collectively set out the economic terms Argentina was offering (the Master Settlement Agreement, the Agreement Schedule, and the acceptance instructions together, the "Unilateral Settlement Offer"). *See* A-1620-1629 (Master Settlement Agreement and appended Agreement Schedule); A-1617-1618 (Instructions for Bondholders to Accept its Settlement Proposal).

In response thereto, Appellants (as well as many other bondholders) repeatedly attempted, both directly and through counsel, to engage with

[6] Additionally, Argentina has entered into settlements with other bondholders wherein it has agreed to pay seventy-five percent (75%) of the amount of their claims (inclusive of all legal and statutory interest), as well as their legal fees, terms different from the Unilateral Settlement Offer. *See* A-2366.

Argentina's representatives and/or the Special Master appointed by the District Court in the hopes of achieving a negotiated resolution. A-5873 (Costantini Decl. ¶¶ 11-12). Importantly, Appellants made specific counter-proposals that sought to ensure that similarly-situated bonds were treated the same – as required by the FAA. *Id.* at ¶ 12; *see also* A-2271-2272 (3/1/16 Hr'g Tr.).

Argentina, however, chose not to respond. A-5873, A-5875 (Costantini Decl. ¶¶ 12, 20). Instead, it negotiated almost exclusively with a discrete group of bondholders (most prominently, the lead NML plaintiffs), while generally neglecting most others, including Appellants and the Interested Plaintiffs (as well as, apparently, certain other plaintiffs who have moved to remove the Special Master – *see* fn. 3 *supra*).[7] *See* A-5874 (Costantini Decl. ¶ 15). Argentina also later rejected Appellants' requests to extend the arbitrary, two-week settlement period that Argentina imposed that expired on February 29, 2016 (as further discussed below). *Id.*

[7] For example, counsel for certain Appellants wrote to three representatives of Argentina and the Special Master on February 25, 2016, explaining that they "would like to resolve [thei]r default bond claims with Argentina" and noting that there "[we]re very easy fixes to what was put on the table to get all the rest of the holders in agreement without . . . additional, unnecessary litigation." *See* A-5877-5878. Prior to the February 29, 2016 deadline discussed below, however, Argentina never meaningfully responded with regard to U.S.-law bonds at issue on this appeal. *See* A-5875 (Costantini Decl. ¶ 20).

E. Argentina Seeks To Immediately Vacate The *Pari Passu* Injunctions

After making the Unilateral Proposal, Argentina moved at breathtaking speed to rid itself of the *pari passu* injunctions. On February 11, 2016 – less than a week after making the Unilateral Proposal – Argentina moved by Order to Show Cause before the District Court for an "indicative ruling" (given that the District Court lacked jurisdiction because of then-pending appeals to this Court) that the District Court would vacate the *pari passu* injunctions if (i) the Argentine legislature repealed the Lock Law and Law 26,984 (the "Sovereign Payment Law"); and (ii) Argentina transmitted payment to any bondholders that reached a settlement agreement with Argentina "on or before February 29, 2016." Thus, without any explanation or justification, Argentina's filing added the concept (not part of the Unilateral Proposal) that each bondholder must accept the Unilateral Proposal or otherwise reach a settlement in principle with Argentina by February 29, 2016, or risk not being paid by Argentina and risk not being protected by an injunction – even if they later reached a settlement with Argentina.

On February 19, 2016, the District Court issued its 23-page Indicative Ruling, just a day after various plaintiffs filed their opposition papers and a *mere two hours* after Argentina filed its reply papers. SPA-35-69. The Indicative Ruling rested on the premise that "President Macri's election marked a turning point in [Argentina's] attitude and actions" and the related finding that Argentina

"has shown a good-faith willingness to negotiate with" the remaining FAA bondholders. SPA-53-59. The lack of a legal remedy for the continued contractual violations by Argentina was not addressed, but the District Court determined that these purported "changed circumstances have rendered the injunctions inequitable[.]" SPA-59. The District Court indicated that it would vacate the injunctions if it were to regain jurisdiction and two conditions precedent – both wholly within Argentina's control – were satisfied:

> (1) Argentina repeals all legislative obstacles to settlement with the FAA bondholders, including the Lock Law and the Sovereign Payment Law; and
>
> (2) For all plaintiffs that entered into [settlement] agreements in principle with Argentina on or before February 29, 2016, Argentina made full payment in accordance with the specific terms of each such agreement.

SPA-69. Thus, under the Indicative Ruling, the settlement process could "still continue," but only "[u]ntil February 29, 2016," *just ten days later*, the date by which "*all* FAA bondholders ha[d] the right to accept the terms of [Argentina's Unilateral] Proposal." SPA-68 (emphasis in original). If – and *only* if – plaintiffs and other bondholders reached agreement with Argentina by that date would they "receive the protections incorporated by" the ruling. *Id.*

On the very next business day, February 22, 2016, Argentina filed an "emergency motion" in this Court in connection with its appeals of the October 30, 2015 *pari passu* injunctions. Such motion sought a remand to the District Court.

Following oral argument, at which Judge Walker expressed concern about the "cram down" nature of Argentina's settlement offer, *see* A-1815 at 11:3-12, this Court issued the Mandate, a February 24, 2016 Order dismissing all of Argentina's current appeals with prejudice and remanding the cases on appeal to the District Court and providing that, as of the date of the Mandate, the Indicative Ruling was of no force or effect. A-1721.

