

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

NATIONAL PUBLIC FINANCE GUARANTEE
CORPORATION,

Plaintiff,

-against-

ALEJANDRO GARCÍA PADILLA, JUAN C. ZARAGOZA
GÓMEZ, and LUIS F. CRUZ BATISTA,

Defendants.

Civil No. 16-cv-_____

COMPLAINT

Plaintiff National Public Finance Guarantee Corporation (“National”), by and through its attorneys Adsuar Muñoz Goyco Seda & Pérez-Ochoa, P.S.C., and Weil, Gotshal & Manges LLP, for its Complaint against Defendants Hon. Alejandro García Padilla, Hon. Juan C. Zaragoza Gómez, and Hon. Luis F. Cruz Batista, alleges as follows:

NATURE OF THIS ACTION

1. Plaintiff seeks a judgment declaring that the Puerto Rico Emergency Moratorium and Financial Rehabilitation Act (the “Moratorium Act” or the “Act”) is preempted by federal law and violates the United States Constitution. Plaintiff insures approximately \$3.84 billion of debt issued by the Commonwealth of Puerto Rico and related entities. The insurance that Plaintiff provides enabled the Commonwealth and many of its instrumentalities to borrow funds on more favorable terms than they otherwise could have. In exchange, Plaintiff obtained various property and contractual rights relating to the debt that it insures, including, among others, the right to first-priority payment on the Commonwealth’s general obligation debt and security interests in toll revenues pledged to the repayment of Puerto Rico Highways and Transportation

Authority (“PRHTA”) bonds. The Moratorium Act is preempted by federal law and violates the U.S. Constitution in a number of independent ways, including because it takes Plaintiff’s property interests without compensation and substantially impairs Plaintiff’s contract rights. What is more, the Governor of the Commonwealth, acting under color of the Moratorium Act, has issued an executive order expropriating bondholders’ security interest in PRHTA toll revenues, and Commonwealth officials have stated openly that the Commonwealth may use the Moratorium Act to block upcoming payments on general obligation debt. All of these actions risk causing hundreds of millions of dollars in damages to Plaintiff in violation of federal law.

2. *First*, the Bankruptcy Clause of the United States Constitution and the federal Bankruptcy Code preclude the Commonwealth from enacting a 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. Indeed, just two days ago, in a decision squarely on point, the United States Supreme Court held that 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*”). Yet the Moratorium Act—like the Puerto Rico Public Corporation Debt Enforcement and Recovery Act (the “Recovery Act”), which the Court held to be preempted in *Franklin*—unlawfully permits the Governor of the Commonwealth to restructure the debts of Puerto Rican government instrumentalities. The Moratorium Act further authorizes the Governor, among other adjustments, to impose a stay on creditor action and remedies; to seize funds pledged for bond 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. As a result, federal law preempts the Moratorium Act.

3. *Second*, the Moratorium Act violates the takings clause of the Fifth Amendment to the United States Constitution (the “Takings Clause”) by taking Plaintiff’s property without just compensation. Plaintiff insures \$2.4 billion in debt issued by the Commonwealth (including general obligation debt), as well as debt issued by the Puerto Rico Sales Tax Financing Corporation (“COFINA”), PRHTA, and the Puerto Rico Industrial, Tourist, Educational, Medical, and Environmental Control Facilities Financing Authority (“AFICA”)¹ (the Commonwealth, COFINA, PRHTA, and AFICA are referred to as the “Issuers”).² As detailed below, Plaintiff has a variety of property and contractual rights pertaining to this insured debt.

4. National has the right, among others, to timely payment of principal and interest on the debt that it insures. The Commonwealth has covenanted, contractually and through the Puerto Rico Constitution, to prioritize the payment of general obligation debt above all other expenditures. The Commonwealth or its instrumentalities have also pledged certain funds to the repayment of COFINA, PRHTA, and AFICA debt, granting creditors liens on those funds. Additionally, Plaintiff has the right to accelerate payment of certain debts in the event of certain defaults. And, pursuant to resolutions governing COFINA debts, the Commonwealth has covenanted not to interfere with the repayment of COFINA debts or to impair the rights of COFINA bondholders.

5. Plaintiff’s rights to priority of payment, prompt payment, acceleration, and non-interference, as well as liens with respect to certain revenues, constitute property interests for

¹ AFICA is partly funded by University of Puerto Rico tuition payments. The Moratorium Act’s inclusion of AFICA and the University of Puerto Rico under the definition of “government entity” is improper, given their operational and financial independence from the Commonwealth.

² To the extent that the Commonwealth exercises the Moratorium Act to prohibit payment to Puerto Rico Electric Power Authority (“PREPA”) bondholders due July 1, 2016, such action is also preempted by federal law.

purposes of the Takings Clause. And, under the Takings Clause, “however great the [government’s] need, private property shall not be . . . taken even for a wholly public use without just compensation.” *United States v. Sec. Indus. Bank*, 459 U.S. 70, 77 (1982) (quotations omitted). Thus, despite its financial distress, the Commonwealth’s government cannot deprive National of its property without just compensation. Yet Sections 201 and 202 of the Moratorium Act operate to unconstitutionally take Plaintiff’s property in a number of ways, including by allowing the Governor of the Commonwealth to suspend payment on debts of the Commonwealth and the other Issuers, violate the priority of general obligation debt, divert funds pledged irrevocably to the repayment of PRHTA and other debt, and prohibit acceleration and other creditor remedies. The Commonwealth has failed to compensate Plaintiff for these takings, in violation of the Takings Clause, and has no intention to do so.

6. *Third*, for all of the same reasons, Sections 201 and 202 of the Moratorium Act have substantially impaired Plaintiff’s contractual rights to priority of payment on general obligation debt, prompt payment, acceleration, and non-interference, as well as Plaintiff’s contractually guaranteed liens. In violation of Article I, Section 10, Clause 1 of the United States Constitution (the “Contract Clause”), these impairments are neither reasonable nor necessary to an important government purpose.

7. *Finally*, the Moratorium Act violates the U.S. Constitution by purporting to bar litigants from commencing suit in federal court. States and the Commonwealth are entirely without power to enjoin federal court proceedings. *See Donovan v. City of Dallas*, 377 U.S. 408, 411-13 (1964).

8. The United States Congress is considering legislation that could independently restrain the Governor’s use of the Moratorium Act. *See Puerto Rico Oversight, Management,*

and Economic Stability Act, H.R. 5278, 114th Cong. (2d Sess. 2016) (“PROMESA”). But there is no assurance that such legislation will become law or, if it does, what the exact terms of that law would be.

