UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 16-628 Caption [use short title]

Motion for: Leave to Intervene as Interested Non-Party Appellees

Aurelius Capital Master, Ltd. v. The Republic of Argentina

Set forth below precise, complete statement of relief sought:

Emergency motion for leave to intervene as interested non-party appellees or, in the alternative, leave to join the appeals by filing a brief of amicus curiae pursuant to Fed. R. App. P. 29(a).

MOVING PARTY: Euro Bondholders
☐ Plaintiff ☐ Defendant
☐ Appellant/Petitioner ☑ Appellee/Respondent

OPPOSING PARTY: Aurelius Capital Master, Ltd. et al.

MOVING ATTORNEY: Christopher J. Clark

OPPOSING ATTORNEY: Edward Friedman

[name of attorney, with firm, address, phone number and e-mail]

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Court-Judge/Agency appealed from: Southern District of New York, District Judge Thomas P. Griesa

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
☑ Yes ☐ No (explain):

Opposing counsel's position on motion:
☐ Unopposed ☑ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:
☐ Yes ☐ No ☑ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☑ No
Has this relief been previously sought in this Court? ☐ Yes ☑ No
Requested return date and explanation of emergency:

Requested return date is 3/18/16. Emergency treatment is needed because the parties' motions to expedite this appeal have been granted as follows: Appellants' principal briefs are due 3/14/16; Appellee's opposition brief is due 3/21/16; Appellants' reply briefs are due 3/25/16.

Is oral argument on motion requested? ☐ Yes ☑ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ☐ Yes ☑ No If yes, enter date:

Signature of Moving Attorney:
/s/ Christopher J. Clark **Date:** March 11, 2016 Service by: ☑ CM/ECF ☐ Other [Attach proof of service]

Form T-1080 (rev. 12-13)

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Aurelius Capital Master, Ltd., ACP Master Ltd., Plaintiffs-Appellants, v. Republic of Argentina, Defendant-Appellee, Bank of America, N.A., Respondent, Banco Bilbao Vizcaya Argentaria, S.A., BBVA Compass Bancshares, Inc., BBVA Securities Inc., Third-Party-Defendants.	Docket No. 16-628

EMERGENCY MOTION OF THE EURO BONDHOLDERS
FOR LEAVE TO INTERVENE

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

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

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

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

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

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Pursuant to Federal Rule of Appellate Procedure 27(a) and Local Rule 27.1, the Euro Bondholders[1] submit this Motion for Leave to Intervene as Appellees in *Aurelius Capital Master, Ltd. v. Republic of Argentina*, No. 16-628.

PRELIMINARY STATEMENT

After nearly fifteen years, this longstanding, massive litigation between the Republic of Argentina (the "Republic") and various holders of the Republic's defaulted debt (the "Holdout Creditors"), which has produced tens of thousands of docket entries across more than 50 cases before the Southern District of New York and dozens of appeals to this Court, is on the verge of a negotiated resolution. In order to increase their settlement leverage at the eleventh hour, certain creditors of the Republic seek to forestall that long-awaited resolution by overturning the District Court's March 2, 2016 Order and Opinion (the "Conditional Order") conditionally vacating the injunctions issued by the District Court on November 21, 2012 and October 30, 2015 (collectively, the "Injunction").

The Euro Bondholders, who appeared before the District Court in support of the Republic's motion to vacate the Injunction, seek leave to intervene because the Conditional Order on appeal directly and profoundly affects their contractual and property interest in hundreds of millions of euros. There can be no dispute that the

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

Euro Bondholders have a substantial, unique, and direct interest in these proceedings. The Euro Bondholders submitted briefing and were given an opportunity to be heard as an interested party at the oral argument preceding the order on appeal. The District Court recognized and weighed the Euro Bondholders' interest in reaching its decision, and the District Court's order specifically held that "Exchange Bondholders," a group that includes the Euro Bondholders, are "[t]he most notable third parties affected" by the Injunction that the Conditional Order stands to vacate. Because no named party to these appeals can adequately represent their unique, acknowledged, and substantial interest in these proceedings—on which the District Court's analysis of the public interest and equities underlying its Order expressly turned—the motion to intervene should be granted.

BACKGROUND

A. The District Court's Injunction

The facts underlying the Injunction are well known to this Court and need not be repeated at length here. In 2001, the Republic defaulted on $80 billion of public external debt, including bonds issued pursuant to a 1994 Fiscal Agency Agreement (the "FAA"). *NML Capital, Ltd. v. Banco Cent. de la Republica Arg.*, 652 F.3d 172, 175, 176 n.3 (2d Cir. 2011). In 2005, and again in 2010, the Republic offered holders of bonds issued pursuant to the FAA new bonds with

substantially less favorable terms (the "Exchange Bonds") in exchange for their defaulted bonds (the "Exchange Offers"). *See NML Capital, Ltd. v. Republic of Arg.*, No. 08-cv-6978, 2012 WL 5895786, at *1 (S.D.N.Y. Nov. 21, 2012), *aff'd*, 727 F.3d 230, 237 (2d Cir. 2013). Holders of approximately 93% of FAA bonds participated in the Exchange Offers. Ex. A, Rule 62.1 Indicative Ruling at 2, *NML Capital, Ltd. v. Republic of Arg.*, No. 14-cv-8947 (S.D.N.Y. Feb. 19, 2016), Dkt. No. 47.[2] The Euro Bondholders hold euro-denominated Exchange Bonds ("Euro Bonds") that are governed by English law. Ex. B, English Judgment ¶ 13, *Knighthead Master Fund LP v. The Bank of New York Mellon*, [2015] EWHC (Ch) 270 (Eng.) (Feb. 13, 2015), *NML Capital, Ltd. v. Republic of Arg.*, No. 08-cv-6978 (S.D.N.Y. Mar. 3, 2015), Dkt. No. 753 at 4-15.

Other bondholders (the "Holdout Creditors"), including the Appellants, declined to accept the Exchange Offers and commenced legal action against the Republic, seeking payment in full under their defaulted bonds. After years of litigation, many obtained monetary judgments against the Republic, which the Republic refused to honor. Ex. A at 3. The Republic went so far as to enact laws signaling "its intention to defy any money judgment issued by [the District Court]." Ex. C, Injunction § 1(b), *NML Capital, Ltd. v. Republic of Arg.*, No. 08-cv-6978, (S.D.N.Y. Nov. 21, 2012), Dkt. No. 425. The District Court ultimately

[2] "Ex." refers to documents exhibited to the Declaration of Christopher J. Clark, dated March 11, 2016, and executed and filed together with this motion.

issued an Injunction which today covers 62 breach of contract actions against the Republic, and provides that whenever the Republic fulfills its obligation to make a payment under the Exchange Bonds, it must also make a "ratable payment" to the Holdout Creditors. Ex. C; Ex. D, Op. & Order at 14, *NML Capital, Ltd. v. Republic of Arg.*, No. 14-cv-8601 (S.D.N.Y. Oct. 30, 2015), Dkt. No. 37.

Rather than pay the Holdout Creditors, the Republic defaulted on the Exchange Bonds. Ex. A at 5, 14. Since the Injunction took effect on June 18, 2014, the Republic has missed several interest payments on the Exchange Bonds, including hundreds of millions of dollars owed to the Euro Bondholders.[3] Ex. E, Decl. of Christopher J. Clark ¶ 3, *NML Capital, Ltd. v. Republic of Arg.*, No. 08-cv-6978 (S.D.N.Y Feb. 29, 2016), Dkt. No. 896-1. The current total of blocked interest payments on all Exchange Bonds is approximately $3.1 billion, and if payments on the Exchange Bonds remain blocked through June 2016 that figure will grow to approximately $3.8 billion. Ex. E ¶ 4.

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

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

An impasse remained until late 2015 when the Argentine people elected a new President. As the District Court explained, the resulting change in administration "changed everything." Ex. A at 13. Reversing the prior government's hostility toward negotiations, President Macri made and (as the District Court found) "honored" a public commitment to settling with the Holdout Creditors. Ex. A at 7-10, 13-14, 16. The Republic immediately commenced good faith negotiations and extended generous settlement offers to Holdout Creditors. *Id.* at 13-14. Within a few months, the Republic has reached agreements in principle worth at least $6.2 billion, accounting for over 85% of plaintiffs who hold claims covered by the Injunction (the "Settling Plaintiffs"). Ex. G, Conditional Order at 4, *NML Capital, Ltd. v. Republic of Arg.*, No. 08-cv-6978 (S.D.N.Y Mar. 2, 2016), Dkt. No. 912. The Special Master who has facilitated the settlements referred to them as a "historic breakthrough" that would "allow the Republic to return to the global financial markets to raise much-needed capital." Ex. A at 8. "The U.S. government has also signaled its support" for "the Republic's good-faith efforts to resolve the disputes." *Id.* at 9.

On February 11, 2016, the Republic moved to vacate the Injunction. On February 19, 2016, the District Court recognized, *inter alia*, that "circumstances

have changed dramatically since the court first issued the injunctions in February 2012," and concluded that the public interest and balance of harms now strongly support vacating of the Injunction. *Id.* at 18. In particular, the District Court noted that lifting the Injunction "would serve the public interest by ceasing the collateral effects [of the Injunction] on third parties," the "most notable" of whom are the Exchange Bondholders, including the Euro Bondholders. *Id.* at 18. The District Court expressed that it "has repeatedly voiced its concern about the exchange bondholders' plight," and acknowledged that though it was not its intention, the Injunction had interfered with the interests of Exchange Bondholders. *Id.* at 18-19. The District Court explained that, if Injunction is lifted, "the Republic may once again pay the exchange bondholders—something that has not happened for nearly two years," and in light of that ongoing harm to the Exchange Bondholders and the changed circumstances, "it is in the public interest for the Republic to resume paying its restructured debt." *Id.* at 19.

Accordingly, the District Court issued an Indicative Ruling that, upon remand of certain cases that the Republic had appealed, it would enter an order vacating the Injunction upon the occurrence of two conditions: (1) the Republic's repeal of legislative obstacles to settlements with all Holdout Creditors, including Argentine laws that specifically bar such settlements; and (2) the Republic's full payment to all plaintiffs that entered agreements in principle to settle on or before

February 29, 2016. *Id.* at 23. The Republic dismissed its appeals, which were promptly remanded. On March 2, 2016, after additional briefing and a hearing at which all interested parties were afforded an opportunity to be heard, the District Court issued an order formalizing its Indicative Ruling and granted the Republic's motions to vacate the Injunction upon the occurrence of the two conditions in the Indicative Ruling. Ex. G at 5.

ARGUMENT

The Euro Bondholders have standing to intervene in these appeals because the Conditional Order directly affects their substantial property and contractual interests in missed interest payments, as well as all future payments that the Injunction will continue to block as long as it remains in effect. This Court has "recognized non-party appellate standing . . . where the non-party has an interest plausibly affected by the judgment." *NML v. Republic of Arg.*, 727 F.3d 230, 239 (2d Cir. 2013) (citing *Official Comm. of Unsecured Creditors of WorldCom, Inc. v. S.E.C.*, 467 F.3d 73, 77-78 (2d Cir. 2006)). A claim to appellate standing is particularly strong where, as here, a non-party's interests are directly affected, such as through a direct interest in or claim to ownership of the property at issue or where the non-party's contractual interests are impaired. *Aurelius Capital Partners, LP v. Republic of Arg.*, 584 F.3d 120, 127-28 (2d Cir. 2009) (holding non-party had appellate standing where order sought to attach and execute on

funds administered by the non-party); *Karaha Bodas Co. v. Pertamina*, 313 F.3d 70, 82 (2d Cir. 2002) (holding non-party's alleged ownership of property covered by order was "affected interest" that provided appellate standing); *see also Kaplan v. Rand*, 192 F.3d 60, 67 (2d Cir. 1999) (holding non-party that did not intervene in District Court had appellate standing); *United States v. Int'l Bhd. of Teamsters*, 931 F.2d 177, 183-84 (2d Cir. 1991) (holding an "asserted contractual interest . . . abrogated by the Order" provided non-party with appellate standing).

As the District Court's Indicative Ruling makes clear, the Euro Bondholders' interests are significantly affected by the Injunction and its vacatur. The Injunction has prevented the Euro Bondholders from receiving hundreds of millions of euros in interest payments to which they are contractually entitled. Ex. E ¶ 3. The right of the Euro Bondholders and other Exchange Bondholders to be paid on the bonds they hold has never been contested. Indeed, throughout this litigation, the District Court has consistently emphasized that "[i]t is important to get the people who are owed interest on their exchange bonds, get them paid." Ex. H, Aug. 1, 2014 Hr'g Tr. at 12:15-12:16, *NML Capital, Ltd. v. Republic of Arg.*, No. 08-cv-6978, (S.D.N.Y. Aug. 13, 2014), Dkt. No. 637.[4]

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

Nevertheless, as long as the Injunction remains in place, the Euro Bondholders and other Exchange Bondholders are prevented from receiving their legally owed money.[5] *See* Ex. A at 19 (noting that a plaintiff armed with an injunction in one case could interfere with Exchange Bondholders' right to be paid and agreements with Settling Plaintiffs). The amount due is substantial—the current total of blocked interest payments on all Exchange Bonds is approximately $3.1 billion, and will rise to approximately $3.8 billion if the Injunction is left in place until June 2016. Ex. E ¶ 4. If the Injunction is lifted, however, the Euro Bondholders would begin receiving their contractually-owed payments—"something that has not happened for nearly two years." Ex. A at 19. Accordingly, the District Court expressly stated that the Exchange Bondholders are the "most notable third parties *affected by the injunctions*," and reiterated that it "has repeatedly voiced its concern about the exchange bondholders' plight." Ex. A at 18 (emphasis added).

The Euro Bondholders' interest is not merely hypothetical or uncertain. When the Injunction first took effect, the Republic attempted to make a payment to

[5] The ongoing harm the Injunction causes to the Exchange Bondholders is especially noteworthy given that the generous settlement offers now available to Holdout Creditors would not be possible if the Exchange Bondholders had not settled their claims on much less favorable terms pursuant to the Exchange Offers. Without the Exchange Bondholders' cooperation, the Republic would simply not have the money to settle with the Holdout Creditors now.

Exchange Bondholders by depositing hundreds of millions of dollars and euros in an account held by BNYM in Buenos Aires. *See supra*, n.3; Ex. F at 12:7-13:12. On February 13, 2015, the English High Court of Justice, Chancery Division reaffirmed that the Euro Bonds are governed by English law, and that under English law, the payments made on those bonds to BNYM are held on an English law trust for the benefit of the Euro Bondholders, for the purpose of making payments due on the bonds they hold. Ex. B ¶¶ 12-13, 36-47. As a result, should the Injunction be vacated, the Euro Bondholders would immediately take possession of substantial funds deposited for their benefit.[6]

Moreover, leave to intervene is particularly appropriate in these appeals because the named parties cannot adequately protect the Euro Bondholders' affected interests. The Euro Bondholders are uniquely situated, as neither Appellants nor the Republic can speak to the distinct harm suffered by the innocent third party Exchange Bondholders. Unlike the Republic or the Appellants, the

[6] The status of these payments further illustrates the extent to which the Euro Bondholders' interests are affected by the Injunction. After the Republic transferred these payments to BNYM's account, the District Court ordered that BNYM "shall retain the funds." Ex. J, Order ¶ 2, *NML Capital, Ltd. v. Republic of Arg.*, No. 08-cv-6978 (S.D.N.Y Aug. 6, 2014), Dkt. No. 633. In an effort to obtain the funds, the Euro Bondholders sued BNYM in an English court of competent jurisdiction, a remedy this Court had endorsed. *See NML Capital, Ltd.*, 727 F.3d at 240 ("If Argentina defaults on its obligations to [the Euro Bondholders], they retain their rights to sue"). Despite the English Court's judgment that the funds are now held in trust for the benefit of the Euro Bondholders in proportion to their interest, BNYM refuses to release those funds to the Euro Bondholders. *See* Ex. B ¶¶ 12-13, 36-47.

Euro Bondholders' ability to receive payments depends entirely upon the actions of others. Despite their innocence and best efforts to protect their rights, the Injunction has prevented them from receiving money to which all agree they are entitled. Because any challenge to the District Court's balancing of the equities or assessment of the public interest would require this Court to understand and account for the interests of Exchange Bondholders like the Euro Bondholders, intervention would also aid this Court's full consideration of the issues at hand.

Intervention is further warranted given the extent to which circumstances have changed in the years since the Republic first appealed the Injunction, before the Injunction had taken effect. At that time, a divided panel of this Court relegated the Euro Bondholders to *amici* status, ruling that they lacked appellate standing "because a creditor's interest in getting paid is not cognizably affected by an order for a debtor to pay a different creditor." *NML Capital, Ltd.*, 727 F.3d at 240, 240 n.1. The underlying rationale of that holding was that this Court could not assume that the Injunction would affect Exchange Bondholders' interests at all, because the Injunction merely ordered the Republic to make payment to the Holdout Creditors and it was speculative that the Republic might cease payment to Exchange Bondholders or that the Injunction would prevent such payments from being realized. Of course, matters now are different. The Injunction *has* prevented the Euro Bondholders from receiving any payment, and an English Court of

competent jurisdiction[7] has determined that the Euro Bondholders have a current property interest in money that has been deposited for their benefit. Thus, the District Court unsurprisingly afforded the Euro Bondholders the opportunity to be heard below, and this Court should do the same. Ex. I, Endorsed Ltr., *NML Capital, Ltd. v. Republic of Arg.*, No. 08-cv-6978 (S.D.N.Y Mar. 1, 2016), Dkt. No. 908.

The Injunction has now outlived its purpose. The Republic has demonstrated its desire to finally resolve these disputes and has settled with the vast majority of the Holdout Creditors. Meanwhile, the direct harm caused by the Injunction to the Euro Bondholders and other Exchange Bondholders—indisputably affected innocent third parties whose substantial claims continue to go unpaid—has gone unredressed. Accordingly, the Euro Bondholders have standing to intervene in these appeals, and the Court should grant their motion to intervene.

CONCLUSION

For the foregoing reasons, the Euro Bondholders respectfully request that this Court grant its Motion for Leave to Intervene. Should the Court deny the

[7] Intervention is also warranted at this time given the comity due to the English judgment discussed above. That judgment definitively resolved that, as a matter of English law, the Euro Bondholders have a present contractual and property interest in funds that already have been deposited by the Republic for their benefit. Only the Injunction prevents them from taking possession of those funds.

motion for any reason, the Euro Bondholders respectfully request that the Court grant them leave to join the appeals by filing a brief of *amicus curiae* pursuant to Fed. R. App. P. 29(a).

Dated: March 11, 2016
New York, New York

Respectfully submitted,

By: LATHAM AND WATKINS LLP

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IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Aurelius Capital Master, Ltd., ACP Master Ltd., Plaintiffs-Appellants, v. Republic of Argentina, Defendant-Appellee, Bank of America, N.A., Respondent, Banco Bilbao Vizcaya Argentaria, S.A., BBVA Compass Bancshares, Inc., BBVA Securities Inc., Third-Party-Defendants.	Docket No. 16-628

DECLARATION OF CHRISTOPHER J. CLARK
IN SUPPORT OF THE EURO BONDHOLDERS'
EMERGENCY MOTION FOR LEAVE TO INTERVENE

I, Christopher J. Clark, am a partner at Latham & Watkins LLP, attorneys for interested non-parties Euro Bondholders. I am admitted to the Bar of the State of New York, of the district court for the Southern District of New York, and of this Court. I respectfully submit this Declaration in Support of the Euro-Bondholders' Emergency Motion for Leave to Intervene.

1. Attached as Exhibit A hereto is a true and correct copy of the District Court's Rule 62.1 Indicative Ruling dated February 19, 2016, in *NML Capital, Ltd. v. Republic of Argentina*, No. 14-cv-8947 (S.D.N.Y. Feb. 19, 2016), Dkt. No. 47.

2. Attached as Exhibit B hereto is a true and correct copy of the English High Court of Justice, Chancery Division's Approved Judgment in *Knighthead Master Fund LP v. The Bank of New York Mellon*, [2015] EWHC (Ch) 270 (Eng.) (Feb. 13, 2015), and filed as Exhibit A to *NML Capital, Ltd. v. Republic of Arg.*, No. 08-cv-6978 (S.D.N.Y. Mar. 3, 2015), Dkt. No. 753.

3. Attached as Exhibit C hereto is a true and correct copy of the District Court's Injunction dated November 21, 2012, in *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Nov. 21, 2012), Dkt. No. 425.

4. Attached as Exhibit D hereto is a true and correct copy of the District Court's Opinion and Order dated October 30, 2015 in *NML Capital, Ltd. v. Republic of Argentina*, No. 14-cv-8601 (S.D.N.Y. Oct. 30, 2015), Dkt. No. 37.

5. Attached as Exhibit E hereto is a true and correct copy of the Declaration of Christopher J. Clark dated February 29, 2016, in *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Feb. 29, 2016), Dkt. No. 896-1.

6. Attached as Exhibit F hereto is a true and correct copy of the transcript of the June 27, 2014 oral hearing held in *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. July 31, 2014), Dkt. No. 622.

7. Attached as Exhibit G hereto is a true and correct copy of the District Court's Opinion and Order dated March 2, 2016 in *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Mar. 2, 2016), Dkt. No. 912.

8. Attached as Exhibit H hereto is a true and correct copy of the transcript of the August 1, 2014 oral hearing held in *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Aug. 13, 2014), Dkt. No. 637.

9. Attached as Exhibit I hereto is a true and correct copy of the transcript of the August 8, 2014 oral hearing held in *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Aug. 20, 2014), Dkt. No. 646.

10. Attached as Exhibit J hereto is a true and correct copy of the District Court's Order dated August 6, 2014, in *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Aug. 6, 2014), Dkt. No. 633.

11. Attached as Exhibit K hereto is true and correct copy of a Letter from Christopher J. Clark dated February 29, 2016 and endorsed by the District Court on March 1, 2016 in *NML Capital, Ltd. v. Republic of Arg.*, No. 08-cv-6978 (S.D.N.Y Mar. 1, 2016), Dkt. No. 908.

I declare under penalty of perjury that the foregoing is true and correct, pursuant to 28 U.S.C. § 1746.

Dated: March 11, 2016
New York, New York

/s/ Christopher J. Clark
Christopher J. Clark

Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NML CAPITAL, LTD., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	14-cv-8601 (TPG)
NML CAPITAL, LTD., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	14-cv-8988 (TPG)
FFI FUND, LTD. and FYI LTD., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	14-cv-8630 (TPG) *(captions continue on following pages)*

RULE 62.1 INDICATIVE RULING

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AURELIUS CAPITAL PARTNERS, LP, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-8946 (TPG)
BLUE ANGEL CAPITAL I LLC, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-8947 (TPG)
EM LTD., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-8303 (TPG)

LIGHTWATER CORP. LTD., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-4092 (TPG)
OLD CASTLE HOLDINGS, LTD., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-4091 (TPG)
SETTIN, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-8739 (TPG)
CAPITAL VENTURES INTERNATIONAL, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-7258 (TPG)

ADAMI, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-7739 (TPG)
CAPITAL MARKETS FINANCIAL SERVICES INC., et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-0710 (TPG)
FOGLIA, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-8243 (TPG)
PONS, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	13-cv-8887 (TPG)

GUIBELALDE, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	11-cv-4908 (TPG)
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TORTUS CAPITAL MASTER FUND, LP, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-3127 (TPG)
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LOS ANGELES CAPITAL, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-7169 (TPG)

CORDOBA CAPITAL, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-7164 (TPG)
WILTON CAPITAL, LTD., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-7166 (TPG)
MCHA HOLDINGS, LLC, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-7637 (TPG)
MCHA HOLDINGS, LLC, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-10064 (TPG)

ANDRAREX LTD., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-9093 (TPG)
CLARIDAE, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-10201 (TPG)
ARAG-A LIMITED, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-9855 (TPG)
ATTESTOR MASTER VALUE FUND LP, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-5849 (TPG)

ANGULO, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-1470 (TPG)
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HONERO FUND I, LLC, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-1553 (TPG)
TRINITY INVESTMENTS LIMITED, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-1588 (TPG)

BANCA ARNER S.A., et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-1508 (TPG)
TRINITY INVESTMENTS LIMITED, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-2611 (TPG)
TRINITY INVESTMENTS LIMITED, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-5886 (TPG)
MCHA HOLDINGS, LLC, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-2577 (TPG)

MCHA HOLDINGS, LLC, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-5190 (TPG)
ERCOLANI, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-4654 (TPG)
FAZZOLARI, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-3523 (TPG)
STONEHILL INSTITUTIONAL PARTNERS, L.P. et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-4284 (TPG)

WHITE HAWTHORNE, LLC, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-4767 (TPG)
VR GLOBAL PARTNERS, LP, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	11-cv-8817 (TPG)
HONERO FUND I, LLC, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-6702 (TPG)
PROCELLA HOLDINGS, L.P., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-3932 (TPG)

BYBROOK CAPITAL MASTER FUND LP et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-7367 (TPG)
BYBROOK CAPITAL MASTER FUND LP et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-2369 (TPG)

Plaintiffs in these forty-nine actions hold bonds issued by defendant, the Republic of Argentina. In October 2015, the court issued injunctions in these actions. Due to a pending appeal, the court does not presently have jurisdiction over the injunctions.