The Mandate further required that, prior to the entry of any order by the District Court adopting the Indicative Ruling, a motion for such relief had to be made by Argentina and all parties had to be afforded "an opportunity to be heard." *Id.* The Mandate prospectively stayed any order of the District Court lifting the *pari passu* injunctions for two weeks to allow Appellants to move for a further stay pending appeal. *Id.*[8] On the very next day, February 25, 2016, Argentina submitted a four-sentence "letter motion" asking the District Court to enter the Indicative Ruling. A-1722-1723. Mere hours later, the District Court ordered that all plaintiffs opposing such relief file oppositions within two business days (by February 29, 2016) – hardly showing respect for the Mandate's requirement that opponents be given "an opportunity to be heard" – and scheduling a hearing for the very next day, March 1, 2016. *See* A-5100.

[8] This Court later extended the stay through the resolution of this appeal based on Argentina consenting to Appellants' Motion for such relief. *See* Second Cir. Dkt. 119 (Order dated Mar. 11, 2016).

In response, counsel for several hundred plaintiffs in eleven actions wrote to the District Court requesting additional time to submit their oppositions and a rescheduling of the hearing. *See* A-5101-5102. The District Court denied such requests. *See* A-5114.

F. Certain Appellants Accept Argentina's Coercive, Cram Down Unilateral Settlement Offer As It Was Clarified By The Settlements Argentina Filed With The District Court

Given the February 29, 2016, deadline arbitrarily set by Argentina and adopted by the District Court in the Indicative Ruling without analysis, many Appellants felt compelled to accept Argentina's Unilateral Settlement Offer without the benefit of substantive negotiations with Argentina, rather than be left without the assurance of being paid under a later settlement or the protection of injunctive relief – given the terms of the Indicative Ruling. A-2286 (3/1/16 Hr'g Tr. at 35:12-16).[9]

The Master Settlement Agreement expressly excluded from the bonds entitled to participate in the Unilateral Settlement Offer *only* "Prescribed Claims," which were defined as "claims . . . arising under defaulted Republic of Argentina bonds as to which *the contractual prescription period set out in the relevant*

[9] As described above, the Unilateral Settlement Offer was comprised of the Master Settlement Agreement and the appended Agreement Schedule (pre-executed by Argentina), as well as the set of instructions (the "Instructions") pursuant to which any holders of "defaulted Argentina bonds" could accept and "settle all claims in respect of those bonds." *See* A-1620-1629; A-1617-1618.

instrument evidencing those bonds has expired." A-1620 (Master Settlement Agreement at 1) (emphasis added). Crucially, neither the Master Settlement Agreement nor the Instructions made reference to any other time-based limitation such as a statute of limitations, even though Argentina has now suggested it may so contend in order to try to re-trade on its settlement offer. Indeed, aside from contractual "prescription," Argentina placed no limitation on the FAA bonds covered by its Unilateral Settlement Offer.[10]

It is undisputed that the "contractual prescription period" referenced in the Unilateral Settlement Offer has never been triggered for the New York law bonds held by Appellants. Under the FAA, "Prescription" poses a time limitation from when Argentina pays funds owed to the bondholders to a "Fiscal Agent" that are then left unclaimed for two years, whereupon the funds are returned to Argentina and the bondholder "shall thereafter look only to the Republic for any payment to which such holder may be entitled." A-490-491 at § 6(d)) (the "Prescription Clause"). Because Argentina has never paid its Fiscal Agent the monies owed on any of the defaulted bonds at issue, the prescription period has not been triggered.

[10] The Unilateral Proposal also referred to a contractual prescription limitation, not a statute of limitations, where it stated that payment on bonds "that have been *prescribed* according to the contractual terms and the applicable laws will not be acknowledged." *See* A-646 (emphasis added). The Unilateral Proposal was superseded by, and integrated within, the Master Settlement Agreement, which also refers only to contractual prescription as set forth above.

Consistent with such interpretation, Argentina entered into settlements with several bondholders (not Appellants) between February 19, 2016 and its self-created February 29, 2016 deadline that did not exclude *any* bonds as allegedly time-barred, even though such settlements covered bonds with maturity dates as early as 2002 and 2003 and the relevant lawsuits were filed more than six years later (the statute of limitations under New York law for contract claims per C.P.L.R. 213). *See* A-2003-2008 (Settlement Agreement with VR Global Partners, L.P. as filed with the District Court); A-2010-2015 (Settlement Agreement with Procella Holdings, L.P. as filed with the District Court); A-2017-2025 (Settlement Agreement with Red Pines LLC as filed with the District Court). Argentina expressly touted these agreements in principle to the District Court as settlement agreements in support of its request to lift the injunctions. *See* A-1922-1941 at A-1939 (Second Supplemental Decl. of Santiago Bausili at ¶¶ 9-11).

