IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re: COMMONWEALTH OF PUERTO RICO, Debtor.	Title III Case No. 3:17-cv-01578
ASSURED GUARANTY CORP.; ASSURED GUARANTY MUNICIPAL CORP.; AND NATIONAL PUBLIC FINANCE GUARANTEE CORPORATION, Plaintiffs, v. COMMONWEALTH OF PUERTO RICO; THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO; PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY; HON. RICARDO ANTONIO ROSSELLÓ NEVARES; GERARDO PORTELA FRANCO; HON. RAÚL MALDONADO GAUTIER; and JOHN DOES 1-3, Defendants.	Adv. No. _____

ADVERSARY COMPLAINT

Plaintiffs Assured Guaranty Corp. ("AGC") and Assured Guaranty Municipal Corp., f/k/a Financial Security Assurance Inc. ("AGM" and, together with AGC, "Assured"), by their attorneys Casellas Alcover & Burgos P.S.C. and Cadwalader, Wickersham & Taft LLP, and Plaintiff National Public Finance Guarantee Corporation ("National" and together with Assured, the "Plaintiffs"), by and through its attorneys Adsuar Muñiz Goyco Seda & Pérez-Ochoa, P.S.C., and Weil, Gotshal & Manges LLP, for their Adversary Complaint against defendants the

Commonwealth of Puerto Rico; the Financial Oversight and Management Board for Puerto Rico; the Puerto Rico Fiscal Agency and Financial Advisory Authority; Hon. Ricardo Rosselló Nevares; Gerardo Portela Franco; Hon. Raúl Maldonado Gautier; and John Does 1-3 (collectively, the "Defendants"), allege as follows:

NATURE OF THIS ADVERSARY PROCEEDING

1. Assured has insured approximately $5.4 billion of the indebtedness of the Commonwealth of Puerto Rico (the "Commonwealth") and its public corporations, including approximately $1.75 billion of general obligation bonds ("GO Bonds") and other obligations that constitute "public debt" under the constitution of the Commonwealth (the "Commonwealth Constitution").

2. National has insured approximately $3.6 billion of the indebtedness of the Commonwealth and its public corporations, including approximately $881 million of GO Bonds and other obligations that constitute "public debt" under the Commonwealth Constitution.

3. Obligations comprising "public debt" are given a priority over all other debts and expenses of the Commonwealth, bar none, by the Commonwealth Constitution. In order to ensure compliance with this priority, the Commonwealth's Management and Budget Office Organic Act (Act No. 147-1980, the "OMB Act") expressly prioritizes payment of the public debt and of other "commitments entered into by virtue of legal contracts in force" over "regular expenses" of government. Similarly, in order to further ensure compliance with this priority, various other debt issuances that are secured by specific special revenue streams are expressly made subject to a statutory right of the Commonwealth to "claw back" revenues to the extent necessary (but *only* to the extent necessary) to pay the public debt. The Puerto Rico

Oversight, Management, and Economic Stability Act ("PROMESA")[1] expressly states that these constitutional and statutory priorities must be respected. See 48 U.S.C. § 2141(b)(1)(N).

4. PROMESA in Section 201(b)(1)(N) specifically requires that any fiscal plan must respect lawful liens and priorities. The Commonwealth's fiscal plan dated March 13, 2017 (as amended, the "Illegal Fiscal Plan") ("Exhibit A"), as implemented through the newly-enacted Fiscal Plan Compliance Law (P. de la C. 938, the "Fiscal Plan Act"), totally disregards these constitutional priorities and liens and therefore constitutes a gross violation of the clear statutory mandates of PROMESA. The Illegal Fiscal Plan, as implemented through the Fiscal Plan Act, turns on its head generations of federal constitutional law governing the priority and protection of secured debt by giving all general expenses and all unsecured debts payment priority over the payment of any bond debts granted constitutional first priority or secured by liens.

5. The Illegal Fiscal Plan, as implemented through the Fiscal Plan Act, also violates Section 201(b)(1)(M) of PROMESA, which requires that a fiscal plan must "ensure that assets, funds, or resources of a territorial instrumentality are not . . . transferred to . . . [the Commonwealth]" except in accordance with law. 48 U.S.C. § 2141(b)(1)(N). The Illegal Fiscal Plan actually *requires*, and the Fiscal Plan Act authorizes, such illegal transfers by allowing the Commonwealth to simply misappropriate for its own general use special revenues that constitute property of its public corporations and their bondholders.

6. Similarly, Sections 101(a) and 201(b) of PROMESA require a compliant fiscal plan to "provide a method to achieve fiscal responsibility and access to the capital markets," (48 U.S.C. §§ 2121(a), 2141(b)), yet the Illegal Fiscal Plan fails to significantly cut

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[1] Pub. L. No. 114-187, 130 Stat. 549 (2016) (codified at 48 U.S.C. § 2101-2241)).

government expenses and, by impairing the contractual rights of the Commonwealth's creditors and stealing their property, ensures that Puerto Rico will *not* regain access to the capital markets for the foreseeable future.

7. In addition to violating PROMESA for the reasons stated above, the Illegal Fiscal Plan and the Fiscal Plan Act also violate the Constitution of the United States (the "U.S. Constitution") by substantially impairing the contractual rights of Plaintiffs and other creditors and by depriving them of property without just compensation or due process of law.

8. Unless totally recast, the Illegal Fiscal Plan and the Fiscal Plan Act cannot possibly be permitted to serve as the basis for any lawful plan of adjustment that complies with the U.S. Constitution and the Commonwealth Constitution and the laws of the United States and of Puerto Rico. Accordingly, Defendants should be enjoined and stayed from presenting any plan of adjustment until the Illegal Fiscal Plan is recast to comply with law.

THE PARTIES

9. Plaintiff Assured Guaranty Corp. ("AGC") is a Maryland insurance company with its principal place of business at 1633 Broadway, New York, New York 10019.

10. Plaintiff Assured Guaranty Municipal Corp. ("AGM") is a New York insurance company with its principal place of business at 1633 Broadway, New York, New York 10019.

11. Plaintiff National Public Finance Corporation ("National") is a New York insurance company with its principal place of business at 1 Manhattanville Road, Purchase, NY 10577.

12. Defendant the Commonwealth of Puerto Rico (the "Commonwealth") is a territory of the United States.

13. Defendant the Financial Oversight and Management Board for Puerto Rico (the "Oversight Board") was created under Section 101(b)(1) of PROMESA (48 U.S.C. § 2121(b)(1)) as an "entity within the [Commonwealth] government." 48 U.S.C. § 2121(c)(1).

14. Defendant the Puerto Rico Fiscal Agency and Financial Advisory Authority ("AAFAF") is a public corporation organized under the laws of the Commonwealth.

15. Defendant Hon. Ricardo Rosselló Nevares ("Governor Rosselló") is the Governor of the Commonwealth. Plaintiffs sue Governor Rosselló in his official capacity.

16. Defendant Gerardo Portela Franco (the "AAFAF Executive Director") is the Executive Director of AAFAF and in that capacity is empowered to implement the Illegal Fiscal Plan and the Fiscal Plan Act. Plaintiffs sue the AAFAF Executive Director in his official capacity.

17. Defendant Hon. Raúl Maldonado Gautier (the "Secretary of Treasury") is the Secretary of Treasury of the Commonwealth and in that capacity is empowered to implement the Illegal Fiscal Plan and the Fiscal Plan Act. Plaintiffs sue the Secretary of Treasury in his official capacity.

18. Defendant John Doe 1 is any successor to Governor Rosselló as Governor of the Commonwealth. Plaintiffs sue John Doe 1 in his or her official capacity.

19. Defendant John Doe 2 is any successor to Gerardo Portela Franco as Executive Director of AAFAF and in that capacity is empowered to implement the Illegal Fiscal Plan and the Fiscal Plan Act. Plaintiffs sue John Doe 2 in his or her official capacity.

20. Defendant John Doe 3 is any successor to Hon. Raúl Maldonado Gautier as Secretary of Treasury of the Commonwealth and in that capacity is empowered to implement the Illegal Fiscal Plan and the Fiscal Plan Act. Plaintiffs sue John Doe 3 in his or her official capacity.

JURISDICTION AND VENUE

21. This Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under PROMESA and the U.S. Constitution. This Court also has subject matter jurisdiction under 28 U.S.C. § 1332, as the parties are of diverse citizenship and the amount in controversy exceeds $75,000. In addition, this Court has jurisdiction under Section 106(a) of PROMESA, which grants jurisdiction to this Court over "any action against the Oversight Board, and any action otherwise arising out of [PROMESA], in whole or in part." 48 U.S.C. § 2126(a).

22. Plaintiffs seek a declaration and related relief pursuant to 28 U.S.C. §§ 2201 and 2202. An actual and justiciable controversy has arisen and exists between the parties with respect to the issues and claims alleged herein.

23. This is an adversary proceeding pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure and Section 310 of PROMESA, which provides "The Federal Rules of Bankruptcy Procedure shall apply to a case under [Title III of PROMESA] and to all civil proceedings arising in or related to cases under [Title III of PROMESA]." 48 U.S.C. § 2170; Fed. R. Bankr. P. 7001.

24. Venue is proper in this District under Section 307 of PROMESA. 48 U.S.C. § 2167.

LEGAL AND FACTUAL BACKGROUND

I. Plaintiffs Insure Bonds Issued By Puerto Rico And Its Instrumentalities

25. Plaintiffs are leading providers of financial guaranty insurance, which is a type of insurance whereby an insurer guarantees scheduled payments of interest and principal as and when due on a bond or other obligation. Plaintiffs insure scheduled principal and interest

payments when due on municipal, public infrastructure, and structured financings both in the United States and around the world.