9. Regardless of whether PROMESA (or some alternative federal legislation addressing the Commonwealth’s fiscal crisis) becomes law, the Commonwealth must comply with the United States Constitution and the United States Bankruptcy Code, as interpreted by the Supreme Court in *Franklin*. Accordingly, the Moratorium Act is preempted and the Commonwealth is prohibited from continuing to i) take Plaintiff’s property without just compensation and ii) impair Plaintiff’s contractual rights in manners that are neither reasonable nor necessary to an important government purpose. Through this action, Plaintiff seeks, among other relief, a judgment declaring that Sections 201 and 202 of the Moratorium Act as written are without force or effect because these provisions: i) are preempted by the Bankruptcy Clause and the Bankruptcy Code; ii) violate the Takings Clause; iii) violate the Contract Clause; and iv) unconstitutionally purport to bar access to the federal courts.

THE PARTIES

10. National is a New York insurance company with its principal place of business at 1 Manhattanville Road, Purchase, NY 10577.

11. Plaintiff is a monoline insurer that provides financial guarantees to the United States and global public finance, infrastructure, and structured finance markets.

12. Defendant Hon. Alejandro García Padilla (the “Governor”) is the Governor of the Commonwealth. Plaintiff sues the Governor in his official capacity.

13. Defendant Hon. Juan C. Zaragoza Gómez (the “Secretary of the Treasury”) is the Secretary of the Treasury of the Commonwealth. Plaintiff sues the Secretary of the Treasury in his official capacity.

14. Defendant Hon. Luis G. Cruz Batista (the “OMB Director”) is the Director of the Commonwealth’s Office of Management and Budget. Plaintiff sues the OMB Director in his official capacity.

JURISDICTION AND VENUE

15. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, which provides that “district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

16. This Complaint presents an actual case and controversy that is ripe for adjudication. The Moratorium Act is preempted by the Bankruptcy Clause of the U.S. Constitution and the U.S. Bankruptcy Code because the Act permits the Governor to adjust the debts of Commonwealth municipalities. *See Franklin*, Slip Op. at 2 (the Bankruptcy Code “bars Puerto Rico from enacting its own municipal bankruptcy scheme to restructure the debt of its insolvent public utilities companies”); U.S. Const. art. I, § 8, cl. 4; 11 U.S.C. §§ 101 *et seq.* Independently, the Moratorium Act effectuates a taking, without just compensation, of Plaintiff’s constitutionally protected property rights. The Moratorium Act also substantially impairs Plaintiff’s contractual rights. Given the alternatives available to the Commonwealth in addressing its financial difficulties—including pursuing negotiations with creditors to restructure the debts of the Commonwealth and other Puerto Rico entities—these impairments are neither reasonable nor necessary to an important government purpose. Finally, the Moratorium Act is unconstitutional insofar as it purports to prohibit Plaintiff and other creditors from accessing the federal courts.

17. The violations of Plaintiff’s constitutional rights alleged herein are ongoing and additional violations are imminently threatened.

18. This Court has jurisdiction to enter a judgment declaring the rights and other legal relations of any interested party seeking such declaration pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202, and Federal Rule of Civil Procedure 57.

19. Venue is proper pursuant to 28 U.S.C. § 1391(b) because all or a substantial part of the events giving rise to the claims at issue occurred in this District.

I. Enactment Of The Moratorium Act

20. On April 6, 2016, the Commonwealth enacted the Moratorium Act.

21. The Moratorium Act directs the Governor to prioritize payment of “essential services” over the debt obligations of government entities during the “covered period,” defined as the period from the date of enactment to January 31, 2017. The Moratorium Act permits the Governor to extend the covered period up to two months, through March 2017. *See* Moratorium Act §§ 103(m), 201(a).

22. Section 201(a) of the Moratorium Act empowers the Governor to issue executive orders: i) declaring a “state of emergency” with respect to the Commonwealth or any other “government entity” in the Commonwealth (defined to include, *inter alia*, PRHTA, AFICA and COFINA³); and ii) suspending payment of the “covered obligations” of any of the foregoing entities. 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). Section 201(a) further provides that, if the Governor’s executive order so provides, any stay issued thereunder shall remain in place during the designated “emergency period.”

³ Under its Enabling Act, COFINA is “a corporate and political entity independent and separate from the Commonwealth of Puerto Rico.” 13 L.P.R.A. § 11a. Subjecting COFINA to the Governor’s arbitrary powers under the Moratorium Act impermissibly compromises COFINA’s statutorily mandated independence and separateness from the Commonwealth.

23. The Moratorium Act also contains the following relevant provisions:

a) The Act imposes a blanket stay on creditor remedies—including court proceedings and rights of acceleration, termination, modification, and setoff—against the designated entities during the emergency period. *Id.* § 201(b)(i)-(iii).

b) The Act permits the Governor to “expropriat[e] property or rights in property interests” related to covered obligations to the extent he claims necessary to further the public interest. The Act states that “just compensation or other relief may be sought in the Court of First Instance” in the event of an expropriation, but does not require the Commonwealth to deposit funds with the court before expropriating property. *Id.* § 201(b)(iv).

c) The Act permits the Governor to unilaterally suspend or modify any obligation (statutory or otherwise) i) to appropriate money to pay or secure covered obligations; ii) to transfer money to pay or secure any covered obligation; iii) to setoff revenues used to pay or cover, directly or indirectly, certain covered obligations; and iv) to ensure payment of a covered obligation as if the Act were not enacted. *Id.* § 201(d).

d) The Act permits the Governor to reprioritize the payment obligations in the Puerto Rico Office of Management and Budget Act (23 L.P.R.A. § 104(c)) (“OMB Act”). *Id.* § 201(e). The OMB Act (23 L.P.R.A. § 104(c)) sets payment priorities for Commonwealth expenditures and, consistently with Article VI, Section 8 of the Commonwealth Constitution, prioritizes payment on public debt above all other expenditures.

e) The Act permits the Governor to issue an executive order under Section 201, which provides for payment of only a minimum portion of the interest due on public

debt obligations (such as general obligation bonds), while suspending payment of the principal due on public debt obligations and interest due on nonpublic debt obligations, with such unpaid principal and interest to accrue interest at the contract rate during the covered period. *Id.* § 202(a).

f) Section 106(b) permits the Governor (among others) to engage legal advisors, financial advisors, and other professionals with respect to, inter alia, “matters related to restructuring or adjusting any covered obligation.”