G. The District Court Vacates The Injunctions In A Summary Proceeding Notwithstanding The Terms Of The Mandate

At the March 1, 2016 hearing, held just three business days following the filing of Argentina's letter motion, multiple counsel – representing a myriad of individual and institutional plaintiffs, including counsel for Appellants – implored the District Court to reconsider or amend its Indicative Ruling. Specifically, such counsel asked the District Court to address Argentina's failure to meaningfully engage with them and their clients concerning settlement during the brief

"negotiation" period that Argentina had imposed and not to lift their respective *pari passu* injunctions given that the injunctions were granted based on contractual rights that had not changed (but that Argentina still was not honoring).[11] Even the lead NML plaintiffs, who had reached a multi-billion dollar agreement in principle with Argentina on the day before the hearing, urged the District Court to postpone lifting the injunctions for thirty days to allow the hundreds of other plaintiffs to engage with Argentina and the Special Master.[12]

The District Court, nevertheless, entered the March 2 Order the very next day, largely adopting its Indicative Ruling. The March 2 Order lifted the *pari passu* injunctions subject to Argentina's satisfaction of the conditions precedent and Argentina's submission of a notice to the District Court stating its compliance therewith. SPA-84 (March 2 Order at 5). The District Court declined to stay entry of its order for even a single additional day. *See id*.

Further, without citing to anything in the record, as nothing existed, the District Court found that "claims made by certain plaintiffs that they have had 'no

[11] *See* A-2272-2308 (3/1/16 Hr'g Tr. at 21:6-22:13 and 52:16-24 (Olson), 23:8-22 and 53:10-14 (Friedman), 27:10-28:4 and 54:2-18 (Spencer), 31:12-24 and 54:24-55:6 (Costantini), 34:25-35:25 and 55:19-56:24 (Levine), 38:17-39:23 and 57:6-8 (Bhargava), 41:25-43:5 (Scullion), and 44:18-45:18 (Sleater)).

[12] NML's stated objective was to ensure that its settlement could close quickly and not be delayed by further litigation; such concerns seem to have been prescient. A-2271-2273 (Olson).

opportunity' to negotiate [we]re exaggerated," even though neither Argentina nor any other party ever disputed the representations of multiple plaintiffs' counsel to that effect during the hearing. *Compare* SPA-82 *with* A-2264-2268 and A-2300-2301 (3/1/16 Hr'g Tr.) (Paskin).

Appellants timely filed Notices of Appeal.[13]

H. Argentina's Suggestions That It May Renege On Or Try To Re-Trade Its Unilateral Settlement Offer Demonstrate That It Is Still A Bad Actor

Despite its public position to the contrary, Argentina now may be seeking to renege or re-trade on its Unilateral Settlement Offer, which certain Appellants and others have accepted. *See* A-2288 (3/1/16 Hr'g Tr. at 37:2-17) (per counsel for Appellants, "There seems to be differing treatment by Argentina of the terms of [its] unilateral [offer]. That can't be. If it makes a unilateral offer and it is accepted, it should be determined and applied by Argentina consistently"). That is, even though Argentina filed with the District Court agreements in principle reached with certain other bondholders – namely, VR Global Partners, L.P., Procella Holdings, L.P., and Red Pines LLC, as discussed above – covering bonds with maturity dates as early as 2002, Argentina, since the issuance of the Indicative

[13] *See* A-5879-5889; A-7887-7897; A-5535-5545; A-7948-7958; A-8184-8194; A-7728-7738; A-5350-5460; A-8442-8452; A-9036-9046; A-9758-9768; A-8891-8901; A-9682-9693; A-9519-9529; A-9955-9965; A-8736-8746; A-9246-9256 (Appellants' Notices of Appeal).

Ruling, has questioned certain of Appellants' acceptances of the Unilateral Settlement Offer with respect to bonds of older vintages based on a purported statute of limitations theory. Such a limitation of the bonds eligible to participate in the settlement (i) was not a condition to the Unilateral Settlement Offer, as demonstrated above, (ii) has not been pressed before in this litigation, and (iii) has no merit in any event, as demonstrated by Argentina's waiver of the issue in reaching other settlements. *See* A-2306-2307 (3/1/16 Hr'g Tr. at 55:25-56:14); A-1620-1629 (Master Settlement Agreement).

As noted above, many Appellants accepted Argentina's Unilateral Settlement Offer (because of its coercive terms and the unsupportable actions of the District Court). As a matter of law, such acceptance creates a binding contract. *Consarc Corp. v. Marine Midland Bank, N.A.*, 996 F.2d 568, 573 (2d Cir. 1993) ("A unilateral offer may be accepted by the other party's conduct and thereby give rise to contractual obligations"); *see also Ontario Teachers' Pension Plan Bd. v. IG Holdings, Inc.*, No. 99-cv-3616, 2000 WL 1234592, at *6 (S.D.N.Y. Aug. 31, 2000) ("[T]ender offers are generally not invitations for offers. It is common practice that tender offers are 'accepted' when a party commits himself or herself to tendering his or her shares. When this happens, the shares are deemed transferred, the tender offer accepted, and a contract formed"). By submitting the negotiated settlements discussed above, Argentina confirmed to the District Court

that its reservation in the Unilateral Settlement Offer concerning contractually prescribed bonds did not include any of the bonds held by Appellants, and Appellants accepted the Unilateral Settlement Offer without revisions or reservations. Thus, equity should not permit Argentina to renege on its offer.[14]

This potential breach of its own Unilateral Settlement Offer is just the type of inequitable conduct Argentina has been engaging in since 2001 and certainly does not support the District Court's lifting of the *pari passu* injunctions. Moreover, if the injunctions are vacated, Argentina will no longer have any reason to honor its Unilateral Settlement Offer and to engage with Appellants to reconcile the conflicting settlement terms that it agreed to with similarly-situated bondholders. Argentina also must be required to address the unfair distinction in the settlement payments for bonds covered by injunctions and those where injunction motions still are pending before the District Court.

