

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

**THE GOVERNMENT DEVELOPMENT  
BANK FOR PUERTO RICO**

**Applicant**

**PROMESA  
Title VI**

**Civil No. 18-1561 (LTS)**

**NOTICE OF INTENTION TO OBJECT TO QUALIFYING MODIFICATION**

**TO THE HONORABLE COURT:**

**COME NOW**, Creditors, Fundación Biblioteca Rafael Hernández Colón, Inc. (“FBRHC”) and Fundación Sila M. Calderón, Inc. (“FSMC”), through the undersigned counsel and hereby state and pray as follows:

**INTRODUCTION**

1. On August 10, 2018, the Government Development Bank for Puerto Rico (“GDB”) and the Puerto Rico Fiscal Agency and Financial Authority (“AAFAF”) (collectively referred hereafter as “Petitioners”) filed an application (the “Application”) pursuant to section 601(m)(1)(D) of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”) seeking approval of a Qualifying Modification (as this term is defined in the Application) for the GDB. (Dkt. No. 1).

2. Petitioners filed an Emergency Motion for Setting Deadline for Parties to File Notice of Intention to Object to the Qualifying Modification for the GDB and Parties to File Standing Objections (Dkt. No. 3), and also filed a Motion Requesting Order Approving Procedures (Dkt. No. 4), all of even date.

3. The Court granted Petitioners’ Emergency Motion for Setting Deadline for Parties to File Notice of Intention to Object to the Qualifying Modification for the GDB and Parties to

File Standing Objections and set August 20, 2018 as the deadline for parties to file notice of intention to object to the qualifying plan and August 30, 2018 as the deadline to file Standing Objections. (Dkt. No. 7).

4. In compliance with the Court's Order, appearing creditors, FBRHC and FSMC provide notice of their intention to object to the Qualifying Modification filed by Petitioners.

#### **FACTUAL AND LEGAL BACKGROUND**

5. Act No. 290 of September 1, 2000 ("Act No. 290"), 3 L.P.R.A. §§ 1040 *et seq.*, provides for the creation of a Special Fund to be funded with, among others, the assignment commencing on fiscal year 2001-2002 of 1% of the taxes collected on tobacco products up to a maximum annual amount of \$1,000,000.00 to designated depositories of public records, materials and property related to Former First Ladies and Former Governors of the Commonwealth of Puerto Rico (the "Designated Depositories").

6. Act No. 290 provides for the assignments to be made until the Special Fund reaches and maintains a balance of \$6,000,000.00. 3 L.P.R.A. § 1040c. The Special Fund, under the provisions of Act No. 290, is held in the GDB and administered by the President of the GDB.

7. Act No. 290 requires the Designated Depositories to prepare annual inventories of the public property in its possession and to file it with the General Archives and the Puerto Rico Legislature. 3 L.P.R.A. § 1040b.

8. The distributions of the Special Fund to the Designated Depositories is made on a matching basis. The Special Fund assigns sixty six percent (66%) for every thirty three percent (33%) that is received by the Designated Depositories from private donations in money or in kind during the fiscal year.

9. The maximum amount to be distributed by the Special Fund is the balance of the Special Fund divided by the number of Designated Depositories. Each Designated Depository is

subject to annual audits of its finances, work and results consistent with the purposes of Act No. 290.

10. Act No. 290 states in mandatory language that the disbursements from the Special Fund “shall be made” (“se harán”) to the qualifying Designated Depositories. 3 L.P.R.A. § 1040e. See also, 11 U.S.C. § 101(53); *Kelin v. Civale & Trovato, Inc. (In re Lionel Corp.)*, 29 F. 3d 88, 94 (2d Cir. 1994) (cited with approval in *In re: The Financial Oversight and Management Board for Puerto Rico*, \_\_\_ F. 3d \_\_\_ (1<sup>st</sup> Cir. 2018), 2018 WL 3750930 (August 8, 2018)).

11. FBRHC is a non-profit corporation organized on June 18, 1992, under the laws of the Commonwealth of Puerto Rico located in Calle Mayor #37, Edificio Isabel II, Ponce, Puerto Rico 00730-3726. FBRHC was organized, among others, for the purposes of serving as custodian of the records of the three (3) government administrations of Former Governor of Puerto Rico, Hon. Rafael Hernández Colón.

12. On December 10, 1992, the FBRHC was designated by the General Archives of Puerto Rico (“Archivo General de Puerto Rico”) as a depository of public records and acting under this grant of authority, the FBRHC collected, organized, catalogued and preserved public documents, property and relics for the use of the general public, academia and students. The FBRHC currently serves as custodian of more than 4 million public records and property owned by the Government of Puerto Rico.

13. The FSMC is a non-profit corporation organized on October 13, 2004, under the laws of the Commonwealth of Puerto Rico located in #1012 Calle González, Urbanización Santa Rita, Río Piedras, P.R. 00925. FSMC was organized, among others, for the purpose of publishing and promoting the gubernatorial and civic work of Former Governor Sila M. Calderón and to compile and publish books and documents relative such work, serving as custodian of records of the government administration of Former Governor Hon. Sila M. Calderón.

14. FBRHC and FSMC are Designated Depositories under Act. No. 290.

15. On December 20, 2004, FSMC was designated by the Public Archives of the Commonwealth of Puerto Rico as a depository of public records and acting under this grant of authority, the FSMC collected, organized, catalogued, and preserved public documents, property, and relics for the use of the general public, academia and students. The FSMC currently serves as custodian of more than 24,000 files, 22,000 audiovisual materials, 40,000 paper photographs, 5,000 digital photographs and 1,075 sets of construction drawings, all of which constitute public records and property owned by the Government of Puerto Rico.

