

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X	:	
LAIG,	:	
	:	Index No. 160103/14
Plaintiff,	:	
	:	
-against-	:	
	:	
MEDANITO S.A.,	:	
	:	
Defendants.	:	
-----X	:	

AFFIDAVIT OF ARIEL CAROSIO

Buenos Aires)
) ss:
Argentina)

ARIEL CAROSIO, being duly sworn, deposes and says:

1. I am a co-Chief Executive Officer of Medanito S.A. (“Medanito”), the defendant in this matter, and I submit this affidavit in opposition to LAIG’s motion for a preliminary injunction. Unless otherwise stated, I have personal knowledge of the facts set forth herein. My primary language is Spanish and I have reviewed a Spanish language translation of this affidavit prior to signing it.

Introduction

2. LAIG alleges that Medanito improperly purchased the shares of ChañaresHerradosEmpresa de TrabajosPetroteros S.A. (“CHASA”) without the participation of LAIG. The facts, however, show that Medanito complied with the binding agreement between the parties and saved the transaction, which was threatened by LAIG’s inability to finance its obligations. Here are the key facts: *First*, the “Confidentiality Agreement” upon which LAIG bases its entire claim was superseded by the “Binding Offer,” which contained all of the terms

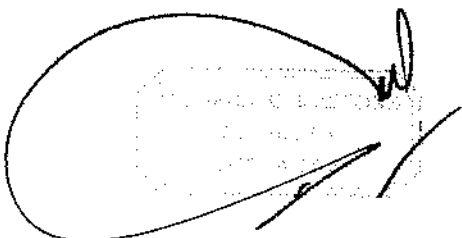
for the purchase of CHASA. (I understand the Binding Offer also requires the parties to arbitrate this dispute in Argentina.) *Second*, the Binding Offer obligated Medanito to buy all the shares of CHASA, if LAIG could not afford them. *Third*, LAIG could not afford to buy its portion of the CHASA shares and never represented that it could. *Fourth*, Medanito saved the deal by devising an alternative plan to purchase LAIG's portion, avoiding any potential liability for itself or LAIG. *Fifth*, it was clear to all of the parties that LAIG would not participate in the closing and the closing date had been extended to finalize alternative funding. *Sixth*, Medanito never closed the door on LAIG; it offered, and the parties tried to negotiate, the right for LAIG to purchase a portion of the shares LAIG could not acquire directly from CHASA.

3. The injunctive relief LAIG seeks will interfere with Medanito's business by further damaging its reputation and integrity in the marketplace. Medanito has already suffered this harm as a result of LAIG's distorted pleadings and the temporary restraining order in place, which has even resulted in misstated press commentary. Medanito has been, and will continue to be, forced to dispel the concerns of Medanito's lenders, bond investors, shareholders and others raised by any further preliminary relief entered by this Court.

Expanding Medanito's Business

4. Medanito is an Argentine energy company. It provides oil and natural gas exploration services and focuses on developing new energy business opportunities by investing in and forming strategic alliances with existing energy companies (e.g. Shell, Esso, Total, Chevron).

5. Medanito's business is focused in Argentina. Medanito does not conduct business in New York. Nor does Medanito have offices or employees in New York. All of the in-person meetings with LAIG took place in Buenos Aires, Argentina.



6. In 2012, prior to any meetings with LAIG, Medanito considered purchasing CHASA, as well as two other companies, Gran Tierra Energy Inc. and Petroleos Sudamericanos S.A., but chose to delay an acquisition and continue to monitor the companies and market.

