

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

CENTRO DE PERIODISMO  
INVESTIGATIVO, INC.

Plaintiff,

v.

HON. RICARDO ROSSELLÓ-NEVARES,  
IN HIS CAPACITY AS GOVERNOR OF  
THE COMMONWEALTH OF PUERTO  
RICO; THE OFFICE OF THE GOVERNOR  
OF THE COMMONWEALTH OF PUERTO  
RICO

Defendants.

Case No.

**NOTICE OF REMOVAL**

**PLEASE TAKE NOTICE THAT** this Notice of Removal is being filed with respect to the pending Title III Case under the Puerto Rico Oversight Management and Economic Stability Act (“PROMESA”) captioned *In re Commonwealth of Puerto Rico*, No. 17-BK-3283 (D.P.R. May 3, 2017) (the “Puerto Rico Title III Case”). Defendants The Honorable Ricardo Rosselló-Nevarés, in his official capacity as Governor of Puerto Rico (“Governor Rosselló”), The Office of the Governor of the Commonwealth of Puerto Rico (the “Governor’s Office”), (collectively, “Defendants”) file this Notice of Removal pursuant to PROMESA Section 306(d) (48 U.S.C. § 2166(d)) and Federal Rule of Bankruptcy Procedure 9027 (made applicable by PROMESA Section 310 (48 U.S.C. § 2170)) and remove the above-captioned action from the Commonwealth of Puerto Rico Court of First Instance, San Juan Part (the “Puerto Rico

Proceeding”), to the United States District Court for the District of Puerto Rico.<sup>1</sup> The Puerto Rico Proceeding should be assigned to the Honorable Laura Taylor Swain as a matter related to the Puerto Rico Title III Case, pursuant to Local Rule 3A of the United States District Court for the District of Puerto Rico.

The Puerto Rico Proceeding seeks a wide variety of documents and communications exchanged between the Governor’s Office and other agencies of Puerto Rico on the one hand and the Financial Oversight and Management Board for Puerto Rico (the “FOMB”) on the other. These documents include, but are not limited to, financial reporting and communications, reports, updates and other information provided back and forth between the entities. At this point, litigation over the information that led to key actions of the FOMB, including certification of Fiscal Plan and the filing of the Title III petitions have no existence outside the Puerto Rico Title III Case.

Accordingly, the Court has original jurisdiction over this proceeding pursuant to PROMESA Section 306(a) (48 U.S.C. § 2166(a)) because this matter arises in and relates to the Puerto Rico Title III Case. The Court also has jurisdiction pursuant to PROMESA Section 106(a) (48 U.S.C. § 2126(a)), which requires that “any action against the Oversight Board, and any action otherwise arising out of this chapter, in whole or in part, shall be brought in a United States district court for the covered territory.” Indeed, plaintiff has filed a nearly identical mandamus action against the FOMB in this district and concedes the existence of subject matter jurisdiction on this basis. *See Centro de Periodismo Investigativo v. Fin. Oversight & Mgmt. Bd. for Puerto Rico*, No. 3:17-cv-01743, Dkt. 1, ¶ 2.1 (D.P.R. Jun. 1, 2017).

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<sup>1</sup> Defendants do not waive and expressly preserve all rights, claims, and defenses, including, without limitation, all defenses relating to jurisdiction, capacity to be sued, and the applicability of the automatic stay under 11 U.S.C. §§ 362, 922 and PROMESA Section 301(a) (48 U.S.C. § 2161(a)).

In support of this Notice of Removal, Defendants state as follows:

### **INTRODUCTION AND BACKGROUND**

1. On June 1, 2017, Plaintiff Centro de Periodismo Investigativo, Inc., initiated the above-entitled action by filing a petition for writ of mandamus seeking to compel Defendants to provide all documents, reports, letters, emails and any other information or material exchanged between Governor's Office and the FOMB. The same day, plaintiff filed a materially identical complaint against the FOMB in this district. *See Centro de Periodismo Investigativo v. Fin. Oversight & Mgmt. Bd. for Puerto Rico*, No. 3:17-cv-01743 (D.P.R. Jun. 1, 2017). Although this action is styled against the Governor in his official capacity, it is directly aimed at the government of the Commonwealth of Puerto Rico—it seeks the Commonwealth's documents, not just the Governor's. And it seeks to invade privileges that belong to the Commonwealth, not just the Governor (and potentially FOMB's lawful claims of privileges as well). The Commonwealth, obviously, is a Title III debtor, and this suit seeks materials created prior to the commencement of the Title III case, and it could have been commenced prior to the Title III case. At best, this matter is an artful attempt at dodging the automatic stay. At worst, it violates the stay. But in any event, the action's entire purpose is to obtain documents and information from the Commonwealth which will undoubtedly be sought in many of the adversary proceedings pending before the court in the Title III case. Removal of this matter is thus both justified under the law and necessary to avoid the risk of disparate or inconsistent rulings on important discovery and evidentiary issues as well as critical privilege issues.

