

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

U.S. Bank Trust National Association

(b) County of Residence of First Listed Plaintiff Wilmington, Delaware (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) David C. Indiano, Indiano & Williams, PSC, 207 Del Parque Street, 3rd Floor, San Juan PR 00912, 787-641-4545

DEFENDANTS

Commonwealth of Puerto Rico, Alejandro García Padilla in his official capacity, University of Puerto Rico, Celeste Freytes González in her official capacity

County of Residence of First Listed Defendant Puerto Rico (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC §2201 and 2202, P.L. 114-187 §303(3) and 405(e), 42 USC §1983, 28 USC §1651, US and PR Const.

Brief description of cause: Relief from PROMESA stay; preliminary and permanent injunctive relief; and declaratory relief

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Francisco Besosa DOCKET NUMBER See attachment

DATE 8/19/16 SIGNATURE OF ATTORNEY OF RECORD David C. Indiano

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

## List of Related Cases per Civil Cover Sheet, Question VIII.

<b>CASE NAME</b>	<b>CASE No.</b>	<b>DATE FILED</b>	<b>JUDGE</b>	<b>RELATED CLAIMS</b>
1. Assured Guaranty Corp. v. Alejandro García Padilla, et al	16-1037	1/7/16	Francisco A. Besosa	<p>Challenging certain Executive Orders on grounds that include</p> <ul style="list-style-type: none"> <li>➤ Violation of the Takings Clause</li> <li>➤ Violation of the Contracts Clause</li> </ul>
2. Financial Guaranty Assurance Company v. Alejandro García Padilla, et al (Consolidated with 16-1037)	16-1095	1/19/16	Francisco A. Besosa	<p>Challenging certain Executive Orders on grounds that include</p> <ul style="list-style-type: none"> <li>➤ Preemption</li> <li>➤ Violation of the Takings Clause</li> <li>➤ Violation of the Contracts Clause</li> </ul>
3. National Public Finance Guarantee Corp. v. Alejandro García Padilla, et al.	16-2101	6/15/16	Francisco A. Besosa	<p>Challenging Moratorium Act on grounds that include</p> <ul style="list-style-type: none"> <li>➤ Preemption</li> <li>➤ Violation of the Takings Clause</li> <li>➤ Violation of the Contracts Clause</li> </ul>
4. Trigo v. Alejandro García Padilla, et al	16-2257	6/30/16	Francisco A. Besosa	<p>Challenging Moratorium Act and Executive Orders on grounds that include</p> <ul style="list-style-type: none"> <li>➤ Preemption</li> <li>➤ Violation of the Takings Clause</li> <li>➤ Violation of the Contracts Clause</li> </ul>
5. Lex Claims, LLC v. Alejandro García Padilla, et al.	16-2374	8/15/16 (amended complaint)	Francisco A. Besosa	<p>Challenging Executive Orders on grounds that include</p> <ul style="list-style-type: none"> <li>➤ Preemption by PROMESA</li> </ul>

List of Related Cases per Civil Cover Sheet, Question VIII.

<p>6. Peaje Investments LLC vs. Alejandro Garcia Padilla, et al.</p>	<p>16-2365</p>	<p>7/18/16</p>	<p>Francisco A. Besosa</p>	<p>Challenging Moratorium Act and Executive Orders on grounds that include</p> <ul style="list-style-type: none"> <li>➤ Preemption by PROMESA</li> <li>➤ Violation of the Takings Clause</li> <li>➤ Violation of the Contracts Clause</li> </ul>
<p>7. Assured Guaranty Corp. and Assured Guaranty Municipal Corp. v. Commonwealth of Puerto Rico et al.</p>	<p>16-2384</p>	<p>7/21/16</p>	<p>Francisco A. Besosa</p>	<p>Challenging Executive Orders on grounds that include</p> <ul style="list-style-type: none"> <li>➤ Preemption by PROMESA</li> <li>➤ Violation of the Takings Clause</li> <li>➤ Violation of the Contracts Clause</li> </ul>

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

-----X	
U.S. Bank Trust National Association,	:
	:
Plaintiff,	:
	:
v.	:
	:
THE COMMONWEALTH OF PUERTO	:
RICO,	:
	:
ALEJANDRO GARCÍA PADILLA,	:
in his official capacity as Governor of the	:
Commonwealth of Puerto Rico,	:
	:
UNIVERSITY OF PUERTO RICO,	:
	:
-and-	:
	:
DR. CELESTE FREYTES GONZÁLEZ,	:
in her official capacity as President of the	:
University of Puerto Rico,	:
	:
Defendants.	:
-----X	

Civil No. 16-cv-2510

**COMPLAINT FOR RELIEF FROM THE AUTOMATIC STAY AND FOR  
DECLARATORY AND INJUNCTIVE RELIEF UNDER THE PUERTO RICO  
OVERSIGHT, MANAGEMENT AND ECONOMIC STABILITY ACT**

**TO THE HONORABLE COURT:**

Plaintiff U.S. Bank Trust National Association, as successor trustee (“Trustee”) under a Trust Agreement among its predecessor First National City Bank as trustee, Banco Popular de Puerto Rico as Co-Trustee, and the University of Puerto Rico (“UPR”) dated as of June 1, 1971, as amended (the “Trust Agreement”), authorizing and securing University of Puerto Rico University System Revenue Bonds (the “UPR Bonds”, and the beneficial holders of such bonds, the “Bondholders”) in the outstanding principal amount of \$431,790,000, by and through its undersigned attorneys, for its complaint against the Commonwealth of Puerto Rico,

Alejandro García Padilla in his official capacity as Governor of the Commonwealth of Puerto Rico, UPR, and Dr. Celeste Freytes González in her official capacity as president of UPR (“Defendants”), alleges as follows:

**NATURE OF THIS ACTION**

1. This is an action under the Puerto Rico Oversight, Management and Economic Security Act of 2016, P.L. 114-187 (“PROMESA”), for relief from PROMESA’s stay and, thereafter, for declaratory and injunctive relief to prevent the Commonwealth’s diversion and expropriation of pledged revenues, including approximately \$89 million in pledged tuition and fees, that constitute the UPR Bonds’ collateral.

2. On June 30, 2016, the Governor of the Commonwealth of Puerto Rico issued Executive Order 31, pursuant to Section 201 of Puerto Rico’s Moratorium Act (Act No. 21 of 2016). Among other things, Executive Order 31 suspends the obligation of UPR to transfer to the Trustee “Pledged Revenues,” including tuition and fees.

3. UPR collects tuition and fees from 57,000 students out of their own funds or from Pell grants or other aid received from the federal government on the students’ behalf. Tuition and fees comprise the best and most certain UPR Bonds’ collateral, as they are paid by third parties and are not subject to the funding of Commonwealth budgets or to any diversion under the Puerto Rico Constitution.

4. Pledged tuition and fees alone are sufficient to pay the entire \$42.6 million annual debt service on the UPR Bonds – indeed, they are approximately double the debt service.

5. Tuition and student fees for each academic year are payable in installments, heavily weighted towards the start of each academic semester – with the bulk of this year’s tuition and fees payable prior to February 15, 2017, when the PROMESA stay expires.

