

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

AUTONOMOUS MUNICIPALITY OF SAN JUAN,

Plaintiff,

-against-

THE FINANCIAL OVERSIGHT AND  
MANAGEMENT BOARD FOR PUERTO RICO,  
GOVERNMENT DEVELOPMENT BANK OF  
PUERTO RICO, and PUERTO RICO FISCAL  
AGENCY AND FINANCIAL ADVISORY  
AUTHORITY,

Defendants.

No. 17 Civ. \_\_\_\_\_

**COMPLAINT FOR  
DECLARATORY  
JUDGMENT AND  
INJUNCTIVE RELIEF**

Plaintiff Autonomous Municipality of San Juan (“San Juan” or the “City”), by and through its undersigned attorneys, alleges as follows for its complaint.

**I. NATURE OF THE ACTION**

1. On July 14, 2017, the Financial Oversight and Management Board for Puerto Rico (“Oversight Board”) conditionally certified a Restructuring Support Agreement (“RSA”) to restructure the debts of the Government Development Bank of Puerto Rico (“GDB”) under Title VI of the Puerto Rico Oversight, Management, and Economic Stability Act, 48 U.S.C. §§ 2101-2241 (“PROMESA”).

2. As relevant to this action, the RSA purports to unlawfully appropriate San Juan’s interests in two types of property. First, the RSA provides that property tax revenues held in a trust pursuant to a trust agreement at GDB for the benefit of San Juan and other municipalities will be appropriated and used to pay all of GDB’s

creditors, including public bondholders. This blatant raiding of a trust would mean that municipalities for whom the funds are held in trust would receive only a fraction of their value, and only if they first execute an onerous settlement agreement with the GDB. These funds are not the property of GDB; these are *trust funds* held by GDB and remain the property of San Juan pursuant to a trust agreement executed by GDB.

3. In addition, with respect to a second category of funds, the RSA purports to illegitimately strip San Juan and other municipalities who maintain deposits established pursuant to statutes of Puerto Rico at the GDB of their statutory right under the laws of Puerto Rico to setoff the amount of their deposits in the GDB against the amount of their debts to the GDB.

4. The City of San Juan is responsible for providing essential public services to its people as well as visitors, including but not limited to medical care, policing and schooling. The RSA would have the effect of unlawfully taking San Juan's interest in its deposits and trust fund at the GDB—monies that could be used to further fund essential services for the people of San Juan—for the benefit of the GDB's bondholders.

5. Knowing that San Juan would not agree to the confiscation and conversion of its trust funds, and to the deprivation of its statutory right to setoff the amounts of its deposits in the GDB against any outstanding debt to the GDB, the GDB and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”) excluded San Juan from the negotiations that led to the RSA, rejected

San Juan's requests for information about the RSA, and refused to provide any substantive response to its objections to the RSA.

6. More egregiously, the Oversight Board, GDB and AAFAF are violating PROMESA by improperly classifying San Juan and thereby depriving San Juan and other municipal depositors of their statutory right to vote as a group on the RSA in accordance with the nature and priority of their claims against the GDB. PROMESA provides that holders of claims against the GDB with different levels of priority interests are entitled to separate voting pools corresponding to their priority, and that holders of two thirds of the claims (by amount) that vote within each pool must approve the RSA before it can become effective (provided that the holders of at least a majority in total amount of claims in each pool have approved). The RSA, however, purports to deny San Juan and other municipalities whose deposit claims are secured through statutory setoff rights a separate voting pool.

7. Instead, the GDB and AAFAF have grouped San Juan and other municipal depositors together with all of the GDB's other creditors in one single voting pool. This is improper because, among other reasons, the claims of San Juan and other municipalities are secured (at least in part) by, for example, their setoff rights. Notwithstanding this fact, the single voting pool created by the RSA lumps together these secured claims with those of unsecured financial market bondholders. These unsecured bondholders have a strong interest in supporting a restructuring plan that strips Puerto Rican municipalities of their property tax funds held in the GDB trust, and of their statutory setoff rights for their municipal deposits, to increase the

recovery available to GDB bondholders. Indeed, after the GDB RSA was announced, the market price of GDB bonds jumped from a range of 21 to 23 cents on the dollar to a range of 30 to 35 cents on the dollar. By improperly classifying all of its bondholders and municipal depositors together in one voting pool as “creditors,” the GDB could conceivably obtain the required approval of such pool, even if almost none of the adversely affected municipalities voted in favor of the RSA.

8. The GDB and AAFAF’s denial of a separate voting pool for those municipalities with setoff claims is particularly harmful to San Juan because such a voting pool is practically the only protection that it has under Title VI of PROMESA. Title VI does not provide any of the other protections typically provided under the Bankruptcy Code to ensure that a restructuring is fair and equitable to affected holders. Rather, PROMESA provides that the court may approve the RSA provided only that it is not “manifestly inconsistent” with Title VI.