26. Governments, including the Commonwealth and its public corporations, have historically taken advantage of financial guaranty insurance because it significantly enhances their ability to raise funds at a lower interest rate. The economic value of financial guaranty insurance to the issuers is a savings in interest costs, reflecting the difference in yield payable on the higher rated insured obligation from that on the same lower rated obligation if uninsured. Such insurance is especially important to issuers such as the Commonwealth and its public corporations who have—and will have—significant borrowing needs, notwithstanding their lower credit rating.

27. Plaintiffs have standing to bring this adversary proceeding as parties in interest in these proceedings, and because under their insurance agreements and/or insurance policies, Plaintiffs are deemed to be the sole owners of the bonds that they insure for purposes of, or otherwise have control rights over, consents and other bondholder actions, including exercising rights and remedies. Plaintiffs are also generally express third party beneficiaries of the resolutions, indentures, or trust agreements under which the bonds are issued. As such, as Section 301(c)(3)(B) of PROMESA expressly recognized, financial guaranty insurers such as Plaintiffs are authorized to act on behalf of the holders of the bonds they insure, including in litigation generally, in these proceedings, and in this adversary proceeding, and Plaintiffs' right to act on behalf of bondholders is not dependent upon a default or subrogation. 48 U.S.C. § 2161(c)(3)(B). In addition, however, Plaintiffs have been subrogated to the rights of relevant bondholders upon paying the claims of such bondholders following a default, as set forth below. Payment by Plaintiffs neither satisfies nor discharges an issuer's obligation to pay and, to the

extent Plaintiffs make payments to bondholders, Plaintiffs step into the shoes of such bondholders and effectively becomes the owner of their bonds.

28. Plaintiffs insure the following types of Puerto Rico public debt at issue in this adversary proceeding:

A. Public Debt

1. GO Bonds

29. Assured insures approximately $1.5 billion of general obligation bonds ("GO Bonds") issued by the Commonwealth. Following the Commonwealth's default with respect to principal and interest payments due on the GO Bonds on July 1, 2016 and January 1, 2017, Assured paid approximately $232 million in aggregate claims by GO Bondholders and is now fully subrogated to the rights of the GO Bondholders for the claims it paid.

30. National insures approximately $691 million of GO Bonds issued by the Commonwealth. Following the Commonwealth's default with respect to principal and interest payments due on the GO Bonds on July 1, 2016 and January 1, 2017, National paid approximately $187 million in aggregate claims by GO Bondholders and is now fully subrogated to the rights of the GO Bondholders for the claims it paid.

2. PBA Bonds

31. The Public Buildings Authority ("PBA") is an instrumentality of the Commonwealth created by Act No. 56-1958 (the "PBA Enabling Act") for the primary purpose of designing and constructing office buildings, quarters, courts, warehouses, shops, schools, health facilities, social welfare facilities, and related facilities for lease to the Commonwealth and its departments, agencies, instrumentalities, and municipalities. Pursuant to the PBA Enabling Act, PBA has issued certain revenue bonds (the "PBA Bonds") under general bond resolutions (the "PBA Resolutions") adopted in 1970 and 1995.

32. Pursuant to the PBA Enabling Act and the PBA Resolutions, PBA Bonds are secured by a pledge of the rentals (the "PBA Pledged Revenues") of government facilities financed or refinanced by PBA Bonds and leased by PBA to departments, agencies, instrumentalities, and municipalities of the Commonwealth. The PBA Bonds are guaranteed by the Commonwealth, and as such constitute "public debt" entitled to the same priority of payment as the GO Bonds under the Commonwealth Constitution. In the PBA Enabling Act, the Commonwealth covenanted that it would "not limit or alter the rights or powers . . . granted [PBA] until the [PBA Bonds] . . . together with interest thereon, have been fully liquidated and retired." 22 L.P.R.A. § 910.

33. Assured insures approximately $174 million of the outstanding PBA Bonds. National insures approximately $190 million of the outstanding PBA Bonds Following PBA's default with respect to debt service payments due on PBA Bonds on July 1, 2016 and January 1, 2017, Assured paid approximately $4.4 million, and National paid approximately $5 million, in aggregate claims by PBA Bondholders and Plaintiffs are now fully subrogated to the rights of PBA Bondholders for the claims they paid.

B. Authority Bonds

34. In addition to public debt, Assured insures bonds (the "Authority Bonds") issued by the Puerto Rico Highways and Transportation Authority ("PRHTA"), the Puerto Rico Convention Center District Authority ("PRCCDA"), and the Puerto Rico Infrastructure Financing Authority ("PRIFA", and together with PRHTA and PRCCDA, the "Authorities"). National also insures bonds issued by PRHTA. The Authority Bonds are secured by statutory and contractual liens on specific pledged special revenue streams (collectively, the "Pledged Special Revenues"). Each of the Authorities is a public corporation separate and distinct from the Commonwealth, and under the Authorities' respective enabling acts, the Commonwealth

(prior to its diversion of their revenues) is not responsible for the Authorities' bond debts, just as the Authorities are not responsible for the general fund obligations of the Commonwealth.

1. PRHTA Bonds

35. PRHTA is a public corporation created by Act No. 74-1965 (the "PRHTA Enabling Act") to assume responsibility for the construction of highways and other transportation systems in Puerto Rico. Pursuant to the PRHTA Enabling Act, PRHTA has issued certain bonds (the "PRHTA Bonds") under general bond resolutions (the "PRHTA Resolutions") adopted in 1968 and 1998.

36. Pursuant to the PRHTA Enabling Act and PRHTA Resolutions, the PRHTA Bonds are secured by a gross lien on (i) revenues derived from PRHTA's toll facilities (the "Pledged Toll Revenues"); (ii) gasoline, diesel, crude oil, and other special excise taxes levied by the Commonwealth (the "PRHTA Pledged Tax Revenues"); and (iii) motor vehicle license fees collected by the Commonwealth (the "Vehicle Fees"; together with the PRHTA Pledged Tax Revenues, the "PRHTA Pledged Special Excise Taxes"; and together with the Pledged Toll Revenues and the PRHTA Pledged Tax Revenues, the "PRHTA Pledged Special Revenues").

37. The Secretary of Treasury is required by statute to transfer the PRHTA Pledged Special Excise Taxes to PRHTA each month for the benefit of PRHTA Bondholders, and the PRHTA Pledged Special Excise Taxes constitute trust funds that are property of the PRHTA Bondholders and not of the Commonwealth. See, e.g., 13 L.P.R.A. § 31751(a)(1); 9 L.P.R.A. §§ 2013(a)(2), 2021, 5681.

38. The Pledged Toll Revenues likewise constitute trust funds collected and held by PRHTA on behalf of PRHTA Bondholders and are property of the PRHTA Bondholders and not of the Commonwealth. See 9 L.P.R.A. § 2013(a)(2).

39. The PRHTA Resolutions in turn require PRHTA to transfer the PRHTA Pledged Special Revenues to the fiscal agent for the PRHTA Bonds (the "PRHTA Fiscal Agent") on a monthly basis. The Commonwealth covenanted with the holders of the PRHTA Bonds in the PRHTA Enabling Act that it would "not limit or restrict the rights or powers . . . vested in [PRHTA by the PRHTA Enabling Act] until all such bonds at any time issued, together with the interest thereon, are fully met and discharged." 9 L.P.R.A. § 2019.

40. PRHTA Bonds are non-recourse bonds, payable solely from the PRHTA Pledged Special Revenues. Moreover, because PRHTA Bonds are secured by a "gross lien" on all of the PRHTA Pledged Special Revenues, operating expenses of PRHTA may only be paid *after* PRHTA satisfies its debt service and reserve fund requirements with respect to PRHTA Bonds.

41. Assured insures approximately $1.5 billion of PRHTA Bonds currently outstanding, and National insures approximately $708 million of PRHTA Bonds currently outstanding. Under their insurance agreements and/or insurance policies, Plaintiffs are deemed to be the sole owners of the PRHTA Bonds that they insure for purposes of, or otherwise have control rights over, consents and other bondholder actions, including exercising rights and remedies of PRHTA Bondholders. Plaintiffs are also recognized as third-party beneficiaries under the PRHTA Resolutions.

42. On July 1, 2016, PRHTA defaulted on debt service payments aggregating approximately $4.5 million. Of that amount, approximately $4 million of the July 1 default was insured and paid by National and $83,039.34 was reinsured and paid by Assured. On January 1, 2017, PRHTA defaulted on a debt service payment totaling approximately $1 million on bonds insured by National. National paid claims to insured bondholders as a result of that default. Plaintiffs are fully subrogated to the rights of the PRHTA Bondholders whose claims they paid.

2. PRCCDA Bonds

43. PRCCDA is a public corporation created by Act No. 351-2000 (September 2, 2000) (the "PRCCDA Enabling Act") for the purpose of developing and operating a convention center located in San Juan, Puerto Rico, and related improvements and facilities. See 23 L.P.R.A. §§ 6402, 6404. Pursuant to the PRCCDA Enabling Act, PRCCDA has issued approximately $468 million of revenue bonds (the "PRCCDA Bonds") under a Trust Agreement dated as of March 24, 2006 (the "PRCCDA Trust Agreement").

44. Pursuant to the PRCCDA Enabling Act, Act No. 272-2003 (the "Hotel Tax Act"), and the PRCCDA Trust Agreement, the PRCCDA Bonds are secured by a lien on certain hotel occupancy taxes (the "PRCCDA Pledged Tax Revenues") imposed by the Commonwealth and collected by the Puerto Rico Tourism Company pursuant to the Hotel Tax Act. The Puerto Rico Tourism Company is required by statute to transfer the PRCCDA Pledged Tax Revenues to a special account maintained by the Government Development Bank for Puerto Rico in the name of PRCCDA but for the benefit of PRCCDA Bondholders, and the PRCCDA Pledged Tax Revenues constitute trust funds that are property of the PRCCDA Bondholders and not of the Commonwealth. See 13 L.P.R.A. § 2271v.

