UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NML CAPITAL, LTD.,	:	08 Civ. 6978 (TPG)
	:	09 Civ. 1707 (TPG)
Plaintiff,	:	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)**

[PROPOSED] SUPPLEMENTAL ORDER REGARDING THE AMENDED FEBRUARY 23, 2012 ORDERS

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, in Orders dated December 7, 2011, and December 13, 2011, this Court found that, under Paragraph 1(c) of the 1994 Fiscal Agency Agreement ("FAA"), the Republic of Argentina (the "Republic") is "required . . . at all times to rank its payment obligations pursuant to Plaintiffs' Bonds at least equally with all the Republic's other present and future unsecured and unsubordinated External Indebtedness."

WHEREAS, in its December 7, 2011 and December 13, 2011 Orders, this Court granted partial summary judgment to Plaintiffs on their claims that the Republic 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 Plaintiffs' bonds."[1]

WHEREAS, in Orders dated February 23, 2012 entered in the above-captioned actions (the "February 23 Orders"), this Court granted Plaintiffs' motion for equitable relief as a remedy for such violations of the FAA pursuant to Rule 65(d) of the Federal Rules of Civil Procedure and the Court's inherent equitable powers.[2]

WHEREAS, Paragraph 4 of the February 23 Orders "permanently PROHIBITED" the Republic "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."

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[1] The "Exchange Bonds," as in the Amended February 23 Orders, refer to 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.

[2] The Court granted to Olifant Fund, Ltd. the relief that it granted to the plaintiffs in the other above-captioned actions in a single order, dated February 23, 2012.

WHEREAS, in an Order dated March 5, 2012 (the "March 5 Order"), the Court stayed the February 23 Orders pending appeal, and also enjoined the Republic as follows (the "Anti-Evasion Injunction"):

> [T]he Republic shall not during the pendency of the appeal to the Second Circuit take any action to evade the directives of the February 23, 2012 Orders in the event they are affirmed, render them ineffective in the event they are affirmed, or diminish the Court's ability to supervise compliance with the February 23, 2012 Orders in the event they are affirmed, including without limitation, altering or amending the processes or specific transfer mechanisms by which it makes payments on the Exchange Bonds, without prior approval of the Court.
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> . . . .
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> This Court shall retain jurisdiction to monitor and enforce this ORDER, and, on notice to the parties, to modify, amend, or extend it as justice requires to achieve its equitable purposes and account for materially changed circumstances, including any failure by the Republic to abide by Paragraph (2) herein.

WHEREAS, following this Court's request for an affidavit ensuring that the Anti-Evasion Injunction would be complied with notwithstanding contrary statements to the press, the Republic submitted the Declaration of Francisco Guillermo Eggers, the Republic's Director of the National Bureau of Public Credit of the Ministry of Economy and Public Finance, dated November 16, 2012, representing "that the Republic has complied, is complying, and will comply with the terms of the March 5 Stay Order."

WHEREAS, the Court resolved certain issues remanded by the Second Circuit in an Opinion, dated November 21, 2012, and an "Amended February 23 Order," dated November 21, 2012, entered in each of the above-referenced actions.

WHEREAS, Paragraph 4 of the Amended February 23 Orders also enjoined the Republic 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."

WHEREAS, in an Opinion dated August 23, 2013 (the "August 23 Opinion"), the Second Circuit affirmed the Amended February 23 Orders, but stayed enforcement of the Amended February 23 Orders pending the resolution of a petition for a writ of certiorari.

WHEREAS, the Second Circuit's August 23, 2013 opinion noted that "Argentina's officials have publicly and repeatedly announced their intention to defy any rulings of this Court and the district court with which they disagree." *NML Capital, Ltd. v. Republic of Argentina*, 727 F.3d 230, 238 (2d Cir. 2013).

WHEREAS, on August 26, 2013, the President of Argentina, Cristina Fernández de Kirchner, delivered a speech announcing that the Republic will establish procedures allowing holders of Exchange Bonds to replace these instruments with nearly identical instruments that are payable within the Republic, in an apparent attempt to evade the directives of the Amended February 23 Orders.

