

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

MUNICIPALITY OF CAGUAS, represented
herein by its Mayor, the Honorable William E.
Miranda Torres,

Plaintiff,

v.

GOVERNMENT DEVELOPMENT BANK
FOR PUERTO RICO, PUERTO RICO
FISCAL AGENCY & FINANCIAL
ADVISORY AUTHORITY, PUERTO RICO
MUNICIPAL REVENUE COLLECTION
CENTER, CHRISTIAN SOBRINO VEGA, in
his official capacity as President of the
Government Development Bank for Puerto
Rico, GERARDO PORTELA FRANCO, in his
official capacity as Executive Director of the
Puerto Rico Fiscal Agency & Financial
Advisory Authority, CARMEN A. VEGA
FOURNIER, in her capacity as Executive
Director of the Puerto Rico Municipal Revenue
Collection Center, and JOHN DOE 1 to 12.

Defendants.

Civil No. 2017 -cv-

Declaratory Judgment, Equitable Relief
and Injunction

TRIAL BY JURY REQUESTED

COMPLAINT

TO THE HONORABLE COURT:

NOW COMES, the Municipality of Caguas (hereinafter, the “Plaintiff” or the “Municipality”), through the undersigned attorneys, and most respectfully states, alleges and prays as follows:

I. PRELIMINARY STATEMENT

1. Plaintiff files this action, *inter alia*, seeking that this Court enter declaratory and injunctive, as well as other equitable relief, prohibiting the Government Development Bank for Puerto Rico (“GDB”) and the Puerto Rico Fiscal Agency and Financial Advisory Authority

(“FAFAA”) from continuing to proceed with a scheme known to be: (a) in violation of the Puerto Rico Oversight, Management, and Economic Stability Act, Public Law No. 114-187 (“PROMESA”), (b) contrary to other applicable law, and/or (c) unconstitutional.

2. Each of the GDB and FAFAA are appallingly engaged in what is best colloquially described as “robbing Peter to pay Paul.” To benefit a select group of creditors of the GDB, at the expense of the Municipality, its constituents and other creditors, the GDB and FAFAA are pursuing an unlawful arrangement, purportedly under the color of law, compelling the Municipality to not only receive the funds it holds at the GDB at a discount, but despite such loss, requiring that the Municipality continue repaying its municipal loans owing to the GDB in full (other than with respect to undisbursed loan proceeds), and in some cases, perplexingly also requiring the Municipality to make loan repayments it has already made under such loans, as if they had not been previously made.

3. On July 14, 2017, the Financial Oversight and Management Board for Puerto Rico constituted under PROMESA (the “Oversight Board”) conditionally approved the use by the GDB of Title VI of PROMESA to restructure a portion of its debts, thus granting the affected parties a cause of action allowing them to challenge an “unlawful application” of Title VI. *See* 48 U.S.C. § 2231(n). Because the GDB and FAFAA are utilizing Title VI of PROMESA as a pretext to achieve certain results that are contrary to applicable law and/or unconstitutional, this Court must grant the relief herein requested.

4. The lynchpin of this unlawful use of Title VI of PROMESA is the GDB RSA (as defined below). Under the guise of a “Qualifying Modification” pursuant to Title VI, the agreement procures to divest GDB of its only performing assets (i.e., municipal loans) by transferring them to a special purpose vehicle for the benefit of a select group of creditors. By

doing so, it strips the Municipality of its contractual and legal rights as debtor under its municipal loans owing to the GDB, and with respect to loan payments previously made to, and funds held at, the GDB.

5. In particular, the GDB and FAFAA are utilizing Title VI of PROMESA for the following unlawful purposes: (a) to *de facto* amend Article 20 of the Puerto Rico Municipal Financing Act of 1996¹ by *motu proprio* modifying the rights of the Municipality, and the obligations of the GDB, with respect to funds transferred to the statutory municipal debt redemption fund (the “Municipal Debt Redemption Fund”) created and governed by such Act; (b) to *de facto* amend Articles 1123, 1126, 1149 and 1155, among others, of the Puerto Rico Civil Code² by *motu proprio* exempting the GDB, *inter alia*, from one or more of the statutory requirements governing application of payments and the set-off of mutual obligations as it pertains to the Municipality; and (c) infringing on rights of the Municipality that, under the present circumstances, are constitutionally protected because, *inter alia*, they: (1) do not involve substantive matters of internal political organization and (2) are predicated on property held by the Municipality for a private purpose by virtue of legal rights that may not be simply abolished by the Legislative Assembly of the Commonwealth of Puerto Rico (the “Commonwealth”), and certainly cannot be infringed upon at the whim of the GDB and FAFAA.

6. Plaintiff’s claims relying on PROMESA are also premised on the prohibitions and preemptions found in 48 U.S. Code §§ 2163 and 2195 against: (a) an involuntary “method of composition of indebtedness” and/or “unlawful executive orders that alter, amend, or modify rights of holders of any debt of the territory or territorial instrumentality, or that divert funds

¹ See Municipal Financing Act of 1996, Act No. 64 of July 3, 1996, as amended from time to time (the “Municipal Financing Act”).

² See 31 L.P.R.A. §§ 3173, 3176, 3222 and 3227.

from one territorial instrumentality to another or to the territory” and (b) depriving any “territorial instrumentality of property in violation of applicable law assuring the transfer of such property to such territorial instrumentality for the benefit of its creditors,” respectively.

7. Plaintiff's constitutional claims under the Fifth and/or Fourteenth Amendments of the Constitution of the United States of America (the “U.S. Constitution”) are premised on the Municipality's constitutionally protected rights against the “taking of private property” without just compensation, on both procedural and substantive due process grounds, inasmuch the Municipality has not been given, and will not be afforded, an impartial hearing in which to contest the unlawful actions by the GDB and FAFAA, and given that such actions are arbitrary, capricious, and premised on trivial reasons. These constitutional claims not only arise directly from the U.S. Constitution, but Plaintiff also has a cause of action under 42 U.S.C. § 1983.

8. Additionally, Plaintiff files this action seeking that this Court enter declaratory and injunctive, as well as other equitable relief, with respect to the *ultra vires* actions being carried out by Defendant Portela Franco in his official capacity. As Executive Director of FAFAA, Defendant Portela Franco has unlawfully claimed for himself all the power and authority granted to FAFAA by the Amended FAFAA Enabling Act (as defined below), without the oversight and supervision specifically required thereby in the form of a Board of Directors comprised of five (5) members, which Board has never been appointed. By purportedly utilizing the authority and powers granted to FAFAA under the Amended FAFAA Enabling Act, without the required Board of Directors appointed within forty-five (45) days since its enactment, Defendant Portela Franco's actions have been, and continue to be, unlawful, invalid, null and void.

II. JURISDICTION AND VENUE

9. This is an action for declaratory, injunctive and equitable relief arising under the Fifth and/or Fourteenth Amendments of the U.S. Constitution, 42 U.S.C. § 1983, 48 U.S.C. §§ 2163, 2195 and 2231, and 28 U.S.C. §§ 2201 and 2202, to determine a substantial and actual controversy between the parties, which controversy is justiciable.

10. As this action arises under the Fifth and/or Fourteenth Amendments of the U.S. Constitution, 42 U.S.C. § 1983, and 48 U.S.C. §§ 2163, 2195 and 2231, this Court has jurisdiction to entertain these claims pursuant to 28 U.S.C. §§ 1331, 2201 and 2202, and Fed. R. Civ. P. 57.

