

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

DIONISIO TRIGO GONZALEZ, CARMEN REGINA SUAREZ SEIN, and their Conjugal Property Partnership; BENIGNO TRIGO GONZALEZ, TERESA ZAPATA BIRD, and their Conjugal Property Partnership; TRIGO CORP.; GUILLERMO L. MARTINEZ, BERTITA MARTINEZ MARTINEZ, and their Conjugal Property Partnership; GUSTAVO HERMIDA CELA, GLORIA COLON SUAREZ, and their Conjugal Property Partnership; RAMON GONZALEZ CORDERO, KETTY SIMOUNET DE GONZALEZ, and their Conjugal Property Partnership; DR. JORGE HESS, REGINA TRIGO DE HESS, and their Conjugal Property Partnership; TRIMAR INVESTMENTS CORP.; SAN RAFAEL HOLDINGS, LLC; CECI MONTILLA ROJO; 322 DE DIEGO HOLDINGS, LLC; JOSE A. VALDES MUZAURIETA, ADRIENNE MUENTES ORTIZ, and their Conjugal Property Partnership; VALMU TRUST; 2015, LLC; EDUARDO ARTAU GOMEZ, CARMEN FELICIANO VARGAS, and their Conjugal Property Partnership; FIRST MEDICAL HEALTH PLAN, INC.; ADRIEL LONGO RAVELO; ERNESTO A. SMITH a/k/a ERNESTO ANTONIO SMITH BRINGAS, SARESS E. SMITH a/k/a SARESS ELLERBE SMITH a/k/a SARESS ELLERBE MCDANIEL, and their Conjugal Property Partnership; FEDERICO M. STUBBE ARZUAGA; FEDERICO STUBBE GONZALEZ; STUGO, LLC; FSA INVESTMENTS, LLC; NORTHSHORE MANAGEMENT, CORP.; HEIRS OF THE ESTATE OF ROSARIO FERRE RAMIREZ DE ARELLANO composed by Benigno Trigo Ferré, Rosario Lorenza Trigo Ferré, and Luis Alfredo Trigo Ferré; 419 PONCE DE LEON, INC.

Plaintiffs,

vs.

ALEJANDRO GARCIA PADILLA, in his official capacity as Governor of Puerto Rico; JUAN C. ZARAGOZA GOMEZ, in his official capacity as Secretary of the Department of the Treasury of Puerto Rico; THE GOVERNMENT DEVELOPMENT BANK OF PUERTO RICO; PUERTO RICO PUBLIC FINANCE CORPORATION; MELBA ACOSTA FEBO, in her official capacity as President of The Government Development Bank of Puerto Rico and of the Puerto Rico Public Finance Corporation; PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY; VICTOR SUAREZ MELENDEZ, in his official capacity as Executive Director of the Puerto Rico Fiscal Agency and Financial Advisory Authority

Defendants.

CIVIL NO. 16-02257

**COMPLAINT**

**TO THE HONORABLE COURT:**

**NOW COME** Plaintiffs DIONISIO TRIGO GONZALEZ, CARMEN REGINA SUAREZ SEIN, and their Conjugal Property Partnership; BENIGNO TRIGO GONZALEZ, TERESA ZAPATA BIRD, and their Conjugal Property Partnership; TRIGO CORP.; GUILLERMO L. MARTINEZ, BERTITA MARTINEZ MARTINEZ, and their Conjugal Property Partnership; GUSTAVO HERMIDA CELA, GLORIA COLON SUAREZ, and their Conjugal Property Partnership; RAMON GONZALEZ CORDERO, KETTY SIMOUNET DE GONZALEZ, and their Conjugal Property Partnership; DR. JORGE HESS, REGINA TRIGO DE HESS, and their Conjugal Property Partnership; TRIMAR INVESTMENTS CORP.; SAN RAFAEL HOLDINGS, LLC; CECI MONTILLA ROJO; 322 DE DIEGO HOLDINGS, LLC; JOSE A. VALDES MUZAURIETA, ADRIENNE MIENTES ORTIZ, and their Conjugal Property Partnership; VALMU TRUST; 2015, LLC; EDUARDO ARTAU GOMEZ, CARMEN FELICIANO VARGAS, and their Conjugal Property Partnership; FIRST MEDICAL HEALTH PLAN, INC.; ADRIEL LONGO RAVELO; ERNESTO A. SMITH a/k/a ERNESTO ANTONIO SMITH BRINGAS, SARESS E. SMITH a/k/a SARESS ELLERBE SMITH a/k/a SARESS ELLERBE MCDANIEL, and their Conjugal Property Partnership; FEDERICO M. STUBBE ARZUAGA; FEDERICO STUBBE GONZALEZ; STUGO, LLC; FSA INVESTMENTS, LLC; NORTSHORE MANAGEMENT, CORP.; HEIRS OF THE ESTATE OF ROSARIO FERRE RAMIREZ DE ARELLANO composed by Benigno Trigo Ferré, Rosario Lorenza Trigo Ferré, and Luis Alfredo Trigo Ferré; 419 PONCE DE LEON, INC. (hereinafter the "Plaintiffs"), represented by their undersigned attorneys Totti & Rodríguez Díaz, P.S.C., and by way of their Complaint against Defendants, respectfully allege and pray:

**NATURE OF THE ACTION**

This action, arising under the Constitution of the United States of America, and the Constitution of Puerto Rico, seeks declaratory judgment and injunctive relief with regard to

provisions of the Puerto Rico Emergency Moratorium and Financial Rehabilitation Act, Puerto Rico Law 21-2016, as amended by Puerto Rico Law 40-2016, such legislation (Law 21 as amended by Law 40) hereinafter referred to as the “Moratorium Act”, which essentially serve to transfer assets of the Government Development Bank of Puerto Rico (“GDB”) that were available to fund payments to bondholders, including Plaintiffs. Such transfer, to a “bridge bank” or a receiver, purportedly contemplated and authorized, via Governor Alejandro García Padilla’s Executive Order 2016-010, declaring a “state of emergency” with respect to GDB and a series of other Executive Orders including, among them, OE-2016-014 and OE-2016-2027, in effect deprives Plaintiffs of their proprietary right to existing and future funding for the contractually scheduled payment of interest and repayment of principal upon their bonds. Such deprivation pursuant to the Moratorium Act, without just compensation nor due process of law constitutes unlawful taking in violation of the takings clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution and Article II Sec. 7 of the Constitution of the Commonwealth of Puerto Rico. The Moratorium Act, serves to substantially impair the obligations of GDB and Puerto Rico Public Finance Corporation (“PRPFC”) under the bonds, in an unreasonable and unnecessary manner, which is not narrowly tailored to promote a legitimate, important or compelling governmental interest, thereby violating the contract clause of the United States Constitution (see Article I §10) and the Puerto Rico Constitution (see Article II §7). In addition, key provisions of the Moratorium Act analogous to bankruptcy legislation are preempted by the Bankruptcy Clause of the United States Constitution, and by the United States Bankruptcy Code, inasmuch as they permit the Governor to adjust debts, thereby allowing for a “composition of indebtedness”, prohibited by the Bankruptcy Code at 11 U.S.C. §903(1), in violation of the Supremacy Clause. See the recent United States Supreme Court decision in Puerto Rico v. Franklyn California Tax-Free Trust, No. 15-233, slip Op. at page 2 (Opinion of June 13, 2016). Finally, the Moratorium Act contains provisions that prohibit, enjoin, stay and/or penalize owners of bonds from suing in any court (including Federal Court). It is firmly established law that states (and the Commonwealth of Puerto Rico) have no power to enjoin Federal Court proceedings. Donovan v. City of Dallas, 377 US 408, at pages 411-413 (1964).

**THE PARTIES**

1. Plaintiffs, primarily residents of Puerto Rico, are individual and corporate owners of bonds issued by GDB and/or bonds issued by PRPFC that are outstanding, and were acquired before the year 2013. The collective face value of such bonds owned by Plaintiffs exceeds the sum of ONE HUNDRED MILLION DOLLARS (\$100,000,000).
2. Defendant Alejandro García Padilla is the Governor of Puerto Rico, sued in his official capacity.
3. Defendant Juan C. Zaragoza González is the Secretary of the Department of the Treasury of Puerto Rico, sued in his official capacity.
4. Defendant Puerto Rico Fiscal Agency and Financial Advisory Authority (“PRFAFAA”) is an independent public corporation and governmental instrumentality with corporate legal existence established and created pursuant to Section 601 of Puerto Rico Act No. 40, approved on May 5, 2016.
5. Defendant Víctor Suárez Meléndez is the Executive Director of PRFAFAA and the sole member of its Board of Directors under Section 603 of Act No. 40, sued in his official capacities as such.
6. Defendant Puerto Rico Public Finance Corporation (“PRPFC”) is a corporation wholly owned by GDB.
7. Defendant Government Development Bank of Puerto Rico (“GDB”) is an instrumentality of the Government of Puerto Rico, established and created pursuant to Puerto Rico Act No. 17, approved on September 23, 1948.
8. Defendant Melba Acosta Febo is the President of GDB and, upon information and belief, also the President of PRPFC, sued in her official capacities as such.