6. If UPR and the Commonwealth divert and expropriate pledged revenues, including tuition and fees, to meet expenses other than debt service, the diverted revenues will be lost to the Trustee and bondholders forever.

7. Unless injunctive relief is granted by the end of December 2016 – to preserve the Trustee’s lien on enough spring semester tuition and fees to pay principal and interest due June 1 – the Commonwealth and UPR’s diversion and expropriation of Pledged Revenues will force the Trustee to deplete its Reserve Account, which UPR pledged to Bondholders as separate security for the twenty-year life of their bonds.

8. This harm is irreparable. Any damages remedy would merely substitute, for hard collateral, an unsecured claim that the Commonwealth or UPR cannot pay.

9. UPR and the Commonwealth cannot justify expropriation of pledged revenues, particularly tuition and fees. Tuition and student fees comprise only about 6% of UPR’s total expenses (and matching revenues) projected in UPR’s budget for fiscal year 2017, and the portion of tuition and fees used to fund debt service on the UPR Bonds comprises approximately 3.0% of budgeted expenses (and matching revenues).

10. Executive Order 31’s diversion and expropriation of pledged revenues, including tuition and fees, violates the Takings Clause and Contracts Clause of the Constitutions of the United States and Puerto Rico. In addition, Moratorium Act § 201, on which Executive Order 31 is based, and the Order are preempted by PROMESA § 303(1), and Executive Order 31 is preempted by PROMESA § 303(3).

11. Executive Order 31’s diversion and expropriation of pledged revenues, including tuition and fees, threatens irreparable harm to the Trustee and the bondholders because UPR will receive – and under Executive Order 31, divert – the lion’s share of Pledged Revenues prior to

the expiration of the PROMESA stay. This harm – the permanent loss of collateral pledged to secure the UPR Bonds – constitutes cause for prompt relief from PROMESA’s stay.

12. In addition to the relief it seeks to avert the impending loss of its collateral, the Trustee seeks relief from the PROMESA stay to apply funds currently on deposit in its UPR Bond trust accounts in accordance with the terms of the Trust Agreement. The Commonwealth does not appear to want such application stayed, since Executive Order 31 itself permits the application of trust account funds to the payment of bonds.

13. By this action, the Trustee seeks interim and permanent relief, pursuant to PROMESA, the United States and Puerto Rico Constitutions, 42 U.S.C. § 1983, and the All Writs Act, 28 U.S.C. § 1651, to avert the irreparable harm threatened by Executive Order 31. Specifically, the Trustee seeks:

- a) relief from the PROMESA stay for cause, pursuant to PROMESA § 405(e)(2), in order to consider and grant the relief stated herein; followed by
- b) a preliminary injunction compelling Defendants to comply with their obligation under the Trust Agreement to transfer, promptly upon receipt, Pledged Revenues consisting of tuition revenues and student fees to the Trustee, subject to reversion to the extent required by any final judgment in this matter;
- c) a permanent injunction enjoining Defendants from implementing Moratorium Act § 201 or enforcing Executive Order 31 with respect to UPR and compelling Defendants to transfer, promptly upon receipt, all Pledged Revenues to the Trustee for application as provided in the Trust Agreement;



- d) a declaration that Moratorium Act § 201 and Executive Order 31 violate the Takings and Contracts Clauses of the United States and Puerto Rico Constitutions;
- e) a declaration that Moratorium Act § 201 and Executive Order 31 are preempted by PROMESA § 303(1); and
- f) a declaration that Executive Order 31 is preempted by PROMESA § 303(3).

### **THE PARTIES**

14. Plaintiff U.S. Bank Trust National Association is a national banking association organized under the laws of the United States and trustee, as successor to First National City Bank, under the Trust Agreement.

15. Defendant Commonwealth of Puerto Rico (“Commonwealth”) is a United States territory subject to the laws of the United States and the United States Constitution.

16. Defendant Governor Alejandro García Padilla (the “Governor”) is Governor of the Commonwealth. He is sued in his official capacity.

17. Defendant UPR is a public corporation organized under the laws of the Commonwealth of Puerto Rico.

18. Upon information and belief, Defendant Dr. Celeste Freytes González (“Freytes González”) is the interim President of UPR. She is sued in her official capacity.

### **JURISDICTION AND VENUE**

19. This action arises under the United States Constitution, the Puerto Rico Constitution, and federal law.

20. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and PROMESA §§ 303(1), 303(3), and 405(e).

21. The Court may render a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Fed. R. Civ. P. 57. The Court may issue an injunction pursuant to Fed. R. Civ. P. 65.

22. Venue is properly laid in this district under 28 U.S.C. § 1391(b) because the events or omissions giving rise to these claims have occurred, and continue to occur, in this District and the Defendants are situated in this district.

23. This action presents an actual case or controversy that is ripe for adjudication. As indicated, the violations of Trustee's rights alleged in this complaint are ongoing and additional violations are threatened.

### **FACTUAL ALLEGATIONS**

#### **I. University of Puerto Rico**

24. UPR is a state-supported university system, founded in 1903. UPR was reorganized in its current form by Act No. 1 of 1966 (as amended, the "UPR Act").

25. UPR is governed by a president and a Board of Trustees ("Board"), and the Board also assumes certain roles previously held by UPR's Higher Education Council under the original UPR Act. 18 L.P.R.A. § 605. The Board is empowered to appoint the UPR's president, who is the "director of the University System." 18 L.P.R.A. § 604(b).

26. Act No. 50 of June 18, 1958 (as amended, "Act 50") authorizes UPR to incur debt. Specifically, Act 50 authorizes the Board to adopt resolutions and enter into a trust agreement for the issuance of the UPR Bonds. 18 L.P.R.A. § 822. Act 50 describes the types of revenues that UPR may pledge in any trust agreement governing the UPR Bonds:

The resolution authorizing the issuance of the bonds or the said trust contract may pledge all or any part of the revenues to be received by any project or facilities existing upon any of the lands of the University, any student quotas fixed and collected on any of the grounds of the University, and any other funds received at any time by the University that the [Board] may determine are available therefor. . . .

18 L.P.R.A. § 824; *see* 18 L.P.R.A. § 605. In addition, Act 50 requires that tuition and fees fixed by the Board be sufficient to pay all principal and interest on the UPR Bonds. *Id.*

## **II. The UPR Bonds**

### **A. The Outstanding UPR Bonds: Series P and Series Q**

27. Pursuant to Act 50, UPR has issued resolutions authorizing, and has executed, the Trust Agreement securing the UPR Bonds.

28. UPR issued the outstanding UPR Bonds in 2006 in the original principal amount of \$546,150,000 in two series: Series P and Series Q.

29. The Series P Bonds were issued to refinance certain revenue bonds that were issued in 1995 and 2000 to fund construction of certain projects, including a School of Architecture building at UPR's Río Piedras campus, a biology research facility at UPR's Mayagüez campus, and an 83,000 square foot student center at UPR's Bayamón campus.

30. The Series Q Bonds were issued to fund the construction of certain projects, including a 153,000 square foot molecular sciences building at UPR's Knowledge Corridor complex and a seismic research facility and biopharmaceutical laboratory building at UPR's Mayagüez campus.