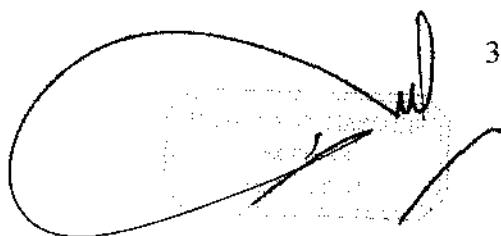
7. Subsequently, in February 2013, Medanito informed LAIG that CHASA was for sale. This occurred when Jorge de Pablo, a director of LAIG, approached Medanito and represented that LAIG wanted to purchase Medanito. Medanito rejected the offer—it was not interested in being acquired—but informed Mr. de Pablo about the two Argentine energy companies that it knew were for sale: CHASA and Gran Tierra Energy Inc.

8. Medanito's interest in acquiring CHASA resurfaced in September 2013, after learning that LAIG's attempt to acquire CHASA with another partner, Unitec Energy S.A. ("Unitec"), had failed. In October 2013, LAIG approached Medanito to consider the acquisition with LAIG. Based on Mr. de Pablo's representations that LAIG had access to international financing to support the acquisition, Medanito chose to proceed.

Medanito-LAIG Negotiations

9. LAIG brings this action based on Medanito's purported breach of the "Confidentiality Agreement," dated November 15, 2013, a preliminary agreement that Medanito and LAIG executed in order to consider jointly purchasing CHASA. A copy of the Confidentiality Agreement is attached hereto as Exhibit A. The purpose of the Confidentiality Agreement was to bring Medanito and LAIG to the point at which they could make an offer to acquire CHASA (the "Transaction"). Paragraph 6, the "Non-Circumvent Provision," states that, for one year, Medanito will not purchase CHASA without LAIG's "participation," unless LAIG doesn't continue with the Transaction:

[Medanito] shall refrain from directly or indirectly participating in the Transaction except if with [LAIG], for a one-year period as from the

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date hereof. However, [Medanito] will be allowed to directly or indirectly participate in the Transaction without [LAIG] at any time in the event [LAIG] decides not to continue with the Transaction.

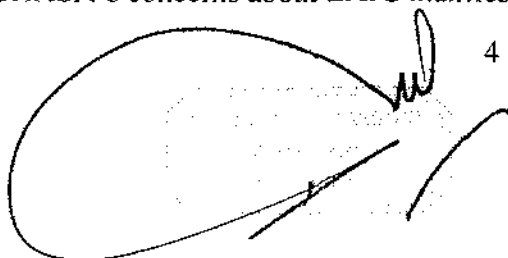
Ex.A ¶ 6. The Confidentiality Agreement adopts New York law and submits disputes “arising out of or related to” the Confidentiality Agreement to the New York Courts. *Id.* ¶ 10. After the Confidentiality Agreement was executed, Medanito’s negotiations with LAIG commenced.

10. Once the Confidentiality Agreement was executed, LAIG provided Medanito with information concerning the CHASA wells and reserves, legal reports and accounting issues. But that information turned out to be useless. It was cut and pasted from LAIG’s proposed transaction with Unitec, outdated, and unhelpful in terms of assessing the value and viability of CHASA. Consequently, Medanito conducted its own extensive study of CHASA utilizing its in-house expertise and multiple outside contractors to conduct legal, environmental, and financial analyses, which lasted for months. LAIG failed to provide any funding for this study despite repeatedly informing Medanito that it had access to significant capital from foreign investors.

11. In November, 2013, Medanito rejected LAIG’s initial proposal that LAIG would purchase 80% of the shares of CHASA and Medanito would purchase 20%. Medanito conditioned its participation upon (i) owning a majority stake in CHASA and (ii) directing and operating the business of CHASA. Medanito had vast oil and gas experience in Argentina and could immediately step in and operate the company. LAIG agreed to the conditions.

