

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

SCOTIABANK DE PUERTO RICO AND
THE BANK OF NOVA SCOTIA,

Plaintiffs,

v.

HON. ALEJANDRO GARCIA PADILLA,
HON. JUAN C. ZARAGOZA GOMEZ, HON.
LUIS G. CRUZ BATISTA, AUTORIDAD
METROPOLITANA DE AUTOBUSES DE
PUERTO RICO; HON. HECTOR IVAN
SANTOS; AND HON. MIGUEL A. TORRES
DÍAZ,

Defendants.

Civil No. 3:16-cv-02736-FAB

**AMENDED COMPLAINT SEEKING RELIEF FROM THE PROMESA
STAY AND DECLARATORY AND INJUNCTIVE RELIEF**

TO THE HONORABLE COURT:

NOW COME, Plaintiffs Scotiabank de Puerto Rico (“Scotiabank”) and The Bank of Nova Scotia (“BNS”) (jointly, “Plaintiffs”), through the undersigned counsel, for their Complaint against Alejandro García Padilla, in his official capacity as Governor of the Commonwealth of Puerto Rico (the “Commonwealth”); Juan C. Zaragoza Gómez, in his official capacity as Secretary of the Treasury of the Commonwealth of Puerto Rico (the “Treasury”); Luis G. Cruz Batista, in his official capacity as Director of the Office of Management and Budget of the Commonwealth of Puerto Rico (“OMB”); Autoridad Metropolitana de Autobuses (“AMA”); Héctor Iván Santos in his official capacity as the President of AMA; and Miguel A. Torres Díaz, in his official capacity as Secretary of the Puerto Rico Highways and Transportation Authority (“PRHTA”), respectfully state, allege, and pray as follows:

NATURE OF THIS ACTION

1. This is an action under the Puerto Rico Oversight, Management, and Economic Stability Act of 2016, Pub. L. 114-187 (“PROMESA”), for relief from PROMESA’s stay, and thereafter, for declaratory and injunctive relief under 42 U.S.C. § 1983 and PROMESA §§ 204(c)(3), 303(1), and 303(3) to prevent the Commonwealth’s diversion and expropriation of certain tax revenues pledged as collateral to secure a loan originally extended by Scotiabank to AMA.

2. Among other forms of relief, Plaintiffs seek a judgment declaring that the Puerto Rico Emergency Moratorium and Financial Rehabilitation Act (the “Moratorium Act”) and certain executive actions taken thereunder—including Executive Order 2016-30 (“Executive Order 30”)—are unlawful because they (a) violate PROMESA, (b) are preempted by federal law

(including by PROMESA), and (c) violate the U.S. Constitution and the Constitution of the Commonwealth of Puerto Rico (the “P.R. Constitution”).

3. Scotiabank is a Puerto-Rico based bank that has extended substantial credit to AMA. Pursuant to a loan agreement dated March 30, 2012 (as amended, the “Loan Agreement”), Scotiabank made a loan to AMA in the original principal amount of \$37,543,294 (the “AMA Loan”). In exchange, Scotiabank received various property and contractual rights, including a lien on certain tax revenues allocated to AMA and pledged as security for repayment of the AMA Loan. These pledged revenues were to be directly deposited by the Treasury into an operating account maintained by AMA at Scotiabank (the “AMA Account”), against which Scotiabank could debit all payments of principal and interest due under the AMA Loan.

4. At present, the AMA Loan is secured by an assignment of the Commonwealth’s tax on the sale of cigarettes (the “Cigarette Tax”).¹ Pursuant to Act 31-2013 (“Act 31”), enacted on June 25, 2013, the Commonwealth allocated to AMA the revenues from the Commonwealth’s tax on cigarette sales (the “Cigarette Tax Revenues”). Act 31 provides that these pledged revenues are to be “used solely for the payment of principal of and interest on the bonds and other obligations of [AMA],” subject only to the public debt payment priority provisions of the P.R. Constitution, which allow the Commonwealth to “claw back” revenues to service the constitutional public debt² if the Commonwealth’s “available resources” are insufficient to meet all the appropriations made for a given year. 13 L.P.R.A. § 31751(C); P.R. Const. art. VI, § 8.

¹ Initially, the AMA Loan was secured by an assignment of proceeds from the Commonwealth’s tax on diesel fuel. This security was subsequently replaced by an assignment of the Commonwealth’s tax on the sale of cigarettes.

² The constitutional public debt is essentially the Commonwealth’s general obligation bonds and bonds guaranteed by the Commonwealth’s good faith and credit.

5. AMA has been in default under the Loan Agreement since December 2015; it has not made any payments under the Loan Agreement since November 30, 2015.