11. This Court has supplemental jurisdiction over the causes of action asserted under the Constitution and Laws of the Commonwealth under 28 U.S.C. § 1367 because they form a part of the same case or controversy under Article III of the U.S. Constitution.

12. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

III. THE PARTIES

Plaintiff

13. **Municipality of Caguas**- Founded on or about January 1, 1775, the Municipality currently has an estimated amount of 137,032 residents and is believed to be the fifth (5th) largest municipality of the Commonwealth, when measured by the number of residents. For purposes of local governance, it has its own executive (a mayor) and legislature (a municipal assembly). Under the Constitution of the Commonwealth (the "P.R. Constitution"), it enjoys a special status independent of the Legislative Assembly constituted under, and the executive power vested in the Governor pursuant to, Articles III and IV of the P.R. Constitution. By way of example, while the P.R. Constitution provides that the Legislative Assembly has the

authority to determine the “organization and functions” of the Commonwealth’s municipalities “and to authorize them to develop programs for the general welfare and to create any agencies necessary for that purpose,” a law abolishing or consolidating municipalities passed by the Legislative Assembly shall *not* take effect “until ratified in a referendum by a majority of the qualified electors voting in said referendum in each of the municipalities to be abolished or consolidated.” *See* Article VI, Section 1 of the P.R. Constitution. The Municipality has the capacity to sue and be sued, and has a strong governmental interest in protecting the health, safety and general welfare of its constituents, the vested property rights of its public employees, and has the obligation to ensure that municipal taxes paid by such constituents covered into the private coffers of the Municipality are applied in accordance with applicable law.

Defendants

14. **Government Development Bank for Puerto Rico-** is a public corporation and government instrumentality of the Commonwealth organized and existing pursuant to Act No. 252 of May 13, 1942, as amended from time to time (the “GDB Enabling Act”). A self-admitted insolvent entity, traditionally the GDB had served the following functions: (a) fiscal agent, paying agent and financial advisor to the Commonwealth, its instrumentalities, public corporations and municipalities; (b) providing interim and long-term financing to the Commonwealth, its instrumentalities, public corporations and municipalities, and to private parties for economic development, and (c) acting as depository or trustee of funds for the Commonwealth, its instrumentalities, public corporations and municipalities. As of the date hereof, the GDB is currently incapable and/or lacks the legal authority to perform any of these functions, and its activities are solely limited to the orderly wind-up of its operations. Pursuant

to the GDB Enabling Act, the GDB has the capacity to sue and be sued.

15. **Puerto Rico Fiscal Agency and Financial Advisory Authority**- is a public corporation and government instrumentality of the Commonwealth organized and existing, in its current form, pursuant to Act No. 2 of January 18, 2017, as amended from time to time (the “Amended FAFAA Enabling Act”). Initially conceived to replace GDB as fiscal agent and financial advisor to the Commonwealth, its instrumentalities, public corporations and municipalities pursuant to Act No. 21 of April 6, 2016, the Amended FAFAA Enabling Act expanded the functions and powers of FAFAA to include: (a) the necessary and desirable powers to implement a “fiscal plan” certified by the Oversight Board and (b) sole authority to negotiate and enter into agreements with “creditors” of the Commonwealth or any of its instrumentalities. *See* Article V of the Amended FAFAA Enabling Act. Accordingly, FAFAA not only currently acts as both fiscal agent and financial advisor of the Municipality, but at the same time purports to represent simultaneously the interests of the GDB vis-à-vis its creditors, one of which is the Municipality. Pursuant to the Amended FAFAA Enabling Act, FAFAA has the capacity to sue and be sued.³

16. **Puerto Rico Municipal Revenue Collection Center**- is a public corporation and government instrumentality of the Commonwealth organized and existing pursuant to Act No. 80 of August 30, 1991, as amended from time to time (the “CRIM Enabling Act”). Pursuant to the CRIM Enabling Act, the Puerto Rico Municipal Revenue Collection Center (the “CRIM”) acts, *inter alia*, as collection agent of municipal property taxes on behalf of the

³ To the extent that FAFAA (including Defendant Portela Franco) claims to be covered by the automatic stay relating to the filing by the Commonwealth of a petition under Title III of PROMESA, such automatic stay is inapplicable to the claims for relief being herein pursued, which are premised on the unlawful actions of FAFAA in its capacity as fiscal agent and financial advisor of the GDB and the municipalities, and not of the Commonwealth. Moreover, this Complaint seeks the vindication of certain constitutional rights, also exempting it from such automatic stay to the extent held to apply to FAFAA acting in such capacity.

Puerto Rico municipalities. Under Puerto Rico law, the CRIM is deemed to be a “municipal entity,” which permits it to collect property taxes on behalf of such municipalities, and further results in the proceeds of such collections *never* being deemed part of the Commonwealth’s “Treasury” organized and established by the P.R. Constitution. *See* Article VI, Section 2 of the P.R. Constitution (granting the Commonwealth the power to impose and collect taxes and to *authorize* municipalities to impose and collect *their own* taxes). Pursuant to the CRIM Enabling Act, the CRIM has the capacity to sue and be sued.

17. **Christian Sobrino Vega**- upon information and belief, is the current duly appointed President of the GDB who, subject to the ultimate authority of the GDB’s Board of Directors, not only oversees and directs the day-to-day operations of the GDB, but also actively directed and participated in the preparation of, and is responsible for implementing, subject to FAFAA’s ultimate authority, the GDB’s fiscal plan certified by the Oversight Board pursuant to PROMESA (the “GDB Fiscal Plan”). Again, upon information and belief, Defendant Sobrino Vega also actively directed, participated and negotiated the Restructuring Support Agreement, dated as of May 15, 2017, between the GDB and certain noteholders identified therein (the “GDB RSA”). The GDB RSA is an essential aspect of the unlawful scheme being pursued jointly by the GDB and FAFAA. Defendant Sobrino Vega is being sued in his official capacity.

18. **Gerardo Portela Franco**- upon information and belief, is the current duly appointed Executive Director of FAFAA who not only oversees and directs the day-to-day operations of FAFAA, but also actively directed and participated in the preparation of, and is responsible for implementing, the GDB Fiscal Plan. Again, upon information and belief, Defendant Portela Franco also actively directed, participated and negotiated the GDB RSA.

While the Amended FAFAA Enabling Act requires the appointment of a board of directors of five (5) members not later than forty-five (45) days from its enactment and such period has elapsed without the enforcement of said statutory mandate, Defendant Portela Franco, upon information and belief, continues to act as sole director of FAFAA. Defendant Portela Franco is being sued in his official capacity.

19. **Carmen A. Vega Fournier-** upon information and belief, is the current duly appointed Executive Director of the CRIM who, subject to the ultimate authority of the CRIM's Board of Directors, oversees and directs the day-to-day operations of the CRIM. Defendant Vega Fournier is being sued in her official capacity.

20. **John Doe 1 to 12-** Defendants John Doe 1 to 6 are successors to any of the Defendants listed above in paragraphs 14 to 19 above, in whole or in part, and Defendants John Doe 7 to 12 are currently unknown governmental officials of the Commonwealth, with the authority to assist or further implement the unlawful arrangement being pursued jointly by FAFAA and GDB. Defendants John Doe 1 to 12 are being sued, to the extent applicable, in their official capacities.

