

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

NATIONAL PUBLIC FINANCE GUARANTEE CORP.,
ASSURED GUARANTY CORP., AND ASSURED
GUARANTY MUNICIPAL CORP.

Plaintiffs,

-against-

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO, JOSÉ B. CARRIÓN III;
ANDREW G. BIGGS; CARLOS M. GARCÍA; ARTHUR
J. GONZÁLEZ; JOSÉ R. GONZÁLEZ; ANA J.
MATOSANTOS; DAVID A. SKEEL, JR.; ELÍAS
SÁNCHEZ; NATALIE JARESKO; and RAMÓN RUIZ.

Defendants.

No. 17-cv-[_____]

Hon. _____

**COMPLAINT FOR DECLARATORY JUDGMENT,
INJUNCTIVE RELIEF, AND WRIT OF MANDAMUS**

TO THE HONORABLE COURT:

Plaintiffs National Public Finance Guarantee Corporation (“National”), Assured Guaranty Corp. (“AGC”), and Assured Guaranty Municipal Corp., f/k/a Financial Security Assurance Inc. (“AGM,” and together with AGC, “Assured”), by and through their undersigned attorneys, for their Complaint against Defendants the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), José B. Carrión III, Andrew G. Biggs, Carlos M. García, Arthur J. González, José R. González, Ana J. Matosantos, David A. Skeel, Jr., Elías Sánchez, Natalie Jaresko, and Ramón Ruiz (“Individual Defendants,” and together with the Oversight Board, “Defendants”) allege, on information and belief as to all facts other than as to themselves, as follows:

NATURE OF THIS ACTION

1. Plaintiffs bring this action to compel Defendants to perform their ministerial duty of certifying a preexisting consensual restructuring plan for Puerto Rico's electric utility, as required by the Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA").

2. Plaintiffs insure and hold bonds issued by the Puerto Rico Electric Power Authority ("PREPA"). PREPA generates, transmits, and distributes most of the electricity consumed in Puerto Rico.

3. In December 2015, PREPA and the vast majority of its creditors, including Plaintiffs, agreed on a restructuring plan to restore PREPA to financial health and stability. This plan, embodied in and referred to as the Restructuring Support Agreement (the "RSA"),¹ sets forth a proposed transaction affording significant benefits to PREPA through debt relief, restored access to the capital markets, and renewed capital investment in PREPA's aging infrastructure.

4. The RSA received the support of key stakeholders, including the Puerto Rico Legislature, which enacted a statute to implement aspects of the deal, and the Puerto Rico Energy Commission (the "Energy Commission"), which approved key aspects of the transaction, including rates, as serving the best interest of customers. The transaction is contemplated to close upon satisfaction of various conditions precedent, including the achievement of certain milestones, as set forth in the RSA.

5. When Congress enacted PROMESA on June 30, 2016, the RSA was the only preexisting consensual agreement between a Puerto Rico government entity and its creditors.

¹ A true and correct copy of the RSA, as supplemented, is attached hereto as **Exhibit 1**.

Congress acknowledged that fact and grandfathered the RSA, singling it out for fast-track approval under the consensual resolution provisions of PROMESA's Title VI.

6. Since PROMESA's enactment, much progress has been made toward implementing the RSA. In particular, a Commonwealth court has validated the Puerto Rico statute that undergirds the restructuring's securitization mechanism, and is in the process of resolving remaining challenges to the securitization charge approved by PREPA's regulator.

7. At the insistence of the new Governor after the 2016 election, creditors agreed in April 2017 to improve the existing deal for the benefit of PREPA and embodied such significant creditor concessions into the RSA. The supplemented RSA maintains the structure and main features of the original deal, but it provides additional and significant relief to PREPA that effectively results in the reduction of the per kWh rate charged by PREPA to consumers.

8. PREPA submitted the supplemented RSA to the Oversight Board on April 28, 2017 for certification and implementation under Title VI of PROMESA. Because Congress intended to preserve the RSA as the only preexisting voluntary agreement, it provided for expedited certification of the Restructuring Support Agreement under PROMESA, without the need for substantive review and evaluation by the Oversight Board. Under Congress' directive, the Oversight Board only has to make a ministerial determination that the proposed debt modification submitted by the debtor to the Oversight Board is consistent with the RSA.

9. Despite broad consensus among Puerto Rico's elected officials, PREPA and its creditors, and in spite of Congress's clear intent to preserve the consensual PREPA restructuring, the Oversight Board has arbitrarily failed to issue the ministerial certification required under Title VI. PROMESA, however, leaves no room for the Oversight Board to second-guess a consensual agreement ratified by Congress and all interested parties.

10. The clock is ticking on PREPA's restructuring, and Puerto Rico cannot afford to endure a PREPA bankruptcy that could turn the lights off. Accordingly, Plaintiffs bring this action to compel the Oversight Board to comply with the Congressional mandate to certify the proposed modification submitted by PREPA pursuant to Section 601(g)(2)(B) of PROMESA. Specifically, Plaintiffs seek: (i) a declaration that the RSA is a preexisting voluntary agreement under Section 104(i)(3) of PROMESA; (ii) a declaration that, in failing to issue the requisite certification, the Oversight Board has unlawfully applied Section 601 of PROMESA; (iii) an injunction prohibiting such unlawful application; and finally (iv) a writ of mandamus requiring Oversight Board members to certify the proposed modification submitted by PREPA to the Oversight Board on April 28, 2017 as consistent with the preexisting RSA and thus a Qualifying Modification.

THE PARTIES

11. Plaintiff National Public Finance Guarantee Corporation is a New York insurance company with its principal place of business at 1 Manhattanville Road, Purchase, NY 10577.