The Republic now moves for a Rule 62.1 Indicative Ruling that this court would vacate the injunctions if the Court of Appeals were to remand for that purpose. The motion under Rule 62.1 allows the court to state that it would grant a motion to vacate if it had the power to do so. Some plaintiffs support the Republic's motion to vacate; others do not. The court must therefore decide whether it would vacate the injunctions on remand.

Background

The court has often recounted the history of this prolonged litigation. A brief summary will suffice.

1. The Default

In 1994, the Republic began issuing bonds pursuant to a Fiscal Agency Agreement ("FAA"), which contains the famed *pari passu* clause:

> The 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 . . . .

After the Republic suffered an economic crisis in 2001, it defaulted on its debts, including the FAA bonds. In an attempt to cure this default, the Republic twice invited bondholders to exchange their FAA bonds for new bonds worth only 25–29% of the FAA bonds' value. In all, roughly 93% of the Republic's creditors ultimately accepted these exchange offers, and the Republic began making payments to the "exchange bondholders."

To buttress the first exchange offer, the Republic enacted Law 26,017—the "Lock Law"—which prohibited "any type of in-court, out-of-court or private settlement" with FAA bondholders who could have participated in the exchange offer but chose not to. Then, in 2009, the Republic enacted Law 26,547, which barred the Republic from giving FAA bondholders who had filed lawsuits "more favorable treatment than what [was] offered to those who have not done so." Finally, in 2013, the Republic passed Law 26,886, which again forbade

bondholders who had filed lawsuits from getting any settlement worth more than the prior exchange offers.

For many years, the Republic never paid anything on the FAA bonds. Plaintiffs who held beneficial interests in those bonds began filing actions against the Republic in this court. Many obtained money judgments for the outstanding principal and interest. The Republic refused to pay, and the plaintiffs tried—usually in vain—to attach Argentine assets to satisfy their money judgments. *See, e.g.*, *EM Ltd. v. Republic of Argentina*, 865 F. Supp. 2d 415, 417 (S.D.N.Y. 2012) (observing that the Republic has "usually prevail[ed] in defeating the plaintiffs' attempts to recover" through attachment).

2. The Original Injunctions

In 2010, a group of plaintiffs in thirteen actions began seeking a different kind of relief.[1] They first filed motions for partial summary judgment, asking the court to declare that the Republic had violated the *pari passu* clause by paying the exchange bondholders while refusing to pay the plaintiffs. The court granted the motions. *See* Order, *NML Capital Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Dec. 7, 2011).

The plaintiffs then moved for specific performance, seeking a remedy for the Republic's violation of the *pari passu* clause. Although the *pari passu* clause does not itself require a particular remedy, the court exercised its inherent equitable discretion under Rule 65(d) to craft appropriate relief. It fashioned

[1] The index numbers of those thirteen actions are 08-cv-6978; 09-cv-1707; 09-cv-1708; 09-cv-8757; 09-cv-10620; 10-cv-1602; 10-cv-3507; 10-cv-3970; 10-cv-8339; 10-cv-4101; 10-cv-4782; 10-cv-9587; 10-cv-5338.

injunctions to address the Republic's steadfast refusal to pay plaintiffs anything. The result was that whenever the Republic paid on the exchange bonds, it needed to make a "ratable payment" to plaintiffs. *See* Order § 2(a), *NML Capital Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Feb. 23, 2012).

In issuing the injunctions, the court made findings that, at that time, supported such equitable relief. For example, the court explained that plaintiffs had no adequate remedy at law due to the Republic's passage of Law 26,017 (which prohibited settlement with plaintiffs who declined the exchange offers) and Law 26,547 (which prevented plaintiffs from receiving settlements more favorable than the exchange offers). *Id.* § 1(b). Moreover, the court found that both the equities and the public interest supported the injunctions because of the Republic's "repeated failures" to pay plaintiffs and its "unprecedented, systematic scheme" to pay other debts without paying plaintiffs. *Id.* § 1(c) & (d); *see also* Am. & Suppl. Order, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Oct. 3, 2014) (holding the Republic in contempt after it attempted to evade the injunctions by passing Law 26,984—the "Sovereign Payment Law").

The Court of Appeals affirmed the injunctions, but remanded for clarification as to how the injunctions would operate. *NML Capital, Ltd. v. Republic of Argentina*, 699 F.3d 246, 255 (2d Cir. 2012). On remand, the court explained the injunctions' payment formula and the effects the injunctions would have on third parties. Order, *NML Capital Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Nov. 21, 2012). The Republic again appealed, and the

Second Circuit again affirmed the injunctions in their entirety. *NML Capital, Ltd. v. Republic of Argentina*, 727 F.3d 230, 248 (2d Cir. 2013). After the Supreme Court denied *certiorari* in June 2014, *Republic of Argentina v. NML Capital, Ltd.*, 134 S. Ct. 2819 (2014), the injunctions went into effect.

In an attempt to encourage settlement, the court appointed a Special Master, Daniel A. Pollack, Esq., on June 23, 2014. The Special Master's mandate was "to conduct and preside over settlement negotiations." Order Appointment Special Master, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. June 23, 2014). Despite his untiring efforts to bring about a settlement, the Republic chose to default on the exchange bonds rather than pay anything to plaintiffs.

3. The "Me Too" Injunctions

In early 2015, "me too" plaintiffs in thirty-six actions filed motions for partial summary judgment. As their name suggests, these plaintiffs sought the same *pari passu* ruling that the other plaintiffs had obtained in the original thirteen actions. On June 5, 2015, the court granted the motions because of the Republic's "entire and continuing course of conduct" in refusing to pay plaintiffs anything at all. Op. & Order, *NML Capital, Ltd. v. Republic of Argentina*, No. 14-cv-8601 (S.D.N.Y. June 5, 2015). "Me too" plaintiffs in fifteen other actions then filed similar motions for partial summary judgment, which the court granted on October 22, 2015. Op. & Order, *Trinity Invest. Ltd. v. Republic of Argentina*, No. 15-cv-2611 (S.D.N.Y. Oct. 22, 2015).

The result was that "me too" plaintiffs in fifty-one actions obtained judgments that the Republic violated the *pari passu* clause. Plaintiffs in forty-nine of those actions then filed motions for specific performance, seeking equitable relief akin to the injunctions obtained in the original thirteen actions.[2] The court granted those motions on October 30, 2015. This meant that plaintiffs in a total of sixty-two actions had obtained injunctions against the Republic.

When the court granted the "me too" injunctions, it again discussed the equities. The court highlighted "[t]he Republic's reluctance to entertain meaningful settlement discussions before the Special Master." Op. & Order 10, *NML Capital, Ltd. v. Republic of Argentina*, No. 14-cv-8601 (S.D.N.Y. Oct. 30, 2015). The court also explained that "[t]he Republic has done nothing in recent years to alleviate the court's concerns" and that, if anything, it had "escalated its scheme" of attempting to pay the exchange bondholders without paying plaintiffs. *Id.* at 8. An appeal followed, which is currently pending before the Second Circuit. Notice Civil Appeal, *NML Capital, Ltd. v. Republic of Argentina*, No. 15-3675 (2d Cir. Nov. 10, 2015).

4. The 2016 Settlement Negotiations

In November 2015, the Republic's voters elected Mauricio Macri as their president, ending the twelve-year reign of the previous ruling party led by former

[2] The index numbers of those forty-nine actions are 14-cv-8988; 14-cv-8601; 14-cv-8630; 14-cv-8303; 14-cv-8946; 14-cv-8947; 14-cv-7739; 11-cv-4908; 13-cv-8887; 14-cv-1109; 14-cv-3127; 14-cv-5963; 14-cv-7169; 14-cv-7171; 14-cv-7164; 14-cv-7166; 14-cv-7258; 14-cv-8242; 14-cv-8243; 14-cv-10141; 15-cv-0710; 15-cv-1470; 15-cv-1471; 14-cv-10016; 14-cv-10064; 14-cv-10201; 14-cv-7637; 15-cv-1588; 15-cv-2577; 15-cv-2611; 15-cv-5190; 15-cv-5886; 14-cv-9093; 14-cv-5849; 14-cv-4092; 14-cv-4091; 14-cv-8739; 15-cv-1508; 15-cv-3523; 15-cv-4654; 11-cv-8817; 14-cv-9855; 15-cv-3932; 15-cv-4284; 15-cv-4767; 15-cv-6702; 15-cv-1553; 15-cv-2369; 15-cv-7367.

President Cristina Kirchner. President Macri's election marked a turning point in the Republic's attitude and actions. Since the election, President Macri's government has consistently declared its desire to resolve the disputes and reopen the country to foreign investors. *See* Stephen Adler & Sujata Rao, *Argentina's Macri Hopes for Creditor Deal Early in 2016*, Reuters (Jan. 23, 2016), *available at* http://www.reuters.com/article/us-argentina-president-idUSKCN0V00UP ("I want to be clear: We want to reach a settlement. We want to find a fair agreement.").

In January 2016, the Argentine government reopened negotiations with the FAA bondholders through the Special Master. President Macri dispatched a delegation of senior government officials to hold talks with lead plaintiffs in New York. On January 13 and during the first week of February, discussions began under the aegis of the Special Master. The Republic presented an informal settlement offer, first to the Special Master, then to those plaintiffs. During the week of discussions before the Special Master, the Republic reached Agreements in Principle with five of those plaintiffs worth over $1.1 billion.[3] Other plaintiffs refused to settle, and the Republic then published its Proposal formally to them and to the world on February 5, 2016. *See* Propuesta, 5 de Febrero de 2016 (Paskin Decl. Ex. J, Dkt. 58, No. 14-cv-8988).

The Republic's Proposal contemplates two settlement categories. The first, known as the "Standard Offer," is open to *all* FAA bondholders, and provides for

[3] Those plaintiffs are EM Ltd. (No. 14-cv-8303); Montreux Partners, L.P. (No. 14-cv-7171); Los Angeles Capital (No. 14-cv-7169); Cordoba Capital (No. 14-cv-7164); and Wilton Capital, Ltd. (No. 14-cv-7166).

a cash payment equal to the original principal of the bond plus 50% of that principal, classified as interest. The second, known as the "*Pari Passu* Offer," extends only to FAA bondholders who have injunctions. Those bondholders with injunctions who have money judgments may receive a cash payment equal to the full amount of that judgment, less a 30% discount. Those without money judgments may receive a cash payment equal to the current accrued value of the claims, less a 30% discount. The Proposal also offers an "early-bird" incentive: for bondholders who reach agreements with the Republic by February 19, 2016, the 30% discount drops to 27.5%. Both the Proposal and the existing Agreements in Principle that the Republic has entered into contain two conditions precedent: (1) the approval of the Argentine Congress; and (2) the vacating of this court's injunctions. The Republic estimates that the settlement payments for the bondholders with injunctions, if made, would total approximately $6.5 billion in cash. It has not estimated the additional figure that might be involved in the Standard Offer. Some litigants may qualify under both categories and will have the option to select the category that best suits them.

In his statement issued February 5, 2016, the Special Master called the Republic's Proposal a "historic breakthrough." He noted that settlement would allow the Republic to return to the global financial markets to raise much-needed capital. Finally, he praised the Republic's leaders for their "courage and flexibility in stepping up to and dealing with this long-festering problem which was not of their making."

The U.S. government has also signaled its support. Treasury Secretary Jacob Lew commended the Republic's good-faith efforts to resolve the disputes and expressed his "strong hope" that all bondholders would accept settlements soon. Readout from a Treasury Spokesperson of Lew's Call with Argentine Finance Minister Alfonso Prat-Gay (Feb. 7, 2016), *available at* https://www.treasury.gov/press-center/press-releases/Pages/jl0339.aspx.

Meanwhile, the Republic intensified its efforts to settle with as many bondholders as possible. Not only did government officials continue to negotiate with those plaintiffs who initially declined the Proposal, but they also reached out to plaintiffs who did not have injunctions in their actions. To date, the Republic has successfully executed additional Agreements in Principle with a number of institutional plaintiffs, a group of class-action plaintiffs, and 50,000 Italian bondholders.[4]

To continue the process of effectuating all these settlements, the Republic now moves to vacate the injunctions in all forty-nine of the "me too" actions. Because the Republic appealed the issuance of the injunctions through its prior counsel, the court cannot presently grant the Republic's motion to vacate. Accordingly, the Republic has brought a motion for a Rule 62.1 Indicative Ruling. Rule 62.1 "authorizes a district court whose jurisdiction has been divested by an appeal to 'state either that it would grant the motion if the court of appeals

[4] Paskin Decl. Ex. E, Dkt. 68, No. 14-cv-8988 (discussing Capital Markets Financial Services settlement); Nate Raymond, *Argentina Reaches Settlement in U.S. Debt Class Action: Mediator*, Reuters (Feb. 16, 2016), *available at* http://www.reuters.com/article/us-argentina-debt-idUSKCN0VP2QE (discussing class-action settlements); Bausili Decl. ¶ 5, Dkt. 59, No. 14-cv-8988 (discussing Italian settlements).

remands for that purpose or that the motion raises a substantial issue.'" *Ret. Bd. of the Policemen's Annuity & Ben. Fund of the City of Chi. v. Bank of N.Y. Mellon*, 775 F.3d 154, 159 n.4 (2d Cir. 2014) (quoting Fed. R. Civ. P. 62.1(a)(3)). The court must therefore consider the merits of the Republic's motion to vacate in order to decide if it would grant the motion on remand.

Discussion

Courts have the inherent power to vacate their injunctions. *United States v. LoRusso*, 695 F.2d 45, 53 (2d. Cir. 1982); 11A C. Wright, A. Miller, & M. Kane, *Federal Practice and Procedure* § 2961 (3d ed.) ("Wright & Miller"); *see also* Fed. R. Civ. P. 54(b) (giving courts the power to revise interlocutory orders). Courts may also rely on Federal Rule of Civil Procedure 60(b), which provides that:

> On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: . . . (5) . . . applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

Courts have "wide discretion" to vacate injunctions. *Sys. Fed'n No. 91, Ry. Emp. Dep't, AFL-CIO v. Wright*, 364 U.S. 642, 648 (1961); *see also Brown v. Plata*, 131 S. Ct. 1910, 1946 (2011) ("The power of a court of equity to modify a decree of injunctive relief is long-established, broad, and flexible." (quoting *N.Y. State Ass'n of Retarded Children, Inc. v. Carey*, 706 F.2d 956, 967 (2d Cir. 1983))); *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U.S. 287, 298 (1941) ("Familiar equity procedure assures opportunity for modifying or vacating an injunction when its continuance is no longer warranted."); *United States v. Swift & Co.*, 286 U.S. 106, 114 (1932) ("We are not doubtful of the power of a court of equity to

modify an injunction in adaptation to changed conditions."); *Matarese v. Lefevre*, 801 F.2d 98, 106 (2d Cir. 1986) ("[Rule 60(b)(6)] confers broad discretion on the trial court to grant relief when appropriate to accomplish justice." (citations omitted)). Accordingly, the standard of review on appeal is whether a court abused of discretion; that is, whether a court's decision to vacate (1) "rests on an error of law or a clearly erroneous factual finding," or (2) "cannot be found within the range of permissible decisions." *In re Terrorist Attacks on Sept. 11, 2001*, 741 F.3d 353, 357 (2d Cir. 2013) (citation omitted).

This considerable discretion does have some limits. Generally, a court may vacate only when "there has been such a change in the circumstances as to make modification of the decree equitable." *Sierra Club v. U.S. Army Corps of Eng'rs*, 732 F.2d 253, 257 (2d Cir. 1984); *see also Davis v. N.Y.C. Hous. Auth.*, 278 F.3d 64, 88 (2d Cir. 2002) (allowing modification "to accommodate changed circumstances" (citing Fed. R. Civ. P. 60(b)(5))). The ultimate question, then, is "whether an ongoing exercise of the court's equitable authority is supported by the prior showing of illegality, judged against the claim that changed circumstances have rendered prospective relief inappropriate." *Salazar v. Buono*, 559 U.S. 700, 718 (2010) (plurality opinion).

A court should also consider "whether the requested modification effectuates or thwarts the purpose behind the injunction." *Sierra Club*, 732 F.2d at 256 (citing *Chrysler Corp. v. United States*, 316 U.S. 556, 562 (1942)). Put differently, a court usually should not vacate an injunction "in the interest of the defendants if the purposes of the litigation as incorporated in the decree have

not been fully achieved." *Id.* at 256 (citing *United States v. United Shoe Mach. Corp.*, 391 U.S. 244, 248 (1968)). Nonetheless, "total compliance" with an injunction "is not an absolute precondition of any modification," *Badgley v. Santacroce*, 853 F.2d 50, 54 (2d Cir. 1988) (citation omitted), and, where equitable, a court may vacate an injunction "even though the purpose of the decree has not been achieved," *United States v. Eastman Kodak Co.*, 63 F.3d 95, 102 (2d Cir. 1995).

Finally, courts may recognize special circumstances that justify a more nuanced approach to the inherent power to vacate injunctions. For example, although changes in fact or law often "afford the clearest bases for altering an injunction," a court's equitable power "extend[s] also to cases where a better appreciation of the facts in light of experience indicates that the decree is not properly adapted to accomplishing its purposes." *King-Seeley Thermos Co. v. Aladdin Indus., Inc.*, 418 F.2d 31, 35 (2d Cir. 1969) (citations omitted). Moreover, a court may vacate "when a decree proves to be unworkable because of unforeseen obstacles; or when enforcement of the decree without modification would be detrimental to the public interest." *Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 383 (1992) (citations omitted); *see also Salazar*, 559 U.S. at 714 ("[A] court should be particularly cautious when contemplating relief that implicates public interests."); Wright & Miller § 2942 ("[B]ecause of its discretionary character, an injunction . . . may be modified if circumstances change after it is issued or in the event that it fails to achieve its objectives."); Timothy Stoltzfus Jost, *From* Swift *to* Stotts *and Beyond: Modification of*

Injunctions in the Federal Courts, 64 Tex. L. Rev. 1101, 1138 (1986) (arguing that, if an injunction becomes "a tool of oppression" or "obviously inefficient," "the court ultimately has the power to, and should, modify a decree that imposes a burden disproportionate to the benefit it assures").

Here, the Republic and a number of plaintiffs ask the court to exercise its discretion to vacate the injunctions. They argue that the injunctions' continued effect is no longer equitable. The court agrees. The injunctions, once appropriate to address the Republic's recalcitrance, can no longer be justified. Significantly changed circumstances have rendered the injunctions inequitable and detrimental to the public interest.

1. Changed Circumstances Render the Injunctions Inequitable.

The original injunctive order explicitly gave this court the power to "modify and amend it as justice requires to achieve its equitable purposes and to account for changing circumstances." Order § 5, *NML Capital Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Feb. 23, 2012). Put simply, President Macri's election changed everything.

Most importantly, the Republic has shown a good-faith willingness to negotiate with the holdouts. Under prior Argentine administrations, plaintiffs had to accept severe haircuts on the value of their bonds, or else engage in a usually fruitless effort to attach property to satisfy their judgments. The Republic never seriously pursued negotiations toward settlement. Instead, the Republic's leadership engaged in rhetoric, calling plaintiffs "vultures" or "financial terrorists," while showing open contempt for this court's rulings. *See*

Robin Wigglesworth & Benedict Mander, *Argentina on the Cusp of Peace with Creditors*, Fin. Times (Feb. 16, 2016), *available at* http://on.ft.com/20B7FBk; *NML Capital, Ltd. v. Republic of Argentina*, 727 F.3d 230, 247 (2d Cir. 2013) (describing the Republic as "a uniquely recalcitrant debtor"). Despite the best efforts of the Special Master, he could not coax the Republic to negotiate with plaintiffs in good faith in 2014 and 2015.

All that has changed. President Macri pledged during his campaign that he would seek to resolve these long-running lawsuits—and he has honored that promise. Not long after President Macri's December 2015 inauguration, the Secretary of Finance approached the Special Master to begin negotiations in earnest. The Republic's high-level officials met with the Special Master and a group of plaintiffs in January 2016 to establish a framework for substantive talks. And, through the first week of February, the Special Master convened a series of meetings in New York. As the Special Master continually informed the court, he communicated intensively with the Republic's officials and the plaintiffs' lead principals on virtually a daily basis. The Republic's senior officials met with a substantial number of plaintiffs as a group, and also spoke separately with a number of those plaintiffs who sought private dialogue with the Republic. By the end of the first week of negotiations, the Republic had reached Agreements in Principle with plaintiffs in five actions, involving payments exceeding $1 billion. At the end of the week, the Republic also issued its public Proposal to settle with all FAA bondholders.

Before the court actually vacates the injunctions, another circumstance must change. As part of the settlement agreements, the Republic must repeal legislative obstacles enacted by prior administrations. Gone will be the Lock Law—the legislation that led the court to fashion these injunctions in the first place—as well as other antagonistic legislation, such as the Sovereign Payment Law. *See generally* Order § 1(b) & (c), *NML Capital Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Feb. 23, 2012); *NML Capital, Ltd. v. Republic of Argentina*, 727 F.3d 230, 241 (2d Cir. 2013). Not only do the very terms of the Republic's Proposal contemplate repeal, but—in the Republic's own words—the lifting of the injunctions would require it. *See* Def.'s Mem. L. Supp. Mot. Vacate 3, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Feb. 11, 2016). These are truly "exceptional circumstances." *See Motorola Credit Corp. v. Uzan*, 561 F.3d 123, 126 (2d Cir. 2009) (citation omitted).

The Republic's decisions in 2005 to outlaw "any type of in-court, out-of-court or private settlement" (Law 26,017), and in 2009 to pay plaintiffs no more than 29% of the original bonds' value (Law 26,547), are sharply inconsistent with the decisions taken by President Macri's administration. *Compare* Hr'g Tr. 29, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Sept. 28, 2011) (conceding that, in 2011, the Republic would offer plaintiffs no more than it offered the exchange bondholders), *with* Propuesta, 5 de Febrero de 2016 (offering all plaintiffs cash payments equal to the original principal amount of the bond plus 50% of that principal). The Republic's self-imposed conditions—repealing legislative obstacles and paying settlements in full—represent a

"dramatic shift in . . . policy" that justifies vacating the injunctions. *See Horne v. Flores*, 557 U.S. 433, 461 (2009).

Although the court takes no position on the reasonableness of the Republic's Proposal, the court does recognize the Republic's earnest efforts to negotiate and its striking change in attitude toward settlement since President Macri assumed office. Just as the Republic's conduct in 2012 and 2015 influenced the court's decision to issue the original and "me too" injunctions, so too must the court consider the Republic's present behavior. The balance of equities has shifted, for no longer is the Republic exhibiting "reluctance to entertain meaningful settlement discussions before the Special Master." Op. & Order 10, *NML Capital, Ltd. v. Republic of Argentina*, No. 14-cv-8601 (S.D.N.Y. Oct. 30, 2015).

Even the objecting plaintiffs have recognized that the Republic's willingness to negotiate a settlement impacts the balance of equities. In arguing that the equities weigh in their favor, those plaintiffs previously invoked the Republic's "refus[al] to negotiate a settlement" and claimed that "[t]he biggest obstacle to settlement is Argentina itself." Pls.' Reply Mem. L. Supp. Mot. Specific Performance 6, 11, *NML Capital, Ltd. v. Republic of Argentina*, No. 14-cv-8601 (S.D.N.Y. Oct. 9, 2015). And those plaintiffs have acknowledged, from the beginning to the end, that the injunctions would promote settlement and that plaintiffs would support that kind of resolution.[5]

[5] *See* Pls.' Mem. L. Supp. Renewed Mot. Specific Enforcement 18, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Jan. 6, 2012) (arguing that the injunctions "could pave the way to a global resolution of this protracted dispute," while noting that a similar injunction

Yet another changed circumstance significantly alters the equities: a number of plaintiffs have now agreed in principle to settle. If the court refused to vacate the injunctions, it would unfairly deny those plaintiffs the opportunity to resolve their disputes amicably with the Republic. It might also create an incentive for the remaining holdout plaintiffs to shun settlement, knowing that they derive leverage from the ability to prevent the Republic and the other plaintiffs from consummating agreements. The injunctions must not be "turned through changing circumstances into an instrument of wrong." *See Swift*, 286 U.S. at 115.

It is also significant that the Republic has not requested the immediate and unconditional lifting of the injunctions. Rather, at the Republic's own urging, the injunctions would remain in effect until it actually makes full payment on all agreements in principle entered into by February 29, 2016, the day before the Argentine Congress reconvenes on March 1. *Cf. Badgley*, 853 F.2d at 51–52 (permitting modification of an equitable order upon fulfillment of certain conditions). The Republic's willingness to impose this condition on itself is compelling evidence of its sincerity and good faith, and stands in stark contrast to the contumacious policies of prior administrations. And the court's retention of jurisdiction should allay any concern that the Republic will return to its old ways.

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in another case prompted the sovereign "to settle with the plaintiff"); Pls.' Reply Mem. L. Supp. Mot. Specific Performance 12, *NML Capital, Ltd. v. Republic of Argentina*, No. 14-cv-8601 (S.D.N.Y. Oct. 9, 2015) ("NML would most welcome meaningful settlement discussions with Argentina before the Special Master.").