IV. ALLEGATIONS RELEVANT TO ALL CLAIMS FOR RELIEF

21. The GDB and FAFAA have agreed under the GDB RSA to perform a series of unlawful actions, purportedly employing the authority and powers granted by the Amended FAFAA Enabling Act empowering FAFAA to implement and enforce the terms and conditions of the GDB Fiscal Plan. As previously alleged, the lynchpin of this unlawful scheme is the agreement by the GDB, under the guise of a "Qualifying Modification" pursuant to Title VI of PROMESA, to divest itself of its only performing assets (i.e., the municipal loans) by transferring them to a special purpose vehicle for the benefit of a select group of its creditors.

By doing so, it strips the Municipality of its contractual and legal rights as debtor under its municipal loans with the GDB, and with respect to loan payments previously made to, and funds held at, the GDB.

22. With the GDB simultaneously: (a) acting as fiscal agent, paying agent and financial advisor to the Commonwealth, its instrumentalities, public corporations and municipalities; (b) providing interim and long-term financing to the Commonwealth, its instrumentalities, public corporations and municipalities, and to private parties for economic development; and (c) acting as depository or trustee of funds for the Commonwealth, its instrumentalities, public corporations and municipalities, the Municipality amassed a significant amount of debt currently owed to the GDB and other creditors. As of June 30, 2017, the Municipality has approximately \$230,332,846.88 in aggregate principal amount of debt outstanding (“Aggregate Caguas Debt Outstanding”), of which the principal amount of \$81,122,650 is owed to the insolvent GDB. In fact, under the fiscal supervision and financial advisement of the GDB, municipalities in the aggregate incurred in levels of debt that will likely prove to be unsustainable.⁴

23. The Municipality was advised and authorized by the GDB to incur in the Aggregate Caguas Debt Outstanding utilizing the three primary sources of repayment available under the Municipal Financing Act, to wit: (a) the property tax known as the special additional property tax (the “Special Additional Property Tax” or “CAE” by its Spanish acronym); (b) the Commonwealth’s sales and use tax dedicated to municipalities (the “CW Municipal SUT”); and (c) the general operating tax and other revenues, including the municipal gross income tax, basic property tax and municipal sales and use tax (“General Municipal Revenues”), in each

⁴ See e.g. Act. No. 7 of March 9, 2009, as amended from time to time (increasing appraisal values of real property ten-fold solely with the intent of increasing the borrowing capacity of Puerto Rico’s municipalities).

case belonging and/or corresponding to the Municipality.

24. Loans disbursed by the GDB to the Municipality, and still owed by the Municipality to the insolvent GDB, are commonly identified in the GDB's books by reference to the primary source of repayment for such loans, such that municipal loans whose primary source of repayment is the Special Additional Property Tax are commonly referred to as "CAE Loans;" loans whose primary source of repayment is the CW Municipal SUT are commonly referred to as "Muni SUT Loans;" and loans whose primary source of repayment are General Municipal Revenues are commonly referred to as "Muni Operational Loans" (collectively, "Municipal Loans"). As of June 30, 2017, the Municipality has the following outstanding principal balances owing to the GDB, identified by their primary source of repayment:

<u>Type</u>	<u>Outstanding Principal</u>
CAE Loans:	\$33,222,650
Muni SUT Loans:	\$20,117,000
Muni Operational Loans:	\$27,783,000

25. In addition to acting as fiscal agent and financial advisor, and providing interim and long-term financing, to the Municipality, the GDB also acted as paying agent, depository and/or trustee of its funds. Somewhat like the identification method used by the GDB for municipal loans in its books, municipal funds transferred to the GDB are identified in the GDB's books by their source. Accordingly, funds transferred by or on behalf of municipalities to the GDB are commonly referred to as follows: funds whose source is the Special Additional Property Tax, as "CAE Funds;" funds whose source is the CW Municipal SUT, as "Muni SUT Funds;" funds whose source is General Municipal Revenues, as "Muni Operational Deposits;"

and finally, funds whose source is loan proceeds pending disbursement for use by the municipalities, as “Escrowed Funds” (collectively, the “GDB Municipal Funds”).

26. As of June 30, 2017, the Municipality has the following GDB Municipal Funds credited to its favor in the books of the GDB, identified by their respective source:

<u>Type</u>	<u>Credited Amount</u>
CAE Funds:	\$16,547,681.73
Muni SUT Funds:	\$415,089.42
Muni Operational Deposits:	\$2,177,039.94
Escrowed Funds:	\$5,351,795.91
Total:	\$24,491,607.00

It is important to underscore that all the Municipality’s CAE Funds with the GDB constitute credits to the Municipal Debt Redemption Fund (as defined below) in favor of the Municipality.⁵

27. On or about May 15, 2017, the Municipality -through a public announcement- was surprised to learn not only of the existence of the GDB RSA, but also of its terms and conditions that purport to significantly modify, amend and/or alter the contractual and legal rights of the Municipality. Despite the dramatic impact that the GDB RSA will have on the Municipality’s finances, acting essentially as self-appointed viceroys of the Municipality, the GDB and FAFAA never engaged the Municipality in any good-faith negotiations prior to executing the GDB RSA, and in fact, did not even grant the Municipality the opportunity to comment on the GDB Fiscal Plan, first unveiled to the public a few minutes prior to the

⁵ The current amount of CAE Funds that the Municipality has credited to the Municipal Debt Redemption Fund is approximately equal to the annual debt service of at least the next four to five years of its CAE Loans owing to the GDB.

Oversight Board certification under PROMESA. The Municipality never had the opportunity to be heard at a meaningful time and in a meaningful manner.

28. On June 12, 2017, having determined that the terms and conditions of the GDB were not in the best interests of the Municipality, and the constituents whose interests it represents, the Municipality informed the GDB that it rejected the terms and conditions of the GDB RSA, and instructed the GDB to apply its GDB Municipal Funds to its CAE Loans owing to the GDB in the *direct order of maturity* of the next installments due (the “Notice of Application of Funds”). Notwithstanding that the Municipality rejected the GDB RSA, and gave such written instructions, the GDB and FAFAA continue to proceed with the implementation of the GDB RSA, as if the Municipality had not rejected it, and in a manner contrary to applicable law.

29. Because of the unlawful arrangement being pursued jointly by the GDB and FAFAA to benefit a select group of creditors of the GDB, purportedly under the color of law, the Municipality may be: (a) unable to pay certain private sector creditors on a timely basis, (b) required to dismiss public employees with vested property rights, and (c) may be unable to continue to provide the necessary level of essential public services, all to the detriment of the health, safety and general welfare of its constituents. Unless the Defendants are enjoined as requested herein, the Municipality and its constituents will suffer irreparable harm.

30. As noted above, the Municipality has a strong governmental interest in protecting the health, safety and general welfare of its constituents, the vested property rights of its public employees, and has the obligation to ensure that municipal taxes paid by such constituents covered into the private coffers of the Municipality are applied in accordance with applicable law.