WHEREAS, in an Order dated October 3, 2013 (the "October 3 Order"), the Court clarified that "the Anti-Evasion Injunction of the March 5 Order has been and remains continuously in full force and effect" and further ordered that:

> [2.] [T]he Republic shall not—either directly or through any representative, agent, instrumentality, political subdivision, or other person or entity acting on behalf of the Republic—take any action to attempt to evade the purposes and directives of the Amended February 23 Order, attempt to render those Orders ineffective, to attempt to diminish the Court's ability to supervise compliance with the Amended February 23 Orders, including without limitation, altering or amending the processes or specific transfer mechanisms by which it makes payments on the Exchange Bonds without prior approval of the Court. This paragraph shall remain in effect pending any petition to the United States Supreme Court for a writ of certiorari with respect to the October 26

Opinion or the August 23 Opinion, any proceeding on the merits in the United States Supreme Court, and any proceedings on remand, unless a further order of the Court states otherwise.

3. DECLARED that for the avoidance of doubt (i) the implementation of the plan to allow Exchange Bonds to be exchanged for securities or similar instruments payable in Argentina, which was announced by President Fernandez de Kirchner in her speech of August 26, 2013, (ii) implementation of any functionally equivalent or reasonably similar plan, or (iii) any step towards implementing (including without limitation the formulation or design of) such a plan or a functionally equivalent or reasonably similar plan, each would violate the Anti-Evasion Injunction of the March 5 Order and Paragraph 2 of this ORDER.

WHEREAS, the October 3 Order further ordered:

[4.] [W]ith respect to any plan or proposal that may have the purpose, effect or intent, either directly or indirectly, of violating the Anti-Evasion Injunction or Paragraph 2 of this ORDER, including without limitation the measures described in Paragraph 3 of this ORDER, or which may be deemed by a reasonable person to have such purpose, effect or intent, the Republic shall disclose to Plaintiffs, within five business days of the entry of this ORDER, the existence and content of any communications between the Republic (or any representative, agent, instrumentality, political subdivision, or other person or entity acting on behalf of the Republic) and: (i) any holders of beneficial interests in the Exchange Bonds or any registered owners of the Exchange Bonds; (ii) any trustee, indenture trustee, paying agent, trustee paying agent transfer agent, or any agent under the relevant indenture and global notes for the Exchange Bonds; (iii) any registrar, clearing corporations and systems, operators of clearing systems, settlement agents, depositary, depositary participant or custodian for the Exchange Bonds; (iv) any banking, financial, trust or custodial institution and any coordinator, manager, solicitation agent, tender or exchange agent, or financial advisor; (v) any United States or international regulator or government entity; or (vi) any agent, representative, or other person acting on behalf of the persons identified in parts (i), (ii), (iii), (iv), or (v) of this paragraph. For the avoidance of doubt, this disclosure shall include the identity of all parties to the communication, the date and nature of the communication, a detailed description of the content of the communication, and any documents or records constituting or associated with the communication (including without limitation any e-mails, attachments, facsimile transmissions, or other written materials).

WHEREAS, in a letter dated October 11, 2013, the Republic's counsel informed Plaintiffs that "the Republic has informed me that it has no plans to violate the Anti-Evasion Injunction and accordingly does not have documents responsive to [the discovery provisions] of the October 3 Order."

WHEREAS, in a hearing on November 15, 2013, Argentina's counsel told this Court: "There is no plan of any kind—and it's set forth in an affidavit—to do anything with respect to the exchange bonds, the bonds that were issued in the two exchange offers that this Court blessed that are held by 93 percent of the original debt. No such plan. No evidence of such a plan."

WHEREAS, on February 18, 2014, the Republic filed a petition for a writ of certiorari with respect to the August 23 Opinion.

WHEREAS, it has been reported that, on May 23, 2014, Seprin published on its website an article entitled "Argentina entraria en default ante los fonds buitres la semana entrante" that described and attached a memorandum, written in Spanish and dated May 2, 2014, from the Republic's counsel at Cleary, Gottlieb, Steen & Hamilton LLP to the Republic's Minister of Economy and Public Finance (the "Memorandum").