45. The Commonwealth covenanted in the PRCCDA Enabling Act that it would "not limit nor alter the rights [conferred on PRCCDA by the PRCCDA Enabling Act] until [the PRCCDA Bonds] and the interest thereon are paid in full." 23 L.P.R.A. § 6450. Moreover, under the PRCCDA Trust Agreement, PRCCDA, as an agent of the Commonwealth, covenanted that the Commonwealth (i) will "make sure that the amounts [of the PRCCDA Pledged Tax Revenues] must be deposited in the accounts as provided in the [PRCCDA] Trust Agreement" and (ii) will not limit or impair the rights of PRCCDA to comply with its obligations to repay the PRCCDA Bonds in full.

46. Assured insures approximately $152 million of the outstanding PRCCDA Bonds. Under a First Supplemental Trust Agreement to the PRCCDA Trust Agreement, dated as of March 24, 2006, Assured is deemed to be a third-party beneficiary and has standing to enforce any right, remedy, or claim.

3. PRIFA Bonds

47. PRIFA is a public corporation created by Act No. 44-1988 (the "PRIFA Enabling Act", and together with the PRHTA Enabling Act and the PRCCDA Enabling Act, the "Authority Enabling Acts") for the purpose of providing financial and other types of assistance to political subdivisions, public agencies, and instrumentalities of the Commonwealth. Pursuant to the PRIFA Enabling Act, PRIFA has issued certain special tax revenue bonds (the "PRIFA Bonds") under a Trust Agreement dated as of October 1, 1988. The aggregate principal amount of PRIFA Bonds outstanding is approximately $1.621 billion.

48. Pursuant to the PRIFA Enabling Act and the PRIFA Trust Agreement, the PRIFA Bonds are secured by a portion of a federal special excise tax imposed on rum and other items produced in the Commonwealth and sold in the United States (the "PRIFA Pledged Tax Revenues", and together with the PRHTA Pledged Special Excise Taxes and the PRCCDA Pledged Tax Revenues, the "Pledged Special Excise Taxes"). The Commonwealth's Department of Treasury (the "Department of Treasury") is required by statute to transfer the PRIFA Pledged Tax Revenues to PRIFA for the benefit of the PRIFA Bondholders, and the PRIFA Pledged Tax Revenues constitute trust funds that are property of the PRIFA Bondholders and not of the Commonwealth. 3 L.P.R.A. § 1914. In the PRIFA Enabling Act, the Commonwealth covenanted that it would "not limit or alter the rights [conferred on PRIFA by the PRIFA Enabling Act] until such bonds and the interest thereon are paid in full." Id. § 1913.

49. Assured insures approximately $18 million of the outstanding PRIFA Bonds through secondary market insurance policies. In connection with PRIFA's defaults with respect to debt service payments due on PRIFA Bonds on January, 1, 2016, July 1, 2016, and January 1, 2017, Assured paid $1.4 million in aggregate claims by PRIFA Bondholders and is now fully subrogated to the rights of the PRIFA Bondholders for the claims it paid.

II. Lawful Priorities And Liens Under Commonwealth Law

50. A number of provisions of the Commonwealth Constitution and of Commonwealth statutory law define the relative priority of (i) the public debt, including the GO and PBA Bonds; (ii) the Authority Bonds; and (iii) the other obligations of the Commonwealth and Authorities. These constitutional and statutory provisions are incorporated into Plaintiffs' contracts with the Commonwealth, PBA, and Authorities. In an earlier decision denying the Commonwealth's motion to dismiss Assured's complaint challenging the Commonwealth's ongoing misappropriation of the Pledged Special Excise Taxes, this Court carefully described and set out these priorities. Assured Guar. Corp. v. García-Padilla, Nos. 16-1037, -1095, 2016 WL 5794715, at *1-3 (D.P.R. Oct. 4, 2016). The relevant provisions include the following:

A. The Constitutional Debt Priority Provision

51. Section 8 of Article VI of the Commonwealth Constitution (the "Constitutional Debt Priority Provision") creates a priority for GO Bonds, PBA Bonds, and other "public debt" over the Commonwealth's other expenditures by requiring the "public debt" to be paid "first":

> In case the available revenues including surplus for any fiscal year are insufficient to meet the appropriations made for that year, **interest on the public debt and amortization thereof shall first be paid**, and other disbursements shall thereafter be made in accordance with the order of priorities established by law.

P.R. Const. art. VI, § 8 (emphasis added).

52. Public debt, including GO and PBA Bond debt, thus has priority (the "Public Debt Priority") over all other government expenditures whenever available resources are not sufficient to meet appropriations. Because of its constitutional status, the Public Debt Priority cannot be overridden by the Commonwealth's police power, even in a financial emergency. See, e.g., Flushing Nat'l Bank v. Mun. Assistance Corp. for N.Y., 358 N.E.2d 848, 852 (N.Y. 1976) (holding that a "fugitive recourse to the police power" may not be used to "displace inconvenient but intentionally protective constitutional limitations").

53. Moreover, after giving effect to the Public Debt Priority, the Constitutional Debt Priority Provision incorporates other legal priorities, created by statute, by stating that, following payment of the public debt, "other disbursements shall . . . be made in accordance with the order of priorities established by law." P.R. Const. art. VI, § 8. Among the statutory priorities incorporated into the Constitutional Debt Priority Provision and thereby granted constitutional protection are (i) the statutory priorities established by certain provisions (the "Authority Bond Priority Provisions") of the statutes governing the Authority Bonds and (ii) the statutory priorities established by the Commonwealth's Management and Budget Office Organic Act, Act No. 147-1980, the "OMB Act").

B. The Authority Bond Priority Provisions

54. In order to make the Authority Bonds attractive to investors, the statutes governing the Authority Bonds grant Authority Bondholders the most senior possible lien on the Pledged Special Excise Taxes consistent with the Constitutional Debt Priority Provision. To this end, these statutes grant Authority Bondholders first-priority liens on the Pledged Special Excise Taxes, subject only to the conditions that, in a fiscal year in which the Constitutional Debt Priority Provision is in effect, the Pledged Special Excise Taxes may (i) be used *solely* to pay the public debt, but (ii) *only if the public debt remains unpaid after a first application of all*

available resources to the payment of public debt. Together, these two preconditions to any "clawback" of Pledged Special Excise Taxes[2] establish the priority (the "Authority Bond Priority") of the Authority Bonds over *all* disbursements other than public debt that might be made during a fiscal year in which the Constitutional Debt Priority Provision is in effect. Except where *both* of these conditions to a "clawback" have been satisfied, the Authority Bonds are fully secured by statutory and contractual liens on the Pledged Special Excise Taxes and cannot be impaired without violating Commonwealth law and the Contracts, Takings, and Due Process Clauses of the U.S. and Commonwealth Constitutions. As this Court described, "[t]he funds from these taxes and tax liens may be used to pay the public debt if no other Commonwealth resources are available." Assured Guar., 2016 WL 5794715, at *3.

55. The Authority Bond Priority, including these two preconditions to any clawback, is expressly set forth in the following Authority Bond Priority Provisions:

(a) **PRHTA Pledged Tax Revenues Pledged to Payment of PRHTA Bonds: "The proceeds of said collection shall be solely used for the payment of interest and amortization of the public debt, as provided in said Section 8 of Item VI of the Constitution, to the extent that all other resources available to which reference is made in said section are insufficient for such purposes.** Otherwise, the proceeds of said collection, in the amount that may be necessary, shall be used solely for the payment of the principal and interest on bonds and other obligations of the Authority and to comply with any stipulations agreed to by the latter with the holders of said bonds or other obligations." 13 L.P.R.A. § 31751(a)(1)(C) (emphasis added).

(b) **Vehicle Fees Pledged to Payment of PRHTA Bonds**: "[S]aid pledge or pignoration shall be subject to the provisions of § 8 of Article VI of the Constitution of Puerto Rico; **Provided, however, That the proceeds of said collection shall only be used for the payment of interest and the amortization of the public debt, as provided in said § 8, to the extent that all other resources available, referred to in said section, are insufficient for such purposes,** otherwise, the proceeds of said collection in the amount

[2] Because the Pledged Toll Revenues do not constitute "available resources," they can never be subject to "clawback" to pay the public debt.

that is necessary shall be used solely for the payment of the principal and interest on bonds and other obligations of the Authority, and to meet whatever other stipulations are agreed upon between the Authority and the holders of said bonds or other obligations." 9 L.P.R.A. § 2021 (emphasis added); see also 9 L.P.R.A. § 5681.

(c) **PRCCDA Pledged Tax Revenues Pledged to Payment of PRCCDA Bonds: "The product of the collection of the tax shall be used solely for the payment of the interest and the amortization of the public debt, as provided in Section 8 of Article VI of the Constitution of the Commonwealth of Puerto Rico, but only to the degree to which the other available resources to which reference is made in said Section are insufficient for such purposes.** Otherwise, the product of said collection, in the amount necessary, shall be used solely for the payment of the principal and interest on the bonds, notes or other obligations and the obligations under any bond related financing agreement contemplated herein, and to comply with any stipulations agreed to with the bondholders, noteholders or holders of other obligations or the providers under bond related financing agreements." 13 L.P.R.A. § 2271v(a)(4) (emphasis added).