12. Plaintiff Assured Guaranty Corp. is a Maryland insurance company with its principal place of business at 1633 Broadway, New York, New York 10019.

13. Plaintiff Assured Guaranty Municipal Corp. is a New York insurance company with its principal place of business at 1633 Broadway, New York, New York 10019.

14. Defendant Oversight Board was created under Section 101 of PROMESA. 48 U.S.C. § 2121.

15. Defendant José B. Carrión III is the Chairman of the Oversight Board. Carrión has failed to exercise his duties as a member of the Oversight Board. Plaintiffs sue Carrión in his official capacity.

16. Defendant Andrew G. Biggs is a member of the Oversight Board. Biggs has failed to exercise his duties as a member of the Oversight Board. Plaintiffs sue Biggs in his official capacity.

17. Defendant Carlos M. García is a member of the Oversight Board. García has failed to exercise his duties as a member of the Oversight Board. Plaintiffs sue García in his official capacity.

18. Defendant Arthur J. González is a member of the Oversight Board. Arthur J. González has failed to exercise his duties as a member of the Oversight Board. Plaintiffs sue Arthur J. González in his official capacity.

19. Defendant José R. González is a member of the Oversight Board. José R. González has failed to exercise his duties as a member of the Oversight Board. Plaintiffs sue José R. González in his official capacity.

20. Defendant Ana J. Matosantos is a member of the Oversight Board. Matosantos has failed to exercise her duties as a member of the Oversight Board. Plaintiffs sue Matosantos in her official capacity.

21. Defendant David A. Skeel, Jr. is a member of the Oversight Board. Skeel has failed to exercise his duties as a member of the Oversight Board. Plaintiffs sue Skeel in his official capacity.

22. Defendant Elías Sánchez is an *ex officio* member of the Oversight Board. Sánchez has failed to exercise his duties. Plaintiffs sue Sánchez in his official capacity.

23. Defendant Natalie Jaresko is the Executive Director of the Oversight Board. Jaresko has failed to exercise her duties. Plaintiffs sue Jaresko in her official capacity.

24. Defendant Ramón Ruiz is the Deputy Executive Director of the Oversight Board. Ruiz has failed to exercise his duties. Plaintiffs sue Ruiz in his official capacity.

JURISDICTION AND VENUE

25. This Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under PROMESA, a federal statute.

26. This Court has jurisdiction pursuant to 28 U.S.C. § 1361, which provides the district courts with “original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.”

27. Furthermore, this Court has jurisdiction under Section 106(a) of PROMESA, which grants jurisdiction to this Court over “any action against the Oversight Board, and any action . . . arising out of [PROMESA], in whole or in part.” 48 U.S.C. § 2126(a). Since this action challenges the Oversight Board’s unlawful application of Section 601 of PROMESA, Section 106(e) is inapplicable. *See* 48 U.S.C. § 2231(n)(2).

28. Plaintiffs seek a declaration and related relief in this case of actual controversy pursuant to 28 U.S.C. §§ 2201 and 2202. An actual and justiciable controversy has arisen and exists between the parties with respect to the issues and claims alleged herein.

29. Venue is proper in this District under 28 U.S.C. § 1391, as all or a substantial part of the events giving rise to these claims occurred in this District, and under 48 U.S.C. § 2126(a).

LEGAL AND FACTUAL BACKGROUND

I. Creditors Have Provided a Lifeline to PREPA for the Past Three Years

30. Established in 1941, PREPA produces, transmits, and distributes the majority of the electric power in Puerto Rico. It is a government instrumentality with a “legal existence and personality separate and apart” from the Commonwealth. *See* Puerto Rico Electric Power

Authority Act, Act 83-1941, as amended (the “PREPA Act”), § 3 (codified at 22 L.P.R.A. § 193).

31. Since its creation, PREPA has issued bonds to finance its capital expenditures and has used credit facilities to fund some of its operating expenses. PREPA currently has over \$8.3 billion of bond debt outstanding (the “PREPA Bonds”) issued pursuant to that certain Trust Agreement, dated January 1, 1974 (as amended and supplemented, the “Trust Agreement”), as well as approximately \$700 million currently due under two lines of credit used by PREPA to pay for the purchase of fuel.

32. With a total exposure of over \$2.3 billion of PREPA Bonds, both as direct holders and insurers, Plaintiffs hold or insure approximately 27% of outstanding bonds and 25% of outstanding debt (including fuel lines). Plaintiffs therefore are significant stakeholders who have an interest in PREPA being reformed into a modern, sustainable, and successful power authority.

A. Creditor Forbearance

33. Like other Puerto Rico government entities, PREPA faces a challenging financial and operational situation. For decades, the utility failed to adjust its base electricity rate to cover the cost of operations and debt service obligations. It also failed to collect unpaid bills from individual and public customers—effectively subsidizing energy consumption in Puerto Rico. Poor governance and operational deficiencies also drained PREPA’s resources. This precarious situation led to a liquidity crisis in June 2014, after PREPA announced that it was unable to repay its fuel line facilities and major vendors curbed their shipments of fuel on standard trade credit terms.

34. To resolve this liquidity crisis, PREPA and certain of its creditors, including Plaintiffs, entered into a forbearance agreement on August 14, 2014 (as amended, the “Forbearance Agreement”). Under the Forbearance Agreement, creditors agreed to refrain from

exercising any rights or remedies as a result of defaults that may have occurred under the Trust Agreement and the fuel line facilities, including the failure to pay the fuel line facilities after the maturity dates. In exchange, PREPA agreed to meet milestones designed to improve PREPA's management and finances, including the elaboration of a five-year business plan to identify needed operational reforms. PREPA also agreed to and did appoint a restructuring officer.

