

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

José F. Rodríguez Perelló; Aristeia Horizons, L.P.; Camino Cipres LLC; Camino Roble LLC; Canary SC Master Fund, L.P.; Canyon Balanced Master Fund, Ltd.; Canyon Value Realization Fund, L.P.; The Canyon Value Realization Master Fund, L.P.; Crescent 1, L.P.; CRS Master Fund, L.P.; Cyrus Opportunities Master Fund II, Ltd.; Cyrus Select Opportunities Master Fund, Ltd.; Cyrus Special Strategies Master Fund, L.P.; Decagon Holdings 1, L.L.C.; Decagon Holdings 2, L.L.C.; Decagon Holdings 3, L.L.C.; Decagon Holdings 4, L.L.C.; Decagon Holdings 5, L.L.C.; Decagon Holdings 6, L.L.C.; Decagon Holdings 7, L.L.C.; Decagon Holdings 8, L.L.C.; Decagon Holdings 9, L.L.C.; Decagon Holdings 10, L.L.C.; Merced Partners Limited Partnership; Merced Partners IV, L.P.; Merced Partners V, L.P.; Pandora Select Partners, L.P.; SB Special Situation Master Fund SPC, Segregated Portfolio D; Scoggin International Fund Ltd.; Scoggin Worldwide Fund Ltd.; Taconic Master Fund 1.5 L.P.; Taconic Opportunity Master Fund L.P.; Tilden Park Investment Master Fund LP; Värde Credit Partners Master, L.P.; Värde Investment Partners, L.P.; Värde Investment Partners (Offshore) Master, L.P.; The Värde Skyway Master Fund, L.P.; Whitebox Asymmetric Partners, L.P.; Whitebox Institutional Partners, L.P.; Whitebox Multi-Strategy Partners, L.P.; and Whitebox Term Credit Fund I L.P.,

Plaintiffs,

v.

Ricardo Rosselló Nevares, in his official capacity; the Government Development Bank of Puerto Rico; the Puerto Rico Fiscal Agency and Financial Advisory Authority; the Puerto Rico Sales Tax Financing Corporation; Gerardo Jose Portela Franco, in his official

Case No. 3:17-cv-1566

**COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE
RELIEF**

capacity; Christian Sobrino-Vega, in his official capacity; Alberto C. Rodríguez Pérez, in his official capacity; Gabriel Olivera Magraner, in his official capacity; Rafael L. Rovira Arbona, in his official capacity; Jose Santiago Ramos, in his official capacity; and Elias Sanchez Sifonte, in his official capacity,

Defendants.

INTRODUCTION

1. As senior bondholders of the Puerto Rico Sales Tax Financing Corporation (“COFINA”), Plaintiffs have contract and property rights protected by the Constitutions of the United States and Commonwealth of Puerto Rico, as well as federal and Puerto Rico statutes. Defendants have unlawfully and unconstitutionally impaired these contractual rights and taken Plaintiffs’ property. This suit seeks protection and vindication of Plaintiffs’ rights through a declaratory judgment that Defendants have breached their constitutional, statutory, and contractual obligations to COFINA bondholders, and injunctive relief against Defendants’ continuation of those breaches.

2. In response to a budgetary crisis and in need of a new source of revenue, the Puerto Rico legislature (the “Legislative Assembly”) created COFINA as an independent instrumentality of the Commonwealth. In connection with its creation of COFINA, the Commonwealth imposed a new sales and use tax (“SUT”) in 2006 and transferred ownership of a portion of it—the Dedicated Sales Tax (“DST”)—to COFINA, to be held separate from, and never deposited in, the Commonwealth’s general fund (the “General Fund”). 13 L.P.R.A. § 12. The Commonwealth’s purpose in separating ownership of the DST was to raise public funds at the lowest possible cost in the face of escalating pressure on the General Fund, at the onset of Puerto Rico’s recession. In order to create these new rescue bonds, by statute, COFINA pledged the DST as security for

payment on the bonds. 13 L.P.R.A. § 13(b). COFINA bondholders, including Plaintiffs, thus have a statutory lien against the DST, and the DST serves as their sole source for repayment.

3. In order to induce bondholders to buy COFINA bonds, the Commonwealth explicitly pledged—in the statutes that created the COFINA structure—that it would not impair the collection of the SUT or the rights of COFINA to the DST. 13 L.P.R.A. § 14(c). This statutory commitment was incorporated into the governing bond contracts, including the resolution pursuant to which the COFINA bonds were issued, which is a contract between COFINA, as the bond issuer, and Plaintiffs, as bondholders. Puerto Rico Sales Tax Financing Corporation, Amended and Restated Sales Tax Revenue Bond Resolution, amended June 10, 2009 (the “COFINA Resolution”), attached as Exhibit 1, at § 103. The COFINA Resolution specifically incorporates and restates the Commonwealth’s statutory non-impairment obligation, for the express benefit of bondholders and to engender their reliance on the commitment. *Id.* at § 706. To give investors confidence that these rights would be enforced, the COFINA Resolution explicitly obligated COFINA to protect and defend the integrity of the COFINA structure and its rights to the DST. *Id.* at § 705.

4. In total, investors on and off the Island purchased more than \$16 billion of COFINA bonds in reliance on COFINA’s structure, including the statutory lien and the Commonwealth’s non-impairment covenant. Today, COFINA bonds are the most widely held on-Island of all bonds issued by the Commonwealth and its instrumentalities, including by a ratio of seven-to-one over holders of the Commonwealth’s general obligation bonds (the “GO Bonds”). The COFINA structure, which has been lauded by legislative leaders from both political parties over the course of a decade, allowed the Commonwealth to raise these monies at a substantially lower cost to Puerto Rico than its alternative financing options.

5. The DST has always been and continues to be enough to satisfy the debt service of the COFINA bonds. Prior to Defendants' unconstitutional actions, this was not expected to change in the foreseeable future.

6. Despite the substantial benefits that it reaped from the COFINA structure and Plaintiffs' monies, the Commonwealth has breached its obligations and violated Plaintiffs' property and contractual rights by reneging on its commitment not to impair COFINA's and Plaintiffs' rights to, and lien on, the DST.

7. Over the last few years, Defendants and their predecessors have engaged in an ongoing campaign to suppress the value of COFINA bonds in an effort to strong-arm COFINA bondholders into a renegotiation of their COFINA debt on unfair, unjust, and illegally punitive terms. Defendants have undermined and threatened the statutory and contractual rights Plaintiffs have in the DST funds, and when that did not work, Defendants squarely violated the United States and Puerto Rico Constitutions by making it impossible for COFINA to pay its bondholders as required by statute and contract. Defendants have taken these actions even though federal law expressly prohibits raiding the COFINA structure for the benefit of the General Fund and requires that lawful rights and priorities of Puerto Rico bonds be respected. In short, the Individual Defendants (as defined below) have made an unlawful policy choice to violate Puerto Rico law, impair contracts, and take property. They have done so purportedly based on the General Fund's budgetary crisis, but that is the very same reason that the Commonwealth created COFINA and made the non-impairment covenant it now breaks.

8. In January 2017, the Legislative Assembly enacted Act 2, which expanded the powers of its Fiscal Agency and Financial Advisory Authority ("AAFAF" by its Spanish

acronym), giving it, among other powers, exclusive authority to bind COFINA in matters related to the restructuring of the Commonwealth's outstanding debts.

9. On March 13, 2017, AAFAF, on behalf of both the Commonwealth and COFINA, submitted a joint fiscal plan (the "Fiscal Plan") to the federal Financial Oversight and Management Board for Puerto Rico ("Oversight Board"), which was created pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA"). Pub. L. 114-187, codified at 48 U.S.C. § 2101 *et seq.* The Oversight Board certified the Fiscal Plan the same day. Once certified, the Fiscal Plan became binding on the Commonwealth and COFINA as a matter of federal law under PROMESA, thus making its impact on COFINA both inevitable and imminent.

10. By ignoring COFINA's independent legal structure from the General Fund and commingling COFINA's revenues, namely the DST, and its debt service with the Commonwealth's assets and liabilities, the Fiscal Plan completely disregards PROMESA's requirement that it "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." Indeed, Defendant Sanchez Sifonte, speaking on behalf of the Governor, publicly admitted that "[t]he Fiscal Plan is conceptualized in a way that all of the Government's revenues go into a single pool (contrary to what happens today with COFINA)." *El Nuevo Dia*, April 25, 2017 at p. 4.

11. What is more, the Fiscal Plan ignores PROMESA's mandate to "respect relative lawful priorities or lawful liens" by effecting a taking of Plaintiffs' property interest in the DST and concretizing the Commonwealth's breach of its non-impairment obligation under the COFINA Resolution, substantially impairing Plaintiffs' contractual relationship with COFINA. According to the Fiscal Plan, the total estimated cash flow available to pay debt service over the next ten years will be less than the DST statutorily owned by COFINA alone during such period. COFINA's

DST ranges from \$724 million in 2018 to \$1.031 billion in 2026. The cash available for all Commonwealth and COFINA debt service under the Fiscal Plan, meanwhile, ranges from \$404 million in 2018 to \$808 million in 2026.

12. Even if all of the cash flow allegedly available to pay debt service reflected in the Fiscal Plan were remitted to COFINA (which Defendant Sanchez Sifonte has said will not happen), the amounts available for debt service would fall short of the DST in seven of the next nine years, including immediately in fiscal year 2018, which begins on July 1, 2017. Plaintiffs thus have been deprived of their property interest in the DST without just compensation or due process, and their contractual relationship with COFINA and rights under the Bond Resolution have been substantially impaired, all in breach of the United States and Puerto Rico Constitutions.

13. On April 28, 2017, the Legislative Assembly enacted House Bill 938 (the “Fiscal Plan Act”), which purports to “take the necessary measures” to comply with the Fiscal Plan. The Fiscal Plan Act expands AAFAF’s powers even more to take the DST from COFINA and deposit it into the General Fund where the statutory prerequisites are satisfied—an illegal confiscation of COFINA’s property and an unjustified and unreasonable impairment of the Plaintiffs’ contractual rights. Defendant Rosselló Nevaes signed the Fiscal Plan Act into law on April 29, 2017.¹ In a late night Electronic Municipal Market Access System (“EMMA”) filing on the eve of signing the new law, the Commonwealth, through AAFAF, disclosed the terms of an unlawful proposal to creditors predicated on the planned trampling of the COFINA structure.

14. There is no doubt that Defendants’ actions with respect to COFINA purport to serve an important public purpose as they are an attempt—even if misguided—to deal with the Island’s

¹ As of the filing of this Complaint, the law has not yet been assigned a final law number.

long and profound fiscal crisis. *U.S. Paper v. Virgin Islands*, 842 F.3d 201, 211 (3d Cir. 2016); see *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 28-32 (1977) (holding that a State may impair a contract to serve an important public purpose, but the impairment must also be necessary and reasonable). The Commonwealth's substantial impairment of Plaintiffs' contractual relationship with COFINA, however, is neither reasonable nor necessary for a multitude of reasons. See *U.S. Trust Co.*, 431 U.S. at 22.

15. Prominent among the reasons that the Commonwealth's decision to disregard the COFINA legal structure and impair Plaintiffs' legal rights is neither reasonable nor necessary, as required by the United States Supreme Court, are that the Commonwealth "consider[ed] impairing the obligations of [Plaintiffs'] contracts on a par with other policy alternatives" and that the Commonwealth visited this "drastic impairment [on Plaintiffs] when an evident and more moderate course would serve its purposes equally well." *Id.* at 30-31; see *U.S. Paper*, 842 F.3d at 212.

16. For example, the Commonwealth could have chosen to negotiate with Plaintiffs in response to any one of Plaintiffs' several proposals to voluntarily restructure their contractual and property rights in order to provide the Commonwealth's Treasury the liquidity and flexibility it needs. The Commonwealth also could have chosen to restructure or otherwise modify its relationship with its own unsecured creditors before unconstitutionally impairing Plaintiffs' contractual relationship with COFINA. Indeed, at the Commonwealth's request, Congress specifically provided the Commonwealth with the tools to either voluntarily negotiate with its creditors² or judicially restructure its debts under Title III of PROMESA where the rule of law

² The Commonwealth could have chosen to consensually negotiate modified terms of bonds issued by the Commonwealth pursuant to Title VI of PROMESA. At a minimum, rather

would be respected and supervised by a federal court. Defendants, however, opted for the politically expedient—but unconstitutional—route of violating Plaintiffs’ property and contractual rights, and tearing down the COFINA structure, under color of Puerto Rico law.