9. Accordingly, San Juan now brings this action seeking (1) a declaratory judgment that the RSA is invalid for violating PROMESA because (a) it fails to provide a separate voting pool for municipal depositors with setoff rights, (b) it purports to provide for a “settlement” of funds held in trust that are San Juan’s property and are not subject to restructuring under Title VI, and (c) it violates PROMESA’s transparency requirements; (2) a declaratory judgment that PROMESA preempts Puerto Rican laws and executive orders that purport to stop withdrawals of municipal deposits from the GDB; and (3) a permanent injunction enjoining the GDB and AAFAF from submitting to the Oversight Board, or the Oversight Board from

certifying, any RSA which confiscates San Juan's trust funds and that does not provide a separate voting pool for municipal depositors.

## **II. THE PARTIES**

10. San Juan is an autonomous municipality organized and existing under and by virtue of the laws of the Commonwealth of Puerto Rico. San Juan is the capital and most populous municipality in Puerto Rico. As of July 1, 2016, the City had an estimated population of 347,052 inhabitants and a daily number of visitors which brings its population to approximately 1 million per day. The City and its metropolitan area are not only the island's educational, medical, legal, cultural and tourism center, but also the location of most of Puerto Rico's economic activity. The City is home to over 10,000 businesses and provides employment for over 195,000 individuals who reside in Puerto Rico.

11. The City provides its residents with a variety of fundamental and essential public services. For instance, the Police and Public Security Department protects the 180 communities of San Juan through a network of stations strategically distributed throughout the City, while the Health Department operates a municipal hospital and health centers for the benefit of its residents and visitors. In addition, the City administers Casa Cuna de San Juan, which is the first municipal government-administered home in Puerto Rico for children that have been mistreated, abused or turned over voluntarily.

12. Defendant Oversight Board was created under Section 101 of PROMESA, 48 U.S.C. § 2121.

13. Defendant GDB is a public corporation and instrumentality of the Commonwealth of Puerto Rico. *See* P.R. Laws Ann. tit. 7, §§ 551-607i. Historically, the GDB has provided Puerto Rico's municipalities a number of services. The GDB's Municipal Financing Department has acted as fiscal agent and financial advisor to the municipalities and provided municipalities financing for various purposes, such as construction and reconstruction of public works, and acquisition of land and equipment, among others. *Id.*

14. The GDB is also the trustee of a trust account established by the Municipal Revenue Collection Center (the "CRIM") known as the Municipal Public Debt Redemption Fund (the "Fondo"), which has an account for each municipality in which CRIM deposits the entire amount of the Additional Special Contribution ("CAE") tax imposed by each municipality, which is needed to service the municipalities' general obligation bonds or notes. In the event that the amount of CAE in the Fondo in a given year exceeds the debt service due that year, Puerto Rican Law and the trust agreement between the CRIM and GDB require that GDB return any over deposited CAE ("Excess CAE") to the municipality. (Attached hereto as **Exhibit A** is a true and correct copy of Escritura Número 4 Constitución de Fideicomiso between the CRIM and GDB, dated November 2, 2015 ("Trust Agreement") and the true and correct certified translation of the Trust Agreement.)

15. Defendant AAFAF is a public corporation and instrumentality of the Commonwealth of Puerto Rico that was created pursuant to P.R. Laws Act Number 2 of 2017. *See* 2017 P.R. Laws 2. AAFAF, among other things, has been given the sole responsibility to renegotiate, restructure and/or to reach agreement with creditors on all or part of the public debt or any other debt issued by any government entity.

### **III. JURISDICTION AND VENUE**

16. This Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under PROMESA, a federal statute codified at 48 U.S.C. §§ 2101-2241.

17. In addition, this Court has jurisdiction under Section 106(a) of PROMESA, which grants this Court jurisdiction over “any action against the Oversight Board, and any action . . . arising out of [PROMESA], in whole or in part.” 48 U.S.C. § 2126(a). Because this action challenges the Oversight Board’s unlawful application of Section 601 of PROMESA, Section 106(e) is inapplicable. *See* 48 U.S.C. § 2231(n)(2).

18. The Court is authorized to provide declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

19. Venue is proper in the District of Puerto Rico under 28 U.S.C. § 1391(b)(2) because a substantial part of the events, omissions, communications, and transactions giving rise to Plaintiffs’ claims occurred in this judicial district, and under 48 U.S.C. § 2126(a).

#### **IV. FACTUAL ALLEGATIONS**

##### **A. THE GDB'S ROLE WITH RESPECT TO MUNICIPALITIES**

20. The GDB was originally created in 1942 with the goal of helping to finance Puerto Rico's economic infrastructure projects and to act as fiscal agent and financial advisor to Puerto Rico and its instrumentalities. Over time, the GDB's role evolved until it became significantly intertwined in the financing of Puerto Rico's government, instrumentalities and municipalities.

21. The GDB provided Puerto Rico's municipalities a number of services over its many years of existence. As a result, the GDB came to hold a substantial sum of monies belonging to the people of San Juan in the form of general deposits. The GDB also holds special deposits held in trust at the GDB pursuant to the Puerto Rico Municipal Financial Act of 1996, P.R. Laws Ann. tit. 21 §§ 6001-6029, and the Trust Agreement.

22. In April of 2016, the Legislative Assembly of Puerto Rico approved and the Governor signed into law Act 21 (the "Puerto Rico Emergency Moratorium and Financial Rehabilitation Act" or "Moratorium Act"). Relying on that law, the governor issued two executive orders, OE 2016-10 and OE 2016-14. These executive orders stopped virtually all municipal transfers and withdrawals out of the GDB and were set to expire in January of 2017.

