

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

<p>Brigade Leveraged Capital Structures Fund Ltd., <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>Alejandro Garcia-Padilla, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil No. 16-1610 (FAB)</p>
<p>National Public Finance Guarantee Corporation,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>Alejandro Garcia-Padilla, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil No. 16-2101 (FAB)</p>
<p>Dionisio Trigo-Gonzalez, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>Alejandro Garcia-Padilla, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil No. 16-2257 (FAB)</p>
<p>U.S. Bank Trust National Association, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>The Commonwealth of Puerto Rico, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>Civil No. 16-2510 (FAB)</p>

**TRIGO PLAINTIFFS' RESPONSE TO FINANCIAL OVERSIGHT AND MANAGEMENT BOARD'S OPPOSITION TO LIFTING THE AUTOMATIC STAY**

**TO THE HONORABLE COURT:**

**NOW COME** Plaintiffs DIONISIO TRIGO GONZÁLEZ, *et al*, represented by their undersigned attorneys, and respectfully, in response to the Financial Oversight and Management Board for Puerto Rico (the "Oversight Board") opposition (Dkt. 65, Exhibit A) to Plaintiffs' Motions to Lift the Automatic Stay in the consolidated cases, state, allege and pray:

1. The appearing Plaintiffs acknowledge the Oversight Board's right to intervene in their case, and welcome said intervention.
2. With regard to the Oversight Board's opposition to lifting the automatic stay, appearing Plaintiffs posit that labeling this litigation a "major distraction"<sup>1</sup>, and attributing "disruption" thereto<sup>2</sup> misses the point altogether: In essence, the Oversight Board asks the Court to look the other way and not enforce the Constitution for the duration of the PROMESA stay, to avoid causing further "disruption". This is tantamount to requesting a stay on the application of the Constitutions of the United States of America and of the Commonwealth of Puerto Rico.
3. The PROMESA stay cannot and does not apply to the supreme legal mandates and tenets in each of those Constitutions, which Plaintiffs contend have been, and are being violated in and under the Moratorium Act. No argument is advanced in the Oversight Board's opposition to lifting the stay, for the

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<sup>1</sup> Dkt. 65, Exhibit A at p. 10.

<sup>2</sup> *Id* at pp. 11, 24.

proposition that a determination as to the constitutionality of the challenged sections of the Moratorium Act is not necessary, that constitutional challenges are not ripe, or that the Court can simply postpone adjudication of questions of constitutional import, because there is a greater good, or an overriding interest.

4. Plaintiffs respectfully submit that the Oversight Board has the statutory power to implement and enforce with dispatch measures in the nature of the ones advanced in its opposition, including: Demanding accountability from the Commonwealth for the “funds over which it has already exercised control pursuant to the Moratorium Act and related Executive Orders, for future revenues and expenditures, and for all transfers to and from the Government Development Bank (“GDB”) since April 16, 2016”<sup>3</sup>; demanding that the Commonwealth give the Oversight Board “immediate and unfettered access to the Commonwealth’s financial officials and advisors”<sup>4</sup>; demanding that the Commonwealth provide the Oversight Board “proposed cash management guidelines and procedures” and “begin rolling production of the information requested by the Oversight Board on October 5 and 20, 2016”, and provide “an information production protocol that will establish procedures and timetables for requesting and producing information, sharing information and maintaining its confidentiality as appropriate, and resolving its disputes over the production of information.”<sup>5</sup>.

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<sup>3</sup> *Id.* p. 11.

<sup>4</sup> *Id.* p. 11.

<sup>5</sup> *Id.* p. 11.

Nevertheless, the Oversight Board's abstention from taking a position on the merits of the challenges to the Moratorium Act, and related Executive Orders<sup>6</sup>, its suggestion "that parties return to Court in 30 days to report on the status of the Oversight Board's progress"<sup>7</sup>, together with statements such as

In the event that circumstances change, Plaintiffs should be allowed to renew their requests to lift the stay on an expedited basis.<sup>8</sup>

and the Board's belief that "the Governor should agree not to exercise any new executive orders relating to the Moratorium Act or PROMESA during the continuation of the stay"<sup>9</sup> may very well be wishful, utopic and unrealistic goals in view of the real distractions represented by upcoming insular and national elections, their aftermath, transition committee meetings, Veterans Day and Puerto Rico Discovery holidays, Thanksgiving holidays, the early arrival of the Puerto Rican Christmas celebrations, and the Governor's notorious assertions that "he could care less" about bond degradation and that bondholders are "vultures" preying on the people of Puerto Rico.

5. The Commonwealth Defendants have used the Moratorium Act to unilaterally tilt the playing field by, for example, depleting funds from GDB. Though the Oversight Board refers to "perpetual revenue streams that secure [revenue bondholders'] claims"<sup>10</sup> appearing Plaintiffs have no such security. Instead, they must rely on representations as to GDB's history of never defaulting, and

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<sup>6</sup> *Id.* p. 10.

<sup>7</sup> *Id.* p. 12.

<sup>8</sup> *Id.* p. 12.

<sup>9</sup> *Id.* p. 24.

<sup>10</sup> *Id.* p. 22.

on Master Indenture commitments as to not straying from the ordinary course of business without bondholders' consent. The "breathing spell" alluded to by the Oversight Board and the Commonwealth defendants while invoking a continuation of the PROMESA stay in these consolidated cases, cannot be taken to mean a respite from application of constitutional law so that the Commonwealth may take, appropriate, and usurp with impunity, under the talismanic guise of "emergency". The vexatious question to ask for the Commonwealth Defendants is: Can we somehow circumvent or somersault the Constitution or put it on "hold"?

6. The Court's ruling on the Constitutional challenges against the Moratorium Act should serve to show the way and educate the parties, including the Government, the Plaintiffs, the Oversight Board, and the general public, as well as potential investors and financial capital markets, at a time when the boundaries of the Constitution, and the need to assert our revered fundamental doctrine of separation of powers stare us all in the face.
7. The Oversight Board should be granted the opportunity, as intervenor, to present any arguments it may have with respect to the constitutional validity of the Moratorium Act, if and when the Court determines to lift the stay as appearing Plaintiffs and the Plaintiffs in the consolidated cases have requested.
8. Plaintiffs most earnestly submit that, at least their litigation, should end with an adjudication as to the unconstitutionality of the challenged sections of the Moratorium Act, and that there is no question that the PROMESA stay against

any action to collect monies upon the bonds and notes of GDB and PFC held by Plaintiffs should continue unabated, granting the Government and the Oversight Board, as well as bondholders, the time and opportunity to negotiate in due course on a level playing field.

**WHEREFORE** appearing Plaintiffs pray the Court for an order lifting the stay so that the Court may proceed to adjudicate the critical and transcendental constitutional issues raised with regard to the Moratorium Act.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico this 28<sup>th</sup> day of October, 2016.

**CERTIFICATE:** It is hereby certified that on this date the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

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