Medanito and LAIG Negotiate With CHASA

12. CHASA required certain terms to enter into the Transaction, including requiring Medanito and LAIG to take on joint and several liability for the entire purchase price. CHASA required these terms, I believe, because its prior negotiations with LAIG in the context of its failed Unitec deal made it suspicious of LAIG’s ability to meet any funding obligations it might take on. CHASA’s concerns about LAIG manifested in three ways. First, during a January

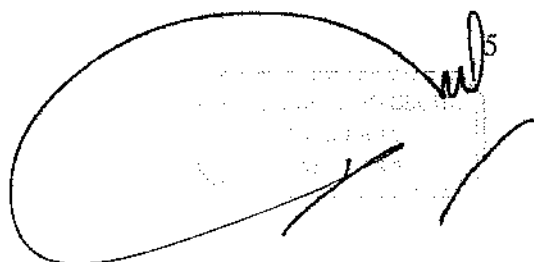
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2014 meeting, CHASA required that all negotiations be directly between Medanito and CHASA; while it was willing to sell shares to LAIG, it told me it would not speak directly with LAIG. Second, CHASA would accept only a formalized written offer for the Transaction. Third, CHASA required Medanito and LAIG be jointly and severally liable for their obligations because CHASA did not trust LAIG and wanted to guarantee that it was fully protected in the event LAIG breached.

13. On February 3, 2014, Medanito and LAIG signed and submitted the Binding Offer to CHASA for the acquisition of 100 % of CHASA's shares. A copy of the Binding Offer, dated February 3, 2014, and an English translation, are attached hereto as Exhibit B. The Binding Offer contains the following key terms:

- Shares – “Medanito shall purchase 51% (fifty-one percent) of the Shares and LAIG, or its assignees, shall purchase 49% (forty-nine percent) of such Shares.” Ex. B § 2.1.
- Joint and Several Liability – “Medanito and LAIG shall be *jointly and severally liable* for any obligations arising from this Offer, particularly the obligation to pay the Price [\$ US 85 million].” *Id.* § 2.2 (emphasis added).
- Escrow – “As security for this Offer and the closing of the Transaction, [Medanito and LAIG], upon acceptance hereof . . . shall transfer the amount of USD 3,000,000 . . . to be held in escrow.” *Id.* § 3.3.1.
 - Medanito agreed that it would fund the escrow because LAIG did not have the funds, since it had not yet secured investors.
- Exclusivity – “[CHASA] . . . until the Closing Date [defined in § 10.1 as 120 days after acceptance of the offer], undertake[s] to abstain from initiating or conducting, directly or indirectly, any negotiations with third parties” *Id.* § 6.
- Right of First Refusal – “[CHASA] shall notify [Petrolera El Trébol S.A. (“PETSA”)] of this Offer so that PETSA may exercise its right of first refusal.” *Id.* § 7.1.
 - Pursuant to an agreement between PETSA (an Argentine energy company) and CHASA, PETSA had a right of first refusal for the purchase of CHASA, which it could exercise for a period of 90 days. PETSA failed to exercise its right, but subsequently

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made clear its interest in acquiring CHASA if the Transaction was not finalized by the Closing Date.¹

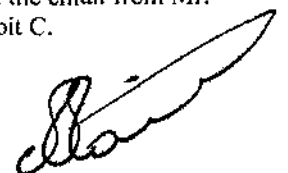
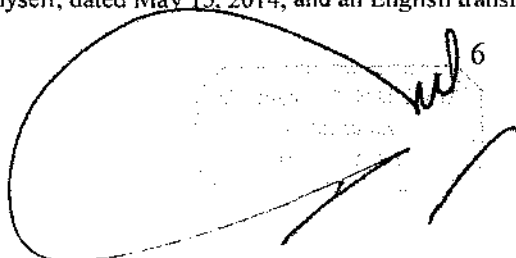
14. Central to this dispute, the terms of the Binding Offer would supersede terms of the Confidentiality Agreement, including the Non-Circumvent Provision, and direct any dispute between the parties to arbitration in Argentina. The express terms of the Binding Offer state that, once it is accepted by CHASA, the Binding Offer “is the entire agreement between the parties . . . and supersedes any prior negotiation or agreement in relation to the subject matter of the Offer.” Ex. B § 15 (emphasis added). It also states that any dispute concerning the agreement for Medanito and LAIG to acquire the shares of CHASA is subject to binding arbitration in Argentina (*id.* § 14.2) and the agreement shall be governed by Argentine law (*id.* § 14.1):

The Parties do hereby expressly state that any disagreement, controversy or conflict which may arise in relation to the validity, interpretation, consideration, or performance of the agreement from the acceptance of the Offer, its negotiation, and/or closing of the Transaction and/or any other difference shall be definitely settled in [arbitration]. (emphasis added).