23. In January of 2017, the Legislative Assembly of Puerto Rico approved and the Governor signed into law Act 5 (the "Puerto Rico Financial Emergency and



Fiscal Responsibility Act,” 2017 P.R. Laws 5), which extended the effective date of the executive orders issued under the Moratorium Act through May of 2017.

24. On April 30, 2017, relying on Act 5, the Governor issued OE 2017-31, which further extended the effective date of OE 2016-10 and OE 2016-14.

25. Because of OE 2016-10 and OE 2016-14, a substantial amount of deposits belonging to San Juan have been trapped at the GDB for well over a year consisting of: municipal deposits related to, among other things, the portion of the sales tax corresponding to the municipalities (the “IVU,” as it is referred to in Spanish), funds for the betterment of schools and other similar amounts as well as Excess CAE funds that belong to the City under the Trust Agreement. The GDB has admitted that it is holding approximately \$152 million that belongs to San Juan. San Juan believes that the amount of its deposits held by the GDB exceeds the admitted amount.

26. To date, the GDB has refused to return to San Juan the bulk of the monies that belong to it or reduce San Juan’s loan payments by a corresponding amount in the form of a statutorily guaranteed offset.

#### **B. OVERVIEW OF PROMESA AND TITLE VI**

27. On June 30, 2016, President Barack Obama signed into law PROMESA.

28. PROMESA provided for the establishment of an Oversight Board and granted the Oversight Board broad powers to oversee Puerto Rico’s finances and financial rehabilitation. In particular, PROMESA created two new tools pursuant to

which the finances of Puerto Rico, those of certain of its instrumentalities, or certain financial debt issuances could be restructured.

29. First, Title III of PROMESA established a new framework for the wholesale restructuring of the Commonwealth's finances (or those of any covered territorial instrumentality) through a court-supervised process that is in many ways similar to a case under Chapter 9 of Title 11 of the United States Code (the "Bankruptcy Code"). To date, the Oversight Board has not invoked Title III with respect to the GDB.

30. Second, and relevant here, Title VI of PROMESA established a framework for restructuring "Bond Claims" with less than the unanimous support of the affected bondholders, and with significantly less court involvement and protection for affected parties than in a full-blown Title III case.

31. Title VI is not an all-purpose restructuring tool like Title III. Instead, as set forth in Sections 104(i)(1) and 601 (48 U.S.C. §§ 2124(i)(1), 2231) of PROMESA, Title VI is a targeted mechanism pursuant to which only "Bond Claims" may be restructured.

32. "Bond Claims" are defined to include claims with respect to "a bond, loan, letter of credit, other borrowing title, obligation of insurance, or other financial indebtedness for borrowed money . . . of which the issuer, obligor, or guarantor is the territorial government." PROMESA § 5(2), (3), 48 U.S.C. § 2104(2), (3).

33. A Title VI restructuring proceeds in several discrete steps. First, an interested party—whether Puerto Rico, a covered territorial instrumentality, or a

creditor—can propose a “Modification” of bond debt, that is a “modification, amendment, supplement or waiver affecting one or more series of Bonds, including those effected by way of exchange, repurchase, conversion, or substitution.”

PROMESA § 601(a)(9), 48 U.S.C. § 2231(a)(9).

34. Once a Modification has been proposed, it falls to the Oversight Board, acting as “Administrative Supervisor,” to determine whether the modification meets the requirements for “certification.” These requirements generally include, among other things, that (a) the proponents of the Modification have followed the statutorily prescribed creditor consultation or voluntary agreement process; (b) all holders of bonds in any given series being restructured are being treated the same; (c) the Modification is consistent with any certified Fiscal Plan or, if no fiscal plan has been certified, otherwise provides for a sustainable level of debt; and (d) the Modification is in the best interests of creditors and is feasible.

35. If a proposed Modification is certified by the Board, it becomes a “Qualifying Modification,” and the issuer whose debt is proposed to be restructured is required to provide to affected creditors, through an “Information Agent,” a variety of types of information, including a description of the issuer’s economic and financial circumstances. Thereafter, creditor votes may be solicited to approve or reject the Qualifying Modification.

36. The solicitation process is designed to protect creditor interests in two primary ways.

37. First, to ensure that creditors with divergent interests are protected, PROMESA mandates that “separate Pools shall be established corresponding to the relative priority or security arrangements of each holder of Bonds.” PROMESA § 601(d)(3)(a), 48 U.S.C. § 2231(d)(3)(a). As a result, secured creditors, including creditors such as San Juan whose claims are secured through setoff rights, cannot be pooled with unsecured creditors, such as the GDB’s general bondholders.

38. Second, in order for a Qualifying Modification to become binding on nonconsenting parties, the Qualifying Modification must receive:

the affirmative vote of the holders of the right to vote at least two-thirds of the Outstanding Principal amount of the Outstanding Bonds in each Pool that have voted to approve or reject the Qualifying Modification, provided that holders of the right to vote not less than a majority of the aggregate Outstanding Principal amount of all the Outstanding Bonds in each Pool have voted to approve the Qualifying Modification.