SUMMARY OF THE ARGUMENT

In determining that circumstances have changed so dramatically as to warrant the lifting of the permanent injunctions pursuant to Rule 60(b)(5), the District Court disregarded controlling authority from this Court as well as its own

[14] While Appellants dispute that any of their claims are prescribed or fall outside the statute of limitations, this Court need not reach that issue to conclude that Argentina's inconsistent behavior is inequitable and requires the reversal of the March 2 Order.

prior rulings and made clearly erroneous findings. As a threshold matter, the Unilateral Settlement Offer itself plainly violates the *pari passu* clause as it has been consistently construed throughout this case, given that it discriminates among similarly-situated bondholders by offering differing payments based solely on distinctions that have no basis under the FAA. Moreover, the District Court's March 2 Order completely disregards this Court's prior holding that, without injunctive relief, plaintiffs have no remedy for the admittedly continuing violation of their contractual rights by Argentina.

The District Court also erred in its factual finding that Argentina has exhibited a "completely changed attitude." *See* SPA-83 (March 2 Order at 4). Contrary to the District Court's mistaken premise that the Unilateral Settlement Offer reflects a sea-change in Argentina's conduct, the undisputed record before the District Court and this Court as set forth above tells a different story. While Argentina engaged in settlement discussions with certain bondholders, it failed to truly negotiate with or meaningfully respond to counterproposals from many other bondholders (including Appellants) at any time prior to its arbitrary February 29, 2016 cut-off.

The Unilateral Settlement Offer itself was coercive, inequitable, and contrary to law. The District Court erred in effectively endorsing the coercive Unilateral Settlement Offer as an adequate resolution of many years of litigation.

In fact, the Unilateral Settlement Offer treats bondholders differently based on inequitable distinctions that are inconsistent with the *pari passu* clause and that likely violate the antifraud provisions of the Federal Securities laws. Further, the District Court failed to consider the fact that Argentina – following the issuance of the Indicative Ruling – has equivocated regarding certain Appellants' acceptances of the Unilateral Settlement Offer by raising questions to certain bondholders based on newly-devised, purported statute of limitations arguments that were neither reserved by Argentina in the offer nor invoked by Argentina in reaching settlement agreements with other bondholders *on the very same bonds*.

Moreover, vacating the injunctions will impede, not serve, the public interest. While the District Court appropriately considered the interests of third parties, including the Exchange Bondholders, these discrete concerns do not outweigh (i) the compelling public interest in holding contracting parties to the terms to which they agreed or (ii) the grossly inequitable treatment being foisted upon similarly situated creditors, either through the Unilateral Settlement Offer or Argentina's possible efforts to renege. Additionally, lifting the injunctions before Argentina has engaged in good faith negotiations with *all* of its bondholders would prematurely deprive Appellants and other bondholders of the very equitable protections that brought Argentina to the negotiating table with other bondholders in the first place.

GOVERNING LEGAL STANDARD

Federal Rule of Civil Procedure 60(b) provides "a mechanism for extraordinary judicial relief [available] only if the moving party demonstrates exceptional circumstances." *Motorola Corp.*, 561 F.3d at 126 (citation omitted). For decades, this Court has recognized that a permanent injunction may be vacated or modified "only where conditions have so changed as to make such relief equitable, *i.e.*, a significant change in the law or facts." *Sierra Club v. U.S. Army Corps of Engineers*, 732 F.2d 253, 256 (2d Cir. 1984); *see also* Fed. R. Civ. P. 60(b)(5) (requiring a showing that "applying [a permanent injunction] prospectively is no longer equitable").

Indeed, once granted, a permanent injunction "may not be changed in the interest of the defendants if the purposes of the litigation as incorporated in the decree have not been fully achieved." *Sierra Club*, 732 F.2d. 256 (finding that a "stricter standard" applies to permanent injunctions than to preliminary injunctions). "The inquiry on appeal is whether there has been such a change in the circumstances as to make modification of the decree equitable." *Id.*

As detailed below, Argentina's recent efforts to ram through its Unilateral Settlement Offer with undue haste and its related misconduct do not amount to an "exceptional" change in circumstances. Nor has the purpose of the injunctions been achieved for most plaintiffs. On the contrary, the Unilateral Settlement Offer

itself violates Appellants' contractual rights in the very manner that led to the implementation of the *pari passu* injunctions in the first place. The District Court thus erred in ordering the vacatur of the injunctions upon Argentina establishing the occurrence of the two conditions precedent. If left undisturbed, the March 2 Order would leave countless bondholders whose contracts have been breached and who have no monetary remedy – as this Court previously has found – without any equitable protection. This is the same situation that twice caused this Court to affirm the injunction, and should now lead to reversal of the March 2 Order.