24. As set forth in detail below, Sections 201(a), (b), (d), and (e) are preempted by the Bankruptcy Clause, U.S. Const. art. I, § 8, cl. 4, and Section 903(1) of the Bankruptcy Code, which prohibits Puerto Rico from creating its own laws providing for a “composition of indebtedness” for its municipalities and instrumentalities. *See* 11 U.S.C. § 903(1); *Franklin*, Slip Op. at 1-2. Sections 201 and 202 of the Moratorium Act also effectuate a taking of Plaintiff’s property rights grounded in Article VI, Section 8 of the Commonwealth Constitution and in the contracts governing insured PRHTA debt (the “PRHTA Bond Resolutions,” including the “1968 PRHTA Bond Resolution”), insured COFINA debt (the “COFINA Bond Resolutions,” including the “Amended and Restated COFINA Bond Resolution,” dated July 10, 2009), insured AFICA debt (the “AFICA Trust Agreement”), and insured Commonwealth general obligation debt (the “GO Bond Resolutions”) (the PRHTA Bond Resolutions, COFINA Bond Resolutions, AFICA Trust Agreement, and GO Bond Resolutions are referred to collectively herein as the “Authorizing Resolutions”). Sections 201 and 202 of the Moratorium Act also substantially impair Plaintiff’s contract rights under the Authorizing Resolutions in manners that are not reasonable or necessary to an important government purpose. Finally, Section 201 is unconstitutional on the independent ground that it purports to bar access to the federal courts.

II. Executive Orders Declaring States Of Emergency At GDB And PRHTA

25. In the past two months, the Governor has issued several executive orders pursuant to the Moratorium Act.

26. On April 8, 2016, the Governor signed an executive order declaring a state of emergency at the Government Development Bank for Puerto Rico (“GDB”). *See* Administrative Bulletin No. OE-2016-010 (Apr. 8, 2016) (the “First GDB Executive Order”) (declaring that “GDB is in a state of emergency” and announcing “as of the date of [the] Executive Order . . . an emergency period”).

27. The First GDB Executive Order directed GDB to continue negotiating a voluntary restructuring with its noteholders. *Id.* The First GDB Executive Order further stated that in order to preserve GDB’s liquidity, GDB was instructed to honor only withdrawal, payment, and transfer requests reasonable and necessary to ensure provision of essential services. *Id.* Further, the order authorized GDB to limit aggregate withdrawals, transfers, and deposits in order to preserve GDB’s liquidity, and to take all actions reasonable and necessary to continue to carry out its operations. *Id.*

28. On April 30, 2016—one day before a \$422.8 million GDB debt payment was due—the Governor signed a second executive order declaring a moratorium on a portion of that payment (the “Second GDB Executive Order”). *See* Administrative Bulletin No. OE-2016-014 (Apr. 30, 2016); *BREAKING: Puerto Rico Governor Declares Moratorium on \$422.8 Million GDB Payment*, Reorg Research, May 1, 2016. GDB subsequently defaulted on \$367 million of the \$422.8 million debt payment. The Second GDB Executive Order also states, citing Section 201(b) of the Moratorium Act, that “no action whatsoever shall be taken and no claim or proceeding whatsoever shall commence or continue in any court of any jurisdiction that is related

to or arises under a Covered Obligation of . . . GDB.” *See* Administrative Bulletin No. OE-2016-014, ¶ 7.⁴

29. Most recently, on May 17, 2016, the Governor signed an executive order declaring a state of emergency at PRHTA (the “PRHTA Executive Order”). *See* Administrative Bulletin No. OE-2016-018 (May 18, 2016). Pursuant to the PRHTA Resolutions and the PRHTA Authorizing Act, various toll revenues, excise taxes, and motor vehicle license fees are irrevocably pledged to the payment of PRHTA debt until that debt is repaid in full. *See* PRHTA Bond Resolutions § 602; 9 L.P.R.A. § 2004(l). The PRHTA Executive Order, under Section 201(d), suspends PRHTA’s contractual obligations to transfer toll revenues and any other revenues to PRHTA bondholders—thus directly eliminating the liens held by PRHTA bondholders with respect to such revenues and effectuating a taking, without compensation, of the PRHTA bondholders’ property rights in these liens. *See* Administrative Bulletin No. OE-2016-018 (May 18, 2016); *Puerto Rico Governor Declares Emergency at Highways Authority*, Reorg Research, May 18, 2016. Like the Second GDB Executive Order, the PRHTA Executive Order purports to bar federal court proceedings relating to PRHTA debt: “Pursuant to Section 201(b) of the Act, no action whatsoever shall be taken and no claim or proceeding whatsoever shall commence or continue in any court of any jurisdiction that is related to or arises under a Covered Obligation of PRHTA.” Administrative Bulletin No. OE-2016-018, ¶ 4. The PRHTA Executive Order’s stated purpose is to “guarantee the ongoing provision of PRHTA’s essential services to protect the health, safety, and welfare of the residents of the Commonwealth.” *Id.* at 3 (seventh whereas clause).

⁴ The Second GDB Executive Order also declared a state of emergency at the Puerto Rico Infrastructure Financing Authority (“PRIFA”) and purported to stay litigation concerning certain PRIFA obligations. *See id.* ¶¶ 2, 7.

30. The PRHTA Executive Order purports to expire on June 30, 2016, but nothing in the Moratorium Act precludes the Governor from renewing it. Indeed, as reflected in the Commonwealth's proposed fiscal year 2017 Consolidated Budget, which allocates no money from PRHTA's own revenues to the payment of debt service, the Governor may intend to extend the effects of the PRHTA Executive Order for the duration of the Moratorium Act's covered period—and perhaps beyond.

III. Additional Executive Orders Violating The Constitutional Rights Of Plaintiff And Other Creditors Are Highly Likely

31. In the absence of congressional intervention (and perhaps even if such legislation is passed), the Governor will undoubtedly soon issue additional executive orders under the Moratorium Act, further impairing the property and contractual rights of Plaintiff and other creditors. Approximately \$780 million in principal and interest payments related to the Commonwealth's general obligation bonds are due on July 1. Although it should have the necessary funds available to make these payments and is constitutionally obligated to do so, the Commonwealth has already foretold that it will not make the July 1 payments in full, rendering another Moratorium Act executive order a foregone conclusion.

32. In February 2016, during trial in *Wal-Mart Puerto Rico, Inc. v. Juan C. Zaragoza-Gomez*, No. 3:15-CV-03018 (JAF), Treasury Secretary Zaragoza testified that “the commonwealth could default on general obligation bonds at the end of the current fiscal year if Puerto Rico [did] not strike a broad debt restructuring deal with its creditors.” *Puerto Rico Yet to Give KPMG Documents Needed for FY2014 CAFR*, Reorg Research, Feb. 5, 2016. More recently, on May 18, 2016, Treasury Secretary Zaragoza stated that he “think[s] the moratorium will be used” to block timely payment on general obligation debt. *Puerto Rico Treasury Says \$125M Set Aside for July GO Payments*, Reorg Research, May 18, 2016.