PROMESA § 601(j), 48 U.S.C. § 2231(j).

39. If a Qualifying Modification receives the requisite votes, it must then receive a further certification from the Oversight Board, and the approval of the District Court, before it becomes binding on nonconsenting creditors. PROMESA § 601(m), 48 U.S.C. § 2231(m). The Court may approve a Qualifying Modification provided only that it is not “manifestly inconsistent” with Title VI.

### **C. THE GDB RSA**

#### **i. Overview of the RSA**

40. On May 15, 2017, Governor Ricardo Rosselló Nevares publicly announced that AAFAF, the GDB, and certain of the GDB’s bondholders (“RSA

Parties”) had entered into the RSA. (Attached hereto as **Exhibit B** is a true and correct copy of the GDB’s RSA, dated as of May 15, 2017.)

41. The RSA was negotiated behind closed doors by AAFAF, the GDB and certain of the GDB’s creditors over an undisclosed time period without any input from San Juan.

42. Notably, the GDB creditors supporting the RSA appear to consist almost entirely of the GDB’s public, unsecured bondholders and a smaller group of Puerto Rico-based credit unions that hold GDB bonds.

43. The RSA sets forth the terms of a proposed sweeping financial restructuring and ultimate liquidation of the GDB. The ultimate effect of the RSA would be to provide a windfall to the GDB’s bondholders by using the resources of San Juan and other municipalities for the payment of bondholder claims while imposing enormous losses on those same municipal depositors through the confiscation of their Excess CAE and their statutorily guaranteed right to setoff deposits at the GDB against their loans from the GDB.

44. Under the RSA, the GDB would transfer its principal assets—including (a) the GDB’s entire municipal loan portfolio; (b) certain real estate assets; (c) proceeds from certain scheduled public entity loans; and (d) unrestricted “excess” cash ((a) through (d), collectively, the “New Bond Collateral”) to a newly created special purpose vehicle (the “New Issuer”).

45. The majority of the GDB’s debt is slated to be restructured, including (a) all of the GDB’s financial market bonds; (b) claims under certain letters of credit

and guarantees issued by the GDB; (c) deposit claims by certain non-public entities; and, finally, (d) deposit claims held by Puerto Rico municipalities, including San Juan. GDB also intends to use monies in its trust fund as part of its restructuring.

46. The GDB has labeled all of the debt and deposits to be restructured as “Participating Bond Claims.” Under the RSA all Participating Bond Claims would be compulsorily exchanged for new bonds issued by the New Issuer (the “New Bonds”).

47. The New Bonds would consist of three tranches, Tranche A, Tranche B, and Tranche C. The three tranches of New Bonds share some characteristics. For example, all three tranches of New Bonds would receive semi-annual interest payments on a pari passu basis, which interest payments would be paid-in-kind to the extent there is insufficient cash on any given semi-annual interest payment date. In addition, all three tranches of New Bonds would mature on July 1, 2040.

48. In other ways, however, including coupon rate, security rights, priority, and up front exchange rate, the three classes of New Bonds differ substantially.

49. Tranche A New Bonds would bear a 7.50 percent coupon rate, be secured by a first lien on the New Bond Collateral, and be entitled to amortizing payments from available cash of the New Issuer on a pari passu basis with Tranche B New Bonds. Holders of Participating Bonds Claims that exchange into Tranche A New Bonds would receive \$550 par value of New Bonds for each \$1000 of Participating Bond Claims exchanged. The actual market value of the Tranche A Bonds is expected to be substantially below par at issuance.

50. Tranche B New Bonds would bear a 5.50 percent coupon rate, be secured by a first lien on the New Bond Collateral (pari passu with Tranche A New Bonds), and be entitled to amortizing payments from available cash of the New Issuer on a pari passu basis with Tranche A New Bonds. Holders of Participating Bonds Claims that exchange into Tranche B New Bonds would receive \$600 par value of New Bonds for each \$1000 of Participating Bond Claims exchanged. The actual market value of the Tranche B Bonds, like that of the Tranche A New Bonds, is expected to be substantially below par at issuance.

51. Tranche C New Bonds would bear a 3.50 percent coupon rate, be secured by a second lien on the New Bond Collateral, i.e., be subordinate in payment to Tranche A and B, and would be entitled to amortizing principal payments from available cash of the New Issuer only *after* Tranche A New Bonds and Tranche B New Bonds have been fully paid down. Holders of Participating Bonds Claims that exchange into Tranche C New Bonds would receive \$750 par value of New Bonds for each \$1000 of Participating Bond Claims exchanged. The actual market value of the Tranche C New Bonds, like that of the Tranche A and B New Bonds, is expected to be substantially below par at issuance, and is likely to be well below the market value of Tranche A and B.

52. To coerce creditors to participate in the purported voluntary exchange, the RSA Parties have established what, in bankruptcy parlance, is referred to as a “deathtrap.” Specifically, holders of Participating Bond Claims who do not voluntarily elect to participate in one of the tranches of New Bonds (presumably

including those holders that vote against the Qualifying Modification or who fail to vote at all) will have their claims compulsorily exchanged into Tranche C of the New Bonds—by far the least valuable of the three tranches. Title VI of PROMESA does not permit the RSA Parties to compromise the claims of non-consenting creditors in this way.