6. On March 31, 2016, BNS paid to Scotiabank the amounts owed by AMA under the Loan Agreement and, therefore, became subrogated by operation of law to all of Scotiabank's rights under the Loan Agreement. On July 6, 2016, BNS and Scotiabank sent AMA a Notice of Subrogation.

7. While Plaintiffs are entitled to exercise their remedies under the Loan Agreement, including by debiting funds from the AMA Account, Defendants have stopped transferring proceeds from the Cigarette Tax to the AMA Account, and have instead diverted the Cigarette Tax Revenues to purposes other than the repayment of the constitutional public debt.

8. Specifically, on June 30, 2016, pursuant to the Moratorium Act (described further *infra*), the Defendant Governor of the Commonwealth of Puerto Rico (the "Governor") issued Executive Order 30. Among other things, Executive Order 30 declares the Commonwealth and AMA to be in a state of emergency, suspends payment on all of AMA's outstanding debt obligations (including the AMA Loan), and suspends the Commonwealth's obligation to transfer funds pledged as collateral for AMA's debts (including the Cigarette Tax Revenues). To date, the Commonwealth has not used the revenues retained under Executive Order 30 to service its constitutional public debt obligations—the only reason the Commonwealth is lawfully permitted to "claw back" pledged revenues under Article VI, Section 8 of the P.R. Constitution and Act 31.

9. The Moratorium Act, Executive Order 30, and other executive actions taken by the Commonwealth have impaired Plaintiffs' contractual and property rights with respect to the Cigarette Tax Revenues, resulting in pecuniary loss and other irreparable harm to Plaintiffs, and are plainly unlawful for a variety of reasons:

10. *First*, Executive Order 30 violates PROMESA. PROMESA expressly prohibits the Commonwealth from taking certain actions after the enactment of PROMESA, but prior to implementation of a fully operational Oversight Board. In particular, during this period, the Commonwealth “shall not enact new laws that either permit the transfer of any funds or assets outside the ordinary course of business or that are inconsistent with the constitution or laws of the territory as of the date of enactment of this Act.” PROMESA § 204(c)(3). Executive Order 30, signed by the Governor shortly after the enactment of PROMESA, allows the Commonwealth to avoid its obligation (under the Loan Agreement and Act 31) to deposit the Cigarette Tax Revenues into the AMA Account, and to divert those revenues to purposes other than the repayment of the AMA Loan. This plainly constitutes a transfer “outside the ordinary course of business” which is inconsistent with Commonwealth law (including Act 31) and thus violates § 204(c)(3), as well as other provisions of PROMESA.

11. *Second*, the Moratorium Act and Executive Order 30 are preempted by federal law. The Bankruptcy Clause of the U.S. Constitution and the Bankruptcy Code preclude the Commonwealth from enacting any bankruptcy law that allows for a composition of indebtedness of Commonwealth instrumentalities without creditor consent. *See* U.S. Const. art. I, § 8, cl. 4; 11 U.S.C. § 903. As the Supreme Court recently held, federal law “bars Puerto Rico from enacting its own municipal bankruptcy scheme to restructure the debt of its insolvent public utilities companies.” *Puerto Rico v. Franklin California Tax-Free Trust*, No. 15-233, slip op. at 2 (U.S. June 13, 2016) (“*Franklin*”). The Moratorium Act—like the Puerto Rico Public Corporation Debt Enforcement and Recovery Act (the “Recovery Act”) held to be preempted in *Franklin*—unlawfully permits the Governor to restructure the debts of Puerto Rican government instrumentalities. The Moratorium Act authorizes the Governor to impose a stay on creditor

action and remedies; to seize funds pledged for debt payments in order to pay unrelated expenses and other debt (thus impairing creditors by converting secured debt into unsecured debt); and to reorder established priorities. Because the Moratorium Act allows the Commonwealth to restructure the debt of insolvent public entities, the law—and the executive orders issued thereunder—are preempted by the Bankruptcy Clause of the U.S. Constitution and the Bankruptcy Code, as well as PROMESA itself, which expressly preempts any Commonwealth law or executive order “prescribing a method of composition of indebtedness or a moratorium law,” and any “unlawful executive orders that alter, amend or modify rights of holders of any debt of the territory or territorial instrumentality.” PROMESA §§ 303(1), (3).

12. *Third*, the Moratorium Act and Executive Order 30 run afoul of the U.S. Constitution and the P.R. Constitution. Specifically, they impair Plaintiffs’ contracts in violation of Article I, § 10 of the U.S. Constitution and Article II, § 7 of the P.R. Constitution, and authorize Defendants to take Plaintiffs’ property in violation of the Fifth and Fourteenth Amendments of the U.S. Constitution.