33. The Moratorium Act includes a statement of motives (“SOM”) asserting that imminent action is needed to address the Commonwealth’s financial difficulties. The SOM states that “[s]ubstantial payment obligations of the Commonwealth and the [GDB] will come due in the following months,” and that “Puerto Rico is in need of immediate relief.” SOM, Part II(A), (E); *see also id.*, Part II(F) (“[T]he Commonwealth and its instrumentalities . . . face looming debt service payments in the immediate future, payments that Puerto Rico will not be able to make while still providing for essential services.”).

34. Soon after the Moratorium Act’s enactment, GDB President Melba Acosta stated that the Act provided “the central government the tools to work with its July payment of \$800 million in case it does not have the funds to make a complete payment.” *BREAKING: Puerto Rico House Passes Debt Moratorium Bill 26-21, Goes to Governor*, Reorg Research, Apr. 6, 2016. Governor García Padilla reinforced this claim by declaring that he would veto any attempt to amend the Act to exclude general obligation, COFINA, and certain other debt from its scope. *Governor: Moratorium Exemptions Protect Wall Street, Not Puerto Rico*, Reorg Research, Apr. 19, 2016.

35. On May 1, 2016, the day that a \$422.8 million GDB debt payment was due, the Governor exercised his emergency powers under the Moratorium Act and issued an executive order declaring a temporary payment moratorium on the debt. *See BREAKING: Puerto Rico Governor Declares Moratorium on \$422.8 Million GDB Payment*, Reorg Research, May 1, 2016.

36. In early May of this year, García Padilla administration officials, including OMB Director Cruz Batista and Treasury Secretary Zaragoza, warned that the \$780 million July 1 general obligation payments were “at risk because of the commonwealth’s fragile financial

situation.” *Id.* A week later, the Governor’s office reiterated that the Commonwealth would (supposedly) not have sufficient funds to cover the July 1 general obligation payments. *Budget Approval May Hinge on Treatment of GOs*, Reorg Research, May 9, 2016.

37. On May 16, 2016, OMB Director Cruz Batista stated publicly that the Commonwealth “lacked the resources to comply with July’s \$800 million [general obligation] payment.” *OMB Says GO Principal Payments Won’t Be Covered by FY2017 Budget*, Reorg Research, May 16, 2016. In the same interview, OMB Director Cruz Batista announced that the Commonwealth’s budget for fiscal year 2017 would not appropriate funds for debt service payments (*id.*)—in direct violation of Article VI, Section 8 of the Commonwealth Constitution.

38. Contrary to OMB Director Cruz Batista’s claims, data published by the Puerto Rico Treasury Department reflect that, as of April 2016, the Commonwealth’s General Fund had collected approximately \$7.549 billion in fiscal year 2016, and the General Fund is expected to finish the fiscal year with \$9.292 billion in collections. The Commonwealth budgeted approximately \$1.13 billion for the payment of general obligation debt in the 2015-2016 fiscal year General Fund budget. Further, on November 30, 2015, the Governor issued an executive order withholding approximately \$329 million of revenues dedicated to PRHTA and other entities and directing (in what appears to be a misrepresentation) that they will “only be used for the payment of the public debt when due.” Administrative Bulletin No. OE-2015-046 (Nov. 30, 2015) (unofficial English translation);⁵ *see also Officials Detail Clawback Funding with Potential PRIFA Default on Horizon*, Reorg Research, Dec. 4, 2015. As such, the Commonwealth should have the resources to make the July 1, 2016 general obligation debt

⁵ An unofficial English translation of the executive order is available at <http://www.gdb-pur.com/documents/ExecutiveOrderNo.OE-2015-046-UnofficialEnglishTranslation.pdf>. It is dated December 1, 2015, whereas the Spanish-language version is dated November 30, 2015.

payments in full but, to the detriment of not only Plaintiff but also uninsured Puerto Rico resident bondholders, the Commonwealth intends not to make the full payments.

39. Most recently, on June 8, 2016, Víctor Suárez Meléndez, the Commonwealth's Secretary of State and head of the Puerto Rico Fiscal Agency and Financial Authority, reiterated the claim that the Commonwealth cannot fund its July 1 debt payments. *New Fiscal Agency Chief Signals That a Broad Moratorium Is Coming*, Reorg Research, June 8, 2018. Secretary Suárez Meléndez also stated that the Puerto Rico Senate Treasury Committee was evaluating a proposed budget that “assumes the implementation of a moratorium on the totality of the commonwealth’s public debt under [the Moratorium Act].” *Id.* Secretary Suárez Meléndez also predicted that the Commonwealth will have to continue taking “extraordinary administrative measures” to bridge the liquidity deficits that the Commonwealth will face in 2017. *Id.*

IV. National Insures Puerto Rico Government Entity Bonds Covered By The Moratorium Act

40. As a provider of financial guaranty insurance, National guarantees scheduled payments of principal and interest as and when due by, among others, PRHTA, COFINA, AFICA, and the Commonwealth. Under relevant provisions of the bond documents and bond insurance policies, and applicable law, payment by providers of financial guaranty insurance neither satisfies nor discharges an issuer’s obligation to pay.

41. National insures over \$715 million (net of reinsurance) of PRHTA bonds, approximately \$684 million of COFINA bonds, \$66 million of AFICA bonds, and \$985 million of general obligation bonds.

42. As detailed below, National has a variety of property and contractual rights relating to the debt that it insures. These include the right to timely, first-priority payment on the Commonwealth’s general obligation debt and liens on various revenues pledged to the

repayment of COFINA, PRHTA, and AFICA debt. The Moratorium Act has taken these property interests and substantially impaired these contractual rights by, *inter alia*, permitting the Governor to violate payment priority rights and divert pledged revenues to other uses, thus expropriating liens. In fact, the Governor has already diverted pledged PRHTA toll revenues under color of the Act, and further unlawful takings are imminently threatened—including as the Commonwealth prepares to default on approximately \$780 million in general obligation debt payments due July 1, 2016. In the event that Defendants, acting under color of the Moratorium Act, cause the Commonwealth or the other Issuers to default, National will be obligated to make up any payment shortfall and will stand to suffer hundreds of millions of dollars in damages as a result.