**ii. The RSA Unlawfully Confiscates Excess CAE**

53. The compulsory nature of the RSA is aggravated by its unfair treatment of municipalities. The RSA’s treatment of San Juan’s and other municipalities’ property interest in the Excess CAE trust funds, for example, violates Title VI on its face.

54. The Excess CAE to which San Juan is entitled by law and which is held in trust is not debt, and thus does not satisfy the definition of “Bond Claims” that may be restructured under Title VI. As described above, the funds collected on account of the CAE are held in trust by the GDB for the benefit of the municipalities. Pursuant to Section V of the Trust Agreement, the aforementioned funds are totally autonomous property, separate from the property of the CRIM or the GDB and exempt from action of creditors.

55. Upon application of such funds to each municipality’s outstanding loan debt, Puerto Rican law requires that the trust fund Excess CAE deposits be returned to the corresponding municipality after the close of the relevant fiscal year. Because the GDB maintains the Excess CAE funds in trust for San Juan, which



makes those funds a special purpose deposit, the funds are *not owed to San Juan but rather owned by it* under Puerto Rican law.

56. Notwithstanding that the Excess CAE held in trust is not debt, the RSA provides that all municipalities with Excess CAE deposits will be compelled to sign settlement agreements releasing the GDB and the issuer from any claims or causes of action related thereto. In exchange, such municipalities would receive cents on the dollar. The RSA indicates that the Excess CAE is estimated by the GDB to be \$38 million, and thus a fifty-five percent recovery would seem to be capped at \$21 million. The actual aggregate Excess CAE amounts, however, are believed to be substantially higher. No outer limit would be imposed on the date by which the insolvent GDB, which would have given away its meaningful assets as part of the RSA, would be required to make payment.

57. Unless the municipality signs the onerous release of the GDB in the settlement agreement, all Excess CAE trust amounts due to the municipality will be confiscated.

58. On June 26, 2017, San Juan brought suit in the Commonwealth of Puerto Rico Superior Court, San Juan Region against GDB to compel GDB to make the statutory payments of Excess CAE from funds at the Banco Popular of Puerto Rico. San Juan's commonwealth action, which remains pending, does not seek the same relief sought in this action. *See* Complaint, *Municipio de San Juan v. Banco Gubernamental de Fomento, et al.*, No. SJ2017CV00501 (P.R. Tribunal de Primera Instancia, June 26, 2017), SUMAC No. 1.

**iii. The RSA Strips Municipal Depositors of Their Setoff Rights**

59. The RSA further harms municipalities for the benefit of bondholders by depriving municipal depositors of their statutorily guaranteed setoff rights.

60. Under governing Puerto Rico law, municipal depositors at the GDB, including San Juan, are afforded an absolute right to setoff their deposits at the GDB against, and in dollar-for-dollar satisfaction of, their GDB loan balances.

Specifically, the GDB's law provides that "[n]otwithstanding any other provision of §§ 561-568 of this title or the Puerto Rico Emergency Moratorium and Financial Rehabilitation Act, a depositor or receiver may offset the amount of its deposit against any outstanding balance of a loan from the Bank as full and final payment up to the amount of the deposit." P.R. Laws Ann. tit. 7, § 559a(c).

61. San Juan is thus at least in part a secured creditor entitled to setoff the entire amount of its deposits at the GDB against the outstanding balance of its loans from the GDB. While the RSA Parties purportedly recognize that San Juan—and all similarly situated municipalities—possess setoff rights, the RSA impermissibly seeks to curtail these rights through the RSA. In particular, the RSA provides that municipal deposits may be offset only against municipal "loans" that *have not yet been funded by the GDB*. There is *no* setoff permitted against loans that are *actually outstanding*. This is no setoff at all. *See* RSA, Exhibit A to Restructuring Support Agreement, at 14.

62. The RSA Parties have failed to disclose the manner in which they have purportedly calculated each municipal depositor's setoff. However, it is clear that the

RSA Parties have not properly calculated such setoff rights, given that the RSA does not reflect the full setoff of municipal deposits against loans. As a result, many municipalities—including San Juan—are described in the RSA as having both “post setoff” deposit claims and “post setoff” loan balances, a logical impossibility if full setoff is applied. For example, the GDB has calculated San Juan to have both a “post setoff” deposit claim of \$60,407,481 and a “post setoff” municipal loan balance of \$336,310,617. (For the avoidance of doubt, San Juan disputes the validity of both figures, even if complete setoff was properly applied.)

63. By depriving municipalities of complete setoff rights, and instead seeking to restructure municipal deposits that should have been used to reduce loan balances dollar-for-dollar, the RSA Parties seek to effect an enormous transfer of wealth—hundreds of millions of dollars—from Puerto Rico’s municipalities to its financial markets creditors. Such a windfall is unsupportable under either Puerto Rico law or Title VI of PROMESA.

#### iv. **Certification of the RSA**

64. In his initial May 15, 2017 announcement, Governor Rosselló indicated that the RSA Parties would ultimately submit the RSA to the Oversight Board for certification as a “Qualifying Modification” under Title VI of PROMESA. Indeed, certification of the RSA as a Qualifying Modification is a condition precedent to the RSA’s effectiveness.