13. Accordingly, Plaintiffs seek the following interim and permanent relief, pursuant to PROMESA, 42 U.S.C. § 1983, and the U.S. and P.R. Constitutions:

- a. relief from PROMESA’s stay for cause, pursuant to PROMESA § 405(e), in order to permit the Court to consider and grant the relief stated herein, followed by—
- b. a preliminary injunction compelling Defendants to deposit the Cigarette Tax Revenues in an account administered by the Court (or otherwise pursuant to a mechanism approved by the Court) pending final judgment in this matter;
- c. a judgment declaring that the Moratorium Act and the executive orders issued thereunder (including Executive Order 30) are unlawful, because they violate PROMESA, are preempted by federal law (including PROMESA), and violate the U.S. and P.R. Constitutions; and
- d. a permanent injunction enjoining Defendants from implementing the Moratorium Act or enforcing executive orders issued thereunder with

respect to Plaintiffs, and directing Defendants to continue to deposit the Cigarette Tax Revenues in accordance with paragraph 11(b) above, subject to the lawful disposition of those funds pursuant to a confirmed plan of adjustment pursuant to title III of PROMESA or a restructuring agreement to which Plaintiffs have consented.

THE PARTIES

14. Plaintiff Scotiabank de Puerto Rico is a bank organized under the laws of Puerto Rico, with its principal place of business located at Avenida Jesús T. Piñero Núm. 290, Scotia Tower, Hato Rey, Puerto Rico 00918.

15. Plaintiff the Bank of Nova Scotia is a bank organized under the laws of Canada, with its principal place of business located at 44 King Street West, Toronto Ontario, Canada.

16. Defendant Hon. Alejandro García Padilla is the Governor of the Commonwealth. Plaintiffs sue the Governor in his official capacity.

17. Defendant Hon. Juan C. Zaragoza Gomez is the Secretary of the Treasury. Plaintiffs sue the Secretary of the Treasury in his official capacity.

18. Defendant Hon. Luis G. Cruz Batista is the OMB Director. Plaintiffs sue the OMB Director in his official capacity.

19. Defendant AMA is “a public corporation having legal existence separate and personality separate and apart from those of the Government [of Puerto Rico] and from any officers thereof,” 23 L.P.R.A. § 603(a), which has power to be sued pursuant to 23 L.P.R.A. § 606(e). Moreover, “[t]he debts, obligations, contracts . . . and property of the Authority . . . shall be deemed to be those of said government-controlled corporation and not to be those of the Commonwealth Government.” 23 L.P.R.A. § 603(b). Currently, AMA is governed by the Secretary of PRHTA pursuant to “Reorganization Plan” No. 6 of 1971, 3 L.P.R.A. Ap. III, § 3.

20. Defendant Hon. Héctor Iván Santos is the President of AMA (the “AMA President”). Plaintiffs sue the AMA President in his official capacity.

21. Defendant Hon. Miguel A. Torres Díaz (the “PRHTA Secretary”) is the Secretary of PRHTA. Plaintiffs sue the PRHTA Secretary in his official capacity.

JURISDICTION AND VENUE

22. This action arises under PROMESA (Pub. L. 114-187, 130 Stat. 549 (2016)), the Constitution of the United States, 42 U.S.C. § 1983, and the P.R. Constitution. This Court thus has subject matter jurisdiction over the action under 28 U.S.C. § 1331 and supplemental jurisdiction under 28 U.S.C. § 1367(a).

23. This Court is authorized to issue the declaratory relief sought here under 28 U.S.C. §§ 2201 and 2202 and Federal Rule of Civil Procedure 57.

24. Venue is properly in this Court pursuant to 28 U.S.C. § 1391(b) because Defendants reside in this District and a substantial part of the events or omissions giving rise to this action occurred in this judicial district.

FACTUAL ALLEGATIONS

A. AMA

25. AMA provides bus transportation to passengers within the San Juan Metropolitan Area. Currently, AMA is governed by the PRHTA Secretary. 3 L.P.R.A. Ap. III, § 3.

B. Loan Agreement

26. On March 30, 2012, Scotiabank and AMA entered into the Loan Agreement, pursuant to which Scotiabank made a loan to AMA in the original principal amount of \$37,543,294. Under the Loan Agreement, AMA agreed to repay the AMA Loan in monthly installments until the maturity date, March 31, 2016.

27. The Loan Agreement provides Scotiabank with various property and contractual rights, including a lien on certain revenues pledged by the Commonwealth as security for repayment of the AMA Loan. At present, the AMA Loan is secured by an assignment of up to \$10,000,000 per fiscal year of the proceeds of the Cigarette Tax, to be disbursed in units of not more than \$800,000 per month, which the Treasury is to directly deposit in an account maintained by AMA at Scotiabank de Puerto Rico (the “AMA Account”). Pursuant to the Loan Agreement, Scotiabank is entitled to debit from this account all payments of principal and interest due under the AMA Loan.