V. Federal Law Preempts The Moratorium Act

43. The Bankruptcy Clause empowers Congress to “establish . . . uniform Laws on the subject of Bankruptcies.” U.S. Const. art. I, § 8, cl. 4. Section 903(1) of the Bankruptcy Code provides that “a State law prescribing a method of composition of indebtedness of [a] municipality may not bind any creditor that does not consent to such composition.” 11 U.S.C. § 903(1). The definition of “municipality” includes a “political subdivision or public agency or instrumentality,” such as the public corporations covered by the Moratorium Act (*e.g.*, AFICA, COFINA, PREPA, PRHTA). *See* 11 U.S.C. § 101(40).

44. In *Franklin*, the U.S. Supreme Court held that “Puerto Rico is a ‘State’ for purposes of [Section 903(1)’s] pre-emption provision.” *Franklin*, Slip Op. at 1. Accordingly, the Court held that Section 903(1) “bars Puerto Rico from enacting its own municipal bankruptcy scheme to restructure the debt of its insolvent public utilities companies” and “pre-empt[s] the Recovery Act.” *Id.* at 2, 5.

45. *Franklin* controls here: the Moratorium Act, like the Recovery Act, effectively imposes a binding restructuring regime on the government entities' creditors. Indeed, a number of the Moratorium Act's provisions invade the purview of the federal Bankruptcy Code:

a) Section 201(d) alters the terms of Commonwealth instrumentality debt by empowering the Governor to suspend the transfer of funds pledged to secured creditors and redirect those funds to other creditors—thus impairing creditors by converting secured debt into unsecured debt. And the moratorium and reprioritization of payments will irretrievably impair security interests: every dollar the Commonwealth diverts from secured creditors is unlikely to be repaid and potentially forever lost to creditors. Section 201(b), moreover, permits the Governor to expropriate property related to covered obligations, thus allowing for the disposition and release of collateral. *See* 11 U.S.C. § 506 (providing that creditors remain secured to the extent of the value of their collateral), § 361 (requiring adequate protection against diminution in value of assets pledged as collateral). In the case of non-recourse debt, such expropriation would have the practical effect of a discharge, and thus fulfill the core function of a bankruptcy regime. *See id.* § 524 (specifying effects of and requirements for discharge).

b) Sections 201(a), (d), and (e) alter the terms of Commonwealth instrumentality debt by permitting the Governor to convert senior debt into junior debt. Specifically, these provisions allow the Governor to reset payment priority rights by directing the Governor to “prioritize payment of essential services” over the payment of covered obligations (defined to include, *inter alia*, general obligation, COFINA, PRHTA, and AFICA debt); empowering the Governor to suspend payment on covered obligations;

and permitting the Governor to “reprioritize services and expenses” in contravention of the OMB Act. *See* 11 U.S.C. § 507 (setting forth priority of claims on the estate).

c) Section 201(b) of the Moratorium Act mimics the federal Bankruptcy Code by providing an automatic stay of proceedings against any government entity declared to be in a state of emergency, as well as a stay of all creditor remedies. *See* 11 U.S.C. § 362 (providing for an automatic stay of proceedings against a debtor upon the filing of a federal bankruptcy petition), § 922 (same, with respect to municipality debtors).

d) Despite the Moratorium Act’s perfunctory assertion that it “does not provide for a composition or discharge of debts,” Section 106(b) expressly acknowledges the potential for “restructuring or adjusting . . . covered obligation[s]” by permitting the Governor to engage legal advisors, financial advisors, and other professionals for that purpose. *See* 11 U.S.C. §§ 327-30 (governing the debtor/trustee’s retention of professionals).

46. These provisions of the Moratorium Act taken together or separately prescribe a method of composition of indebtedness without creditor consent and, therefore, the Moratorium Act is preempted by the Bankruptcy Clause and the Bankruptcy Code.

VI. The Moratorium Act Effectuates Takings Of Plaintiff’s Property Rights And Substantially Impairs Plaintiff’s Contract Rights

A. Right To Timely Payment On All Insured Debt And To Priority Of Payment On General Obligation Debt

47. The Authorizing Resolutions guarantee holders of the debt of the Commonwealth and the other Issuers timely payment of principal and interest when due. *See, e.g.,* 2007 GO Bond Resolution § 52 (“The good faith, credit and taxing power of the Commonwealth are irrevocably pledged for the prompt payment of the principal of and the interest on the Refunding

Bonds.”); PRHTA Bond Resolutions § 601 (PRHTA covenants “that it will promptly pay the principal of and the interest in every bond issued under the provisions of [the PRHTA Bond Resolutions] at the places, on the dates and in the manner provided herein and in said bonds and in any coupons appertaining to said bonds”); Amended and Restated COFINA Bond Resolution § 701 (COFINA covenants to “duly and punctually pay or cause to be paid the principal and premium, if any, on every Bond and the interest thereon . . . at the date(s) and place(s) and in the manner mentioned in [the COFINA Bond Resolutions and] the Bonds”); AFICA Trust Agreement § 701 (“The Authority shall cause to be paid, when due, the principal of and redemption premium, if any, and interest on the Bonds at the places, on the dates and in the manner provided herein and in said Bonds according to the true intent and meaning thereof”). These timely payment obligations are a central undertaking in the issuance of debt and serve as an inducement to bond purchasers.

48. Moreover, the GO Bond Resolutions and the Puerto Rico Constitution guarantee that the Commonwealth will prioritize payment on general obligation debt above all other Commonwealth expenditures. *See* 2007 GO Bond Resolution § 52 (“The good faith, credit and taxing power of the Commonwealth are irrevocably pledged for the prompt payment of the principal of and the interest on the Refunding Bonds. The Secretary [of the Treasury of Puerto Rico] is authorized and directed to pay the principal of and premium, if any, and the interest on the Refunding Bonds as the same shall fall due from any funds in the Treasury of the Commonwealth available for such purpose in the fiscal year for which said payment is required.”); P.R. Const. art. VI, § 8 (requiring that “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”).

49. The right to timely payment when due—and, in the case of general obligation debt, to priority of payment above all other Commonwealth expenditures—constitutes a property interest for purposes of the Takings Clause. *See U.S. Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1, 19 n.16 (1977); *Gonzalez v. Torres*, 915 F. Supp. 511, 516 (D.P.R. 1996). By permitting the Governor to suspend payment obligations, Section 201(a) effects a taking of this property. By directing the Governor to “prioritize payment of essential services” over the payment of general obligation debt, empowering the Governor to suspend payment on general obligation debt, and permitting the Governor to “reprioritize services and expenses” in contravention of the OMB Act, Sections 201(a), (d), and (e) of the Moratorium Act effectuate a taking of the bondholders’ property interest in payment priority. As set forth in greater detail below (*see infra* ¶¶ 61-63), the Commonwealth has not paid and almost certainly will not pay just compensation.