(d) **PRIFA Pledged Tax Revenues Pledged to Payment of PRIFA Bonds:** "[PRIFA] is hereby empowered to segregate a portion of said Funds into one (1) or more sub-accounts, subject to the provisions of Section 8 of Article VI of the Constitution of the Commonwealth of Puerto Rico for the payment of the principal and interest on bonds and other obligations of the Authority, or for the payment of bonds and other obligations issued by a benefited entity, or for any other legal purpose of the Authority. **The moneys of the Special Fund may be used for the payment of interest and for the amortization of the public debt of the Commonwealth, as provided in said Section 8, only when the other resources available referred to in said Section are insufficient for such purposes.**" 3 L.P.R.A. § 1914 (emphasis added).

C. The OMB Act

56. In furtherance of the Constitutional Debt Priority Provision, and consistent with the Authority Bond Priority Provisions, Section 4(c) of the OMB Act sets certain "priority guidelines" for the disbursement of available resources in a fiscal year in which the Constitutional Debt Priority Provision is in effect. The priorities set by the Commonwealth's Legislative Assembly (the "Legislative Assembly") in the OMB Act first require "payment of interest and amortizations corresponding to the public debt." 23 L.P.R.A. § 104(c)(1). The "priority guidelines" next assign a second-priority status to "commitments entered into by virtue

of legal contracts in force, judgments of the courts in cases of condemnation under eminent domain, and binding obligations to safeguard the credit, reputation and good name of the Government of the Commonwealth of Puerto Rico," including, to the extent applicable, the Authority Bonds.[3] Id. § 104(c)(2).

57. "Regular expenses" related to government operations receive a *third*-priority status (after public debt and Authority Bonds) under Section 4(c) of the OMB Act, with priority within this group given to expenses related to "[c]onservation of public health," "[p]rotection of persons and property," "[p]ublic education programs," "[p]ublic welfare programs," and "[p]ayments of employer contributions to retirement systems and payment of pensions to individuals granted under special statutes," followed by "remaining public services in the order of priority determined by the Governor." 23 L.P.R.A. § 104(c)(3)(A)-(E). Necessary "adjustments due to reductions may be made" to the appropriations for any of these enumerated "service areas." Id. § 104(c)(3)(E).

58. Finally, the OMB Act's "priority guidelines" assign the lowest priorities to "construction of capital works or improvements" (fourth priority) (23 L.P.R.A. § 104(c)(4)) and "contracts and commitments contracted under special appropriations" (fifth priority) (id. § 104(c)(5)).

[3] The Pledged Toll Revenues are not subject to the OMB Act waterfall, because they are not general revenues and do not constitute "available resources." Similarly, the Pledged Special Excise Taxes are not subject to the OMB Act waterfall, because the Pledged Special Excise Taxes are not general revenues and can never be used for any purpose other than to pay the Authority Bonds or, following a *valid* clawback, the public debt. Even in the event the OMB Act waterfall were found to apply to the Pledged Special Excise Taxes, however, the Pledged Special Excise Taxes could only be applied to the first two items in the waterfall, namely payment of the public debt or of "legal contracts in force" (i.e. the Authority Bonds).

III. PROMESA And The Illegal Fiscal Plan

59. On June 30, 2016, President Barack Obama signed PROMESA into law. The stated purpose of PROMESA is to "establish an Oversight Board to assist the Government of Puerto Rico, including instrumentalities, in managing its public finances, and for other purposes." H.R. 5278, 114th Cong. (2016) (preamble).

60. Among other things, PROMESA (i) establishes a process for the Oversight Board to approve a fiscal plan governing the Commonwealth's future finances and budgets (Title II); (ii) establishes a process for the Oversight Board to file a bankruptcy petition on behalf of the Commonwealth or its instrumentalities (Title III); and (iii) provides for an alternative mechanism for adjusting the Commonwealth's bond debt outside of a bankruptcy proceeding by effectuating modifications with the substantial, but not necessarily unanimous, support of the affected bondholders.

61. To qualify as a "Fiscal Plan" as defined in PROMESA, a fiscal plan must satisfy a series of substantive requirements set forth in Section 201(b)(1). 48 U.S.C. § 2141(b)(1). Specifically, Section 5(10) of PROMESA defines a "Fiscal Plan" as "**a Territory Fiscal Plan** or an Instrumentality Fiscal Plan," and Section 5(22) of PROMESA in turn defines "Territory Fiscal Plan" as "a fiscal plan for a territorial government submitted, approved, and certified **in accordance with section [201].**" 48 U.S.C. § 2104(10), (22) (emphasis added). Because the Illegal Fiscal Plan is not substantively "in accordance with section 201[(b)(1)]," it does not constitute a "Fiscal Plan" under PROMESA and cannot be the basis for the filing and confirmation of a plan of adjustment in these Title III proceedings.

62. On March 27, 2017, shortly after the Oversight Board approved the Illegal Fiscal Plan, Assured and numerous other Commonwealth creditors sent a letter ("Exhibit B") to the Oversight Board alerting its members to the Illegal Fiscal Plan's non-compliance with

PROMESA and identifying the Illegal Fiscal Plan's many deficiencies. Assured and the other signatories to the March 27 letter received no written response from the Oversight Board.

63. On April 5, 2017, Assured sent a second letter ("Exhibit C") to the Oversight Board again alerting its members to the Illegal Fiscal Plan's non-compliance with PROMESA and formally requesting that the Oversight Board revoke its certification of the Illegal Fiscal Plan. Assured received no written response from the Oversight Board to its April 5 letter.

64. On April 7, 2017, two members of the United States Senate, Hon. Sen. Thom Tillis and Hon. Tom Cotton (the "Senators"), sent a letter ("Exhibit D") to José B. Carrión III, the chair of the Oversight Board, expressing their concern that the Illegal Fiscal Plan was not compliant with PROMESA because of (i) its failure to comply with lawful priorities and liens established by Puerto Rico's constitution, (ii) its failure to differentiate between non-essential and essential spending, (iii) its elevation of all non-debt spending above debt service, and (iv) its unexplained economic assumptions.

65. On April 25, 2017, the Oversight Board issued a written response ("Exhibit E") to the Senators. Instead of adequately addressing the Senators' concerns, the Oversight Board's April 25 letter essentially conceded that the Illegal Fiscal Plan does not comply with lawful priorities and liens. Specifically, the Oversight Board claimed that the word "respect" in Section 201(b)(1)(N) means something other than "comply with," which in the Oversight Board's view gave the Illegal Fiscal Plan the "flexibility" to *dis*respect and violate lawful priorities and liens, a result that would be contrary to generations of federal constitutional and bankruptcy law. See Ex. E at 12.

66. The Oversight Board's position that Section 201(b)(1)(N)'s use of the verb "respect" gives the Illegal Fiscal Plan "flexibility" to disrespect and violate priorities and liens is

pure sophistry, because when referring to a "legal requirement," to "respect" means precisely to **"abide by,"** as in "the crown and its ministers ought to respect the ordinary law."[4]

67. The Oversight Board's position on the meaning of "respect" is therefore contrary to the plain meaning of the statute and at odds with Congress' stated intent. According to Congress, Section 201(b)(1)(N) was added to "**ensure** fiscal plans keep intact the structural hierarchy of prioritized debt,"[5] and Section 201(b)(1) "should not be interpreted to reprioritize pension liabilities ahead of the lawful priorities or liens of bondholders as established under the territory's constitution, laws, or other agreements."[6]

68. The Oversight Board also sought in its April 25 letter to justify the Illegal Fiscal Plan's prioritization of general government expenses over debt service by referring to "PROMESA §§ 104(i) and 314(b)," two sections of PROMESA that have nothing to do with the requirements for certification of a compliant fiscal plan. See Ex. E at 2. Section 104(i) establishes certain requirements that must be satisfied in order to "fast track" a voluntary agreement with creditors for implementation through Title VI of PROMESA. 48 U.S.C. § 2124(i). Section 314(b) in turn establishes certain requirements for confirmation of a plan of adjustment in a Title III proceeding. 48 U.S.C. § 2174(b). Although PROMESA encourages voluntary agreements with creditors and, under certain well-defined circumstances, permits the filing and confirmation of a Title III plan of adjustment, nothing in PROMESA *requires* either voluntary agreements or the filing of Title III plans. By contrast, PROMESA *requires* the

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[4] Oxford Living Dictionaries: English, https://en.oxforddictionaries.com/definition/respect (last visited May 1, 2017) (emphasis added).

[5] Memorandum of Full Committee Markup of H.R. 5278 Before the H. Comm. on Nat. Res., at 3, 114th Cong. (2016), http://naturalresources.house.gov/uploadedfiles/markup_memo_h.r._5278_05.24.16_05.25.16.pdf (emphasis added).

[6] H.R. Rep. No. 114-602, pt. 1, at 45 (2016).

Oversight Board to develop and approve a fiscal plan that complies with Section 201(b). There is therefore no way that Sections 104(i) and 314(b) could ever override the express requirements of Section 201(b).

A. Injuries Caused By The Illegal Fiscal Plan

1. Injuries Caused By The Illegal Fiscal Plan Generally

69. Under PROMESA, once a fiscal plan is certified, all governmental actions, including all actions by Defendants, must comply with the certified fiscal plan. This would include actions taken by applicable Defendants during the pendency of a Title III proceeding.

70. For example, Section 202 of PROMESA requires the budgets of the Commonwealth, the PBA, and the Authorities to comply with a certified fiscal plan. 48 U.S.C. § 2142.

71. Similarly, Section 204 of PROMESA requires future Commonwealth legislation to comply with a certified fiscal plan. 48 U.S.C. § 2144.

72. In addition, Section 314 of PROMESA sets forth the requirements for confirmation of a plan of adjustment in these Title III proceedings. 48 U.S.C. § 2174. One of these requirements is that "the plan is consistent with the applicable Fiscal Plan certified by the Oversight Board under [Title] II." Id. § 2174(b)(7). Therefore, unless this Court grants the relief requested by Plaintiffs to ensure that the Illegal Fiscal Plan is amended to be made PROMESA-compliant, the Illegal Fiscal Plan likely will control the terms of the plans of adjustment submitted by or on behalf of the debtors in these or related Title III proceedings, in addition to actions taken by Defendants during the pendency of these Title III proceedings.

