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October 10, 2023

VIA ECF

Hon. Mary Kay Vyskocil
U.S. District Court, Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10007

Re: *Glacial Capital, LLC et al v. The Province of Buenos Aires*, Case No. 1:21-cv-10786-MKV

Dear Judge Vyskocil:

We are counsel to Glacial Capital, LLC and TRSE Holdings, LLC, the plaintiffs and judgment creditors in the above-referenced action (collectively, “**Judgment Creditors**”). We write pursuant to Your Honor’s Individual Rule 3.D to request the Court’s permission to file a motion to compel third parties the Bank of New York Mellon (“**BoNY**”), its wholly owned subsidiary Pershing, LLC (“**Pershing**”), and American Express Travel Related Services Company, Inc. (“**American Express**”) to respond to a post-judgment subpoena *duces tecum* that Judgment Creditors served on each of them in May 2023 (“**Subpoena**”), a copy of which is attached hereto as **Exhibit A**.¹

These banks likely possess records showing that government officials of the Province of Buenos Aires (“**PBA**” or “**Judgment Debtor**”), and related entities and individuals, have misappropriated public funds and/or illicitly transferred them overseas, primarily through an Argentine brokerage firm called Allaria Ledesma & Cia (“**Allaria**”). Judgment Creditors are entitled to discovery into these international asset flows to aid in the enforcement of this Court’s March 20, 2023 Judgment against the PBA (“**Judgment**”) (ECF 57). Having reached an impasse in discovery negotiations with these banks, Judgment Creditors should be permitted to move to compel them to respond.

I. Judgment Creditors’ Post-Judgment Subpoena *Duces Tecum*

The Court entered the Judgment in favor of Judgment Creditors and against the PBA in the amount of \$35,092,958.41, plus post-judgment interest, on March 20, 2023. ECF 57. Subsequently, the PBA refused to pay the Judgment. Accordingly, beginning on May 2, 2023, and pursuant to Federal Rules of Civil Procedure 45 and 69, Judgment Creditors served the Subpoena on eleven banks to obtain information about the PBA’s assets that may be used to satisfy the Judgment.

The Subpoena seeks SWIFT messages – *i.e.*, international electronic funds transfer records – pertaining to a number of PBA government entities, state-owned corporations, and their principals and affiliates; entities and individuals in Argentina that may be their debtors, creditors, or counterparties; and individuals who may have misappropriated assets from these entities. Ex. A

¹ While Judgment Creditors have endeavored to comply with Individual Rule 3.D, they understand that a joint letter is unwarranted because BoNY, Pershing, and American Express are non-parties.

at 8-31. SWIFT, or the “Society for Worldwide Interbank Financial Telecommunication,” is an organization that “provides a messaging service” that is “considered the ‘nerve center of the global banking industry,’ routing more than 11 million transactions each day ‘between banks, brokerages, stock exchanges and other institutions.’” *Amidax Trading Grp. v. S.W.I.F.T. SCRL*, 671 F.3d 140, 143 (2d Cir. 2011) (citations omitted).

The Subpoena requests that the banks search these entities’ names on their SWIFT message databases and produce results for transfers that exceeded US\$ 25,000 going back to 2013, just before a large amount of misappropriation and transfer of public funds reportedly occurred in 2014 and 2015. Ex. A at 8. The search terms also have a priority of 1, 2, or 3, which reduces burden on the banks by facilitating rolling productions and the possibility of suspending lower-priority searches if productions for higher-priority search terms prove sufficiently relevant. *Id.* at 9-31. Precedent confirms Judgment Creditors’ right to subpoena third-party banks for this SWIFT information to map out the PBA’s financial circulatory system and locate its assets that may satisfy the Judgment—including funds allegedly misappropriated from the PBA by public servants or other entities. *See, e.g., Doraleh Container Terminal SA v. Republic of Djib.*, Misc. Action 23-83 (BAH) (D.D.C. Sep. 21, 2023) (affirming similar SWIFT subpoena served on ten banks going back eleven years); *EM Ltd. v. Republic of Arg.*, 695 F.3d 201, 208 (2d Cir. 2012) (similar), *aff’d*, *Republic of Arg. v. NML Capital, Ltd.*, 573 U.S. 134, 140 (2014) (validating such subpoenas for discovery from “third-party banks about the judgment debtor’s assets” worldwide); *NML Capital, Ltd. v. Republic of Arg.*, No. 2:14-cv-492 (VCF), 2014 WL 3898021 (D. Nev. Aug. 11, 2014) (allowing discovery into allegedly embezzled sovereign debtor’s assets to enforce judgment).