50. Section 201(a) of the Moratorium Act also substantially impairs bondholders’ contractual rights to payment as and when due—and, in the case of general obligation debt, to priority of payment above all other Commonwealth expenditures—by authorizing the Governor to delay payments during the “covered period.” As set forth in greater detail below (*see infra* ¶¶ 64-65), this impairment is unwarranted given the less drastic alternatives available to the commonwealth.

B. Liens On Pledged Revenues

51. The COFINA Bond Resolutions, the PRHTA Bond Resolutions, and the AFICA Trust Agreement provide bondholders with a lien on certain funds pledged for the payment of the respective bonds issued thereunder. *See, e.g.*, Amended and Restated COFINA Bond Resolution § 707; PRHTA Bond Resolutions § 601 (specifying that particular revenues and funds “are hereby pledged” to “the payment” of PRHTA bonds in the manner specified in the PRHTA Resolutions); *see also* 9 L.P.R.A. § 2004(1) (providing that PRHTA may secure the

payment of PRHTA bonds by pledge of or lien on “all or any of its properties, revenues or other income, and . . . the proceeds of any tax or other funds which may be made available to [PRHTA] by the Commonwealth”); AFICA Trust Agreement § 701 (“The Bonds shall be secured by a lien on and pledge of such revenues, receipts, proceed, and other money as provided in this Trust Agreement . . .”). These entities covenant to prioritize these liens, and promise that the pledged funds are reserved for the payment of debt service. *See, e.g.*, 1968 PRHTA Bond Resolution § 602 (“The Authority will not incur any indebtedness nor create or cause or suffer to be created any debt, lien, pledge, assignment, encumbrance or any other charge having a priority to or being on a parity with the lien on Revenues on the Bonds . . .”); Amended and Restated COFINA Bond Resolution § 707 (“The Corporation may not issue Bonds with a payment priority or claim against the Pledged Property that is senior to that of the Senior Bonds.”); AFICA Trust Agreement § 601 (“Any and all money received by the Authority under the provisions of this Trust Agreement shall be deposited as received by the Authority with the Trustee and shall be trust funds under the terms hereof and shall not . . . be subject to any lien or attachment by any creditor of the Authority, the Borrower or the University.”).

52. The liens provided in the COFINA Bond Resolutions, the PRHTA Bond Resolutions, and the AFICA Trust Agreement constitute property interests for purposes of the Takings Clause. *See United States v. Sec. Indus. Bank*, 459 U.S. 70, 75-76 (1982). By directing the Governor to prioritize the payment of undefined “essential services” over the debt obligations of COFINA, PRHTA, and AFICA during the covered period, Section 201(a) effects a taking of bondholders’ first-priority right to the revenue streams pledged to those entities. Section 201(b)(iv) of the Moratorium Act further impairs COFINA, PRHTA, and AFICA bondholders’ contractually guaranteed liens by authorizing the Governor to expropriate property rights related

to covered obligations. And Section 201(d) impairs COFINA, PRHTA, and AFICA bondholders' liens by empowering the Governor to suspend or modify the obligation to transfer money to secure covered obligations. In fact, with respect to PRHTA, the Governor has already taken certain toll revenues pursuant to Section 201(d) and redirected them to certain other undefined government uses. The May 18, 2016 PRHTA Executive Order thus underscores how the Moratorium Act impairs bondholders' secured property interests in pledged revenues and empowers the Governor to violate bondholders' liens by diverting pledged revenues to purposes other than the repayment of bonds.

53. As set forth in more detail below (*see infra* ¶¶ 61-63), the Commonwealth has not paid and almost certainly will not pay just compensation.

54. Moreover, by directing the Governor to prioritize the payment of “essential services” over COFINA, PRHTA, and AFICA debt-service payments, Section 201(a) of the Moratorium Act substantially impairs these contractually guaranteed liens. This prioritization of “essential services” has directly impacted—and effectively primed—the bondholders' various liens on pledged revenues. Revenue streams that were once exclusively reserved for the payment of debt service are now first available to the Governor to dispose of as he and the Commonwealth see fit. Such actions, which were taken without the bondholders' consent, impair the contractual liens established in the COFINA Bond Resolutions, the PRHTA Bond Resolutions, and the AFICA Trust Agreement.

55. As set forth in greater detail below (*see infra* ¶¶ 64-65), these impairments of contractually guaranteed liens are unwarranted given the less drastic alternatives available to the commonwealth.

C. Right To Accelerate

56. The COFINA Bond Resolutions and the AFICA Trust Agreement provide holders of bonds with certain remedies in the event of default, including the ability to accelerate payments. *See, e.g.*, Amended and Restated COFINA Bond Resolution § 1102; AFICA Trust Agreement § 802. These acceleration rights constitute property interests for purposes of the Takings Clause. Section 201(b)(ii) of the Moratorium Act effects a taking of those rights by prohibiting any person from “exercis[ing] any remedy,” including “any right of acceleration or termination . . . related to any covered obligation” during an emergency period. As demonstrated below (*see infra* ¶¶ 61-63), the Commonwealth has not paid and almost certainly will not pay just compensation.

57. By prohibiting Plaintiff from exercising its valid contractual rights to acceleration under the COFINA Bond Resolutions and the AFICA Trust Agreement, Section 201(b)(ii) has substantially impaired those contract rights. As demonstrated below (*see infra* ¶¶ 64-65), this impairment is unwarranted given the less drastic alternatives available to the commonwealth.

D. Non-Interference Covenant

58. The COFINA Bond Resolutions incorporate the Commonwealth’s pledge “that, until the [COFINA] Bonds, of whichever date, together with the interest thereon, are totally paid and withdrawn, the Commonwealth will not . . . limit or restrict the rights that are by [the COFINA authorizing act (“COFINA Act”)] granted or the rights of [COFINA] to meet its obligations to its Bondholders, until such Bonds, of whichever date, together with the interest thereon, have been completely paid and retired.” Amended and Restated COFINA Bond Resolution § 706. The COFINA Act similarly provides that the Commonwealth “shall not . . . limit nor restrain the powers hereby conferred by [the COFINA Act] or the rights of COFINA to meet its agreements with bondholders, until such time as such bonds, regardless of their date,

together with the interest accrued, shall be entirely paid for and withdrawn.” 13 L.P.R.A. § 14(c)(ii).