WHEREAS, on May 28, 2014, Clarin published on its website an article entitled "Fondos buitre: sorpresivo cambio de estrategia argentino" that described the Memorandum. According to Clarin, the Memorandum recommends that the Republic "go into default and then restructure the entire debt under another jurisdiction."

WHEREAS, on May 28, 2014, Fortunaweb published on its website an article entitled "Fondos buitres: rumor de default en caso de fallo adverso" that described the Memorandum. According to Fortunaweb, the Memorandum advises the Republic "that, in the event of the US Court throwing the case out or handing down an adverse ruling, the best course for Argentina

would be to go into default and then restructure its entire debt under a non-Argentine jurisdiction."

WHEREAS, on May 29, 2014, the Financial Times published on its Alphaville website an article (the "Financial Times Article") entitled "Recalcitrant, moi?" that described the Memorandum. The Financial Times Article republished a paragraph of the Spanish-language Memorandum, which was translated in the comments. According to that translation, the Memorandum advises the Republic "that, without having the Supreme Court accept a review of the lower court's decision, the best option for the Republic could be to permit the Supreme Court to force a default and then immediately restructure all of the external bonds so that the payment mechanism and the other related elements are outside the reach of US courts." A copy of the Financial Times Article is appended to this ORDER.

WHEREAS, on May 30, 2014, attorneys for Plaintiffs sought from the Court by motion factual findings that the Memorandum is not privileged and an order for Plaintiffs to file a certified translation of the Memorandum.

WHEREAS, on June 12, 2014, the Supreme Court of the United States is expected to consider the Republic's petition for a writ of certiorari to review the August 23 Opinion.

AND WHEREAS, on June 30, 2014, the Republic is scheduled to make a payment on the Exchange Bonds.

THE COURT FINDS THAT:

1. The Memorandum and its translation into English have been published to such an extent that the document no longer can be considered confidential, and whether or not that document has ever been covered by the attorney-client privilege or any other applicable privilege or protection, any privilege or protection as to that document accordingly has been waived. *See,*

e.g., *United States v. Philip Morris Inc.*, 212 F.R.D. 421, 428 (D.D.C. 2002) ("These documents have been widely disseminated and are readily available to the public not only throughout the United States, but worldwide. As previously noted, the documents are posted on the House Commerce Committee's internet website . . . . Because of this widespread disclosure, the public policy basis for maintaining their confidentiality has been eliminated.").

2. The formulation and design of the scheme that is purportedly referenced in the Memorandum for the Republic to "restructure all of the external bonds so that the payment mechanism and the other related elements are outside the reach of US courts" violates this Court's Orders of March 5, 2012, and October 3, 2013, which prohibit the Republic and its agents from formulating or designing any alteration of the means by which the Republic makes payments on the Exchange Bonds.

3. Advising the Republic to restructure its bonds to take its payment mechanism outside the reach of U.S. courts would be fundamentally inconsistent with the basic premises of the adversary system and would further the Republic's violation of this Court's Order of October 3, 2013; the Memorandum was created with the intent to facilitate such misconduct; and for that reason the Memorandum is not protected by the attorney client privilege. *See Chevron Corp. v. Donziger*, 11 CIV. 0691 LAK JCF, 2013 WL 4045326 (S.D.N.Y. Aug. 9, 2013).

4. Permitting the Republic to maintain privilege over the Memorandum would further a fraud on the Court because it would permit the Republic's counsel to continue its practice of denying that the Republic has developed a plan to alter the means by which the Republic makes payments on the Exchange Bonds.

IT IS HEREBY:

1. ORDERED that Plaintiffs shall file with the Court a certified translation of the Memorandum.

2. DECLARED that the formulation and design of the scheme that is purportedly referenced in the Memorandum for the Republic to "restructure all of the external bonds so that the payment mechanism and the other related elements are outside the reach of US courts" violates this Court's Orders of March 5, 2012, and October 3, 2013, which prohibit the Republic and its agents from formulating or designing any alteration of the means by which the Republic makes payments on the Exchange Bonds.