II. Post-Judgment Discovery Reveals that PBA Officials May Have Misappropriated And/Or Illicitly Transferred Public Funds

Eight of the subpoenaed banks have been complying with the Subpoena and working with Judgment Creditors to tailor it to minimize burden. The SWIFT data they have produced to date, in tandem with public reporting, indicate that PBA government officials may have been systematically misappropriating public funds and transferring them out of Argentina. These transfers are recent, inexplicably large for public servants, and have been made while the Argentine populace lives under rampant inflation, widespread poverty, and strict capital controls limiting the flow of US dollars out of the country.

These apparently illicit transfers primarily involve one well-connected brokerage firm in Argentina: Allaria. A handful of examples reveal Allaria’s centrality to this scheme. Carlos Montana, Chief of Staff of the PBA’s Ministry of Security, and Diego Benitez, its Undersecretary of Public Works, appear to have moved hundreds of thousands of dollars into and out of Argentina through Allaria in the last two years. Similarly, one Ana Maria Bazan, who may be related to a PBA advisor of the same name and is implicated in the Pandora Papers, has used Allaria to move millions of dollars into and out of Argentina. These sums, along with the telltale tactic of using a brokerage to evade capital controls, are highly suggestive of corruption and money laundering.

The web of apparently illicit transfers with Allaria at the center also includes politically connected corporations. For instance, Corporación America, a multibillion-dollar airport operator run by Martín Eurnekian, has moved several million dollars from Swiss bank accounts into Argentina through Allaria in recent years. Eurnekian, in turn, was implicated in the infamous Notebook

(*Cuadernos*) corruption scandal, which exposed a massive bribery network controlled by Cristina Fernández de Kirchner, Argentina’s current Vice President and President from 2007 to 2015.

Allaria itself is also reportedly embroiled in scandals in Argentina. These allegedly include an insider trading scandal involving the repurchase of Argentine sovereign bonds by the country’s National Social Security Administration. The firm’s principal, Ernesto Allaria, has enjoyed a meteoric rise in recent years – coinciding with the illicit transfers described above – and is close to the Kirchner family. Like other connected financiers, he may be linked to an ongoing corruption scandal in which Martín Insaurralde, who recently resigned as the PBA’s Chief of Staff, inexplicably paid a US\$ 20-million divorce settlement and was photographed enjoying luxuries that he could not legitimately afford.² Insaurralde reportedly moved this immense sum through the Uruguayan brokerage Pro Capital via an account opened there by prominent Argentine financier Miguel Sulichin (who runs another financial entity called Advise Wealth Management).

The SWIFT data reveals many other instances of PBA and Argentine officials transferring potentially misappropriated public funds abroad in violation of capital controls. Matias Garcia, a Director of the PBA’s water and sewer service (*ABSA*), who has used ABSA to funnel excessive payments, apparently transferred huge sums of money into a Swiss bank account. And ironically, José Ignacio de Mendiguren, Argentina’s Secretary of Production, who reports to Minister of Economy (and presidential candidate) Sergio Massa, used a broker to transfer nearly US\$ 1 million abroad—*when his own Ministry imposed the very capital controls that he evaded*. These are only a few examples of misappropriation and asset concealment. Further discovery will reveal more.

III. BoNY and Pershing Have Refused To Comply with the Subpoena

Judgment Creditors served BoNY and its wholly owned subsidiary Pershing with the Subpoena because public information indicates they have large roles in international money transfers in Argentina. On May 10, 2023, Judgment Creditors met and conferred with both banks (who are represented by the same in-house counsel and take largely identical positions). The banks agreed to process the Subpoena and run the nearly 250 Priority 1 search terms across their international wire transfer message databases (which contains SWIFT message data), while Judgment Creditors agreed to hold the lower priority search terms in abeyance pending the results of the Priority 1 production, and to limit the responsive time frame to 7 years.