73. As a direct result of the subordination of debt service to all expenses ordained by the Illegal Fiscal Plan, certain defaults on bonds insured by Plaintiffs have already

occurred. Further defaults on bonds insured by Plaintiffs are imminent and will occur on July 1, 2017 and thereafter as a result of the implementation of the Illegal Fiscal Plan. Defaults on bonds insured by Plaintiffs will cause significant financial harm to Plaintiffs. Implementation of the Illegal Fiscal Plan through a Title III plan of adjustment would also permanently impair Plaintiffs' and bondholders' contractual rights and deprive Plaintiffs and bondholders of their property interests in violation of the U.S. Constitution.

74. The full implications and illegality of the Illegal Fiscal Plan can be seen in the Fiscal Plan Act, which was recently enacted to "implement" the Illegal Fiscal Plan by impairing the contractual rights of Assured and other stakeholders and depriving them of their property without just compensation or due process of law.

2. The Fiscal Plan Act

75. On or about April 29, 2017, the Commonwealth enacted the Fiscal Plan Act. The Fiscal Plan Act fully effectuates the contract impairments and illegal expropriations of property purportedly authorized by the Illegal Fiscal Plan. Chapters 4 and 6 ("Exhibit F") of the Fiscal Plan Act are particularly egregious and obviously illegal and unconstitutional. Chapter 4, entitled "Transfer Of Profits From Authorities To The General Fund," purportedly authorizes the Commonwealth to simply misappropriate secured bondholder collateral and other property to which the Commonwealth has no legal entitlement. Chapter 6, meanwhile, similarly purports to authorize the Commonwealth to simply appropriate for its own use trust funds held in special accounts in the Commonwealth treasury for the benefit of the Authorities and their bondholders.

(a) Chapter 4 Of The Fiscal Plan Act

76. Article 4.01 of Chapter 4 of the Fiscal Plan Act provides for the Commonwealth to expropriate property in the form of "surplus" revenues from its public corporations and their bondholders:

> Article 4.01.- Transfer of Surplus
>
> Public corporations, agencies and instrumentalities of the Government of Puerto Rico are hereby directed to transfer to the Department of the Treasury the surplus of the income produced. These funds will be considered as available resources of the State and deposited by the Department of the Treasury in the General Fund of the Government of Puerto Rico to meet the liquidity requirements set out in the Fiscal Plan adopted under the provisions of *"Puerto Rico Oversight, Management and Economic Stability Act of 2016"* Public Law 114-187, also known as PROMESA.

77. Article 4.02 of Chapter 4 of the Fiscal Plan Act in turn purports to establish a Committee empowered to determine what amounts of bondholder collateral are to be expropriated from the Commonwealth's public corporations and transferred to the Commonwealth pursuant to Article 4.01:

> Article 4.02.-Committee
>
> The amount of funds that each of the corporations and instrumentalities will provide will be determined by a committee composed of the [AAFAF Executive Director], the [Secretary of Treasury] and the Executive Director of the Office of Management and Budget, who may establish the necessary tariffs to comply with the provisions of the Fiscal Plan approved for the Government of Puerto Rico and the one which will rule its corporations. This committee will ensure that the transfer of funds as provided in Article 4.01 of this Act do not affect the services provided by public corporations and instrumentalities, and only consist of the available surplus after the operating expenses and obligations of these entities have been covered in accordance with the budgeted expenses approved by the Office of Management and Budget for each fiscal year.

78. Chapter 4 makes absolutely no provision for payment by the Authorities of their secured debt. Instead, under Chapter 4, the Commonwealth authorizes itself simply to steal the Pledged Special Revenues pledged to payment of the Authority Bonds.

79. Equally unlawfully and unconstitutionally, Chapter 4 defines the revenues that the Commonwealth may expropriate to include all revenues that do not constitute "operating

expenses and obligations" of the relevant Authority. In the case of Authorities, such as PRHTA, that have given a "gross pledge" of their revenues to bondholders, Chapter 4 *reverses* the priorities established by the gross pledge, essentially providing that operating expenses of the Authority have a first priority status over all of its other obligations, including its debt obligations.

80. Moreover, Article 4.02 defines as "available resources" those Pledged Special Revenues (the "Operating Revenues") that are generated by an Authority itself and not assigned to the Authority by the Commonwealth, such as Pledged Toll Revenues generated by PRHTA's operations. Such Operating Revenues do not constitute "available resources" under the Commonwealth Constitution and are not subject to "clawback" by the Commonwealth even under the very limited circumstances under which a "clawback" of the Pledged Special Excise Taxes is permitted. The Commonwealth's misappropriation of these Operating Revenues under Chapter 4 simply constitutes theft.

(b) Chapter 6 Of The Fiscal Plan Act

81. Chapter 6 of the Fiscal Plan Act amends Act No. 230-1974 (July 23, 1974), known as the "Government Accounting Act of Puerto Rico" (as amended, the "Accounting Act"), among other things by providing under Article 7(a) and (e) of the Accounting Act, as amended:

> [A]ll of the state special funds and other revenues of dependencies and public corporations after July 1, 2017, shall be deposited in their totality in the State Treasury under the custody of the Secretary of the Treasury or in the banking institution that he deems adequate. . . .
>
> . . .
>
> After July 1st, 2017, all those special state funds created by law for specific purposes will be used for those **purposes for which they were assigned by Law in accordance with the Budget recommended by the Office of Management and Budget and with the Fiscal Plan**. . . . **If**

> **there is any inconsistency between the law and the use of funds with the Fiscal Plan, the purpose provided in Fiscal Plan approved under the provisions of the Federal Law PROMESA shall prevail**. (emphasis added).

82. Funds held in "special funds" in the Commonwealth treasury include Pledged Special Revenues "assigned" to the Authorities "by law" and constituting trust funds held by the Department of Treasury on behalf of the relevant Authority for the benefit of its bondholders. In particular, the PRHTA Pledged Special Excise Taxes are held in a special fund in the Commonwealth Treasury on PRHTA's behalf for the benefit of its bondholders prior to transfer to the PRHTA Fiscal Agent. By conditioning the uses of these special funds on their being "in accordance with the Budget recommended by the Office of Management and Budget and with the Fiscal Plan," Chapter 6 subverts the purposes for which the Pledged Special Revenues were assigned by law. Indeed, the Illegal Fiscal Plan mandates an unlawful treatment of the Pledged Special Revenues that does not accord with the liens and priorities established by law.

83. Chapter 6 further flaunts the fact that the Illegal Fiscal Plan deprives bondholders of their statutory entitlements and substantially impairs their contractual rights, stating, "If there is any inconsistency **between the law** and the use of funds with the Fiscal Plan**, the purpose provided in Fiscal Plan . . . shall prevail."** The admitted effect of the Illegal Fiscal Plan, then, is to deprive Plaintiffs and other parties of benefits and other property interests to which they are entitled by law.

IV. The Illegal Fiscal Plan And The Fiscal Plan Act Violate PROMESA

84. The Illegal Fiscal Plan and the Fiscal Plan Act fail to comply with numerous substantive requirements of PROMESA.[7] Specific provisions of PROMESA violated by the Illegal Fiscal Plan and the Fiscal Plan Act include the following:

A. The Illegal Fiscal Plan And The Fiscal Plan Act Fail To Respect Lawful Priorities And Liens (PROMESA §§ 201(b)(1)(N) And 201(b)(1)(B))

85. Section 201(b)(1)(N) of PROMESA requires a fiscal plan to "respect the relative lawful priorities or lawful liens, as may be applicable, in the constitution, other laws, or agreements of a covered territory or covered territorial instrumentality in effect prior to the date of enactment of [PROMESA]." 48 U.S.C. § 2141(b)(1)(N).

86. As set forth above, the Constitutional Debt Priority Provision, the Authority Bond Priority Provisions, and the OMB Act together establish the lawful priorities in effect prior to the enactment of PROMESA. The Illegal Fiscal Plan as implemented through the Fiscal Plan Act violates the Public Debt Priority and the Authority Bond Priority, however, because it assumes that *all* non-debt expenses of the Commonwealth government are to be paid before *any* payments are made for debt service. By contrast, a compliant fiscal plan would require that (i) the public debt must be paid first from all available resources, that (ii) the Authority Bonds must be paid from the Pledged Special Revenues (except in the unlikely scenario that the public debt remains unpaid after a first application of all available resources to the payment of such public debt), and that (iii) the remaining available resources must be budgeted to other government expenditures in accordance with the priorities set out in the OMB Act.

[7] Plaintiffs reserve the right to challenge the legality of the procedure through which the Oversight Board determined to certify the Illegal Fiscal Plan.

87. The Illegal Fiscal Plan openly acknowledges its own non-compliance with Section 201(b)(1)(N), because it does not even take a position on the existence of the relevant priorities and liens: "The Fiscal Plan as proposed . . . does [not] take a position with respect to asserted constitutional or contractual rights and remedies, validity of any bond structure, or the dedication or application of tax streams/available resources." Ex. A at 5. A determination of each of the cited items would be necessary in order for the Illegal Fiscal Plan to demonstrate its compliance with Section 201(b)(1)(N), however.

88. The Illegal Fiscal Plan also violates the priorities established by Section 4(c)(3) of the OMB Act by failing even to attempt to prioritize as between different categories of third priority "regular expenses" of government. Indeed, the Illegal Fiscal Plan openly acknowledges that it does not reflect any attempt at differentiation between higher priority "essential" services and lower priority "non-essential services," because it includes within its list of "Legal and Contractual Issues not determined by the Fiscal Plan" the issue of "What is an essential service for purposes of the exercise of the Government's police power." Ex. A at 6. This is contrary to the OMB Act's express requirement that expenditures related to health, public safety, education, and welfare be given priority over other, less essential government services and over capital improvements, albeit in both cases only after the payment first of public debt and the Authority Bonds.