ARGUMENT

I. THE MARCH 2 ORDER SHOULD BE REVERSED

A. The District Court's Lifting Of The Injunctions Notwithstanding The *Pari Passu* Clause Contradicts The Law Of The Case

This Court has recognized that the meaning of the FAA's *pari passu* clause presents a "simple question of contract interpretation." *NML I*, 699 F.3d at 258-60. The text of the *pari passu* clause has not changed since the time that the injunctions were put in place and affirmed. Neither the March 2 Order nor the Indicative Ruling, however, even attempted to reconcile the District Court's decision to lift the injunctions with the District Court's and this Court's prior holdings. Rather, focusing solely on external factors that have *nothing* to do with the language of the FAA as it has been construed by this Court and that find little or no support in the record (*i.e.*, that "circumstances have changed dramatically"

due to President Macri's election, SPA-112-114), the District Court concluded that the *pari passu* injunctions should be lifted.

Even putting the District Court's erroneous focus on the purported "changed circumstances" to the side, the March 2 Order should be reversed because it fails to apply the law of the case. As explained above, when Argentina issued bonds under the FAA in 1994, it pledged that (i) the bonds would "*at all times rank pari passu and without any preference among themselves*" and (ii) Argentina's payments on the bonds would "*at all times rank at least equally* with all its other present and future unsecured and unsubordinated [obligations.]" A-482 at § l(c) (emphasis added). Argentina thus promised that *all* FAA bondholders would be treated equally, "at all times." Following its 2001 default on all of its public debts, Argentina willfully and habitually breached the FAA's *pari passu* clause, as set forth above; it also refused to recognize money judgments on these bonds. *See, supra*, Statement of the Case and Facts, §§ A-C.

The District Court thus issued a series of rulings that stand in sharp contrast to its Indicative Ruling and the March 2 Order. In each of those earlier decisions, the District Court performed a straightforward, well-reasoned analysis of the terms of the FAA and agreed with the plaintiffs that Argentina "breached (and continue[s] to breach) its contractual duty" under the *pari passu* clause by attempting to subordinate the claims of the FAA bondholders to other

bondholders. *See, e.g.*, *NML Capital*, 2011 WL 9522565 at *2. The District Court then entered the *pari passu* injunctions. *NML Capital, Ltd.*, 2012 WL 5895786 at *1.

This Court twice affirmed those injunctions, each time based on the plain language of the *pari passu* clause. *See NML I*, 699 F.3d at 258-60; *NML II*, 727 F.3d at 238. Thus, time and again, the District Court (including as recently as October 30, 2015) and this Court reaffirmed the fundamental principle that *all* holders of Argentina's FAA bonds should be treated on the same basis as each other and no less favorably than the holders of other non-subordinated Argentinian debt. *NML II*, 727 F.3d at 237. And, because Argentina breached that contractual "promise of equal treatment" and left Appellants without any monetary remedy, the injunctions were necessary. *Id.*; *NML I*, 699 F.3d at 259-60.

As this Court also recognized, "Argentina has no right to force [the bondholders] to accept a restructuring, even one approved by a super-majority." *NML I*, 699 F.3d at 263 n.15. Yet, in issuing the Indicative Ruling, the District Court essentially forced many bondholders to accept Argentina's unilateral terms because, in the absence of the injunctions, the bondholders will be left without equitable relief or monetary relief (given Argentina's abject refusal to respect money judgments). The sole "relief" available to the bondholders in that scenario will be years of continued litigation before the District Court and this Court if they

did not accept the settlement (or if Argentina reneges on their settlements). *See NML I*, 699 F.3d at 262 ("[I]t is clear to us that monetary damages are an ineffective remedy for the harm plaintiffs have suffered as a result of Argentina's breach. Argentina will simply refuse to pay any judgments. It has done so in this case by, in effect, closing the doors of its courts to judgment creditors").

In sum, the District Court's failure to even consider Appellants' argument that the Unilateral Settlement Offer violated the *pari passu* provision in the FAA as interpreted by the law of this case was an error of law that warrants the reversal of the March 2 Order.

B. The District Court Erroneously Concluded That "Changed Circumstances" Support Vacating The Injunctions

The District Court further erred in vacating the *pari passu* injunctions because its decision rested on the remarkably faulty assumption that Argentina's inequitable conduct now has ceased. *See* SPA-83 (March 2 Order at 4) (describing Argentina's "completely changed attitude"); SPA-103, SPA-105, SPA-109-112 (Indicative Ruling at 7, 9, 13-16) (characterizing Argentina's "earnest efforts to negotiate"). In short, notwithstanding that Argentina (i) still is not making good on its obligations to the FAA bondholders; (ii) still has not negotiated with most bondholders; (iii) violated the *pari passu* provision on its face through the Unilateral Settlement Offer, and (iv) has signaled following its receipt of the Indicative Ruling that it may seek to renege on certain settlements, the District

Court found a "dramatic shift in . . . policy" on Argentina's part, reflecting a "good-faith willingness to negotiate with the holdouts." SPA-109 (Indicative Ruling at 13).

The undisputed record, however, reveals that Appellants and other bondholders have *not* been the beneficiaries of any such change in behavior. Argentina virtually ignored Appellants throughout the arbitrarily-compressed settlement window that Argentina foisted on the bondholders. On February 6, 2016 (the day after Argentina issued its Unilateral Proposal), certain Appellants asked Argentina questions about it. *See* A-5873 (Costantini Decl. ¶ 9). Those questions went unanswered. *Id.* On February 9 and February 10, 2016, certain Appellants made counter-proposals that sought to have similar bonds treated similarly. *Id.* at ¶ 11. Argentina did not respond. *Id.* at ¶ 12. Ultimately, certain Appellants – faced with the risk that they would be left with no ability to negotiate a settlement, that any later settlement would not be paid, and that they would be left without the equitable protections that they had secured and no ability to enforce a money judgment – accepted the Unilateral Settlement Offer that Argentina had pre-signed. A-2286 (3/1/16 Hr'g Tr. at 35:12-16).