3. ORDERED that the Republic is now and is permanently PROHIBITED from taking any action or planning to take any action—either directly or through any representative, agent, instrumentality, political subdivision, or other person or entity acting on behalf of the Republic—to evade or attempt to evade the purposes and directives of the Amended February 23 Orders, to render or attempt to render those Orders ineffective, or to diminish or attempt to diminish the Court's ability to supervise compliance with the Amended February 23 Orders without prior approval of the Court. This prohibition extends to taking any step toward an action, or toward planning or devising a means by which to take an action, to evade or attempt to evade the purposes and directives of the Amended February 23 Orders, including, without limitation, the formulation or design of any alteration, amendment, change, or exchange of the processes or specific transfer mechanisms by which it makes payments on the Exchange Bonds, or the formulation or design of any means by which the Republic might transfer, recreate, refinance, exchange, or substitute obligations now existing under the Exchange Bonds through other debt instruments, contracts, or securities in the future.

4. ORDERED that the Republic shall within 72 hours of the date of this ORDER produce to Plaintiffs any and all documents or records relating to the scheme referenced in the Financial Times Article and/or the Memorandum, and shall produce to Plaintiffs any and all documents or records relating to the scheme referenced in the Financial Times Article and/or the Memorandum created after the date of this ORDER within 72 hours of their creation. Any claim of privilege by the Republic shall be documented in a detailed privilege log of a type that is satisfactory to Plaintiffs.

5. ORDERED that the Republic shall within 72 hours of the date of this ORDER produce to Plaintiffs any other documents or records reflecting any other plan or proposal, whatever its stage of development, to evade the Amended February 23 Orders in the event the Supreme Court denies certiorari or rules for Plaintiffs on the merits, and shall produce to Plaintiffs any and all documents or records reflecting any other plan or proposal, whatever its stage of development, to evade the Amended February 23 Orders created after the date of this ORDER within 72 hours of their creation. Any claim of privilege by the Republic shall be documented in a detailed privilege log of a type that is satisfactory to Plaintiffs.

6. ORDERED that with respect to any plan or proposal of any stage of development that may have the purpose, effect or intent, either directly or indirectly, of violating the Anti-Evasion Injunction or Paragraph 2 of the October 3 Order, Paragraph 4 of the Amended February 23 Orders, or Paragraph 2 of this ORDER, including without limitation the measures described in Paragraph 3 of the October 3 Order, the Financial Times Article, and the Memorandum, or which would be deemed by a reasonable person to have such purpose, effect or intent, the Republic shall disclose to Plaintiffs, within 72 hours of the entry of this ORDER, the existence and content of any communications between the Republic (or any representative, agent,

instrumentality, political subdivision, or other person or entity acting on behalf of the Republic) and: (i) any holders of beneficial interests in the Exchange Bonds or any registered owners of the Exchange Bonds; (ii) any trustee, indenture trustee, paying agent, trustee paying agent transfer agent, or any agent under the relevant indenture and global notes for the Exchange Bonds; (iii) any registrar, clearing corporations and systems, operators of clearing systems, settlement agents, depositary, depositary participant or custodian for the Exchange Bonds; (iv) any banking, financial trust or custodial institution and any coordinator, manager, solicitation agent, tender or exchange agent, or financial advisor; (v) any United States or international regulator or government entity; or (vi) any agent, representative, or other person acting on behalf of the persons identified in parts (i), (ii), (iii), (iv), or (v) of this paragraph. For the avoidance of doubt, this disclosure shall include the identity of all parties to the communication, the date and nature of the communication, a detailed description of the content of the communication, and any documents or records constituting or associated with the communication (including without limitation any e-mails, attachments, facsimile transmissions, or other written materials). To the extent that any such communications come into existence after the date of this ORDER, such communications shall be disclosed to the Court and to Plaintiffs' respective counsel within 72 hours of the sending or receipt of such communications. Any claim of privilege by the Republic shall be documented in a detailed privilege log of a type that is satisfactory to Plaintiffs.

Dated: New York, New York
May ___, 2014

Thomas P. Griesa
U.S. District Judge