In sum, circumstances have changed dramatically since the court first issued the injunctions in February 2012. The court finds and holds that maintaining the injunctions would now be inequitable.

2. Vacating the Injunctions Serves the Public Interest.

Vacating the injunctions would serve the public interest by ceasing the collateral effects they have on third parties. It would also promote amicable resolution of protracted legal disputes—both generally and in this particular litigation.

The most notable third parties affected by the injunctions are the exchange bondholders. But there are others, too: the financial intermediaries that the Republic engages to help it pay the exchange bondholders; the FAA bondholders who favor settlement but who are not parties to every single case; and the Argentine people generally. Each of these groups will benefit if the court vacates the injunctions.

The court has repeatedly voiced its concern about the exchange bondholders' plight. Hr'g Tr. 11, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Aug. 21, 2014) (bemoaning the injunctions' collateral damage to "very innocent third parties"); Hr'g Tr. 15, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Aug. 8, 2014) ("[S]ettling this case . . . will assist real human beings."). When some plaintiffs first sought injunctive relief, they reassured the court that there was "no evidence" that the injunctions would "stop or interfere or impair in any way those exchange offers." Hr'g Tr. 35, 4–5, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Sept. 28,

2011). Yet that is precisely what has happened. Of course, the Republic's decision to default on the exchange bonds was its own, and plaintiffs bear no blame for seeking these injunctions four years ago. But the court may still *now* recognize that it is in the public interest for the Republic to resume paying its restructured debt. If the court vacates the injunctions, the Republic may once again pay the exchange bondholders—something that has not happened for nearly two years.

Vacating the injunctions in all cases further benefits third parties by allowing any FAA bondholder to resolve claims against the Republic. For example, plaintiff EM Limited agreed to settle with the Republic for nearly $1 billion after signing a simple, one-page, handwritten Agreement in Principle.[6] If another plaintiff, armed with an injunction in a different action, could scupper that deal, EM—as a third party to that action—would suffer. The court never intended this result. *See* Hr'g Tr. 39, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Sept. 28, 2011) ("I have felt that the Republic of Argentina had a right to make an exchange offer, and that any bondholders who wished to take that exchange offer had a right to take it. And if they felt that it was beneficial to them, why, that was up to them to make that decision."). Accordingly, if the court lifts the injunctions, it will do so in all cases.

[6] Where there is good will toward each other, the parties have had no difficulty reaching agreements in principle that are uncomplicated and effective. The court commends the Special Master for helping those parties understand that complexity is not a requisite when agreeing to a monetary settlement of a judgment.

The Court of Appeals has also recognized this court's discretion to consider "the health of the nation" when considering appropriate remedies. *EM Ltd. v. Republic of Argentina*, 131 F. App'x 745, 747 (2d Cir. 2005) ("Exercising discretion with respect to pre- and post-judgment remedies, the District Court acted well within its authority to vacate the remedies in order to avoid a substantial risk to the successful conclusion of the debt restructuring. That restructuring is obviously of critical importance to the economic health of a nation."). Allowing the Republic to reenter the capital markets will undoubtedly help stimulate its economy and thus benefit its people. It might even encourage other indebted nations to choose compromise over intransigence.

Finally, vacating the injunctions serves the public interest by encouraging settlement to resolve disputes generally—particularly such protracted ones—as well as the concern for finality in this particular litigation. *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (recognizing the "strong judicial policy in favor of settlements"). Although such aspirations are broad, the court is mindful that the two interests plaintiffs invoked to support the original injunctions were "enforcing agreements and upholding the rule of law." Pls.' Mem. L. Supp. Renewed Mot. Specific Enforcement 14, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Jan. 6, 2012). The public has a compelling interest in encouraging amicable resolution of longstanding legal battles and ending this massive litigation that dates back nearly fourteen years. *See* Compl., *Applestein v. Argentina Republic*, No. 02-cv-1773 (S.D.N.Y. Mar. 6, 2002). Allowing settlement will further these goals.

3. The Court May Exercise its Discretion to Vacate the Injunctions.

Some plaintiffs argue that the court does not have the power to vacate the injunctions. They claim that the court must protect the injunctions' purpose of enforcing the *pari passu* clause. Essentially, these plaintiffs believe the court cannot alter the injunctions if doing so would mean the Republic could pay the exchange bondholders without (1) ratably paying plaintiffs or (2) settling with plaintiffs for the full amount of their claims.

It is important to recall that the plaintiffs had no absolute legal right to the injunctions. An injunction is an extraordinary measure that is not normally available for breach of contract. The *pari passu* clause never *required* the equitable relief that the plaintiffs requested and the court granted. Rather, the court exercised its inherent equitable power to fashion a remedy for the Republic's breach of the plaintiffs' contractual rights. *See* Op., *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6979 (S.D.N.Y. Nov. 21, 2012) (explaining that the injunctions do "not literally to carry out the *pari passu* clause"). In short, the injunctions were a discretionary remedy, not a legal entitlement.

When the court was considering how to craft this equitable remedy, it stressed that the injunctions should not prevent bondholders from settling their claims with the Republic. *See* Hr'g Tr. 40, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Sept. 28, 2011) (expressing the court's desire to find a remedy that would provide "leverage" without "do[ing] something that would prejudice the rights and opportunities of the people who want to make exchanges"). For years, the court has repeatedly recognized that the only viable

way to end this litigation is through settlement—surely for less than the full claim, as the notion of "settlement" implies.[7] To that end, the court appointed a Special Master, who has worked tirelessly and, now, effectively to encourage compromise.

Of course, the court does not have the power to force plaintiffs to accept a settlement. The court notes, however, that the Republic and the Special Master worked diligently to give plaintiffs the opportunity to negotiate and settle their claims. And that process may still continue. Until February 29, 2016, *all* FAA bondholders have the right to accept the terms of the Republic's Proposal, and they are certainly free to make counteroffers. If they reach agreements by that date, they will receive the protections incorporated by this ruling—namely, the Republic must pay their settlements in full before the injunctions are lifted.

Some plaintiffs may choose to reject the Republic's Proposal. That is their right. But that does not diminish the court's discretion to vacate injunctions that would prevent resolution of a meaningful portion of this litigation. The court

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[7] *See* Order, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Aug. 4, 2014) ("It is most important to stay at the settlement table so that the issues in the case can be resolved."); Hr'g Tr. 29, *NML Capital, Ltd. v. Republic of Argentina*, No. 14-cv-8601 (S.D.N.Y. Oct. 28, 2015) ("I have to assume that on this late date in this very lengthy litigation . . . that the interested parties, all of them, will participate in settlement negotiations."); Hr'g Tr. 23–24, *NML Capital, Ltd. v. Republic of Argentina*, No. 14-cv-8601 (S.D.N.Y. May 29, 2015) ("[T]he way to ultimately resolve this litigation must come through settlement."); Hr'g Tr. 16, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Apr. 22, 2015) ("I hope the Republic at long last will be willing to negotiate."); Hr'g Tr. 10–11, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Aug. 21, 2014) ("[T]he thing that is of paramount necessity is to have a settlement."); Hr'g Tr. 8–9, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Aug. 8, 2014) ("[T]he really truly important thing is to recognize that this matter will not be resolved without a successful settlement."). Indeed, even those plaintiffs who now oppose the motion to vacate have previously declared that resolution of these actions would come through settlement. *See* Hr'g Tr. 7, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Aug. 21, 2014) ("[W]e, too, believe that a settlement is the way that this matter will ultimately be resolved.").

cannot countenance an equitable remedy that would allow some plaintiffs to hold other plaintiffs hostage. If that were truly the injunctions' effect, it would surely constitute a form of "unforeseen obstacle[]" the court had not previously contemplated. *See Rufo*, 502 U.S. at 383.

Lastly, the court wishes to note that the Special Master, Daniel Pollack, has devoted himself to a remarkable degree to carrying out his duties, and he has done so with great skill. His efforts will undoubtedly be of great value in the ultimate resolution of this litigation. He has the thanks of the court.

Conclusion

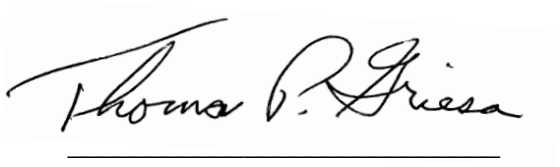
For these reasons, the court now indicates that it would vacate the injunctions upon the occurrence of two conditions precedent:

> (1) The Republic repeals all legislative obstacles to settlement with the FAA bondholders, including the Lock Law and the Sovereign Payment Law;
>
> (2) For all plaintiffs that enter into agreements in principle with the Republic on or before February 29, 2016, the Republic must make full payment in accordance with the specific terms of each such agreement. The Republic must also notify the court once those plaintiffs have all received full payment.

If the Court of Appeals remands to allow this court to grant the Republic's motion to vacate, the injunctions will be lifted automatically upon fulfillment of these two conditions.

SO ORDERED

Dated: New York, New York
February 19, 2016



Thomas P. Griesa
United States District Judge

Exhibit B

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March 3, 2015

VIA ECF

Hon. Thomas P. Griesa
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *NML Capital, Ltd. v. The Republic of Argentina*, No. 08-cv-6978 (TPG) and related cases

Dear Judge Griesa:

We write to update the Court regarding the action entitled *Knighthead Master Fund LP v. The Bank of New York Mellon* (2014), HC-2014-000704, initiated by certain Euro Bondholders[1] in the English High Court of Justice, Chancery Division (the "English Court"), in London, England. As explained in our letters dated November 7, 2014, Dkt. # 709, and November 25, 2014, Dkt. # 723, the action concerns the status of payments remitted by the Republic of Argentina to the Bank of New York Mellon ("BNY") in its capacity as indenture trustee for the Euro Bondholders. During the course of that proceeding, BNY took the position that as trustee, it could be relied upon by the English Court to bring to Your Honor's attention any rulings issued by the English Court; however, because BNY has failed to take any steps to timely inform the Court of such rulings, the Euro Bondholders are compelled to do so themselves.

Following detailed written and oral submissions by the parties, and after providing additional potentially interested parties an opportunity to be heard, on February 13, 2015, Mr. Justice Richards issued the English Court's judgment (the "English Judgment") and order, attached hereto as Exhibits A and B. In his judgment, Mr. Justice Richards reaffirmed that the Euro Bonds are governed by English law, and that under English law, the payments made pursuant to those bonds are held by BNY on an English law trust for the benefit of the Euro

[1] The Euro Bondholders are a group of investors holding euro-denominated bonds issued by the Republic of Argentina (the "Republic") pursuant to 2005 and 2010 exchange offers (the "Euro Bonds"). The Euro Bondholders are Knighthead Capital Management, LLC; Perry Capital, LLC, Monarch Master Funding 2 (Luxembourg) S.á.r.l.; QVT Fund IV LP; QVT Fund V LP; Quintessence Fund L.P.; and Centerbridge Partners LP (each on behalf of itself or one or more investment funds or accounts managed or advised by it). The claimants in the proceedings before the English Court are Knighthead Master Fund LP, RGY Investments LLC, Quantum Partners LP, and Hayman Capital Master Fund LP.

Bondholders. Ex. A ¶¶ 36-47. Mr. Justice Richards left open the second issue raised by the Claimants, namely, whether under English law, BNY's obligations and liabilities under the trust indenture for the Euro Bonds are affected by the Court's Amended Injunction dated November 21, 2012. *Id.* ¶¶ 35(2), 48-49.

Mindful "not to intrude improperly into matters which are before the US courts," Mr. Justice Richards concluded that his ruling was "peculiarly within the jurisdiction of [the English Court]" because it established "the status of the funds held by [BNY] as a matter of English law." *Id.* ¶ 44. In that regard, Mr. Justice Richards observed that the Euro Bonds "involve no connection at all with the United States" and are indisputably governed by English law, *id.* ¶ 13, but that "issues of English law have not been raised before the District Court," *id.* ¶ 44.

Finally, Mr. Justice Richards expressed some concern regarding the "problematic . . . state of 'paralysis' . . . in the operation of the trust caused by the injunction," *id.* ¶ 46, and posited that "international cooperation in international disputes . . . has proved to be helpful," *id.* ¶ 44. We respectfully request that in the spirit of such international cooperation and in light of the respect to this Court shown by Mr. Justice Richards, Your Honor consider the guidance provided by the English Court in its judgment – the only court that has ruled on issues specific to the Euro Bonds, which are indisputably governed by English law and lack a nexus to the United States.

In light of the above, we respectfully request that the Court reconsider its prior rulings as they apply to the Euro Bonds. In the meantime, the Euro Bondholders, as fiduciaries, will continue to pursue any remedy available to them in connection with their property rights relating to those bonds in all appropriate forums.

Sincerely yours,

/s/ Christopher J. Clark
Christopher J. Clark
of LATHAM & WATKINS LLP

cc: Counsel of Record (via ECF)

Encl.

EXHIBIT A

Neutral Citation Number: [2015] EWHC 270 (Ch)

Case No: HC-2014-000704

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Royal Courts of Justice
Rolls Building,
Fetter Lane, London, EC4A 1NL

Date: 13 February 2015

Before :
MR JUSTICE DAVID RICHARDS

Between :

(1) Knighthead Master Fund LP **(2) RGY Investments LLC** **(3) Quantum Partners LP** **(4) Hayman Capital Master Fund LP**	**Claimants/ Applicants**
- and -	
(1) The Bank of New York Mellon **(2) The Bank of New York Depositary (Nominees) Limited**	**Defendants/ Respondents**

Mark Hapgood QC, David Quest QC and David Simpson
(instructed by **Reynolds Porter Chamberlain LLP**) for the **Claimants/Applicants**
Robert Miles QC and Andrew de Mestre
(instructed by **Allen & Overy LLP**) for the **Defendants/Respondents**

Hearing date: 18 December 2014

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

Mr Justice David Richards:

Introduction

1. The claimants in these proceedings are four investment funds which hold or are interested in euro-denominated debt securities issued by the Republic of Argentina (the Republic) in 2005 and 2010. These securities are subject to the terms of a trust indenture dated as of 2 June 2005 (as amended) (the trust indenture) and both the securities and the trust indenture, as it applies to the securities, are governed by English law.

2. The first defendant, The Bank of New York Mellon (the trustee), is the trustee with respect to the relevant debt securities. It is a company formed under the laws of the State of New York and its registered office is in New York. It has a registered place of business in England. The second defendant, The Bank of New York Depository (Nominees) Limited, is a company incorporated under the laws of England and Wales and is a wholly-owned subsidiary of the trustee. It is the registered holder of the global securities issued in respect of each series of the relevant debt securities.

3. On the present application, the claimants seek two interim declarations, as to the status of funds held by the trustee and as to the obligations under English law of the trustee, and also a direction to the trustee to bring the terms of such declarations, if made, to the attention of courts in the United States.

The exchange bonds

4. The securities held by the claimants are among the debt securities (the exchange bonds) issued in exchange for securities previously issued by the Republic under a Fiscal Agency Agreement made in 1994 and governed by New York law (the FAA bonds). The Republic defaulted on the FAA bonds in 2001 when it declared a "temporary moratorium" on the payment of principal and interest on debt in excess of US $80 billion. Since then, the Republic has not made any payments on the FAA bonds.

5. In 2005 the Republic made an offer to the holders of FAA bonds to exchange those bonds for new unsecured bonds at a very significant discount. Some 76% of the holders of the FAA bonds with an aggregate par value of some US $62.3 billion accepted the offer. A second exchange offer was made on materially the same terms in 2010 and was accepted by the holders of a further 15% of the original FAA bonds. Accordingly, some 91% of the FAA bonds have been exchanged. The terms of the FAA bonds did not include a collective action clause enabling a majority to bind the minority, so the holders of the remaining FAA bonds are not bound by the restructuring and they have become known as the Holdout Creditors.

6. The exchange bonds were issued in a number of different series and in three different currencies: Argentine pesos, euros and US dollars. So far as relevant for present purposes, they are governed by the trust indenture and by the terms endorsed on the relevant global securities.

7. The present proceedings are concerned only with the euro-denominated exchange bonds (euro debt securities). As noted above, the euro debt securities are governed by English law and section 12.7 of the trust indenture (as amended in 2010) provides, so far as relevant:

> *"In respect of Debt Securities of a Series governed by English law, this Indenture, such Debt Securities* ***and any non-contractual obligations arising out of or in connection therewith*** *shall be governed by and construed in accordance with the laws of England and Wales without regard to principles of conflicts of laws, except with respect to authorisation and execution by the Republic, which shall be governed by the laws of the Republic."*

The words in bold were added in 2010.

8. By section 12.8, so far as relevant, the Republic irrevocably submits to the jurisdiction of the courts of England and of the Republic with respect to any proceedings arising out of or in connection with the indenture as it relates to debt securities governed by English law.

9. By section 3.1 of the trust indenture, the Republic covenants to pay the principal of and interest on the exchange bonds to the trustee, at the places and times and in the manner provided in the debt securities and the trust indenture. Section 3.1 continues:

> *"All monies (save for its own account) paid to the Trustee under the Debt Securities and this Indenture shall be held by it in trust for itself and the Holders of Debt Securities in accordance with their respective interests to be applied by the Trustee to payments due under the Debt Securities and this Indenture at the time and in the manner provided for in the Debt Securities and this Indenture."*

10. Section 3.5 provides that any sums due are to be paid to the trustee no later than the business day prior to each interest payment date or principal payment date. It continues by providing that the trustee shall apply the amounts so received in payment of the sums due on the relevant payment date and:

> *"Pending such application, such amounts shall be held in trust by the Trustee for the exclusive benefit of the Trustee and the Holders entitled thereto in accordance with their respective interests and the Republic shall have no interest whatsoever in such amounts."*

11. In the case of the euro debt securities, payment is made in euros to an account in the name of the trustee at Banco Central de la República Argentina (the Central Bank) in Buenos Aires.

12. The structure created by the trust indenture and the terms of the euro debt securities are therefore clear and straightforward. Payments made by the Republic to the trustee in respect of the euro debt securities are to be held by the trustee on the trusts

of the trust indenture and for the purpose of making payments due on the euro debt securities of principal and interest. Once received by the trustee, the funds are held on those trusts and the Republic has no interest in them. It may however be noted that payment is not deemed to be made on the euro debt securities until the relevant sums are received by the Holder: paragraph 2 of the terms and conditions of the euro debt securities.

13. In the context of the present proceedings, it is also relevant to note that save in one respect, these arrangements involve no connection at all with the United States. The euro debt securities, and the trust indenture so far as it relates to them, are governed by English law, and the Republic has submitted to the jurisdiction of the English courts. Payments are made in euros and are made to an account in the Republic for onward transmission to those ultimately entitled to them, through the systems operated by Euroclear Bank SA/NV (Euroclear) and Clearstream Banking SA (Clearstream) under Belgium and Luxembourg law respectively. The one connection with the United States is that the trustee is incorporated under New York law and has its registered office in New York. This is not a coincidence. The criteria for appointment as trustee are set out in section 5.8 of the trust indenture and include requirements that the trustee:

> *"has its Corporate Trust Office in the Borough of Manhattan, the City of New York and is doing business in good standing under the laws of the United States or of any State or territory thereof or the District of Columbia that is authorised under such laws to exercise corporate trust powers (including all powers and related duties set forth in this Indenture), and subject to supervision or examination by federal, or state authority."*

14. Any trustee that ceases to be eligible in accordance with the provisions of section 5.8 is required to resign immediately. No successor trustee may accept appointment unless at the time of such acceptance it is eligible under the terms of Article 5.

The US proceedings

15. The background to the present proceedings, and the reason for them, are the proceedings brought by some Holdout Creditors in the United States and orders made in those proceedings.

16. Proceedings were brought by different groups of Holdout Creditors in the US District Court for the Southern District of New York (the District Court). As a result of the failure of the Republic to pay interest due under the FAA bonds, events of default were declared and the full amount of the principal of those bonds became due and payable. Judgments have been entered in the District Court in favour of Holdout Creditors for the full amount of their bonds.

17. For example, NML Capital Limited commenced proceedings in November 2003 in the District Court to recover the principal and interest due under the FAA bonds held by it. The Republic appeared and defended the proceedings. On 18 December 2006, NML obtained judgment in a sum of a little over US $284 million on a motion for summary judgment. NML has brought proceedings in England for judgment on the

District Court's judgment and the Supreme Court has held that the Republic is not entitled to rely on state immunity: *NML Capital Ltd v Republic of Argentina* [2011] UKSC 31; [2011] 2 AC 495.

18. The Holdout Creditors have relied on a term of the FAA bonds to argue that no payment of interest may be made on the exchange bonds without making a rateable payment of the amount due on the FAA bonds. As the full amount of principal of the FAA bonds is due and payable, this means that if, for example, the Republic wishes to pay the full amount of interest due on the exchange bonds on a particular interest payment date, it must simultaneously pay the full amount due on the FAA bonds. The provision in question, known as a pari passu clause, reads so far as relevant as follows:

> *"The Securities will constitute (except as provided in Section 11 below) 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 (as defined in this Agreement)."*

19. In 2012, the District Court held in favour of the Holdout Creditors' construction of the pari passu clause, a decision which was subsequently upheld on appeal by the Court of Appeals for the Second Circuit (the Court of Appeals). The US Supreme Court has declined to hear an appeal against this. This construction is controversial but, as Newey J said in a judgment to which I will later refer, this is of little or no significance because the clause has been definitively interpreted in accordance with its governing law by a court of competent jurisdiction.

20. On 23 February 2012, on an application by NML Capital Limited and other Holdout Creditors, and having heard the Republic in opposition, the District Court granted an injunction (the injunction) that enjoined the Republic from making payment of any percentage of the amount due under the exchange bonds without concurrently or in advance making payment of a similar percentage of amounts due under the FAA bonds. The Republic was also required to provide copies of the order to all persons and entities who act in active concert or participation with the Republic to assist the Republic in fulfilling its payment obligations under the exchange bonds, who "shall be bound by the terms of this order" and who were prohibited from aiding and abetting any violation of the order.

21. On 26 October 2012, the Court of Appeals affirmed the order but remanded the case to the District Court for more precise definition of the third parties to which the injunction would apply. That clarification was provided by the District Court on 21 November 2012, specifically identifying certain third parties including the trustee who were subject to the terms of the order. Other third parties include the registered owners of the exchange bonds and nominees of the depositories for the exchange bonds (including the second defendant in these proceedings), Clearstream and Euroclear, trustee paying agents and transfer agents for the exchange bonds. The order provides that any non-party that has received proper notice of the order and that requires clarification as to its duties, if any, under the order may apply to the District

Court on notice to the Republic and NML. On 23 August 2013, the Court of Appeals affirmed the order and refused leave to appeal to the US Supreme Court. On 16 June 2014, the US Supreme Court denied the Republic's petition for a writ of certiorari, thus lifting the previously ordered stay of the injunction.

22. On 26 June 2014 the Republic transferred the funds necessary to make the payment of interest due on the exchange bonds on 30 June 2014 to the trustee's account at the Central Bank. This included €225 million for interest on the euro debt securities (the euro funds). The following day the Republic published a notice addressed to holders of its bonds stating that it had made this payment. On the same day NML and other Holdout Creditors filed a motion before the District Court alleging that the payment was a breach of the injunction. A hearing took place that day at which other parties, including the trustee and the claimants in the present proceedings and other holders of euro debt securities, were represented and made submissions. The judge stated that the funds should "simply be returned" to the Republic and invited counsel for NML to draft an order.

23. On 29 June 2014, the claimants and other holders of euro debt securities (euro bondholders) filed an emergency motion seeking clarification of the injunction. The clarification sought was that the injunction does not apply to the third parties that processed payments on the euro debt securities.

24. On 6 August 2014 the District Court entered an order in terms which had been submitted by Holdout Creditors on 1 August 2014. By the order, the court declared that the payment by the Republic of funds, including the funds in euros, made to the trustee on 26 June 2014 "was illegal and a violation of" the injunction. The trustee was ordered to retain the funds in its account at the Central Bank pending further order of the court and was restrained from making or allowing any transfer of the funds unless ordered by the court. The Republic was restrained from taking any steps to interfere with the trustee's retention of the funds in accordance with the order. The order further provided that the trustee's retention of the funds pursuant to the terms of the order should not be deemed a violation of the injunction and that the trustee "shall incur no liability under the Indenture governing the Exchange Bonds or otherwise to any person or entity for complying with this Order" and the injunction.

25. On 15 August 2014 the euro bondholders issued an appeal against this order but on 22 October 2014 the Court of Appeals declined jurisdiction to hear the appeal.

26. In August 2014, two groups of Holdout Creditors filed motions in the District Court seeking orders that the trustee pay over to them the funds transferred to the trustee by the Republic on 26 June 2014, including the euro funds, or so much of them as was sufficient to satisfy their judgments together with post-judgment interest (the turnover motions). In September 2014, the trustee filed briefs in opposition to the turnover motions, as did NML and other Holdout Creditors.

27. By an order issued on 27 October 2014, the District Court denied the Turnover Motions on the grounds that the euro funds were located outside the United States. The court's reasoned judgment stated that even if the plaintiffs could show that the Republic maintained an interest in the euro funds, a point "which the court does not reach", a turnover order would constitute an attachment or execution of the property

of a foreign sovereign located outside the United States, which is not authorised under the terms of the Foreign Sovereign Immunities Act.