17. The unreasonableness of the Commonwealth’s chosen path is highlighted by the fact that the fiscal crisis confronting Puerto Rico is not of recent vintage, but one that has been extant for over a decade. In fact, COFINA was created in 2006 in an attempt to ameliorate Puerto Rico’s fiscal crisis, and Plaintiffs’ bonds are Puerto Rico’s first and only true “rescue bonds.” Thus, “the problem sought to be resolved by [the] impairment of [Plaintiffs’] contract existed at the time the contractual obligation was incurred” and the Commonwealth cannot now rely on that problem to impair Plaintiffs’ contractual rights. *U.S. Paper*, 842 F.3d at 213 (citing *U.S. Trust Co.*, 431 U.S. at 31). Indeed, as in *U.S. Trust Co.*, the existence of the problem was the reason that the COFINA structure was adopted to protect COFINA bondholders. *See U.S. Trust Co.*, 431 U.S. at 31-32.

18. For its part, COFINA violated its contractual obligations to Plaintiffs by refusing—despite repeated requests—and failing to protect and defend itself from the Commonwealth’s creeping illegal actions. COFINA is unable to fulfill its obligations to protect and defend itself and its bondholders from Defendants’ illegal conduct, as it is controlled by and under the broad

than formulating the Fiscal Plan in a constitutionally impermissible way, Defendants could have requested a voluntary “extension of applicable principal maturities and interest on Bonds issued by [the Commonwealth] . . . for a period of up to one year.” PROMESA § 104(i)(1)(C), 130 Stat. 560. Alternatively, Defendants could have respected its non-impairment covenant given to COFINA’s bondholders by formulating a fiscal plan for the Commonwealth independent of COFINA and maintained the separateness of COFINA assets from the liabilities besieging the General Fund. That the Commonwealth’s General Fund is woefully insolvent does not give Defendants license to raid property belonging to COFINA and its bondholders when other alternatives were clearly available and not chosen.

authority of Defendants, including the Individual Defendants who developed the Fiscal Plan that by its terms steals the very property—the DST—that COFINA is obligated to protect and defend.

19. The Commonwealth must not be allowed to continue to breach its constitutional and contractual obligations at will. This action seeks to declare Plaintiffs' rights and Defendants' obligations under the United States and Puerto Rico Constitutions, federal law, Puerto Rico statutes, and the governing bond contracts, and to enjoin Defendants' continuing illegal conduct. The remedies requested are necessary, as Plaintiffs do not have an adequate remedy at law given the insolvency of the Commonwealth and its General Fund. Thus, Plaintiffs request that the Court issue a judgment:

- a. Declaring that Defendants have substantially impaired Plaintiffs' contractual rights that arise under the COFINA Resolution and by statute, including through their control of the COFINA corporation and through the promulgation of the Fiscal Plan for certification by the Oversight Board, all in violation of rights protected under the United States and Puerto Rico Constitutions;
- b. Declaring that Defendants have taken Plaintiffs' property without just compensation or due process in violation of rights protected under the United States and Puerto Rico Constitutions;
- c. Declaring that the enactment of Act 2 and its grant of broad authority to AAFAF undercuts COFINA's autonomy and violates Defendants' statutory and contractual obligation not to impair COFINA's ability to collect the DST;
- d. Declaring that Defendants' formulation and submission of the Fiscal Plan to the Oversight Board violated Defendants' statutory and contractual obligation not to impair COFINA's ability to collect the DST;

- e. Declaring that the enactment of the Fiscal Plan Act and its grant of authority to AAFAF to confiscate COFINA's DST for use by the General Fund where the statutory prerequisites are satisfied violates the Commonwealth's statutory and contractual obligation not to impair COFINA's ability to collect the DST;
- f. Declaring that the Governmental Development Bank of Puerto Rico ("GDB"), AAFAF, and the Individual Defendants interfered with Plaintiffs' contractual relationship with COFINA by, among other things, controlling COFINA and causing it to breach its contractual obligations to Plaintiffs, and by formulating and promulgating the Fiscal Plan, which requires COFINA to breach its contractual obligations to bondholders.
- g. Declaring that the Fiscal Plan and the Fiscal Plan Act are preempted by Section 303(1) of PROMESA as territory laws consolidating the assets and liabilities of a territorial instrumentality with the territory and prescribing a method of composition for COFINA without COFINA bondholders' consent;
- h. Declaring that Defendant COFINA has breached the terms of the COFINA Resolution by failing to defend, preserve, and protect the pledge of the DST;
- i. Declaring that there is an Event of Default under the terms of the COFINA Resolution;
- j. Declaring that Defendants' submission of the Fiscal Plan for certification by the Oversight Board constitutes a violation of Section 407 of PROMESA;
- k. Declaring that the Individual Defendants deprived Plaintiffs of their rights secured by the United States and Puerto Rico Constitutions;

- l. Mandating that Defendants amend the Fiscal Plan so that it complies with and respects Plaintiffs' constitutional, statutory, and contractual rights, and to submit the amended fiscal plan to the Oversight Board for certification;
- m. Mandating that Defendants permit Plaintiff Rodríguez Perelló to inspect and copy all documents related to the restructuring of the debts of Puerto Rico and its instrumentalities including, without limitation, e-mails, telephone records, text messages, and any other records or communications relating to the decisions made by Defendants;
- n. Enjoining Defendants from implementing the Fiscal Plan as drafted to the extent it fails to comply with COFINA's enabling statute and interferes with the DST;
- o. Enjoining Defendants from continuing to violate Plaintiffs' constitutional, statutory, property, and contractual rights including, without limitation, by enacting any budget measure, statute, executive order, or administrative order or directive that would disrupt the flow of the DST to COFINA for the benefit of Plaintiffs;
- p. Enjoining COFINA from permitting the use of the DST for any purpose other than the payment in due course of the COFINA bonds in the order of their priority;
- q. Awarding Plaintiffs fees and costs expended in this suit; and
- r. Ordering such other and further relief as the Court deems proper.

JURISDICTION

20. This United States District Court has original subject matter jurisdiction under 28 U.S.C. § 1331, because the case arises under the Constitution and laws of the United States, and 48 U.S.C. § 2101 *et seq.*

21. Plaintiffs also seek relief pursuant to 42 U.S.C. § 1983, as the Individual Defendants, acting under the color of law, have deprived Plaintiffs of rights guaranteed by the United States Constitution.

22. This Court has supplemental subject matter jurisdiction under 28 U.S.C. § 1367(a) over Plaintiffs' claims arising under the Puerto Rico Constitution, Puerto Rico statutes, and contract, because those claims form part of the same case and controversy, arise from a common nucleus of operative facts and involve the same factual allegations as Plaintiffs' claims arising under the United States Constitution. *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 725 (1966).

23. The Court is authorized to provide declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02.

24. Venue in this District Court is appropriate because a substantial part of the events giving rise to the claim occurred in Puerto Rico.

PARTIES

25. Plaintiff Jose F. Rodríguez Perelló owns senior bonds issued by COFINA. Mr. Rodríguez Perelló was a vice chairman of the board of directors of the GDB. A substantial amount of his retirement savings is invested in COFINA senior bonds. Mr. Rodríguez Perelló relies on the payment of principal and interest on those bonds for his household income, and any failure to receive the payments to which he is entitled will cause him great hardship.

26. Plaintiffs Aristeia Horizons, L.P.; Camino Cipres LLC; Camino Roble LLC; Canary SC Master Fund, L.P.; Canyon Balanced Master Fund, Ltd.; Canyon Value Realization Fund, L.P.; The Canyon Value Realization Master Fund, L.P.; Crescent 1, L.P.; CRS Master Fund, L.P.; Cyrus Opportunities Master Fund II, Ltd.; Cyrus Select Opportunities Master Fund, Ltd.; Cyrus Special Strategies Master Fund, L.P.; Decagon Holdings 1, L.L.C.; Decagon Holdings 2,

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27. Together, Plaintiffs own in excess of 25% of all COFINA senior bonds.

28. Defendant Ricardo Antonio Rosselló Nevaes, the current Governor of the Commonwealth, is the highest-ranking official of the Executive Branch of the Commonwealth, and is sued in his official capacity.

29. Defendant GDB was created to serve as a bank, fiscal agent, and financial advisor for the Commonwealth, its instrumentalities, and COFINA. Its stated mission is to “safeguard the fiscal stability of Puerto Rico and promote its competitiveness in order to transform [Puerto Rico’s] economy into one of the most developed economies in the world, hence, fostering the social and economic enhancement of [its] people.” With the creation of AAFAF, the GDB was replaced as fiscal agent of and financial advisor to the Commonwealth and COFINA in connection with any debt restructuring.

30. Defendant COFINA is an independent government-owned corporation that issues secured bonds to raise funds as directed from time to time by the Legislative Assembly. Under COFINA's enabling legislation, COFINA is attached to the GDB and has the same board of directors as the GDB.

31. Defendant AAFAF is a government institution created pursuant to Chapter 6 of the Puerto Rico Emergency Moratorium and Financial Rehabilitation Act, Act 21-2016. Although the legislation creating AAFAF requires the appointment of a five-member board of directors within 45 days of enactment of the legislation, to date only a sole executive director has been appointed—Mr. Gerardo Portela Franco, who also is AAFAF's Executive Director and sits on the boards of the GDB and COFINA. AAFAF was created to replace the GDB as fiscal agent of and financial advisor to the Commonwealth in connection with any debt restructuring.

32. Defendant Gerardo Portela Franco is a board member of the GDB and COFINA, and the executive director of AAFAF, and in that capacity has been tasked by Defendant Rosselló Nevaes with leading negotiations related to restructuring of Puerto Rico debt, including COFINA debt obligations. Defendant Portela Franco is sued in his official capacity.

33. Defendant Christian Sobrino-Vega is the President of the GDB, a director of the GDB and of COFINA, and is sued in his official capacity.

34. Defendant Alberto C. Rodríguez Pérez is a director of the GDB and of COFINA, and is sued in his official capacity.

35. Defendant Gabriel Olivera Magraner is a director of the GDB and of COFINA, and is sued in his official capacity.

36. Defendant Rafael L. Rovira Arbona is a director of the GDB and of COFINA, and is sued in his official capacity.

37. Defendant Jose Santiago Ramos is Executive Director of COFINA, and is sued in his official capacity.

38. Defendant Elias Sanchez Sifonte is an *ex officio* member of the Oversight Board and the Commonwealth's representative to that body. Defendant Sanchez Sifonte was appointed to his position by Defendant Rosselló Nevares and is sued in his official capacity.

39. Defendants Rosselló Nevares, Portela Franco, Sobrino-Vega, Rodríguez Pérez, Olivera Magraner, Rovira Arbona, Santiago Ramos, and Sanchez Sifonte are the "Individual Defendants."

FACTUAL BACKGROUND

The Commonwealth Created and Used COFINA to Rescue Puerto Rico During Its Fiscal Crisis, Granting COFINA Bondholders a Lien on and Contractual Protections Regarding the DST

40. In 2006, the Commonwealth of Puerto Rico faced an unparalleled financial and fiscal crisis that "forced the governor to furlough 95,000 government employees and led to a week of rallies and vigils." Rick Lyman, *Compromise Resolves the Fiscal Crisis in Puerto Rico*, N.Y. Times, May 9, 2006, *available at* <http://www.nytimes.com/2006/05/09/us/09puerto.html>.

41. Among other measures designed to address the crisis, the Legislative Assembly acted with a rare display of bipartisan consensus to give the Commonwealth access to the capital markets at low and prudent cost through the creation of a securitization structure. Through a series of statutes, the Legislative Assembly imposed for the first time a SUT and created COFINA for the purpose of issuing secured bonds collateralized by the DST, which was transferred to COFINA. In exchange, COFINA transferred to the Commonwealth the proceeds of the bonds it received upon issuance. *See* Act 91 of 2006; Act 291 of 2006; Act 56 of 2007 (together codified, as amended, at 13 L.P.R.A. §§ 11a–16). Each of these legislative acts passed with the near unanimous

support of legislators from both major political parties. The voting records for Act 91, Act 291, and Act 56 are attached as Exhibits 2, 3, and 4, respectively.