31. The outstanding principal amount of the UPR Bonds is \$431,790,000.

32. The UPR Bonds pay interest at 5% annually in two installments, on December 1 and June 1 of each year. The next interest payment, in the amount of \$10,794,750, is due on December 1, 2016. Another interest payment in the same amount is due June 1, 2017.

33. UPR repays the principal amount of the UPR Bonds in annual installments on June 1, including \$20,965,000 due June 1, 2017. The total amount of interest and principal due June 1, 2017 is \$31,759,750.

**B. Pledged Revenues**

34. Under the Trust Agreement, “the University . . . has pledged and does hereby pledge to the Trustees the revenues derived by the University from tuition fees and student fees charged and collected from students of the University.” Trust Agreement, final decretal paragraph. The Trust Agreement defines such revenue streams as “Pledged Revenues”:

The term “Pledged Revenues” shall mean the proceeds, receipts, profits and other income derived or to be derived by or in behalf of the University from

- (i) **tuition fees collected from all students of the University;**
- (ii) **student fees collected from all students of the University;**
- (iii) rentals and other charges received for the right of use or occupancy of the facilities in the University System;
- (iv) bookstore receipts (gross sales less cost of books and supplies sold);
- (v) interest on investment of University funds, excluding funds invested pursuant to Article VI of this Agreement;
- (vi) funds paid to the University in respect of overhead allowances on Federal research projects;
- (vii) Other Income; and
- (viii) amounts received by the University through any debt service grant programs of the United States Government or any agency thereof

Trust Agreement § 101 (emphasis added).

35. Consistent with Act 50’s mandate, UPR covenants to fix, impose, revise, and collect tuition, student fees, and rentals such that the Pledged Revenues, together with any other funds available for debt service (including appropriations made available for debt service), are sufficient to pay scheduled debt service on the outstanding UPR Bonds. Trust Agreement § 501.

36. UPR covenants that “**all Pledged Revenues** (other than moneys received by the University under any debt service grant program of the United States Government or any agency thereof) **will be collected by the University and will be deposited as received with the**

**Trustee without deduction for any expenses or charges.”** Trust Agreement § 503 (emphasis added).

37. The Trust Agreement requires UPR to transfer all Pledged Revenues to the Trustee, to be deposited in a Sinking Fund pledged to secure all obligations under the Trust Agreement, including the Trustee’s expenses, all future installments of interest and \$431,790,000 of outstanding principal.

38. The Sinking Fund comprises several sub-accounts, including the Bond Service Account and the Reserve Account.

39. The Trust Agreement requires that Pledged Revenues be transferred into the Bond Service Account in an amount (the “Bond Service Account Requirement”) equal to interest due in the next 6 months plus principal due in the next 12 months. The Bond Service Account Requirement is about \$31.8 million for the current fiscal year, 2017.

40. After satisfying the Bond Service Account Requirement, the Trustee must deposit Pledged Revenues into the Reserve Account until it holds an amount equal to the maximum annual debt service for any remaining fiscal year for all outstanding UPR Bonds (such calculated amount, the “Reserve Account Requirement”). The Reserve Account Requirement is approximately \$42.6 million for the current fiscal year, 2017.

41. Until June 2016, UPR had transferred Pledged Revenues to the Trustee for deposit into the Bond Service Account at the rate of approximately \$4,000,000 per month, but has made no transfers to the Trustee since.

42. When the Trustee paid principal and interest on June 1, 2016, it emptied the Bond Service Account. Accordingly, the current balance in the Bond Service Account is zero and the Reserve Account is the only account within the Sinking Fund with any money.

43. The current balance of the Reserve Account is approximately \$55 million. This is approximately \$12 million more than the Reserve Account Requirement, but barely enough to cover the next interest installment, without taking into account any of the Trustee's expenses

44. UPR reported "Pledged Revenues" of \$137,946,000 for the fiscal year ended June 30, 2015. Most of these Pledged Revenues consisted of \$89 million in tuition and student fees. The remaining \$49 million in Pledged Revenues is principally comprised of the following (using round numbers):

- \$25 million in gambling tax revenues levied by the Commonwealth's Puerto Rico Tourist Company ("PRTC") – *but* such revenues may be subject to appropriation by PRTC and their pledge may be challenged under the Puerto Rican Constitution; and
- \$16 million in "research overhead allowance on federal projects" – but such revenue depends on federal budgets and UPR's continued qualification for grants, which is by no means assured: the National Science Foundation suspended UPR in 2013, costing UPR approximately \$13 million in funding.

45. Thus, tuition and fees comprise an overwhelming percentage of the Pledged Revenues on which the Trustee and the UPR Bondholders can rely. Only tuition and fees are not subject to Commonwealth budgets, not threatened by litigation, and not contingent on grant qualification.

46. The \$89 million in tuition and student fees is payable in installments heavily weighted towards the start of each academic semester, according to the tuition deadlines for each UPR campus: early August for the fall, early January for the spring.

47. This tuition and fee revenue includes Pell grants from the federal government, which pursuant to federal regulations will be released to UPR this fiscal year on the same schedule as the student tuition payments – i.e., mostly in the next five months.

48. Thus, if the relief sought herein is not granted promptly, the lion's share of this fiscal year's tuition and fees will be lost.

### III. The Moratorium Act

49. Act No. 21 of 2016 (the “Moratorium Act” or “Act”) was signed into law on April 6, 2016.

50. The Moratorium Act authorizes the Governor to issue executive orders (i) declaring a “state of emergency” with respect to the Commonwealth or its instrumentalities, including UPR, and (ii) suspending payment of principal and interest on “covered obligations,” including the UPR Bonds, during a “covered period” through January 31, 2017, extendable to March 31, 2017. Moratorium Act §§ 103(l) & (m), 201(a)..

51. Covered obligations are defined to include, *inter alia*, “any interest obligation, principal obligation or enumerated obligation of a government entity that is due or becomes due during the emergency period in respect of such government entity.” *Id.* § 103(l).

52. Section 201(b) permits the Governor to “expropriat[e] property or rights in property interests” related to covered obligations “pursuant to the Commonwealth’s power of eminent domain,” to the extent he deems necessary to further the public interest. *Id.* § 201(b). The Act states that “just compensation or other relief may be sought in the Court of First Instance” in the event of such an expropriation – but eliminates the century-old requirement (in Puerto Rico’s Expropriation Act) that the Commonwealth must deposit funds with the court before expropriating property. *Id.* § 201(b)(iv).

53. Judgments for expropriation are, under Puerto Rico’s constitution, paid after the Commonwealth’s general obligation bonds, which now trade at less than 70 cents on the dollar and which the Commonwealth says it cannot pay. Thus, any judgment for expropriation has limited and uncertain value.

54. Section 201(d) permits the Governor to unilaterally suspend or modify any statutory or other obligation (defined as an “enumerated obligation”) to transfer money for the payment of, or to secure any, covered obligation, so that instrumentalities subject to the Moratorium Act can pay for “essential services.” *Id.* § 201(d)(ii).

55. On May 5, 2016, the Commonwealth enacted Act No. 40-2016, which amended Section 108 of the Moratorium Act to provide:

It is the Legislative Assembly’s finding that, given the Commonwealth’s ongoing fiscal crisis, during the extraordinary emergency period the Government should prioritize the payment of essential services over debt service not only to provide for the health, safety and welfare of the residents of the Commonwealth but also to avoid a further economic downturn and fiscal and humanitarian crisis that would ultimately materially worsen the creditor’s [sic] recovery on their Puerto Rico Bonds. **This includes prioritizing the safety, soundness and stability of depository financial institutions, protecting their deposits.**

Act. No. 40-2016 § 9 (emphasis added).