**JURISDICTION AND VENUE**

9. This Honorable Court has jurisdiction in this action under 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”, and supplemental jurisdiction under 28 U.S.C. § 1367(a).

10. Venue is proper in this district under 28 U.S.C. § 1391(b)(1) since Defendants are residents of Puerto Rico and the events under which claims arise have occurred in this district.
11. This Court is not impeded from entertaining the present action by Section 405(b) of the Puerto Rico Oversight, Management and Economic Stability Act (PROMESA), which once signed by the President will be applied retroactively to claims filed after December 18, 2015, as: (i) the remedies requested herein do not seek to obtain a monetary award or payment, nor to obtain an equitable remedy for breach of performance, and (ii) the complaint is filed to assert and protect Plaintiff’s rights under the Constitution of the United States.

#### **THE FACTS AND ALLEGATIONS**

12. The Plaintiffs own bonds issued by GDB and/or bonds issued by PRPFC that are outstanding, and were acquired before the year 2013.
13. Plaintiffs acquired such bonds relying on the Government’s promises and representations, and on the Organic Act of the GDB and other formal documents related to the issuance of the bonds.
14. All of the bonds issued by GDB and/or PRPFC carried schedules of repayment.
15. Defaults have occurred with respect to scheduled payments for the bonds issued by GDB and owned by Plaintiffs, beginning on May 1, 2016.
16. Defaults have occurred with respect to the bonds issued by PRPFC and owned by Plaintiffs, beginning on August 1, 2015.
17. The Puerto Rico Emergency Moratorium and Financial Rehabilitation Act, Puerto Rico Law 21-2016, enacted on April 6, 2016, as amended shortly thereafter, on May 5, 2016 by Puerto Rico Law 40-2016, the “Moratorium Act”, in §§ 105, 201, 203, 301, 302, and 401, among others, creates a framework and scaffolding for the systematic stripping of assets

of GDB and PRPFC that will render each unable to meet its obligations to bondholders and leave the owners of said bonds essentially without recourse to assets that can serve to fund scheduled payments of interest and repayments of principal.

18. Plaintiffs had every expectation as to the honest and forthright administration of GDB and PRPFC, particularly upon the fact emphasized in bond offering literature that “Neither the Corporation nor the Commonwealth has ever defaulted on the payment of principal or interest on any of its debt.”
19. Far from honest and forthright administration of GDB and PRPFC, the recent actions including the approval and comprehensive amendment within less than one month of the Moratorium Act, and a series of Executive Orders thereafter, without warning, without prior consultation with creditors, including the Plaintiffs, suggest a chain of events involving concerted action by the Defendants, aimed at defrauding creditor bondholders, who had been induced to advance funds with the reasonable expectation that they would be repaid with interest.
20. If we consider the prohibitions in the Moratorium Act regarding immunity for actions thereunder, and prohibitions against lawsuits by which creditors could protect their rights, the absolute absence of due process, and the arbitrary taking of Plaintiffs’ proprietary right to existing, available, and future-funding for the contractually scheduled payment of interest, and repayment of principal upon their bonds, becomes clearly evident.
21. As recently as June 13, 2016, the United States Supreme Court ruled that Puerto Rico could not legislate its own bankruptcy law, as bankruptcy matters are preempted by the U.S. Bankruptcy Code. See Puerto Rico v. Franklyn California Tax-Free Trust, *supra*. The Moratorium Act is equivalent and analogous to bankruptcy legislation.
22. Section 201(b) of the Moratorium Act provides as follows:  

"(b) During the emergency period for any government entity-

  - i. 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-
    - A. the recovery from, or judgment or enforcement against such government

entity related to any covered obligation, or any funds, property, receivables or revenues thereof;