V. ADDITIONAL ALLEGATIONS RELEVANT TO CAE FUNDS

31. Despite the specific instructions by the Municipality forming part of the Notice of Application of Funds, upon information and belief, the GDB did not make on July 1, 2017 the requested internal book-entries to reflect the repayment of the installments then due of the Municipality's CAE Loans owing to the GDB. Remarkably, upon information and belief, despite the Municipality having a balance of CAE Funds credited to the Municipal Debt Redemption Fund well in excess of the statutory twelve (12) month prepayment requirement for all its CAE Loans at the GDB, rather than perform the requested internal book-entries, the GDB, at the direction and/or with the consent of FAFAA, violated Article 20 of the Municipal Financing Act and has "taken" as its own the CAE Funds previously credited to the Municipal Debt Redemption Fund, with the unlawful intention of only returning a portion of the funds to the Municipality.

32. The Municipality's CAE Funds with the GDB do not constitute traditional banking "deposits," or to borrow a term from PROMESA- "other financial indebtedness for borrowed money"⁶ -but rather were transferred into the Municipal Debt Redemption Fund as set forth in the Municipal Financing Act. Accordingly, all the CAE Funds transferred to the GDB and booked in the Municipal Debt Redemption Fund, as it pertains to the Municipality and its creditors, *constitute a prepayment* of the CAE Loans in the *direct order of maturity* of the next installments due on the Municipality's CAE Loans.

33. The Municipality's creditors under CAE Loans, including, without limitation, the GDB, knowingly accepted the credit risk associated with the Municipal Debt Redemption Fund being held at the GDB. In point, as a matter of law, the Municipality is not liable to its

⁶ See 48 USC § 2104(2) (...the term "Bond" means a bond, loan, letter of credit, other borrowing title, obligation of insurance *or other financial indebtedness for borrower money*...) (emphasis ours).

creditors for missed payments on installments due on its CAE Loans, if the cause of failure to pay is the GDB's failure to repay such loans with funds deposited in the Municipal Debt Redemption Fund. Article 20 of the Municipal Financing Act reads in the pertinent part as follows:

“(c) In general terms, the first lien shall operate in the following manner: The Center shall collect the proceeds of the special surtax and any other taxes on the value of the property levied by the municipality. ***The Center shall deposit the proceeds of the special surtax in the account of the municipality in the Redemption Fund. If the Government Bank determines that the deposits in said account in the Redemption Fund are not sufficient to cover any payment of the principal or interest on any outstanding municipal general obligation bonds or notes or any payment of the interest on any outstanding note in advance of municipal general obligation bonds, the Government Bank shall notify the Center and the Center shall deposit in said account an amount proceeding from other income subject to the first lien established by this section that, together with the deposits in said fund, shall be sufficient to make said payment.*** The Government Bank, in consultation with the Center, shall establish, through regulations, the specific procedure for the operating of this first lien.

(d) ***The Government Bank, as trustee of the Redemption Fund, shall pay the principal and interest on municipal general obligation bonds or notes and the interest on all the notes in advance of the municipal general obligation bonds of the municipality from the resources deposited in the account of the municipality in the Redemption Fund.*** The Government Bank shall make those payments on behalf of the municipality and through its paying agents designated on said bonds or notes.

(e) ***Once the reserve or the portion equivalent to the payment for the subsequent twelve (12) months of principal and interest of the loan is assured,*** and once the payment of the municipal public debt is guaranteed, as determined by the Government Development Bank, in the event there is a surplus in the Municipal Public Debt Redemption Fund, ***the Government Development Bank shall be bound to place said surplus at the disposal of the municipality.*** The surplus *can be requested once during each fiscal year.*” See 21 L.P.R.A. § 6016 (emphasis ours).

Therefore, the Municipality is deemed to have complied with its payment obligations under the Municipal Financing Act so long as the CRIM, after deducting loan payments that should have been made by the GDB, has transferred sufficient proceeds of the Special Additional Property Tax to the Municipal Debt Redemption Fund. Said proceeds must be equal to the subsequent twelve (12) months of principal and interest on the Municipality's CAE Loans, irrespective of whether the GDB, as fiduciary of the Municipal Debt Redemption Fund, makes the required payments.

34. Furthermore, as is the case with other municipalities, the Municipality, as permitted by applicable law, increased its borrowing capacity beyond the annual debt service coverage provided by the estimated annual proceeds of its Special Additional Property Tax by utilizing excess CAE Funds credited to the Municipal Debt Redemption Fund as the source of repayment. Accordingly, the Municipality's prospective annual collections of its Special Additional Property Tax may by themselves be insufficient to cover the annual debt service of all its CAE Loans, because the source of repayment for a portion of such loans are funds that have already been credited to the Municipal Debt Redemption Fund.

35. Considering the GDB's increasing financial difficulties, and recognizing the credit risk associated with the Municipal Debt Redemption Fund being held at the GDB, commencing on November 2, 2015, an intervening trust mechanism between the CRIM and the Municipal Debt Redemption Fund held at GDB was constituted pursuant to Deed Number Four (4) of even date before the Notary Public Roberto C. Rodriquez Poventud (the "Special Additional Property Tax Trust"). The purpose of this intervening trust is, *inter alia*, to eliminate/mitigate GDB credit risk with respect to CAE Funds by avoiding unnecessary transfers to the now insolvent GDB, other than as required for the repayment of CAE Loans held by the GDB. In particular, the Special Additional Property Tax Trust provides a mechanism such that: (1) private sector lenders and bondholders receive the proceeds of the Special Additional Property Tax necessary for repayment of their CAE Loans directly from the CRIM and (2) municipalities have "excess" to CAE Funds available to them at the end of each fiscal year.⁷ Nevertheless, the Special Additional Property Tax Trust did not -nor did it purport

⁷ Upon information and belief, during fiscal year 2017, the Special Additional Property Tax Trust was expressly clarified to reiterate that so long as a municipality complies with the statutory twelve (12) month prepayment requirement for its CAE Loans with the GDB, no additional proceeds of the Special Additional Property Tax are to be transferred to the GDB.

to- modify, amend and/or alter the GDB's continuing statutory obligations with respect to CAE Funds previously credited to the Municipal Debt Redemption Fund.

36. Not only has the GDB violated Article 20 of the Municipal Financing Act and "taken" as its own the Municipality's CAE Funds credited to the Municipal Debt Redemption Fund, but as part of the unlawful scheme being pursued, both the GDB and FAFAA have continued to require that the CRIM transfer proceeds of the Municipality's Special Additional Property Tax to the insolvent GDB. Upon information and belief, the GDB has applied, or intends to apply, such transferred funds to the repayment of the CAE Loans owing to it, as if the Municipality did not have the CAE Funds set forth in paragraph 26 credited to the Municipal Debt Redemption Fund.

37. Moreover, because the Municipality maintains a credit of CAE Funds to the Municipal Debt Redemption Fund well in excess of the statutory twelve (12) month prepayment requirement for its CAE Loans with the GDB, it is important to underscore that the Municipality has not defaulted, nor will it be deemed to have defaulted, on its CAE Loans with the GDB so long as the balance of CAE Funds credited to the Municipal Debt Redemption Fund -after the required debits for the payment of installments due on the Municipality's CAE Loans owed to the GDB- exceeds the statutory twelve (12) month prepayment requirement for such loans. As noted above, the current amount of CAE Funds that the Municipality has credited to the Municipal Debt Redemption Fund is approximately equal to the annual debt service of at least the next four to five years of its CAE Loans owing to the GDB.