LAIG invoked the arbitration provision in connection with this dispute. It initiated a mediation in Argentina, which summoned the shareholders of CHASA, invoking the § 14.2 of the Binding Offer. In the mediation demand, LAIG complains—as it does in the New York action—that Medanito improperly purchased shares meant for LAIG. A copy of the mediation demand, dated June 13, 2014, and an English translation are attached hereto as Exhibit D.

15. CHASA accepted the Binding Offer on February 5, 2014, making it binding on all parties.

¹ LAIG and Medanito understood at all times that any delays closing the Transaction could revive PETSA’s right of first refusal. Mr. de Pablo wrote in an email to me in the context of negotiations finalizing the Transaction, “any delay [closing] may oblige us to refile the ROFR with Petsa, which would be crazy.” A copy of the email from Mr. de Pablo to myself, dated May 15, 2014, and an English translation, are attached hereto as Exhibit C.



LAIG Cannot Fund Its Share

16. Once CHASA accepted the Binding Offer, LAIG still needed to secure its financing. LAIG informed Medanito that it was unable to finance its portion of the Transaction and required outside investors, which it had not yet secured. The Closing Date was set for June 5, 2014. LAIG was required to secure US \$41,405,000—its portion (49%) of the shares—by that date. LAIG sent a letter to Medanito on February 5, 2014, (the “February 5 LAIG Letter”), which stated the available liquid capital of LAIG (US \$10 million) and the investors it hoped would participate at the time—Oryxa Capital LP (“Oryxa”) (US \$10 million) and Redwood Master Fund, Ltd. (“Redwood”) (US \$40 million). A copy of the February 5 LAIG Letter is attached hereto as Exhibit E.

17. But shortly thereafter, Medanito was informed that Oryxa had backed out. LAIG, consequently, would rely solely on funds from Redwood, which assumed the position left by Oryxa.

18. But less than ten days before the June 5 Closing Date, Medanito was informed by LAIG that it did not have the financing and that Redwood backed out, leaving LAIG unable to finance its share. On May 27, 2014, a telephone conference was held among myself, Mr. de Pablo, and Ruben Kliksberg (the principal at Redwood). On that call, Mr. Kliksberg stated that Redwood would not participate in the Transaction. LAIG therefore had no investors to support its US \$41,405,000 obligation, and apparently only US \$10,000,000 liquid capital.

19. Mr. de Pablo knew that Redwood was LAIG’s only hope for funding its share. He wrote to me on May 28, 2014 at 22:07: “something needs to be proposed to [R]edwood! We can’t let him get away!” A notarized English transcript of the text messages exchanged between Mr. de Pablo and me on May 28, May 29, and June 5, 2014 is attached as Exhibit F.




20. On May 27, 2014, after Redwood backed out, Mr. de Pablo told me that LAIG needed a two-to-four month extension of the June 5 Closing Date because of its difficulties obtaining the requisite funds. I told LAIG that Medanito could request a small (possibly two-day) extension from CHASA, but not two-to-four months because it would revive PETSA's right of first refusal putting the Transaction at risk, which Mr. de Pablo understood. *See supra* ¶ 13 and n.1; *see also* Ex. B § 7.1. The Closing Date thus remained June 5.