42. COFINA's ownership of the DST allowed COFINA to issue bonds at favorable rates compared to other options, such as unsecured GO Bonds. In a press release announcing the planned expansion of COFINA in late 2013, the Interim President of the GDB, José Pagán, emphasized the benefit of COFINA to the Commonwealth and stated that "total net savings from issuing COFINA bonds, compared to other available options, are estimated between \$66 million and \$132 million for every \$1 billion issued in bonds." Press Release, Puerto Rico Department of the Treasury, GDB, Treasury Secretary and Interim GDB President Announce Amendments to COFINA Act that Will Facilitate More Cost-Effective Financing for the Commonwealth, Sept. 25, 2013. A copy of the September 25, 2013 press release is attached as Exhibit 5. Based on these estimates, the Commonwealth and its taxpayers have saved between \$1 billion and \$2 billion in borrowing costs by using the COFINA structure when compared to other financing options.

43. In order to induce investors to lend their money to Puerto Rico through the COFINA structure, both the Legislative Assembly and COFINA provided investors with critical rights and protections designed to assure them that COFINA's ownership of the property collateralizing their bonds was guaranteed and that the DST itself was secure from impairment.

44. Chief among these protections are the statutory segregation of the DST from the General Fund, and COFINA's ownership of the DST. 13 L.P.R.A. § 12 ("The [DST Fund] and all the funds deposited therein on the effective date of this act and all the future funds that must be deposited in the [DST Fund] pursuant to the provisions of §§ 11a-16 of this title are hereby transferred to, and shall be the property of COFINA."). The Legislative Assembly authorized COFINA to pledge the DST as security for its payment on the bonds. *Id.* § 13(b) ("COFINA is

hereby authorized to pledge and otherwise encumber all or part of such revenues solely for the payment of principal, interest and redemption premium of such bonds Said pledge shall be valid and binding as of the time it is made”). The Legislative Assembly thus created property rights for COFINA (the DST itself) and for COFINA bondholders (a lien on the DST) that are protected by the Fifth Amendment of the United States Constitution and Article II, Sections 7 and 9 of the Puerto Rico Constitution.

45. Indeed, the Legislative Assembly explicitly stated in the COFINA enabling act that the DST: (i) was not to be deposited into the Puerto Rico General Fund; (ii) would not constitute resources available to the Commonwealth; and (iii) was not available for use by the Secretary of the Treasury of the Commonwealth. *Id.* § 12.

46. Because the Commonwealth created COFINA in order to rescue Puerto Rico from an ongoing financial crisis that, in fact, has persisted for a decade, the Legislative Assembly went further and explicitly covenanted that the Commonwealth would not impair the collection of the SUT and the rights of COFINA to the DST. This statutory covenant was made for the express purpose of inducing bondholder reliance and in order to ward off any concerns about future impairment given the Commonwealth’s beleaguered financial condition:

The Commonwealth of Puerto Rico hereby agrees and assures any person, firm or corporation or any agency of the United States of America or of any state or the Commonwealth of Puerto Rico who underwrites or acquires bonds issued by COFINA, or who provides insurance, repayment or solvency sources for such bonds, that until such bonds, from any date, together with the interest thereon, entirely paid for and withdrawn, **the Commonwealth shall not: (i) limit nor restrain the rights or powers of the corresponding officials of the Commonwealth of Puerto Rico to levy, maintain, charge or collect taxes and other income to constitute the amounts to be deposited into the [DST Fund] pursuant to the provisions of §§ 11a-16 of this title;** Provided, That [sic] the foregoing provisions do not limit the power of the Commonwealth of Puerto Rico, by means of a law amendment, to limit or restrain

the nature or the amount of such taxes or other revenues or to substitute similar or comparable collateral by other taxes, fees, charges or other income to be deposited into the [DST Fund] if, for the following fiscal years, the revenues projected by the Secretary of the Treasury from such substitutive tax, income or collateral is equal to or greater than the service of the debt and other charges and any coverage requirement included in the COFINA bond authorizing documents; **or (ii) limit or restrain the powers hereby conferred by §§ 11a-16 of this title or the rights of COFINA to meet its agreements with bondholders, until such time as such bonds, regardless of their date, together with the interest accrued, shall be entirely paid for and withdrawn. No amendment to §§ 11a-16 of this title, shall undermine any obligation or commitment of COFINA.**

13 L.P.R.A. § 14(c) (emphasis added).

47. The legal structure of COFINA also allows COFINA to issue debt that is not considered Commonwealth debt under Article II Section 6 of the Puerto Rico Constitution, because it does not enjoy the protection of its full faith and credit. Instead of said protection, the COFINA legislation created a property right in and statutory lien on the DST that was insulated from the risks of the General Fund, and the Commonwealth's agreement not to impair that property interest—was critical to investors who relied on the commitment that, while they would not have recourse to the Commonwealth's full faith and credit guarantee (like GO bondholders), they would have the benefit of a separate legal structure and a dedicated stream of payments. This legal structure was expressly validated by the Executive Branch, under the control of alternating political parties, which issued legal opinions confirming COFINA's validity and the uncontroverted fact that the DST does not constitute available resources. *See, e.g.* Opinion of Attorney General Guillermo A. Somoza-Colombani, Dec. 13, 2011, attached as Exhibit 6.

48. COFINA itself made contractual covenants to prospective bondholders to assure them that even if the fiscal crisis continued (as it foreseeably did), COFINA bonds would be safe and protected from the political and economic risks affecting the General Fund. These covenants

are found in the COFINA Resolution, which is a contract between COFINA, as the bond issuer, and the bondholders. *See* COFINA Resolution at § 103 (“[T]he Resolution shall be deemed to be and shall constitute a contract among the Corporation [COFINA], the Owners from time to time of the Bonds, and all other Beneficiaries; and the pledge made in the Resolution and the covenants and agreements therein set forth to be performed on behalf of the Corporation [COFINA] shall be for the equal benefit, protection and security of the Owners of any and all of the Bonds and all other Beneficiaries . . .”).

49. Section 706 of the COFINA Resolution specifically incorporates and restates the Commonwealth’s statutory non-impairment obligation, and provides contractual rights in favor of COFINA bondholders:

Pursuant to the Act, the Corporation hereby includes, for the benefit of the Bondowners and the Beneficiaries, the pledge of the Commonwealth that, until the Bonds, of whichever date, together with the interest thereon, are totally paid and withdrawn, **the Commonwealth will not (i) limit or restrict the rights or powers of the appropriate officers of the Commonwealth to impose, maintain, charge or collect the taxes and other receipts constituting amounts to be deposited in the Dedicated Sales Tax Fund in accordance with the provisions of the Act**, provided that the foregoing shall not preclude the Commonwealth from exercising its power, through a change in law, to limit or restrict the character or amount of such taxes and other receipts or to substitute like or comparable security in the form of taxes, fees, charges or other receipts for deposit in the Dedicated Sales Tax Fund if, for the ensuing fiscal years, the projected revenues certified by the Secretary of the Treasury of such taxes, other receipts or collateral meet or exceed the debt service and other charges and any coverage requirements set forth in the related authorizing bond documents of the Corporation (including the Resolution), and **(ii) limit or restrict the rights that are by the Act granted or the rights of the Corporation to meet its obligations to its Bondholders, until such Bonds, of whichever date, together with the interest thereon, have been completely paid and retired. The Act further provides that no amendment to the Act shall impair any obligation or commitment of the Corporation.** The Corporation hereby covenants for the benefit of the Bondowners and the

Beneficiaries that any such substitution of any security in the form of taxes, fees, charges or other receipts for the Dedicated Sales Tax shall not qualify as the delivery of “like or comparable security” in conformance with the foregoing covenant of the Commonwealth unless the Trustee shall have been provided with (i) written confirmation of all outstanding ratings of the Bonds from the Rating Agencies, taking such substitution into account, and (ii) written opinions of the Secretary of Justice, nationally recognized Bond Counsel, and Puerto Rico counsel expert in public finance matters, each concluding that the Puerto Rico Supreme Court, if properly presented with the issue, would conclude that the substituted assets and revenues have been validly imposed by law and that such substituted assets and revenues have been validly transferred to the Corporation and shall not constitute “available resources” of the Commonwealth for purposes of Section 2 and Section 8 of Article VI of the Constitution of Puerto Rico nor shall they be available for use by the Secretary of the Treasury of the Commonwealth.

Id. at § 706 (emphasis added).

50. To give investors confidence that these rights would be enforced, the COFINA Resolution explicitly obligated COFINA to protect and defend the integrity of the COFINA structure and its rights to the DST:

The Corporation [COFINA] shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Pledged Property [the DST] and all the rights of the Trustee, the Beneficiaries and the Bondowners under the Resolution against all claims and demands of all persons whomsoever.

Id. at § 705. In addition, the COFINA Resolution directed COFINA, as necessary and desirable, to provide further assurances to investors that COFINA’s pledge of its revenues as security for the bonds was valid to perfect the security interest granted to bondholders. *Id.* at § 704.

51. COFINA has no assets other than the DST and no other means of repaying bondholders who lent billions of dollars trusting those representations. Therefore, protection of the legal structure, and the enforcement of these commitments and covenants, is essential to the integrity of the COFINA structure. Recognizing the importance of these commitments, the COFINA Resolution provides that “a failure to observe, or a refusal to comply with, the terms of

the Resolution or the Bonds” shall constitute an Event of Default, even when COFINA continues to make principal and interest payments to bondholders. *Id.* at § 1101(ii).

52. In giving the COFINA bonds strong, investment-grade ratings, the rating agencies explicitly relied on the Legislative Assembly’s commitments, as well as the covenants set out in the COFINA Resolution. For example, in its June 27, 2007 rating letter for the initial COFINA bond offerings, Moody’s Investor Service (“Moody’s”) specifically stated that the inviolability of the transfer and pledge was key to its ratings decision and flagged the Commonwealth’s non-impairment pledge:

**REVENUES NOT SUBJECT TO COMMONWEALTH
“CLAWBACK”**

We note that the rating on the Sales Tax Revenue Bonds is significantly higher than our current Baa3/negative rating on the Commonwealth’s G.O. bonds, primarily reflecting our assessment of the strength of the pledged sales tax security, as well as the fact that the sales tax revenues are not subject to the Commonwealth’s “clawback” provisions. **Importantly, we view the sales tax pledge to be insulated from the state’s broader budget and financial problems that have caused the downgrading of the G.O. bonds to their current low investment-grade level of Baa3 with a negative outlook.**

The Commonwealth’s Secretary of Justice and outside bond counsel are expected to provide clean validity opinions for the sales tax bonds. These will include specific opinions that the pledged sales tax revenues are not available to the Treasury or the General Fund. That is, the revenues are not subject to the “clawback” provision that affects many Commonwealth revenues. The Commonwealth has also covenanted not to impair bondholder’s rights.

Moody’s Investor Service, New Issue: Moody’s Assigns A1 Rating And Stable Outlook To Puerto Rico Sales Tax Financing Corporation Sales Tax Revenue Bonds, June 27, 2007, at 2 (emphasis added). Moody’s issued a rating letter in connection with each COFINA offering, and each of the rating letters reflects the same analysis. The Moody’s rating letters are attached as Exhibits 7-17.

53. Similarly, Standard & Poor's ("S&P") focused on the solidity of COFINA's legal structure. For example, in its June 28, 2007 ratings letter for the initial COFINA offerings, S&P wrote that:

The rating reflects a strong legal structure that separates the revenue stream supporting the bonds from the Commonwealth of Puerto Rico, along with strong cash flows that, under severe stress assumptions, are still sufficient to make timely payments of interest and principal. . . .

The legislative act creating COFINA, Law 91 of 2006, successfully separates and provides a priority interest in the Commonwealth's sales and use taxes for the bondholders. Law 91 provides that all revenues from the Commonwealth's 5.5% sales and use tax go directly to COFINA until a guaranteed base amount of tax collections is met. The statute further grants a statutory lien to bondholders on the Commonwealth's sales and use tax revenues once any bonds are issued. In addition, COFINA is not permitted to voluntarily file for bankruptcy protection and cannot be forced into involuntary bankruptcy. Furthermore, Standard & Poor's received an opinion from bond counsel stating that Act 91 successfully transfers property of the sales and use tax collections to COFINA. This transfer of property effectively excludes the pledged sales and use tax revenues from Puerto Rico's constitutional provision regarding the Commonwealth GO debt's first-lien claim on all available revenues (also known as the "claw-back" constitutional provision).