56. UPR’s most recent Operating Report lists approximately \$82,427,000 due to the Government Development Bank for Puerto Rico (“GDB”) under credit agreements that are subordinated to the UPR Bonds. Section 103(kk) of the Moratorium Act defines GDB as a “depository institution”. Moratorium Act § 103(kk).

57. Therefore the amended Moratorium Act authorizes payments ahead of the UPR Bonds even though the GDB’s notes are subordinated to the UPR Bonds – and Executive Order 31, while suspending transfers of revenues pledged to pay the UPR Bonds, “does *not* suspend payment of *other* obligations of UPR.” *See* Executive Order 2016-031 (“Executive Order 31”) at ¶ 9 (emphasis added).



#### **IV. Executive Order 31**

58. On June 30, 2016, the Governor issued Executive Order 2016-031, which declared a state of emergency and granted other relief under the Moratorium Act with respect to a number of public corporations.

59. The first two sentences of the NINTH decretal paragraph of Executive Order 31 address UPR. The first sentence of that paragraph declares a state of emergency and commences an emergency period for UPR, pursuant to Moratorium Act § 201(a). The second sentence designates UPR's obligation to transfer Pledged Revenues to the Trustee as an "enumerated obligation" under the Act and suspends that obligation, pursuant to Moratorium Act § 201(d)(ii).

60. Executive Order 31 reads in pertinent part:

Pursuant to Sections 201 and 202 of the Act, I hereby declare the University of Puerto Rico ("UPR") to be in a state of emergency and announce the commencement, as of the date of this Executive Order, of an Emergency Period for UPR. I further declare that any obligation of UPR, pursuant to the Trust Agreement, dated as of June 1, 1971, as amended, to transfer Pledged Revenues to the Trustee (each, as defined in such Trust Agreement) is an Enumerated Obligation, and is hereby suspended.

Executive Order 31 ¶ 9.

61. Executive Order 31 thus diverted and expropriated Pledged Revenues to pay for "essential services" on the ground that UPR is in a "state of emergency." Yet the Order makes no particular findings as to the alleged state of emergency at UPR. It does not explain how \$89 million in tuition and fees so diverted and confiscated are material to UPR's \$1.4 billion budget, or how suspending debt service of \$42.6 million per year – about 3.0% of UPR's \$1.4 billion annual budget – is required to allow UPR to provide "essential services." Because Act 40 deemed payments to GDB to be "essential services," Executive Order 31 also has the effect of diverting Pledged Revenues to repay the GDB's subordinated loans.

## V. PROMESA

62. On June 30, 2016, President Obama signed into law the Puerto Rico Oversight, Management, and Economic Stability Act, or PROMESA. PROMESA provides that the Commonwealth and its public corporations, including UPR, must implement operational, fiscal and financial reforms in a fiscal plan or plans approved by the Oversight Board. PROMESA § 201. Only after the Oversight Board has approved a fiscal plan for UPR can UPR commence a bankruptcy restructuring in this Court of some or all of its debts under Title III, §§ 206(b) and 302(2)

63. Prior to commencement of a Title III restructuring, PROMESA Section 405 provides for the creation – and in appropriate circumstances, the lifting – of an automatic stay modeled on Section 362 of the Bankruptcy Code (the “PROMESA stay”):

- Section 405(b) stays the commencement or continuation of court proceedings and the exercise of other creditor remedies.
- PROMESA § 405(e)(2) lifts the stay after a creditor’s request “for cause shown.”
- PROMESA § 405(f) automatically terminates the stay 45 days after a request, unless the court finds, after notice and a hearing held within that 45-day period, that the party opposing stay relief has a reasonable likelihood of prevailing at a final hearing.
- PROMESA § 405(d) terminates the stay on February 15, 2017.<sup>1</sup>

64. However, PROMESA also protects creditors, such as the Trustee and UPR Bondholders, during the automatic stay:

- PROMESA § 405(k) provides, “This section [i.e., 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.”
- PROMESA § 407(a) makes transferees liable for the unlawful transfer of creditors’ collateral.

65. Finally, PROMESA expressly preempts Commonwealth law:

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<sup>1</sup> The stay can be extended for limited periods to implement a voluntary restructuring under Title VI.

- PROMESA § 4: “The provisions of this Act shall prevail over any general or specific provision of [Commonwealth law] that is inconsistent with this Act.”
- PROMESA § 303(1) specifically preempts composition and moratorium laws:

A territory law prescribing a method of composition of indebtedness or a moratorium law, but solely to the extent that it prohibits the payment of principal or interest by an entity not described in section 109(b)(2) of title 11, United States Code, may not bind any creditor of a covered territory or any covered territorial instrumentality thereof that does not consent to the composition or moratorium

- Section 303(3) provides that “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, shall be preempted by this Act.”

#### **VI. Cause Exists to Lift the PROMESA Stay To Consider Further Relief Related to the Moratorium Act and Executive Order 31.**

66. Upon PROMESA’s enactment, § 405(b) imposed an automatic stay on actions taken to assert certain claims or recover property from public corporations like UPR. Pursuant to § 405(e) of PROMESA, cause exists to lift the automatic stay to allow the Trustee to seek the other relief requested in this complaint.

67. Section 405(e) of PROMESA authorizes this Court to grant relief from the stay “for cause shown.”

68. The Trustee should be granted stay relief to seek the other relief requested herein. Moratorium Act § 201 and Executive Order 31 vitiate UPR’s obligation to transfer any Pledged Revenues to the Trustee. The Trustee and Bondholders are being permanently deprived of their collateral. This deprivation constitutes cause to lift the stay under § 405(e) of PROMESA.

69. As discussed above, UPR will receive most of the tuition and student fee payments for the 2016-2017 academic year before the expiration of the Moratorium Act’s “Covered Period” on January 31, 2017, which the next Governor may extend for two additional

months. The diversion of these Pledged Revenues will force the Trustee to deplete a Reserve Account which UPR pledged to Bondholders as separate collateral for the life of their bonds. The Trustee and Bondholders will be irreparably harmed unless UPR is compelled to transfer the tuition and student fee components of Pledged Revenues to the Trustee pending the final determination of the Trustee's claims. This threatened harm constitutes cause to lift the stay pursuant to § 405(e)(2) of PROMESA.

70. In addition, the PROMESA stay will expire within 45 days after stay relief is requested unless, after notice and a hearing, the judge orders the stay continued on the ground that the party opposing the stay has a reasonable likelihood of prevailing at the final hearing. PROMESA § 405(f).

#### **VII. Moratorium Act § 201 and Executive Order 31 Are Unlawful.**

71. Moratorium Act § 201 and Executive Order 31 are unlawful for multiple reasons. They violate the Contracts Clauses and the Takings Clauses of the United States and Puerto Rico Constitutions, and they are preempted by PROMESA.