65. On May 16, 2017, San Juan and its attorneys met with representatives of the GDB and AAFAF at the request of San Juan to discuss the RSA and the

proposed process. In that meeting, counsel for AAFAF instructed the GDB not to answer any questions regarding the legal criteria used by the GDB to prepare the RSA or the proposed process.

66. It was not until the RSA was made public that the GDB and AAFAF held a perfunctory meeting with the Mayor of San Juan. By then, however, it was too late for San Juan to have any input into the RSA. The GDB had no intention of restructuring the RSA to accommodate the concerns of San Juan. Tellingly, after San Juan informed the GDB that the GDB seemed to have prepared the RSA based upon inaccurate financial information and requested information from the GDB to attempt to reconcile the GDB's numbers with its own records, the GDB did not provide San Juan with such information and pressed ahead.

67. On June 2, 2017, San Juan sent a letter to the Oversight Board outlining its objections to the RSA. (Attached hereto as **Exhibit C** is a true and correct copy of San Juan's letter, dated as of June 2, 2017.) In pertinent part, San Juan explained to the Oversight Board that the RSA was based upon unverified financial information and inappropriately deprived San Juan of its setoff rights and confiscated Excess CAE deposits held in trust for San Juan (*id.* at 4-8). In addition, San Juan explained that the RSA violated various provisions of PROMESA (*id.* at 8-14). Last, San Juan requested that the Oversight Board provide certain procedural due process guarantees (*id.* at 14). Specifically, San Juan sought, among other things, basic procedural guarantees, including 1) receipt of a copy of the applications and other materials filed with the Oversight Board in connection with the GDB's

proposed restructuring agreement; 2) an opportunity to address any responses to its objection prior to the Board taking action; and 3) that action on the RSA be taken at a public meeting. While making a number of public pronouncements on other topics, the Oversight Board did not respond to San Juan's simple request for an open and transparent process.

68. On June 16, 2017, AAFAF's counsel sent San Juan a letter acknowledging receipt of San Juan's letter. (Attached hereto as **Exhibit D** is a true and correct copy of AAFAF's letter, dated as of June 16, 2017.) San Juan was advised that, while the GDB had initially targeted June 15, 2017 as the date by which it would submit materials in support of the RSA to the Oversight Board, it had delayed its submission (*id.*). No new target date for submission was given, except that the submission would be made in the coming weeks (*id.*).

69. On information and belief, on June 30, 2017, AAFAF, without public announcement, requested that the Oversight Board certify the RSA as a Qualifying Modification. Neither the filing of the application nor its contents have been disclosed publicly.

70. After receiving no response to its June 2, 2017 letter, San Juan sent a follow up letter to the Oversight Board's counsel on July 7, 2017. (Attached hereto as **Exhibit E** is a true and correct copy of San Juan's letter, dated as of July 7, 2017.) In that letter, San Juan requested that the Oversight Board provide an update on the status of the RSA and the process that it intended to follow (*id.*). None of the

defendants even acknowledged receipt of the July 7, 2017 letter, much less provided a response.

71. On July 14, 2017, the Oversight Board announced it had “conditionally” certified the RSA as a Qualifying Modification under Title VI of PROMESA that day. (Attached hereto as **Exhibit F** is a true and correct copy of the Oversight Board’s General Release Regarding the GDB RSA, dated July 14, 2017.) As of the date of this filing, the Oversight Board has not publicly shared any minutes from the closed executive session.

72. On July 19, 2017, the Oversight Board published the Unanimous Written Consent Approving Authorization of the GDB and Certification of the RSA Pursuant to Title VI of PROMESA on its website (the “Certification Resolution”). (Attached hereto as **Exhibit G** is a true and correct copy of the Certification Resolution, dated July 12, 2017.)

73. The RSA certified by the Board specifically requires that voting be limited to a single unified pool of all “Participating Bond Claims,” regardless of their priority or security arrangements.

74. The RSA was approved in a closed door executive session without any input from San Juan or the public. The Certification Resolution confirms that the Oversight Board conferred with representatives of AAFAF and GDB.

75. The Certification Resolution notes that the Oversight Board has not undertaken an independent review or valuation of the assets that were being transferred by GDB.

76. The Certification Resolution further reveals that the Oversight Board relied on the unchallenged and unverified statements in AAFAF's undisclosed letter in its decision to approve certification of the RSA.

77. The same day the Oversight Board certified the RSA, it also certified a revised fiscal plan for the GDB in order to facilitate the RSA, without any public comment or input whatsoever. As of the date of this filing, neither the letter by AAFAF requesting the revisions to the Fiscal Plan nor the amended Fiscal Plan have been posted on the GDB's website. In other words, there is no publicly filed Fiscal Plan for the GDB. Thus, there is simply no way for any third party to determine whether the RSA is consistent with the GDB Fiscal Plan as required by PROMESA.

78. Upon information and belief, the RSA Parties have begun or will soon begin the process of soliciting votes in respect of the RSA pursuant to Title VI of PROMESA.