Standard & Poor's, Puerto Rico Sales Tax Fin. Corp.; Sales Tax, June 28, 2007, at 2 (emphasis added). In the same letter, in setting out the "Legal Risks," S&P again emphasized that COFINA is separate from the Commonwealth:

COFINA was established by statute as an instrumentality of the Commonwealth. COFINA is not authorized to file a petition for bankruptcy under Chapter 9 of the Bankruptcy Code. **Its assets and liabilities are separate from those of the Commonwealth.** In addition, as a public agency or instrumentality of the Commonwealth, COFINA cannot be the subject of an involuntary bankruptcy filing. COFINA's sole legal purpose is to issue bonds and use other financing mechanisms to pay or refinance (directly or indirectly) all or part of the extra-constitutional debt of the Commonwealth of Puerto Rico as of June 30, 2006, and the accrued

interest thereon, using as a source of repayment the portion of the tax deposited in the Dedicated Sales Tax Fund.

Id. at 5 (emphasis added). S&P issued a rating letter in connection with each COFINA offering, and each of the rating letters reflects the same analysis. The S&P rating letters are attached as Exhibits 18-22.

54. The Commonwealth itself touted COFINA's structure. As recently as October 2013, for example, interim GDB president José Pagán reiterated the strength of COFINA and its benefits to Puerto Rico, stating: "COFINA's credit is bolstered by strong legal protections for bondholders. COFINA is the best-rated credit among Puerto Rico issuers and has historically been the most attractive and cost-effective source of financing for the Commonwealth." GDB, Conference Call About COFINA Legal Opinions, October 31, 2013, at 2. A transcript of the October 31, 2013 conference call is attached as Exhibit 23.

55. For nearly a decade, the COFINA structure functioned as intended, providing the Commonwealth with the low-cost financing it desperately needed throughout an ongoing fiscal crisis. Pursuant to its strong legal structure, COFINA's property rights in the DST and COFINA bondholders' lien on that property, and both the Commonwealth's and COFINA's covenants of support, COFINA issued more than \$16 billion of bonds between 2007 and 2011—including billions of dollars of bonds issued to residents of Puerto Rico³—at rates much cheaper than other alternative sources of financing. The Commonwealth was able to use this cheaper source of financing for critical government functions and to refinance more costly debt that was not backed by a property interest, such as GO debt.

³ In fact, residents of Puerto Rico own more COFINA bonds than any other bond issued by the territory or any of its instrumentalities, including **seven times** the amount of GO Bonds. Commonwealth of Puerto Rico Fiscal Plan, Oct. 14, 2016, at 71. A copy of the October 14, 2016 Fiscal Plan is attached as Exhibit 24.

Defendants Turn Their Backs on Puerto Rico’s Only Successful Financing Vehicle and Flout Plaintiffs’ Constitutional, Property, Statutory, and Contractual Rights

56. On June 30, 2016, President Obama signed into law PROMESA, which, among other things, provides a legal framework for adjustment of Puerto Rico debts and for the appointment of the Oversight Board. Pub. L. 114-187, codified at 48 U.S.C. § 2101 *et seq.*

57. Relevant to this Complaint, PROMESA requires the Governor of Puerto Rico to provide the Oversight Board with a “fiscal plan” that covers a period of no less than five years and provides “estimates of revenues and expenditures in conformance with agreed accounting standards” PROMESA § 201(b). PROMESA requires that a fiscal plan “be based on . . . applicable laws,” “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,” and “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].” *Id.*

58. PROMESA also requires that the Governor, either alone or jointly with the Legislative Assembly and/or the Oversight Board, develop a budget that is compliant with the approved fiscal plan, and that the budget must be enacted before the start of the applicable fiscal year. *Id.* § 202. If the Legislative Assembly fails to do so, PROMESA instructs the Oversight Board to submit a budget to the Governor and Legislative Assembly which shall be “deemed to be approved” and certified. *Id.* § 202(e)(3). The first fiscal year covered by the Fiscal Plan commences July 1, 2017.

59. Additionally, PROMESA preempts any “territory law prescribing a method of composition of indebtedness” and “unlawful executive orders that alter, amend, or modify rights of holders of any debt of the territory or territorial instrumentality, or that divert funds from one territorial instrumentality to another or to the territory.” *Id.* § 303.

60. Finally, PROMESA provided for a temporary stay of certain litigation, which expired on May 1, 2017. *Id.* § 405. Congress stated that the purpose of the stay was to “allow the Government of Puerto Rico a limited period of time during which it can focus its resources on negotiating a voluntary resolution with creditors instead of defending numerous, costly creditor lawsuits” *Id.* § 405(n)(2).

61. Although Plaintiffs repeatedly attempted to engage with Defendants and their predecessors, *see infra* Paragraphs 76-80, Defendants never substantively responded to these efforts. In fact, rather than use the stay period to engage with COFINA senior bondholders to negotiate a voluntary resolution, Defendants instead turned their backs on COFINA, took Plaintiffs’ property, impaired Plaintiffs’ contractual rights, broke the Commonwealth’s statutory non-impairment covenant, and breached their contracts with Plaintiffs.

62. On January 18, 2017, the Legislative Assembly enacted Act 2 of 2017, also known as the Puerto Rico Fiscal Agency and Financial Advisory Authority Act (“Act 2”). The Act was passed to allow AAFAF “to manage issues such as, but not limited to, contracts, transactions and regulations of the agencies and public instrumentalities; to make the Authority **the only entity** authorized to renegotiate, restructure and or reach agreements with creditors related to all or part of the public debt or **any other debt issued by any Governmental entity**, including but not limited to agencies, boards, commissions, instrumentalities, **public corporations** or applicable political subdivision” Act 2 at 1 (emphasis added).

63. Act 2 gave AAFAF the broad and exclusive authority to take numerous actions to ensure compliance with a fiscal plan. Article 5(c), for example, transfers to AAFAF all “powers of a fiscal agent, financial advisor, and informative agent as they were granted to the [GDB],” while Article 8 states that “[s]hould the Authority, **in its discretion**, determine that any governmental entity is not complying or is not going to comply with terms established by the Fiscal Oversight Board pursuant to Section 201 of PROMESA, the Authority is hereby authorized to carry out any action on behalf of that entity in order to comply with PROMESA” and “[i]n the eventuality that a bank account cannot be closed and/or consolidated by federal or state law, the Authority shall require that any disbursement from that account have the previous approval of the Authority.” Act 2, arts. 5(c), 8 (emphasis added). This language purports to allow AAFAF to act on behalf of COFINA and potentially block payments from COFINA to its debt holders. The delegation of authority to AAFAF by the Commonwealth and COFINA, however, undercuts COFINA’s autonomy, contrary to the non-impairment obligations of 13 L.P.R.A. § 14 and Section 706 of the COFINA Resolution.

64. Act 2 further states that AAFAF “shall be governed by a Board of Directors consisting of the Executive Director of the Authority, who may be its sole member for a maximum term of forty five (45) days since the approval of this Law.” Act 2, art. 6(a). After the 45-day period, which elapsed on March 4, 2017, “the Authority will be directed by a Board of Directors consisting of five (5) members, including the Executive Director of the Authority appointed by the Governor, one (1) representative of the Senate of Puerto Rico and one (1) representative of the House of Representatives of Puerto Rico, who will be appointed by the Presidents of each Legislative Body” along with “two remaining members . . . appointed by the Governor.” *Id.* Since

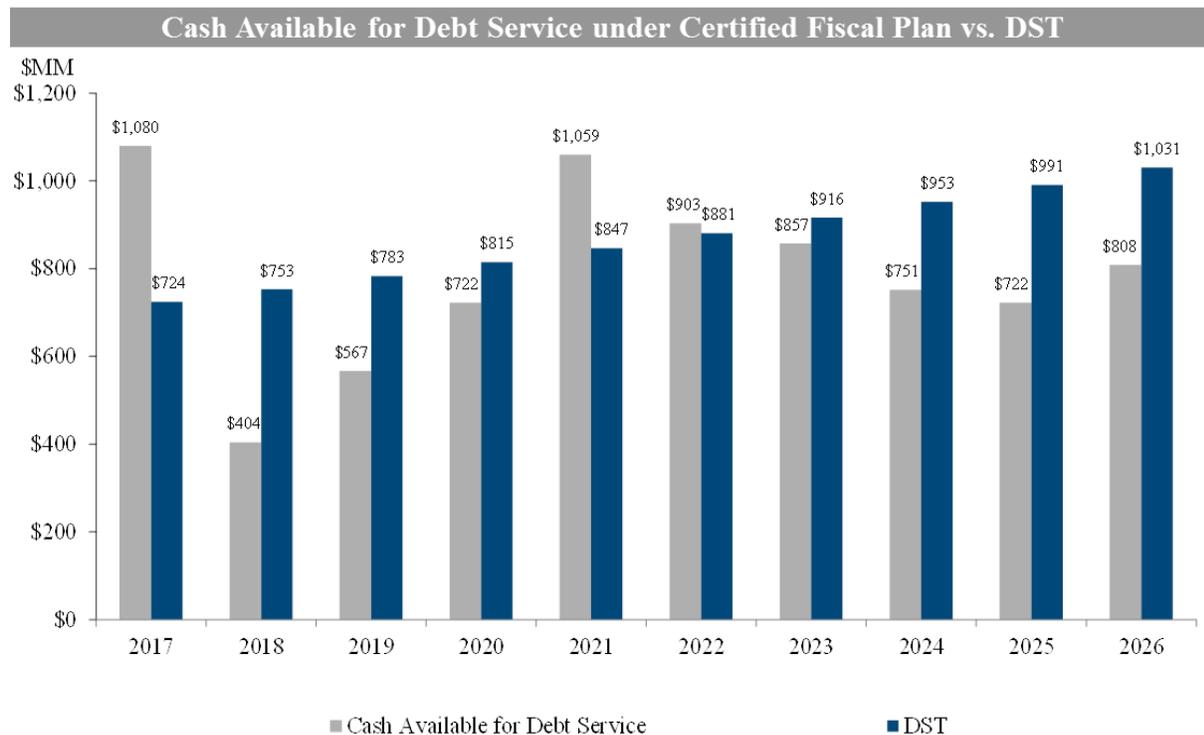
its inception and through the current time, AAFAF has only had a sole board member and executive director—Defendant Portela Franco—an appointee of the Governor.

65. On March 13, 2017, AAFAF (through its one board member and executive director), on behalf of the Commonwealth and COFINA, submitted the Fiscal Plan to the Oversight Board. The Oversight Board certified the Fiscal Plan the same day. The Fiscal Plan as designed by AAFAF has the force of law in Puerto Rico, because under PROMESA, the Governor is now required to submit a budget to the Oversight Board to track the Fiscal Plan. PROMESA § 202(c) (“The Governor shall submit to the Oversight Board proposed Budgets by the time specified in the notice delivered under subsection (a). In consultation with the Governor in accordance with the process specified in the notice delivered under subsection (a), the Oversight Board shall determine in its sole discretion whether each proposed Budget is compliant with the applicable Fiscal Plan . . .”). Thus, the Fiscal Plan is binding on all parties whose rights are impacted by its terms—including COFINA bondholders like Plaintiffs. Fiscal Plan at 6 (stating that COFINA is among the entities covered by the Fiscal Plan).

66. According to the Fiscal Plan, the **total** estimated cash flow available to pay debt service on all bonds over the next ten years will be less than the debt service owed by COFINA alone during such period. COFINA’s DST ranges from \$724 million in 2018 to \$1.031 billion in 2026. The cash available for all debt service under the Fiscal Plan, meanwhile, ranges from \$404 million in 2018 to \$808 million in 2026. Even if all of the cash flow allegedly available to pay debt service reflected in the Fiscal Plan was remitted to COFINA—which Defendant Sanchez Sifonte has said will not happen—the amounts remitted to COFINA would fall short of the DST in seven of the next nine years, including immediately in fiscal year 2018, which begins on July 1, 2017. Fiscal Plan at 27–28. Figure 1, below, demonstrates the shortfalls in the DST even if all of

the Fiscal Plan’s cash flow available for debt service is earmarked for COFINA. Indeed, over the term of the Fiscal Plan, **COFINA will suffer a minimum shortfall of over \$1.4 billion.**⁴ Consequently, in formulating its Fiscal Plan and submitting it for certification by the Oversight Board, the Commonwealth has repudiated its obligations to COFINA and COFINA bondholders, has taken the property owned by COFINA that secures Plaintiffs’ investments by statutory lien, and has created new law that impairs Plaintiffs’ contractual rights.

Figure 1: Cash Available for Debt Service Under Fiscal Plan and COFINA DST, Fiscal Years 2017-2026



Source: Cash available for debt service per Fiscal Plan certified on March 13, 2017. DST is the Pledged Sales Tax Base Amount (the minimum fixed amount to be deposited into the Dedicated Sales Tax Fund in each fiscal year) per COFINA Official Statements.