35. Creditors granted PREPA multiple extensions of the Forbearance Agreement. These extensions provided PREPA with additional flexibility to address its financial woes and meet the agreed-upon milestones. Additionally, creditors provided more than \$1.2 billion in liquidity by purchasing relending bonds, waiving debt service reserve fund and self-insurance fund requirements, waiving waterfall requirements to permit the use of general fund monies for capital improvements prior to debt service, and allowing PREPA to use cash in the construction fund to finance operations.

36. In the meantime, fuel prices declined significantly, giving PREPA significant breathing room to shore up its reserve accounts and stabilize its finances. PREPA also took this opportunity to pass along over \$2 billion in fuel cost savings to customers.

B. Restructuring Support Agreement

37. During the forbearance period, PREPA and its creditors engaged in discussions to negotiate the terms of a broader restructuring agreement. On December 23, 2015, PREPA and creditors holding or insuring approximately 70% of PREPA's debt, including Plaintiffs (the "RSA Parties"),² entered into a RSA, which was subsequently amended and restated on March 14, 2016.

² The original RSA Parties were PREPA, the Government Development Bank for Puerto Rico ("GDB"), monoline insurers (including National, Assured Guaranty Corp., Assured Guaranty Municipal Corp., and Syncora Guarantee Inc.), fuel line facility lenders, and the so-called Ad Hoc Group of PREPA Bondholders.

38. The RSA Parties agreed to support a restructuring plan affording significant benefits to PREPA. Under the transaction contemplated by the RSA, participating uninsured bondholders would exchange their outstanding bonds for new securitization bonds (the “Securitization Bonds”) with a face value 15% lower than the principal amount of the existing bonds, a lower fixed interest rate, and a five-year principal deferral. The Securitization Bonds would be issued by a special-purpose, bankruptcy-remote entity—the PREPA Revitalization Corporation (“PREPARC”)—and secured by a special assessment collected by PREPA, as servicer, but owned by PREPARC (the “Transition Charge”). Fuel line facility lenders, meanwhile, would either convert their loans to fixed-rate term loans with a maturity extension of six years or participate in the securitization bond exchange. Participating bond insurers, including National and Assured, would issue surety policies (or otherwise purchase Securitization Bonds) to provide cash proceeds to fund debt service reserves. In exchange, the monoline insurers would receive “mirror bonds” (the “Mirror Bonds”) issued by PREPARC, which would economically defease the insured PREPA Bonds. Overall, the restructuring transaction would be expected to generate debt cost savings estimated at approximately \$1.1 billion in the first five years and \$1.7 billion over a 10-year period.

39. The RSA also has additional objectives, including improvements to PREPA’s (i) governance, (ii) operations, and (iii) capital expenditures. With regard to governance, the RSA mandates the establishment of an independent board of directors in an effort to depoliticize the utility. Because of a long history of political interference, operational decision making has been prone to political expediency at the expense of sound business judgment.

40. With regard to operational reform, the RSA gives PREPA the breathing room to launch modernization initiatives to improve service delivery, collections, and integration of

alternative energy sources into Puerto Rico's energy mix. Creditor forbearance has already allowed PREPA to obtain standard trade terms from fuel vendors, and the RSA further positions PREPA to obtain a steady fuel supply and achieve operational savings.

41. With regard to capital improvements, the RSA allows PREPA to attract private investments and aims to restore PREPA's access to the capital markets. PREPARC creates a stable financial platform to access the capital markets and finance select capital improvements. Additionally, the RSA seeks to achieve the necessary financial stability to encourage third-party investment in PREPA's aging system and electricity grid. Once the transaction closes, investors will be more likely to extend credit or provide financing to PREPA. This will enable PREPA to obtain the capital it needs for critical investments to transform and modernize the utility with a goal of achieving further cost savings.

42. Since the initial agreement was executed in December 2015, the RSA has been supplemented to incorporate various relending transactions, through which PREPA's creditors have extended more than \$375 million of additional liquidity to PREPA through the purchase of relending bonds (the "2016 Relending Bonds"), the proceeds of which were used to reimburse PREPA for certain debt service payments made by PREPA on January 1 and July 1, 2016. As discussed further below, the RSA now also contemplates that the monoline insurers and Ad Hoc Bondholders will purchase additional bonds in June 2017 (the "2017 Relending Bonds," and together with the 2016 Relending Bonds, the "Relending Bonds"), and the monoline insurers would provide approximately \$340 million of additional liquidity relief over the following six years.

C. The Puerto Rico Legislature Enacts the Revitalization Act

43. In addition to the support it enjoys from PREPA's creditors, the RSA has also received support from the Puerto Rico legislature. Under the administration of Governor García

Padilla, the Puerto Rico Legislative Assembly ratified the RSA by enacting Act 4-2016, known as the PREPA Revitalization Act (the “Revitalization Act”), on February 16, 2016. The Revitalization Act formally created PREPARC, established the securitization structure and Transition Charge mechanism, provided the statutory framework for the transactions contemplated by the RSA, and also addressed governance and public-private partnerships. In June 2016, the Puerto Rico Energy Commission, which serves as PREPA’s regulator, issued a restructuring order that approved a methodology to calculate the Transition Charge.

44. Under the RSA and the Revitalization Act, the restructuring transaction is contemplated to close upon the satisfaction of certain conditions and milestones.

45. The Revitalization Act provides an opportunity for challenges to be made to the validity of the statute (the “Phase I Proceedings”) and the restructuring order approved by the Energy Commission in June 2016 (the “Phase II Proceedings”). Certain plaintiffs, including PREPA’s largest union, retirees, and management, commenced Phase I Proceedings and Phase II Proceedings in the spring and summer of 2016. PREPA has vigorously defended against these plaintiffs’ attempts to block the RSA and the Revitalization Act. In January 2017, the Commonwealth Court of First Instance upheld the validity of the Revitalization Act in one of the Phase I Proceedings. This ruling has been appealed to the Supreme Court of Puerto Rico, which, to date, has denied certification of the appeal, thereby allowing the lower court ruling to stand. Other Phase I Proceedings have been voluntarily dismissed. The Phase II Proceedings have been consolidated and are currently pending in Commonwealth court.