B. any order, judgment, lien, set-off, right of attachment or counterclaim related to any covered obligation against such government entity, or the indebtedness or liability evidenced thereby; or

C. the application of any funds, property, receivable or revenues of such government entity related to any covered obligation of such government entity, or the indebtedness or liability evidenced thereby;"

23. In turn, Section 201(c) of the Moratorium Act provides as follows:

"(c) Any act found to violate subsection (b) of this Section shall be void and punishable by contempt of court. Any person or entity found to violate this Section may also be liable to such government entity for damages, costs, and attorneys' fees incurred by the Governor or such government entity in defending against actions taken in violation of this Section, and punitive damages for intentional or knowing violations, and upon determining that there has been a violation of this section, the court may order additional appropriate remedies."

24. Section 203(b)(1) of the Moratorium Act provides as follows:

"(b) For the purposes of this section, actions that are "reasonable and necessary" shall include, but are not limited to, the following-

i. prescribing such conditions or restrictions for the conduct of the business of the Bank, including dispensing with the compliance, in whole or in part, of any requirement prescribed by otherwise applicable law, including those that require the Bank to maintain deposit reserves above a certain threshold;"

25. Section 301 of the Moratorium Act amends Article 11 of Act No. 17 of September 23, 1948, as amended known as the Organic Act of the Governmental Development Bank (the "GDB Organic Act"), and provides the process upon which a receiver to the BDG may be appointed.

26. Section 301(e) provides as follows:

"E. Immediately upon the appointment of a receiver, the receiver may (1) take over the assets of and operate the Bank with all the powers of the directors and the officers of the Bank, including the power to employ and utilize the seal of the Bank, and conduct all business of the Bank; (2) collect all obligations and money due to the Bank, including without limitation to take all acts necessary for obtaining payment of any money due from a debtor of the Bank or his estate, to prove, rank and claim in the bankruptcy, insolvency, or sequestration of any debtor of the Bank for any balance against any estate, and to receive dividends in any proceeding for monies due to the Bank; (3) sell, transfer and compromise any asset, liability, right, power, or obligation of the Bank, by public auction or private contract, without any approval, assignment, or consent with respect to such transfer and without payment of any registration or other fee, charge, stamp or duty; (4) draw, accept, make, compromise, terminate, and endorse any bill of exchange, promissory note, or other document or obligation in the name and on behalf of the Bank; (5) provide or facilitate through guarantees or other support such funding as may be necessary

to accomplish the purposes and exercise the powers authorized by this Act; (6) retain, appoint, and employ the services of private persons and entities, on such terms and conditions as the receiver may approve, to assist the receiver in fulfilling the duties under this Act and such private persons and entities shall have full recourse to the powers and rights of the receiver, as appropriate, as directed, limited and managed by the receiver; (7) sue and be sued in the name of the Bank, except as otherwise limited in this Act, and perform all functions of the Bank in the name of the Bank that are consistent with the appointment as receiver; (8) as appropriate, preserve and conserve the assets and property of the Bank; (9) pay all valid claims and obligations of the Bank in accordance with the prescriptions and limitations of this Act; (10) investigate, pursue all claims or lawsuits, and collect all claims against persons who may be liable for injuries or losses of the Bank through negligence or other wrongdoing; (11) exercise all powers and authorities specifically granted to receivers, respectively, under this Act and such incidental powers as shall be necessary to carry out such powers; and (12) take any action authorized by this Section, which the receiver determines is in the best interests of the Bank or its depositors and obligees."

27. Section 301(f) of the Moratorium Act provides that the Receiver may, inter alia:

"(1)...

(2) may allow or disallow and otherwise determine claims in accordance with the requirements of this Section.

(3) shall (i) promptly publish in a newspaper of national circulation and a newspaper of local circulation and in the Bank's website, a general notice to the Bank's creditors, and mail notice to any creditor shown in the Bank's records, to present their claims, together with proof, to the receiver by a date specified in the notice which shall be not less than ninety (90) days after the publication of such notice; (ii) republish such notice approximately thirty (30) days after publication under clause (i); and (iii) upon discovery of the name and address of a claimant not identified in the Bank's records, mail notice to such claimant within thirty (30) days of such discovery.