##### **A. Moratorium Act § 201 and Executive Order 31 Expropriate Bondholders' Collateral in Violation of the Takings Clause of the United States Constitution.**

72. Moratorium Act § 201 and Executive Order 31 effect an unconstitutional taking of the Pledged Revenues.

73. As described above, UPR has pledged its tuition revenue, student fees, bookstore receipts, and other income to the Trustee. All funds in UPR's possession that fit within one of the definitional categories of Pledged Revenues are subject to this pledge.

74. The Trustee and Bondholders have a property interest in the Pledged Revenues and a contractual right to receive payment from the Pledged Revenues.

75. The Moratorium Act authorizes, and Executive Order 31 implements, the permanent diversion and expropriation of these Pledged Revenues.

76. Moratorium Act § 201 authorizes the Governor to issue an executive order that suspends “any statutory or other obligation to transfer money (or its equivalent) to pay or secure any covered obligation (or take any action in furtherance thereof).” Moratorium Act § 201(d)(iii). A “covered obligation” is defined in part as “the transfer of, or obligation to transfer, funds required to be made in advance of” debt service of a government instrumentality such as UPR.

77. Executive Order 31 implements the Moratorium Act with respect to UPR. Citing Moratorium Act § 201 as authority, Executive Order 31 suspends UPR’s obligation to transfer the Pledged Revenues as required by the Trust Agreement.

78. The Fifth Amendment to the United States 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 states, and to the Commonwealth, by virtue of Section 1 of the Fourteenth Amendment. *See* U.S. CONST. amend. XIV, § 1.

79. Moratorium Act § 201 and Executive Order 31 permanently deprive the Trustee of Pledged Revenues and the contractual right to be paid from such revenues. This deprivation constitutes a direct taking of the Trustee’s and Bondholders’ property interests in the Pledged Revenues.

80. The Moratorium Act and Executive Order 31 provide no meaningful compensation to the Trustee or the Bondholders for the expropriation of their property.

81. Section 201(b) of the Moratorium Act permits parties whose property has been expropriated to seek “just compensation or other relief” in Commonwealth court – but the Act

does not require the Commonwealth to deposit funds with that court before expropriating property. *See* Moratorium Act § 201(b)(iv). Consequently, any such suit would result only in a judgment that, under the Commonwealth's Constitution, would be junior in priority to general obligation debt claims. *See* P.R. CONST. art. VI, § 8. Such a judgment has speculative value, given the Commonwealth's asserted inability to pay even its constitutional first priority general obligation debts as they come due.

82. The remedy of "adequate protection" nominally offered under Moratorium Act §204(b) fails to provide meaningful compensation. The Trust Agreement promises solid collateral that assures full payment of the UPR Bonds: tuition and fees payable by 57,000 private citizens, and not subject to the vagaries of government budgets, grant qualifications or claw-back litigation. As "protection" for the taking of this collateral, the only substitute collateral UPR can offer are future revenues that it hopes to receive from the Commonwealth – revenues that are entirely dependent on the Commonwealth's ability to pay and willingness to pay, both of which are doubtful at best. UPR has no other collateral to offer, since all revenues of UPR that are not already pledged to the Trustee are subject to appropriation by the Commonwealth or the federal government.

83. Nor does the remedy offered by PROMESA § 407 – a potential damages claim against the recipient of property that was unlawfully transferred in violation of a secured creditor's rights – provide meaningful compensation for the taking of the Trustee's collateral. An unsecured damages claim against the Commonwealth would have only speculative value, given the Commonwealth's asserted inability to pay even its constitutional first priority general obligation debts. Nor would a damages claim against UPR, as the pledgor of the collateral, or

against other financially distressed instrumentalities of the Commonwealth, provide an adequate remedy for the Trustee's loss of hard collateral.

84. The Moratorium Act and Executive Order 31 thereby permanently deprive the Trustee and the Bondholders of their property interest in Pledged Revenues during the emergency period without just compensation in violation of the Takings Clause of the United States Constitution.

**B. Moratorium Act § 201 and Executive Order 31 Violate the Takings Clause of the Puerto Rico Constitution.**

85. The Takings Clause in Article II, Section 9 of the Puerto Rico Constitution provides that “[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.” P.R. CONST. art. II, § 9. This provision is analogous to the Takings Clause of the United States Constitution and provides at least the same level of protections against takings of private property without just compensation. Moratorium Act § 201 and Executive Order 31 therefore violate the Takings Clause of the Puerto Rico Constitution for the reasons set forth above.

**C. The Moratorium Act and Executive Order 31 Violate the Contracts Clause of the United States Constitution.**

86. Moratorium Act § 201 and Emergency Order 31 eliminate UPR's obligation to transfer Pledged Revenues to the Trustee and thereby impair Bondholders' contractual obligations in violation of the Contracts Clause of the United States Constitution.

87. The Trust Agreement creates a contractual relationship between UPR and the Bondholders. In the Trust Agreement, UPR covenants to timely pay all principal and interest due for the UPR Bonds. Trust Agreement § 701.

88. As part of its obligation to pay debt service on the UPR Bonds, the Trust Agreement requires UPR to fix and collect a sufficient amount of tuition and other Pledged Revenues. Specifically, the Trust Agreement requires UPR to “at all times, fix, impose, revise from time to time and collect such tuition fees, student fees and rentals and other charges for the right of use or occupancy of the University System, so that the Pledged Revenues” are sufficient to enable deposits in the Trustee’s Sinking Fund to satisfy the UPR Bonds’ debt service requirements for each fiscal year. Trust Agreement § 501.

89. In the Trust Agreement, UPR pledges the Pledged Revenue to the Trustee as security for the payment of the UPR Bonds. UPR further covenants that all Pledged Revenues “will be collected by the University and will be deposited as received with the Trustee without deduction for any expenses or charges. . . .” Trust Agreement § 503.

90. Moratorium Act § 201 allows the Governor to suspend “any statutory or other obligation to transfer money (or its equivalent) to pay or secure any covered obligation (or take any action in furtherance thereof).” Moratorium Act § 201(d)(iii). In accordance with such provision, Executive Order 31 suspended UPR’s obligation to transfer Pledged Revenues to the Trustee.

91. Article 1, Section 10 of the Constitution provides that “[n]o State shall . . . pass any . . . Law impairing the Obligation of Contracts. . . .” See U.S. CONST. art. I, § 10, cl. 1.

92. Contracts Clause claims are analyzed under a two-pronged test, which asks (i) “whether the State law has operated as a substantial impairment of a contractual relationship,” and (ii) if so, “whether the impairment was reasonable and necessary to serve an important government purpose.” *United Auto., Aero., Agric. Impl. Workers of Am. v. Fortuño*, 633 F.3d 37, 41 (1st Cir. 2011).



93. Moratorium Act § 201, as implemented by Executive Order 31, effects a substantial impairment of the Bondholders' contractual relationship with UPR. Executive Order 31 suspends UPR's contractual obligation to transfer the Pledged Revenues to the Trustee upon receipt. This impairment is substantial because the Pledged Revenues are the sole source of funds pledged to the repayment of the UPR Bonds.

94. This impairment was not reasonable and necessary to serve an important government purpose. While the moratorium provisions of the Moratorium Act are purportedly intended to "enable the Commonwealth and its instrumentalities to continue providing essential services to Puerto Rico's residents while addressing the critical need for structural and fiscal reform and debt restructuring," Moratorium Act, Explanation of Motives, § F, the taking of UPR Bondholders' collateral is not a reasonable and necessary means to that end.