2. In both of its mandamus lawsuits, plaintiff seeks production of financial documents exchanged between the Governor's Office and the FOMB, including, among other things cash flow reports, bank account data, revenue reports, and reports of debt obligations.

The Governor generally supports the release relevant information to the extent permitted by law, and in fact has taken many steps to promote transparency in the Commonwealth's dealing with the public and creditors. In this action, however, plaintiff also seeks every document exchanged between these parties up through May 3, 2017.

3. The expansive scope of the plaintiff's discovery requests are likely to touch upon the FOMB's determinations in approving and certifying Puerto Rico's Fiscal Plan, which served as a basis for commencement of the Puerto Rico Title III Case. Such requests for information may require this Court to determine the propriety of the release any information as it relates to determinations made by the FOMB within its sole and exclusive discretion not subject to review by any court. Thus allowing the Puerto Rico Proceeding to move forward carries the risks of inconsistent orders between this proceeding and the Puerto Rico Title III Case and the possibility of a decision rendered that is at odds with PROMESA.

4. Under PROMESA Section 104(c)(2) (48 U.S.C. § 2124(c)(2)), the FOMB has the power to receive and review any government documents "necessary to enable the Oversight Board to carry out its responsibilities under [PROMESA]."

5. Any documents provided to the FOMB in connection with or as a predicate to the FOMB issuing the restructuring certification as a prerequisite to filing the Title III petitions, and continue to enable to carry out its responsibilities as representative of the debtors in the Title III actions, will be the subject of litigation in the Puerto Rico Title III Case concerning the scope of permissible discovery from the FOMB. *See* PROMESA Sections 206(a) (restructuring certification), 304(a) (FOMB files petition) (48 U.S.C. §§ 2146(a), 2164(a).)

### GROUNDS FOR REMOVAL

6. Defendants remove this action to the District Court under PROMESA Sections 306 and 106(a) (48 U.S.C. §§ 2166, 2126(a).)

7. PROMESA Section 306 allows removal of claims over which the District Court has federal subject matter jurisdiction under PROMESA to the court in which a Title III Proceeding is pending. This Court has original jurisdiction of all cases “arising in” or “related to” cases under Title III of PROMESA. PROMESA Section 306(a)(2) (48 U.S.C. § 2166(a)(2)). Removal is appropriate here because plaintiff’s mandamus petition falls within both of those categories.

8. First, this action is indisputably “related to” the Puerto Rico Title III Case, as governed by PROMESA and the Bankruptcy Code provisions incorporated therein. “Related to” jurisdiction exists where an action “could conceivably have any effect on the estate being administered in bankruptcy.” *In re G.S.F. Corp.*, 938 F.2d 1467, 1475 (1st Cir. 1991); *Garcia-Quintero v. Commonwealth of Puerto Rico*, 111 F.3d 122 (Table) (1st Cir. 1997).

9. Plaintiff seeks an extraordinarily broad amount of information and communications about the Fiscal Plan and other PROMESA related matters between Puerto Rico and the FOMB and its staff and members, which will involve critical elements of the Puerto Rico Title III Case, including the FOMB’s certification of the Fiscal Plan and decision to file Title III petitions. Any factual inquiries made into determinations by the FOMB are statutorily mandated to be within in its “sole discretion” pursuant to PROMESA Section 201(b) and approval and certification of the proposed Fiscal Plan are not reviewable by any court pursuant to PROMESA Sections 106(e), 201(c)(3), and 201(e)(1). Discovery into such factual matters, therefore, is statutorily barred. Litigation outside of the Puerto Rico Title III Case, of which the

sole purpose is obtaining disclosure of these documents could obviously affect the Commonwealth's case, including through the prospect of inconsistent determinations with respect to the scope of discovery or disclosure obligations and privilege. As a result, this dispute falls squarely within PROMESA's "related to" jurisdiction and can be removed to the Title III court.