(4) shall determine whether to allow or disallow the claim and shall notify the claimant, by mail at the address identified in the claim, of any decision by the receiver on such claim, stating the reasons for any denial of the claim and the procedures available for further review, not later than one hundred eighty (180) days after the date the claim is presented to the receiver. Such period may be extended by a written agreement between the claimant and the receiver."

28. Section 302 of the Moratorium Act include several new articles to the GDB Organic Act.

Among other, and particular to this complaint, Article 12 and 13.

29. Article 12 provides as follows:

"Article 12.- Priority of expenses and unsecured claims in a receivership

A. Unsecured claims against the Bank, or the receiver for the Bank under this Act, that are proven to the satisfaction of the receiver, shall have priority in the following order:

(1) Administrative expenses of the receiver.

(2) Wages, salaries, or commissions, including vacation, severance, and sick leave pay, or other similar employee benefits, earned by an individual prior to the appointment of the receiver in accordance with the Bank's employment policies or



by applicable law.

(3) Contributions owed to employee benefit plans arising from services rendered before the date of appointment of the receiver.

(4) Any unpaid balance of money held by the Bank in its depository accounts for the credit of a depositor and any other general or senior liability of the Bank (which is not a liability described in clause (5)).

(5) Any obligation that is statutorily or contractually subordinated to general unsecured creditors.

30. In turn Article 13(b), incorporated by Section 302 of the Moratorium Act provides:

B. In addition to any other rights a receiver may have, the receiver, in the exercise of his power to administer and wind up the Bank, may disaffirm or repudiate any contract or lease (1) to which the Bank is a party; (2) if, in the receiver's discretion, its continued performance will be burdensome; and (3) if, in the discretion of the receiver, the disaffirmance or repudiation of the contract or lease will promote the orderly administration and/or winding up of the Bank's affairs."

31. Section 401 of the Moratorium Act provides that,

"A. When a receiver has been appointed for the Bank, the Secretary of the Treasury of Puerto Rico shall have the power, in his/her discretion, to organize and charter a temporary bank to be referred to as a bridge bank to assist the receiver in fulfilling its powers and duties."

32. Article I, Section 8 of the Constitution of the United States grants Congress broad power to enact legislation in several enumerated areas of national concern. In turn Article VI of the Constitution of the United States, known as the Supremacy Clause, bars all states and territories from infringing upon those rights specifically reserved to the Congress of the United States. Amongst those prerogatives that have not been delegated to the states, are those that relate to the power of Congress to establish a uniform, coherent body of provision related to bankruptcy, which have been codified in 11 U.S.C. §101, et seq. and are known as the Federal Bankruptcy Code.

33. Section 201(b) of the Moratorium Act, imposes an automatic stay enjoining, inter alia, any claimant from the recovery judgment, or enforcement of any judgment against a government entity, including the GDB. The stay also applies to stay any order, judgment, lien, right of setoff or attachment.

34. Section 201(b) of the Moratorium Act is akin to the automatic stay provided in the

Bankruptcy Code by 11 U.S.C. §362. Particularly to Sections 362(a)1, 2, 3, 4 6 and 7, as well as the stay provided under 11 U.S.C . §922.

35. In turn, Section 201(c) of the Moratorium Act is akin to the effect that violations of the automatic stay have under the Bankruptcy Code, which include that such actions are void and null, actual and punitive damages; or even contempt or other sanctions under 11 U.S.C. §105, pursuant to the Bankruptcy Court's inherent powers.
36. Section 203(b)(i) when it provides that the GDB may dispense with the compliance in whole or in part, of any requirement prescribed by otherwise applicable laws, is an impermissible and overly broad intromission with Federal Laws and the Constitution of the United States, which is the paramount law of the land.
37. Section 301(e) of the Moratorium Act is akin to the powers granted by the Bankruptcy Code in 11 U.S.C. §704, §1106 and §1107 to an appointed Trustee or Debtor in Possession.
38. Sections 301(f)(2) and 301(f)(4), which provide for the allowance or disallowance of claims is akin to the powers granted to the Bankruptcy Court in 11 U.S.C. §502 to determine the allowance or disallowance of claims.
39. Section 301(f)(3), is akin to 11 U.S.C. §923 which requires that certain notices related to the proceedings be published in newspapers.
40. The new Article 12 introduced by the Moratorium Act, which provides for the priority of expenses and unsecured claims, is akin to the provisions of 11 U.S.C. §507 which establishes the priorities in which claims are paid in Bankruptcy Proceedings.
41. Evidently the Bankruptcy Code was the basis for the Moratorium Act. Article 12(A)(2) is drafted to include "wages, salaries, or commissions, including vacation, severance, and sick leave pay". When we turn to 11 U.S.C. §507(a)(4)(A), this section in the Bankruptcy Code refers to "wages, salaries, or commissions, including vacation, severance, and sick leave pay". It is clear that no legislative effort was placed even in modifying the order in which these words were copied from the Bankruptcy Code and introduced into the Moratorium Act.