VI. ADDITIONAL ALLEGATIONS RELEVANT TO ALL GDB MUNICIPAL FUNDS

38. In addition to the unlawful taking of the Municipality's CAE Funds credited to the Municipal Debt Redemption Fund, the GDB and FAFAA, unless enjoined, will also continue to unlawfully interfere and impair the Municipality's contractual and legal rights as debtor under the Municipal Loans owing to the GDB, and with respect to its other GDB Municipal Funds (the "Other GDB Municipal Funds") held at the GDB. Each of the Municipal Loans and Other GDB Municipal Funds are currently governed by the terms and conditions of private contracts between the Municipality and GDB, as supplemented by applicable law.

39. Under the pretext of availing itself of Title VI of PROMESA, FAFAA, by purportedly utilizing the authority and powers granted to it under the Amended FAFAA Enabling Act, has, and continues to, unlawfully interfere with and hinders the Municipality's contractual and legal rights as debtor under the Municipal Loans owing to the GDB, and with respect to its Other GDB Municipal Funds.

40. Pursuant to the Notice of Application of Funds, the Municipality further instructed the GDB to make, from time to time, the required internal book entries such that the Other GDB Municipal Funds credited to the Municipality are applied for repayment, in the direct order of maturity, of the next installments due on the Municipality's CAE Loans. Such instructions are consistent with Articles 1123, 1126, 1149 and 1155 of the Puerto Rico Civil Code,⁸ as well as other provisions of applicable law.

41. Notwithstanding the specific instructions provided by the Municipality to the GDB, FAFAA, in conjunction with the GDB, continues and/or intends to compel, under the guise of a "Qualifying Modification" pursuant to Title VI of PROMESA, that the: (a) Municipality's Escrowed Funds be applied to the repayment of its CAE Loans owing to the

⁸ See 31 L.P.R.A. §§ 3173, 3176, 3222 and 3227.

GDB in the *inverse order of maturity* and (b) Municipality accept at a discount, in exchange for the moneys owed to it by the GDB in the form of Muni SUT Funds and Muni Operational Deposits, notes to be issued by a special purpose vehicle to which the GDB shall transfer all its loan rights arising from the Municipal Loans.

42. Even assuming arguendo that the Municipality had not given the Notice of Application of Funds, the structure pursued by the GDB and FAFAA would be contrary to Puerto Rico law. First, a set-off is permitted only if the off-setting obligations are each due, determined and actionable. *See* 31 L.P.R.A. § 3222. Because the Municipality's CAE Loans are currently performing, and have not been declared due and payable (accelerated) because of the occurrence of an event of default, applying the Municipality's Escrowed Funds to its CAE Loans in the inverse order of maturity -without the Municipality's consent- constitutes an unlawful impairment of the Municipality's contractual and legal rights with respect to such funds. Furthermore, pursuant to the terms and conditions of the private contracts governing the Muni SUT Funds and Muni Operational Deposits, as supplemented by applicable law, the Municipality is not required to accept the proposed exchange, or otherwise accept a lesser amount than the full amount owed to it by the GDB.

43. Accordingly, the use of Title VI of PROMESA by the GDB and FAFAA as a pretext to achieve the results agreed to pursuant to the GDB RSA is undeniably an unlawful application of Title VI, and interferes with and hinders the Municipality's contractual and legal rights as debtor under the Municipal Loans owing to the GDB, and with respect to its Other GDB Municipal Funds. The GDB and FAFAA must not be allowed to continue with this ruse of utilizing a "Qualifying Modification" pursuant to Title VI of PROMESA to divest itself of its only performing assets (i.e., the Municipal Loans) by transferring them to a special purpose

vehicle for the benefit of a selected group of creditors, and by doing so, stripping the Municipality of its contractual and legal rights as debtor under its Municipal Loans, and with respect to its CAE Funds and Other GDB Municipal Funds.

VII. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF *(For Declaratory and Injunctive Relief* *For Unlawful Application of Title VI of PROMESA)*

44. Plaintiff repeats and realleges each allegation in the preceding paragraphs 1 to 43 as if fully set forth herein.

45. Title VI of PROMESA provides a collective action mechanism which *only* permits the “Modification” of “Bonds” and only if such “Modification” is deemed a “Qualifying Modification.” *See* 48 U.S.C. § 2231.

46. Section 5 of PROMESA defines “Bond” as a “bond, loan, letter of credit, other borrowing title, obligation of insurance, or other financial indebtedness for borrowed money, including rights, entitlements, or obligations whether such rights, entitlements, or obligations arise from contract, statute, or any other source of law, in any case, related to such a bond, loan, letter of credit, other borrowing title, obligation of insurance, or other financial indebtedness in physical or dematerialized form of which the issuer, obligor, or guarantor is the territorial government.” *See* 48 USC § 2104(2).

47. The CAE funds credited to the Municipal Debt Redemption Fund do not constitute “Bonds,” as such term is defined in PROMSEA. In fact, as previously alleged, pursuant to Article 20 of the Municipal Financing Act, CAE Funds credited to the Municipal Debt Redemption Fund constitute loan prepayments by the Municipality of its CAE Loans.

48. Likewise, all Other GDB Municipal Funds do not fall within the meaning

ascribed to the term “Bond” in PROMESA. Funds held as deposits by the GDB are neither a “bond, loan, letter of credit, other borrowing title, obligation of insurance, or other financial indebtedness for borrowed money.”

49. Because neither CAE Funds or the Other GDB Municipal Funds can be the object of a “Modification” under Title VI of PROMESA, the GDB and FAFAA are unlawfully utilizing Title VI as a pretext to *de facto* amend: (a) Article 20 of the Puerto Rico Municipal Financing Act of 1996 by *motu proprio* modifying the statutory rights of the Municipality with respect to funds transferred to the Municipal Debt Redemption Fund and (b) Articles 1123, 1126, 1149 and 1155, among others, of the Puerto Rico Civil Code by *motu proprio* exempting the GDB, *inter alia*, from one or more of the statutory requirements governing application of payments and the set-off of mutual obligations as it pertains to the Municipality.

50. The Municipality is entitled to an order declaring that: (a) its rights as debtor under the Municipal Loans, and to the CAE Funds and Other GDB Municipal Funds may not be the object of a “Modification” pursuant to Title VI of PROMESA; (b) its rights as debtor under the Municipal Loans, and to the CAE Funds and Other GDB Municipal Funds -may not in any way be- modified, amended and/or altered pursuant to Title VI of PROMESA; and (c) that notwithstanding the use of the collective action mechanism of Title VI of PROMESA to modify “Bonds” issued by GDB and to transfer the GDB’s loan rights to the Municipal Loans as contemplated by the GDB RSA: (1) the GDB shall remain liable for the use of the CAE Funds credited to the Municipal Debt Redemption Fund for a purpose other than repayment of the CAE Loans; (2) the Municipality has a payment defense with respect to the CAE Loans owing to the GDB in an amount equal to the CAE Funds credited to the Municipal Debt Redemption Fund and, as a result of having validly elected to apply the Other GDB Municipal

Funds to the repayment of such loans, in an additional amount equal to such other funds, in each case, with respect to the next payment installments due; and (3) that any transferee of the GDB's loan rights to the CAE Loans shall accept such loan rights subject to the payment defenses accruing to the Municipality resulting from its rights to demand that CAE Funds credited to the Municipal Debt Redemption Fund, and the Other Municipal Funds, be applied to the repayment of such loans.