28. Pursuant to Act 31, AMA’s allocation of Cigarette Tax Revenues, on which Scotiabank has a lien, is subordinate to the prior allocation of a portion of the Cigarette Tax reserved for the benefit of PRHTA. AMA’s allocation of Cigarette Tax Revenues is also subject to the public debt priority provisions of the P.R. Constitution, which provide that if the Commonwealth’s “available resources” are insufficient to meet the appropriations made for a given year, “interest on the public debt and amortization thereof shall first be paid, and other disbursements shall thereafter be made in accordance with the order of priorities established by law.” P.R. Const. art. VI, § 8; 13 L.P.R.A. § 31751(C).

29. Act 31, which assigns the Cigarette Tax Revenues to AMA, makes clear that the Commonwealth may only “claw back” the Cigarette Tax Revenues to service the constitutional public debt. It provides, in relevant part—

The proceeds from such taxes [pledged as collateral] shall be used solely for the payment of the interest on and amortization of the public debt, as provided in Section 8 of Article VI of the Constitution of Puerto Rico, insofar as the [Commonwealth’s] other available resources . . . do not suffice to attain such purposes. Otherwise, the proceeds from said tax, in the necessary amount, ***shall be used solely for the payment of principal of and interest on the bonds and other obligations of [AMA]*** and to meet any

stipulation agreed on by [AMA] to the holders of its bonds and other obligations.

13 L.P.R.A. § 31751(C) (emphasis added).

30. On September 18, 2013, AMA notified the Treasury that, pursuant to the Loan Agreement, AMA assigned to Scotiabank all rights, revenues, profits, and other payments due to AMA from the Cigarette Tax Revenues and instructed the Treasury to deposit with Scotiabank all Cigarette Tax Revenues. This notice was acknowledged and consented to by the Treasury on October 23, 2013.

C. AMA's Default Under the Loan Agreement

31. On December 30, 2015, AMA failed to make a principal payment on the AMA Loan in the amount of \$218,000. On December 31, 2015, AMA failed to make an interest payment in the amount of \$105,307.

32. Thereafter, on January 5, 2016, Scotiabank sent a letter to AMA and the Government Development Bank for Puerto Rico ("GDB"), fiscal agent of the Commonwealth, providing notice of several material events of default under the Loan Agreement and proposing a forbearance agreement to facilitate the negotiation of a debt refinancing.

33. On March 31, 2016, the AMA Loan became due and payable in full, according to the terms of the Loan Agreement, in the principal amount of \$28,249,666, together with unpaid interest, which continues accruing on a daily basis. AMA has not made any payments under the Loan Agreement since November 30, 2015.

34. On March 31, 2016, BNS became subrogated to all of Scotiabank's rights under the Loan Agreement.

35. Scotiabank, on behalf of BNS, has made several attempts to work with AMA to refinance its debt under the Loan Agreement. On May 24, 2016, Scotiabank, on behalf of BNS,

sent a second letter to AMA and GDB, which included, among other things, an outline of a potential workout. These attempts have been unsuccessful, as AMA has declined to engage in serious negotiations with Plaintiffs.

D. The Clawback Order

36. On December 1, 2015, the Governor signed Executive Order 2015-046, which, among other things, instructed the Secretary of the Treasury to “claw back” revenues assigned to AMA (including the Cigarette Tax Revenues) in order to service the constitutional public debt. According to the Governor, this action was necessary in light of the Commonwealth’s liquidity constraints and revised financial projections for fiscal year 2016. As of June 30, 2016, upwards of \$4.9 million of the funds assigned to AMA have been clawed back under Executive Order 2015-046. These revenues have not been used to service the constitutional public debt.

E. The Moratorium Act

37. On April 6, 2016, the Governor signed into law the Moratorium Act, which declares a state of fiscal emergency in the Commonwealth and “directs the Governor to prioritize payment of essential services over [certain debt] obligations to promote the health, safety, and welfare of the residents of the Commonwealth.”