28. In early November 2014, appeals were filed with the Court of Appeals against the order denying the turnover motions. The trustee filed with the Court of Appeals a motion for leave to intervene as a non-party appellee, although the attorneys for some of the Holdout Creditors stated that such leave was not necessary. In any event on 28 January 2015, the Court of Appeals granted this motion. A similar motion filed by the euro bondholders was denied by the Court of Appeals which instead granted them leave to file amicus curiae briefs. As I understand it, reasons were not given for the denial of the euro bondholders' motion.

29. I have been supplied with the appellants' briefs in the appeals against the refusal of the turnover motions in two sets of proceedings, both briefs being dated 22 December 2014. The foundation of the turnover motions is that the payment of sums to the trustee by the Republic on 26 June 2014 was in breach of the injunction issued by the District Court and was therefore "illegal". This, it is said, gives the Holdout Creditors with judgments a better claim to the funds than the trustee or those for whom it otherwise holds the funds. In the brief submitted on behalf of the appellant in *Dussault v Republic of Argentina*, the plaintiff's submission in support of the turnover motion is summarised as follows:

> *"the plaintiff maintained that because the transfer of funds to BNY was in direct contravention of the February 23, 2014 order, the transfer gave BNY possession and custody, but not title to or control of the funds. The Republic thus undoubtedly had an interest in the funds. ... The Republic is thus effectively entitled to possession and control of the funds which, as the District Court acknowledged, will have to be returned to the Republic. In addition, the plaintiff maintained that as a judgment creditor its rights to the funds were greater than BNY's rights to the funds as a mere trustee or custodian."*

30. The brief records the basis of the trustee's opposition, being that the trust indenture provided that the funds were held for the benefit of the bondholders and the trustee. The Republic had opposed the motion on the grounds that it had no interest in the funds held in the trustee's accounts, which belonged to the bondholders. The euro bondholders who had submitted opposition as non-parties had claimed title to that portion of the funds held for payment of interest on the euro debt securities, the ownership of which was governed by English law.

31. In reply, the plaintiff had submitted that since the transfer of funds to the trustee was illegal, the Republic retained an interest in the funds. She disputed that the euro funds belonged to or were held ultimately for the benefit of the euro bondholders, noting that by its terms the Indenture Trust does not apply to illegal transfers of money. In any event, relying on relevant provisions of US law, she submitted that where funds have been transferred from or by the judgment debtor, the judgment creditor's rights to the property are superior to those of the transferee.

32. By way of summary of her position on the appeal the plaintiff's brief states:

> *"Finally, although the district court did not reach this issue, it is clear that the funds currently on deposit in BNY's account are subject to execution within the scope of the provisions of New York Civil Practice Law and Rules ("CPLR") §5225(b) because the Republic retains actual control of the funds. Indeed, only the Republic can give the directive for the funds to be paid out in accordance with the district court's and this Court's directives, failing which, as the district court has indicated, the funds will have to be returned to the Republic. In any event, as a judgment creditor, Plaintiff's right to the funds is greater than BNY's right to the funds as a trustee on behalf of bondholders. Accordingly, BNY should be directed "to pay the money, or so much of it as is sufficient to satisfy the judgment to the judgment creditor." CPLR §5225(b). (Point III)."*

33. In her brief, the plaintiff repeats and expands on the submissions made to the District Court. She submits that "[t]here is no question that the Republic has an interest in the funds currently being held by BNY." The brief goes on to state that "[i]t is also clear that the Republic is entitled to possession of the funds currently being held by BNY. During the June 27, 2014 and July 22, 2014 hearings before the district court it was made clear that the transfer made by the Republic was illegal and the transferred amount should be returned to the Republic." It is further submitted that "it cannot be gainsaid that as a judgment creditor the Plaintiff's right to the funds are superior to those of BNY, which as a trustee has no personal right to the funds, but rather has possession of the fund for the benefit of others." Specifically addressing submissions made by the euro bondholders, it is submitted:

> *"First, the district court's order precluding a distribution of the funds to the bondholders raises serious questions as to whether or not they have any right or claim to the funds improperly transferred to BNY. The plaintiff's rights as a judgment creditor are certainly superior to the bondholders' rights to receive an interest payment under the bonds. This is particularly true since any payment to the bondholders would violate the injunction issued by the district court."*

34. I have cited at some length from this appeal brief because it gives some idea of the nature of the claims being made by Holdout Creditors with judgments as regards the euro funds currently held by the trustee and the basis on which it is said that those claims are superior to the claims of the beneficial owners of the funds under the terms of the trust indenture.

Declarations

35. The terms of the declarations sought by the claimants have undergone a number of changes but I take them now to be in the following form:

    1) A declaration that the sum of €225 million transferred by the Republic of Argentina to the account of the trustee with Banco Central de la República Argentina and still held to the credit of that account is held on the trusts

declared by a Trust Indenture between the Republic as Issuer and The Bank of New York as trustee dated as of 2 June 2005 and subsequently amended, such trust being governed by English law, (as would be any other funds paid to it in attempted satisfaction of the Republic's payment obligations under the Euro Debt Securities).

2) Subject to the terms of the Trust Indenture, and any other defences available under English law, the obligations and liabilities of the Bank of New York Mellon under the Trust Indenture and the Euro Debt Securities (including the obligation under clause 3.5(a) of the Trust Indenture and clause 2 of the Euro Debt Securities to transfer the Euro Funds to the Second Defendant) are unaffected by the New York Injunction, whether or not the First Defendant is subject to that injunction as a matter of US law.

The first declaration

36. As regards the first interim declaration which is sought on this application, the trustee does not dispute that it holds the funds received by it on 25 June 2014 on the trusts of the trust indenture and it does not oppose the making of such declaration, provided that the court is satisfied in accordance with well-established principles that it is appropriate to make a declaration in these circumstances.

37. Whether in the circumstances it is appropriate to make this declaration was an issue addressed by Newey J when this application was before him in November 2014. Having considered the relevant authorities, he concluded that it would be appropriate to do so: see [2014] EWHC 3662 (Ch) at [21]-[26]. It is not necessary for me to consider this question afresh but in any event I agree with the conclusion of Newey J and, in circumstances where there is so much dispute surrounding the attempt by the Republic to pay sums due on the exchange bonds, I consider that a declaration, authoritatively stating the position under the governing law of the trust indenture and the euro debt securities, is helpful.

38. It was a matter of concern to Newey J that the Holdout Creditors had not had an opportunity to challenge the proposed declaration. As he observed, it is they who might want to dispute the existence or terms of a trust and contend that the Republic had a continuing interest in the funds held by the trustee. He therefore adjourned the application to give the Holdout Creditors the chance to put forward any arguments that they might wish to make in opposition. He directed that notice should be given to the attorneys acting in the US proceedings for the Holdout Creditors that it was open to them to intervene in these proceedings. As he observed, if any of the Holdout Creditors were to argue that the funds were not subject to the trust asserted by the claimants, the court hearing the matter would be reassured that both sides of the argument had been fully ventilated.

39. Notice was duly given to the attorneys acting for the Holdout Creditors in proceedings before the District Court and nine firms requested copies of the documents filed in these proceedings. No Holdout Creditors have applied to intervene and to make representations to the court.

40. Nonetheless, attorneys acting for a number of Holdout Creditors sought to make their views known to the court. A letter dated 5 December 2014 from Dechert LLP and

three other firms to the claimants' solicitors was copied to the court. Duane Morris, attorneys acting for another group of Holdout Creditors, wrote directly to the court on 19 November 2014.

41. There are difficulties in this way of proceeding. First, it is clear that the opportunity provided by the order of Newey J was to enable Holdout Creditors wishing to make submissions to intervene in the English proceedings and make submissions to the court. In this way, the court would have the benefit of submissions from different parties responding to each other and would have the opportunity of probing those submissions with counsel advancing them.

42. Secondly, the claimants and the trustee are agreed that, at any rate, the letter from Duane Morris contains some important errors. The claim made by them that the issue of the exchange bonds has been ruled illegal by the US courts is wrong. The US courts have never ruled or even suggested that the exchange bonds were illegal. The injunction granted by the District Court is concerned with compelling payments to Holdout Creditors in conjunction with payments under the exchange bonds, not in any sense with the legality or otherwise of the exchange bonds themselves. Further, it is wrong to suggest that the trust indenture has been "abrogated or suspended" by the injunction granted by the District Court or that the injunction created a constructive trust which superseded the trust indenture.

43. The fundamental point made in both letters is that the English court is not the proper forum to determine the matters raised by the claimants' application. It is pointed out that the claimants and other persons entitled to the benefit of euro debt securities have appeared in the proceedings in the District Court and the Court of Appeals and have made submissions to the effect that the injunction granted by the District Court does not or should not extend to payments on the euro debt securities, albeit not as parties to the proceedings in the United States. They further point out, as is obviously the case, that the District Court is well able to determine issues of foreign law, including the English law of trusts, and that the claimants could have introduced evidence of English law in the District Court.

44. This court is, of course, very concerned not to intrude improperly into matters which are before the US courts. But the making of a declaration in the terms sought by the claimants would not, in my judgment, do so. The declaration would establish the status of the funds held by the trustee as a matter of English law. As the letter dated 5 December 2014 states, issues of English law have not been raised before the District Court. A declaration as to the effect of a trust indenture governed by English law is in my view peculiarly within the proper jurisdiction of this court.

45. The declaration sought by the claimants does not in any way interfere with or impede the US courts in their consideration of the issues before them. They are concerned with the effect of the breach by the Republic of the injunction granted by the District Court. Because the trustee is subject to the personal jurisdiction of the District Court, it can properly be the subject of any orders which that court considers appropriate. It would be quite wrong for this court to make, and I do not make, any comment on such orders as may be appropriate and their effect as a matter of US law. The only comment I would make is that, *as a matter of English law*, I can see no basis on which any such order could of itself give either the Republic or the Holdout

Creditors any proprietary interest in the funds held by the trustee with the Central Bank.

46. More problematic is the state of "paralysis", as leading counsel for both the claimants and the trustee described it, in the operation of the trust caused by the injunction. A continuing state of paralysis may have a number of consequences in English law. Such consequences may not arise, at this time at any rate, and they have not been the subject of any submissions to the court. They are at most issues which may arise in the future. For the present, I consider that the first proposed declaration accurately sets out the position under English law.

47. Accordingly, I consider that it is appropriate for the court to make the first declaration sought by the claimants.

The second declaration

48. The second declaration raises rather different issues. The main purpose of the declaration is to establish that the injunction provides no defence to a claim to enforce the terms of the trust indenture, including the obligation under clause 3.5(a) to transfer the euro funds to the second defendant. At the same time the opening words of the proposed declaration, referring to the terms of the trust indenture and any defences under general trust law, keep open the position that, because the trustee is subject to the personal jurisdiction of the US courts, it may as a matter of English law be able to rely on the injunction as a proper ground for non-compliance with what would otherwise be its obligations under the trust indenture.

49. It is clearly right to keep those matters open. It is highly arguable that the terms of section 5.2(xvi) and (xx) would relieve the trustee of its obligations under the trust indenture to the extent that they were prohibited from performing them by the injunction. It is also arguable that where a trustee is subject to a legal inhibition, preventing it from performing its obligations as trustee, that too can provide a defence to a claim for breach of trust under general principles of law: see *Concord Trust v The Law Debenture Trust Corporation Plc* [2004] EWHC 1216 (Ch) at [33]. In my judgment, a declaration which is qualified in these terms, as this declaration must be, serves no useful purpose. It would be, in short, a declaration that the trustee would be in breach of trust unless it had a defence. No-one is assisted by a declaration in those terms. Accordingly, I shall decline to make the second proposed declaration.

Direction to the trustee

50. Finally, the claimants seek an order that the trustee bring the declaration that I have made to the attention of any relevant court before which it appears in the United States. The claimants are critical in some respects of the conduct of the trustee in the US proceedings. I do not propose to enter into a discussion of those criticisms. I am in no doubt that the trustee is conscious of its obligations as trustee but equally it is conscious, as it must be, of the delicate position in which it finds itself as a trustee subject to the personal jurisdiction of the US courts. In presenting its case on behalf of itself and those interested in the exchange bonds, the trustee and its attorneys have to take fine decisions as to the most effective way of dealing with it. No doubt there can be different views as to the best way in which the case can be presented, but I am

not satisfied that the trustee's conduct of the litigation has been outside the reasonable range of possible approaches.

51. I do not think that it would assist if I were to give the direction sought. It is a matter for the trustee to decide, with its attorneys, the proper time and way, if at all, to bring this judgment and order to the attention of the US courts. In any event, it is of course open to the claimants, who have permission to file non-party briefs in the Court of Appeals, to bring the judgment and order to the attention of that court.

Conclusion

52. Accordingly, for the reasons given in this judgment, I shall make the first interim declaration sought but I shall not make either the second interim declaration or a direction that the trustee bring this judgment and order to the attention of the US courts.

EXHIBIT B

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

CLAIM NO: HC-2014-000704

MR JUSTICE DAVID RICHARDS

13 FEBRUARY 2015

B E T W E E N:

(1) KNIGHTHEAD MASTER FUND LP
(2) RGY INVESTMENTS LLC
(3) QUANTUM PARTNERS LP
(4) HAYMAN CAPITAL MASTER FUND LP

Claimants

AND

(1) THE BANK OF NEW YORK MELLON
(2) THE BANK OF NEW YORK DEPOSITARY (NOMINEES) LIMITED

Defendants

ORDER

UPON the adjourned hearing of the parts of the Claimants' application issued on 9 October 2014 identified in paragraph 1 of the Order of Mr Justice Newey dated 6 November 2014;

AND UPON notice of the Claimants' application having been provided to specified third parties in accordance with paragraph 2 of the said Order of Mr Justice Newey;

AND UPON no person applying to be heard at the adjourned hearing of the Claimants' application;

AND UPON hearing Mark Hapgood QC, David Quest QC and David Simpson for the Claimants and Robert Miles QC and Andrew de Mestre for the Defendants

IT IS DECLARED THAT:

1. The sum of €225,852,475.66 transferred by the Republic of Argentina to the account of the First Defendant with Banco Central de la República Argentina and still held to the credit of that account is held on the trusts declared by a trust indenture between the Republic of Argentina as Issuer and the First Defendant as trustee dated as of 2 June 2005 and subsequently amended (as would be any other funds paid to the First Defendant in attempted satisfaction of the Republic of Argentina's payment obligations under the euro-denominated debt securities issued under the said trust indenture), such trusts being governed by English law.

IT IS ORDERED that:

1. Save as set out in the declaration at paragraph 1 above, there be no further order on the Claimants' application.

2. The Claimants' application for permission to appeal is refused.

3. Costs reserved to the Judge hearing the trial of the proceedings.

4. This order shall be served by the Claimants on the Defendants.

Service of the order
The court has provided a sealed copy of this order to the serving party:

Reynolds Porter Chamberlain LLP
Tower Bridge House, St Katharine's Way
London, E1W 1AA
Ref: THY/JSH/KNI49.1
Email: Tom.Hibbert@rpc.co.uk and Jake.Hardy@rpc.co.uk

Exhibit C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NML CAPITAL, LTD., Plaintiff, – against – REPUBLIC OF ARGENTINA, Defendants.	**ORDER** 08 Civ. 6978 (TPG) 09 Civ. 1707 (TPG) 09 Civ. 1708 (TPG)

AMENDED FEBRUARY 23, 2012 ORDER

WHEREAS, in an Order dated December 7, 2011, this Court found that, under Paragraph 1(c) of the 1994 Fiscal Agency Agreement ("FAA"), the Republic is "required . . . at all times to rank its payment obligations pursuant to NML's Bonds at least equally with all the Republic's other present and future unsecured and unsubordinated External Indebtedness."

WHEREAS, in its December 7, 2011 Order, this Court granted partial summary judgment to NML on its claim that the Republic repeatedly has breached, and continues to breach, its obligations under Paragraph 1(c) of the FAA by, among other things, "ma[king] payments currently due under the Exchange Bonds, while persisting in its refusal to satisfy its payment obligations currently due under NML's Bonds."

And WHEREAS NML Capital, Ltd. ("NML") has filed a renewed motion for equitable relief as a remedy for such violations pursuant to Rule 65(d) of the Federal Rules of Civil Procedure and the Court's inherent equitable powers.

Upon consideration of NML's renewed motion, the response of the Republic of Argentina (the "Republic") thereto, NML's reply, and all other arguments submitted to the Court in the parties' papers and at oral argument, it is HEREBY ORDERED that:

1. It is DECLARED, ADJUDGED, and DECREED that NML is irreparably harmed by and has no adequate remedy at law for the Republic's ongoing violations of Paragraph 1(c) of the FAA, and that the equities and public interest strongly support issuance of equitable relief to prevent the Republic from further violating Paragraph 1(c) of the FAA, in that:

   a. Absent equitable relief, NML would suffer irreparable harm because the Republic's payment obligations to NML would remain debased of their contractually-guaranteed status, and NML would never be restored to the position it was promised that it would hold relative to other creditors in the event of default.

   b. There is no adequate remedy at law for the Republic's ongoing violations of Paragraph 1(c) of the FAA because the Republic has made clear – indeed, it has codified in Law 26,017 and Law

26,547 – its intention to defy any money judgment issued by this Court.

c. The balance of the equities strongly supports this Order in light of the clear text of Paragraph 1(c) of the FAA and the Republic's repeated failures to make required payments to NML. In the absence of the equitable relief provided by this Order, the Republic will continue to violate Paragraph 1(c) with impunity, thus subjecting NML to harm. On the other hand, the Order requires of the Republic only that which it promised NML and similarly situated creditors to induce those creditors to purchase the Republic's bonds. Because the Republic has the financial wherewithal to meet its commitment of providing equal treatment to both NML (and similarly situated creditors) and those owed under the terms of the Exchange Bonds, it is equitable to require it to do so. Indeed, equitable relief is particularly appropriate here, given that the Republic has engaged in an unprecedented, systematic scheme of making payments on other external indebtedness, after repudiating its payment obligations to NML, in direct violation of its contractual commitment set forth in Paragraph 1(c) of the FAA.

d. The public interest of enforcing contracts and upholding the rule of law will be served by the issuance of this Order, particularly here, where creditors of the Republic have no

recourse to bankruptcy regimes to protect their interests and must rely upon courts to enforce contractual promises. No less than any other entity entering into a commercial transaction, there is a strong public interest in holding the Republic to its contractual obligations.

2. The Republic accordingly is permanently ORDERED to specifically perform its obligations to NML under Paragraph 1(c) of the FAA as follows:

a. Whenever the Republic pays any amount due under terms of the bonds or other obligations issued pursuant to the Republic's 2005 or 2010 Exchange Offers, or any subsequent exchange of or substitution for the 2005 and 2010 Exchange Offers that may occur in the future (collectively, the "Exchange Bonds"), the Republic shall concurrently or in advance make a "Ratable Payment" to NML (as defined below and as further defined in the Court's Opinion of November 21, 2012).

b. Such "Ratable Payment" that the Republic is ORDERED to make to NML shall be an amount equal to the "Payment Percentage" (as defined below) multiplied by the total amount currently due to NML in respect of the bonds at issue in these cases (08 Civ. 6978, 09 Civ. 1707, and 09 Civ. 1708), including pre-judgment interest (the "NML Bonds").

c. Such "Payment Percentage" shall be the fraction calculated by dividing the amount actually paid or which the Republic

intends to pay under the terms of the Exchange Bonds by the total amount then due under the terms of the Exchange Bonds.

d. The Republic is ENJOINED from violating Paragraph 1(c) of the FAA, including by making any payment under the terms of the Exchange Bonds without complying with its obligation pursuant to Paragraph 1(c) of the FAA by concurrently or in advance making a Ratable Payment to NML.

e. Within three (3) days of the issuance of this ORDER, the Republic shall provide copies of this ORDER to all participants in the payment process of the Exchange Bonds ("Participants"). Such Participants shall be bound by the terms of this ORDER as provided by Rule 65(d)(2) and prohibited from aiding and abetting any violation of this ORDER, including any further violation by the Republic of its obligations under Paragraph 1(c) of the FAA, such as any effort to make payments under the terms of the Exchange Bonds without also concurrently or in advance making a Ratable Payment to NML.

f. "Participants" refer to those persons and entities who act in active concert or participation with the Republic, to assist the Republic in fulfilling its payment obligations under the Exchange Bonds, including: (1) the indenture trustees and/or registrars under the Exchange Bonds (including but not limited to The Bank of New York Mellon f/k/a/ The Bank of New York);

(2) the registered owners of the Exchange Bonds and nominees of the depositaries for the Exchange Bonds (including but not limited to Cede & Co. and The Bank of New York Depositary (Nominees) Limited) and any institutions which act as nominees; (3) the clearing corporations and systems, depositaries, operators of clearing systems, and settlement agents for the Exchange Bonds (including but not limited to the Depository Trust Company, Clearstream Banking S.A., Euroclear Bank S.A./N.V. and the Euroclear System); (4) trustee paying agents and transfer agents for the Exchange Bonds (including but not limited to The Bank of New York (Luxembourg) S.A. and The Bank of New York Mellon (including but not limited to the Bank of New York Mellon (London)); and (5) attorneys and other agents engaged by any of the foregoing or the Republic in connection with their obligations under the Exchange Bonds.

g. Nothing in this ORDER shall be construed to extend to the conduct or actions of a third party acting solely in its capacity as an "intermediary bank," under Article 4A of the U.C.C. and N.Y.C.L.S. U.C.C. § 4-A-104, implementing a funds transfer in connection with the Exchange Bonds.

h. Any non-party that has received proper notice of this ORDER, pursuant to Rule 65(d)(2), and that requires clarification as to

its duties, if any, under this ORDR may make an application to this Court, with notice to the Republic and NML. Such clarification will be promptly provided.

i. Concurrently or in advance of making a payment on the Exchange Bonds, the Republic shall certify to the Court and give notice of this certification to its Participants, and to counsel for NML, that the Republic has satisfied its obligations under this ORDER to make a Ratable Payment to NML.

3. NML shall be entitled to discovery to confirm the timing and amounts of the Republic's payments under the terms of the Exchange Bonds; the amounts the Republic owes on these and other obligations; and such other information as appropriate to confirm compliance with this ORDER;

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

5. This Court shall retain jurisdiction to monitor and enforce this ORDER, and to modify and amend it as justice requires to achieve its equitable purposes and to account for changing circumstances.