51. The Municipality is entitled to injunctive relief barring each of the Defendants from either requiring or seeking to effect pursuant to Title VI of PROMESA: (a) any modification, amendment or alteration of its rights as debtor under the Municipal Loans, and to the CAE Funds and Other GDB Municipal Funds and (b) the transfer of any additional proceeds of its Special Additional Property Tax, the CW Municipal SUT corresponding to the Municipality (other than as required to pay Muni SUT Loans pursuant to their respective contractual terms), and its General Municipal Revenues for the repayment of any of the Municipality's Municipal Loans owing to the GDB, including the transfer of any such funds to any trust, special purpose vehicle or other entity acquiring the GDB's loans rights to such loans, unless an event of default shall have occurred and be continuing, and then only as contractually agreed or as otherwise permitted by law.

SECOND CLAIM FOR RELIEF
(For Declaratory and Injunctive Relief
for Violations of Sections 303 and 407 of PROMESA)

52. Plaintiff repeats and realleges each allegation in the preceding paragraphs 1 to 43 as if fully set forth herein.

53. Proceeds of municipal taxes are the "private property" of municipalities, to the extent that municipal taxes, once collected, are never deemed to form part of the

Commonwealth's "Treasury" organized and established by the P.R. Constitution. Specifically, CAE Funds credited to the Municipal Debt Redemption Fund are not the property of the GDB because they constitute the proceeds of a special municipal tax that must be applied by the GDB for the repayment of CAE Loans pursuant to Article 20 of the Municipal Financing Act.

54. Each of the Municipal Loans and Other GDB Municipal Funds are currently governed by the terms and conditions of private contracts between the Municipality and GDB, as supplemented by applicable law. The Municipality is a creditor of the insolvent GDB with respect to one or more of its Other GDB Municipal Funds.

55. The GDB's failure to make, from time to time, the necessary book-entries for the payment of installments due on the Municipality's CAE Loans owed to it by: (1) debiting amounts credited to the Municipality in the Municipal Debt Redemption Fund and/or (2) applying the amounts owed to the Municipality as Other GDB Municipal Funds: (a) constitutes a "method of composition of indebtedness" and/or "unlawful executive orders that alter, amend, or modify rights of holders of any debt of the territory or territorial instrumentality, or that divert funds from one territorial instrumentality to another or to the territory" in clear contravention of, and preempted by, Section 303 of PROMESA, and (b) deprives the Municipality of property "in violation of applicable law assuring the transfer of such property to such territorial instrumentality for the benefit of its creditors" in clear contravention of, and preempted by, Section 407 of PROMESA. *See* 48 U.S.C. §§ 2163 and 2195, respectively.

56. The continuing exigency made by both the GDB and FAFAA, purportedly utilizing authority and powers granted under the Amended FAFFA Enabling Act empowering FAFAA to implement and enforce the terms and conditions of the GDB Fiscal Plan, requiring that the: (1) Municipality's Escrowed Funds held at the GDB be applied against CAE Loans

owing to the insolvent GDB in the inverse order of maturity and/or (2) Municipality accept a lesser amount than the full amount owed to it by the GDB in the form of Other GDB Municipal Funds: (a) constitutes a “method of composition of indebtedness” and/or “unlawful executive orders that alter, amend, or modify rights of holders of any debt of the territory or territorial instrumentality, or that divert funds from one territorial instrumentality to another or to the territory” in clear contravention of, and preempted by, Section 303 of PROMESA, and (b) deprives the Municipality of property “in violation of applicable law assuring the transfer of such property to such territorial instrumentality for the benefit of its creditors” in clear contravention of, and preempted by, Section 407 of PROMESA. *See* 48 U.S. Code §§ 2163 and 2195, respectively.

57. The Municipality is entitled to an order declaring that the GDB’s failure to make, from time to time, the necessary book-entries for the payment of installments due on the Municipality’s CAE Loans owed to it by: (1) debiting amounts credited to the Municipality in the Municipal Debt Redemption Fund and/or (2) applying the amounts owed to the Municipality as Other GDB Municipal Funds: (a) constitutes a “method of composition of indebtedness” and/or “unlawful executive orders that alter, amend, or modify rights of holders of any debt of the territory or territorial instrumentality, or that divert funds from one territorial instrumentality to another or to the territory” in clear contravention of, and preempted by, Section 303 of PROMESA, and (b) deprives the Municipality of property “in violation of applicable law assuring the transfer of such property to such territorial instrumentality for the benefit of its creditors” in clear contravention of, and preempted by, Section 407 of PROMESA.

58. The Municipality is entitled to injunctive relief barring each of the Defendants

from either requiring or effecting, as applicable, the transfer of the proceeds of its Special Additional Property Tax, the CW Municipal SUT corresponding to the Municipality (other than as required to pay Muni SUT Loans pursuant to their respective contractual terms), and its General Municipal Revenues for the repayment of any of the Municipality's Municipal Loans owing to the GDB, including the transfer of any such funds to any trust, special purpose vehicle or other entity acquiring the GDB's loans rights to any such loans, unless an event of default shall have occurred and be continuing, and then only as contractually agreed or as otherwise permitted by law.

59. The Municipality is entitled to an order declaring that the continuing exigency by the GDB and FAFAA requiring that the: (1) Municipality's Escrowed Funds held at the GDB be applied against CAE Loans owing to the insolvent GDB in the inverse order of maturity and/or (2) Municipality accept a lesser amount than the full amount owed to it by the GDB in the form of Other GDB Municipal Funds: (a) constitutes a "method of composition of indebtedness" and/or "unlawful executive orders that alter, amend, or modify rights of holders of any debt of the territory or territorial instrumentality, or that divert funds from one territorial instrumentality to another or to the territory" in clear contravention of, and preempted by, Section 303 of PROMESA, and (b) deprives the Municipality of property "in violation of applicable law assuring the transfer of such property to such territorial instrumentality for the benefit of its creditors" in clear contravention of, and preempted by, Section 407 of PROMESA.

60. The Municipality is entitled to an order declaring that (a) because the Municipality currently maintains a credit of CAE Funds in the Municipal Debt Redemption Fund well in excess of the statutory twelve (12) month prepayment requirement for its CAE

Loans with the insolvent GDB, the CRIM is not required, and the Defendants may not require the Municipality, to continue transferring municipal funds for the payment of its CAE Loans with the GDB, until such time as the Municipality is no longer in compliance with such statutory prepayment requirements and (b) the GDB is required to make, from time to time, the necessary book-entries for the payment of installments due on the Municipality's CAE Loans owed to it by debiting the Municipal Debt Redemption Fund.

61. The Municipality is entitled to injunctive relief barring each of the Defendants from (a) compelling the exchange of the Municipality's Muni Operational Deposits and GDB Muni SUT Funds for notes to be issued by a special purpose vehicle in accordance with the terms and conditions of the GDB RSA or (b) taking any other action to forcefully and/or involuntarily compel the Municipality to accept a lesser amount than the full amount owed to it by the GDB.