38. Section 201 of the Moratorium Act empowers the Governor “by executive order” to declare a moratorium with respect to “Covered Obligations” of certain Puerto Rico “Covered Entities” and banks. *Id.* at § 201(a). The period during which the Governor may declare such a moratorium (the “Covered Period”) expires on January 31, 2017, unless “extended by executive order of the Governor for not more than two months.” *Id.*

39. AMA is explicitly defined as a “Government Entity” that may be subject to a moratorium under the Act. *Id.* § 103(t)(i). “Covered Obligations” include “any interest

obligation, principal obligation or enumerated obligation of a government entity that is due or becomes due . . . in respect of such government entity” declared subject to a moratorium, as well as “any obligation arising or resulting from . . . the guarantee by such government entity of any obligation,” and any “obligation to transfer funds” by such entity. *Id.* at § 103(l). Moreover, the Governor may declare a moratorium with respect to any “Enumerated Obligation,” defined to include any obligation that “may arise from any contract or agreement . . . providing for amounts or benefits payable by a government entity to any person. . . .” *Id.* § 103(r). Accordingly, all of AMA’s outstanding obligations (including under the Loan Agreement) and any obligation of the Commonwealth to transfer revenues pledged to AMA (including the Cigarette Tax Revenues) are subject to suspension under the Moratorium Act during the Covered Period.

40. Section 201 of the Moratorium Act further provides that once a state of emergency is declared for a government entity, “no act shall be done, and no action or proceeding, including issuance of process, shall be commenced or continued in any court in any jurisdiction, which could result in . . . the recovery from, or judgment or enforcement against such government entity related to any covered obligation, or any funds, property, receivables or revenues thereof.” *Id.* at § 201(b)(i)(A). Any violation of this stay provision “shall be void and punishable by contempt of court.” *Id.* at § 201(c).

F. PROMESA

41. PROMESA, enacted on June 30, 2016, is intended to assist the Commonwealth and its territorial instrumentalities in achieving fiscal stability and responsibility. PROMESA establishes a Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”) tasked with, among other things, the creation of a plan of adjustment to restructure and

satisfy the debts of the Commonwealth and the instrumentalities designated by the Oversight Board as “covered” for purposes of the Act. *See* PROMESA §§ 101(b), 101(d), 104(j), 312.

42. PROMESA prohibits the Commonwealth from taking certain actions after its enactment but before the Oversight Board is appointed and fully operational. During this period, the Commonwealth is barred from taking any action or enacting any law that would permit the transfer of funds or assets outside the normal course of business. *Id.* at § 204(c)(3)(B). Any action taken by the Governor or the Commonwealth’s legislature authorizing the movement of assets during this interim period may be subject to review and reversal by the Oversight Board. *Id.* Since PROMESA’s enactment, members of the Oversight Board have been appointed; however, the board is not yet fully operational.

43. PROMESA contains several specific preemption provisions. Section 4 of PROMESA is a general supremacy provision, which states that “[t]he provisions of this Act shall prevail over any general or specific provisions of territory law, State law, or regulation that is inconsistent with this Act.” *Id.* at § 4. Section 303(1) further provides that the Commonwealth “may not prescribe a method of composition of indebtedness or a moratorium law without the consent of creditors.” Section 303(3) expressly preempts “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.* at §§ 303(1), (3).

44. PROMESA imposes a stay on “the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the Government of Puerto Rico that was or could have been commenced before the enactment of [PROMESA],” along with “any act to create, perfect, or enforce any lien against property of the Government of Puerto Rico.” *Id.* at

§§ 405(b)(1), (4). The U.S. District Court for the District of Puerto Rico is empowered to grant relief from the stay “for cause shown.” *See id.* at § 405(e); *see also* § 405(g) (empowering the court to—with or without a hearing—lift the stay in order to prevent irreparable damage to the interest of an entity in property).

45. PROMESA’s litigation stay was not intended to impair claims against the Commonwealth, or impair any security interest or lien thereunder. Section 405(k) provides that the automatic stay “does not discharge an obligation of the Government of Puerto Rico or release, invalidate, or impair any security interest or lien securing such obligation.” And PROMESA provides creditors with protection against transfers of property subject to a valid pledge by stating that any transferee shall be liable for the value of such property:

While an Oversight Board for Puerto Rico is in existence, 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.

Id. at § 407(a). Creditors are permitted to enforce their rights under § 407 by bringing an action in the U.S. District Court for the District of Puerto Rico after the stay imposed by § 405 has been lifted (or expired), as long as there is no stay in effect under a special reorganization proceeding pursuant to Title III of PROMESA. *See id.* at § 407(b).

G. The Emergency Order—Executive Order 30

46. Just hours after the enactment of PROMESA, on June 30, 2016, the Governor signed Executive Order 30 pursuant to the Moratorium Act. Executive Order 30 declares the Commonwealth to be in a state of emergency and suspends the Commonwealth’s obligation to,

among other things, transfer Cigarette Tax Revenues to AMA. The order also declares AMA to be in a state of emergency and suspends its obligation to make payments on its debts.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
(Relief from PROMESA Stay)

47. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 46 of this Complaint.