At the March 1 hearing before the District Court on Argentina's "motion" to enter the Indicative Ruling, eight different counsel – representing myriad individual and institutional plaintiffs with differing interests – independently

implored the Court to reconsider or amend its Indicative Ruling or stay entry of it for thirty days in order to address Argentina's failure to meaningfully engage with most bondholders during the truncated "negotiation" period that Argentina had devised. As the District Court also heard, following the Indicative Ruling, when certain Appellants entered into binding settlement agreements with Argentina by signing and returning the Agreement Schedule to the Master Settlement Agreement without modification (along with the list of their bond holdings requested by the instructions), Argentina devised an ill-conceived statute of limitations issue that was not a condition to acceptance of the Unilateral Settlement Offer in order to reduce its payment obligations to certain Appellants. *See* A-5875 (Costantini Decl. ¶ 18); A-2288, A-2306-2307 (3/1/16 Hr'g Tr. at 37:2-17; 55:25-56:14). Argentina does not have the right to do so. *See generally Consarc Corp.*, 996 F.2d at 573 ("A unilateral offer may be accepted by the other party's conduct and thereby give rise to contractual obligations").

At the same time that it was raising these questions about acceptances of its offer, however, Argentina was openly touting to the District Court settlements that it entered into *just days before* with other bondholders holding bonds of the same vintages – *i.e.*, VR Global Partners, L.P., Procella Holdings L.P., and Red Pines LLC. None of these settlement agreements excluded *any* bonds, whether based on "prescription" as articulated in the Unilateral Settlement Offer, or based on an un-

reserved statute of limitations argument.[15] Of course, after deploying these settlement agreements in convincing the District Court to lift the injunctions, Argentina then turned around and suggested that it might not accept for settlement *those very same bonds* in connection with Appellants' acceptance of the Unilateral Settlement Offer. *Compare*, *e.g.*, Procella Settlement (A-2014) (settling claim based on bond with ISIN US040114AH34 and December 20, 2003 maturity date where complaint was filed May 21, 2015) *with* ARAG-A Limited Complaint ¶ 19 (A-7534) (asserting claim based on bond with ISIN US040114AH34 and December 20, 2003 maturity date in complaint filed December 12, 2014).

Argentina's conduct not only is inequitable, but is almost certain to result in additional litigation if Argentina – as required by the March 2 Order (SPA-84) – ultimately reports to the District Court that the bondholders that entered into settlements on or before February 29, 2016, "have all received full payment." If Argentina so reports, the result will be a massive new round of litigation by the

[15] These settlements included schedules listing the bonds that they covered, and many of those bonds had maturity dates as early as 2002 and 2003. *See* A-2003-2008 (VR Global Partners, L.P.); A-2010-2015 (Procella Holdings L.P.); and A-2017-2025 (Red Pines LLC). Moreover, for the avoidance of any doubt that Argentina was *not excluding* any bonds from its settlement offer based on prescription or other time-based defenses, two of these agreements expressly stated that "no Prescribed Claims exist with respect to the Bonds listed on the attachment to this Agreement Schedule, and [Argentina] will not assert that the Holder's claims to any Bonds listed thereon are untimely, or otherwise time-barred." *See* A-2055 and A-2012. Thus, any potential claim by Argentina of inadvertence or mistake would simply not be credible.

objecting, unpaid settling plaintiffs. Thus, the District Court's conclusion that there were sufficient "changed circumstances" to satisfy Rule 60(b) represents clear error given the record, which amply demonstrates that Argentina's strong-arm approach, inequitable conduct, and failure to meet its contractual obligations have not ceased. Even after certain Appellants were coerced into accepting the Unilateral Settlement Offer, Argentina has suggested that it may seek to renege on the resulting contracts. In sum, the record thoroughly contradicts the District Court's conclusion that there has been an "exceptional" change in circumstances sufficient to vacate the injunctions. *See Motorola*, 561 F.3d at 126.

C. The District Court Relied On An Inequitable And Prejudicial Settlement Proposal And Made Clearly Erroneous Factual Findings While Sitting As A Court Of Equity

While finding a "historic breakthrough," SPA-54, the District Court failed to even consider the fact that the cram down settlement *violated the FAA* as construed by this Court. In blatant breach of the FAA's *pari passu* clause – which requires Argentina "at all times" to treat its "payment obligations" under the FAA bonds "at least equally with all its other present and future unsecured and unsubordinated External Indebtedness" – the Unilateral Settlement Offer purports to treat those bondholders that had obtained money judgments and *pari passu* injunctions better

than similarly-situated bondholders.[16] At a minimum, the value of Appellants' claims should not rest on whether the District Court ruled on motions pending before it that were virtually identical to injunctive motions it previously had granted. *Id.*

The March 2 Order – issued on a rushed and under-developed record, despite this Court's Mandate – simply failed to consider any of these facts. On the contrary, it made clearly erroneous factual findings, such as the unsupported *ipse dixit* that certain bondholders' claims of being left out of the settlement process were "exaggerated," despite Argentina's own failure to contest the point during the March 1, 2016 hearing. "A factual finding is clearly erroneous . . . if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Ortega v. Duncan*, 333 F.3d 102, 106-07 (2d Cir. 2003); *see also* 9C Arthur R. Miller, *et al.*, *Federal Practice and Procedure* § 2585 (3d ed.) ("[I]f a finding is not supported by substantial evidence, it will be found to be clearly erroneous on appeal"). Here, there was no evidence whatsoever to support that finding.