II. Congress Approved the Implementation of the RSA Through Title VI of PROMESA

46. On June 30, 2016, President Barack Obama signed PROMESA, 48 U.S.C. § 2101 *et seq.*, into law.

47. Among other things, PROMESA established the Oversight Board, whose purpose is “to provide a method for [Puerto Rico] to achieve fiscal responsibility and access to the capital markets.” *Id.* § 2121(a).

A. The Oversight Board Has Only Ministerial Duties Concerning the Certification of the RSA

48. Under PROMESA, the Oversight Board is vested with a number of powers and responsibilities, including, among other things, the authority to review, approve, and certify fiscal plans developed by the Governor of the Commonwealth (Title II of PROMESA) and the ability to file a petition to restructure the Commonwealth’s or any covered territorial instrumentality’s debts in a court-supervised process similar to Chapter 9 of the Bankruptcy Code (Title III of PROMESA). The Oversight Board’s powers and responsibilities are much more limited, however, with respect to this preexisting voluntary agreement—the only preexisting voluntary agreement that existed when Congress enacted PROMESA—under Title VI of PROMESA.

49. Title VI of PROMESA establishes a mechanism for adjusting bond and bank debt outside of a bankruptcy proceeding by effectuating debt modifications with the support of a substantial, but not necessarily unanimous, threshold of affected debtholders. *See id.* § 2231. Title VI defines a “Modification” of such debt as “a modification, amendment, supplement or waiver affecting one or more series of Bonds, including those effected by way of exchange, repurchase, conversion, or substitution.” *Id.* § 2231(a)(9).

50. Under Title VI, the Oversight Board acts only as an “Administrative Supervisor,” whose primary responsibility is merely to issue a certification that the proposed Modification meets certain identified criteria and, thus, constitutes a “Qualifying Modification.” *Id.*

51. A proposed Modification can become a Qualifying Modification either through the “consultation process” or the “voluntary agreement process.” *Id.* § 2231(g). With regard to the latter, Section 601(g)(2)(B) of PROMESA provides a ministerial mechanism for the Oversight Board to certify a Modification with respect to preexisting voluntary agreements:

The Administrative Supervisor has issued a certification that—

(A) the requirements set forth in [Section 104(i)(2) and Section 601(g)(1)(B) of PROMESA] have been satisfied; or

(B) the Modification is *consistent with a restructuring support or similar agreement* to be implemented pursuant to the law of the covered territory executed by the Issuer *prior to the establishment of an Oversight Board* for the relevant territory.

Id. § 2231(g)(2) (emphasis added).

52. The RSA is the only agreement that meets the conditions of Section 601(g)(2)(B). Congress included this provision in PROMESA to ensure that the RSA could close and to limit the Oversight Board’s supervisory role over the parties’ preexisting voluntary agreement.

53. Thus, the Oversight Board plays a very limited role in certifying Modifications to be consistent with preexisting voluntary agreements. The sole issue for the Oversight Board to consider is whether a proposed Modification is consistent with the preexisting voluntary agreement at issue. If it is, then the clear intent of PROMESA is that the certification will be issued. Thus, when presented with a Modification consistent with a preexisting voluntary agreement, the Oversight Board’s duties and responsibilities are simply the ministerial act of issuing a certificate.

54. The Oversight Board has no discretion to consider—indeed, it is precluded from considering—certain requirements of Sections 104(i)(1), which establishes certain financial conditions for voluntary agreements to become effective. Consideration of those matters is expressly precluded by Section 104(i)(3) of PROMESA, which provides that “[a]ny voluntary

agreements that the territorial government or any territorial instrumentality has executed before May 18, 2016, with holders of a majority in amount of Bond Claims that are to be affected by such agreement to restructure such Bond Claims *shall be deemed* to be in conformance with the requirements” of Section 104(i). *Id.* § 2124(i)(3) (emphasis added). Under the plain terms of Section 104(i), the Oversight Board has no discretion to deny, but instead “shall issue,” a Voluntary Agreement Certification under Section 104(i) when, as in this case, PREPA has proposed Modifications that are consistent with a pre-existing RSA. *See id.* §§ 2124(i)(1), 2231(g)(2)(B).

55. Notwithstanding the clear mandate of Section 104(i)(3), the Oversight Board has refused to issue a Qualifying Modification certification pursuant to Section 601(g) of PROMESA, and has instead insisted upon considering precisely those matters which were removed from its purview for this preexisting RSA. The Oversight Board’s failure to issue the certification and its insistence instead on first considering matters that were expressly removed from its purview by Congress with respect to this preexisting RSA is unlawful. Further, in Section 601(n)(2) of PROMESA, Congress authorized this Court to consider claims challenging the Oversight Board’s unlawful application of Title VI. *See* 48 U.S.C. § 2231(n).

B. The RSA Is a Preexisting Voluntary Agreement Under PROMESA That Was Expressly Intended to Proceed Subsequent to Enactment

56. As an agreement between PREPA and a majority of PREPA’s bondholders and all its fuel line facility lenders that was executed on December 23, 2015, and amended and restated on March 14, 2016, the RSA is a “preexisting voluntary agreement” under Sections 104(i)(3) and 601(g)(2)(B). The RSA not only predates May 18, 2016 (Section 104(i)(3)’s deadline) but also the establishment of the Oversight Board (Section 601(g)(2)(B)’s deadline), which was

established upon PROMESA's enactment on June 30, 2016. *See* 48 U.S.C. § 2121(b)(1) (“A Financial Oversight and Management Board is hereby established for Puerto Rico.”).