48. Section 405(b) of PROMESA imposes an automatic stay on certain actions taken to assert certain claims or recover property from public corporations. The stay applies only to claims or enforcement actions that were or could have been commenced *before* the enactment of PROMESA. Given that this action seeks relief for violations of PROMESA itself (Claim II)—and a declaration that Executive Order 30 is preempted by, among other federal laws, PROMESA (Claim III)—it could not have been commenced prior to the statute’s enactment, and is therefore not stayed.

49. But to the extent that this lawsuit is deemed to fall within PROMESA’s stay provision, Plaintiffs respectfully request relief from the stay under § 405(e) of PROMESA, which authorizes this Court to grant relief from the stay “for cause shown.”

50. Cause to lift the PROMESA stay has been shown. *First*, the balance of harms plainly weighs in favor of lifting the stay. The Moratorium Act and Executive Order 30 allow the Commonwealth to avoid its obligation to deposit the Cigarette Tax Revenues into the AMA Account, and to divert those revenues to purposes other than the repayment of the AMA Loan. Given that AMA has defaulted on the AMA Loan, the diversion and dissipation of the only collateral securing that loan has resulted in severe economic harm to Plaintiffs—harm that will compound if the stay is not lifted. By contrast, lifting the stay to allow Plaintiffs to bring this

action will not “unduly” harm the Defendants. Plaintiffs do not seek repayment of any debt obligations with this action; it seeks only injunctive and declaratory relief designed to maintain the status quo. Preservation of the status quo does not constitute any cognizable harm to the Defendants, and is, in fact, the goal underlying several of PROMESA’s provisions, including the stay provision.

51. *Second*, cause to lift the stay exists due to lack of adequate protection. A secured creditor is entitled to adequate protection if it can establish that the value of its interest in collateral is declining as a result of the stay; such “interest in collateral” includes a creditor’s right to have its collateral applied in payment of a debt upon the completion of a reorganization. There is no question that Plaintiffs are secured creditors entitled to adequate protection of its property interests, including their right to have the Cigarette Tax Revenues applied to the AMA Account dedicated to the payment of the AMA Loan. So long as the stay remains in effect, Plaintiffs’ collateral can be and is being diverted to purposes other than payment of the AMA Loan. This diversion reduces the overall value of the collateral even if the Commonwealth decides to one day recommit the Cigarette Tax Revenues to repayment of the AMA Loan. Indeed, the value of Plaintiffs’ collateral will continue to decline so long as the Cigarette Tax Revenues are diverted and spent instead of properly applied to the AMA Loan.

52. *Third*, cause to lift the stay exists due to irreparable harm. Plaintiffs are suffering irreparable harm because the Commonwealth, which is insolvent, is dissipating and misappropriating Plaintiffs’ collateral, and will continue to do so as long as the stay remains in effect. The fact that the collateral at risk of dissipation consists primarily of money assets does not preclude a showing of irreparable injury. In light of this irreparable harm to Plaintiffs, emergency relief from the PROMESA stay under § 405(g) is also warranted.

SECOND CLAIM FOR RELIEF
**(Declaratory Judgment that the Moratorium Act and Executive Order 30
Violate PROMESA §§ 204(c)(3), 303(1), and 303(3))**

53. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 52 of this Complaint.

54. Plaintiffs seek a declaration that the Moratorium Act and Executive Order 30 violate PROMESA §§ 204(c)(3), 303(1) and 303(3).

55. Section 204(c)(3) of PROMESA provides that, “[d]uring the period after a territory becomes a covered territory and prior to the appointment of all members and the Chair of the Oversight Board,” the Commonwealth “shall not enact new laws that either permit the transfer of any funds or assets outside the ordinary course of business or that are inconsistent with the constitution or laws of the territory as of the date of enactment of this Act.” As the Oversight Board is not yet fully operational, the prohibitions set forth in § 204(c)(3) have applied since PROMESA’s enactment on June 30, 2016, and continue to apply to the present.

56. Executive Order 30, which was adopted since PROMESA’s enactment, permits the transfer of funds “outside the ordinary course of business” by diverting the Cigarette Tax Revenues in violation of the Loan Agreement (and Act 31). It thus violates PROMESA § 204(c)(3).

57. Moreover, § 303(1) of PROMESA prohibits the Commonwealth from “prescrib[ing] a method of composition of indebtedness or a moratorium law without the consent of creditors.” Section 303(3) further preempts “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.”

58. The Moratorium Act and Executive Order 30 purport to restructure Plaintiffs’ debt and impair Plaintiffs’ rights by diverting the revenues pledged to pay AMA’s debt to

Plaintiffs without Plaintiffs' consent. As such, the Moratorium Act and Executive Order 30 violate PROMESA §§ 303(1) and 303(3).