⁴ This assumes that the Commonwealth will not pay over to COFINA funds in excess of the DST for the years in which the Fiscal Plan contemplates debt service greater than COFINA’s DST for that year. But even if the Commonwealth did “top-up” COFINA with those funds, **COFINA would still suffer a shortfall of over \$800 million over the term of the Fiscal Plan.**

67. On March 27, 2017, certain holders and an insurer of COFINA bonds wrote to the Oversight Board informing its members that the Fiscal Plan violates the law “by failing to respect the COFINA bondholders’ lien on the assigned revenues granted to COFINA.” A copy of the March 27, 2017 letter is attached as Exhibit 25. The Oversight Board has publicly indicated that it did not develop its own fiscal plan, but rather only reviewed and approved the Fiscal Plan formulated by Defendants.⁵ Thus, the decision to impair Plaintiffs’ rights through formulation of the Fiscal Plan was that of the Defendants acting under color of Puerto Rico law.

68. The Fiscal Plan identified no legal authorization for the taking of COFINA’s property, the violation of the COFINA statute, or the impairment of COFINA Bondholders’ contractual rights. Nor did the Fiscal Plan explain or even assert that it was necessary and reasonable, as required by the United States Supreme Court, to violate the rights of COFINA bondholders, as compared with other policy choices, in order to create a fiscal plan that complied with PROMESA.

69. Implementation of the Fiscal Plan began in April 2017. On April 25, 2017, Defendant Sanchez Sifonte publicly acknowledged that the Fiscal Plan violated the Plaintiffs’ constitutional, property, statutory, and contractual rights to the DST, noting that “[t]he Fiscal Plan is conceptualized in a way that all of the Government’s revenues go into a single pool (contrary to what happens today with COFINA).” *El Nuevo Dia*, April 25, 2017 at p. 4. That same day, the Oversight Board sent a letter to United States Senators Thom Tillis and Tom Cotton acknowledging that one of the measures incorporated in the Fiscal Plan is “reallocating tax revenues.” Oversight Board Letter to U.S. Senators at 3 and 12, *available at*

⁵ The Oversight Board has stated it would entertain amendments to the Fiscal Plan, if and when submitted.

<https://juntasupervision.pr.gov/wp-content/uploads/wpfd/50/58ffadd569e07.pdf>. In the case of the DST, “reallocating” is but a bureaucratic euphemism for the taking of Plaintiffs’ constitutionally protected property and contractual rights to that dedicated revenue stream.

70. On April 28, 2017, the Legislative Assembly enacted the Fiscal Plan Act, which purports to implement the Fiscal Plan and to “take the necessary measures” to comply with the Plan. Several of these provisions violate Plaintiffs’ rights. Most damningly, Article 4 of the Fiscal Plan Act explicitly empowers AAFAF to transfer the DST from COFINA and deposit it into the General Fund, which will be considered “available resources” of the Commonwealth. Fiscal Plan Act art. 4.01. Article 6 implements this confiscation. Article 4.03 of the Fiscal Plan Act purports to impose some limitations on the executive’s ability to take Plaintiffs’ property rights by cabining its access to COFINA funds to occasional instances as a last resort upon submission of a sworn statement to the Legislative Assembly certifying the need for the funds, the term during which they are needed, and that they will be used to “cure a significant occasional deficiency in the cash flows to comply with the Fiscal Plan of the Government of Puerto Rico.” Fiscal Plan Act, art. 4.03. Those limitations however, do not alter the statute’s destructive effect on the COFINA legal structure and on Plaintiffs’ constitutional, statutory, property, and contractual rights.

71. The Fiscal Plan Act directly violates the Commonwealth’s non-impairment obligations to COFINA and the COFINA bondholders, reflected in 13 L.P.R.A. § 14(c) and in Section 706 of the COFINA Resolution, and it constitutes a taking of the DST without just compensation.⁶ Indeed, according to press reports, during the debate over the enactment of the Fiscal Plan Act, at least one Puerto Rico senator presciently “questioned the constitutionality of allowing the executive branch to breach the COFINA trust.” Reorg Research, Amended Fiscal

⁶ And as discussed below, it is also preempted by Section 303(1) of PROMESA.

Plan Compliance Bill Clears Legislature, Heads to Governor, Apr. 28, 2017, attached hereto as Exhibit 26. Other senators acknowledged the purpose of confiscating COFINA's DST, but defended the law because "[i]t will be a transparent process" and "[i]t won't be a blank check." *Id.* What is clear is that lawmakers were left with no choice but to follow the instructions of the Individual Defendants to raid COFINA's coffers to advance their policy choices.

72. Immediately following the Legislative Assembly's enactment of the Fiscal Plan Act, in a late night surprise EMMA filing, the Commonwealth, through AAFAF, disclosed the terms of an unlawful proposal to creditors that was predicated on its plot to destroy the COFINA structure. Not only was the proposal selectively shared with only a few bondholders before its release, but it also was made public despite originally being shared on an "ADVISORS EYES ONLY" basis pursuant to a non-disclosure agreement. Among other fatal defects, the Commonwealth's proposal affords lower-rated unsecured GO Bonds (the only creditors even to see the proposal before public distribution) a higher recovery than secured COFINA bonds, and also disregards the seniority and rights of Plaintiffs' senior COFINA bonds relative to subordinated COFINA bonds by inexplicably offering equal paltry recoveries to both.

73. The contractual impairment and confiscation of Plaintiffs' property cannot be remedied through a money judgment or other remedy at law, because Defendants have admitted that the General Fund is currently insolvent. Thus, any judgment against the Commonwealth would be hollow and meaningless. Only an injunction preventing Defendants from effecting the expropriation of the DST from COFINA and COFINA bondholders can secure Plaintiffs' constitutional rights.

74. The unreasonableness of Defendants' actions in impairing Plaintiffs' contractual rights and confiscating their property is highlighted by the particular facts and timeline of events related to COFINA.

75. First, as noted above, COFINA was created at the outset of Puerto Rico's financial crisis, and the terms of the COFINA structure were created with full knowledge—and precisely because of—the fiscal challenges facing the Commonwealth. Those contractual terms were in fact critical to the ability of Puerto Rico to borrow money through the COFINA structure. The Legislative Assembly's separation of the DST, as property, from the General Fund and its fiscal challenges was the very thesis that the Commonwealth used to induce investors to lend Puerto Rico their money at the lowest possible interest rates.

76. In addition, Defendants have numerous other means of addressing the crisis that it appears they have not employed before impairing Plaintiffs' contractual rights and taking their property. For example, Plaintiffs themselves offered several liquidity relief solutions to the Commonwealth and its officers and advisors for more than a year before Defendants created AAFAF and formulated the Fiscal Plan. From the very first proposal, Plaintiffs offered to consensually release a portion of the DST on terms and conditions that would respect COFINA's structure and contractual rights. Plaintiffs have also always proposed mechanisms to alleviate hardship on any on-Island retail holders that could not afford to provide the liquidity relief. But rather than pursue, encourage, or even substantively respond to **any** of these offers, Defendants instead picked the more politically expedient course of ignoring the law and violating Plaintiffs' property and contractual rights by tearing down the COFINA structure.

77. In February 2016, certain of Plaintiffs made a proposal to the Commonwealth and its previous working group of legal and financial advisors that would have resulted in liquidity

relief to the Commonwealth of between \$2.6 and \$3.7 billion over the subsequent decade, depending on economic assumptions. That proposal expressly offered to make special provision for on-Island retail bondholders who depend on continued COFINA income.

78. In June 2016, the Commonwealth and its advisors made an offer to certain of the Plaintiffs that required ten-year liquidity relief of \$2.7 billion from COFINA bondholders, and \$23 billion of liquidity relief over the lifetime of all COFINA bonds. Certain of Plaintiffs made a counteroffer that would have given \$1.7 billion of relief over ten years, and \$18.6 billion over the life of the COFINA structure, while still providing for on-Island retail bondholders who depend on continued COFINA income. The Commonwealth never responded to that counteroffer.

79. In December 2016 and January 2017, following the election and inauguration of Defendant Rosselló Nevaes as Governor, Plaintiffs affirmatively contacted the Commonwealth and made yet another proposal, this time through a structure to be implemented pursuant to the new tools provided by PROMESA as either a consensual restructuring of the COFINA bonds under Title VI or as a pre-arranged Title III restructuring. The proposal contemplated between \$2.4 and \$2.7 billion of liquidity relief to the Commonwealth over the subsequent ten years, effectively meeting the Commonwealth's previous "ask." The proposal also contemplated financing of \$800 million at an effective rate of only 4.0%—less than half the cash interest rate charged in the Commonwealth's last GO Bond offering. Once again, Plaintiffs offered to make a special provision for on-Island retail bondholders who depend on continued COFINA income.

80. While Plaintiffs have remained constructive and offered to modify their rights to help the Commonwealth provide essential services to its citizens and meet critical obligations owed in connection with pensions and healthcare, other organized bondholders have been jockeying for priority over these competing Commonwealth creditors without regard for the best

interests of the residents of Puerto Rico. Defendant Rosselló Nevares recently criticized these other bondholders, noting that they stooped to lobbying against the Commonwealth's efforts to obtain federal funds that would help guarantee the continuity and availability of healthcare for Puerto Rico residents. *See* Glora Ruiz Kuilan, Government and bondholders closer to court, *El Nuevo Dia*, May 1, 2017, *available at* <http://www.elnuevodia.com/english/english/nota/governmentandbondholdersclosertocourt-2316528>.

81. As with the prior administration, Plaintiffs' attempts to assist the Commonwealth went unanswered, with Defendants' representatives paying lip service in the media to entertaining creditor proposals but never communicating a substantive response to Plaintiffs' detailed consensual proposals. Instead, Defendants proceeded with a scheme to take Plaintiffs' property and impair their contractual rights while disregarding the tools Congress provided them in PROMESA to address the General Fund's fiscal problems.

82. Although Defendants' reluctance to commence a bankruptcy case for the Commonwealth under Title III of PROMESA may be understandable for political reasons, Title III is nevertheless in the best interest of the Commonwealth and its citizens. Still, Defendants have chosen to act outside of Title III to craft a system where a handful of individuals develop a back-room unlawful restructuring for both the Commonwealth and COFINA. By improperly exploiting their position during this fiscal crisis, Defendants have attempted to coerce some creditors into submission by trampling private rights in violation of the United States and Puerto Rico Constitutions. In the face of similar tactics by the prior administration, PROMESA expressly preempted such continued foul play by Puerto Rico's executive branch officials.

83. A mere 17 days after the United States Supreme Court affirmed this Court's decision that federal law preempts the Commonwealth's bankruptcy statute for its municipalities and public corporations, the President signed PROMESA into law with the overwhelming, bipartisan support of both chambers of Congress. With the experience of the mischief that the Commonwealth theretofore employed in restructuring its debts, the federal law expressly prohibited the Commonwealth government from in any way attempting to modify creditors' rights against their will by force of local law.

84. Section 303(1), which is modeled on Section 903(1) of Title 11 of the United States Code (the "Bankruptcy Code"), expressly preempts any territorial law that "prescribes a method of composition of indebtedness." Section 903(1) of the Bankruptcy Code was the provision that this Court, the First Circuit Court of Appeals, and the Supreme Court each relied upon in invalidating the Puerto Rico Corporations Debt Enforcement & Recovery Act, Act 71-2014, the Commonwealth's first attempt at imposing a restructuring of debt without creditor consent.

85. By consolidating COFINA's pledged assets with the Commonwealth's unencumbered assets—both through the Fiscal Plan and the Fiscal Plan Act—Defendants have **prescribed** a method of composition. This is preempted by PROMESA. Moreover, by not making available to COFINA the full annual amount of DST that it owns under territorial law, the Defendants have effectively imposed a restructuring by modifying and altering creditors' rights without creditor consent. This, too, is preempted under Section 303(1) of PROMESA.

86. The First Circuit Court of Appeals already has questioned the constitutionality of Defendants' misguided interference with secured creditors' rights: "[T]he Commonwealth [believes it] could expend every penny of the [bondholders'] collateral, leaving the debt entirely unsecured. . . . [W]e doubt the constitutionality of such a result" *Altair Global*

Credit Opportunities Fund v. Garcia-Padilla, 845 F.3d 505, 512 (1st Cir. 2017). The First Circuit’s admonition, however, appears to have fallen on deaf ears.