On May 22, the banks backtracked and stated that they could run only 5 search terms over 6 months. On June 26, the banks admitted they could run the search terms on their databases after all, but stated they would only run 20 out of the nearly 250 Priority 1 search terms. Judgment Creditors agreed to review an initial production for 20 Priority 1 search terms, while reserving their right to request that the banks process the remaining terms. The banks made their initial productions just over a month later on August 2. Although limited, the productions contained a high proportion of relevant records. Thus, on August 16, Judgment Creditors requested that the banks run the remaining Priority 1 search terms as previously agreed. The banks refused to run more than 40 (*i.e.*, under one-fifth) of the remaining Priority 1 terms.

² The ongoing Insaurralde scandal is being widely covered in Argentine press. *See, e.g., Grim future for controversial politician Insaurralde*, MERCOPRESS (Oct. 6, 2023), <https://en.mercopress.com/2023/10/06/argentina-grim-future-for-controversial-politician-insaurralde>.

On October 2, Judgment Creditors rejected this insufficient offer and again directed the banks to run the remaining Priority 1 search terms. Judgment Creditors noted that the Subpoena would impose only routine compliance costs on major banks like BoNY and Pershing; the banks had a procedure to run search terms and produce responsive records; and Judgment Creditors had already narrowed the Subpoena by limiting the search terms to Priority 1 and the date range to 7 years. On October 6, Judgment Creditors and the banks met and conferred by phone. The banks claimed to have limited capacity to conduct searches. Judgment Creditors reiterated that they had made significant accommodations, and while they could narrow certain search terms on a case-by-case basis, they could not limit the Subpoena further. The parties agreed they were at an impasse and that the Court's guidance was warranted. On October 10, the banks further counteroffered running 60 more Priority 1 search terms, but that proposal was unacceptable to Judgment Creditors.

BoNY and Pershing undoubtedly possess SWIFT data responsive to many of the remaining Priority 1 search terms and relevant to enforcement of the Judgment. In addition to the limited, but highly relevant, production these banks made on August 2, the productions of *other* banks show BoNY and Pershing routing international transfers for PBA officials named in the Subpoena, confirming that these banks do have highly relevant and responsive information. Indeed, Pershing apparently performs settlement, clearing, and custody for Allaria, meaning it possesses records of potential misappropriation and illicit transfers undertaken by PBA and Argentine officials as described above. Further, Pershing reportedly routed the inexplicable US\$ 20 million divorce payment that Martín Insaurralde, the PBA's former Chief of Staff, initiated via proxies from the Uruguayan brokerage Pro Capital. While Judgment Creditors do not suggest any impropriety by BoNY or Pershing and assume they are unaware of the malfeasance described herein, this information underscores that they urgently must comply with their discovery obligations.

IV. American Express Has Failed To Respond to or Comply with the Subpoena

Judgment Creditors served American Express with the Subpoena on May 2, 2023 because it is reported to have a significant role in international money transfers in Argentina. Over the following months, Judgment Creditors contacted the bank many times by phone, but could not reach anyone authorized to discuss the Subpoena. On September 15, Judgment Creditors emailed the bank's Subpoena Response Unit, requesting a meet and confer. By email over the following weeks, the bank refused to process the Subpoena and ignored Judgment Creditors' meet and confer requests. On October 4, Judgment Creditors again asked to meet and confer, emphasizing that the bank was delinquent in its response to the Subpoena. The bank has not responded. Thus, Judgment Creditors have been unable to meet and confer with American Express.

For all these reasons, Judgment Creditors respectfully request that the Court permit them to move to compel these banks to respond to the Subpoena in lieu of conducting an informal conference.

Respectfully submitted,

/s/ Dennis Hranitzky
Dennis Hranitzky

Counsel for Judgment Creditors

CC: Counsel for BoNY, Pershing, and American Express