59. An actual, substantial, and justiciable case or controversy exists between the parties with respect to these issues and claims. This Court has the power to adjudicate the rights of the parties with respect to this controversy, and should grant the requested declaratory judgment pursuant to 28 U.S.C. §§ 2201, 2202 and Federal Rule of Civil Procedure 57.

THIRD CLAIM FOR RELIEF
(Declaratory Judgment that the Moratorium Act and Executive Order 30 Are Preempted by Federal Law, Including PROMESA)

60. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 59 of this Complaint.

61. Article VI of the U.S. Constitution provides that federal law “shall be the supreme Law of the Land.” U.S. Const. art. VI, cl. 2. The Bankruptcy Clause of the U.S. Constitution further provides that “[t]he Congress shall have the Power [. . . t]o establish [. . .] uniform Laws on the subject of Bankruptcies throughout the United States.” U.S. Const. art. I, § 8, cl. 4. In accordance with that Clause, the United States Congress has enacted the Bankruptcy Code, 11 U.S.C. § 101 et seq.

62. Section 903 of the Bankruptcy Code, enacted pursuant to the Bankruptcy Clause of the U.S. Constitution, provides that “(1) a State law prescribing a method of composition of indebtedness of such municipality may not bind any creditor that does not consent to such composition; and (2) a judgment entered under such a law may not bind a creditor that does not consent to such composition.” 11 U.S.C. § 903. Puerto Rico is a State for purposes of this statute, and AMA is a municipality as defined in 11 U.S.C. § 101(40).

63. The Moratorium Act and Executive Order 30 unlawfully permit the Governor to restructure the debts of Puerto Rican government instrumentalities, such as AMA. The Moratorium Act authorizes the Governor to impose a stay on creditor action and remedies; to seize funds pledged for debt payments in order to pay unrelated expenses and other debt (thus impairing creditors by converting secured debt into unsecured debt); and to reorder established priorities. There can thus be no question that the Moratorium Act and Executive Order 30 impair the rights of creditors, including Plaintiffs, and allow for a composition of indebtedness of Puerto Rico instrumentalities. Accordingly, they are in conflict with and preempted by section 903 of the Bankruptcy Code.

64. The Moratorium Act and Executive Order 30 are also in conflict with and expressly preempted by various provisions of PROMESA, including section 4 (which provides that PROMESA “shall prevail over any general or specific provisions of territory law, State law, or regulation that is inconsistent with this Act”); section 303(1) (which provides that Puerto Rico “may not prescribe a method of composition of indebtedness or a moratorium law without the consent of creditors”); and section 303(3) (which preempts “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”).

65. An actual, substantial, and justiciable case or controversy exists between the parties with respect to these issues and claims. This Court has the power to adjudicate the rights of the parties with respect to this controversy, and should grant the requested declaratory judgment pursuant to 28 U.S.C. §§ 2201, 2202 and Federal Rule of Civil Procedure 57.

FOURTH CLAIM FOR RELIEF

(Declaratory Judgment that the Moratorium Act and Executive Order 30 Violate the Contracts Clause of the U.S. and P.R. Constitutions)

66. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 65 of this Complaint.

67. Article I, section 10 of the United States Constitution provides that “No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . .” (the “Contracts Clause”). *See* U.S. Const. art. I, § 10, cl. 1.

68. The Moratorium Act and Executive Order 30—by suspending AMA’s obligation to service the AMA Loan and the Commonwealth’s obligation to transfer proceeds from the Cigarette Tax Revenues to the AMA Account—substantially impair the contractual relationship between Plaintiffs and AMA. The Loan Agreement confers numerous contractual rights on Plaintiffs that are impaired or eliminated by the Moratorium Act and Executive Order 30, including the assignment of all rights, revenues, profits, and all other payments due to AMA from the Cigarette Tax Revenues and the right to receive deposits of the Cigarette Tax Revenues from the Treasury. The Moratorium Act and Executive Order 30 also suspend AMA’s contractual obligation to repay principal and interest.

69. The extent to which the Moratorium Act and Executive Order 30 impair the contractual rights of AMA’s creditors, including Plaintiffs, is neither reasonable nor necessary to serve an important governmental purpose. Indeed, the Commonwealth could have pursued legislative alternatives far less drastic than the Moratorium Act, such as requiring AMA to negotiate with creditors to restructure its debts, a process that Scotiabank tried to facilitate prior to passage of the executive actions described in this Complaint.

70. For these reasons, the Moratorium Act and Executive Order 30 violate the Contracts Clause of the U.S. Constitution, as well as the analogous clause of the P.R.