87. Notwithstanding the clear pronouncement of constitutional limitations on acts by Commonwealth officials to interfere with the rights of secured creditors, Defendants have violated the rights of COFINA bondholders by formulating the Fiscal Plan and then introducing a bill that became Law to implement it (the Fiscal Plan Act). These measures require the transfer of COFINA’s property to the Commonwealth, and make no provision for the retention of liens by COFINA bondholders in the transferred property. Such transfers serve only to render the statutorily secured creditors of COFINA unsecured or undersecured, in direct contravention of the First Circuit’s express admonition that such disregard of property rights raises “constitutional concerns.”

COFINA Breached its Contractual Covenants to Plaintiffs Resulting in an Event of Default

88. As described in Paragraphs 48 to 51, above, COFINA has provided the COFINA bondholders, including Plaintiffs, with important contractual rights designed to give COFINA bondholders comfort that their rights will be protected. These include the obligation to protect and defend COFINA and COFINA bondholders (Section 705) and to provide further assurances to COFINA bondholders (Section 704). COFINA has breached these covenants and, as a result, COFINA has committed an Event of Default under the COFINA Resolution. These breaches are part of an ongoing campaign by Defendants to suppress the value of COFINA bonds in an effort to strong-arm Plaintiffs (and other COFINA senior bondholders) into a renegotiation of their COFINA debt on terms unfairly, unjustifiably, and illegally punitive to those COFINA senior bondholders.

89. During the prior administration, faced with the ongoing fiscal crisis that has persisted since 2006—despite the success of COFINA to provide the Commonwealth with additional liquidity—the Commonwealth began to abandon its commitment to honor its legal obligations to COFINA and COFINA bondholders. On June 28, 2015, the New York Times published a story on an interview with then-Governor García Padilla regarding Puerto Rico debt. García Padilla told the New York Times that “[t]he debt is not payable,” and stated that creditors must “share the sacrifices.” According to the New York Times, García Padilla stated that “[i]f [creditors] don’t come to the table, it will be bad for them.” Michael Corkery & Mary Williams Walsh, Puerto Rico’s Governor Says Island’s Debts are “Not Payable,” N.Y. Times, June 28, 2015, *available at* <https://www.nytimes.com/2015/06/29/business/dealbook/puerto-ricos-governor-says-islands-debts-are-not-payable.html>.

90. Two months later, the Commonwealth suggested that it might no longer honor its legal obligation not to impair COFINA’s rights to the DST. On September 9, 2015, the Working Group for the Fiscal and Economic Recovery of Puerto Rico (the “Working Group”) published the Puerto Rico Fiscal and Economic Growth Plan (the “September 2015 Fiscal Plan”), which ignored the essential commitment that COFINA’s assets and liabilities are and always have been separate from the General Fund of the Commonwealth. Rather, the September 2015 Fiscal Plan lumped all of COFINA’s revenues and its debt service in with the Commonwealth’s assets and liabilities, which is inconsistent with COFINA’s independent legal structure and disregards COFINA’s property interest in the DST. In several different places, the September 2015 Fiscal Plan publicly portrayed COFINA’s debt obligations and assets as those of the Commonwealth, in direct contravention of the foundational premise of the COFINA structure. September 2015 Fiscal Plan at 17, 60, 61, and 62. A copy of the September 2015 Fiscal Plan is attached as Exhibit 27.

91. Further, the September 2015 Fiscal Plan stated that “the clawback of revenues supporting certain Commonwealth tax supported debt” may be available to “service all principal and interest on debt that has a constitutional priority,” indicating that the Commonwealth believes it can use those revenues as part of the General Fund’s resources to pay the Commonwealth’s own liabilities, including debts owed to GO bondholders. *Id.* at 6, 65.

92. These statements suggested that the then-Governor, the GDB, and their advisors intended to disregard the Legislative Assembly’s statutory transfer of the DST to COFINA and COFINA bondholders’ lien on the DST, to violate the statutory COFINA transfer and pledge, or to otherwise violate the property rights of COFINA and COFINA bondholders.

93. Understandably, in the wake of releasing the September 2015 Fiscal Plan, S&P immediately downgraded COFINA to CC, just two notches above default, and stated that it believed “default or restructuring is highly likely and could take the form of either a missed debt service payment or a distressed exchange that we would characterize as a default” and that “all of Puerto Rico’s tax-backed debt is highly vulnerable to nonpayment.” Street Insider, S&P Downgrades Puerto Rico’s Tax-Backed Debt to ‘CC’, Outlook Negative, Sept. 11, 2015, a copy of which is attached hereto as Exhibit 28. Neither COFINA nor the Commonwealth defended COFINA’s separate structure, its property interest, or the COFINA bondholders’ lien on the DST.

94. On September 24, 2015, certain of the Plaintiffs wrote to the GDB and COFINA (which share overlapping boards of directors pursuant to 13 L.P.R.A. § 11a(e)), demanding that the GDB and COFINA correct the September 2015 Fiscal Plan and provide assurances to COFINA bondholders that the Commonwealth will continue to meet its statutory and constitutional obligations to collect the SUT and pay the DST to COFINA. A copy of the September 24, 2015 letter is attached as Exhibit 29.

95. The GDB's advisors, as agents of COFINA, refused to formally respond to the letter and instead referred the COFINA senior bondholders to an editorial written by a self-described attorney for GO bondholders arguing that the DST transferred to COFINA was subject to clawback by the Treasury of Puerto Rico to pay GO bondholders' debt service because the DST is an "available resource" under the Puerto Rico Constitution. Contrary to its obligations under Sections 704 and 705 of the COFINA Resolution, COFINA did not take any action to correct those misstatements, nor did it provide any further assurances.

96. On November 20, 2015, the Commonwealth released its first proposal to the fiscal crisis which relied on the "consolidation of revenue streams" through the use of a "superbond." Senior Creditors of Puerto Rico Sales Tax Financing Corporation (COFINA) Comment on Recent Press Reports, PR Newswire, Nov. 30, 2015, a copy of which is attached hereto as Exhibit 30. Such a consolidation would have not only been a drastic and unnecessary step, but would also necessarily have entailed ignoring COFINA's property rights in the DST and illegally taking its bondholders' lien on the DST without just compensation.

97. On February 1, 2016, the Working Group published a document titled the "Puerto Rico Restructuring Proposal" along with an accompanying press release. Once again, the press release unlawfully referred to COFINA debt as the debt of the Commonwealth, and even included COFINA debt service and revenue within the Commonwealth's own debt and revenue calculations. This directly contradicts everything the Commonwealth represented and warranted to the COFINA bondholders when they lent their money for the benefit of the Island, *i.e.*, that both COFINA's liabilities and COFINA's assets were legally separate from the Commonwealth and its General Fund. These statements and the actions that followed breach the Commonwealth's commitment not to impair the rights of COFINA and its bondholders to the DST.

98. On February 8, 2016, Plaintiff Rodríguez Perelló sent a letter to COFINA demanding that it abide by its obligations under the COFINA bond documents to “defend, preserve and protect the pledge of Pledged Property and all rights of . . . the Bondowners under the Resolution against all claims and demands of all persons whomsoever,” and to take all steps that “may be necessary or desirable” to eliminate any asserted clouds over the title of the DST. Plaintiff Rodríguez Perelló demanded that COFINA protect itself and COFINA’s bondholders from the Commonwealth’s encroachment on COFINA’s rights and property, including by publishing a press release renouncing the Working Group’s statements, and retaining separate advisors in connection with the ongoing crisis. A copy of Plaintiff Rodríguez Perelló’s February 8, 2016 letter is attached as Exhibit 31.

99. Rather than defend Plaintiff Rodríguez Perelló and the COFINA structure, on February 10, 2016, COFINA publicly responded to Plaintiff Rodríguez Perelló’s letter by threatening retaliatory legal action without any substantive response to the complaints. A copy of the February 10, 2016 letter responding to Plaintiff Rodríguez Perelló is attached as Exhibit 32. To date, COFINA has never satisfactorily addressed the breaches specified in Rodríguez Perelló’s letter.

100. In the wake of this value-destructive campaign, market participants expressed continued concern for the COFINA structure. For example, on March 21, 2016, S&P issued a press release once again stating that “[i]n our view, all of Puerto Rico’s tax-backed debt is highly vulnerable to nonpayment,” and that “a default or restructuring is highly likely.” Critically, S&P stated that the course of the Commonwealth’s conduct in connection with its restructuring efforts had led them to the conclusion “that annual segregation of sales taxes pledged to COFINA that are scheduled to begin again on July 1 [2016] may not occur.” S&P directly tied this conclusion to

the efforts of the GDB and its advisors to compel COFINA bondholders to exchange into the “superbond” at a low rate, stating that “[t]he commonwealth’s current proposal for COFINA debt would impose a greater restructuring haircut on COFINA than on GO debt.” A copy of the March 21, 2016 press release by S&P is attached as Exhibit 33. While S&P’s fears have not yet fully developed, Defendants have not only failed to provide assurances that they do not intend to interrupt the SUT collections and remittance to COFINA, but they also passed a statute—the Fiscal Plan Act—that allows the Executive Branch to do just that. This failure is especially problematic in light of the Defendants’ issuance of the (now certified and binding) Fiscal Plan, compliance with which necessitates such action prior to July 1, 2017.

101. On July 20, 2016, several GO bondholders brought an action in the District Court for the District of Puerto Rico. Complaint, *Lex Claims, LLC v. García-Padilla*, Case No. 3:16-cv-02374 (FAB) (D.P.R. July 20, 2016), Dkt. No. 1. COFINA was added as a defendant on November 4, 2016. Second Amended Complaint, *Lex Claims, LLC v. García-Padilla*, Case No. 3:16-cv-02374 (FAB) (D.P.R. Nov. 4, 2016), Dkt. No. 78. The GO bondholders claimed that the PROMESA stay did not bar their pursuit of certain claims challenging the COFINA structure, including the clawback of funds that had already been remitted to COFINA’s accounts. On February 17, 2017, the District Court entered an order allowing the case to proceed in spite of the PROMESA stay. Opinion and Order, *Lex Claims, LLC v. García-Padilla*, Case No. 3:16-cv-02374 (FAB) (D.P.R. Feb. 27, 2017), Dkt. No. 184.

102. Neither the Commonwealth nor COFINA—both defendants in the *Lex Claims* litigation—appealed this order. Instead, they acquiesced in the GO bondholders’ efforts to pursue their challenge to the COFINA structure. Left with Defendants’ continued violation of their contractual covenants, certain of the Plaintiffs, together with the Oversight Board and the monoline

insurer Ambac Assurance Corp. (“Ambac”), sought to enforce the litigation stay that Congress deemed critical for the orderly and negotiated resolution of bond claims.

103. Although Plaintiffs, the Oversight Board, and Ambac prevailed in the First Circuit Court of Appeals, which eventually stayed the litigation in its entirety, Defendants took a different tack, throwing in their lot with the GO bondholders in their challenge to COFINA.

104. On March 17, 2017, while the appeal was pending in the First Circuit, the Commonwealth, through AAFAF, ignored its commitment not to impair COFINA’s right to the DST and issued a joint press release with the GO bondholder plaintiffs in the *Lex Claims* litigation, stating that it “is not taking a definitive position on the merits of the constitutional questions [relating to COFINA’s legal structure] at this time, [but] it will analyze the constitutional issues raised by the GO bondholders. In addition, the Government will urge Judge Besosa to decide the issues raised by the GO bondholders by April 30, 2017, and not support any efforts to defer or delay the resolution of the constitutional questions raised by the GO bondholders until after the PROMESA litigation stay expires.”

105. COFINA provided no response to any of these statements and challenges to the COFINA structure. And it has continued to remain silent as the Commonwealth consolidated and commingled COFINA’s pledged assets with those of Commonwealth through the Fiscal Plan and the Fiscal Plan Act. COFINA has thus failed to comply with the terms of the COFINA Resolution requiring COFINA to give further assurances in support of the COFINA bondholders’ security interest in the DST and to preserve, protect, and defend the COFINA structure and its rights to the DST, including enforcement of the non-impairment covenant of the Commonwealth itself (Section 706). This is not surprising given that COFINA is wholly controlled by Governor Rosselló Nevaes and his administration. In fact, Defendant Portela Franco—a director of COFINA and

the GDB—was at the time the executive director and sole member of the board of AAFAF, and remains so to this day (in violation of the AAFAF enabling legislation, Act 2).

106. The foregoing failures and refusals by COFINA constitute an Event of Default under Section 1101(ii) of the COFINA Resolution. Indeed, Ambac—one of the largest insurers of COFINA bonds—provided COFINA with notice of this Event of Default on May 1, 2017. *See* Notice of Failures to Comply with Covenants and Events of Default, May 1, 2017, attached hereto as Exhibit 34.