Dated: New York, New York
November, 21 2012

Thomas P. Griesa

Thomas P. Griesa
U.S. District Judge

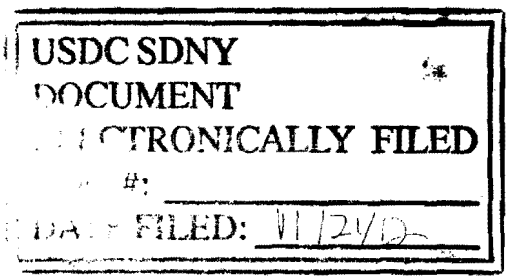

Exhibit D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NML CAPITAL, LTD., Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	14 Civ. 8601 (TPG)
NML CAPITAL, LTD., Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	14 Civ. 8988 (TPG)
FFI FUND, LTD. and FYI LTD., Plaintiffs, - against - THE REPUBLIC OF ARGENTINA, Defendant.	14 Civ. 8630 (TPG) *(captions continue on following pages)*

OPINION AND ORDER

PEREZ, et al., Plaintiffs, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	14 Civ. 8242 (TPG)
AURELIUS CAPITAL PARTNERS, LP, et al., Plaintiffs, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	14 Civ. 8946 (TPG)
BLUE ANGEL CAPITAL I LLC, Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	14 Civ. 8947 (TPG)
EM LTD., Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	14 Civ. 8303 (TPG)

LIGHTWATER CORP. LTD., Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	14 Civ. 4092 (TPG)
OLD CASTLE HOLDINGS, LTD., Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	14 Civ. 4091 (TPG)
SETTIN, Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	14 Civ. 8739 (TPG)
CAPITAL VENTURES INTERNATIONAL, Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	14 Civ. 7258 (TPG)

ADAMI, et al., Plaintiffs, - against - THE REPUBLIC OF ARGENTINA, Defendant.	14 Civ. 7739 (TPG)
CAPITAL MARKETS FINANCIAL SERVICES INC., et al., Plaintiffs, - against - THE REPUBLIC OF ARGENTINA, Defendant.	15 Civ. 0710 (TPG)
FOGLIA, et al., Plaintiffs, - against - THE REPUBLIC OF ARGENTINA, Defendant.	14 Civ. 8243 (TPG)
PONS, et al., Plaintiffs, - against - THE REPUBLIC OF ARGENTINA, Defendant.	13 Civ. 8887 (TPG)

GUIBELALDE, et al., Plaintiffs, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	11 Civ. 4908 (TPG)
DORRA, et al., Plaintiffs, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	14 Civ. 10141 (TPG)
BELOQUI, et al., Plaintiffs, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	14 Civ. 5963 (TPG)
TORTUS CAPITAL MASTER FUND, LP, Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	14 Civ. 1109 (TPG)

TORTUS CAPITAL MASTER FUND, LP, Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	14 Civ. 3127 (TPG)
TRINITY INVESTMENTS LIMITED, Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	14 Civ. 10016 (TPG)
MONTREUX PARTNERS, L.P., Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	14 Civ. 7171 (TPG)
LOS ANGELES CAPITAL, Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	14 Civ. 7169 (TPG)

CORDOBA CAPITAL, Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	14 Civ. 7164 (TPG)
WILTON CAPITAL, LTD., Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	14 Civ. 7166 (TPG)
MCHA HOLDINGS, LLC, Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	14 Civ. 7637 (TPG)
MCHA HOLDINGS, LLC, Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	14 Civ. 10064 (TPG)

ANDRAREX LTD., Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	14 Civ. 9093 (TPG)
CLARIDAE, et al., Plaintiffs, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	14 Civ. 10201 (TPG)
ARAG-A LIMITED, et al., Plaintiffs, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	14 Civ. 9855 (TPG)
ATTESTOR MASTER VALUE FUND LP, Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	14 Civ. 5849 (TPG)

ANGULO, et al., Plaintiffs, - against - THE REPUBLIC OF ARGENTINA, Defendant.	15 Civ. 1470 (TPG)
LAMBERTINI, et al., Plaintiffs, - against - THE REPUBLIC OF ARGENTINA, Defendant.	15 Civ. 1471 (TPG)
HONERO FUND I, LLC, Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	15 Civ. 1553 (TPG)
TRINITY INVESTMENTS LIMITED, Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	15 Civ. 1588 (TPG)

BANCA ARNER S.A., et al., Plaintiffs, - against - THE REPUBLIC OF ARGENTINA, Defendant.	15 Civ. 1508 (TPG)
TRINITY INVESTMENTS LIMITED, Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	15 Civ. 2611 (TPG)
TRINITY INVESTMENTS LIMITED, Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	15 Civ. 5886 (TPG)
MCHA HOLDINGS, LLC, Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	15 Civ. 2577 (TPG)

MCHA HOLDINGS, LLC, Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	15 Civ. 5190 (TPG)
ERCOLANI, et al., Plaintiffs, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	15 Civ. 4654 (TPG)
FAZZOLARI, et al., Plaintiffs, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	15 Civ. 3523 (TPG)
STONEHILL INSTITUTIONAL PARTNERS, L.P. et al., Plaintiffs, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	15 Civ. 4284 (TPG)

WHITE HAWTHORNE, LLC, Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	15 Civ. 4767 (TPG)
VR GLOBAL PARTNERS, LP, Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	11 Civ. 8817 (TPG)
HONERO FUND I, LLC, Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	15 Civ. 6702 (TPG)
PROCELLA HOLDINGS, L.P., Plaintiff, - against - THE REPUBLIC OF ARGENTINA, Defendant.	:	15 Civ. 3932 (TPG)

BYBROOK CAPITAL MASTER FUND LP et al.,	:	
Plaintiffs,	:	
- against -	:	15 Civ. 7367 (TPG)
THE REPUBLIC OF ARGENTINA,	:	
Defendant.	:	
BYBROOK CAPITAL MASTER FUND LP et al.,	:	
Plaintiffs,	:	
- against -	:	15 Civ. 2369 (TPG)
THE REPUBLIC OF ARGENTINA,	:	
Defendant.	:	

Plaintiffs in these forty-nine actions hold defaulted bonds issued by defendant, the Republic of Argentina. Plaintiffs have already obtained partial summary judgment that the Republic violated, and continues to violate, the *pari passu* clause of the underlying bond agreement. Plaintiffs now seek a remedy. They request an order granting specific performance of the *pari passu* clause. For the following reasons, the court grants plaintiffs' motions for specific performance.

Background

In 1994, the Republic began issuing bonds pursuant to a Fiscal Agency Agreement ("FAA"). The FAA contains a provision, the *pari passu* clause, which

reads:

> The 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 . . . .

FAA ¶ 1(c). In 2001, the Republic experienced an economic crisis and defaulted on its public debts, including the FAA bonds. Each year since 2002, the Republic has passed legislation prohibiting payment on the FAA bonds. As a result, many FAA bondholders began filing actions against the Republic in this court.

1. The 2005 and 2010 Exchange Offers

In 2005 and 2010, the Republic issued exchange offers inviting creditors, including FAA bondholders, to exchange their old bonds for newly issued bonds worth 25% to 29% of the original bonds' value. The Republic took certain steps to encourage participation in the exchange offers, and to discourage "holdouts" from pursuing better terms. For example, the Republic enacted Law 26,017 (the "Lock Law"), prohibiting settlement with those who declined the 2005 exchange. *See* Law 26,017 art. 4. In all, an estimated 93% of the Republic's creditors accepted the 2005 and 2010 exchange offers. After each exchange, the Republic made regular payments on the Exchange Bonds but continuously refused to pay on the FAA bonds.

2. The Lead Plaintiffs and the *Pari Passu* Injunction

In 2010, a group of plaintiffs led by NML Capital, Ltd. (the "Lead Plaintiffs") filed motions seeking a different kind of judgment. These plaintiffs, by motion for partial summary judgment, asked the court to declare that the Republic had violated a portion of the *pari passu* clause, the "Equal Treatment Provision," by "creating a class of creditors who are guaranteed payment while formally condemning [plaintiffs] to a lower rank that is barred from receiving any payment at all." *See* Mem. L. Supp. Mot. Part. Summ. J. at 2, *NML Capital Ltd. v. Republic of Argentina*, No. 08-cv-6978 (Oct. 20, 2010). After extensive briefing, the court agreed with the Lead Plaintiffs and adjudged that the Republic had violated the *pari passu* clause of the FAA when it "lowered the rank of [plaintiffs'] bonds . . . [and] when it made payments currently due under the Exchange Bonds[] while persisting in its refusal to satisfy its payment obligations currently due under [plaintiffs'] Bonds." Order at 4–5, *NML Capital Ltd. v. Republic of Argentina*, No. 08-cv-6978 (Dec. 7, 2011).

On February 23, 2012, the court fashioned an injunction to enforce its judgment that the Republic had violated the *pari passu* clause. *See* Order, *NML Capital Ltd. v. Republic of Argentina*, No. 08-cv-6978 (Feb. 23, 2012). In granting equitable relief, the court found that each plaintiff "is irreparably harmed by and has no adequate remedy at law for the Republic's ongoing violations of [the *pari passu* clause], and that the equities and public interest strongly support issuance of equitable relief to prevent the Republic from further violating [the *pari passu* clause]." *Id.*

The Court of Appeals for the Second Circuit affirmed the injunction, but remanded to this court "to clarify precisely how it intends this injunction to operate." *NML Capital, Ltd. v. Republic of Argentina*, 699 F.3d 246, 255 (2d Cir. 2012) (*NML I*). On remand, the court issued an order clarifying that:

> a. Whenever the Republic pays any amount due under terms of the bonds or other obligations issued pursuant to the Republic's 2005 or 2010 Exchange Offers, or any subsequent exchange of or substitution for the 2005 and 2010 Exchange Offers that may occur in the future (collectively, the "Exchange Bonds"), the Republic shall concurrently or in advance make a "Ratable Payment" to [plaintiffs].
>
> b. Such "Ratable Payment" that the Republic is ORDERED to make to [plaintiffs] shall be an amount equal to the "Payment Percentage" . . . multiplied by the total amount currently due to [plaintiffs] in respect of the bonds at issue in these cases . . . , including pre-judgment interest . . . .

Order at ¶ 2 (a)–(b), *NML Capital Ltd. v. Republic of Argentina*, No. 08-cv-6978 (Nov. 21, 2012). This order became known as "the Amended Injunction."

The Republic appealed the Amended Injunction to the Court of Appeals.[1] The Second Circuit affirmed the Amended Injunction in its entirety. *NML Capital, Ltd. v. Republic of Argentina*, 727 F.3d 230, 248 (2d Cir. 2013) (*NML II*). Nonetheless, it stayed the injunction to allow the Republic to file a petition for a writ of *certiorari*. *Id.* The Republic filed its petition, and the Supreme Court denied it on June 16, 2014. *Republic of Argentina v. NML Capital, Ltd.*, 134 S. Ct. 2819 (2014). Soon thereafter, the Court of Appeals lifted the stay of the Amended Injunction and the Republic chose to default on the Exchange Bonds.

[1] Despite taking an appeal, at oral argument before the Court of Appeals in February 2013, counsel for the Republic "told the panel that it 'would not voluntarily obey' the district court's injunctions, even if those injunctions were upheld . . . ." *NML Capital, Ltd. v. Republic of Argentina*, 727 F.3d 230, 238 (2d Cir. 2013).

3. The Republic's Post-Injunction Conduct

Less than a month after the Court of Appeals affirmed the Amended Injunction, the Republic passed Law 26,886, reopening the exchanges but again prohibiting those who wished to participate from receiving terms more favorable than it had already offered. *See* Law 26,886 art. 2. Moreover, the Republic continued to forbid settlement with the holdouts who had filed lawsuits unless those holdouts accepted the same terms given in 2005 and 2010. *Id.* art. 4. In response, this court again ordered the Republic not to take any steps to evade its orders and held that the proposed evasion scheme would be illegal. Order, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (Oct. 3, 2013).

The day after the Supreme Court denied the Republic's petition for a writ of *certiorari*, the Republic announced a plan to pay on the Exchange Bonds without making a payment to the FAA bondholders. *See* Statement of the Minister of the Economy at 4 (June 17, 2014) ("We are initiating steps to initiate a debt exchange that would permit us to pay in Argentina under Argentine law."). Six days later, the Republic attempted to make a payment of $832 million on the Exchange Bonds without making a ratable payment to the Lead Plaintiffs. It has attempted to make additional payments since then. *See* Op. & Order, *NML Capital, Ltd. v. Republic of Argentina*, No. 14-cv-8601 (June 5, 2015).

On September 11, 2014, the Republic enacted legislation with the stated purpose of paying on the Exchange Bonds without observing this court's orders

in the Lead Cases. *See* Law 26,984 art. 2. The legislation purported to appoint an Argentine entity as trustee of the Exchange Bonds and establish a process for Exchange Bondholders to swap their Exchange Bonds for securities governed by French Law. *Id.* arts. 3, 7. Law 26,984 also declared this court's orders as "illegitimate and illegal obstruction" of the payment process on the Exchange Bonds. *Id.* art. 2.

In response, the court held the Republic in contempt of court at a hearing on September 29, 2014. *See* Am. & Suppl. Order, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (Oct. 3, 2014). The very next day the Republic purported to make yet another payment on the Exchange Bonds and has apparently attempted to do so again in March and June 2015. Cohen Decl. Exs. 22, 23, 30.

4. The "Me Too" Plaintiffs and the Motions for Partial Summary Judgment

As discussed, in 2011 the Lead Plaintiffs obtained judgments from this court that the Republic violated the *pari passu* clause of the FAA when it lowered the rank of their FAA bonds. In early 2015, so-called "me too" plaintiffs in thirty-six actions filed motions for partial summary judgment seeking a similar ruling. On June 5, 2015, the court granted those motions, finding that:

> By issuing the Exchange Bonds and passing legislation prohibiting payment on the FAA bonds, the Republic has created a superior class of debt to that held by plaintiffs. By making payments on this superior class of debt, the Republic has violated its promise to rank plaintiffs' bonds equally with its later-issued external indebtedness. Thus, the court holds, in light of the Republic's entire and continuing course of conduct, that it has breached the *pari passu* clause of the FAA.

Op. & Order, *NML Capital, Ltd. v. Republic of Argentina*, No. 14-cv-8601 (June 5, 2015). Plaintiffs in fifteen additional actions then filed similar motions for partial summary judgment, which the court granted on October 22, 2015. Op. & Order, *Trinity Invest. Ltd. v. Republic of Argentina*, No. 15-cv-2611 (Oct. 22, 2015).

5. The "Me Too" Plaintiffs and the Motions for Specific Performance

In total, "me too" plaintiffs in fifty-one actions have obtained judgments that the Republic violated, and continues to violate, the *pari passu* clause of the FAA. Plaintiffs in forty-nine of those actions now move for specific performance.[2] Plaintiffs seek equitable relief akin to the Amended Injunction obtained by the Lead Plaintiffs—and upheld by the Court of Appeals in August 2013—namely, an order requiring the Republic to make ratable payments to plaintiffs any time it makes, or attempts to make, payments on the Exchange Bonds. *See* Fed. R. Civ. P. 65(d).

Discussion

"Specific performance may be ordered where no adequate monetary remedy is available and that relief is favored by the balance of equities, which may include the public interest." *NML I*, 699 F.3d at 261 (citations omitted).

[2] The two actions where plaintiffs have obtained summary judgment but have not moved for specific performance are *Yellow Crane Holdings, LLC v. Republic of Argentina*, No. 14-cv-5675, and *Yellow Crane Holdings, LLC v. Republic of Argentina*, No. 15-cv-3336.

1. The Republic's conduct causes plaintiffs irreparable harm for which there is no adequate remedy at law.

The Republic's ongoing violations of the *pari passu* clause cause plaintiffs irreparable harm for which there is no adequate remedy at law. The Republic has violated its promise to rank plaintiffs' bonds equally with its later-issued external indebtedness by making payments on the Exchange Bonds and not on plaintiffs' bonds. The Republic has made clear its intention to defy any money judgment issued by this court, and plaintiff has no other means to enforce its rights under the *pari passu* clause. *See id.* 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.").

2. The balance of equities favors specific performance.

The balance of equities tips in plaintiffs' favor because the Republic has engaged in a scheme of making payments on other external indebtedness after repudiating its payment obligations to plaintiffs. As far back as 2012, the court held that the Republic's evasive tactics meant the balance of equities "strongly supports" an award of specific performance. The Republic has done nothing in recent years to alleviate the court's concerns. If anything, it has escalated its scheme of attempting to make payments on the Exchange Bonds while refusing to make any payment on the FAA bonds. *See, e.g.*, Order, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (Oct. 3, 2013) (finding that the Republic's proposed evasion scheme would contravene the Amended Injunction).

The relief sought would also not unfairly prejudice the rights of third parties. The order does not affect the Exchange Bondholders' contractual right to be paid by the Republic, and the Republic's threat not to pay the Exchange Bondholders "does not make an otherwise lawful injunction 'inequitable.'" *See NML II*, 727 F.3d at 242. Moreover, the injunction is not unfair to the Exchange Bondholders because, as the Court of Appeals stressed, "before accepting the exchange offers, they were expressly warned by Argentina in the accompanying prospectus that there could be 'no assurance' that litigation over the FAA Bonds would not 'interfere with payments' under the Exchange Bonds." *Id.*

The Republic's arguments concerning its ability to pay all its debts in full are unavailing. Nothing in this order requires—or coerces—the Republic to pay plaintiffs anything at all.[3] The Republic laments that it will have no choice but to default if it is subject to an injunction requiring it to pay all plaintiffs if it wants to pay the Exchange Bondholders. But this argument ignores the obvious fact that the Republic has *already* chosen to default on its Exchange Bonds. Granting plaintiffs' motion here will therefore cause no new harm that would alter the equities.

[3] That said, the Republic has repeatedly shown it can pay its debts when it chooses to do so—such as its October 2015 payment of nearly $6 billion to creditors; its February 2014 settlement with Repsol S.A. for $5 billion; and its May 2014 settlement with the Paris Club nations for $9.7 billion. *See* Cohen Decl. Exs. 2–4. *Cf. NML II*, 727 F.3d at 242 (noting the importance of the Republic's failure "to present the district court with any record evidence to support its assertions" that it could not service its defaulted debt).

The Republic also claims the court should not issue additional injunctions because they would impede settlement. The Republic's reluctance to entertain meaningful settlement discussions before the Special Master should not prevent plaintiffs from vindicating their rights under the *pari passu* clause. If anything, the equities cut the other way. It would be inequitable to give injunctive relief to one group of bondholders while denying that relief to other, similarly situated bondholders. Ordering specific performance therefore ensures basic fairness by placing these plaintiffs on equal footing with the Lead Plaintiffs.

3. The public interest supports granting specific performance.

Finally, an order of specific performance serves the public interest of enforcing contracts, maintaining confidence in debt markets, and upholding the rule of law. As the Court of Appeals held back in 2013, "the interest—one widely shared in the financial community—in maintaining New York's status as one of the foremost commercial centers is advanced by requiring debtors, including foreign debtors, to pay their debts." *Id.* at 248. The same holds true today.

Nor will relief in this "exceptional" case "imperil future sovereign debt restructurings." *See id.* at 247. As the Court of Appeals observed, "cases like this one are unlikely to occur in the future because Argentina has been a uniquely recalcitrant debtor and because newer bonds almost universally include collective action clauses ("CACs") which permit a super-majority of

bondholders to impose a restructuring on potential holdouts." *Id.* An order of specific performance therefore serves the public interest.

4. The FSIA poses no bar to the relief sought by the post-judgment plaintiffs.

The Republic asserts that § 1609 of the Foreign Sovereign Immunities Act ("FSIA") prohibits the injunctions sought by the *post-judgment* plaintiffs here. Although the Court of Appeals held that the FSIA posed no bar to the Amended Injunction, the Republic argues that it did so only because plaintiffs in the earlier cases had not yet obtained judgments, unlike many of the plaintiffs here. The injunction sought by the post-judgment plaintiffs would therefore be in "aid of execution" of their judgments and subject to the execution immunity afforded to sovereign property under the FSIA.

The Republic's attempt to evade the Court of Appeals' decision is unpersuasive. The Court of Appeals placed no weight on the pre-judgment status of those plaintiffs, instead holding generally that the FSIA has no relation to an order requiring the Republic to honor its contractual promise to pay all of its creditors ratably if it chooses to pay any of them. *NML I*, 699 F.3d at 262 ("[B]ecause compliance with the Injunctions would not deprive Argentina of control over any of its property, they do not operate as attachments of foreign property prohibited by the FSIA."). Just as with the Amended Injunction, the injunctions sought here "do not attach, arrest, or execute upon any property," nor do they require "seizure and control over specific property." *Id.* Indeed, as the Court of Appeals made clear, these injunctions "can be complied with without the court's ever exercising dominion

over sovereign property." *See id.* And, if it so chooses, the Republic may pay its debts "with whatever resources it likes." *See NML II*, 727 F.3d at 240–41.

At oral argument, counsel for the Republic repeatedly claimed that, because the Amended Injunction is already in effect, the post-judgment plaintiffs' request for additional injunctions is redundant and necessarily shows that plaintiffs seek only to enforce their money judgments since the injunctions could serve no other purpose. *See, e.g.*, Hr'g Tr. at 27:11–14 (Oct. 28, 2015) ("[S]ince we have injunctions in place, the question becomes why are they insisting on this additional amount. And my submission to your Honor is that it is this issue of coercing a payment in full to them and to others . . . ."). Not so. Plaintiffs here are equally entitled to enforce their rights under the *pari passu* clause and understandably seek the same relief as the Lead Plaintiffs. Absent an injunction, plaintiffs in these actions would be left without the protection guaranteed to them under the FAA if the Lead Plaintiffs were to withdraw their claims against the Republic. The relief plaintiffs' seek is reasonable and has nothing to do with coercing payment or enforcement money judgments.

5. Compliance with the injunction is not impossible.

The Republic also argues that the court must deny all plaintiffs' motions because specific performance is unavailable where compliance is impossible. The Republic claims that "no sovereign . . . could afford to reduce its Central Bank reserves by the amount of the Republic's outstanding defaulted debt" because those reserves "are vital to maintaining the healthy functioning of the

Republic's economy, and the requested orders would subject the Republic to an unacceptable degree of catastrophic risk." Mem. L. Opp'n Mot. Specific Performance at 2–3, *NML Capital, Ltd. v. Republic of Argentina*, No. 14-cv-8601 (Sept. 25, 2015).

Again, the Republic fundamentally misapprehends the nature of the *pari passu* clause and these injunctions. The injunctions are not meant to coerce payment—they seek to fulfill a promise to treat the Republic's obligations under the FAA equally with its obligations on other external indebtedness, both in ranking and through ratable payments. The *pari passu* clause does not ensure that plaintiffs' bonds will be paid in full—or even paid at all. Rather, it ensures that *if* the Republic chooses to pay some external indebtedness, it must pay the same ratable share to plaintiffs. The Republic can comply with the injunction even if it never pays plaintiffs, so long as it affords the same treatment to other holders of its external indebtedness.

Conclusion

For these reasons, the court grants plaintiffs' motions for specific performance. The Republic is ordered to specifically perform its obligations to plaintiffs under the *pari passu* clause by making ratable payments to plaintiffs any time it makes, or attempts to make, payments on the Exchange Bonds. The Republic is enjoined from violating the *pari passu* clause and from taking any action to evade the purposes and directives of this order. Within three days, the Republic shall provide copies of this order to all participants in the payment process of the Exchange Bonds. These participants shall be bound by this order, as provided by Rule 65(d)(2), and prohibited from aiding and abetting any violation of this order.

SO ORDERED

Dated: New York, New York
October 30, 2015

Thomas P. Griesa
U.S. District Judge

Exhibit E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NML CAPITAL LTD., Plaintiff, -against- THE REPUBLIC OF ARGENTINA, Defendant.	No. 08-cv-6978 (TPG)

DECLARATION OF CHRISTOPHER J. CLARK

I, Christopher J. Clark, am a partner at Latham & Watkins LLP, attorneys for interested non-parties Euro Bondholders. I am admitted to the Bar of the State of New York and District Court for the Southern District of New York. I respectfully submit this Declaration in connection with the Republic of Argentina's (the "Republic") motion to vacate the injunctions of November 21, 2012 and October 30, 2015 (collectively, the "Injunction").

1. Based on my representation of the Euro Bondholders, I have personal knowledge of the facts described in this declaration.

2. The Euro Bondholders are a group of investors that hold euro-denominated bonds governed by English law (the "Euro Bonds") that were issued pursuant to the Republic's 2005 and 2010 exchange offers.

3. The Euro Bondholders, like other holders of exchange bonds, have been substantially harmed by the state of paralysis that has been caused by the Injunction. By virtue of that stalemate, the Euro Bondholders have been denied hundreds of millions of dollars of contractually-owed payments on the bonds they own.

4. Based on my review of the governing Indentures and Notes, payment notices delivered by the Trustee, and discussions with the banks that serve as custodians for the exchange bonds, it is my understanding that the current total amount of blocked interest payments on all exchange bonds is approximately 3.1 billion dollars. I further understand it to be true that, if payments on the exchange bonds remain blocked through June of 2016, that amount will rise to approximately 3.8 billion dollars.

5. A court of competent jurisdiction and appropriately seized of these matters has held that the funds subject to the hearing described in the preceding paragraph are property of the Euro Bondholders and other similarly-situated bondholders. Specifically, on March 3, 2015, I submitted a letter to the Court explaining that, on February 13, 2015, the English High Court of Justice, Chancery Division (the "English Court") reaffirmed that the Euro Bonds are governed by English law, and that under English law, the payments made pursuant to those bonds, including the payments at issue during the June 27, 2014 hearing before this Court, are held by the Bank of New York Mellon, as Indenture Trustee, on an English law trust for the benefit of the Euro Bondholders. *See* Mar. 3, 2015 C. Clark Ltr. & Exs. A-B, *NML Capital, Ltd. v. The Republic of Arg.*, No. 08-cv-6978, Dkt. # 753 (S.D.N.Y. Mar. 3, 2015). A copy of the English Court's Approved Judgment and Order were submitted as Exhibits A and B to that March 3, 2015 letter.

I declare under penalty of perjury that the foregoing is true and correct, pursuant to 28 U.S.C. § 1746.

Dated: February 29, 2016
New York, New York

/s/ Christopher J. Clark
Christopher J. Clark

Exhibit F

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

NML CAPITAL, LTD.,

Plaintiff,

v. 08 CV 6978 (TPG)

THE REPUBLIC OF ARGENTINA,

Defendant.

----------x

June 27, 2014
10:40 a.m.

Before:

HON. THOMAS P. GRIESA,

District Judge

APPEARANCES

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Attorneys for The Bank of New York Mellon, as Indenture Trustee
BY: ERIC A. SCHAFFER
NEIL GRAY

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

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

THE COURT: Good morning, everybody.

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

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

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

THE COURT: Okay, go ahead.

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

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

MR. COHEN: Yes, your Honor.

THE COURT: -- how far did that get?

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

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

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

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

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

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

THE COURT: That they would not?

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

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

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

(Handing)

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

THE COURT: Where are you reading from?

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

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

MR. COHEN: B.

THE COURT: B?

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

THE COURT: Let me get that. All right.

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

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

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

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

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

may allow us to legitimately enforce our rights."

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Go to the lectern, please.

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

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

THE COURT: Look --

MR. FRIEDMAN: Sorry. I just wanted to.

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

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

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

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

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

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

MR. COHEN: Yes, exhibit D.

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

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

Now, where is there a description?

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

(Pause)

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

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

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

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

New York?

MR. SCHAFFER: Your Honor --

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

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

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

MR. FRIEDMAN: Okay.

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

And your name, sir, is what?

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

THE COURT: Indenture trustee means what?

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

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

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

MR. SCHAFFER: Yes, your Honor.

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

indenture trustee for the exchange bonds.

MR. SCHAFFER: Yes.

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

MR. SCHAFFER: Yes, your Honor.

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

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

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

MR. SCHAFFER: Yes, your Honor.