59. The Commonwealth’s covenants of non-interference with respect to COFINA Bonds constitute a property interest for purposes of the Takings Clause. Sections 201(a), (b), and (d) of the Moratorium Act effect a taking of that property by empowering the Governor to suspend payment on COFINA Bonds, stay judicial proceedings, restrict the exercise by bondholders of their acceleration rights and other remedies, expropriate property, and suspend the transfer of money to pay or secure the COFINA debt. As demonstrated below (*see infra* ¶¶ 61-63), the Commonwealth has not paid and almost certainly will not pay just compensation.

60. By permitting the Governor to interfere with COFINA’s obligations under the COFINA Bond Resolutions, Sections 201(a), (b), and (d) also substantially impair Plaintiff’s contractual right to be free from such interference. As set forth in greater detail below (*see infra* ¶¶ 64-65), this impairment is unwarranted given the less drastic alternatives available to the Commonwealth.

VII. The Commonwealth Has Not Paid Just Compensation For The Property Rights It Has Taken And Almost Certainly Will Not Do So

61. The Commonwealth has not compensated and cannot compensate Plaintiff for the taking of its property interests. Indeed, the Moratorium Act does not require the Commonwealth to compensate Plaintiff for the taking of Plaintiff’s property rights with respect to: i) timely payment on the debt of the Commonwealth and other Issuers; ii) payment priority on Commonwealth general obligation debt; iii) liens on revenues pledged to the repayment of insured COFINA, PRHTA, and AFICA debt; iv) right to acceleration under the COFINA Bond Resolutions and the AFICA Trust Agreement; and v) non-interference with rights under the COFINA Bond Resolutions.

62. The Moratorium Act claims that “just compensation or other relief may be sought in the Court of First Instance” if an expropriation occurs “pursuant to the Commonwealth’s power of eminent domain.” *See* Moratorium Act § 201(b)(iv). Beyond the highly limited scope of this provision—which suggests that the Commonwealth does not even acknowledge the need to compensate direct takings effectuated outside of formal eminent domain proceedings—the promise of compensation is meaningless. The Commonwealth’s distressed finances raise serious concerns regarding the bondholders’ ability to obtain any relief, much less “just compensation,” from the Commonwealth. *See, e.g., Wal-Mart Puerto Rico, Inc. v. Juan C. Zaragoza-Gomez*, No. 3:15-CV-03018, 2016 WL 1183091, at *3, *38 (D.P.R. Mar. 28, 2016) (describing the payment of an unconstitutional tax “to an insolvent government, without any hope that the victimized taxpayers will be reimbursed in the foreseeable future” as “the very definition of an inadequate remedy”; noting that a court order directing the Commonwealth to refund monies would be “worthless”). Moreover, to the extent that the Commonwealth expropriates cash pursuant to Section 201(b)(iv), there is a presumption that the Commonwealth does not intend to provide compensation. *See In re Chateaugay Corp.*, 53 F.3d 478, 493 (2d Cir. 1995).

63. Therefore, the Commonwealth has not compensated and cannot compensate Plaintiff and other creditors for the taking of their property rights.

VIII. The Commonwealth Has Not Fully Explored Less Drastic Options To Address Its Fiscal Challenges Consistently With The U.S. Constitution

64. Puerto Rico’s financial crisis is a matter of public record. But the Commonwealth has not explored all potential avenues to address this situation without substantially impairing the contractual rights of Plaintiff and other bondholders. Most obviously, the Commonwealth (and COFINA, PRHTA, and AFICA) have not exhausted their ability to voluntarily restructure their debts—as sovereign nations and other entities that are not eligible for bankruptcy customarily do,

and as PREPA is doing. Additionally, the Commonwealth could reduce its expenditures, and the other Issuers could raise revenues in a variety of ways: PRHTA, for example, could raise tolls sufficiently to cover rising costs. COFINA's debt, meanwhile, is fully funded by dedicated sales tax revenues; there is no need to restructure COFINA's debt at all. The availability of these alternative solutions confirms that the Moratorium Act is not reasonable or necessary to serve an important government purpose.

65. Additionally, the Moratorium Act is not narrowly tailored. The Moratorium Act indiscriminately targets every public corporation and all types of debt, including both secured and unsecured obligations. The Commonwealth could have chosen to exclude certain entities (such as AFICA, which has much less debt than other public corporations), and instead focus on a few public corporations as an initial matter. And while the Moratorium Act purports to be narrowly tailored in its temporal scope, such that it expires in January 2017 (or, if extended, in March 2017), the Commonwealth already has made clear in its proposed budget for the 2016-2017 fiscal year that it intends to enforce the Moratorium Act past its supposed expiration date. Indeed, \$757 million in interest and \$371 million in principal payments on general obligation and other debt guaranteed by the Commonwealth are scheduled to come due in fiscal year 2017 (*i.e.*, July 1, 2016 to June 30, 2017). But the Commonwealth's proposed fiscal year 2017 budget allocates just \$209 million to pay interest on such debt, and not a penny for payment of principal. *See Puerto Rico Governor Says Budget Will Omit Bond Payments*, Bloomberg, May 23, 2016.

IX. The Moratorium Act Unlawfully Purports To Restrain Federal Court Proceedings

66. Section 201(b) of the Moratorium Act provides that during the emergency period 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," *inter alia*, "the recovery from, or judgment or enforcement against such government entity

related to any covered obligation,” or “any order, judgment, lien, set-off, right of attachment or counterclaim related to any covered obligation against such government entity.” This provision, by its terms, would purport to prohibit Plaintiff and other creditors from commencing or continuing suit in the federal courts.

67. The Second GDB Executive Order and the PRHTA Executive Order, as noted, each purport to bar litigants from bringing suit in federal court. These orders state that “no action whatsoever shall be taken and no claim or proceeding whatsoever shall commence or continue in any court of any jurisdiction that is related to or arises under a Covered Obligation of” GDB and PRHTA, respectively.

68. However, neither states nor the Commonwealth have any power under the U.S. Constitution to enjoin proceedings in federal court. *See Donovan v. City of Dallas*, 377 U.S. 408, 411-13 (1964). Accordingly, Section 201(b) of the Moratorium Act violates the U.S. Constitution.

FIRST CLAIM FOR RELIEF

(Declaratory Relief for Violation of the Bankruptcy Clause, U.S. Const. art. I, § 8, cl. 4, and 11 U.S.C. § 903(1))

69. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 68 hereof, as if fully set forth herein.