62. Because the GDB is currently insolvent and pursuant to the GDB RSA it shall transfer the loan rights to the Municipal Loans owing to it to a third party, the Municipality is further entitled to an order declaring that: (1) the GDB shall remain liable for the use of the CAE Funds credited to the Municipal Debt Redemption Fund for a purpose other than repayment of the CAE Loans; (2) the Municipality has a payment defense with respect to the CAE Loans owing to the GDB in an amount equal to the CAE Funds credited to the Municipal Debt Redemption Fund and, as a result of having validly elected to apply the Other GDB Municipal Funds to the repayment of such loans, in an additional amount equal to such other funds, in each case, with respect to the next payment installments due for such loans; and (3) any transferee of the GDB's loan rights to the CAE Loans shall accept such loan rights subject to the payment defenses accruing to the Municipality resulting from its rights to demand that

CAE Funds credited to the Municipal Debt Redemption Fund, and the Other Municipal Funds, be applied to the repayment of such loans.

THIRD CLAIM FOR RELIEF
*(For Declaratory and Injunctive Relief
for Violations of the Takings Clause of the U.S. Constitution)*

63. Plaintiff repeats and realleges each allegation in the preceding paragraphs 1 to 43 as if fully set forth herein.

64. Proceeds of municipal taxes are the “private property” of municipalities, to the extent that municipal taxes, once collected, are never deemed to form part of the Commonwealth’s “Treasury” organized and established by the P.R. Constitution. Specifically, CAE Funds credited to the Municipal Debt Redemption Fund are not the property of the GDB because they constitute proceeds of a special municipal tax that must be applied by the GDB for the repayment of CAE Loans pursuant to Article 20 of the Municipal Financing Act.

65. Proceeds of municipal taxes are “private property” of municipalities within the meaning of the Takings Clause of the U.S. Constitution.

66. While under the P.R. Constitution the organization and functions of municipalities are determined by the Commonwealth, the Municipality is not barred from invoking the protections of the Fifth and/or Fourteenth Amendments to the U.S. Constitution requested by this Complaint.

67. The unconstitutional scheme being pursued jointly by the GDB and FAFAA for the benefit of a select group of GDB’s creditors, purportedly utilizing authority and powers granted under the Amended FAFFA Enabling Act empowering FAFAA to implement and enforce the terms and conditions of the GDB Fiscal Plan, does not have a “public purpose.”

68. The Commonwealth has not delegated the power of eminent domain to any of the

GDB or FAFAA.

69. The Municipality is an “other person” entitled to bring a cause of action pursuant to 42 U.S.C. § 1983.

70. The GDB’s failure to make, from time to time, the necessary book-entries for the payment of the next installments due on the Municipality’s CAE Loans owed to the insolvent GDB by debiting the Municipal Debt Redemption Fund, constitutes: (a) a “taking of private property” without just compensation within the meaning, and in violation, of the Fifth and/or Fourteenth Amendments to the U.S. Constitution and (b) deprives the Municipality of due process of law, again in violation of the Fifth and/or Fourteenth Amendments to the U.S. Constitution.

71. The Defendants’ continuing exigency, purportedly under the color of law, that the CRIM continue transferring the proceeds of the Municipality’s Special Additional Property Tax for the repayment of its CAE Loans with the insolvent GDB, coupled with their failure to acknowledge that the Municipality currently maintains a credit of CAE Funds to the Municipal Debt Redemption Fund well in excess of the statutory twelve (12) month prepayment requirement for its CAE Loans with the GDB, constitutes: (a) a “taking of private property” without just compensation within the meaning, and in violation, of the Fifth and/or Fourteenth Amendments to the U.S. Constitution and (b) deprives the Municipality of due process of law, again in violation of the Fifth and/or Fourteenth Amendments to the U.S. Constitution.

72. The Municipality is entitled to an order declaring that the GDB’s failure to make, from time to time, the necessary book-entries for the payment of the next installments due on the Municipality’s CAE Loans owed to the insolvent GDB by debiting the Municipal Debt Redemption Fund, constitutes: (a) a “taking of private property” without just compensation

within the meaning, and in violation, of the Fifth and/or Fourteenth Amendments to the U.S. Constitution and (b) deprives the Municipality of due process of law, again in violation of the Fifth and/or Fourteenth Amendments to the U.S. Constitution.

73. The Municipality is entitled to an order declaring that: (a) because the Municipality currently maintains a credit of CAE Funds in the Municipal Debt Redemption Fund well in excess of the statutory twelve (12) month prepayment requirement for its CAE Loans with the insolvent GDB, the CRIM is not required, and the Defendants may not require the Municipality, to continue transferring municipal funds for the payment of its CAE Loans with the GDB, until such time as the Municipality is no longer in compliance with such statutory prepayment requirement and (b) the GDB is required to make, from time to time, the necessary book-entries for the payment of installments due on the Municipality's CAE Loans owed to it by debiting the Municipal Debt Redemption Fund.

74. The Municipality is entitled to injunctive relief barring each of the Defendants from either requiring or effecting, as applicable, the transfer of any additional proceeds of its Special Additional Property Tax, the CW Municipal SUT corresponding to the Municipality (other than as required to pay Muni SUT Loans pursuant to their respective contractual terms), and its General Municipal Revenues for the repayment of any of the Municipality's Municipal Loans owing to the GDB, including the transfer of any such funds to any trust, special purpose vehicle or other entity acquiring the GDB's loans rights to such loans, unless an event of default shall have occurred and be continuing, and then only as contractually agreed or as otherwise permitted by law.

FOURTH CLAIM FOR RELIEF
(For Declaratory and Injunctive Relief)

for Violations of the Amended FAFAA Enabling Act)

75. Plaintiff repeats and realleges each allegation in the preceding paragraphs 1 to 43 as if fully set forth herein.

76. Article 6 of the Amended FAFAA Enabling Act states that the Executive Director of FAFAA may only act as sole member of its Board of Directors for a period not to exceed forty-five (45) days from its enactment, at which time the Amended FAFAA Enabling Act requires the appointment of five (5) members to such Board of Directors.

77. More than forty-five (45) days have elapsed from the enactment of the Amended FAFAA Enabling Act, and in violation of Article 6, upon information and belief, the required five (5) members have not been appointed to serve to the Board of Directors of FAFAA.

78. Notwithstanding the unequivocal requirement pursuant to the Amended FAFAA Enabling Act that the Executive Director's official acts be subject to the ultimate supervision and oversight of a Board of Directors composed of five (5) members, upon information and belief, Defendant Portela Franco, in his official capacity, has unlawfully claimed for himself all the power and authority granted to FAFAA, subject to no supervision or oversight.

79. Because the Amended FAFAA Enabling Act requires the appointment of five (5) members to such Board of Directors, each of the actions taken by Defendant Portela Franco, forty-five (45) days from its enactment, is ultra-vires, and is unlawful, invalid, null and void.

80. The Municipality is entitled to an order declaring that each action taken by Defendant Portela Franco, as Executive Director of FAFAA, in any way related to the GDB Fiscal Plan and the RSA, is ultra-vires, and is unlawful, invalid, null and void.

81. The Municipality is entitled to injunctive relief barring each of the Defendants from taking any further action requiring, implementing and/or effecting the GDB Fiscal Plan

and/or GDB RSA, until FAFAA has the required five (5) members in its Board of Directors, and then only as permitted by law.