57. Congress drafted and enacted four different provisions of PROMESA specifically to address and preserve the RSA. Section 104(i)(3) provides that “[a]ny voluntary agreement that . . . any territorial instrumentality has executed before May 18, 2016, with holders of a majority in amount of Bond Claims that are to be affected by such agreement to restructure such Bond Claims shall be deemed to be in conformance with the requirements of [Section 104(i)].” As noted above, exactly one such agreement had been executed before May 18, 2016: the RSA. Section 405(k) provides that the stay on creditor actions imposed by PROMESA “does not impair or affect the implementation of any restructuring support agreement executed by the Government of Puerto Rico to be implemented pursuant to Puerto Rico law specifically enacted for that purpose prior to the enactment of this Act or the obligation of the Government of Puerto Rico to proceeding in good faith as set forth in any such agreement.” Section 405(k) was crafted specifically to protect the RSA, as the RSA is the only restructuring support agreement that fits that description and the Revitalization Act was enacted prior to the enactment of PROMESA specifically to implement the RSA. Section 601(d)(4) provides that, notwithstanding the other requirements of Section 601(d) for establishment of pools of debt for purposes of voting on a Qualifying Modification under Title VI, “a preexisting voluntary agreement as described in [Section 104(i)(3)]” may, subject to certain conditions, “classify Insured Bonds and uninsured Bonds in different Pools and provide different treatment thereof”—thus ensuring that the RSA, which provides for different treatment for insured and uninsured PREPA Bonds, can be implemented under Title VI. And Section 601(g)(2) provides a ministerial mechanism by which the Oversight Board must certify a proposed Modification under Title VI if such Modification is

consistent with “a restructuring support or similar agreement . . . executed by the Issuer prior to the establishment of an Oversight Board for the relevant territory,” without considering the requirements of Sections 104(i)(2) and 601(g)(1)(B), which a proposed Modification would otherwise need to satisfy.

58. The legislative history of PROMESA makes this intent abundantly apparent. At a January 12, 2016 oversight hearing before the Subcommittee on Energy and Mineral Resources of the United States House of Representatives’ Committee on Natural Resources, Lisa J. Donahue, the then Chief Restructuring Officer of PREPA, testified that “[a]ccess to a restructuring regime would allow PREPA to implement the restructuring contemplated by the RSA” and would “facilitate the deal very quickly” by, among other things, “pull[ing] in the holdouts.” Ms. Donahue explained that securing the RSA holdouts was essential because, without them, “the deal [could not] be consummated.” Ms. Donahue further stressed the importance of the RSA to PREPA and Puerto Rico by testifying that failure to consummate the RSA would result in, among other things, dramatically increased energy costs, enforcement actions, and rolling blackouts.

59. A Congressional Research Service summary of the bill described one of the Oversight Board’s powers as “protecting certain preexisting voluntary restructuring agreements.” Congressional Research Service, *Summary: H.R. 5278 - 114th Congress (2015-2016)*, <http://www.congress.gov/bill/114th-congress/house-bill/5278>; *see also* D. ANDREW AUSTIN, CONG. RESEARCH SERV., R44532, THE PUERTO RICO OVERSIGHT, MANAGEMENT, AND ECONOMIC STABILITY ACT (PROMESA; H.R. 5278, S. 2328) 9 (“The act would grandfather in voluntary agreements executed before its enactment.”). And a report issued just three days before PROMESA’s enactment noted that “PREPA and a large proportion of its creditors have signed a

Restructuring Support Agreement (RSA) that would create a surcharge on electricity consumers' bills." The report also observed that the PREPA securitization charge was approved by the Energy Commission on June 21, 2016, and that voluntary debt agreements consummated before PROMESA's enactment "will be deemed to comply with the act's requirements."

III. Upon the Insistence of the Rosselló Administration, Creditors Agree to Additional Concessions Favorable to PREPA

A. Governor Rosselló's New Team

60. Following Governor Rosselló's election in November 2016, the Governor announced the appointment of a new agency, the Fiscal Agency and Financial Advisory Authority (known as "AAFAF," by its Spanish acronym), to take over the negotiations on behalf of PREPA.

61. The Oversight Board noted, in a letter to the Governor on January 19, 2017, that the Board had "reviewed, but has not taken a position on the PREPA [RSA], in deference to [the Rosselló] Administration's statement that it will promptly be providing its policy decisions concerning PREPA's business model, board of directors, and the RSA."

62. To accommodate the new administration, creditors agreed to extend the January 31, 2017 RSA milestone, by which the RSA Parties had to agree upon a method of implementation for the transactions contemplated by the RSA, until March 31, 2017. The additional period was intended to provide sufficient time for AAFAF to familiarize itself with the terms of the deal and negotiate a path for implementation of the RSA.

63. For almost two months, however, no substantive negotiations took place between AAFAF and the RSA Parties, and there was relatively little contact between AAFAF and the creditors.

64. On March 21, 2017, AAFAF released a restructuring proposal for PREPA, which had only been shared with the Ad Hoc Group of Bondholders. The proposal would have departed from core provisions of the RSA and undermined the structural integrity of the PREPA securitization debt.

65. In this context, Congress announced a hearing on March 22, 2017 on the status of the RSA. The hearing was held by the Subcommittee on Indian, Insular and Alaska Native Affairs of the House Committee on Natural Resources (the “Subcommittee”) and chaired by Representative Doug LaMalfa. The Subcommittee heard the testimonies of Governor Rosselló, Defendants Carrión and Matosantos, PREPA Governing Board President Luis Benítez Hernández, Adam Bergonzi of National, Stephen Spencer of Houlihan Lokey on behalf of Franklin Advisers Inc. and OppenheimerFunds, Inc., and Rob Bryngelson of Excelerate Energy L.P.