107. Because the Commonwealth’s General Fund is woefully insolvent, there is no adequate remedy at law available to Plaintiffs. An injunction is thus necessary to ensure that Defendants cease violating the Contracts Clause and Takings Clause of the United States and Puerto Rico Constitutions, as well as federal and Puerto Rico law.

FIRST CAUSE OF ACTION

Against All Defendants

**REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF
(UNDER 28 U.S.C. §§ 2201 AND 2202, UNITED STATES CONSTITUTION ARTICLE I,
SECTION 10, AND PUERTO RICO CONSTITUTION ARTICLE II, SECTION 7)**

108. Plaintiffs repeat and reallege each and every allegation set forth in the preceding Paragraphs above as if fully set forth herein.

109. Plaintiffs’ contractual rights to the structural and legal protections provided for in the COFINA Resolution, including the covenants set out in Sections 705 and 706, are protected from impairment by the Contracts Clause, Art. I, Sec. 10 of the United States Constitution and Art. II, Sec. 7 of the Puerto Rico Constitution, as is their right to the protection of the lien on the DST owned by COFINA. Defendants’ creation of the Fiscal Plan and its implementation through the Fiscal Plan Act violates Plaintiffs’ rights under the Contracts Clause.

110. Defendants have substantially impaired Plaintiffs' contractual rights to these structural protections and covenants by formulating the Fiscal Plan (which must necessarily be implemented by a forthcoming and imminent budget) that commingles COFINA and General Fund revenues and that does not sufficiently fund the debt service on COFINA's bonds, in breach of the COFINA Resolution. These effects of the Fiscal Plan unconstitutionally impair Plaintiffs' contractual rights. COFINA Resolution at § 706; *see also* 13 L.P.R.A. § 12 (specifying that the DST is not to be deposited into the Puerto Rico General Fund).

111. The Fiscal Plan also prohibits COFINA from using the DST to satisfy its debt service obligations. It thus necessarily unconstitutionally impairs Plaintiffs' contractual rights, under which the "Commonwealth will not . . . limit or restrict the rights or powers of the appropriate officers of the Commonwealth to impose, maintain, charge or collect the taxes and other receipts constituting the amounts to be deposited in the Dedicated Sales Tax Fund" and will not "limit or restrict the rights that are by [statute] granted or the rights of [COFINA] to meet its obligations to its Bondholders." COFINA Resolution at § 706. The Fiscal Plan Act, which purports to implement the Fiscal Plan, directly impairs Plaintiffs' rights under Section 706 of the COFINA Resolution (and under statute) by authorizing Defendants to seize the DST and confiscate it from COFINA, which will prevent COFINA from meeting its obligations to Bondholders.

112. Defendants have also breached Plaintiffs' contractual rights by challenging COFINA's title to the DST through a campaign of repeated misinformation and refusal to defend such title.

113. These impairments of Plaintiffs' contractual rights undoubtedly are substantial, as they undermine the fundamental protection of the COFINA structure and, unless declared

unlawful, would necessarily result in an enormous shortfall in the required payments to COFINA bondholders.

114. Defendants' impairment of Plaintiffs' contractual right to these legal protections was neither reasonable nor necessary, as required by the United States Supreme Court, because Defendants failed to entertain any of Plaintiffs' consensual restructuring offers and to avail themselves of PROMESA's debt restructuring tools that would allow the Commonwealth to restructure its own unsecured obligations under federal law while respecting its binding non-impairment covenant, made expressly for the benefit of COFINA bondholders under the COFINA Resolution. At a minimum, there is no rational or legitimate basis for Defendants to impair Plaintiffs' contractual rights, effectively demolishing the carefully crafted COFINA structure, rather than impairing other creditors that do not have rights akin to Plaintiffs' contractual guarantees (including by availing the Commonwealth of the tools provided by Congress).

115. In addition, Defendants' impairment is unreasonable and unlawful because Defendants or their predecessors knew about the budgetary crisis at the time the Commonwealth created and issued the COFINA bonds—and, in fact, that was the reason for their issuance and for the safeguards provided by the COFINA structure. Defendants, therefore, cannot use the budgetary crisis as an excuse to dramatically alter the contractual rights committed to Plaintiffs in return for their willingness to lend at low rates that would help the Commonwealth survive the budget crisis.

116. A present case and controversy exists respecting Plaintiffs' rights and Defendants' obligations with respect to the contractual covenants and protections provided in the COFINA Resolution.

117. This Court is able and authorized to resolve such controversy by declaratory action and injunctive relief.

SECOND CAUSE OF ACTION

Against the Individual Defendants

**REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF
(UNDER 42 U.S.C. § 1983; UNITED STATES CONSTITUTION ARTICLE I, SECTION
10)**

118. Plaintiffs repeat and reallege each and every allegation set forth in the preceding Paragraphs above as if fully set forth herein.

119. The Individual Defendants, all officers or directors of government entities, acting under color of law, have caused the substantial impairment of Plaintiffs' contractual right to the covenants and protections provided in the COFINA Resolution.

120. For the reasons set forth in Plaintiffs' First Cause of Action, this impairment was neither reasonable nor necessary, and it violates the Contracts Clause of the United States Constitution.

121. Plaintiffs seek declaratory and injunctive relief from the Individual Defendants.

THIRD CAUSE OF ACTION

Against All Defendants

**REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF
(UNDER 28 U.S.C. §§ 2201 AND 2202, UNITED STATES CONSTITUTION
AMENDMENT V AND PUERTO RICO CONSTITUTION ARTICLE II, SECTION 7
AND SECTION 9)**

122. Plaintiffs repeat and reallege each and every allegation set forth in the preceding Paragraphs above as if fully set forth herein.

123. The Due Process and Takings clauses of the Fifth Amendment of the United States Constitution provide: "No person shall be . . . deprived of life, liberty, or property, without due

process of law; nor shall private property be taken for public use, without just compensation.” The Puerto Rico Constitution similarly provides in Article II, Sections 7 and 9: “No person shall be deprived of his liberty or property without due process of law” and “[p]rivate property shall not be taken or damaged for public use except upon payment of just compensation and in the manner provided by law.”

124. Under Puerto Rico law, “[t]he [DST] and all the funds deposited therein on the effective date of this act and all the future funds that must be deposited in the [DST] pursuant to the provisions of §§ 11a-16 of this title are hereby transferred to, and shall be the property of COFINA.” 13 L.P.R.A. § 12. As authorized by statute, COFINA has “pledge[d] and otherwise encumber[ed] all or part of such revenues solely for the payment of principal, interest and redemption premium” of COFINA bonds held by Plaintiffs. *Id.* § 13(b).

125. Thus, COFINA has a property interest in the DST, and it has created a lien on that property for Plaintiffs’ COFINA senior bonds. Such a lien is a property interest protected from deprivation without due process of law or being taken for public use without just compensation by the United States Constitution, Amendment V.

126. Defendants have adopted a Fiscal Plan (which now binds COFINA) and enacted legislation—including the Fiscal Plan Act—that implements the Fiscal Plan, commingles COFINA and General Fund debts, and prohibits COFINA from using the DST to satisfy its debt service obligations. Defendants have thereby taken Plaintiffs’ lien on the DST backing the COFINA bonds (which is in turn collateralized by COFINA’s property interest in the DST) without just compensation or due process in violation of Amendment V of the United States Constitution.

127. But for the Defendants' actions, Plaintiffs' property rights would have remained intact and the lien backing their COFINA bonds would not have been taken without due process or taken without just compensation.

128. Plaintiffs received no compensation for the taking of the lien, and there is no opportunity, apart from this suit for declaratory judgment and injunctive relief, to receive just compensation.

129. Defendants have also deprived Plaintiffs of property by challenging COFINA's title to the DST through a campaign of repeated misinformation and refusal to defend such title.

130. A present case and controversy exists respecting the taking of Plaintiffs' property rights.

131. Such controversy arises under the United States Constitution and under the Puerto Rico Constitution.

132. This Court is able and authorized to resolve such controversy by declaratory action and injunctive relief.

FOURTH CAUSE OF ACTION

Against the Individual Defendants

**REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF
(UNDER 42 U.S.C. § 1983; UNITED STATES CONSTITUTION AMENDMENT V)**

133. Plaintiffs repeat and reallege each and every allegation set forth in the preceding Paragraphs above as if fully set forth herein.

134. The Individual Defendants, all officers or directors of government entities, acting under color of law, have caused the deprivation without due process and a taking without just compensation of Plaintiffs' lien that backs their COFINA senior bonds, which is in turn

collateralized by COFINA's property interest in the DST—in violation of Amendment V of the United States Constitution.

135. But for the Individual Defendants' actions, Plaintiffs' property rights would have remained intact and the lien backing their COFINA bonds would not have been deprived without due process or taken without just compensation.

136. Plaintiffs seek declaratory and injunctive relief from the Individual Defendants.

FIFTH CAUSE OF ACTION

Against COFINA

REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF (Breach of Contract)

137. Plaintiffs repeat and reallege each and every allegation set forth in the preceding Paragraphs above as if fully set forth herein.

138. The COFINA Resolution is a contract between bondholders, including Plaintiffs and COFINA.

139. The COFINA Resolution includes certain covenants for the benefit of all COFINA bondholders, including, without limitation, (i) a covenant that COFINA "shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of [the DST] and all the rights of the Trustee, the Beneficiaries and the Bondowners under the Resolution against all claims and demands of all persons whomsoever" (Section 705); (ii) a "pledge of the Commonwealth" that it will not "limit or restrict the rights or powers of the appropriate officers of the Commonwealth to impose, maintain, charge or collect the taxes and other receipts constituting amounts to be deposited in the Dedicated Sales Tax Fund" (Section 706); and (iii) a covenant that the Commonwealth will not "limit or restrict the rights that are by the Act granted or the rights of [COFINA] to meet its obligations to its Bondholders, until such Bonds, of whichever date, together

with the interest thereon, have been completely paid and retired” (Section 706). In addition, Section 704 directs COFINA to provide further assurances to investors that COFINA’s pledge of its revenues as security for the bonds was valid to perfect the security interest granted to bondholders.

140. Defendant COFINA has breached these obligations through the actions, and inaction, described above, which constitute a failure to observe, or a refusal to comply with, the terms of the COFINA Resolution. In particular, despite numerous threats to COFINA, culminating in the Fiscal Plan and the Fiscal Plan Act, COFINA has failed to protect and defend the COFINA structure, its rights to the DST, and the rights and interests of COFINA bondholders as required by the COFINA Resolution and its enabling laws. Indeed, it responded to a request to defend the COFINA structure with the threat of retaliatory legal action against Plaintiff Rodríguez Perelló.

141. Moreover, COFINA has shown an unwillingness and inability to fulfill its obligations to protect and defend itself and its bondholders from Defendants’ illegal conduct in the future, as it is controlled by and under the broad authority of Defendants, including the Individual Defendants.

142. The COFINA Resolution provides that “a failure to observe, or a refusal to comply with, the terms of the Resolution or the Bonds” shall constitute an Event of Default, even when COFINA continues to make principal and interest payments to bondholders. COFINA Resolution at § 1101(ii). COFINA’s breaches of Sections 704, 705, and 706 therefore constitute an Event of Default under the COFINA Resolution.

143. A present case and controversy exists respecting Defendant COFINA’s breach of the terms of the COFINA Resolution.

144. This Court is able and authorized to resolve such controversy by declaratory action and injunctive relief.

SIXTH CAUSE OF ACTION

Against the GDB, AAFAF, and the Individual Defendants

**REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF
(Tortious Interference with Contract)**

145. Plaintiffs repeat and reallege each and every allegation set forth in the preceding Paragraphs above as if fully set forth herein.

146. The COFINA Resolution is a contract between bondholders, including Plaintiffs, and COFINA.

147. The COFINA Resolution includes certain covenants for the benefit of all COFINA bondholders, including, without limitation, (i) a covenant that COFINA “shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of [the DST] and all the rights of the Trustee, the Beneficiaries and the Bondowners under the Resolution against all claims and demands of all persons whomsoever,” (Section 705); (ii) a “pledge of the Commonwealth” that it will not “limit or restrict the rights or powers of the appropriate officers of the Commonwealth to impose, maintain, charge or collect the taxes and other receipts constituting amounts to be deposited in the Dedicated Sales Tax Fund” (Section 706); and (iii) a covenant that the Commonwealth will not “limit or restrict the rights that are by the Act granted or the rights of [COFINA] to meet its obligations to its Bondholders, until such Bonds, of whichever date, together with the interest thereon, have been completely paid and retired” (Section 706). In addition, Section 704 directs COFINA to provide further assurances to investors that COFINA’s pledge of its revenues as security for the bonds was valid to perfect the security interest granted to bondholders.