VIII. RELIEF DEMANDED

WHEREFOR the Municipality requests that the Court enter judgment against the Defendants as follows:

- (a) Declaring that: (a) the Municipality's rights as debtor under the Municipal Loans, and to the CAE Funds and Other GDB Municipal Funds, may not be the object of a "Modification" pursuant to Title VI of PROMESA; (b) the Municipality's rights as debtor under the Municipal Loans, and to the CAE Funds and Other GDB Municipal Funds -may not in any way be- modified, amended and/or altered pursuant to Title VI of PROMESA; and (c) that notwithstanding the use of the collective action mechanism of Title VI of PROMESA to modify "Bonds" issued by GDB and to transfer of the GDB's loan rights to the Municipal Loans as contemplated by the GDB RSA: (1) the GDB shall remain liable for the use of the CAE Funds credited to the Municipal Debt Redemption Fund for a purpose other than repayment of the CAE Loans; (2) the Municipality has a payment defense with respect to the CAE Loans owing to the GDB in an amount equal to the CAE Funds credited to the Municipal Debt Redemption Fund and, as a result of having validly elected to apply the Other GDB Municipal Funds to the repayment of such loans, in an additional amount equal to such other funds, in each case, with respect to the next payment installments due; and (3) any transferee of the GDB's loan rights to the CAE Loans shall accept such loan rights subject to the payment defenses accruing to the Municipality resulting from its rights to demand that CAE Funds credited to the Municipal Debt Redemption

- Fund, and the Other Municipal Funds, be applied to the repayment of such loans;
- (b) Declaring that the GDB's failure to make, from time to time, the necessary book-entries for the payment of installments due on the Municipality's CAE Loans owed to it by: (1) debiting amounts credited to the Municipality in the Municipal Debt Redemption Fund and/or (2) applying the amounts owed to the Municipality as Other GDB Municipal Funds: (a) constitutes a "method of composition of indebtedness" and/or "unlawful executive orders that alter, amend, or modify rights of holders of any debt of the territory or territorial instrumentality, or that divert funds from one territorial instrumentality to another or to the territory" in clear contravention of, and preempted by, Section 303 of PROMESA, and (b) deprives the Municipality of property "in violation of applicable law assuring the transfer of such property to such territorial instrumentality for the benefit of its creditors" in clear contravention of, and preempted by, Section 407 of PROMESA;
- (c) Declaring that the continuing exigency by the GDB and FAFAA requiring that the: (1) Municipality's Escrowed Funds held at the GDB be applied against CAE Loans owing to the insolvent GDB in the inverse order of maturity and/or (2) Municipality accept a lesser amount than the full amount owed to it by the GDB in the form of Other GDB Municipal Funds: (a) constitutes a "method of composition of indebtedness" and/or "unlawful executive orders that alter, amend, or modify rights of holders of any debt of the territory or territorial instrumentality, or that divert funds from one territorial instrumentality to another or to the territory" in clear contravention of, and preempted by, Section 303 of PROMESA, and (b) deprives the Municipality of property "in violation of applicable law assuring the transfer of such property to such territorial

instrumentality for the benefit of its creditors” in clear contravention of, and preempted by, Section 407 of PROMESA

- (d) Declaring that because the GDB is currently insolvent and pursuant to the GDB RSA it shall transfer the loan rights to the Municipal Loans owing to it to a third party: (1) the GDB shall remain liable for the use of the CAE Funds credited to the Municipal Debt Redemption Fund for a purpose other than repayment of the CAE Loans; (2) the Municipality has a payment defense with respect to the CAE Loans owing to the GDB in an amount equal to the CAE Funds credited to the Municipal Debt Redemption Fund and, as a result of having validly elected to apply the Other GDB Municipal Funds to the repayment of such loans, in an additional amount equal to such other funds, in each case, with respect to the next payment installments due for such loans; and (3) that any transferee of the GDB’s loan rights to the CAE Loans shall accept such loan rights subject to the payment defenses accruing to the Municipality resulting from its rights to demand that CAE Funds credited to the Municipal Debt Redemption Fund, and the Other Municipal Funds, be applied to the repayment of such loans;
- (e) Declaring that under Article 20 of the Municipal Financing Law that (a) because the Municipality currently maintains a credit of CAE Funds to the Municipal Debt Redemption Fund well in excess of the statutory twelve (12) month prepayment requirement for its CAE Loans with the insolvent GDB, the CRIM is not required, and the Defendants may not require the Municipality, to continue transferring municipal funds for the payment of its CAE Loans with the GDB, until such time as the Municipality is no longer in compliance with such statutory prepayment requirement and (b) the GDB is required to make, from time to time, the necessary book-entries for

the payment of installments due on the Municipality's CAE Loans owed to it by debiting the Municipal Debt Redemption Fund;

- (f) Declaring that the GDB's failure to make, from time to time, the necessary book-entries for the payment of the next installments due on the Municipality's CAE Loans owed to the insolvent GDB by debiting the Municipal Debt Redemption Fund constitutes: (a) a "taking of private property" without just compensation within the meaning, and in violation, of the Fifth and/or Fourteenth Amendments to the U.S. Constitution and (b) deprives the Municipality of due process of law, again in violation of the Fifth and/or Fourteenth Amendments to the U.S. Constitution;
- (g) Declaring that each action taken by Defendant Portela Franco, as Executive Director of FAFAA, in any way related to the GDB Fiscal Plan and the RSA, is ultra-vires, unlawful, invalid, null and void;
- (h) Enjoining each of the Defendants from either requiring or seeking to effect pursuant to Title VI of PROMESA: (a) any modification, amendment and/or alteration of the Municipality's rights as debtor under the Municipal Loans, and to the CAE Funds and Other GDB Municipal Funds, and (b) the transfer of any additional proceeds of its Special Additional Property Tax, the CW Municipal SUT corresponding to the Municipality (other than as required to pay Muni SUT Loans pursuant to their respective contractual terms), and its General Municipal Revenues for the repayment of any of the Municipality's Municipal Loans owing to the GDB, including the transfer of any such funds to any trust, special purpose vehicle or other entity acquiring the GDB's loans rights to such loans, unless an event of default shall have occurred and be continuing, and then only as contractually agreed or as otherwise

permitted by law;

- (i) Enjoining each of the Defendants from either requiring or effecting, as applicable, the transfer of the proceeds of the Municipality's Special Additional Property Tax, the CW Municipal SUT corresponding to the Municipality (other than as required to pay Muni SUT Loans pursuant to their respective contractual terms), and its General Municipal Revenues for the repayment of any of the Municipality's Municipal Loans owing to the GDB, including the transfer of any such funds to any trust, special purpose vehicle or other entity acquiring the GDB's loans rights to any such loans, unless an event of default shall have occurred and be continuing, and then only as contractually agreed or as otherwise permitted by law;
- (j) Enjoining each of the Defendants from (a) compelling the exchange of the Municipality's Muni Operational Deposits and GDB Muni SUT Funds for notes to be issued by a special purpose vehicle in accordance with the terms and conditions of the GDB RSA or (b) taking any other action to forcefully and/or involuntarily compel the Municipality to accept a lesser amount than the full amount owed to it by the GDB;
- (k) Enjoining each of the Defendants from taking any further action requiring, implementing and/or effecting the GDB Fiscal Plan and GDB RSA, until FAFAA has the required five (5) members in its Board of Directors, and then only as permitted by law; and
- (l) Granting the Municipality such other and further relief as this Court may deem just and proper.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 17th day of July, 2017.

FACCIO & PABÓN-ROCA

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