16. Pursuant to the provisions of Act No. 290, the FBRHC and FSMC applied for and received their corresponding share of the Special Fund every year until fiscal year 2014.

17. Notwithstanding the above, FBRHC and FSMC have continued to comply with all the requirements and conditions as Designated Depositories and have continued to serve as custodians, protecting and making available to the public the government archives, records and property in their possession.

18. On February 18, 2016, the GDB certified that the FBRHC had received qualified contributions that had not been matched by the Special Fund from previous years totaling \$3,339,579.37.

19. As of October 2017, the FSMC had received the total amount of \$2,423,719.83 in qualifying contributions that have not been matched by the Special Fund.

20. Neither the FBRHC nor the FSMC have loans with the GDB.

21. Neither FBRHC nor FSMC have received disbursements from the Special Fund since fiscal year 2014.

### **BASIS FOR OBJECTION**

22. FBRHC and FSMC have the intention of filing objections to the Qualifying Modification. As of the time the Application was filed in this case, it is believed that the Special Fund held by the GDB and administered by its President had a balance of \$1,577,867.00, corresponding to transfers made into the Special Fund by the Department of Treasury of Puerto Rico prior to and until fiscal year 2015-2016.

23. FBRHC and FSMC are beneficiaries of the Special Fund held in the GDB and are creditors of the GDB. The Special Fund is neither property of the GDB nor of the Commonwealth of Puerto Rico.

24. The tobacco tax as provided by Act. No. 290 must be distributed to the qualifying Designated Depositories.

25. The GDB has refused to distribute the balance of the Special Fund to the qualifying Designated Depositories despite having received the applications from the FBRHC and FSMC identifying the cash and in-kind contributions received and having received certifications from the GDB of the balance of qualifying contributions subject to matching with the Special Fund.

26. There are various reasons that support the FBRHC and FSMC's objections to the Qualifying Modification. First, the GDB failed to comply with Title VI's information and notice requirements as no communication has been made to the FBRHC and FSMC regarding the Qualifying Modification or the RSA.

27. Previous attempts made by the FBRHC to the GDB seeking information regarding the status of the Special Fund were left unattended by the GDB. Furthermore, no notice was provided to these two entities and no Solicitation Package (as this term is defined in the Application) containing the Solicitation Statement, including the Preliminary Offering Memorandum and corresponding Ballots has been distributed or notified to FBRHC and FSMC,

as holders of claims against the GDB. Hence, the requirements of section 601 of PROMESA have not been met and the Application should be denied.

28. The process followed by AAFAF and GDB to seek approval of the RSA and present their Application failed to ensure that all parties with a stake in GDB's restructuring have an opportunity to be heard in connection with the Title VI efforts.

29. Also, FBRHC and FSMC are private entities entitled to deposits held by the GDB in the Special Fund. The Qualifying Modification posits that "the claims of GDB's bondholders, municipal and private depositors, and certain other contingent creditors will be resolved by exchanging such claims for new bonds issued by a governmental entity created by the GDB Restructuring Act- the GDB Debt Recovery Authority (the "**Recovery Authority**")". Yet, it ignores the claims of the FBRHC and FSMC, as they are not included in the list of private depositors of the GDB.

30. The private obligations of the GDB with the FBRHC and FSMC are ignored in the Qualifying Modification. The claims of the FBRHC and FSMC will not be resolved through the Qualifying Modification.

31. Moreover, the Qualifying Modification intends to use the deposits held in the Special Fund to satisfy GDB obligations to other creditors, while at the same time, ignoring the entitlement of the FBRHC and FSMC to the Special Fund.

32. Finally, the FBRHC and FSMC, as well as any other Designated Depository, constitute a distinct and separate class of claim holders that have been ignored by the GDB in the Qualifying Modification.

**RESERVATION OF RIGHTS**

33. Nothing contained in this Notice constitutes an admission of the validity of the Qualifying Modification or a waiver of FBRHC and FSMC's rights.

34. The FBRHC and FSMC expressly reserve the right to raise objections not described herein including but not limited to takings and illegal discrimination of equally situated creditors.

35. The FBRHC and FSMC reserve the right to amend this notice.

## CONCLUSION

For the reasons stated in this Notice, FBRHC and FSMC provide notice of their intention of filing objections to the Qualifying Modification and request that the Court deny the Qualifying Modification as it does not satisfy the applicable requirements of PROMESA section 601.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 20<sup>h</sup> day of August, 2018.

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**CERTIFICATE OF SERVICE**

I certify that on August 20, 2018 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will automatically send notice of such filing to all attorneys of record. I also certify that, in compliance with the Court's Order, on August 20, 2018 service of this Notice was provided before 5:00 p.m. (EST) by personal delivery and e-mail to: (a) GDB, Minillas Government Center, Avenida de Diego, Parada 22, San Juan, PR 00907 (Attn.: Belén Fornaris Alfaro) (Belen.Fornaris@bgf.pr.gov); (b) AAFAF, Minillas Government Center, Avenida de Diego, Parada 22, San Juan, PR 00907 (Attn.: Mohammad Yassin Mahmud)(Mohammad.Yassin@aafaf.pr.gov); and (c) O'Melveny & Myers, LLP, Times Square Tower, Seven Times Square, New York, NY 10036 (Attn.: John J. Rapisardi Esq. (jrapisardi@omm.com), Suzanne Uhland, Esq. (suhland@omm.com), and Peter Friedman, Esq.(pfriedman@omm.com)).

In San Juan, Puerto Rico, this 20<sup>th</sup> day of August, 2018.

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