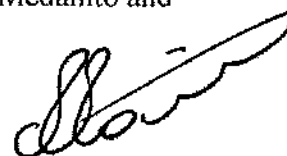
Medanito Saves The Transaction

21. Medanito had no choice but to save the deal itself, devising an alternative to acquire LAIG's 49% share or else risk (i) LAIG and Medanito being held liable for the entirety of the Transaction (*see* Ex. B. § 2.2), but Medanito would be the first to pay since LAIG had no assets in Argentina; (ii) Medanito losing its US \$3 million deposit being held in escrow (*see supra* ¶ 13); (iii) reviving PETSA's right of first refusal (*see supra* ¶ 13; *see also* Ex. B, § 7.1); and (iv) opening the possibility that CHASA would negotiate with other interested parties (*see* Ex. B, § 6). Given its investment of both time and money, and its liability for any default, Medanito could not afford to lose this deal.

22. Medanito devised an alternative plan to save itself and LAIG, and coordinated implementation with CHASA. Medanito, unable to purchase the entirety of the shares on its own, concluded that Exmed S.A. ("Exmed") (majority shareholder of Medanito) would propose purchasing 48% of the shares—Medanito would purchase 52%. On May 29, 2014, Medanito explained to CHASA LAIG's stated inability to fund by the Closing Date. On May 30, 2014, Medanito presented to CHASA's lawyers the alternative transaction involving Exmed. CHASA accepted the proposal involving Exmed on June 3, 2014, and extended the Closing Date to June 12, 2014, to allow time to finalize Exmed's new deal documentation. Medanito and



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Exmed worked on their end to prepare for closing, including obtaining approval from both boards of directors.

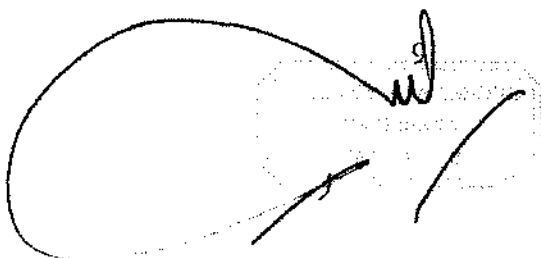
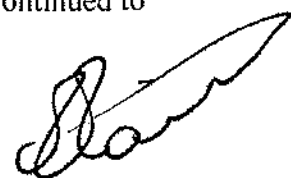
Medanito Keeps LAIG Involved

23. Medanito tried to keep LAIG involved by negotiating with LAIG for LAIG to purchase of shares of CHASA after the Transaction closed, if LAIG could arrange financing. It was never contemplated that Exmed would retain all of the shares of CHASA; it was merely brought in to save the Transaction. Specifically, on or around May 30, 2014, Medanito informed LAIG that it would move ahead with the alternative involving Exmed, but also offered to keep LAIG involved. On May 30, 2014, LAIG hand-delivered to me a proposal (the "LAIG May 30 Proposal") about LAIG's continued involvement after the Transaction closed. A copy of the LAIG May 30 Proposal and English translation are attached hereto as Exhibit G.

24. The negotiations for LAIG's involvement continued until just prior to the original June 5 Closing Date. On June 3, 2014, Medanito proposed (i) offering LAIG the opportunity to purchase 25% to 40% of the shares of CHASA after closing; (ii) paying a commission to LAIG, and (iii), in the event LAIG did not purchase the shares, refunding LAIG's expenses incurred in connection with the original proposed transaction. A copy of Medanito's proposal to LAIG, dated June 3, 2014, and English translation are attached hereto as Exhibit H.