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

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

THE COURT: But it's an Argentine bank?

MR. SCHAFFER: Yes, your Honor.

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

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

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

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

THE COURT: In euros?

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

THE COURT: 225,852.

MR. SCHAFFER: 475.66.

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

MR. SCHAFFER: Yes, your Honor.

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

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

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

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

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

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

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

MR. SCHAFFER: Yes, your Honor.

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

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

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

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

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

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

MR. SCHAFFER: Yes, your Honor.

THE COURT: If there were no other problems.

MR. SCHAFFER: Correct.

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

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

THE COURT: And the bondholders.

MR. SCHAFFER: Yes.

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

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

MR. SCHAFFER: Yes, your Honor.

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

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

THE COURT: And the reason for that is what?

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

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

MR. SCHAFFER: Nothing to add, your Honor.

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

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

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

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

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

MR. FRIEDMAN: I apologize, your Honor.

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

Okay, go ahead.

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

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

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

THE COURT: What is exhibit D?

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

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

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

THE COURT: Back to Mr. Friedman.

MR. FRIEDMAN: Yes.

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

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

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

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

MR. FRIEDMAN: Yes. That bullet point --

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

539 million to trustee Bank of New York Mellon.

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

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

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

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

MR. FRIEDMAN: Thank you, your Honor.

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

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

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

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

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

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

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

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

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

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

We all knew that if there was to be fruitful

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

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

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

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

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

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

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

MR. BOCCUZZI: I hope so, your Honor.

THE COURT: And how will that be done?

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

THE COURT: Now, look -- look here.

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

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

THE COURT: If the Republic --

MR. BOCCUZZI: -- the request.

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

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

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

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

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

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

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

MR. BOCCUZZI: Yes, your Honor.

THE COURT: Now, where to go?

MR. COHEN: Your Honor -- sorry.

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

THE COURT: Let me just finish.

MR. BOCCUZZI: Yes. I think --

THE COURT: Let me just finish.

MR. BOCCUZZI: Yes, please.

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

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

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

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

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

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

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

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

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

from Davis Polk representing Citibank.

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

THE COURT: Can I just interrupt you?

MS. WAGNER: Sure.

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

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

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

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

MS. WAGNER: Certainly, your Honor.

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

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

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

MS. WAGNER: Completely --

THE COURT: -- all along.

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

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

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

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

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

THE COURT: What?

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

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

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

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

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

THE COURT: Good.

MS. WAGNER: Thank you.

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

MS. WAGNER: Thank you, your Honor.

Anything else?

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

THE COURT: Yes.

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

THE COURT: Holders of what? Say it again?

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

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

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

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

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

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

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

THE COURT: Try to do that.

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

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

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

THE COURT: What did the Second Circuit do?

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

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

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

THE COURT: What would that provide?

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

THE COURT: Payments are made by whom?

MR. BATCHELOR: The payments are made by Argentina.

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

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

THE COURT: I wasn't finished.

MR. BATCHELOR: Oh.

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

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

MR. BATCHELOR: Your Honor, just to --

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

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

MR. BATCHELOR: Your Honor --

THE COURT: Thank you very much.

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

THE COURT: All right.

MR. BATCHELOR: -- any order --

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

Is there anyone else who wishes to speak?

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

THE COURT: Right.

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

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

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

MR. SCHAFFER: Yes, your Honor.

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

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

MR. SCHAFFER: Yes, your Honor.

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

THE COURT: What did --

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

THE COURT: Someone else was standing.

MR. COHEN: I'm very sorry.

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

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

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

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

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

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

THE COURT: Now what is meant by that?

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

THE COURT: Why shouldn't he get them?

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

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

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

THE COURT: I tend to agree with that.

MR. SPENCER: Your Honor --

THE COURT: Let me finish.

MR. SPENCER: yes.

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

MR. SPENCER: Aurelius.

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

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

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

I think we'll adjourn now.

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

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

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

THE COURT: Well, you should do that.

MR. SCHAFFER: Yes.

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

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

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

the Republic to the table.

And let's adjourn at that. Thank you.

MR. BOCCUZZI: Thank you, your Honor.

(Adjourned)

Exhibit G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NML CAPITAL, LTD., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	08-cv-6978 (TPG) 09-cv-1707 (TPG) 09-cv-1708 (TPG) 14-cv-8601 (TPG) 14-cv-8988 (TPG)
AURELIUS CAPITAL PARTNERS, LP, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	09-cv-8757 (TPG) 09-cv-10620 (TPG) 10-cv-1602 (TPG) 10-cv-3507 (TPG) 10-cv-3970 (TPG) 10-cv-8339 (TPG) 14-cv-8946 (TPG)
BLUE ANGEL CAPITAL I LLC, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	10-cv-4101 (TPG) 10-cv-4782 (TPG) 14-cv-8947 (TPG) *(captions continue on following pages)*

OPINION AND ORDER

OLIFANT FUND, LTD., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	10-cv-9587 (TPG)
VARELA, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	10-cv-5338 (TPG)
FFI FUND, LTD. and FYI LTD., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-8630 (TPG)
EM LTD., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-8303 (TPG)

PEREZ, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-8242 (TPG)
LIGHTWATER CORP. LTD., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-4092 (TPG)
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TRINITY INVESTMENTS LIMITED, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-10016 (TPG) 15-cv-1588 (TPG) 15-cv-2611 (TPG) 15-cv-5886 (TPG)
MCHA HOLDINGS, LLC, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-10064 (TPG) 14-cv-7637 (TPG) 15-cv-2577 (TPG) 15-cv-5190 (TPG)
SETTIN, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-8739 (TPG)
PROCELLA HOLDINGS, L.P., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-3932 (TPG)

ADAMI, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-7739 (TPG)
CAPITAL MARKETS FINANCIAL SERVICES INC., et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-0710 (TPG)
FOGLIA, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-8243 (TPG)
PONS, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	13-cv-8887 (TPG)

GUIBELALDE, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	11-cv-4908 (TPG)
DORRA, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-10141 (TPG)
BELOQUI, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-5963 (TPG)
TORTUS CAPITAL MASTER FUND, LP, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-1109 (TPG) 14-cv-3127 (TPG)

ANDRAREX LTD., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-9093 (TPG)
CLARIDAE, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-10201 (TPG)
MONTREUX PARTNERS, L.P., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-7171 (TPG)
LOS ANGELES CAPITAL, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-7169 (TPG)

CORDOBA CAPITAL, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-7164 (TPG)
WILTON CAPITAL, LTD., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-7166 (TPG)
ARAG-A LIMITED, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-9855 (TPG)
ATTESTOR MASTER VALUE FUND LP, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-5849 (TPG)

ANGULO, et al.,		
	Plaintiffs,	
	v.	15-cv-1470 (TPG)
THE REPUBLIC OF ARGENTINA,		
	Defendant.	
LAMBERTINI, et al.,		
	Plaintiffs,	
	v.	15-cv-1471 (TPG)
THE REPUBLIC OF ARGENTINA,		
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HONERO FUND I, LLC,		
	Plaintiff,	
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THE REPUBLIC OF ARGENTINA,		
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BANCA ARNER S.A., et al.,		
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	Defendant.	

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FAZZOLARI, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-3523 (TPG)
STONEHILL INSTITUTIONAL PARTNERS, L.P. et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-4284 (TPG)

VR GLOBAL PARTNERS, LP, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	11-cv-8817 (TPG)
BYBROOK CAPITAL MASTER FUND LP et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-2369 (TPG) 15-cv-7367 (TPG)

OPINION AND ORDER

In 1994, the Republic of Argentina began issuing bonds pursuant to a Fiscal Agency Agreement ("FAA"), which contains a *pari passu* clause. After the Republic suffered an economic crisis in 2001, it defaulted on its debts, including the FAA bonds. For many years, the Republic never paid anything on the FAA bonds, and plaintiffs who held beneficial interests in those bonds began filing actions against the Republic in this court.

In 2010, a group of plaintiffs in thirteen actions filed motions for partial summary judgment, asking the court to declare that the Republic had violated the *pari passu* clause. After the court granted those motions, the plaintiffs

moved for specific performance, seeking a remedy for the Republic's violation of the *pari passu* clause. Although the *pari passu* clause does not itself require a particular remedy, the court fashioned injunctions to address the Republic's refusal to pay plaintiffs anything.

In early 2015, a group of "me too" plaintiffs filed similar motions for partial summary judgment. As their name suggests, these plaintiffs sought the same *pari passu* ruling that the other plaintiffs had obtained in the original thirteen actions. "Me too" plaintiffs in forty-nine actions then filed motions for specific performance, seeking injunctions like those issued in the original actions. The court granted the motions on October 30, 2015. This meant that plaintiffs in a total of sixty-two actions had obtained injunctions against the Republic.

On February 11, 2016, the Republic of Argentina filed motions to vacate the injunctions in all sixty-two actions. After full briefing on the motions, the court issued an Indicative Ruling in the forty-nine "me too" actions alone. In the Indicative Ruling, the court explained that it did not presently have jurisdiction over the injunctions in the "me too" actions because of a pending appeal, but the court indicated that it would vacate the injunctions if the Court of Appeals remanded for that purpose.

The Court of Appeals held oral argument on February 24, 2016, at which time the Republic agreed to voluntarily dismiss two pending appeals that implicated both the original injunctions and the "me too" injunctions. Accordingly, the Court of Appeals returned jurisdiction to this court and remanded to allow this court to enter the Indicative Ruling as an order. The

Republic then moved the court to enter that order and thereby vacate the injunctions.

The parties have extensively briefed the issues, both before and after remand. And at a hearing on March 1, 2016, the court gave all interested parties the opportunity to be heard, allowing moving, answering, reply, and sur-reply argument. Upon consideration of all arguments and the equities in each case, the court hereby formally enters the Indicative Ruling as an order and vacates the injunctions.

It should be noted that vacating the injunctions in no way impedes the settlement negotiations now taking place. Nor does it prevent acceptance of the Republic's Proposal for settlement, which remains open. Plaintiffs who have not settled may continue to negotiate with the Republic. Moreover, as the record makes clear, claims made by certain plaintiffs that they have had "no opportunity" to negotiate are exaggerated. The court expects the Republic to continue to negotiate with the remaining non-settling plaintiffs.

There is a pressing need for certainty and finality. If some plaintiffs choose to appeal this order, that is their right. But appeals must happen promptly to ensure the certainty and finality needed for existing settlements to succeed. The Argentine Congress must know where it stands, and all parties must act diligently to consummate these settlements. At least one Agreement in Principle with four major bondholders calls for payment by mid-April. The Republic needs

time to raise the capital required to pay all plaintiffs with whom it has reached agreement.

Despite this reality, certain plaintiffs ask the court to grant them thirty more days to settle their claims. Further delay could seriously erode the Republic's ability to move forward and raise the capital necessary to fund the settlements. Moreover, the Court of Appeals has *already* entered a stay of this order of up to two weeks, which will give those plaintiffs ample time to continue negotiations. More importantly, this court's order places no limit on plaintiffs' ability to reach agreements with the Republic beyond that point. Even if some plaintiffs choose to appeal, they may continue to negotiate. The only difference is that the court has now held that the injunctive relief it once deemed equitable is no longer so. The injunctive relief cannot be allowed to be used as a tool for leverage in negotiations.

The court also wishes to note three recent developments that buttress the court's prior finding that the injunctions are no longer equitable or in the public interest. First, the Republic has now signed Agreements in Principle with plaintiffs representing the vast majority of claims in these actions. The total settlement consideration now amounts to at least $6.2 billion, potentially resolving over 85% of claims held by plaintiffs with injunctions. Second, the Republic has abandoned all former challenges to the injunctions by voluntarily dismissing with prejudice the two appeals pursued by the Republic's prior administration, thus showing a completely changed attitude. Third, yesterday President Macri addressed the Argentine Congress to urge approval of

settlements in this litigation—an important step toward fulfilling a condition of this order.

The court appreciates the arguments presented by all parties who spoke at yesterday's hearing. And the court does not take lightly the decision to lift the injunctions. But, ultimately, circumstances have changed so significantly as to render the injunctions inequitable and detrimental to the public interest. For the reasons outlined in the Indicative Ruling and this order, the court grants the Republic's motions to vacate the injunctions in all actions upon the occurrence of the two conditions precedent:

(1) The Republic repeals all legislative obstacles to settlement with the FAA bondholders, including the Lock Law and the Sovereign Payment Law;

(2) For all plaintiffs that entered into agreements in principle with the Republic on or before February 29, 2016, the Republic must make full payment in accordance with the specific terms of each such agreement. The Republic must also notify the court once those plaintiffs have all received full payment.

SO ORDERED

Dated: New York, New York
March 2, 2016

Thomas P. Griesa
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NML CAPITAL, LTD., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-8601 (TPG)
NML CAPITAL, LTD., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-8988 (TPG)
FFI FUND, LTD. and FYI LTD., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-8630 (TPG) *(captions continue on following pages)*

RULE 62.1 INDICATIVE RULING

PEREZ, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-8242 (TPG)
AURELIUS CAPITAL PARTNERS, LP, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-8946 (TPG)
BLUE ANGEL CAPITAL I LLC, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-8947 (TPG)
EM LTD., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-8303 (TPG)

LIGHTWATER CORP. LTD., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-4092 (TPG)
OLD CASTLE HOLDINGS, LTD., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-4091 (TPG)
SETTIN, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-8739 (TPG)
CAPITAL VENTURES INTERNATIONAL, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-7258 (TPG)

ADAMI, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-7739 (TPG)
CAPITAL MARKETS FINANCIAL SERVICES INC., et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-0710 (TPG)
FOGLIA, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-8243 (TPG)
PONS, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	13-cv-8887 (TPG)

GUIBELALDE, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	11-cv-4908 (TPG)
DORRA, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-10141 (TPG)
BELOQUI, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-5963 (TPG)
TORTUS CAPITAL MASTER FUND, LP, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-1109 (TPG)

TORTUS CAPITAL MASTER FUND, LP, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-3127 (TPG)
TRINITY INVESTMENTS LIMITED, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-10016 (TPG)
MONTREUX PARTNERS, L.P., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-7171 (TPG)
LOS ANGELES CAPITAL, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-7169 (TPG)

CORDOBA CAPITAL, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-7164 (TPG)
WILTON CAPITAL, LTD., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-7166 (TPG)
MCHA HOLDINGS, LLC, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-7637 (TPG)
MCHA HOLDINGS, LLC, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-10064 (TPG)

ANDRAREX LTD., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-9093 (TPG)
CLARIDAE, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-10201 (TPG)
ARAG-A LIMITED, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-9855 (TPG)
ATTESTOR MASTER VALUE FUND LP, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	14-cv-5849 (TPG)

ANGULO, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-1470 (TPG)
LAMBERTINI, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-1471 (TPG)
HONERO FUND I, LLC, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-1553 (TPG)
TRINITY INVESTMENTS LIMITED, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-1588 (TPG)

BANCA ARNER S.A., et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-1508 (TPG)
TRINITY INVESTMENTS LIMITED, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-2611 (TPG)
TRINITY INVESTMENTS LIMITED, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-5886 (TPG)
MCHA HOLDINGS, LLC, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-2577 (TPG)

MCHA HOLDINGS, LLC, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-5190 (TPG)
ERCOLANI, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-4654 (TPG)
FAZZOLARI, et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-3523 (TPG)
STONEHILL INSTITUTIONAL PARTNERS, L.P. et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-4284 (TPG)

WHITE HAWTHORNE, LLC, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-4767 (TPG)
VR GLOBAL PARTNERS, LP, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	11-cv-8817 (TPG)
HONERO FUND I, LLC, Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-6702 (TPG)
PROCELLA HOLDINGS, L.P., Plaintiff, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-3932 (TPG)

BYBROOK CAPITAL MASTER FUND LP et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-7367 (TPG)
BYBROOK CAPITAL MASTER FUND LP et al., Plaintiffs, v. THE REPUBLIC OF ARGENTINA, Defendant.	:	15-cv-2369 (TPG)

Plaintiffs in these forty-nine actions hold bonds issued by defendant, the Republic of Argentina. In October 2015, the court issued injunctions in these actions. Due to a pending appeal, the court does not presently have jurisdiction over the injunctions.

The Republic now moves for a Rule 62.1 Indicative Ruling that this court would vacate the injunctions if the Court of Appeals were to remand for that purpose. The motion under Rule 62.1 allows the court to state that it would grant a motion to vacate if it had the power to do so. Some plaintiffs support the Republic's motion to vacate; others do not. The court must therefore decide whether it would vacate the injunctions on remand.

Background

The court has often recounted the history of this prolonged litigation. A brief summary will suffice.

1. The Default

In 1994, the Republic began issuing bonds pursuant to a Fiscal Agency Agreement ("FAA"), which contains the famed *pari passu* clause:

> The 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 . . . .

After the Republic suffered an economic crisis in 2001, it defaulted on its debts, including the FAA bonds. In an attempt to cure this default, the Republic twice invited bondholders to exchange their FAA bonds for new bonds worth only 25–29% of the FAA bonds' value. In all, roughly 93% of the Republic's creditors ultimately accepted these exchange offers, and the Republic began making payments to the "exchange bondholders."

To buttress the first exchange offer, the Republic enacted Law 26,017—the "Lock Law"—which prohibited "any type of in-court, out-of-court or private settlement" with FAA bondholders who could have participated in the exchange offer but chose not to. Then, in 2009, the Republic enacted Law 26,547, which barred the Republic from giving FAA bondholders who had filed lawsuits "more favorable treatment than what [was] offered to those who have not done so." Finally, in 2013, the Republic passed Law 26,886, which again forbade

bondholders who had filed lawsuits from getting any settlement worth more than the prior exchange offers.

For many years, the Republic never paid anything on the FAA bonds. Plaintiffs who held beneficial interests in those bonds began filing actions against the Republic in this court. Many obtained money judgments for the outstanding principal and interest. The Republic refused to pay, and the plaintiffs tried—usually in vain—to attach Argentine assets to satisfy their money judgments. *See, e.g.*, *EM Ltd. v. Republic of Argentina*, 865 F. Supp. 2d 415, 417 (S.D.N.Y. 2012) (observing that the Republic has "usually prevail[ed] in defeating the plaintiffs' attempts to recover" through attachment).

2. The Original Injunctions

In 2010, a group of plaintiffs in thirteen actions began seeking a different kind of relief.[1] They first filed motions for partial summary judgment, asking the court to declare that the Republic had violated the *pari passu* clause by paying the exchange bondholders while refusing to pay the plaintiffs. The court granted the motions. *See* Order, *NML Capital Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Dec. 7, 2011).

The plaintiffs then moved for specific performance, seeking a remedy for the Republic's violation of the *pari passu* clause. Although the *pari passu* clause does not itself require a particular remedy, the court exercised its inherent equitable discretion under Rule 65(d) to craft appropriate relief. It fashioned

[1] The index numbers of those thirteen actions are 08-cv-6978; 09-cv-1707; 09-cv-1708; 09-cv-8757; 09-cv-10620; 10-cv-1602; 10-cv-3507; 10-cv-3970; 10-cv-8339; 10-cv-4101; 10-cv-4782; 10-cv-9587; 10-cv-5338.

injunctions to address the Republic's steadfast refusal to pay plaintiffs anything. The result was that whenever the Republic paid on the exchange bonds, it needed to make a "ratable payment" to plaintiffs. *See* Order § 2(a), *NML Capital Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Feb. 23, 2012).

In issuing the injunctions, the court made findings that, at that time, supported such equitable relief. For example, the court explained that plaintiffs had no adequate remedy at law due to the Republic's passage of Law 26,017 (which prohibited settlement with plaintiffs who declined the exchange offers) and Law 26,547 (which prevented plaintiffs from receiving settlements more favorable than the exchange offers). *Id.* § 1(b). Moreover, the court found that both the equities and the public interest supported the injunctions because of the Republic's "repeated failures" to pay plaintiffs and its "unprecedented, systematic scheme" to pay other debts without paying plaintiffs. *Id.* § 1(c) & (d); *see also* Am. & Suppl. Order, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Oct. 3, 2014) (holding the Republic in contempt after it attempted to evade the injunctions by passing Law 26,984—the "Sovereign Payment Law").

The Court of Appeals affirmed the injunctions, but remanded for clarification as to how the injunctions would operate. *NML Capital, Ltd. v. Republic of Argentina*, 699 F.3d 246, 255 (2d Cir. 2012). On remand, the court explained the injunctions' payment formula and the effects the injunctions would have on third parties. Order, *NML Capital Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Nov. 21, 2012). The Republic again appealed, and the

Second Circuit again affirmed the injunctions in their entirety. *NML Capital, Ltd. v. Republic of Argentina*, 727 F.3d 230, 248 (2d Cir. 2013). After the Supreme Court denied *certiorari* in June 2014, *Republic of Argentina v. NML Capital, Ltd.*, 134 S. Ct. 2819 (2014), the injunctions went into effect.

In an attempt to encourage settlement, the court appointed a Special Master, Daniel A. Pollack, Esq., on June 23, 2014. The Special Master's mandate was "to conduct and preside over settlement negotiations." Order Appointment Special Master, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. June 23, 2014). Despite his untiring efforts to bring about a settlement, the Republic chose to default on the exchange bonds rather than pay anything to plaintiffs.

3. The "Me Too" Injunctions

In early 2015, "me too" plaintiffs in thirty-six actions filed motions for partial summary judgment. As their name suggests, these plaintiffs sought the same *pari passu* ruling that the other plaintiffs had obtained in the original thirteen actions. On June 5, 2015, the court granted the motions because of the Republic's "entire and continuing course of conduct" in refusing to pay plaintiffs anything at all. Op. & Order, *NML Capital, Ltd. v. Republic of Argentina*, No. 14-cv-8601 (S.D.N.Y. June 5, 2015). "Me too" plaintiffs in fifteen other actions then filed similar motions for partial summary judgment, which the court granted on October 22, 2015. Op. & Order, *Trinity Invest. Ltd. v. Republic of Argentina*, No. 15-cv-2611 (S.D.N.Y. Oct. 22, 2015).

The result was that "me too" plaintiffs in fifty-one actions obtained judgments that the Republic violated the *pari passu* clause. Plaintiffs in forty-nine of those actions then filed motions for specific performance, seeking equitable relief akin to the injunctions obtained in the original thirteen actions.[2] The court granted those motions on October 30, 2015. This meant that plaintiffs in a total of sixty-two actions had obtained injunctions against the Republic.

When the court granted the "me too" injunctions, it again discussed the equities. The court highlighted "[t]he Republic's reluctance to entertain meaningful settlement discussions before the Special Master." Op. & Order 10, *NML Capital, Ltd. v. Republic of Argentina*, No. 14-cv-8601 (S.D.N.Y. Oct. 30, 2015). The court also explained that "[t]he Republic has done nothing in recent years to alleviate the court's concerns" and that, if anything, it had "escalated its scheme" of attempting to pay the exchange bondholders without paying plaintiffs. *Id.* at 8. An appeal followed, which is currently pending before the Second Circuit. Notice Civil Appeal, *NML Capital, Ltd. v. Republic of Argentina*, No. 15-3675 (2d Cir. Nov. 10, 2015).

4. The 2016 Settlement Negotiations

In November 2015, the Republic's voters elected Mauricio Macri as their president, ending the twelve-year reign of the previous ruling party led by former

[2] The index numbers of those forty-nine actions are 14-cv-8988; 14-cv-8601; 14-cv-8630; 14-cv-8303; 14-cv-8946; 14-cv-8947; 14-cv-7739; 11-cv-4908; 13-cv-8887; 14-cv-1109; 14-cv-3127; 14-cv-5963; 14-cv-7169; 14-cv-7171; 14-cv-7164; 14-cv-7166; 14-cv-7258; 14-cv-8242; 14-cv-8243; 14-cv-10141; 15-cv-0710; 15-cv-1470; 15-cv-1471; 14-cv-10016; 14-cv-10064; 14-cv-10201; 14-cv-7637; 15-cv-1588; 15-cv-2577; 15-cv-2611; 15-cv-5190; 15-cv-5886; 14-cv-9093; 14-cv-5849; 14-cv-4092; 14-cv-4091; 14-cv-8739; 15-cv-1508; 15-cv-3523; 15-cv-4654; 11-cv-8817; 14-cv-9855; 15-cv-3932; 15-cv-4284; 15-cv-4767; 15-cv-6702; 15-cv-1553; 15-cv-2369; 15-cv-7367.

President Cristina Kirchner. President Macri's election marked a turning point in the Republic's attitude and actions. Since the election, President Macri's government has consistently declared its desire to resolve the disputes and reopen the country to foreign investors. *See* Stephen Adler & Sujata Rao, *Argentina's Macri Hopes for Creditor Deal Early in 2016*, Reuters (Jan. 23, 2016), *available at* http://www.reuters.com/article/us-argentina-president-idUSKCN0V00UP ("I want to be clear: We want to reach a settlement. We want to find a fair agreement.").