42. The new Article 13(b) introduced by the Moratorium Act, which provides for the repudiation or "dissafirmance" [sic] of contract or leases is a disingenuous attempt to include the provisions contained in 11 U.S.C. §365(d) for the rejection or assumption of executory contracts and unexpired leases.
43. Thus, taken in their entirety, it is clear that the Moratorium Act usurps the powers vested by Congress to the Bankruptcy Court and contained in the Bankruptcy Code.
44. If and when a state statute is in conflict with the Bankruptcy Code, under the Supremacy Clause of the Constitution of the United States, bankruptcy law preempts state law.
45. Section 401 of the Moratorium Act allows the GDB to organize and operate a bridge bank. In as much as this power is granted in conjunction with and in furtherance to the previously mentioned sections which infringe upon and are preempted by Federal Law, Section 401 should also be declared unconstitutional.
46. As previously mentioned, the Supreme Court's decision in *Commonwealth of Puerto Rico, et al v. Franklin California Tax-Free Trust*, supra, struck down a similar attempt by the Commonwealth of Puerto Rico to create a territorial bankruptcy code, and clearly determined that Federal Law pre-empts such attempts.
47. Under Article 14 of the Organic Act of the GDB (7 L.P.R.A. § 562) certain transfers of assets made while GDB is insolvent or anticipating its insolvency, are deemed "null and ineffective". Nevertheless, upon information and belief, GDB has transferred or is planning to transfer assets to a receiver or "bridge bank", presumably relying on the shelter of Moratorium Act provisions granting immunity or exculpating actions such as transfer of valuable assets that leave GDB devoid of funding for repayment to bondholders.
48. Article 19 of Act No. 17, enacted September 23, 1948, as amended (GDB Act), provides that "No amendment to §§ 551-568 of this title or of any other law of Puerto Rico shall impair any obligation or commitment of the bank." (7 L.P.R.A. § 567). Thus, provisions of the GDB Act, are incorporated into the obligations between Puerto Rico, the GDB, and its creditors. This included Article 6 of the GDB Act, which requires GDB to "maintain a

reserve of no less than 20% of its liabilities on accounts of deposits on demand, which can be invested in investment instruments with maturities of up to 90 days.” Article 14 provided that “all transfers of notes, bonds, bills of exchange or credits of the bank or of deposits of the credit thereof, and all assignments of mortgages, security or real property . . . or other thing of value and all payments of money to its creditors made while the Bank is insolvent, or in anticipation of insolvency . . . or with the intent of giving preference to one creditor over another shall be null and ineffective.” (7 L.P.R.A. § 562). Under Article 11, 7 L.P.R.A. § 559, of the GDB Act, if the bank became insolvent or if it fail to maintain the reserves required, it could be place into receivership, and the receivership was obligated to proceed to settle the affairs of the bank and pay its obligations and debts.

49. Any action taken under the provisions of the Moratorium Act and/or under any Executive Order or other action, that impairs creditors’ rights, without their consent, that gives preference to one creditor over another, and/or allows or condones failure to maintain the minimum reserve of 20% of liabilities for demand deposits in short-term investments, constitutes a violation of Plaintiffs’ rights under the Contract Clause of the Constitution of the United States, Article I § 10, and of the Contracts Clause in Article II, Section 7 of the Constitution of Puerto Rico.
50. Act No. 40 of May 5, 2016 (“Act 40”) further amended various provisions of the GDB Act and the initial Moratorium legislation and thereby expanded a potential GDB receiver’s power to engage in the preferential treatment of certain GDB creditors over others, which infringes Plaintiffs’ rights under the contract clauses to be treated on equal grounds with other creditors. Specifically, Act 40 amended Article 11(H) of the GDB Act, regarding the powers of a receiver, to state that “...the receivership process shall preserve and prioritize the safety, soundness and stability of depository financial institutions and their deposits.” Said legislation also amended Section 103(kk) of the Moratorium Act in order to define these depository institutions who’s safety, soundness and stability the receiver shall