Constitution, which provides that “[n]o laws impairing the obligation of contracts shall be enacted.” P.R. Const. art. II, § 7.

71. An actual, substantial, and justiciable case or controversy exists between the parties with respect to these issues and claims. This Court has the power to adjudicate the rights of the parties with respect to this controversy, and should grant the requested declaratory judgment pursuant to 28 U.S.C. §§ 2201, 2202 and Federal Rule of Civil Procedure 57.

FIFTH CLAIM FOR RELIEF
(Declaratory Relief for Violation of the Takings and Due Process Clauses)

72. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 71 of this Complaint.

73. The Fifth Amendment to the U.S. Constitution provides that “private property [shall not] be taken for public use, without just compensation” (the “Takings Clause”). *See* U.S. Const. amend. V. The Takings Clause applies to the Commonwealth through Section 1 of the Fourteenth Amendment. *See* U.S. Const. amend. XIV, § 1.

74. The Fifth and Fourteenth Amendments to the U.S. Constitution ensure that no person shall be deprived “of life, liberty, or property, without due process of law.” U.S. Const. amend. V; *id.* amend. XIV.

75. The Moratorium Act and Executive Order 30 suspend AMA’s contractual obligation to make any principal and/or interest payments owed to Plaintiffs under the Loan Agreement. During this suspension period, Plaintiffs are also deprived of their property rights with respect to the Cigarette Tax Revenues. While this deprivation is purportedly temporary, the value of the Cigarette Tax Revenues pledged as collateral under the Loan Agreement is being permanently reduced on account of the Defendants’ unlawful diversion of those revenues to purposes other than the repayment of the AMA Loan. Accordingly, the Moratorium Act and

Executive Order 30 effect a taking without just compensation and a deprivation of property without due process.

76. An actual, substantial, and justiciable case or controversy exists between the parties with respect to these issues and claims. This Court has the power to adjudicate the rights of the parties with respect to this controversy, and should grant the requested declaratory judgment pursuant to 28 U.S.C. §§ 2201, 2202 and Federal Rule of Civil Procedure 57.

SIXTH CLAIM FOR RELIEF
(Injunctive Relief)

77. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 76 of this Complaint.

78. Plaintiffs seek a preliminary injunction requiring the Defendants, in their official capacities as officers of the Commonwealth, to deposit the Cigarette Tax Revenues in an account administered by the Court (or otherwise pursuant to a mechanism approved by the Court) and prohibiting Defendants, in their official capacities as officers of the Commonwealth, from diverting the Cigarette Tax Revenues to purposes other than the payment of AMA's obligations.

79. Plaintiffs further seek a permanent injunction enjoining Defendants from implementing the Moratorium Act or enforcing the various executive orders—including Executive Order 30—with respect to Scotiabank.

80. Plaintiffs currently lack an adequate remedy at law because, in the absence of such injunctive relief, the Commonwealth will continue unlawfully disposing of the Cigarette Tax Revenues, permanently reducing the value of Plaintiffs' collateral. Therefore, the requested injunctive relief is necessary and appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the entry of judgment as follows:

- i. To the extent applicable, lifting the automatic stay under section 405(e) of PROMESA;
- ii. Declaring that the Moratorium Act and Executive Order 30, and any prospective enforcement thereof or authorization thereunder, violate Section 204(c)(3) of PROMESA;
- iii. Declaring that the Moratorium Act and Executive Order 30, and any prospective enforcement thereof or authorization thereunder, are preempted by the Bankruptcy Code, 11 U.S.C. § 903(1), the Bankruptcy Clause of the U.S. Constitution, art. I, § 8; and PROMESA §§ 4, 303(1), and 303(3).
- iv. Declaring that the Moratorium Act and Executive Order 30, and any prospective enforcement thereof or authorization thereunder, violate Article I, Section 10, Clause 1 of the United States Constitution and Article II, Section 7 of the Puerto Rico Constitution, through the retroactive impairment of Scotiabank's rights under the Loan Agreement;
- v. Declaring that the Moratorium Act and Executive Order 30, and any prospective enforcement thereof or authorization thereunder, violate the Fifth Amendment and the Fourteenth Amendment of the United States Constitution through the taking of Plaintiffs' property interests and by depriving Plaintiffs of due process;
- vi. Enjoining Defendants from diverting the transfers of the Cigarette Tax Revenues and requiring them to deposit the Cigarette Tax Revenues in an account administered by the Court (or otherwise pursuant to a mechanism approved by the Court);

- vii. Awarding Plaintiffs' costs and attorneys' fees as authorized under 42 U.S.C. § 1983; and
- viii. Granting such other and further relief as the Court deems just and proper.

Dated: San Juan, Puerto Rico
October 17, 2016

Respectfully submitted,

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