In January 2016, the Argentine government reopened negotiations with the FAA bondholders through the Special Master. President Macri dispatched a delegation of senior government officials to hold talks with lead plaintiffs in New York. On January 13 and during the first week of February, discussions began under the aegis of the Special Master. The Republic presented an informal settlement offer, first to the Special Master, then to those plaintiffs. During the week of discussions before the Special Master, the Republic reached Agreements in Principle with five of those plaintiffs worth over $1.1 billion.[3] Other plaintiffs refused to settle, and the Republic then published its Proposal formally to them and to the world on February 5, 2016. *See* Propuesta, 5 de Febrero de 2016 (Paskin Decl. Ex. J, Dkt. 58, No. 14-cv-8988).

The Republic's Proposal contemplates two settlement categories. The first, known as the "Standard Offer," is open to *all* FAA bondholders, and provides for

[3] Those plaintiffs are EM Ltd. (No. 14-cv-8303); Montreux Partners, L.P. (No. 14-cv-7171); Los Angeles Capital (No. 14-cv-7169); Cordoba Capital (No. 14-cv-7164); and Wilton Capital, Ltd. (No. 14-cv-7166).

a cash payment equal to the original principal of the bond plus 50% of that principal, classified as interest. The second, known as the "*Pari Passu* Offer," extends only to FAA bondholders who have injunctions. Those bondholders with injunctions who have money judgments may receive a cash payment equal to the full amount of that judgment, less a 30% discount. Those without money judgments may receive a cash payment equal to the current accrued value of the claims, less a 30% discount. The Proposal also offers an "early-bird" incentive: for bondholders who reach agreements with the Republic by February 19, 2016, the 30% discount drops to 27.5%. Both the Proposal and the existing Agreements in Principle that the Republic has entered into contain two conditions precedent: (1) the approval of the Argentine Congress; and (2) the vacating of this court's injunctions. The Republic estimates that the settlement payments for the bondholders with injunctions, if made, would total approximately $6.5 billion in cash. It has not estimated the additional figure that might be involved in the Standard Offer. Some litigants may qualify under both categories and will have the option to select the category that best suits them.

In his statement issued February 5, 2016, the Special Master called the Republic's Proposal a "historic breakthrough." He noted that settlement would allow the Republic to return to the global financial markets to raise much-needed capital. Finally, he praised the Republic's leaders for their "courage and flexibility in stepping up to and dealing with this long-festering problem which was not of their making."

The U.S. government has also signaled its support. Treasury Secretary Jacob Lew commended the Republic's good-faith efforts to resolve the disputes and expressed his "strong hope" that all bondholders would accept settlements soon. Readout from a Treasury Spokesperson of Lew's Call with Argentine Finance Minister Alfonso Prat-Gay (Feb. 7, 2016), *available at* https://www.treasury.gov/press-center/press-releases/Pages/jl0339.aspx.

Meanwhile, the Republic intensified its efforts to settle with as many bondholders as possible. Not only did government officials continue to negotiate with those plaintiffs who initially declined the Proposal, but they also reached out to plaintiffs who did not have injunctions in their actions. To date, the Republic has successfully executed additional Agreements in Principle with a number of institutional plaintiffs, a group of class-action plaintiffs, and 50,000 Italian bondholders.[4]

To continue the process of effectuating all these settlements, the Republic now moves to vacate the injunctions in all forty-nine of the "me too" actions. Because the Republic appealed the issuance of the injunctions through its prior counsel, the court cannot presently grant the Republic's motion to vacate. Accordingly, the Republic has brought a motion for a Rule 62.1 Indicative Ruling. Rule 62.1 "authorizes a district court whose jurisdiction has been divested by an appeal to 'state either that it would grant the motion if the court of appeals

[4] Paskin Decl. Ex. E, Dkt. 68, No. 14-cv-8988 (discussing Capital Markets Financial Services settlement); Nate Raymond, *Argentina Reaches Settlement in U.S. Debt Class Action: Mediator*, Reuters (Feb. 16, 2016), *available at* http://www.reuters.com/article/us-argentina-debt-idUSKCN0VP2QE (discussing class-action settlements); Bausili Decl. ¶ 5, Dkt. 59, No. 14-cv-8988 (discussing Italian settlements).

remands for that purpose or that the motion raises a substantial issue.'" *Ret. Bd. of the Policemen's Annuity & Ben. Fund of the City of Chi. v. Bank of N.Y. Mellon*, 775 F.3d 154, 159 n.4 (2d Cir. 2014) (quoting Fed. R. Civ. P. 62.1(a)(3)). The court must therefore consider the merits of the Republic's motion to vacate in order to decide if it would grant the motion on remand.

Discussion

Courts have the inherent power to vacate their injunctions. *United States v. LoRusso*, 695 F.2d 45, 53 (2d. Cir. 1982); 11A C. Wright, A. Miller, & M. Kane, *Federal Practice and Procedure* § 2961 (3d ed.) ("Wright & Miller"); *see also* Fed. R. Civ. P. 54(b) (giving courts the power to revise interlocutory orders). Courts may also rely on Federal Rule of Civil Procedure 60(b), which provides that:

> On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: . . . (5) . . . applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

Courts have "wide discretion" to vacate injunctions. *Sys. Fed'n No. 91, Ry. Emp. Dep't, AFL-CIO v. Wright*, 364 U.S. 642, 648 (1961); *see also Brown v. Plata*, 131 S. Ct. 1910, 1946 (2011) ("The power of a court of equity to modify a decree of injunctive relief is long-established, broad, and flexible." (quoting *N.Y. State Ass'n of Retarded Children, Inc. v. Carey*, 706 F.2d 956, 967 (2d Cir. 1983))); *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U.S. 287, 298 (1941) ("Familiar equity procedure assures opportunity for modifying or vacating an injunction when its continuance is no longer warranted."); *United States v. Swift & Co.*, 286 U.S. 106, 114 (1932) ("We are not doubtful of the power of a court of equity to

modify an injunction in adaptation to changed conditions."); *Matarese v. Lefevre*, 801 F.2d 98, 106 (2d Cir. 1986) ("[Rule 60(b)(6)] confers broad discretion on the trial court to grant relief when appropriate to accomplish justice." (citations omitted)). Accordingly, the standard of review on appeal is whether a court abused of discretion; that is, whether a court's decision to vacate (1) "rests on an error of law or a clearly erroneous factual finding," or (2) "cannot be found within the range of permissible decisions." *In re Terrorist Attacks on Sept. 11, 2001*, 741 F.3d 353, 357 (2d Cir. 2013) (citation omitted).

This considerable discretion does have some limits. Generally, a court may vacate only when "there has been such a change in the circumstances as to make modification of the decree equitable." *Sierra Club v. U.S. Army Corps of Eng'rs*, 732 F.2d 253, 257 (2d Cir. 1984); *see also Davis v. N.Y.C. Hous. Auth.*, 278 F.3d 64, 88 (2d Cir. 2002) (allowing modification "to accommodate changed circumstances" (citing Fed. R. Civ. P. 60(b)(5))). The ultimate question, then, is "whether an ongoing exercise of the court's equitable authority is supported by the prior showing of illegality, judged against the claim that changed circumstances have rendered prospective relief inappropriate." *Salazar v. Buono*, 559 U.S. 700, 718 (2010) (plurality opinion).

A court should also consider "whether the requested modification effectuates or thwarts the purpose behind the injunction." *Sierra Club*, 732 F.2d at 256 (citing *Chrysler Corp. v. United States*, 316 U.S. 556, 562 (1942)). Put differently, a court usually should not vacate an injunction "in the interest of the defendants if the purposes of the litigation as incorporated in the decree have

not been fully achieved." *Id.* at 256 (citing *United States v. United Shoe Mach. Corp.*, 391 U.S. 244, 248 (1968)). Nonetheless, "total compliance" with an injunction "is not an absolute precondition of any modification," *Badgley v. Santacroce*, 853 F.2d 50, 54 (2d Cir. 1988) (citation omitted), and, where equitable, a court may vacate an injunction "even though the purpose of the decree has not been achieved," *United States v. Eastman Kodak Co.*, 63 F.3d 95, 102 (2d Cir. 1995).

Finally, courts may recognize special circumstances that justify a more nuanced approach to the inherent power to vacate injunctions. For example, although changes in fact or law often "afford the clearest bases for altering an injunction," a court's equitable power "extend[s] also to cases where a better appreciation of the facts in light of experience indicates that the decree is not properly adapted to accomplishing its purposes." *King-Seeley Thermos Co. v. Aladdin Indus., Inc.*, 418 F.2d 31, 35 (2d Cir. 1969) (citations omitted). Moreover, a court may vacate "when a decree proves to be unworkable because of unforeseen obstacles; or when enforcement of the decree without modification would be detrimental to the public interest." *Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 383 (1992) (citations omitted); *see also Salazar*, 559 U.S. at 714 ("[A] court should be particularly cautious when contemplating relief that implicates public interests."); Wright & Miller § 2942 ("[B]ecause of its discretionary character, an injunction . . . may be modified if circumstances change after it is issued or in the event that it fails to achieve its objectives."); Timothy Stoltzfus Jost, *From* Swift *to* Stotts *and Beyond: Modification of*

Injunctions in the Federal Courts, 64 Tex. L. Rev. 1101, 1138 (1986) (arguing that, if an injunction becomes "a tool of oppression" or "obviously inefficient," "the court ultimately has the power to, and should, modify a decree that imposes a burden disproportionate to the benefit it assures").

Here, the Republic and a number of plaintiffs ask the court to exercise its discretion to vacate the injunctions. They argue that the injunctions' continued effect is no longer equitable. The court agrees. The injunctions, once appropriate to address the Republic's recalcitrance, can no longer be justified. Significantly changed circumstances have rendered the injunctions inequitable and detrimental to the public interest.

1. Changed Circumstances Render the Injunctions Inequitable.

The original injunctive order explicitly gave this court the power to "modify and amend it as justice requires to achieve its equitable purposes and to account for changing circumstances." Order § 5, *NML Capital Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Feb. 23, 2012). Put simply, President Macri's election changed everything.

Most importantly, the Republic has shown a good-faith willingness to negotiate with the holdouts. Under prior Argentine administrations, plaintiffs had to accept severe haircuts on the value of their bonds, or else engage in a usually fruitless effort to attach property to satisfy their judgments. The Republic never seriously pursued negotiations toward settlement. Instead, the Republic's leadership engaged in rhetoric, calling plaintiffs "vultures" or "financial terrorists," while showing open contempt for this court's rulings. *See*

Robin Wigglesworth & Benedict Mander, *Argentina on the Cusp of Peace with Creditors*, Fin. Times (Feb. 16, 2016), *available at* http://on.ft.com/20B7FBk; *NML Capital, Ltd. v. Republic of Argentina*, 727 F.3d 230, 247 (2d Cir. 2013) (describing the Republic as "a uniquely recalcitrant debtor"). Despite the best efforts of the Special Master, he could not coax the Republic to negotiate with plaintiffs in good faith in 2014 and 2015.

All that has changed. President Macri pledged during his campaign that he would seek to resolve these long-running lawsuits—and he has honored that promise. Not long after President Macri's December 2015 inauguration, the Secretary of Finance approached the Special Master to begin negotiations in earnest. The Republic's high-level officials met with the Special Master and a group of plaintiffs in January 2016 to establish a framework for substantive talks. And, through the first week of February, the Special Master convened a series of meetings in New York. As the Special Master continually informed the court, he communicated intensively with the Republic's officials and the plaintiffs' lead principals on virtually a daily basis. The Republic's senior officials met with a substantial number of plaintiffs as a group, and also spoke separately with a number of those plaintiffs who sought private dialogue with the Republic. By the end of the first week of negotiations, the Republic had reached Agreements in Principle with plaintiffs in five actions, involving payments exceeding $1 billion. At the end of the week, the Republic also issued its public Proposal to settle with all FAA bondholders.

Before the court actually vacates the injunctions, another circumstance must change. As part of the settlement agreements, the Republic must repeal legislative obstacles enacted by prior administrations. Gone will be the Lock Law—the legislation that led the court to fashion these injunctions in the first place—as well as other antagonistic legislation, such as the Sovereign Payment Law. *See generally* Order § 1(b) & (c), *NML Capital Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Feb. 23, 2012); *NML Capital, Ltd. v. Republic of Argentina*, 727 F.3d 230, 241 (2d Cir. 2013). Not only do the very terms of the Republic's Proposal contemplate repeal, but—in the Republic's own words—the lifting of the injunctions would require it. *See* Def.'s Mem. L. Supp. Mot. Vacate 3, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Feb. 11, 2016). These are truly "exceptional circumstances." *See Motorola Credit Corp. v. Uzan*, 561 F.3d 123, 126 (2d Cir. 2009) (citation omitted).

The Republic's decisions in 2005 to outlaw "any type of in-court, out-of-court or private settlement" (Law 26,017), and in 2009 to pay plaintiffs no more than 29% of the original bonds' value (Law 26,547), are sharply inconsistent with the decisions taken by President Macri's administration. *Compare* Hr'g Tr. 29, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Sept. 28, 2011) (conceding that, in 2011, the Republic would offer plaintiffs no more than it offered the exchange bondholders), *with* Propuesta, 5 de Febrero de 2016 (offering all plaintiffs cash payments equal to the original principal amount of the bond plus 50% of that principal). The Republic's self-imposed conditions—repealing legislative obstacles and paying settlements in full—represent a

"dramatic shift in . . . policy" that justifies vacating the injunctions. *See Horne v. Flores*, 557 U.S. 433, 461 (2009).

Although the court takes no position on the reasonableness of the Republic's Proposal, the court does recognize the Republic's earnest efforts to negotiate and its striking change in attitude toward settlement since President Macri assumed office. Just as the Republic's conduct in 2012 and 2015 influenced the court's decision to issue the original and "me too" injunctions, so too must the court consider the Republic's present behavior. The balance of equities has shifted, for no longer is the Republic exhibiting "reluctance to entertain meaningful settlement discussions before the Special Master." Op. & Order 10, *NML Capital, Ltd. v. Republic of Argentina*, No. 14-cv-8601 (S.D.N.Y. Oct. 30, 2015).

Even the objecting plaintiffs have recognized that the Republic's willingness to negotiate a settlement impacts the balance of equities. In arguing that the equities weigh in their favor, those plaintiffs previously invoked the Republic's "refus[al] to negotiate a settlement" and claimed that "[t]he biggest obstacle to settlement is Argentina itself." Pls.' Reply Mem. L. Supp. Mot. Specific Performance 6, 11, *NML Capital, Ltd. v. Republic of Argentina*, No. 14-cv-8601 (S.D.N.Y. Oct. 9, 2015). And those plaintiffs have acknowledged, from the beginning to the end, that the injunctions would promote settlement and that plaintiffs would support that kind of resolution.[5]

[5] *See* Pls.' Mem. L. Supp. Renewed Mot. Specific Enforcement 18, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Jan. 6, 2012) (arguing that the injunctions "could pave the way to a global resolution of this protracted dispute," while noting that a similar injunction

Yet another changed circumstance significantly alters the equities: a number of plaintiffs have now agreed in principle to settle. If the court refused to vacate the injunctions, it would unfairly deny those plaintiffs the opportunity to resolve their disputes amicably with the Republic. It might also create an incentive for the remaining holdout plaintiffs to shun settlement, knowing that they derive leverage from the ability to prevent the Republic and the other plaintiffs from consummating agreements. The injunctions must not be "turned through changing circumstances into an instrument of wrong." *See Swift*, 286 U.S. at 115.

It is also significant that the Republic has not requested the immediate and unconditional lifting of the injunctions. Rather, at the Republic's own urging, the injunctions would remain in effect until it actually makes full payment on all agreements in principle entered into by February 29, 2016, the day before the Argentine Congress reconvenes on March 1. *Cf. Badgley*, 853 F.2d at 51–52 (permitting modification of an equitable order upon fulfillment of certain conditions). The Republic's willingness to impose this condition on itself is compelling evidence of its sincerity and good faith, and stands in stark contrast to the contumacious policies of prior administrations. And the court's retention of jurisdiction should allay any concern that the Republic will return to its old ways.

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in another case prompted the sovereign "to settle with the plaintiff"); Pls.' Reply Mem. L. Supp. Mot. Specific Performance 12, *NML Capital, Ltd. v. Republic of Argentina*, No. 14-cv-8601 (S.D.N.Y. Oct. 9, 2015) ("NML would most welcome meaningful settlement discussions with Argentina before the Special Master.").

In sum, circumstances have changed dramatically since the court first issued the injunctions in February 2012. The court finds and holds that maintaining the injunctions would now be inequitable.

2. Vacating the Injunctions Serves the Public Interest.

Vacating the injunctions would serve the public interest by ceasing the collateral effects they have on third parties. It would also promote amicable resolution of protracted legal disputes—both generally and in this particular litigation.

The most notable third parties affected by the injunctions are the exchange bondholders. But there are others, too: the financial intermediaries that the Republic engages to help it pay the exchange bondholders; the FAA bondholders who favor settlement but who are not parties to every single case; and the Argentine people generally. Each of these groups will benefit if the court vacates the injunctions.

The court has repeatedly voiced its concern about the exchange bondholders' plight. Hr'g Tr. 11, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Aug. 21, 2014) (bemoaning the injunctions' collateral damage to "very innocent third parties"); Hr'g Tr. 15, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Aug. 8, 2014) ("[S]ettling this case . . . will assist real human beings."). When some plaintiffs first sought injunctive relief, they reassured the court that there was "no evidence" that the injunctions would "stop or interfere or impair in any way those exchange offers." Hr'g Tr. 35, 4–5, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Sept. 28,

2011). Yet that is precisely what has happened. Of course, the Republic's decision to default on the exchange bonds was its own, and plaintiffs bear no blame for seeking these injunctions four years ago. But the court may still *now* recognize that it is in the public interest for the Republic to resume paying its restructured debt. If the court vacates the injunctions, the Republic may once again pay the exchange bondholders—something that has not happened for nearly two years.

Vacating the injunctions in all cases further benefits third parties by allowing any FAA bondholder to resolve claims against the Republic. For example, plaintiff EM Limited agreed to settle with the Republic for nearly $1 billion after signing a simple, one-page, handwritten Agreement in Principle.[6] If another plaintiff, armed with an injunction in a different action, could scupper that deal, EM—as a third party to that action—would suffer. The court never intended this result. *See* Hr'g Tr. 39, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Sept. 28, 2011) ("I have felt that the Republic of Argentina had a right to make an exchange offer, and that any bondholders who wished to take that exchange offer had a right to take it. And if they felt that it was beneficial to them, why, that was up to them to make that decision."). Accordingly, if the court lifts the injunctions, it will do so in all cases.

[6] Where there is good will toward each other, the parties have had no difficulty reaching agreements in principle that are uncomplicated and effective. The court commends the Special Master for helping those parties understand that complexity is not a requisite when agreeing to a monetary settlement of a judgment.

The Court of Appeals has also recognized this court's discretion to consider "the health of the nation" when considering appropriate remedies. *EM Ltd. v. Republic of Argentina*, 131 F. App'x 745, 747 (2d Cir. 2005) ("Exercising discretion with respect to pre- and post-judgment remedies, the District Court acted well within its authority to vacate the remedies in order to avoid a substantial risk to the successful conclusion of the debt restructuring. That restructuring is obviously of critical importance to the economic health of a nation."). Allowing the Republic to reenter the capital markets will undoubtedly help stimulate its economy and thus benefit its people. It might even encourage other indebted nations to choose compromise over intransigence.

Finally, vacating the injunctions serves the public interest by encouraging settlement to resolve disputes generally—particularly such protracted ones—as well as the concern for finality in this particular litigation. *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (recognizing the "strong judicial policy in favor of settlements"). Although such aspirations are broad, the court is mindful that the two interests plaintiffs invoked to support the original injunctions were "enforcing agreements and upholding the rule of law." Pls.' Mem. L. Supp. Renewed Mot. Specific Enforcement 14, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Jan. 6, 2012). The public has a compelling interest in encouraging amicable resolution of longstanding legal battles and ending this massive litigation that dates back nearly fourteen years. *See* Compl., *Applestein v. Argentina Republic*, No. 02-cv-1773 (S.D.N.Y. Mar. 6, 2002). Allowing settlement will further these goals.

3. The Court May Exercise its Discretion to Vacate the Injunctions.

Some plaintiffs argue that the court does not have the power to vacate the injunctions. They claim that the court must protect the injunctions' purpose of enforcing the *pari passu* clause. Essentially, these plaintiffs believe the court cannot alter the injunctions if doing so would mean the Republic could pay the exchange bondholders without (1) ratably paying plaintiffs or (2) settling with plaintiffs for the full amount of their claims.

It is important to recall that the plaintiffs had no absolute legal right to the injunctions. An injunction is an extraordinary measure that is not normally available for breach of contract. The *pari passu* clause never *required* the equitable relief that the plaintiffs requested and the court granted. Rather, the court exercised its inherent equitable power to fashion a remedy for the Republic's breach of the plaintiffs' contractual rights. *See* Op., *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6979 (S.D.N.Y. Nov. 21, 2012) (explaining that the injunctions do "not literally to carry out the *pari passu* clause"). In short, the injunctions were a discretionary remedy, not a legal entitlement.

When the court was considering how to craft this equitable remedy, it stressed that the injunctions should not prevent bondholders from settling their claims with the Republic. *See* Hr'g Tr. 40, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Sept. 28, 2011) (expressing the court's desire to find a remedy that would provide "leverage" without "do[ing] something that would prejudice the rights and opportunities of the people who want to make exchanges"). For years, the court has repeatedly recognized that the only viable

way to end this litigation is through settlement—surely for less than the full claim, as the notion of "settlement" implies.[7] To that end, the court appointed a Special Master, who has worked tirelessly and, now, effectively to encourage compromise.

Of course, the court does not have the power to force plaintiffs to accept a settlement. The court notes, however, that the Republic and the Special Master worked diligently to give plaintiffs the opportunity to negotiate and settle their claims. And that process may still continue. Until February 29, 2016, *all* FAA bondholders have the right to accept the terms of the Republic's Proposal, and they are certainly free to make counteroffers. If they reach agreements by that date, they will receive the protections incorporated by this ruling—namely, the Republic must pay their settlements in full before the injunctions are lifted.

Some plaintiffs may choose to reject the Republic's Proposal. That is their right. But that does not diminish the court's discretion to vacate injunctions that would prevent resolution of a meaningful portion of this litigation. The court

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[7] *See* Order, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Aug. 4, 2014) ("It is most important to stay at the settlement table so that the issues in the case can be resolved."); Hr'g Tr. 29, *NML Capital, Ltd. v. Republic of Argentina*, No. 14-cv-8601 (S.D.N.Y. Oct. 28, 2015) ("I have to assume that on this late date in this very lengthy litigation . . . that the interested parties, all of them, will participate in settlement negotiations."); Hr'g Tr. 23–24, *NML Capital, Ltd. v. Republic of Argentina*, No. 14-cv-8601 (S.D.N.Y. May 29, 2015) ("[T]he way to ultimately resolve this litigation must come through settlement."); Hr'g Tr. 16, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Apr. 22, 2015) ("I hope the Republic at long last will be willing to negotiate."); Hr'g Tr. 10–11, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Aug. 21, 2014) ("[T]he thing that is of paramount necessity is to have a settlement."); Hr'g Tr. 8–9, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Aug. 8, 2014) ("[T]he really truly important thing is to recognize that this matter will not be resolved without a successful settlement."). Indeed, even those plaintiffs who now oppose the motion to vacate have previously declared that resolution of these actions would come through settlement. *See* Hr'g Tr. 7, *NML Capital, Ltd. v. Republic of Argentina*, No. 08-cv-6978 (S.D.N.Y. Aug. 21, 2014) ("[W]e, too, believe that a settlement is the way that this matter will ultimately be resolved.").

cannot countenance an equitable remedy that would allow some plaintiffs to hold other plaintiffs hostage. If that were truly the injunctions' effect, it would surely constitute a form of "unforeseen obstacle[]" the court had not previously contemplated. *See Rufo*, 502 U.S. at 383.

Lastly, the court wishes to note that the Special Master, Daniel Pollack, has devoted himself to a remarkable degree to carrying out his duties, and he has done so with great skill. His efforts will undoubtedly be of great value in the ultimate resolution of this litigation. He has the thanks of the court.

Conclusion

For these reasons, the court now indicates that it would vacate the injunctions upon the occurrence of two conditions precedent:

(1) The Republic repeals all legislative obstacles to settlement with the FAA bondholders, including the Lock Law and the Sovereign Payment Law;

(2) For all plaintiffs that enter into agreements in principle with the Republic on or before February 29, 2016, the Republic must make full payment in accordance with the specific terms of each such agreement. The Republic must also notify the court once those plaintiffs have all received full payment.

If the Court of Appeals remands to allow this court to grant the Republic's motion to vacate, the injunctions will be lifted automatically upon fulfillment of these two conditions.

SO ORDERED

Dated: New York, New York
February 19, 2016

Thomas P. Griesa
United States District Judge

Exhibit H

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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NML CAPITAL, LTD., et al.,

Plaintiffs,

v. 08 CV 6978 (TPG)

THE REPUBLIC OF ARGENTINA,

Defendant.

----------x

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

Before:

HON. THOMAS P. GRIESA,

District Judge

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DANIEL POLLACK
Special Master

(In open court; case called)

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

THE COURT: Good morning everyone.

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

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

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

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

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

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

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

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

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

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

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

effort failed.

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

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

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

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

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

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

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

reach a settlement. It was the only avenue.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you.

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

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

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

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

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

Thank you.