preserve and prioritize as “Banks and cooperative savings and credit associations (state chartered credit unions) operating in Puerto Rico, and the Public Corporation for the Supervision and Insurance of Cooperatives of Puerto Rico, as insurer of the share and deposits of cooperative savings and credit associations (state chartered credit unions).” Lastly, Act 40 amended Section 108 of the Moratorium Act to establish that “...during this 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 recovery on their Puerto Rico bonds” and that “this includes prioritizing the safety, soundness and stability of depository financial institutions, protecting their deposits.” This blanket power conceived for a new type of receivership, even contemplating impunity for the receiver as he follows unclear and arbitrary guidelines, constitutes a major substantive modification and deprivation of Plaintiffs’ contractual rights. Moreover, the foregoing designation of priority and preferential treatment of certain creditors is clearly contrary to the representations made to Plaintiffs by GDB and/or PRPFC as well as to the intent stated in Article 14 of the GDB Act of barring “giving preference to one creditor over another”.

51. Upon information and belief, some or all of Defendants negotiated with institutional investors in bonds of GDB and/or PRPFC and discussed terms of possible accommodation and preferential transfers that were not offered to the Plaintiffs. This constitutes a preferential treatment of these institutional investors over Plaintiffs which, in turn, impaired Plaintiffs’ rights under the Contracts Clauses of the U.S. and Puerto Rico Constitutions. Article 14 of the GDB Act, 7 L.P.R.A. § 562, provided that “All transfers” of anything of value made while the Bank is insolvent, or in anticipation of its insolvency . . . with the intent of giving preference to one creditor over another, shall be null and ineffective.” 7 L.P.R.A. § 562.

52. Plaintiffs are entitled to a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.* and to Fed. R. Civ. P. 57, finding that Sections 105, 201, 203, 301, 302, and 401 of the Moratorium Act are unconstitutional because they violate the Takings and the Contract Clauses of the Constitution of the United States of America and the Constitution of Puerto Rico, as well as the Supremacy Clause of the U.S. Constitution and the issuance of an injunction enjoining Defendants from enforcing, or availing themselves of, said provisions of the Moratorium Act. Injunctive remedy is appropriate on the premises of this matter because, availing themselves of the Moratorium Act provisions questioned and impugned herein, Defendants, and others acting under their authority, may imminently proceed, if they haven't done so already, to ransack GDB and/or PRPFC to further deplete their assets, thereby reducing them to "shell" status and rendering useless and perfunctory any subsequent effort by Plaintiffs to protect their rights and their investments. Thus, the damages to which the Plaintiffs are exposed are both imminent, and irreparable.

53. Due to the unprecedented and rapid flow of developments under the Moratorium Act, PROMESA legislation and the "emergencies" declared by Governor Alejandro García Padilla, Plaintiffs are compelled to reserve the right to amend the Complaint as the Law and/or their interests may be affected.

WHEREFORE, Plaintiffs respectfully pray for judgment declaring that Sections 105, 201, 203, 301, 302 and 401 of the Moratorium Act, and any executive or other governmental action predicated on the same are null and void because they violate the Fifth and Fourteenth Amendments (takings clauses) of the Constitution of the United States and Article II, Sec. 7 of the Constitution of Puerto Rico, as well as the Contracts Clause therein and in Article I § 10 of the U.S. Constitution; because said provisions are preempted by Section 903(1) of the U.S. Bankruptcy Code and are in violation of Article 1, Section 8 of the Constitution of the United States, and because said provisions purport to prohibit, stay or penalize filing of lawsuits in any court (including

Federal Court). Plaintiffs FURTHER pray that the Court enter judgment enjoining each and all Defendants and any persons purporting to act in their stead, from acting in the enforcement of such provisions of the Moratorium Act, with such other legal and/or equitable relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 30<sup>th</sup> day of June, 2016.

s/Etienne Totti del Valle  
ETIENNE TOTTI DEL VALLE  
USDC-PR-119101

s/Juan E. Rodríguez Díaz  
JUAN E. RODRIGUEZ DIAZ  
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