10. This matter also arises in Title III. Arising in proceedings generally "are those that are not based on any right expressly created by title 11 but nevertheless, would have no existence outside of the bankruptcy." *In re Middlesex Power Equip. & Marine, Inc.*, 292 F.3d 61, 68 (1st Cir. 2002) (collecting cases) (internal marks omitted); *Heck-Dance v. Cardona-Jimenez*, 102 F. App'x 171, 172 (1st Cir. 2004) ("arising in" jurisdiction over state law malpractice claim that would not exist "but for" the underlying bankruptcy case). For these purposes decisions under Title 11 of the United States Code (the "Bankruptcy Code") are directly on-point in a Title III case.<sup>2</sup> At this point, litigation over the propriety of discovery of documents concerning the FOMB's determinations, including certification of Fiscal Plan and the filing of the Title III petitions have no existence outside the Puerto Rico Title III Case.<sup>3</sup>

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<sup>2</sup> PROMESA has its own removal statute which closely mirrors the federal bankruptcy removal statute. Compare PROMESA Section 306(d) (48 U.S.C. § 2166(d)) with 28 U.S.C. § 1452(a). Accordingly, authorities concerning the scope of removal jurisdiction in the context of the Bankruptcy Code are persuasive here.

<sup>3</sup> Defendants do not concede that plaintiff's petition has merit, although it will make public appropriate information in response to the lawsuit as part of their efforts at transparency. Defendants reserve the right to challenge the petition on the merits, as well as argue that this litigation is precluded by the provisions of PROMESA that immunize the Fiscal Plan from review or oversight by a court or the Puerto Rico legislature. See, e.g., PROMESA Sections 106(e) (48 U.S.C. § 2126(e)) (divesting courts of jurisdiction to review FOMB's certification determinations), 108 (§ 2128(a)) (legislature may not exercise control, supervision, oversight or review of the FOMB or its activities), 201(c)(3) (§ 2141(c)(3)) (FOMB has sole discretion to review Fiscal Plan), 2142(c)(1) (FOMB has sole discretion to review budgets for compliance with Fiscal Plan).

11. PROMESA Section 106(a) (48 U.S.C. § 2126(a)) separately requires that “any action against the Oversight Board, *and any action otherwise arising out of this chapter*, in whole or in part, shall be brought in a United States district court for the covered territory” (emphasis added). Plaintiff filed a materially similar complaint against the FOMB in this district pursuant to this statute. *Centro de Periodismo Investigativo v. Fin. Oversight & Mgmt. Bd. for Puerto Rico*, No. 3:17-cv-01743, Dkt. 1, ¶ 2.1 (D.P.R. Jun. 1, 2017) (allegation of jurisdiction in federal complaint against the FOMB).

### **PROCEDURAL REQUIREMENTS**

12. The petition for writ of mandamus was filed on June 1, 2017 and served on Defendants on June 5, 2017. Defendants have timely filed this Notice of Removal within 30 days after receipt, through service or otherwise, of the complaint from in accordance with Fed. R. Bankr. P. 9027(a)(3).<sup>4</sup>

13. Pursuant to Fed. R. Bankr. P. 9027(b)-(c), Defendants will file a copy of this Notice of Removal with the Clerk of Court for the Court of First Instance of the Central Court of San Juan. They also will promptly serve a copy of this Notice of Removal on counsel for the plaintiff.

### **INTRADISTRICT ASSIGNMENT**

14. Venue for removal is proper in this Court as the district which has original jurisdiction over claims like this that arise in or are related to cases under PROMESA Title III. PROMESA Section 306(a)(2), (d)(1) (48 U.S.C. § 2166(a)(2), (d)(1)).

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<sup>4</sup> The Federal Rules of Bankruptcy Procedure apply to proceedings under Title III of PROMESA. PROMESA Section 310 (48 U.S.C. § 2170).

15. This proceeding should be transferred to the Honorable Laura Taylor Swain as a proceeding related to *In re Commonwealth of Puerto Rico*, No. 17-BK-3283 (D.P.R. May 3, 2017), under Local Rule 3A of the United States District Court for the District of Puerto Rico.

16. This case should also be deemed related to the pending federal action against the FOMB. *Centro de Periodismo Investigativo v. Fin. Oversight & Mgmt. Bd. for Puerto Rico*, No. 3:17-cv-01743 (D.P.R. Jun. 1, 2017).

**WHEREFORE**, Defendants hereby remove this action from the Court of First Instance of the Central Court of San Juan, to the United States District Court for the District of Puerto Rico.

Dated: June 12, 2017

Respectfully submitted:

**WANDA VAZQUEZ GARCED**  
SECRETARY OF JUSTICE

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