70. Sections 201 (a), (b), (d), and (e) of the Moratorium Act separately and together are preempted by Congress’s power to “establish . . . uniform Laws on the subject of Bankruptcies” under the Bankruptcy Clause, and by the Supremacy Clause and Section 903(1) of the Bankruptcy Code, 11 U.S.C. § 903(1), which expressly prohibit States and Puerto Rico from creating their own laws providing for a “composition of indebtedness” for their municipalities. *See generally Franklin*, No. 15-233.

71. Accordingly, an actual, substantial, and justiciable case or controversy exists between the parties with respect to the constitutionality of Sections 201 (a), (b), (d), and (e) of the Moratorium Act. 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 that Sections 201 (a), (b), (d), and (e) of the Moratorium Act are unconstitutional.

SECOND CLAIM FOR RELIEF

(Declaratory Relief for Violation of the Takings Clause, U.S. Const. amends. V, XIV)

72. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 71 hereof, as if fully set forth herein.

73. Sections 201 and 202 of the Moratorium Act effectuate a direct taking of the following rights: i) priority of payment as set forth in the Puerto Rico Constitution and the GO Bond Resolutions with respect to insured Commonwealth general obligation debt; ii) the right to timely payment of insured general obligation, PRHTA, COFINA, and AFICA debt under the GO Bond Resolutions, the Puerto Rico Constitution, the PRHTA Bond Resolutions, the COFINA Bond Resolutions, and the AFICA Trust Agreement; iii) liens on various revenues pledged to the repayment of insured COFINA, PRHTA, and AFICA debt; iv) the right to accelerate debt payments upon certain events of default under the COFINA Bond Resolutions and the AFICA Trust Agreement; and v) the Commonwealth's covenant not to interfere with the rights of COFINA bondholders under the terms of the COFINA Bond Resolutions and Enabling Act. All of the foregoing rights constitute property interests for purposes of the Takings Clause.

74. Sections 201 and 202 of the Moratorium Act effectuate a taking of Plaintiff's property interests relating to the Authorizing Resolutions and the debt of the Commonwealth and the other Issuers. In violation of the Takings Clause and Fourteenth Amendment to the United

States Constitution, the Commonwealth has not provided just compensation for these takings and almost certainly will not do so.

75. Accordingly, an actual, substantial, and justiciable case or controversy exists between the parties with respect to the constitutionality of Sections 201 and 202 of the Moratorium Act. 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 that Sections 201 and 202 of the Moratorium Act are unconstitutional.

THIRD CLAIM FOR RELIEF

(Declaratory Relief for Violation of the Contract Clause, U.S. Const. art. I, § 10, cl. 1)

76. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 75 hereof, as if fully set forth herein.

77. Sections 201 and 202 of the Moratorium Act substantially impair the following contractual rights belonging to Plaintiff: i) priority of payment as set forth in the Puerto Rico Constitution and the GO Bond Resolutions with respect to insured Commonwealth general obligation debt; ii) the right to timely payment of insured general obligation, PRHTA, COFINA, and AFICA debt under the GO Bond Resolutions, the Puerto Rico Constitution, the PRHTA Bond Resolutions, the COFINA Bond Resolutions, and the AFICA Trust Agreement; iii) liens on various revenues pledged to the repayment of insured COFINA, PRHTA, and AFICA debt; iv) the right to accelerate debt payments upon certain events of default under the COFINA Bond Resolutions and the AFICA Trust Agreement; and v) the Commonwealth's covenant not to interfere with the rights of COFINA bondholders under the terms of the COFINA Bond Resolutions and Enabling Act.

78. In violation of the Contract Clause, these substantial impairments are neither reasonable nor necessary to serve an important government purpose.

79. Accordingly, an actual, substantial, and justiciable case or controversy exists between the parties with respect to the constitutionality of Sections 201 and 202 of the Moratorium Act. 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 that Sections 201 and 202 of the Moratorium Act are unconstitutional.

FOURTH CLAIM FOR RELIEF

(Declaratory Relief for Violation of Access to Federal Courts)

80. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 79 hereof, as if fully set forth herein.

81. Section 201(b) of the Moratorium Act provides that, during the emergency period for any government entity, no person may commence or continue any “action or proceeding” in “any court in any jurisdiction” that could implicate that government entity’s covered obligations.

82. This provision, on its face, purports to bar litigants from accessing the federal courts. However, a state (or the Commonwealth) cannot enjoin proceedings in federal court. *See Donovan*, 377 U.S. at 411-13. Therefore, Section 201(b) violates the United States Constitution and must be declared null and void.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that the Court enter an order granting the following relief:

(1) On its First Claim for Relief, declaring that Sections 201 (a), (b), (d), and (e), and any prospective enforcement thereof or authorization thereunder, are preempted by Section 903(1) of the Bankruptcy Code and violate Article I, Section 8 of the United States Constitution;

(2) On its Second Claim for Relief, declaring that Sections 201 and 202 of the Moratorium Act, and any prospective enforcement thereof or authorization thereunder, violate the Fifth Amendment and the Fourteenth Amendment to the United States Constitution by effectuating the taking of Plaintiff's property interests without just compensation;

(3) On its Third Claim for Relief, declaring that Sections 201 and 202 of the Moratorium Act, and any prospective enforcement thereof or authorization thereunder, violate Article I, Section 10, Clause 1 of the United States Constitution by retroactively impairing Plaintiff's contractual rights in manners neither reasonable nor necessary to an important government purpose;

(4) On its Fourth Claim for Relief, declaring that Section 201(b) of the Moratorium Act, and any prospective enforcement thereof or authorization thereunder, violates the Supremacy Clause of the United States Constitution by purporting to bar Plaintiff from accessing the federal courts;

(5) Permanently enjoining Defendants from taking or causing to be taken any action pursuant to Section 201 and/or Section 202 of the Moratorium Act, including, without limitation:

(a) prohibiting Defendants from taking any action, under color of the Moratorium Act or otherwise, that takes Plaintiff's property right to priority of payment as guaranteed by the Constitution, which requires that "interest on the public debt and amortization thereof shall first be paid, and other disbursements shall thereafter be made," with respect to the

principal and interest payments on the Commonwealth's general obligation debt, and

(b) prohibiting Defendants from taking any action, under color of the Moratorium Act or otherwise, to expropriate or divert revenues in which creditors hold a security interest (including, without limitation, toll revenues as to which holders of bonds issued by the Puerto Rico Highways and Transportation Authority have a security interest) from their contractually mandated use;

(6) Awarding Plaintiff costs and reasonable attorneys' fees; and

(7) Granting Plaintiff any other relief this Court deems just and proper.

RESPECTFULLY SUBMITTED, in San Juan, Puerto Rico, this 15th day of June, 2016.

**ADSUAR MUÑIZ GOYCO
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