Medanito And Exmed Close With CHASA

25. Prior to the original June 5 Closing Date, all parties, including LAIG, understood that Exmed would be participating in the Transaction in LAIG's place. On June 4, 2014, I met with Mr. de Pablo at Medanito's offices and informed him that the Closing Date had been extended to June 12, 2014. Mr. de Pablo made no representations that LAIG had come up with the financing or was capable of closing June 5 as initially agreed. We also continued to

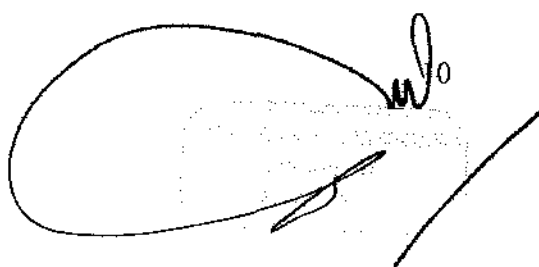
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negotiate the proposal to keep LAIG involved after the closing. Mr. de Pablo delivered a letter to Medanito that same day in furtherance of those negotiations. A copy of the letter from Jorge de Pablo to Medanito, dated June 4, 2014, and English translation are attached hereto as Exhibit I. Mr. de Pablo's June 4 letter made no statement concerning LAIG's ability to finance its obligations under the original transaction terms.

26. Mr. de Pablo's June 4 letter did, however, state "that it will be Medanito S.A.'s sole liability if the CHASA purchase is not executed." Ex. I at 3. Concerned with LAIG's conflicting positions, Medanito then confirmed that LAIG was unable to participate in closing the Transaction. On June 4, 2014, the day prior to the originally scheduled June 5 Closing Date, I sent a letter to Mr. de Pablo requesting LAIG provide "sufficient proof of the existence and availability of the sums of money that are necessary to cancel your obligation with [CHASA]." The letter demanded that LAIG provide such proof within two hours of receipt of the letter, which was entirely reasonable given the proximity—mere hours—to the originally scheduled closing date. A copy of the letter from me to Jorge de Pablo, dated June 4, 2014, and English translation are attached hereto as Exhibit J.

27. LAIG failed to provide any definitive response that it had come up with US \$41,405,000 and was capable of closing the Transaction. On June 4, all parties understood that the Transaction was proceeding with Exmed's participation.

28. Despite admittedly knowing that the Closing Date had been extended, LAIG apparently showed up at CHASA's offices on June 5, 2014. *See de Pablo Aff.* ¶ 28. LAIG suggests that Medanito and CHASA were scheming in CHASA's offices when LAIG arrived. *See id.* ¶¶ 29-30. But no one from Medanito was even at CHASA's offices; there was no meeting—let alone closing—taking place. Mr. de Pablo's affidavit disingenuously claims that

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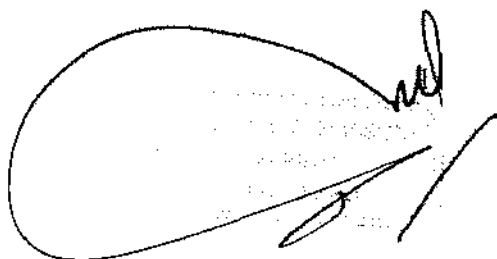
he did not know the closing did not take place on June 5, 2014 (*id.* ¶¶ 28-30). Yet, he did know. On June 10, 2014, (after the supposed secret closing), Mr. de Pablo sent me a text message asking if he could help with the upcoming closing: “What’s up Ariel? How’s the closing going? Is there anything I can help you with?” (emphasis added). A notarized English transcript of the June 10, 2014 text message sent from Mr. de Pablo to me is attached hereto as Exhibit K.

29. The Transaction closed on June 12. Medanito acquired 52% of the shares of CHASA and Exmed acquired 48%. Later in the month, Medanito contacted LAIG to discuss LAIG’s purchase of shares in CHASA, but we received no response.