66. Governor Rosselló testified that he would seek to restructure PREPA under Title III of PROMESA only if voluntary talks with creditors failed. Defendants Carrión and Matosantos conceded that PROMESA had grandfathered the RSA, but they appeared to disagree with the substantive terms of the deal, in defiance of Congress’ own judgment and decision to support the RSA. Defendant Carrión’s main objection concerned the electricity rates to be achieved under the deal, deeming them not low enough to spur the growth of the Puerto Rico economy—and effectively calling on creditors to further subsidize the electricity rate. On the other hand, Defendant Matosantos criticized PREPA’s draft fiscal plan for insufficient operational savings. With regard to the RSA, Defendant Matosantos indicated that the Oversight Board “would approve an RSA amended to reflect the improved economic terms” sought by Governor Rosselló.

67. Creditor representatives responded that failure to close the RSA would call into question Puerto Rico's good faith in negotiating consensual restructurings with creditors and would undermine the government's ability to use securitization as a restructuring tool.

B. All RSA Parties Agree to Supplement the RSA in a Manner More Favorable to PREPA

68. Following the congressional hearing, the Rosselló administration and creditors reengaged in discussions regarding the RSA. The Oversight Board was apprised of these discussions and was supportive of the Governor's effort to supplement the RSA. On March 31, 2017, the RSA Parties agreed to extend the RSA to consider the government's request for additional creditor concessions.

69. On April 6, 2017, Governor Rosselló announced that the RSA Parties had agreed to improved terms for PREPA under the RSA. AAFAF Executive Director Gerardo Portela Franco took the opportunity to "express [his] appreciation to the team and PREPA's creditors," noting that "the transaction represents the first step in the comprehensive restructuring of Puerto Rico's debt."

70. The debt modification under the RSA, as supplemented by these additional concessions, is consistent with the provisions of the RSA that was in effect in March 2016. Bondholders will still exchange their legacy debt for securitization debt with an 85% exchange rate, along with a 5-year principal deferral and lower interest rates. Monoline insurers will still receive the Mirror Bonds in exchange for legacy PREPA Bonds, and will still provide surety (or otherwise purchase Securitization Bonds to provide cash proceeds to fund debt service reserves) to support the securitization structure. Fuel line facility lenders will still either exchange their existing loans into extended term loans or into the Securitization Bonds. However, the RSA, as supplemented, incorporates additional, extremely valuable, creditor concessions in favor of

PREPA: (i) Securitization Bonds no longer need investment grade rating for the RSA to close, but it remains a condition post-closing; (ii) debt service reserve fund requirements are lowered from 10% to 5% for Securitization Bonds; (iii) the maturities of the 2016 Relending Bonds issued to the monoline insurers will be extended by five years, and will be interest-only for the first five years; (iv) the Ad Hoc Bondholders and monoline insurers will purchase the 2017 Relending Bonds to avoid a default by PREPA on July 2017 debt service obligations; (v) the monoline insurers will provide approximately \$340 million of additional liquidity over the next six years; and (vi) the term loans issued to the electing fuel line facility lenders will amortize over eight years (instead of six years under the original RSA), and those fuel line facility lenders that have agreed to accept Securitization Bonds instead of term loans will fund a portion of the debt service reserve fund for the Securitization Bonds. Overall, the restructuring transaction, as supplemented, would be expected to generate debt cost savings estimated at approximately \$2.2 billion in the first five years and \$2.5 billion over a 10-year period.

IV. Having Turned Its Back on Consensual Restructuring Outcomes, the Oversight Board Has Unlawfully Failed to Certify the RSA

71. At the March 22, 2017 Oversight Hearing, Defendant Matosantos testified that the Oversight Board “stands ready to review the PREPA RSA.” Following the hearing, Representative Bishop of Utah, Chairman of the Natural Resources Committee and publicly touted as PROMESA’s architect, submitted questions on the record for Defendant Matosantos. Among other questions, Representative Bishop asked:

Question 1. In your testimony, you state: “under PROMESA section 104(i)(3), the PREPA RSA is deemed to be consistent with PREPA’s debt sustainability and the Oversight Board has no power to say otherwise.”

Section 104(i) states: “The Oversight Board shall issue a certification to a covered territory or a covered territorial instrumentality if the Oversight Board determines, in its sole

discretion, that such territory or covered territorial instrumentality, as applicable, has successfully reached a voluntary agreement with holders of its Bond Claims to restructure such Bond Claims” if a fiscal plan has been certified in a manner that provides for a sustainable level of debt. There are other qualifiers if the fiscal plan has not been approved.

Section 104(i)(3) states: “Any voluntary agreement that the territorial government or any territorial instrumentality has executed before May 18, 2016, with holders of a majority in amount of Bond Claims . . . shall be deemed to be in conformance with the requirements of this subsection.”

So, the plain language of the statute deems that the preexisting voluntary agreement for PREPA meets the requirement for a certified fiscal plan that provides for a sustainable level of debt. Furthermore, it deems the PREPA deal as being in conformance with the certified plan, isn’t that correct?

If those criteria are met, then the statute dictates that the Board is to issue a certificate saying so, isn’t that correct? Why hasn’t the Board done so?

72. Defendant Matosantos answered Representative Bishop’s question as follows:

As mentioned in my testimony, the RSA has not been presented to the Board for its review and approval as the prior administration did not submit it for review and the current administration sought amendments to the agreement. The Board remains committed to taking action on the RSA consistent with the PROMESA statute when an RSA is submitted to the Board.