89. The Illegal Fiscal Plan's failure to differentiate between essential and non-essential services is also contrary to Section 201(b)(1)(B) of PROMESA, which requires a fiscal plan to provide for the funding of "*essential* public services." 48 U.S.C.A. § 2141(b)(1)(B) (emphasis added). Because the Illegal Fiscal Plan does not even identity which services are essential, it does not satisfy this requirement of Section 201(b) and is not "in accordance with section 201."

90. The Illegal Fiscal Plan and the Fiscal Plan Act also violate the lawful liens in effect prior to the enactment of PROMESA, because they unlawfully commingle the Pledged Special Revenues, which are property of the Authority Bondholders, with the Commonwealth's unencumbered revenues and assume that these Pledged Special Revenues can be used to fund any and all Commonwealth expenses. The Illegal Fiscal Plan and the Fiscal Plan Act cannot override those liens. Congress retained the special revenue provisions of the Bankruptcy Code in PROMESA. See 48 U.S.C. § 2161 (incorporating sections 922 and 928 of the Bankruptcy Code). Accordingly, liens securing Authority Bonds, among others, remain enforceable against revenues received after the filing of a Title III petition. 11 U.S.C. § 928(a). Further, the filing of a Title III petition does not operate as a stay against the application of pledged special revenues for debt service. Id. § 922(d). Finally, the Pledged Special Excise Taxes constitute special excise taxes, and such pledged special excise taxes are not subject to, and may not be used to fund, the necessary operating expenses of PRHTA or the Commonwealth. Id. § 928(b).

91. Similarly, the Illegal Fiscal Plan and the Fiscal Plan Act fail to first use unencumbered available Commonwealth resources to pay public debt, as required by the Constitutional Debt Priority Provision and the Authority Bond Priority, and fail to segregate Pledged Special Revenues for the payment of the Authority Bonds or of the public debt, which are the only two purposes for which such Pledged Special Revenues could ever possibly be used.

B. The Illegal Fiscal Plan Requires, And The Fiscal Plan Act Implements, The Misappropriation Of Pledged Special Revenues (PROMESA § 201(b)(1)(M))

92. The Illegal Fiscal Plan and the Fiscal Plan Act also violate Section 201(b)(1)(M) of PROMESA, which requires a compliant fiscal plan to "ensure that assets, funds, or resources of a territorial instrumentality are not loaned to, transferred to, or otherwise used for the benefit of a covered territory or another covered territorial instrumentality of a covered

territory, unless permitted by the constitution of the territory, an approved plan of adjustment under [Title] III, or a Qualifying Modification approved under [Title] VI[.]" 48 U.S.C. § 2141(b)(1)(M). By its plain terms, this section of PROMESA expressly prohibits the unlawful commingling of Pledged Special Revenues with Commonwealth general funds.

93. As set forth above, the Illegal Fiscal Plan and the Fiscal Plan Act fail to preserve the segregation of the Pledged Special Revenues and instead simply commingle the Pledged Special Revenues with the Commonwealth's general revenues. However, the Pledged Special Revenues are either generated directly by the relevant entity (in the case of the Pledged Toll Revenues) or are assigned to the relevant entity by statute for the benefit of bondholders[8] (in the case of the other Pledged Special Revenues). As such, the Pledged Special Revenues constitute "assets, funds, [and] resources" of the relevant "territorial instrumentality" (i.e. an Authority) that cannot legally be loaned to, transferred to, or otherwise used for the benefit of the Commonwealth.

94. However, the Illegal Fiscal Plan expressly acknowledges that it "consolidates available cash resources that can be made available for debt service payments," and it includes Pledged Special Revenues in this "consolidated" calculation of resources available for *Commonwealth* debt service. See Ex. A at 5-6. The Fiscal Plan Act in turn establishes a precise mechanism for the illegal transfer of Pledged Special Revenues from the Authorities to the Commonwealth.

95. The use of Pledged Special Revenues to fund Commonwealth general expenditures under the Illegal Fiscal Plan and the Fiscal Plan Act thus violates Section

[8] See 13 L.P.R.A. § 31751(a)(1) (governing Special Excise Taxes assigned to PRHTA); 9 L.P.R.A. §§ 2021, 5681 (governing Vehicle Fees assigned to PRHTA); 13 L.P.R.A. § 2271v (governing PRCCDA Pledged Tax Revenues); 3 L.P.R.A. § 1914 (governing PRIFA Pledged Tax Revenues).

201(b)(1)(M), again rendering the Illegal Fiscal Plan and the Fiscal Plan Act non-compliant and in violation of PROMESA.

C. The Illegal Fiscal Plan Fails To Provide For Estimates Of Revenues And Expenditures Based On Applicable Laws (PROMESA § 201(b)(1)(A)(i))

96. Section 201(b)(1)(A)(i) of PROMESA requires a compliant fiscal plan to "provide for estimates of revenues and expenditures in conformance with agreed accounting standards and be based on applicable laws; or specific bills that require enactment in order to reasonably achieve the projections of the Fiscal Plan." 48 U.S.C. § 2141(b)(1)(A). The revenue and expenditure estimates in the Illegal Fiscal Plan are not based on "applicable laws," because these revenue and expenditure estimates simply assume, without explanation, that (i) all general government expenditures can be funded before debt service, in violation of the Public Debt Priority and the Authority Bond Priority, and that (ii) Pledged Special Revenues are available for use by the Commonwealth to fund its general expenditures, notwithstanding the fact that these Pledged Special Revenues constitute property of the relevant bondholders and can only be used to make payments on the bonds to which they are pledged.

97. The revenue and expenditure estimates in the Illegal Fiscal Plan are also not based on any "specific bills" pending at the time the Illegal Fiscal Plan was developed that would have permitted the Commonwealth to violate the Public Debt Priority and the Authority Bond Priority in the manner envisioned by the Illegal Fiscal Plan. Any such bills, including the subsequently proposed and enacted Fiscal Plan Act, would in any case have been unconstitutional under the U.S. and Commonwealth Constitutions upon enactment, meaning that they could not have formed an appropriate or realistic basis for the Commonwealth's revenue and expenditure projections. Therefore, the Illegal Fiscal Plan violates Section 201(b)(1)(A)(i) of PROMESA.

D. The Illegal Fiscal Plan And The Fiscal Plan Act Fail To Provide For Fiscal Responsibility Or Access To Capital Markets (PROMESA §§ 101(a), 201(b)(1))

98. Most fundamentally, the Illegal Fiscal Plan and the Fiscal Plan Act fail to achieve the overarching purpose of the Oversight Board as identified in Section 101(a) of PROMESA, which is to "provide a method for [Puerto Rico] to achieve fiscal responsibility and access to the capital markets." 48 U.S.C. § 2121(a). Reiterating this overarching purpose of PROMESA, Section 201(b)(1) similarly expressly requires a compliant fiscal plan to "provide a method to achieve fiscal responsibility and access to the capital markets." Id. § 2141(b)(1).

99. The Illegal Fiscal Plan, as implemented through the Fiscal Plan Act, does nothing to help Puerto Rico achieve fiscal responsibility, because it leaves in place a pro forma level of government expenses before payment of public and other debt that is not lower than 2016 and does not attempt to differentiate between expenses for essential services and expenses for non-essential services. See Ex. A at 6.

100. Moreover, the Illegal Fiscal Plan includes an incremental $6.2 billion "Reconciliation Adjustment" designed to provide the Commonwealth with an annual "cushion" of approximately $600 million to pay for non-budgeted expenses. See Ex. A at 14. The inclusion of this massive contingency reserve is contrary to the express language of PROMESA, which requires a compliant fiscal plan to "provide for the elimination of structural deficits" (48 U.S.C. § 2141(b)(1)(D)) and which requires the Oversight Board to respond to any noncompliance by the Commonwealth with its Board-approved budget by "mak[ing] appropriate reductions in ***nondebt expenditures***" (id. § 2143(d)(1)) (emphasis added). The Illegal Fiscal Plan also fails to take into account any reductions in expenses that could result from successful privatization of government assets.

101. Similarly, the Illegal Fiscal Plan, as implemented through the Fiscal Plan Act, *impedes*, rather than enhances, Puerto Rico's access to the capital markets by undermining investor confidence in Puerto Rico's commitment to debt repayment and creditor rights. So long as the Illegal Fiscal Plan and the Fiscal Plan Act continue to disregard the Public Debt Priority, the Authority Bond Priority, and Section 201(b)(1) of PROMESA, the Commonwealth will continue to have no access to the capital markets. Renewed access to the capital markets is essential, however, if the Commonwealth is to implement the types of pro-growth measures that can provide a long-term solution to its financial difficulties. In this context, it is significant that the Illegal Fiscal Plan fails to incorporate any of the recommendations made by the Congressional Task Force on Economic Growth in Puerto Rico created by Section 409(a) of PROMESA in its December 20, 2016 Report to the House and Senate, which details numerous economic initiatives that the Commonwealth could undertake through a combination of better utilization of federal resources and new infusions of private investment.

V. The Illegal Fiscal Plan And The Fiscal Plan Act Violate The U.S. Constitution

102. In addition to violating PROMESA itself, the Illegal Fiscal Plan and the Fiscal Plan Act violate the Contracts, Takings, and Due Process Clauses of the U.S. Constitution.