148. Defendant COFINA has breached these obligations through the actions, and inaction, described above, which constitute a failure to observe, or a refusal to comply with, the terms of the COFINA Resolution.

149. Defendants GDB, AAFAF, and the Individual Defendants were aware at all times of the contractual relationship between COFINA and the COFINA bondholders, including Plaintiffs.

150. Defendants GDB, AAFAF, and the Individual Defendants interfered with this contractual relationship by, among other things, controlling COFINA and causing it to breach its contractual obligations to COFINA bondholders, including Plaintiffs, by formulating and promulgating the Fiscal Plan, which requires COFINA to breach its contractual obligations to bondholders, and by enacting the Fiscal Plan Act, which purports to grant AAFAF the authority to confiscate COFINA's assets for the benefit of the General Fund where the statutory prerequisites are satisfied.

151. A present case and controversy exists respecting Defendants GDB, AAFAF, and the Individual Defendants' interference with the contractual relationship between COFINA and the COFINA bondholders, including Plaintiffs, which caused COFINA to breach of the terms of the COFINA Resolution.

152. This Court is able and authorized to resolve such controversy by declaratory action and injunctive relief.

SEVENTH CAUSE OF ACTION

Against All Defendants

**REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF
(Violations of PROMESA Section 407)**

153. Plaintiffs repeat and reallege each and every allegation set forth in the preceding Paragraphs above as if fully set forth herein.

154. Under Section 407 of PROMESA, “if any property of any territorial instrumentality of Puerto Rico is transferred in violation of applicable law under which any creditor has a valid pledge of, security interest in, or lien on such property, or which deprives any such territorial instrumentality of property in violation of applicable law assuring the transfer of such property to such territorial instrumentality for the benefit of its creditors, then the transferee shall be liable for the value of such property.”

155. The Fiscal Plan requires the transfer of funds from COFINA, a territorial instrumentality of Puerto Rico, to the Commonwealth in violation of Puerto Rico law, the Puerto Rico Constitution, and the United States Constitution.

156. Accordingly, the transfer of funds violates PROMESA and should be prohibited.

157. The requested relief is necessary, as Plaintiffs do not have an adequate remedy at law given the insolvency of the Commonwealth and its General Fund.

158. A present case and controversy exists respecting the imminent transfer of funds from COFINA, as required by the Fiscal Plan and [Act 24].

EIGHTH CAUSE OF ACTION

Against All Defendants

**REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF
(Violations of PROMESA Section 303(1))**

159. Plaintiffs repeat and reallege each and every allegation set forth in the preceding Paragraphs above as if fully set forth herein.

160. Section 303(1) of PROMESA preempts any territorial law that “prescribes a method of composition of indebtedness.”

161. The Fiscal Plan consolidates COFINA’s pledged assets with the Commonwealth’s unencumbered assets. This constitutes a method of composition by modifying creditors’ rights without their consent, and consolidation of assets and liabilities in a manner only contemplated by the Bankruptcy Code, subject to protections not afforded by the Fiscal Plan. Further, the Fiscal Plan Act purports to implement this method of composition by granting AAFAF the authority to confiscate COFINA’s assets for the benefit of the General Fund where certain statutory prerequisites are satisfied.

162. Accordingly, the Fiscal Plan and the Fiscal Plan Act are preempted by Section 303(1) of PROMESA.

163. A present case and controversy exists respecting the imminent consolidation of COFINA’s assets and the assets of the Commonwealth, as required by the Fiscal Plan.

164. This Court is able and authorized to resolve such controversy by declaratory action and injunctive relief.

NINTH CAUSE OF ACTION

Against All Defendants

**REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF
(Violations of Puerto Rico Law and Actions Ultra Vires)**

165. Plaintiffs repeat and reallege each and every allegation set forth in the preceding Paragraphs above as if fully set forth herein.

166. Under Puerto Rico law, the DST is owned by COFINA and must be held separate from the Commonwealth's General Fund. 13 L.P.R.A. § 12. The statute also authorized COFINA to pledge the DST to COFINA bondholders, which COFINA did. *Id.* § 13(b). And the statute committed that the Commonwealth would not impair the collection of the SUT and the rights of COFINA to the DST. *Id.* § 14(c).

167. Defendants violated the statute by creating a Fiscal Plan that by its express terms disregards the COFINA legal structure, commingles COFINA funds with funds of the General Treasury, impairs COFINA's rights to the DST, and interferes with the rights of COFINA bondholders to a statutory lien on the DST.

168. Neither Defendants Rosselló Nevares nor AAFAF has the authority to ignore the COFINA statute and violate its requirements. To the extent that the Fiscal Plan purports to rely upon Act 2, that statute said nothing about the SUT, impairing COFINA's rights, or impairing the rights of COFINA bondholders. Moreover, Act 2 cannot be considered an implicit repeal of or amendment to the COFINA statute because COFINA's enabling statute prohibits the Commonwealth from "limit[ing] or restrain[ing] the power . . . or the rights of COFINA to meet its agreements with bondholders" and from making any "amendment . . . [that] shall undermine any obligation or commitment of COFINA." 13 L.P.R.A. § 14(c). In addition, Act 2 requires that

AAFAF act through a five-member Board of Directors, and thus Defendant Portela Franco had no authority to purport to act by himself for AAFAF.

169. Accordingly, the Fiscal Plan is in violation of Puerto Rico law and an *ultra vires* act of Defendants Rosselló Nevares and AAFAF.

170. A present case and controversy exists respecting Defendants' creation of the Fiscal Plan in violation of Puerto Rico law and *ultra vires*.

171. This Court is able and authorized to resolve such controversy by declaratory action and injunctive relief.

TENTH CAUSE OF ACTION

Against All Defendants

PETITION FOR WRIT OF MANDAMUS

(Issuance of Amended Compliant Fiscal Plan)

172. Plaintiffs repeat and reallege each and every allegation set forth in the preceding Paragraphs as if fully set forth herein.

173. As set forth in the preceding causes of action, Defendants formulated and submitted the Fiscal Plan for certification by the Oversight Board, and are now developing the forthcoming budget in compliance with the Fiscal Plan. These actions are incompatible with the Commonwealth's constitutional, statutory, and contractual obligations owed to Plaintiffs, and violate Plaintiffs' rights under the United States and Puerto Rico Constitutions, federal law, Puerto Rico law, and the COFINA Resolution.

174. This Court is able to resolve the controversy created by Defendants' actions and omissions by issuing a writ of mandamus requiring Defendants to amend the Commonwealth's Fiscal Plan so that it complies with and respects Plaintiffs' constitutional, statutory, and contractual rights, and to submit the amended fiscal plan to the Oversight Board for certification. The amended

fiscal plan must respect the statutory ownership of the DST by COFINA, in the amounts dictated by the statute itself for each of the years covered by the fiscal plan, for the benefit of COFINA bondholders.

175. Adequate relief cannot be obtained by any other means, as a damages remedy would be meaningless given the Commonwealth's insolvency.

ELEVENTH CAUSE OF ACTION

Against All Defendants

PETITION FOR WRIT OF MANDAMUS (Access to Public Information)

176. Plaintiffs repeat and reallege each and every allegation set forth in the preceding Paragraphs above as if fully set forth herein.

177. Pursuant to 32 L.P.R.A. § 1781, “[e]very citizen has a right to inspect and take a copy of any public document of Puerto Rico, except as otherwise expressly provided by law.”

178. Plaintiff Rodríguez Perelló is a citizen of the Commonwealth of Puerto Rico.

179. Defendants created or received numerous documents and records related to the Commonwealth efforts to restructure and renegotiate bonds issued by Puerto Rico and its instrumentalities, including bonds issued by COFINA. These documents, including communications, are public documents for purposes of 32 L.P.R.A. § 1781.

180. Plaintiff Rodríguez Perelló has been provided only limited and selective disclosures of such documents, and only to the extent the Commonwealth has publicly released them.

181. Upon information and belief, leading up to the illegal conduct described herein, Defendants have had non-public dealings over many months with a handful of holders of GO Bonds, and documents relating to those dealings constitute public documents for purposes of 32 L.P.R.A. § 1781.

182. Defendants have a defined ministerial and legal duty to permit persons to inspect and copy any public documents pursuant to 32 L.P.R.A. § 1781.

183. This Court is able to resolve such controversy by issuing a writ of mandamus requiring Defendants to comply with the legal mandates of 32 L.P.R.A. § 1781.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

- A. A Declaratory Judgment that Defendants have substantially impaired Plaintiffs' contractual rights that arise under the COFINA Resolution and by statute, including through their control of the COFINA corporation and through the promulgation of the Fiscal Plan for certification by the Oversight Board, all in violation of rights protected under the United States and Puerto Rico Constitutions;
- B. A Declaratory Judgment that Defendants have taken Plaintiffs' property without just compensation or due process in violation of rights protected under the United States and Puerto Rico Constitutions;
- C. A Declaratory Judgment that the enactment of Act 2 and its grant of broad authority to AAFAF undercuts COFINA's autonomy and constitutes a violation of Defendants' statutory and contractual obligation not to impair COFINA's ability to collect the DST;
- D. A Declaratory Judgment that Defendants' formulation and submission of the Fiscal Plan to the Oversight Board constitutes a violation of Defendants' statutory and contractual obligation not to impair COFINA's ability to collect the DST;
- E. A Declaratory Judgment that the enactment of the Fiscal Plan Act and its grant of authority to AAFAF to confiscate COFINA's DST for use by the General Fund where the statutory prerequisites are satisfied violates Defendants' statutory and contractual obligation not to impair COFINA's ability to collect the DST;

- F. A Declaratory Judgment that the GDB, AAFAF, and the Individual Defendants interfered with Plaintiffs contractual relationship with COFINA by, among other things, controlling COFINA and causing it to breach its contractual obligations to Plaintiffs, and by formulating and promulgating the Fiscal Plan, which requires COFINA to breach its contractual obligations to bondholders;
- G. A Declaratory Judgment that the Fiscal Plan and the Fiscal Plan Act are preempted by Section 303(1) of PROMESA as territory laws consolidating the assets and liabilities of a territorial instrumentality with the territory and prescribing a method of composition for COFINA without COFINA bondholders' consent;
- H. A Declaratory Judgment that Defendant COFINA has breached the terms of the COFINA Resolution by failing to defend, preserve, and protect the pledge of the DST;
- I. A Declaratory Judgment that there has been an Event of Default under the terms of the COFINA Resolution;
- J. A Declaratory Judgment that Defendants' submission of the Fiscal Plan for certification by the Oversight Board constitutes a violation of Section 407 of PROMESA;
- K. A Declaratory Judgment that the Individual Defendants deprived Plaintiffs of their rights secured by the United States and Puerto Rico Constitutions;
- L. A Writ of Mandamus ordering Defendants to amend the Fiscal Plan so that it complies with and respects Plaintiffs' constitutional, statutory, and contractual rights, and to submit the amended fiscal plan to the Oversight Board for certification;
- M. A Writ of Mandamus commanding Defendants to permit Plaintiff Rodríguez Perelló to inspect and copy all documents related to the restructuring of the debts of Puerto Rico and its instrumentalities including, without limitation, e-mails, text messages, telephone

records, and any other records or communications relating to the decisions made by Defendants;

- N. A Permanent Injunction prohibiting Defendants and their affiliates, agents, employees, and attorneys, and any and all other persons in active concert or participation with them, from implementing the Fiscal Plan as drafted to the extent it fails to comply with COFINA's enabling statute and interferes with the DST;
- O. A Permanent Injunction prohibiting the Defendants and their affiliates, agents, employees, and attorneys, and any and all other persons in active concert or participation with them, from continuing to violate Plaintiffs' constitutional, property, and contractual rights to the DST;
- P. A Permanent Injunction prohibiting Defendants and their affiliates, agents, employees, and attorneys, and any and all other persons in active concert or participation with them, from interfering with or interrupting in any way (including without limitation through any budget measure, statute, executive order, or administrative order or directive) the flow of the DST.
- Q. An award of fees and costs expended in this suit, including costs awardable pursuant to 42 U.S.C. § 1988(b); and
- R. Such other relief as the Court deems just and proper.

DATED: May 2, 2017

Respectfully submitted,

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