## **V. CAUSES OF ACTION**

### **Count One**

#### **Improper Pooling of Claims for Voting Purposes (PROMESA § 601(d)(3)(A), 48 U.S.C. § 2231(d)(3)(A))**

79. Plaintiff repeats and realleges the allegations contained in each of the paragraphs above, as if fully set forth herein.

80. As previously set forth, Governor Ricardo Rosselló Nevares publicly announced that AAFAF, the GDB, and certain of its bondholders entered into the RSA. Governor Rosselló indicated that the RSA would ultimately be submitted to the

Oversight Board for certification of the transactions described therein as a Qualifying Modification.

81. On June 2, 2017, San Juan submitted a letter to the Oversight Board, describing, in detail, why the transactions contemplated by the RSA were ineligible for certification as a Qualifying Modification.

82. Unbeknownst to San Juan, AAFAF requested that the Oversight Board certify the transactions described in the RSA as a Qualifying Modification on June 30, 2017.

83. The Oversight Board, without any public explanation or comment, accepted the GDB's decision to deprive municipalities of a separate voting pool.

84. Title VI of PROMESA imposes certain requirements on the Oversight Board, acting as "Administrative Supervisor," before the Oversight Board can certify that a proposed modification of debt pursuant to Title VI is a "Qualifying Modification" that can be submitted to a vote of affected bondholders.

85. Under Section 601(d)(3)(A) of PROMESA, 48 U.S.C. § 2231(d)(3)(A), any proposed modification cannot be a Qualifying Modification unless it establishes "separate Pools" for voting purposes that "correspond[] to the relative priority or security arrangements of each holder of Bonds" that will be affected by the Qualifying Modification.

86. While PROMESA, does not define "security arrangements," analogous bankruptcy law establishes that any claim subject to a valid right of setoff is secured to the extent of the amount subject to setoff.



87. Puerto Rico law provides specific “security arrangements” for municipal depositors who are also obligors under loans issued by the GDB in the form of a statutorily-guaranteed right of setoff.

88. In particular, the GDB law provides that “[n]otwithstanding any other provision of §§ 561-568 of this title or the Puerto Rico Emergency Moratorium and Financial Rehabilitation Act, a depositor or receiver may offset the amount of its deposit against any outstanding balance of a loan from the Bank as full and final payment up to the amount of the deposit.” P.R. Laws Ann. tit. 7, § 559a(c).

89. San Juan is the beneficiary of this statutory security arrangement in that it is both a depositor with the GDB and has an outstanding loan balance owed to the GDB.

90. Upon information and belief, numerous other Puerto Rico municipalities are similarly situated to San Juan, and are thus likewise the beneficiary of a statutory security arrangement.

91. The RSA ignores this statutory security arrangement, providing, as a condition to effectiveness, that only a single pool of claims be established for voting purposes, which pool would include both municipal deposit claims (regardless of setoff rights) and bond claims.

92. The RSA’s failure to provide a separate voting pool for municipalities possessing both deposit claims against and loan obligations to the GDB violates PROMESA Section 601(d)(3)(A), 48 U.S.C. § 2231(d)(3)(A), and renders the

transactions contemplated by the RSA thereby ineligible for certification as a Qualifying Modification.

93. An actual case or controversy has arisen between the parties. The deprivation of a separate voting pool threatens injury to San Juan. Accordingly, San Juan seeks a declaration that the RSA is invalid for failure to comply with PROMESA's voting pool requirements and injunctive relief to prevent such further harm.

**Count Two**  
**Improper Settlement of Excess CAE Trust Funds in Title VI**  
**(PROMESA § 601(g)(2), 48 U.S.C. § 2231(g)(2))**

94. Plaintiff repeats and realleges the allegations contained in each of the paragraphs above, as if fully set forth herein.

95. The RSA purports to provide for a settlement of Excess CAE Trust Funds due to San Juan and other municipalities:

*Excess CAE Settlement*

All municipalities for which excess CAE deposits have not been disbursed for fiscal year 2015, 2016, and 2017 (estimated at \$38 million in the aggregate) shall receive a 55 cents on the dollar recovery to be paid in cash by GDB on or after the Closing Date, provided that such Designated Depositors enter into a Settlement Agreement waiving the balance of any such claims and otherwise releasing GDB and the Issuer from any claims or causes of action related thereto.

RSA, Exhibit A (Term Sheet), at 4.

96. As explained above, Excess CAE trust funds are not subject to a qualifying modification under Title VI because they are not "Bond Claims" for which a certification may be issued under Section 104(i)(1), as required by Section

601(g)(2). “Bond Claims” consist of claims with respect to “a bond, loan, letter of credit, other borrowing title, obligation of insurance, or other financial indebtedness for borrowed money . . . of which the issuer, obligor, or guarantor is the territorial government.”

97. Excess CAE funds, in contrast, are municipal tax revenues held in trust for San Juan and other municipalities. Because the GDB holds the Excess CAE in trust for San Juan, the funds are not Bond Claims owed to San Juan, but rather funds in which San Juan has a direct property interest under Puerto Rican law and under the terms of the Trust Agreement.