A. The Illegal Fiscal Plan And The Fiscal Plan Act Violate The Contracts Clause

103. The Contracts Clause of Article I of the U.S. Constitution (the "Contracts Clause") provides that "**[n]o State shall . . . pass any . . . Law impairing the Obligation of Contracts[.]**" U.S. Const. art. I, § 10, cl. 1 (emphasis added). The primary purpose behind the enactment of the Contracts Clause was to prevent States from adopting laws that would permit borrowers (including the States) to abrogate their debts at the expense of creditors.

104. The Fiscal Plan Act constitutes a "law" that was "passed" by the Commonwealth. In addition, and independently of its implementation through the Fiscal Plan Act, the Illegal Fiscal Plan itself also has the force of law and constitutes a "law" for purposes of the Contracts Clause. Among other things, the Illegal Fiscal Plan dictates to the Legislative Assembly what types of budgets (PROMESA § 202) and other legislation (PROMESA § 204) it may pass. Accordingly, in authorizing the Oversight Board to approve fiscal plans, the U.S. Congress clearly delegated a portion of the Commonwealth's legislative power to the Oversight Board.

105. The Illegal Fiscal Plan and the Fiscal Plan Act substantially impair the contractual rights of bondholders and of Plaintiffs. Plaintiffs insured, and bondholders purchased, the GO Bonds, the PBA Bonds, and the Authority Bonds (collectively, the "Bonds") in reliance on the Public Debt Priority and the Authority Bond Priority, both of which priorities were incorporated into Bondholders' and Plaintiffs' contracts with the Commonwealth, PBA, and the Authorities. Moreover, Plaintiffs insured the Authority Bonds in reliance on the Authorities' promises to pledge the Pledged Special Revenues exclusively to the payment of the relevant Bonds, subject only to the Constitutional Debt Priority Provision and the Authority Bond Priority Provisions. However, by (i) altering these priorities and (ii) diverting Pledged Special Revenues from their contractually agreed upon purposes, the Illegal Fiscal Plan and the Fiscal Plan Act substantially impair (i) the contractual rights of GO and PBA Bondholders to be paid on a first-priority basis from available resources and (ii) the contractual rights of Authority Bondholders and Plaintiffs to be secured by, and ultimately paid from, the Pledged Special Revenues.

106. The Commonwealth also covenanted with Authority Bondholders in the Authority Enabling Acts that it would not limit or restrict the rights or powers vested in the

Authorities until all Authority Bonds had been paid in full. See 9 L.P.R.A. § 2019 (covenant with PRHTA Bondholders); 23 L.P.R.A. § 6450 (covenant with PRCCDA Bondholders); 3 L.P.R.A. § 1913 (covenant with PRIFA Bondholders). By limiting the Authorities' rights and powers to fulfill the terms of their pledge of Pledged Special Revenues to the payment of Authority Bonds, the Illegal Fiscal Plan and the Fiscal Plan Act impair the Commonwealth's covenants with Authority Bondholders.

107. The Commonwealth, including the Oversight Board, cannot justify this substantial impairment of Plaintiffs' and Bondholders' rights by claiming that it was exercising the Commonwealth's police power in enacting the Illegal Fiscal Plan and the Fiscal Plan Act, because the police power cannot override constitutional limitations. See, e.g., Flushing, 358 N.E.2d at 852 (holding that a "fugitive recourse to the police power" may not be used to "displace inconvenient but intentionally protective constitutional limitations"). The Commonwealth, including the Oversight Board as "an entity within the [Commonwealth] government," therefore has no power to override the Constitutional Debt Priority Provision or the statutory priorities incorporated therein, including the Authority Bond Priority.

108. Alternatively, even if the Commonwealth was permitted to exercise its police power to override the Commonwealth Constitution, it could do so only to the extent the resulting impairments of Plaintiffs' and of bondholders' contractual rights constituted a reasonable and necessary means of serving an important public purpose. As set forth above, the substantial contractual impairments effected through the Illegal Fiscal Plan and the Fiscal Plan Act do not serve a public purpose, because these impairments will serve only to lock the Commonwealth out of the capital markets for the foreseeable future, impeding Puerto Rico's economic recovery and harming its people. Moreover, these substantial impairments are neither necessary nor reasonable because the Commonwealth and Oversight Board had many more

reasonable alternatives for dealing with the Commonwealth's fiscal difficulties. Indeed, the obvious alternative to the approval and subsequent implementation of the Illegal Fiscal Plan would have been to approve and implement a fiscal plan that actually complied with PROMESA by providing a method for the Commonwealth to achieve fiscal responsibility.

109. For example, the Oversight Board and the Commonwealth could have addressed the Commonwealth's economic difficulties by, among other things:

- Approving and implementing a fiscal plan that required the Commonwealth to adjust its budget in accordance with the "priority guidelines" set forth in the OMB Act. Notably, the Illegal Fiscal Plan itself assumes approximately $19 billion in revenues for Fiscal Year 2017, meaning that the Commonwealth and its instrumentalities could pay their approximately $3.5 billion in annual debt service (including for PBA, the Authorities, and all other Commonwealth bond issuers) and still have approximately $15.5 billion to fund other expenses. Thus, based on a proposed nondebt expense line item of approximately $18 billion in 2017, the Commonwealth could pay all debt service if it merely undertook a modest 13% trimming of nondebt expenses. Importantly, this is a *conservative* analysis that gives full credence to the Commonwealth's unsubstantiated claim that the approximately $600 million per annum "Reconciliation Adjustment" included in the Illegal Fiscal Plan reflects real expenses.

- Approving and implementing a fiscal plan that distinguished between essential and non-essential services, as required by Section 201(b)(1)(B) of PROMESA, and that prioritized essential over non-essential services.

- Approving and implementing a fiscal plan that, instead of including an illegal $6.2 billion contingency reserve to cover unbudgeted expenses, assumed that the Commonwealth would eliminate structural deficits as required by Section 201(b)(1)(D) of PROMESA.

- Approving and implementing a fiscal plan that, instead of including an illegal $6.2 billion contingency reserve, assumed that the Commonwealth would be required to comply with its future budgets by making appropriate reductions in *nondebt* expenditures when necessary.

- Approving and implementing a fiscal plan that required the Commonwealth to raise additional revenues, as required by the Commonwealth Constitution in a fiscal year in which appropriations exceed estimated resources. See P.R. Const. art. VI, § 7.

- Negotiating a consensual restructuring of the Commonwealth's debt, similar to the recently-negotiated restructuring of the debts of the Puerto Rico Electric Power Authority. Notably, PROMESA itself, through Section 104(i), encourages such voluntary agreements with creditors, and Title VI of PROMESA provides a mechanism by which they can be effectively implemented.

110. In view of these more reasonable PROMESA-compliant alternatives, the Illegal Fiscal Plan and the Fiscal Plan Act do not constitute reasonable or necessary means of serving an important public purpose and therefore violate the Contracts Clause.

B. The Illegal Fiscal Plan And The Fiscal Plan Act Violate The Takings And Due Process Clauses

111. The Takings Clause of the Fifth Amendment to the U.S. Constitution (the "Takings Clause") provides that **"private property [shall not] be taken for public use, without just compensation."** U.S. Const. amend. V. The Takings Clause applies to the States, and the Commonwealth, by virtue of Section 1 of the Fourteenth Amendment to the U.S. Constitution (the "Due Process Clause"), which provides, "No State . . . shall . . . deprive any person of life, liberty, or property, without due process of law." See id. amend. XIV, § 1.

112. The Pledged Special Revenues constitute property (i) of Authority Bondholders and (ii) of the Authorities in their capacity as trustees for the bondholders. The Pledged Special Revenues do not constitute property of the Commonwealth or the other Defendants. To the extent Defendants are permitted to hold the Pledged Special Revenues, they hold them in trust for the benefit of the Authority Bondholders.

113. Moreover, Authority Bondholders have a lien on the Pledged Special Revenues. A lien is a property interest protected by the Takings and Due Process Clauses. As express third party beneficiaries of the lien on the Pledged Special Revenues, Plaintiffs have a lawful property right and interest in the Pledged Special Revenues, protected by the Fifth Amendment.

114. GO and PBA Bondholders are also entitled by the Constitutional Debt Priority Provision to receive payment of the GO and PBA Bonds on a first-priority basis, and Authority Bondholders are entitled by the Constitutional Debt Priority Provision and by statute to receive the Pledged Special Revenues. A constitutional or statutory entitlement to receive a benefit constitutes a property interest protected by the Takings and Due Process Clauses.

115. In addition, GO Bondholders and PBA Bondholders have a contractual right to receive payment on a first-priority basis from available resources, and Authority Bondholders have a contractual right to receive payment from the Pledged Special Revenues. A contractual right constitutes a form of property for purposes of the Takings and Due Process Clauses.

116. The Illegal Fiscal Plan and the Fiscal Plan Act thus violate the Takings and Due Process Clauses by requiring and authorizing the Commonwealth to take Plaintiffs' and Bondholders' property without providing Plaintiffs and Bondholders with just compensation or with due process of law.

FIRST CLAIM FOR RELIEF
(For Declaratory Relief Pursuant To 28 U.S.C. §§ 2201 And 2202 For Violations Of Section 201(b)(1)(N) Of PROMESA, Against All Defendants)

117. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 117 hereof, as if fully set forth herein.

118. Plaintiffs are entitled to an order declaring that the Illegal Fiscal Plan and the Fiscal Plan Act violate Section 201(b)(1)(N) of PROMESA, because they do not respect the relative lawful priorities and lawful liens in the constitution, other laws, and agreements of the Commonwealth, PBA, and the Authorities in effect prior to the date of enactment of PROMESA.

119. An actual and justiciable controversy has arisen and exists between the parties with respect to these issues and claims and a declaratory judgment is necessary to resolve such controversy.