95. *First*, the amount of Pledged Revenues (indeed, the amount of pledged tuition and fees) necessary to pay debt service on the UPR Bonds is not material to UPR's annual budget. The UPR Bonds' annual debt service of \$42.6 million is only about 3.0% of UPR's \$1.4 billion of budgeted expenditures for the current 2017 fiscal year. Executive Order 31 makes only an unsupported and general assertion that this inconsequential fraction of UPR's budget is necessary to provide unidentified essential public services. This is not sufficient to justify an impairment of contract which destroys the UPR Bonds' collateral.

96. *Second*, a fiscal growth plan prepared by Commonwealth officials and government advisors proposed reforms that would yield \$50 million in savings to UPR in the current fiscal year, and an additional incremental \$50 million for each of the next three years. This savings would more than cover debt service on the UPR Bonds.

**D. The Moratorium Act and Executive Order 31 Violate the Contracts Clause of the Puerto Rico Constitution.**

97. The Contracts Clause of the Puerto Rico Constitution provides: “No laws impairing the obligation of contracts shall be enacted.” P.R. CONST. art. II, § 7. That provision is interpreted consistently with the Contracts Clause of the United States Constitution and provides at least the same level of protections against the impairment of contract. *See, e.g., Bayrón Toro v. Serra*, 19 P.R. Offic. Trans. 646, 661-62 (P.R. 1987); *Warner Lambert Co. v. Superior Court of Puerto Rico*, 1 P.R. Offic. Trans. 527, 550-53 (P.R. 1973). The Moratorium Act therefore violates the Contracts Clause of the Puerto Rico Constitution for the reasons set forth above.

**E. Executive Order 31 Is Preempted by PROMESA § 303(3).**

98. The United States Constitution gives Congress “the Power . . . [t]o establish . . . uniform Laws on the subject of Bankruptcies throughout the United States.” U.S. CONST. art. I, § 8, cl. 4 (the “Supremacy Clause”).

99. Section 4 of PROMESA generally provides 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.” PROMESA § 4.

100. In addition, PROMESA § 303(3) specifically provides, in relevant part, that “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, shall be preempted by this Act.”

101. As noted, Executive Order 31 violates the Takings Clause and the Contracts Clause of the United States and Puerto Rico Constitutions. In addition, Executive Order 31 modifies the rights of holders of UPR bonds, *and* it diverts funds from one Commonwealth

instrumentality (UPR) to the Commonwealth and/or its other instrumentalities. It therefore is preempted by PROMESA § 303(3).

**F. Moratorium Act § 201 and Executive Order 31 Are Preempted by PROMESA § 303(1).**

102. Moratorium Act § 201 and Executive Order 31 issued thereunder are preempted by PROMESA § 303(1) as a matter of both express preemption and conflict preemption.

**i. Express Preemption**

103. Moratorium Act § 201 and Executive Order 31 are preempted by the express terms of PROMESA § 303(1).

104. Section 303(1) preempts all non-consensual territorial laws that either (i) “prescrib[e] a method of composition of indebtedness” or (ii) constitute “a moratorium law, but solely to the extent that it prohibits the payment of principal or interest.”

105. Moratorium Act § 201 is preempted by both of these provisions – i.e., it imposes a non-consensual composition of UPR’s debts and a moratorium that effectively prohibits the payment of principal and interest on the UPR Bonds.

106. As this Court has held, “[a] ‘composition’ is an ‘agreement between a debtor and two or more creditors for the adjustment or discharge of an obligation for some lesser amount.’ Black’s Law Dictionary 346 (10th ed. 2014).” *Franklin Cal. Tax-Free Trust v. Puerto Rico*, 85 F. Supp. 3d 577, 597 (D.P.R. 2015), *aff’d*, 805 F.3d 322 (1st Cir. 2015), *aff’d*, 136 S. Ct. 1938 (2016) (“*Franklin*”).

107. Moratorium Act § 201, like the Recovery Act previously struck down by this Court, is a non-consensual debt composition law. It authorizes the Governor to divert and permanently deprive the Trustee of Pledged Revenues.

108. Without Pledged Revenues, the Trustee will be unable to pay principal and interest on the Revenue Bonds when due, and bondholders will be forced to accept partial or no payment. By limiting Bondholders' recoveries in this fashion, Moratorium Act § 201 imposes a non-consensual composition on the UPR Bondholders, which is expressly preempted by § 303(1).

109. Moratorium Act § 201 also effects a moratorium that prohibits the payment of principal and interest on the UPR Bonds. It authorizes the diversion and dissipation of Pledged Revenues, thereby permanently depriving the Trustee of revenues that it needs to pay the bonds.

**ii. Conflict Preemption**

110. Under the doctrine of conflict preemption, Moratorium Act § 201 and Executive Order 31 are preempted because they stand as obstacles to Congress's purposes and objectives in enacting PROMESA.

111. Moratorium Act § 201 stands as an obstacle to the purposes and objectives of PROMESA. PROMESA establishes a process for the Commonwealth and its instrumentalities, including UPR, to address their financial distress. The process begins with the appointment of an Oversight Board charged with considering and approving operational, fiscal and financial reforms. Only after the Oversight Board has approved a fiscal plan for UPR is UPR permitted to impose a *non*-consensual debt restructuring on its creditors through the commencement of a Title III case. To leave no doubt that Title III provides the sole and exclusive non-consensual debt restructuring vehicle available to the Commonwealth, PROMESA expressly preempts both non-consensual debt composition laws and moratorium laws that prohibit the payment of principal or interest.

112. Moratorium Act § 201 purports to permit UPR to side-step PROMESA's debt restructuring process. Section 201 authorizes UPR to unilaterally take Bondholders' collateral without first implementing the operational, fiscal and financial reforms approved by the Oversight Board *and* without satisfying the requirements of Title III. As noted, debt service on the UPR Bonds amounts to only 3% of UPR's approved budget – and consequently, even the most modest reforms could free up the small amounts needed to pay debt service in full.

113. In addition, even if Moratorium Act § 201 were not deemed to *constitute* a non-consensual debt composition law or a moratorium law prohibiting the payment of principal and interest, at minimum Section 201 is equivalent in effect to such laws. The diversion and expropriation of Pledged Revenues deprives Bondholders of payment no less than would a composition that forced the reduction of principal or interest, or a moratorium that prohibited payment of principal or interest. In this way as well, Moratorium Act § 201 stands as an obstacle to Congress's purposes and objectives in enacting PROMESA.

**VIII. The Stay Should Be Lifted to Permit the Trustee To Apply Trust Funds Pursuant to the Terms of the Trust Agreement.**

114. The PROMESA stay should also be lifted to allow the Trustee to administer the Pledged Revenues that it already possesses.

115. The Trustee holds these funds in the Sinking Fund or sub-accounts thereunder, and ample cause exists to lift the stay pursuant to PROMESA § 405(e)(2) to permit the Trustee to apply the funds in accordance with the Trust Agreement, including to fund Trustee expenses that UPR is obligated to pay but has not paid.