[16] As Appellants' counsel submitted at oral argument before the District Court, "under the *pari passu* provision, it is completely unfair for Argentina to basically force . . . on investors [a] settlement which differentiates based on whether or not they have an injunction, whether or not they have moved for an injunction, which is still pending before your Honor, or whether or not other bondholders have not moved." A-2287 (3/1/16 Hr'g Tr. at 36:12-24).

D. The District Court Erroneously Relied On The Coercive Unilateral Settlement Offer Even Though It Appears To Violate The Antifraud Provisions Of The Federal Securities Laws

The District Court further erred in relying on the Unilateral Settlement Offer as grounds for vacatur of the *pari passu* injunctions because its coercive terms and failure to disclose material facts likely violated the antifraud provisions of the federal securities laws. Indeed, even a cursory review of its terms betrays an effort by Argentina to manipulate the bondholders to sell their bonds on a completely uninformed basis.

Although Argentina is a foreign governmental issuer, it is *not* exempt from the operation of Section 10(b) of the Securities Exchange Act of 1934 , 15 U.S.C. § 78j(b) (the "Exchange Act"), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5. As the Securities and Exchange Commission (the "SEC") observed in adopting Regulation FD, "foreign issuers [*i.e.*, both foreign governmental issuers and foreign private issuers] in their disclosure practices remain subject to liability for conduct that violates, and meets the jurisdictional requirements of, the antifraud provisions of the federal securities laws." SEC Release No. 7881 (Aug. 15, 2000); *see* 17 C.F.R. § 240.3b-4(b) (defining "foreign issuer" to include, among others, "any issuer which is a foreign government"). Because the Unilateral Settlement Offer seeks to purchase debt securities for cash, it is subject to Section 10(b) and Rule 10b-5. *Superintendent of Ins. of State of N. Y. v. Bankers*

Life & Cas. Co., 404 U.S. 6, 10 (1971) ("Section 10(b) outlaws the use 'in connection with the purchase or sale' of any security of 'any manipulative or deceptive device or contrivance'") (quoting 15 U.S.C. § 78j(b)) (approving claims based on allegations of manipulation in connection with the sale of bonds for cash); *see generally* 15 U.S.C § 77b(a)(1) ("The term 'security' means any note, . . . bond, debenture, [or] evidence of indebtedness").

Section 10(b) and Rule 10b-5 proscribe the use of any "manipulative or deceptive device or contrivance" to effect "a fraud or deceit upon any person in connection with the purchase or sale of any security." Argentina's Unilateral Settlement Offer did just that. It coercively elevated both the amount of consideration (if it was accepted by February 19, 2016) and the certainty of payment (if accepted by February 29, 2016) to those bondholders who quickly agreed to its terms over those who might have decided to participate at a later date.

In fact, if the Unilateral Settlement Offer were a tender offer subject to Sections 14(d) and/or (e) of the Exchange Act, 15 U.S.C. § 78n(d-e), and the regulations promulgated by the SEC thereunder, the coercive tactics used would be deemed unlawful under the antifraud provisions of Section 14(e). *See* 15 U.S.C. § 78n(e) ("It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not

misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any tender offer or request or invitation for tenders"); *see also Schreiber v. Burlington Northern, Inc.*, 472 U.S. 1, 11 (1985) ("persons engaged in making or opposing tender offers or otherwise seeking to influence the decision of investors or the outcome of the tender offer are under an obligation to make *full disclosure* of material information to those with whom they deal") (quotation marks and citation omitted) (emphasis added).

There is no compelling reason for a different conclusion under Section 10(b). Indeed, Argentina's attempt to have its bondholders relinquish their liquidity for up to 150 days[17] – effectively at Argentina's option and without any accompanying disclosures – is reminiscent of the front-end loaded, so-called "Saturday night special" tender offers made illegal by the Williams Act in 1968.

The Unilateral Settlement Offer also violated Section 10(b) and Rule 10b-5 because it omitted material information necessary to allow bondholders to make an informed decision as to whether to accept. Among other things, the Unilateral Settlement Offer failed to disclose anything about the likelihood of its conditions precedent being satisfied.

[17] *See* A-1621 (Master Settlement Agreement at § 3(ii)) (requiring holders to deliver their bonds against payment on the Closing Date); A-1631 (Agreement Schedule at ¶ (ii)) (requiring that the "Closing Date" be a date agreed to by Argentina); *id.* at ¶ (iii) (allowing Argentina to extend the "Closing Period" until the date that is 150 days after the date a holder executes the Agreement Schedule).

First, although Argentina and its legislature are a single sovereign entity, the Unilateral Settlement Offer says nothing about the likelihood of Argentina's legislature deciding not to repeal or abridge the Lock Law or the Sovereign Payment Law. Ultimate legislative approval, of course, is not a *fait accompli*.