98. An actual case or controversy has arisen between the parties. The RSA’s purported attempt to provide for a “settlement” of such Excess CAE trust funds violates PROMESA Section 601(d)(3)(A), 48 U.S.C. § 2231(d)(3)(A), and threatens injury to San Juan. San Juan thus seeks a declaration that the transactions involving Excess CAE trust funds contemplated by the RSA are invalid and injunctive relief to prevent such further harm.

**Count Three**  
**Inappropriate use of Executive Session**  
**(PROMESA § 101(h)(4), 48 U.S.C. § 2121(h)(4))**

99. Plaintiff repeats and realleges the allegations contained in each of the paragraphs above, as if fully set forth herein.

100. PROMESA provides certain transparency requirements that were violated in this case.

101. Under PROMESA Section 101(h)(4), 48 U.S.C. § 2121(h)(4), “the Oversight Board may conduct its business in an executive session that consists solely of the Oversight Board’s voting members and any professionals the Oversight Board determines necessary and is closed to the public, but only for the business items set forth as part of the vote to convene an executive session.”

102. Under Rule 4.7 of the Oversight Board’s Bylaws, “[u]pon an affirmative vote of no fewer than four (4) members of the Board, the Board may conduct its business in an executive session. The executive session shall be closed to the public and consist solely of the Board’s members and any *professionals of the Board*, including staff and advisors, the Board determines necessary. The Board may consider only the business items set forth as part of the vote to convene such executive session.” (Emphasis added.) (Attached hereto as **Exhibit H** is a true and correct copy of the Board Bylaws, approved on September 30, 2016 and, as amended, October 14, 2016 and January 28, 2017.)

103. The Unanimous Written Consent Approving Authorization of the GDB and Certification of the RSA Pursuant to Title VI of PROMESA reflects that “the Board has reviewed the RSA and has discussed it with the Board’s advisors and with representatives of AAFAF and GDB.” (See **Exhibit G**, Certification Resolution.)

104. PROMESA and the Oversight Board’s Bylaws contemplate that only the Oversight Board members and professionals that are under their employ will be present at executive sessions. Upon information and belief, the Oversight Board

inappropriately held closed door meetings with professionals not employed by the Oversight Board in violation of PROMESA and its Bylaws.

105. Upon information and belief, the Oversight Board did not properly convene the executive session at which it certified the RSA.

106. An actual case or controversy has arisen between the parties. The inappropriate use of Executive Session has caused injury to San Juan. Accordingly, San Juan seeks a declaration that the RSA is invalid for failure to comply with PROMESA's executive session requirements.

**Count Four**  
**Inappropriate use of Moratorium for Restructuring**  
**(PROMESA § 303, 48 U.S.C. § 2163, and U.S. Const. Art. 6, Cl. 2)**

107. Plaintiff repeats and realleges the allegations contained in each of the paragraphs above, as if fully set forth herein.

108. PROMESA expressly provides that “[t]he provisions of this chapter shall prevail over any general or specific provisions of territory law, State law, or regulation that is inconsistent with this chapter.” 48 U.S.C. § 2103. *See also* PROMESA § 303(3), 48 U.S.C. § 2163(3).

109. As set forth above, the RSA purports to restructure deposits held at the GDB by San Juan and other municipalities.

110. The GDB holds San Juan's deposits under the color of the Puerto Rico Financial Emergency and Fiscal Responsibility Act and Executive Order 2017-31, which extend the effective date of Executive Orders 2016-10 and 2016-14 issued under the now-revoked Puerto Rico Emergency Moratorium and Financial

Rehabilitation Act (these Acts and Executive Orders collectively referred to as the “Moratorium Acts and Orders”). The Moratorium Acts and Orders purport to stop almost all municipal withdrawals and transfers out of the GDB.

111. To the extent they are inconsistent with it, the Moratorium Acts and Orders are preempted by PROMESA, including Section 303(3) thereto. Accordingly, the Moratorium Acts and Orders have no effect as to San Juan’s deposits at the GDB and cannot impair San Juan’s property rights.

112. Furthermore, the RSA is not valid to the extent that it purports to restructure San Juan’s deposits at the GDB, because such deposits have been unlawfully held at the GDB in violation of PROMESA.

## **VI. PRAYER FOR RELIEF**

**WHEREFORE** San Juan requests that the Court enter judgment against the Defendants as follows:

- i. Declare that the Oversight Board’s contingent approval of the RSA is invalid for failure to comply with PROMESA’s voting pool requirements;
- ii. Declare that the Oversight Board’s contingent approval of the RSA is invalid because the RSA’s provision for a “settlement” of Excess CAE trust funds violates PROMESA;
- iii. Declare that the Oversight Board’s contingent approval of the RSA is invalid for failure to comply with PROMESA’s executive session requirements;

- iv. Declare that PROMESA and Article VI, Clause 2 of the U.S. Constitution preempt Puerto Rican laws and executive orders that purport to stop withdrawals of municipal deposits from the GDB;
- v. Permanently enjoin the GDB and AAFAF from submitting to the Oversight Board, and the Oversight Board from certifying any RSA that:
  - a. does not provide a separate voting pool for municipal depositors with setoff rights; or
  - b. contemplates the use of Excess CAE trust funds for the benefit of non-municipal creditors.

Dated: San Juan, Puerto Rico  
July 26, 2017

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