116. The PROMESA stay should be lifted to allow the Trustee to apply the monies in the Sinking Fund pursuant to the terms of the Trust Agreement. Even the Moratorium Act expressly excludes from its scope funds that have been “deposited with a trustee or other

custodian prior to the commencement of the emergency period for such obligor.” Moratorium Act § 103(l) (definition of “covered obligation”). The funds at issue constitute Pledged Revenues previously transferred to the Trustee by UPR, or investment proceeds thereof, and by the very terms of the Moratorium Act would fall outside of the scope of any moratorium imposed pursuant to § 201 or § 202 because the Trustee holds these funds “subject to a lien and charge in favor of the holders of the UPR Bonds.” Trust Agreement § 503.

117. In addition to the Commonwealth’s own disclaimer of any desire to stay application of such funds, UPR’s own chief financial officer has said that UPR has the cash to pay debt service, *see University of Puerto Rico Has Cash, but Not Authority, To Make Bond Payments*, DebtWire (July 21, 2016). The fact that no party to, or beneficiary of, the Trust Agreement wishes to stay application of these funds itself constitutes “cause” to lift the stay.

118. For these reasons, the Court should lift the stay pursuant to PROMESA § 405(e)(2) to permit the trustee to apply Sinking Fund money in accordance with the Trust Agreement.

### **CLAIMS FOR RELIEF**

#### **FIRST CLAIM FOR RELIEF** **(Relief from the Stay Under PROMESA § 405)**

119. The Trustee incorporates the allegations set forth above, all of which are fully re-alleged here.

120. Moratorium Act § 201 and Executive Order 31 permanently deprive the Trustee and the Bondholders of their property interests in the Pledged Revenues, which threatens to inflict irreparable damage upon the Trustee and the Bondholders. This constitutes “cause” under PROMESA § 405(e)(2) to grant relief from the PROMESA stay to allow the Trustee seek the remainder of the relief requested in this complaint.

121. In addition, the PROMESA stay will expire within 45 days after stay relief is requested unless, after notice and a hearing, the judge orders the stay continued on the ground that the party opposing the stay has a reasonable likelihood of prevailing at the final hearing. PROMESA § 405(f).

**SECOND CLAIM FOR RELIEF**  
**(Relief from the Stay Under PROMESA § 405)**

122. The Trustee incorporates the allegations set forth above, all of which are fully alleged here.

123. The Trustee is in possession of these funds securing the UPR Bonds, which it holds pursuant to the Trust Agreement in the Sinking Fund or sub-accounts thereunder.

124. Cause exists under PROMESA § 405(e)(2) to lift the stay with respect to these funds so that the Trustee may apply them, in accordance with the Trust Agreement, for the benefit and protection of the holders of UPR Bonds.

**THIRD CLAIM FOR RELIEF**  
**(Declaratory Judgment that Moratorium Act § 201 and Executive Order 31 Are Invalid Under the Takings Clause of the United States Constitution)**

125. The Trustee incorporates the allegations set forth above, all of which are fully alleged here.

126. Moratorium Act § 201 and Executive Order 31 effect a taking, without just compensation, of the property interest in Pledged Revenues, as well as the contractual right to receive payment from those revenues, granted to the Trustee and the Bondholders pursuant to the UPR Bonds, in violation of the Takings Clause of the United States Constitution.

127. Accordingly, an actual, substantial, and justiciable case or controversy exists (i) between the Trustee and the Commonwealth with respect to the constitutionality of Moratorium Act § 201 and Executive Order 31, (ii) between the Trustee and the Governor with

respect to the constitutionality of Moratorium Act § 201 and the Governor's authority to issue Executive Order 31, and (iii) between the Trustee and UPR and Defendant Freytes González with respect to the constitutionality of Moratorium Act § 201 and Executive Order 31, and the authority of UPR and Defendant Freytes González to comply with Executive Order 31. 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 and 2202 and Fed. R. Civ. P. 57 that Moratorium Act § 201 and Executive Order 31 violate the Takings Clause of the United States Constitution.

**FOURTH CLAIM FOR RELIEF**  
**(Declaratory Judgment that Moratorium Act § 201 and Executive Order 31 Are Invalid Under the Takings Clause of the Puerto Rico Constitution)**

128. The Trustee incorporates the allegations set forth above, all of which are fully re-alleged here.

129. Moratorium Act § 201 and Executive Order 31 effect a taking, without just compensation, of the property interest in Pledged Revenues, as well as the contractual right to receive payment from those revenues, granted to the Trustee and the Bondholders pursuant to the UPR Bonds, in violation of the Takings Clause of the Puerto Rico Constitution.

130. Accordingly, an actual, substantial, and justiciable case or controversy exists (i) between the Trustee and the Commonwealth with respect to the constitutionality of Moratorium Act § 201 and Executive Order 31, (ii) between the Trustee and the Governor with respect to the constitutionality of Moratorium Act § 201 and the Governor's authority to issue Executive Order 31, and (iii) between the Trustee and UPR and Defendant Freytes González with respect to the constitutionality of Moratorium Act § 201 and Executive Order 31, and the authority of UPR and Defendant Freytes González to comply with Executive Order 31. 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 and 2202 and Fed. R. Civ. P. 57 that Moratorium Act § 201 and Executive Order 31 violate the Takings Clause of the Puerto Rico Constitution.

**FIFTH CLAIM FOR RELIEF**  
**(Declaratory Judgment that Moratorium Act § 201 and Executive Order 31 Are Invalid Under the Contracts Clause of the United States Constitution)**

131. The Trustee incorporates the allegations set forth above, all of which are fully alleged here.

132. Moratorium Act § 201 and Executive Order 31 substantially impair the contractual obligations imposed by the Trust Agreement, the UPR Act, and Act 50 in violation of the Contracts Clause of the United States Constitution. Because reasonable alternatives are available, such substantial impairment is not necessary or reasonable to serve an important government purpose.

133. Accordingly, an actual, substantial, and justiciable case or controversy exists (i) between the Trustee and the Commonwealth with respect to the constitutionality of Moratorium Act § 201 and Executive Order 31, (ii) between the Trustee and the Governor with respect to the constitutionality of Moratorium Act § 201 and the Governor's authority to issue Executive Order 31, and (iii) between the Trustee and UPR and Defendant Freytes González with respect to the constitutionality of Moratorium Act § 201 and Executive Order 31, and the authority of UPR and Defendant Freytes González to comply with Executive Order 31. 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 and 2202 and

Fed. R. Civ. P. 57 that Moratorium Act § 201 and Executive Order 31 violate the Contracts Clause of the United States Constitution.

**SIXTH CLAIM FOR RELIEF**  
**(Declaratory Judgment that Moratorium Act § 201 and Executive Order 31 Are Invalid Under the Contracts Clause of the Puerto Rico Constitution)**

134. The Trustee incorporates the allegations set forth above, all of which are fully alleged here.

135. Moratorium Act § 201 and Executive Order 31 substantially impair the contractual obligations imposed by the Trust Agreement, the UPR Act, and Act 50 in violation of the Contracts Clause of the Puerto Rico Constitution. Because reasonable alternatives are available, such substantial impairment is not necessary or reasonable to serve an important government purpose.