Second, nowhere does the Unilateral Settlement Offer specify what sort of legislative "abridgement" will satisfy the first of the two conditions precedent. The probability of the Unilateral Settlement Offer failing to close would alter the total mix of information available to a bondholder considering whether to relinquish his or her securities.

Finally, the Unilateral Settlement Offer is materially misleading because it never discloses whether Argentina has or will have the necessary funds to make the requisite payments. While the District Court observed that Argentina "needs time to raise the capital required to pay all plaintiffs with whom it has reached agreement," SPA-82-83 (March 2 Order at 3-4), Argentina has not disclosed its chances of being successful in raising such funds. Such information would be highly material to a bondholder deciding whether or not to accept the Unilateral Settlement Offer.

The Unilateral Settlement Offer thus fails to provide bondholders the information necessary for them to decide whether to tender, whether to sell their securities in the active trading market, or whether to continue to hold their

securities. In sum, because the Unilateral Settlement Offer was manipulative and failed to disclose material information, the District Court erred in relying upon it as a basis for lifting the *pari passu* injunctions.

II. THE DISTRICT COURT ERRONEOUSLY FOUND THAT VACATING THE *PARI PASSU* INJUNCTIONS WOULD SERVE THE PUBLIC INTEREST

The March 2 Order should also be reversed because it contravenes, rather than serves, the public interest. The District Court's public-interest analysis focused myopically on the interests of Argentina and certain third parties, including the Exchange Bondholders. *See* SPA-64-65 (Indicative Ruling at 18-19). While Appellants appreciate those discrete interests, Argentina cannot overcome the critical public-interest principle ignored by the District Court: the requirement that debtors meet their contractual obligations. *See NML II*, 727 F.3d at 248 ("New York's status as one of the foremost commercial centers" requires that "borrowers and lenders may, under New York law, negotiate mutually agreeable terms for their transactions, *but they will be held to those terms*") (emphasis added). As this Court has recognized in this case, that interest is "essential to the integrity of the capital markets." *Id.*[18]

[18] It is well-settled that the enforcement of contractual obligations arising under freely negotiated agreements serves the public interest. *See M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 12-13 (1972) ("There are compelling reasons why a freely negotiated private international agreement, unaffected by fraud, undue influence, or overweening bargaining power . . . should be given full effect"); *see also Weltover, Inc. v. Republic of Argentina*, 941 F.2d 145, 153 (2d Cir. 1991)

As explained above, the *pari passu* injunctions promote the core public interest that "is advanced by requiring debtors, including foreign debtors, to pay their debts." *NML II*, 727 F.3d at 248; *see* October 30 Order, 2015 WL 6656573, at *5. Indeed, it was the *pari passu* injunctions that brought Argentina to the settlement table with at least some bondholders. Prematurely vacating those injunctions would not, as the District Court assumed, "encourag[e] amicable resolution of longstanding legal battles." SPA-66 (Indicative Ruling at 20). To the contrary, the March 2 Order, if left undisturbed, would have the perverse impact of chilling negotiations between Argentina and the remaining FAA bondholders and would disincentivize Argentina from ever treating all bondholders similarly, as required by the *pari passu* clause, while potentially undermining certain Appellants' ability to enforce their acceptances of the Unilateral Settlement Offer. Indeed, the record shows that just the issuance of the Indicative Ruling gave Argentina free license (or so it perceived) to revert to its bad ways of the past.

The March 2 Order also is contrary to the additional public interest in fully, but fairly, resolving this 15-year old legal dispute. *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 117 (2d Cir. 2005) ("The compromise of complex

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("New York, as a preeminent commercial center, has an interest in protecting those who rely upon that reputation to do business"); *Allied Bank Int'l v. Banco Credito Agricola de Cartago*, 757 F.2d 516, 521-22 (2d Cir. 1985) ("The United States has an interest in maintaining New York's status as one of the foremost commercial centers in the world").

litigation is encouraged by the courts and favored by public policy") (citation omitted); *see also In re PaineWebber Ltd. P'ships Litig.,* 147 F.3d 132, 138 (2d Cir. 1998) (recognizing the strong judicial policy in favor of settlements). Thus, the public interest weighs strongly in favor of reversal.

CONCLUSION

For all the foregoing reasons, this Court should vacate the March 2 Order in its entirety with instructions that the *pari passu* injunctions not be lifted until (i) disputes concerning Argentina's compliance with the conditions precedent have been fully adjudicated and (ii) any non-settling plaintiffs have had a full and fair opportunity to engage in settlement discussions with Argentina, and that any subsequent order of the District Court lifting the injunctions be stayed for two weeks to allow time for further appeals to this court and for motions for a further stay pending the resolution of such potential future appeals.

Dated: March 14, 2016
New York, New York

Respectfully submitted,

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PROOF OF SERVICE

I certify that on this day, March 14, 2016, I caused the Republic of Argentina to be served with the foregoing appellate brief via the Court's CM/ECF system.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because the brief contains 11,281 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because the brief has been prepared in a proportionally spaced typeface using Microsoft Word, version 2010, in 14-point Times New Roman font.

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Plaintiffs Honero Fund I, LLC, White Hawthorne II, LLC, and Yellow Crane Holdings, LLC