A. PREPA Submits the RSA to the Oversight Board for Approval

73. PREPA and AAFAF submitted the RSA to the Oversight Board for approval by letter dated April 28, 2017 (the “Submission Letter”).

74. In the Submission Letter, PREPA and AAFAF noted that the RSA is a preexisting voluntary agreement under Section 104(i)(3) of PROMESA because (i) the RSA was executed and effective on March 14, 2016, more than two months prior to Section 104(i)(3)’s May 18, 2016 deadline and (ii) the RSA has the support of the majority of holders of each of PREPA’s three categories of issued Bonds.

75. PREPA and AAFAF also explained that the RSA met Section 601(g)(2)(B)'s requirements for a Qualifying Modification certification because (i) it prescribes Modifications to the claims of several categories of PREPA's financial creditors, (ii) pursuant to a restructuring support agreement executed prior to the establishment of the Oversight Board, and (iii) that will be implemented pursuant to Puerto Rico law, specifically the PREPA Revitalization Act.

76. Given the Modifications' consistency with the RSA, PREPA and AAFAF requested that the Oversight Board certify the RSA and the Qualifying Modifications under Title VI by May 15, 2017.

B. The Oversight Board Unlawfully Fails to Certify the Modifications Under the RSA as Consistent with the RSA

77. The Oversight Board has conceded that the RSA is a preexisting voluntary agreement under PROMESA. At a March 22, 2017 hearing before the Subcommittee on Indian, Insular and Alaska Native Affairs of the United States House of Representatives' Committee on Natural Resources, Defendant Matosantos testified that the "RSA is deemed to be consistent with PREPA's debt sustainability and the Oversight Board has no power to say otherwise" because "the PREPA RSA was entered into prior to May 18, 2016." Defendant Matosantos separately acknowledged that "the PREPA RSA was grandfathered to some extent by PROMESA."

78. On April 28, 2017, the Oversight Board held a public meeting and certified fiscal plans for a number of Commonwealth instrumentalities, including PREPA. Defendant Natalie Jaresko, Executive Director of the Oversight Board, publicly commented that the PREPA fiscal plan did not provide for "sufficiently lower cost" power and was not consistent with the assumptions of the certified fiscal plan. She then called for the plan to be amended within 45 days to deliver, among other things, power at a rate no higher than 21 cents per kWh by 2023. The Oversight Board subsequently voted unanimously to certify the PREPA fiscal plan subject

to incorporation of amendments outlined by Defendant Jaresko. The Oversight Board, however, did not address PREPA's Title VI certification request.

79. On June 1, 2017, Defendant Jaresko publicly commented on the status of PREPA's certification request at the Puerto Rico Manufacturers Association Convention. She stated that the Oversight Board was still working on amending the PREPA fiscal plan and remarked that the Oversight Board would not make "any decision on the Title VI request with regard to the RSA" until that process (*i.e.*, amending the fiscal plan to lower energy costs) was complete. However, Defendant Jaresko's suggestion that certification of the RSA is somehow related to PREPA's fiscal plan is misplaced. Since the RSA meets Section 601(g)(2)(B)'s requirements for a Qualifying Modification certification, the Oversight Board may not require that it conform to PREPA's fiscal plan.

80. On June 15, 2017, Representative Bishop sent a letter to Defendant Carrión. In the letter, Mr. Bishop expressed concern over the Oversight Board's inaction with respect to certifying the RSA. He labeled the Oversight Board's lack of a consensus to certify the RSA "troubling," given that "the decision to implement the RSA had already been made by Congress with the passage of PROMESA," and stated that "the Oversight Board's dilatory tactics run counter to the plain language of PROMESA." Mr. Bishop reminded the Oversight Board that Congress specifically intended to protect the RSA and that the RSA was, in fact, the only preexisting voluntary agreement contemplated by Congress when drafting Sections 104(i)(3) and 601(g)(2)(B) of PROMESA. He explained that PROMESA "obviated the need for any substantive action or oversight of the RSA by the Oversight Board." As a result, Mr. Bishop admonished, "the ongoing actions taken by the Oversight Board towards the RSA, including the

development of a Fiscal Plan and subjecting the RSA thereto, are outside the scope of the Oversight Board's powers and a violation of PROMESA.”

81. As of the date of this Complaint, the Oversight Board has been sitting on PREPA's RSA Title VI certification request for 59 days. Despite representations that the Oversight Board made to Congress that it was ready to review the RSA, the Oversight Board has steadfastly—and unlawfully—refused to take action and certify the Modifications under the RSA as a Qualifying Modification.

82. The Oversight Board's failure to comply with its ministerial and statutory obligations puts the RSA at risk of unraveling, with damaging repercussions for PREPA, creditors, consumers, and Puerto Rico's economy as a whole. Turning off the lights is not an option. Therefore, Plaintiffs request proper declaratory, injunctive, and mandamus relief requiring the Oversight Board to comply with its obligations under PROMESA.

FIRST CLAIM FOR RELIEF

(For Declaratory Relief Pursuant to 28 U.S.C. §§ 2201 and 2202 for a Declaration Under Section 104(i)(3) of PROMESA, Against All Defendants)

83. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 82 hereof, as if fully set forth herein.

84. PROMESA defines a Preexisting Voluntary Agreement as “[a]ny voluntary agreement that the territorial government or any territorial instrumentality has executed before May 18, 2016 with holders of a majority in amount of Bond Claims that are to be affected by such agreement to restructure such Bond Claims” and provides that the Preexisting Voluntary Agreement “shall be deemed to be in conformance with the requirements” of Section 104 of PROMESA. 48 U.S.C. § 2124(i)(3).