136. Accordingly, an actual, substantial, and justiciable case or controversy exists (i) between the Trustee and the Commonwealth with respect to the constitutionality of Moratorium Act § 201 and Executive Order 31, (ii) between the Trustee and the Governor with respect to the constitutionality of Moratorium Act § 201 and the Governor's authority to issue Executive Order 31, and (iii) between the Trustee and UPR and Defendant Freytes González with respect to the constitutionality of Moratorium Act § 201 and Executive Order 31, and the authority of UPR and Defendant Freytes González to comply with Executive Order 31. 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 and 2202 and Fed. R. Civ. P. 57 that Moratorium Act § 201 and Executive Order 31 violate the Contracts Clause of the Puerto Rico Constitution.

**SEVENTH CLAIM FOR RELIEF**

**(Declaratory Judgment that Executive Order 31 Is Preempted by PROMESA § 303(3))**

137. The Trustee incorporates the allegations set forth above, all of which are fully alleged here.

138. Executive Order 31 is preempted by PROMESA § 303(3), which prohibits territories from issuing “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.”

139. Accordingly, an actual, substantial, and justiciable case or controversy exists (i) between the Trustee and the Commonwealth with respect to the constitutionality of Executive Order 31, (ii) between the Trustee and the Governor with respect to the constitutionality of Executive Order 31, and (iii) between the Trustee and UPR and Defendant Freytes González with respect to the constitutionality of Executive Order 31 and the authority of UPR and Defendant Freytes González to comply with Executive Order 31. 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 and 2202 and Fed. R. Civ. P. 57 that Moratorium Act § 201 is preempted by PROMESA § 303(3).

**EIGHTH CLAIM FOR RELIEF**

**(Declaratory Judgment that Moratorium Act § 201 and Executive Order 31 Are Preempted by PROMESA § 303(1))**

140. The Trustee incorporates the allegations set forth above, all of which are fully alleged here.

141. Moratorium Act § 201 and Executive Order 31 are preempted by § 303(1) of PROMESA, which prohibits all non-consensual territorial laws that either (i) “prescrib[e] a

method of composition of indebtedness” or (ii) constitute “a moratorium law, but solely to the extent that it prohibits the payment of principal or interest.”

142. Accordingly, an actual, substantial, and justiciable case or controversy exists (i) between the Trustee and the Commonwealth with respect to the constitutionality of Moratorium Act § 201 and Executive Order 31, (ii) between the Trustee and the Governor with respect to the constitutionality of Moratorium Act § 201 and the Governor’s authority to issue Executive Order 31, and (iii) between the Trustee and UPR and Defendant Freytes González with respect to the constitutionality of Moratorium Act § 201 and the authority of UPR and Defendant Freytes González to comply with Executive Order 31. 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 and 2202 and Fed. R. Civ. P. 57 that Moratorium Act § 201 and Executive Order 31 are preempted by PROMESA § 303(1).

**NINTH CLAIM FOR RELIEF**  
**(Preliminary Injunction Compelling Defendants To Transfer Tuition Fees and Student Fees to the Trustee Pending Final Judgment)**

143. The Trustee incorporates the allegations set forth above, all of which are fully alleged here.

144. The diversion of Pledged Revenues pursuant to Moratorium Act § 201 and Executive Order 31 violates the Takings Clause and the Contracts Clause of the United States and Puerto Rico Constitutions. In addition, Moratorium Act § 201 and Executive Order 31 are preempted by PROMESA.

145. The diversion of Pledged Revenues pursuant to Executive Order 31 and Moratorium Act § 201 threatens irreparable injury to the Trustee and the Bondholders, the

Trustee and Bondholders have no adequate remedy at law, and the requested preliminary injunctive relief is equitable and in the public interest.

146. The Trustee is entitled to a preliminary injunction compelling the Defendants to comply with UPR's obligation under the Trust Agreement to transfer, promptly upon receipt, Pledged Revenues consisting of tuition revenues and student fees to the Trustee, to the extent necessary to satisfy the Bond Service Account Requirement and the Reserve Account Requirement, subject to reversion to the extent required by any final judgment in this matter.

**TENTH CLAIM FOR RELIEF**

**(Permanent Injunction Barring Defendants from Implementing the Moratorium Act or Enforcing Executive Order 31 and Ordering Defendants Transfer All Pledged Revenues to the Trustee upon Receipt)**

147. The Trustee incorporates the allegations set forth above, all of which are fully alleged here.

148. The diversion of Pledged Revenues pursuant to Moratorium Act § 201 and Executive Order 31 violates the Takings Clause and the Contracts Clause of the United States and Puerto Rico Constitutions. In addition, Moratorium Act § 201 and Executive Order 31 are preempted by PROMESA.

149. The diversion of Pledged Revenues pursuant to Executive Order 31 and Moratorium Act § 201 threatens permanent and irreparable injury to the Trustee and the Bondholders, the Trustee and Bondholders have no adequate remedy at law, and the requested permanent injunctive relief is equitable and in the public interest.

150. The Trustee is entitled to a permanent injunction (i) enjoining the Defendants from implementing Moratorium Act § 201 and Executive Order 31 with respect to UPR, and (ii) compelling the Defendants to transfer or cause to transfer, upon receipt, all Pledged Revenues to the Trustee for application to the Sinking Fund as provided by the Trust Agreement.

**CONCLUSION**

**WHEREFORE**, the Trustee respectfully prays for a judgment:

- i. Granting relief from the automatic stay under PROMESA §§ 405(e)(2) and 405(f) in order to consider and grant the declaratory and injunctive relief requested herein;
- ii. Declaring that Moratorium Act § 201, and any prospective enforcement of it or orders issued pursuant to it, and Executive Order 31 are invalid with respect to UPR under the Takings Clauses of the United States and Puerto Rico Constitutions;
- iii. Declaring that Moratorium Act § 201, and any prospective enforcement of it or orders issued pursuant to it, and Executive Order 31 are invalid with respect to UPR under the Contracts Clauses of the United States and Puerto Rico Constitutions;
- iv. Declaring that Executive Order 31, and any prospective order issued pursuant to Moratorium Act § 201 with respect to UPR, is preempted by PROMESA § 303(3);
- v. Declaring that Moratorium Act § 201, and any prospective enforcement of it or orders issued pursuant to it, and Executive Order 31 are preempted with respect to UPR by PROMESA § 303(1);
- vi. a preliminary injunction compelling Defendants to comply with their obligation under the Trust Agreement to transfer, promptly upon receipt, Pledged Revenues consisting of tuition revenues and student fees to the Trustee, to the extent necessary to satisfy the Bond Service Account Requirement and the Reserve Account Requirement, subject to reversion to the extent required by any final judgment in this matter;
- vii. Permanently enjoining Defendants from implementing Moratorium Act § 201 or enforcing Executive Order 31 with respect to UPR and enjoining the Defendants to

transfer, upon receipt, all Pledged Revenues to the Trustee as provided by the Trust Agreement;

- viii. Granting relief from the automatic stay under PROMESA § 405(e)(2) to allow the Trustee to apply funds in the Sinking Fund in accordance with the Trust Agreement;
- ix. Awarding costs, including attorneys' fees; and
- x. Granting the Trustee such other and further relief as this Court may deem just and proper.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, today August 19, 2016.

**INDIANO & WILLIAMS, P.S.C.**

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