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

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

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

With that, we will adjourn our hearing.

MR. COHEN: Thank you, your Honor.

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

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

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

THE COURT: Regarding Clearstream and Euroclear.

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

THE COURT: Sure.

Sit down everybody, please.

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

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

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

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

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

THE COURT: Thank you.

MS. WEISS: Thank you.

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Exhibit I

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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NML CAPITAL, LTD., et al.,

Plaintiffs,

v. 08 CV 6978 (TPG)

THE REPUBLIC OF ARGENTINA,

Defendant.

----------x

New York, N.Y.
August 8, 2014
3:05 p.m.

Before:

HON. THOMAS P. GRIESA,

District Judge

A P P E A R A N C E S

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Attorneys for Defendant
BY: JONATHAN I. BLACKMAN
DANIEL J. NORTHROP

DANIEL POLLACK
Special Master

(Case called)

THE COURT: The reason we are here today is because of the two-page document entitled "Legal Notice" which appeared on two pages of the *Wall Street Journal* and also of the *New York Times*.

Last week, last Friday, we had a meeting, and I went through at that time a complete statement of the obligations of the Republic that are relevant to this matter. The Republic had issued statements omitting relevant facts about its obligations and, of course, that needed to stop.

It goes without saying that during that meeting I warned that misleading statements by the Republic must cease, and I put it upon counsel for the Republic to assist in seeing that that was done. There were certain events of June 30 which were covered and at least one statement or ruling issued by the court, and I won't go into that. But what I was hoping is that the parties would get back on the track of settlement negotiations under the aegis of the special master who was appointed to supervise or assist in such negotiations.

I want to say now, and I will repeat it at the end, it is through settlement that obligations which need to be honored can be honored; therefore, it is highly important that settlement negotiations go forward and bear fruition. I was hoping that that would take place.

However, on Thursday, August 7, a two-page write-up

entitled "Legal Notice" appeared in the *New York Times* and the *Wall Street Journal*. This so-called legal notice is false and misleading, and the court could not let time go by without making it publicly clear what has occurred, and that is the reason the court called the session today on what is, admittedly, somewhat short notice. Unfortunately, this notice continues something which I thought should have ceased after last Friday.

What the Republic has done over substantial time is to make various public pronouncements which, on the face of it, are supposed to describe the obligations of the Republic. But these various pronouncements have regularly and systematically omitted a vital part of the obligations of the Republic. The Republic has discussed publicly in various ways the obligations that it has to parties who exchanged their bonds for new bonds of the Republic in 2005 and 2010. The Republic surely has obligations to those exchangers, without any doubt; but, it also has obligations to people who did not exchange and who still have their judgments and who are judgment creditors on those judgments.

There is no virtue in saying one kind of obligation is more important than another. That would be a useless exercise. The fact is, the Republic has these obligations and not just one. And if the Republic puts out public information describing only one and indicating this is all that the

Republic has in the way of obligations, that is false and misleading.

This kind of thing was discussed last Friday and, naturally, the court warned against further false and misleading public pronouncements or statements by the Republic, and the court assumed that that warning would be heeded. Why should it not be? Litigants come to this court all the time, and it is not difficult to avoid false and misleading pronouncements relative to a court case. That is naturally done by most litigants and most attorneys. It is naturally done, instinctively done. It has not been done here. I thought that the discussion held last Friday would put an end to the false and misleading public information which had been put out by the Republic. I assumed that it would, and I asked counsel for the Republic to monitor that. However, we have, yesterday, a two-page newspaper spread in the *New York Times* and in the *Wall Street Journal*, which constituted another, yet another, false and misleading statement by the Republic about its obligations.

I repeat: Yesterday in the two-page spread, published obviously at the request of the Republic, in the *Wall Street Journal* and *The New York Times* we had another false and misleading description of the Republic's obligations.

The notice which was published in the press describes the obligations of the Republic to parties who exchanged their

bonds and received new bonds in 2005 and some in 2010. It goes on to describe in detail how payment is to be made to those exchangers under the relevant trust indenture. It omits, however, except for some possible fragmentary notice, which I don't recall at the moment, but it omits any description of the obligation of the Republic to judgment creditors and it omits any mention of the legal requirements now imposed by the District Court and the Court of Appeals before payment can be made on these obligations. The latter point is highly important.

Both the District Court and the Court of Appeals recognize that, because of certain contractual provisions, particularly something called the *pari passu* provision, that any payment made on any of these obligations must appropriately cover all of the obligations. I say "appropriately," because I am not going to try to get into a definition of the specific requirements. But the basic point is there. Payment cannot be made in part and still be called payment of the obligations. Payment must deal, under the definition and requirement of the District Court and the Court of Appeals, with the full range of obligations.

This should not be surprising. If someone has a debt, say, of $10,000 and goes up to the creditor and says, Here, I will give you $8,000, it would not surprise anybody in this gathering today to find out that that does not mean payment of

the debt. It is very simple.

So payment of part is not payment of all. And payment here must comply with certain requirements imposed by law, imposed by the District Court and the Court of Appeals.

I think I have said this, but I want to make sure, because I don't want to be abstract: The obligations of the Republic, of course, include its obligations to its exchange bondholders, but they also include obligations to those who did not exchange, because exchange was not required. So the obligations of the Republic also run to the parties who exercised their rights and maintain their judgments and who are, today, in the position of being judgment creditors, a position hardly unimportant.

Now, there is also the requirement that any payment to the exchangers must comply with requirements that arise under what is called the *pari passu* clause or term. Let it be remembered that we are dealing with contractual terms. We are not dealing with something imposed by the court. We are dealing with contractual terms. And who proposed and authored those contractual terms? It was the Republic of Argentina. And they did so in order to help market their bonds.

Now, therefore, when the so-called notice talks about or asserts the proposition that the Republic has paid, that proposition, as presented here, is false and misleading. The Republic did pay money to the indentured trustee; and the

indentured trustee, wisely and in accordance with the court orders in existence, held and has held that money. But that did not constitute payment within the terms specified under the law as laid out by the District Court and the Court of Appeals. Consequently, there has been no payment to the bondholders, to the judgment creditors. There has been no payment.

Let me repeat: There has been no payment.

The reason for that is what I have explained a moment ago; and, that is, payment must cover what is required under the law and under the rulings of the District Court and the Court of Appeals. That is the only way payment can be made, and no such payment has been made.

To the extent that the so-called notice would lead a reader to think that some kind of a payment has been made -- and that is one of the important points of this so-called notice -- such a statement, such an implication, is false and misleading.

Now, the court can only hope -- no, the court can do more than hope. The court reiterates its direction to cease and desist from false and misleading public pronouncements by the Republic. That must be done. And again I am charging counsel with responsibility for monitoring that. Again I issue the warning and again I charge counsel.

I don't want to go farther than that because the really truly important thing is to recognize that this matter

will not be resolved without a successful settlement. Maybe "successful" is not the right word. Without a settlement. Obviously if the Republic paid everything it owed, it would be in the position of the kind of judgment debtor which is often found, which simply pays. The indications are that that will not occur. The court understands that there may be reasons why it will not occur, and that is why the court appointed a special master to carry out and assist in settlement negotiations, because in this case, there are issues which deserve negotiation and which deserve resolution by settlement. That, of course, leads to the point that if the parties and if the attorneys wish to resolve this matter, there must be negotiation of issues and there must be a settlement. And there can be a settlement.

So this afternoon the court wishes to go no farther than to reiterate what is in the order appointing the special master, and that is that he is to supervise settlement negotiations and the parties are to cooperate with him.

Surely there will be a cessation of false and misleading statements by the Republic. Surely there will be a cessation. If there is not, it will be necessary to consider contempt of court. But the court earnestly, earnestly hopes and desires that the matter will not get into that posture and that negotiations can continue.

If anyone has any comments, please give them.

MR. BLACKMAN: Thank you, your Honor. Jonathan Blackman representing the Republic of Argentina.

As always, we appreciate what you have said. It will certainly, as the court's earlier statements have been, be conveyed to our client.

I have to say a couple of things.

One, the ad that the court referred to or the press statements that the court referred to have not been prepared by my firm, by me, by anyone associated with us, and we knew nothing about them until I read them, probably the same time your Honor did, in the *New York Times* yesterday. In fact, I read them later because it wasn't until this hearing was scheduled that I got to that page of the paper in my office as a result of the hearing being scheduled.

I say that because the court needs to understand that the Republic of Argentina is a state. The court knows that.

THE COURT: Is what?

MR. BLACKMAN: Is a state. A state takes positions, makes decisions. They are not necessarily legal decisions. They are decisions that are made without their lawyers. This is a statement of its position, for better or worse, and I can't say more than that.

If we are talking about statements, though, that are false and misleading, I have to bring to the court's attention the fact that this week, every day this week, an organization

called American Task Force Argentina, which was created by Ellie & Associates, which is the owner of the plaintiff NML and funded by it, has put out on its Web site false and misleading statements about me and about my law firm. It has put out statements saying that we are responsible for Argentina's default; that I personally have told the president of Argentina to default.

The next one is entitled, "Should the Court Sanction Cleary?" on the grounds that our legal representation of our client in this case for the last 12 years somehow represents sanctionable behavior.

The final one -- and I am going to bring these up to your Honor so they can be put into the record -- shows me on the body of a vulture saying that I am a vulture and my firm are vultures because we are preying on Argentina and that somehow this default occurred so that my firm and I could make legal fees. That is false and misleading. It is also reprehensible. It is outrageous. The people who prepared that -- and I suspect I know who they are, but I'm not going to stoop to their level and name them -- have acted in a way that is malicious and evil, a way that no one -- no human being -- should act towards another human being. There have been high tempers in this case, and obviously, the court knows, a great deal of animosity between clients. But to attack a lawyer and his law firm in that fashion personally, day after day, so that

my family has to read this sort of stuff, just goes beyond any bounds of human decency. It is just absolutely wrong and improper.

I am going to hand up to the court copies of these documents so that they can be put into the record, with the court's permission, and I will hand a copy to counsel.

I regret having to bring up this subject, but I felt I owed it to myself, I owed it to my firm, I owed it to my family, and I owed it to our profession to do that. This kind of stuff is far more damaging to the fabric of the court and our profession than anything that's been discussed.

As far as the substance, which is what we should all stick to, Argentina has made it clear that it does want to engage with all of its creditors, judgment creditors, other holdout creditors, and of course it wants to service its obligations, which no one questions exist, to the exchange bondholders. I won't repeat all the reasons why that is a huge challenge and why, thus far, those efforts have not borne fruition. Of course they need to continue in some fashion.

I would just ask the court to keep in mind, in doing that, that the government of Argentina, my client, has to be a government. It has to make statements on matters that are of intense public interest to Argentina. And those statements, for better or worse, are not always -- not even often -- what lawyers would draft if they had any role in drafting them.

They are statements made, just like our president makes statements, just like the president of any other country makes statements. I would just ask the court to appreciate them in that context and not let what is essentially, if I can call it that, a side issue -- because everyone knows what these injunctions say and what they do and the effect they have had, including the banks who have been before your Honor -- not let that side issue divert us or make the temperature rise further from what should be the main event, which is trying to resolve this very difficult situation.

Thank you.

THE COURT: I am very glad that you made clear that you and your firm did not play a role in drafting this so-called notice. That is a fact that is highly important.

On the other points you have made, I deeply regret any personal attacks or disparagement upon you.

When the different elements that have been discussed are put on the scale, so to speak, it is impossible for me to neglect the fact that I presided over this case for about a dozen years. I sat on this bench over and over, pointing out the fact that the Republic of Argentina had obligations here which it was ignoring, it was issuing misleading statements about, but basically was ignoring. I urged that those obligations be honored despite the fact that, under the circumstances that existed during those years, I had no ability

to compel the Republic to honor those obligations. But I appealed to the Republic as a matter of honor, honesty, to honor those obligations. That appeal was not responded to in the slightest degree in a positive manner, not the slightest.

Years went by. NML and other plaintiffs sought to find assets in the United States they could recover against, and those efforts were unsuccessful. But the Republic did not honor its basic obligation, but hid behind the fact that it was a distant republic at that time and was shielded as a matter of law.

Things changed when a new concept was introduced into the case, which I won't get into the technicalities, but a new concept introduced into the case called the *pari passu* doctrine in 2010. This finally compelled the Republic to recognize and to begin to deal with its obligations. That process is going on and hopefully that process will lead to settlement. So what cannot be forgotten is that for a dozen years or more the Republic was not compelled to and did not do anything to honor its legal obligations.

Entirely apart from what occurred in court, apart from what I knew anything about, it may be that attacks were made on Mr. Blackman. I don't really say "it may be." I credit Mr. Blackman. That was wrong. Without excuse. And what I am saying now is not an excuse, but it is, when people with just causes go year after year after year, as NML and Aurelius,

etc., did year after year after year, without any recognition of their legal rights, it may very well be that frustration develops and behavior that is wrong occurs.

All of that occurred outside of the knowledge and responsibility of the court. Mr. Blackman had every right to bring it up today.

But, as he himself recognizes, it is not a matter which can interfere in any way with the real motion that must take place in this case, and that is the movement towards a settlement. There are people who are being harmed by the present circumstances, and settlement is necessary to eliminate that harm. That is what we want to focus on now, and nobody denies that.

So let us stick to the resolution of the issues before the court. Let us avoid any further false and misleading press releases or statements by the Republic, and let us continue with the process of settling this case. That is what will assist real human beings.

Thank you.

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Exhibit J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

[redacted] **ORDER**

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

WHEREAS, on November 12, 2012, this Court issued Amended February 23, 2012 Orders in each of the above-captioned cases (the "Amended February 23 Orders"), which provide, among other things, that: (a) whenever the Republic of Argentina ("Argentina") pays any amount due under the Exchange Bonds, it shall concurrently or in advance make a Ratable Payment to Plaintiffs; (b) Argentina is enjoined from making any payment on the Exchange Bonds without complying with its obligation to make a Ratable Payment to Plaintiffs; (c) concurrently or in advance of making a payment on the Exchange Bonds, Argentina shall certify to the Court, with notice to, among others, counsel for Plaintiffs, that it has satisfied its obligations to make a Ratable Payment to Plaintiffs; and (d) Argentina is permanently prohibited from taking action to evade the directives of the Amended February 23 Orders; and

WHEREAS, on June 26, 2014, Argentina set in motion the process of making certain payments to Exchange Bondholders in defiance of the Orders by transferring the equivalent of approximately $539 million ($230,922,521.14 in US dollars and 225,852,475.66 in Euros) to The Bank of New York Mellon ("BNY") into BNY accounts at the Banco Central de la Republica de Argentina (the "BCRA") (this transfer, together with any other funds, if any, that Argentina has transferred to BNY relating to payments on the Exchange Bonds due on or after June 16, 2014 collectively, the "Funds"); and

WHEREAS, on June 27, 2014 and July 22, 2014, the Court held hearings in these matters, and ruled that the payment by Argentina to BNY described above was a violation of the Amended February 23 Orders and illegal;

IT IS HEREBY ORDERED that:

1. For the reasons stated on the record at the June 27, 2014 and July 22, 2014 hearings, the payment by Argentina to BNY described above was illegal and a violation of the Amended February 23 Orders.

2. BNY shall retain the Funds in its accounts at the BCRA pending further Order of this Court, and shall not make or allow any transfer of the Funds unless ordered by the Court.

3. Argentina will take no steps to interfere with BNY's retention of the Funds in accordance with the terms of this Order.

4. BNY's retention of the Funds in its accounts at the BCRA pursuant to this Order shall not be deemed a violation of the Amended February 23 Orders. BNY shall incur no liability under the Indenture governing the Exchange Bonds or otherwise to any person or entity for complying with this Order and the Amended February 23 Orders.

Dated: New York, New York
August 6, 2014

Thomas P. Griesa
United States District Judge

Exhibit K

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LATHAM & WATKINS LLP

February 29, 2016

VIA ECF

Hon. Thomas P. Griesa
United States District Court Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *NML Capital, Ltd. v. The Republic of Argentina*, No. 08-cv-6978 (TPG) and related cases

Dear Judge Griesa:

I write on behalf of certain Euro Bondholders[1] to respectfully request an opportunity to be heard regarding the letter motion (the "Motion") filed by the Republic of Argentina (the "Republic") on February 25, 2016, seeking orders to vacate the amended injunctions entered by the Court on November 21, 2012 and October 30, 2015 (collectively, the "Injunction"). *See* Feb. 25, 2016 M. Paskin Ltr., *NML Capital, Ltd. v. The Republic of Arg.*, No. 08-cv-6978, Dkt. # 888 (S.D.N.Y. Feb. 25, 2016).

It is common ground that, through no fault of their own, the Euro Bondholders (and other exchange bondholders) have been collaterally damaged by the dispute between the Plaintiffs and the Republic for years. The operation of the Injunction has deprived the Euro Bondholders of hundreds of millions of dollars of contractually owed payments on the bonds they own, and the current total amount of blocked interest payments on all exchange bonds is approximately 3.1 billion dollars. Ex. A, Declaration of Christopher J. Clark (Feb. 29, 2016) ¶¶ 3-4. "The court has repeatedly voiced its concern" regarding the "plight" of such innocent third parties affected by the Injunction, and has expressly recognized that the "most notable" among these third parties "are the exchange bondholders," including the Euro Bondholders. Indicative Ruling at 18, *NML Capital, Ltd. v. The Republic of Arg.*, No. 14-cv-8947, Dkt. # 47 (S.D.N.Y. Feb. 19, 2016) (citing Aug. 21, 2014 Hr'g Tr. at 11:9, *NML Capital, Ltd. v. The Republic of Arg.*, No. 08-cv-6978 (S.D.N.Y. Sept. 4, 2014) (noting concern with the Injunction's collateral effect on "very innocent third parties")). As the

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[1] The Euro Bondholders are a group of holders of a substantial amount of English law governed euro-denominated bonds ("Euro Bonds") issued by the Republic of Argentina pursuant to 2005 and 2010 exchange offers. Ex. A, Clark Decl. ¶ 2.

Court recognized, if the Injunction is lifted, "the Republic may once again pay the exchange bondholders—something that has not happened for nearly two years." Indicative Ruling at 19. If, however, the Injunction remains in effect, the total amount of blocked payments on the exchange bonds will continue growing, rising to approximately 3.8 billion dollars by June 2016. Ex. A, Clark Decl. ¶ 4.

Under these circumstances, the continuing operation of the Injunction is unwarranted and inequitable. As set forth in my letter of February 19, 2016, and in the Court's Indicative Ruling, the significant change in the circumstances underlying the Injunction warrants vacatur as soon as the conditions set forth in the Indicative Ruling are met. *See* Indicative Ruling at 11-18; Feb. 19, 2016 C. Clark Ltr. at 2-3, *NML Capital, Ltd. v. The Republic of Arg.*, No. 08-cv-6978, Dkt. # 886 (S.D.N.Y. Feb. 19, 2016).

First, it is undisputed that, contrary to the facts that gave rise to the Injunction—namely, the Republic's refusal to negotiate with holdout bondholders, *see* Indicative Ruling at 4—the Republic's new administration has consistently declared its commitment to resolving these disputes and has made good on those promises by extending (generous) settlement offers to the Plaintiffs. Indicative Ruling at 7-10, 13-14, 16.

Second, many large holdout bondholders (the "Settling Plaintiffs"), including Dart Management Inc., EM Ltd., Montreux Partners, L.P., Los Angeles Capital, Cordoba Capital, and Wilton Capital, Ltd., have accepted the Republic's offers. *See* Indicative Ruling at 7, 17. Those settlements—like the payments owed to the Euro Bondholders and other exchange bondholders—are now held hostage by the continued operation of the Injunction because, as explained by the Settling Plaintiffs in submissions to the Court, absent vacatur, the Republic would be unable to obtain the Congressional approval required to effect those settlements. *See* Settling Pls.' Br. at 2-3 n.2, *NML Capital, Ltd. v. The Republic of Arg.*, No. 08-cv-6978, Dkt. # 869-1 (S.D.N.Y. Feb. 12, 2016); *see also* Indicative Ruling at 19. The Court has echoed the Settling Plaintiffs' concerns, noting that "if another plaintiff, armed with an injunction in a different action could scupper that deal, [a Settling Plaintiff]—as a third party to that action—would suffer." Indicative Ruling at 19.

Third, as long as the Injunction remains in effect, the amount of past interest due to holders of exchange bonds, which is currently approximately 3.1 billion dollars, Ex. A, Clark Decl. ¶ 4, will continue to grow. Indeed, if the Injunction is not vacated, that amount will rise to approximately 3.8 billion dollars by June 2016. Ex. A, Clark Decl. ¶ 4. Meanwhile, the Republic would remain unable to access the global capital markets to raise capital to finance settlements with holdout bondholders *or* to pay the amounts owed on the exchange bonds. Eventually, those amounts will become so large that, without access to the global capital markets, the Republic may simply be unable to pay them. In other words, the Injunction will perpetuate *and exacerbate* the very problem it was meant to resolve—the Republic's non-payment of its defaulted debt—and will transform from a tool for incentivizing settlement to an impediment to settlement.

Finally, maintaining the status quo is particularly inequitable in light of the fact that the issuance of the Injunction and its effect on the rights of third parties, including the Euro Bondholders, was put in place without affording those third parties a meaningful opportunity to be heard. For example, on November 9, 2012, at the Plaintiffs' request, the Court set an expedited

briefing schedule to decide—in accordance with the Second Circuit Court of Appeals' mandate—the effect of the Injunction on third-party intermediaries in the exchange bond payment chain. *See* Nov. 9, 2014 Hr'g Tr., *NML Capital, Ltd. v. The Republic of Arg.*, No. 08-cv-6978, Dkt. # 411 (S.D.N.Y. Nov. 19, 2012). Exchange bondholders (indisputably interested third parties), including the Euro Bondholders, received neither notice of that proceeding nor an opportunity to be heard. Likewise, on June 27, 2014, again at the Plaintiffs' behest, the Court held an emergency hearing regarding funds transferred by the Republic for the benefit of the Euro Bondholders to a Bank of New York Mellon account at Banco Central de la República de Argentina in Buenos Aires, Argentina. *See* July 27, 2014 Hr'g Tr., *NML Capital, Ltd. v. The Republic of Arg.*, No. 08-cv-6978, Dkt. # 622 (S.D.N.Y. July 31, 2014). Again, the Euro Bondholders, *whose money was the subject of that hearing*, Ex. A, Clark Decl. ¶ 5, received no notice of the proceeding.[2] And, each time the Euro Bondholders have attempted to protect their rights by seeking to intervene before the Second Circuit Court of Appeals, they have been rebuffed and their motions denied. *See NML Capital, Ltd. v. Republic of Arg.*, 727 F.3d 230, 240 (2d Cir. 2013); *Applestein v. Republic of Arg.*, No. 14-4221, Dkt. # 101 (2d Cir. Jan. 28, 2015); *Dussault v. Republic of Arg.*, No. 14-4235, Dkt. # 70 (2d Cir. Jan. 28, 2015).

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[2] In light of this procedural history, the Plaintiffs' letter of February 26, 2016 is particularly ironic when it bemoans the "hurried schedule" set by the Court to hear the Republic's motion to vacate the Inunction as "entirely unnecessary and skirt[ing] the mandate of the court of appeals." Feb. 25, 2016 R. Cohen Ltr., *NML Capital, Ltd. v. The Republic of Arg.*, No. 08-cv-6978, Dkt. # 890 (S.D.N.Y. Feb. 25, 2016). As the court is aware, on many occasions, the Plaintiffs have submitted *ex parte* applications to hold emergency hearings with no notice to interested third parties, and have repeatedly surreptitiously filed papers with the Court without making them publically available. *See, e.g.*, July 3, 2014 C. Clark Ltr. at 1 n.1, *NML Capital, Ltd. v. The Republic of Arg.*, No. 08-cv-6978, Dkt. # 558 (S.D.N.Y. July 3, 2014) (noting the Plaintiffs' submission of a letter and proposed order to Court via email such that counsel of record, including for the Euro Bondholders, did not receive notice). The latter clandestine practice required the Court to formally order that parties "file all documents electronically." Order, *NML Capital, Ltd. v. The Republic of Arg.*, No. 08-cv-6978, Dkt. # 644 (S.D.N.Y. Aug. 19, 2014). The schedule set by the Court is eminently reasonable and provides the Plaintiffs far greater opportunity to be heard than many others have been afforded in these matters. The Plaintiffs have been on notice of the Republic's motion to vacate the Injunctions since February 11, 2016, have been provided the opportunity to submit further briefing, and will have the chance to make their points orally at the hearing on March 1, 2016. This Court's judicial process does not exist for the Plaintiffs' strategic advantage, and the Plaintiffs must abide by the Court's procedures even when they are inconvenient for them.

LATHAM&WATKINS LLP

After years of being deprived of their contractually owed payments and a meaningful opportunity to be heard, the Euro Bondholders respectfully submit that they are entitled to their day in court, and request an opportunity to address the Court on these very important matters during the hearing before the Court scheduled for 1:30 p.m. on March 1, 2016.

APPROVED

Sincerely,

/s/ Christopher J. Clark

Christopher J. Clark
of LATHAM & WATKINS LLP

cc: Counsel of Record (via ECF)

So ordered: Thomas P. Griesa

3/1/2016