Harm Suffered By Medanito

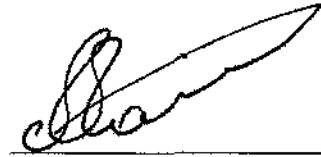
30. The temporary restraining order already has caused damages to Medanito. The restraint has been the subject of some media attention in the Argentine press that has distorted the nature of the proceedings here. One article, for example, states that this Court has ordered an “embargo” on Medanito’s shares of CHASA. A copy of the article published in *Ámbito Financiero*, dated October 16, 2014, and English translation are attached hereto as Exhibit L. The news media is also reporting that the restraint is having “unexpected repercussions and is altering the oil industry” in Argentina. A copy of the article published in *Ámbito Financiero*, dated September 12, 2014, and English translation are attached hereto as Exhibit M.

31. LAIG’s actions and the press commentary have damaged Medanito’s reputation and integrity in the market and threatened to disrupt our business operations. Banks that have extended \$45 million in financing to Medanito have expressed concern about the restraint and the

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press articles about it. So have Medanito's bond investors, as the pricing of any future bond offerings may be affected. The entering of a preliminary injunction will make the problem worse.

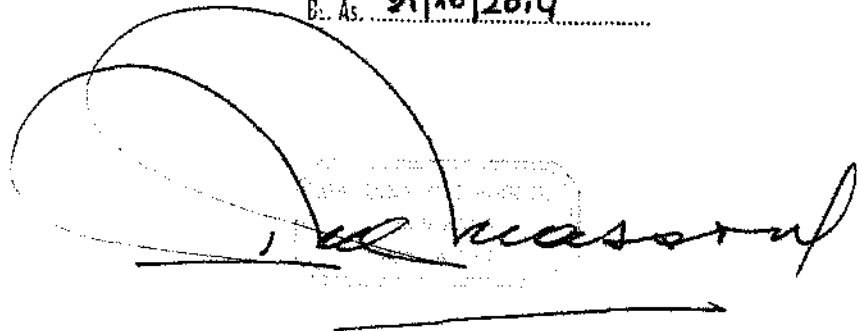
32. For the reasons stated here and in the memorandum of law submitted by Medanito's counsel, I respectfully request that the Court deny LAIG's application for a preliminary injunction.



Ariel Carosio

Sworn to before me this
__ day of _____, 2014

FIRMA CERTIFICADA EN EL SELLO
R10746338 ANEXO.....
B. As. 31/10/2014





F 010746338

1 Buenos Aires, 31 de octubre de 2014 . En mi carácter de escribano
2 TITULAR DEL REGISTRO NOTARIAL CUATROCIENTOS TREINTA Y SEIS

3 **CERTIFICO:** Que la/s firma que obra/n en el
4 documento que adjunto a esta foja, cuyo requerimiento de certificación se
5 formaliza simultáneamente por ACTA número 138 del LIBRO
6 número 038 , es/son puesta/s en mi presencia por la/s persona/s
7 cuyo/s nombre/s y documento/s de identidad se menciona/n a continuación así como
8 la justificación de su identidad. Ariel Francisco CAROSIO, D.N.I.

9 20.565.915. **INTERVIENE:** Como apoderado de “MEDANITO S.A.”, lo que
10 acredita con la escritura de poder general amplio número 1.067, del 3/11/2009,
11 otorgada ante la Escribana de esta Ciudad, Nelly G. Sampayo, al folio 3.132 del Registro
12 Notarial 24 de su adscripción, cuyo original tengo a la vista, del que resultan suficientes
13 facultades para este acto y que la sociedad se inscribió en I.G.J. el 27/8/1993, bajo el
14 número 8.010 del libro 113, tomo A de sociedades anónimas. La autorizante deja
15 constancia: a) Que el compareciente justifica su identidad de acuerdo al inciso a) del
16 artículo 1.002 del Código Civil, por ser persona de su conocimiento; b) Que la firma se
17 certificó en documento redactado en idioma extranjero, manifestando el requirente que
18 el mismo consiste en una declaración bajo juramento para ser presentada en juicio; y c)
19 Que se utilizó la foja de actuación notarial número “F” 10746338. CONSTE.-

Reg. 436

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MARIANA C. MASSONE
ESCRIBANA
MAT. 4383