SECOND CLAIM FOR RELIEF
(For Declaratory Relief Pursuant To 28 U.S.C. §§ 2201 And 2202 For Violations Of Section 201(b)(1)(M) Of PROMESA, Against All Defendants)

120. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 120 hereof, as if fully set forth herein.

121. Plaintiffs are entitled to an order declaring that the Illegal Fiscal Plan and the Fiscal Plan Act violate Section 201(b)(1)(M) of PROMESA, because they fail to ensure that assets, funds, or resources of a territorial instrumentality are not illegally loaned to, transferred to, or otherwise used for the benefit of a covered territory or another covered territorial instrumentality of a covered territory, and indeed require and implement such illegal transfers.

122. An actual and justiciable controversy has arisen and exists between the parties with respect to these issues and claims and a declaratory judgment is necessary to resolve such controversy.

THIRD CLAIM FOR RELIEF
(For Declaratory Relief Pursuant To 28 U.S.C. §§ 2201 And 2202 For Violations Of Section 201(b)(1)(A)(i) Of PROMESA, Against All Defendants)

123. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 123 hereof, as if fully set forth herein.

124. Plaintiffs are entitled to an order declaring that the Illegal Fiscal Plan violates Section 201(b)(1)(A)(i) of PROMESA, because it fails to provide for estimates of revenues and expenditures based on applicable laws.

125. An actual and justiciable controversy has arisen and exists between the parties with respect to these issues and claims and a declaratory judgment is necessary to resolve such controversy.

FOURTH CLAIM FOR RELIEF
(For Declaratory Relief Pursuant To 28 U.S.C. §§ 2201 And 2202 For Violations Of Sections 101(a) and 201(b) Of PROMESA, Against All Defendants)

126. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 126 hereof, as if fully set forth herein.

127. Plaintiffs are entitled to an order declaring that the Illegal Fiscal Plan and the Fiscal Plan Act violate Sections 101(a) and 201(b) of PROMESA, because they fail to provide a method for the Commonwealth to achieve fiscal responsibility and access to the capital markets.

128. An actual and justiciable controversy has arisen and exists between the parties with respect to these issues and claims and a declaratory judgment is necessary to resolve such controversy.

FIFTH CLAIM FOR RELIEF
(For Declaratory Relief Pursuant To 28 U.S.C. §§ 2201 And 2202 For Violations Of Section 201(b)(1)(B) Of PROMESA, Against All Defendants)

129. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 129 hereof, as if fully set forth herein.

130. Plaintiffs are entitled to an order declaring that the Illegal Fiscal Plan and the Fiscal Plan Act violate Section 201(b)(1)(B) of PROMESA, because they fail to distinguish between essential and non-essential services and ensure the funding of only essential services.

131. An actual and justiciable controversy has arisen and exists between the parties with respect to these issues and claims and a declaratory judgment is necessary to resolve such controversy.

SIXTH CLAIM FOR RELIEF
(For Declaratory Relief Pursuant To 28 U.S.C. §§ 2201 And 2202 For A Declaration Under Sections 5(10) and 5(22) Of PROMESA, Against All Defendants)

132. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 132 hereof, as if fully set forth herein.

133. Plaintiffs are entitled to an order declaring that the Illegal Fiscal Plan does not constitute a "Fiscal Plan" as defined in Sections 5(10) and 5(22) of PROMESA, because it is not "in accordance with section 201" of PROMESA. 48 U.S.C. § 2104(10), (22).

134. An actual and justiciable controversy has arisen and exists between the parties with respect to these issues and claims and a declaratory judgment is necessary to resolve such controversy.

SEVENTH CLAIM FOR RELIEF
(For Declaratory Relief Pursuant To 28 U.S.C. §§ 2201 And 2202 For Violations Of The Contracts Clause, Against All Defendants Other Than The Commonwealth)

135. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 135 hereof, as if fully set forth herein.

136. The Illegal Fiscal Plan and the Fiscal Plan Act substantially interfere with and impair Plaintiffs' contractual rights and the contractual rights of GO, PBA, and Authority Bondholders.

137. Plaintiffs are entitled to an order declaring that the Illegal Fiscal Plan and the Fiscal Plan Act are unconstitutional in that they violate the Contracts Clause.

138. An actual and justiciable controversy has arisen and exists between the parties with respect to these issues and claims and a declaratory judgment is necessary to resolve such controversy.

EIGHTH CLAIM FOR RELIEF
(For Declaratory Relief Pursuant To 28 U.S.C. §§ 2201 And 2202 For Violations Of The Takings and Due Process Clauses, Against All Defendants Other Than The Commonwealth)

139. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 139 hereof, as if fully set forth herein.

140. Pursuant to the Illegal Fiscal Plan and the Fiscal Plan Act, Defendants have taken and continue to take the Plaintiffs' property and the property of GO, PBA, and Authority Bondholders without just compensation or due process of law.

141. Plaintiffs are entitled to an order declaring that the Illegal Fiscal Plan and the Fiscal Plan Act are unconstitutional in that they violate the Takings and Due Process Clauses.

142. An actual and justiciable controversy has arisen and exists between the parties with respect to these issues and claims and a declaratory judgment is necessary to resolve such controversy.

NINTH CLAIM FOR RELIEF
(Injunctive Relief For Violations Of PROMESA And The U.S. Constitution, Against All Defendants)

143. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 143 hereof, as if fully set forth herein.

144. The Illegal Fiscal Plan and the Fiscal Plan Act violate Section 201(b)(1)(N) of PROMESA; violate Section 201(b)(1)(M) of PROMESA; violate Sections 101(a) and 201(b) of PROMESA; violate Section 201(b)(1)(B) of PROMESA; are unconstitutional and violate the Contracts Clause; and are unconstitutional and violate the Takings and Due Process Clauses.

145. In addition, the Illegal Fiscal Plan violates Section 201(b)(1)(A)(i) of PROMESA and does not constitute a "Fiscal Plan" as defined in PROMESA.

146. Plaintiffs are entitled to an injunction prohibiting Defendants from presenting or proceeding with confirmation of any plan of adjustment based on the Illegal Fiscal Plan and the Fiscal Plan Act, or taking or causing to be taken any other action pursuant to the Illegal Fiscal Plan and the Fiscal Plan Act.

147. Unless Defendants are enjoined from presenting or proceeding with confirmation of any plan of adjustment based on the Illegal Fiscal Plan and the Fiscal Plan Act, or taking or causing to be taken any other action pursuant to the Illegal Fiscal Plan and the Fiscal Plan Act, Plaintiffs will be irreparably harmed. There is no adequate remedy at law.

148. The balance of the hardships are in favor of Plaintiffs due to the irreparable harm Plaintiffs will suffer if Defendants are not enjoined from presenting or proceeding with confirmation of any plan of adjustment based on the Illegal Fiscal Plan and the Fiscal Plan Act, or taking or causing to be taken any other action pursuant to the Illegal Fiscal Plan and the Fiscal Plan Act. Defendants will not be unduly harmed if they are so enjoined. Injunctive relief is in the public interest.

TENTH CLAIM FOR RELIEF

(For A Stay Pursuant To 11 U.S.C. § 105(a) And (d) Of Title III Confirmation Proceedings)

149. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 149 hereof, as if fully set forth herein.

150. The Illegal Fiscal Plan violates Section 201(b)(1)(N) of PROMESA; violates Section 201(b)(1)(M) of PROMESA; violates Section 201(b)(1)(A)(i) of PROMESA; violates Sections 101(a) and 201(b) of PROMESA; violates Section 201(b)(1)(B) of PROMESA; does not constitute a "Fiscal Plan" as defined in PROMESA; is unconstitutional under the Contracts Clause; and is unconstitutional under the Takings and Due Process Clauses.

151. Plaintiffs respectfully request that this Court exercise its powers under 11 U.S.C. § 105(a) and (d) to issue a stay of the confirmation of any plan of adjustment in these Title III proceedings pending development of a fiscal plan compliant with PROMESA and the U.S. Constitution.

RELIEF DEMANDED

152. WHEREFORE Plaintiffs Assured Guaranty Corp., Assured Guaranty Municipal Corp., and National Public Finance Guarantee Corporation respectfully request that the Court enter judgment against Defendants as follows:

(a) Declaring that the Illegal Fiscal Plan and the Fiscal Plan Act violate Section 201(b)(1)(N) of PROMESA;

(b) Declaring that the Illegal Fiscal Plan and the Fiscal Plan Act violate Section 201(b)(1)(M) of PROMESA;

(c) Declaring that the Illegal Fiscal Plan violates Section 201(b)(1)(A)(i) of PROMESA;

(d) Declaring that the Illegal Fiscal Plan and the Fiscal Plan Act violate Sections 101(a) and 201(b) of PROMESA;

(e) Declaring that the Illegal Fiscal Plan and the Fiscal Plan Act violate Section 201(b)(1)(B) of PROMESA;

(f) Declaring that the Illegal Fiscal Plan does not constitute a "Fiscal Plan" as defined in Sections 5(10) and 5(22) of PROMESA;

(g) Declaring that the Illegal Fiscal Plan and the Fiscal Plan Act violate the Contracts Clause;

(h) Declaring that the Illegal Fiscal Plan and the Fiscal Plan Act violate the Takings and Due Process Clauses;

(i) Enjoining Defendants from presenting or proceeding with confirmation of any plan of adjustment based on the Illegal Fiscal Plan and the Fiscal Plan Act, or taking or causing to be taken any other action pursuant to the Illegal Fiscal Plan and the Fiscal Plan Act;

(j) Staying the confirmation of any plan of adjustment in these Title III proceedings pending development of a fiscal plan compliant with PROMESA and the U.S. Constitution; and

(k) Granting Plaintiffs such other and further relief as this Court may deem just and proper.

Dated: San Juan, Puerto Rico
May 3, 2017

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