85. An actual, justiciable controversy exists between the parties regarding the interpretation of Section 104(i)(3) of PROMESA, and a declaratory judgment is necessary to resolve such controversy.

86. PREPA is a territorial instrumentality of Puerto Rico.

87. The RSA was executed before May 18, 2016 between PREPA and holders of a majority in amount of Bond Claims (including National and Assured) that were to be affected by the RSA.

88. Accordingly, the RSA is a Preexisting Voluntary Agreement under Section 104(i)(3) of PROMESA.

89. Plaintiffs are entitled to a declaratory judgment that the RSA is a “Preexisting Voluntary Agreement” under Section 104(i)(3) of PROMESA.

SECOND CLAIM FOR RELIEF

(For Declaratory Relief Pursuant to 28 U.S.C. §§ 2201 and 2202 for Violations of Section 601 of PROMESA, Against All Defendants)

90. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 90 hereof, as if fully set forth herein.

91. Title VI of PROMESA gives the Oversight Board duties as the Administrative Supervisor to issue certain certifications for voluntary agreements. In particular, the Oversight Board must certify that a proposed modification of debt under Title VI—a Modification—is a Qualifying Modification that can be submitted to a vote of affected bondholders.

92. The RSA is a Preexisting Voluntary Agreement as defined by Section 104(i)(3) of PROMESA. As a result, under Section 104(i) of PROMESA, the Oversight Board has no discretion to review or reject the agreement based on its assessment of the financial conditions in

Section 104(i)(1). Under the terms of the statute, the Oversight Board “shall issue” a certification as long as the requirement of Section 601(g)(2) is met.

93. Under Section 601(g)(2) of PROMESA, the sole issue the Oversight Board may consider is whether the Modification “is consistent with the restructuring support or similar agreement to be implemented pursuant to the law of [Puerto Rico] executed by the Issuer prior to the establishment of an Oversight Board for the relevant territory.” The Oversight Board must certify any Modification that is consistent with a Preexisting Voluntary Agreement.

94. On April 28, 2017, PREPA submitted Modifications pursuant to the RSA for certification by the Oversight Board.

95. The Modifications under the RSA, as supplemented in April 2017, are consistent with the RSA in effect in March 2016 because the deal retains its original structure and main features. The adjustments made to the RSA simply relax certain financing terms and provide additional liquidity to PREPA, all of which benefit PREPA. Therefore, the Modifications pursuant to the RSA, as so supplemented, qualify for certification as a Qualifying Modification under Section 601(g)(2) of PROMESA.

96. Section 601(g)(2) of PROMESA does not provide Defendants discretion to refuse to act and certify a Modification that is consistent with a Preexisting Voluntary Agreement.

97. Despite the mandates of Section 601(g)(2), Defendants have failed to issue any certification or to act at all.

98. Rather than acting in compliance with their duties under Section 601(g)(2), Defendants have unlawfully applied the requirements of Title VI by failing to act and considering extraneous factors that PROMESA expressly precludes it from considering in connection with a Preexisting Voluntary Agreement.

99. An actual and justiciable controversy has arisen and exists between the parties with respect to these issues and claims.

100. Plaintiffs are entitled to a declaratory judgment that Defendants' refusal to certify the Modifications under the RSA is an unlawful application of Section 601 of PROMESA.

THIRD CLAIM FOR RELIEF

**(For Injunctive Relief for Violations of Section 601 of PROMESA,
Against All Defendants)**

101. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 100 hereof, as if fully set forth herein.

102. Defendants' unlawful application of PROMESA and failure to certify the Modifications under the RSA will cause immediate and irreparable harm to Plaintiffs, depriving them of their bargained-for contractual rights and requiring them to pay claims when PREPA defaults. Plaintiffs have no adequate remedy at law to protect their rights.

103. The balance of hardships favors Plaintiffs due to the irreparable harm Plaintiffs will suffer if Defendants' unlawful application of Section 601 of PROMESA and continued failure to certify the Modifications under the Supplemented RSA are not enjoined. Injunctive relief is in the public interest.

104. Plaintiffs are entitled to an injunction prohibiting Defendants from unlawfully applying Section 601 of PROMESA and continuing their failure to certify the Modifications under the Supplemented RSA.

FOURTH CLAIM FOR RELIEF

(Petition For a Writ of Mandamus pursuant to 28 U.S.C. § 1361)

105. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 104 hereof, as if fully set forth herein.

106. The Individual Defendants hold offices created by federal law.

107. The Oversight Board is a creature of federal law.

108. As set forth in the preceding claims for relief, Defendants have failed to execute their duties under Section 601 of PROMESA and instead unlawfully applied Section 601(g)(2). These actions are incompatible with Defendants' duties owed to Plaintiffs and violate Plaintiffs' rights under PROMESA, a federal law.

109. Defendants' duties under Section 601 of PROMESA are ministerial and their failure to act consistent with these duties is outside the scope of any discretion.

110. An actual, justiciable controversy exists between the parties.

111. The Court is able to resolve the controversy created by Defendants' actions and omissions by issuing a writ of mandamus requiring the Individual Defendants to certify the Modifications under the RSA and cease their unlawful application of Section 601.

112. Adequate relief cannot be obtained by any other means.

113. Absent the requested relief, Defendants' failure to act consistent with their ministerial duties will cause immediate and irreparable harm to Plaintiffs, depriving them of their bargained-for contractual rights and requiring them to pay claims when PREPA defaults.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment against Defendants as follows:

(a) Declaring that the RSA is a "Preexisting Voluntary Agreement" as defined by Section 104(i)(3) of PROMESA;

(b) Declaring that Defendants' failure to certify the Modifications under the RSA as a Qualifying Modification is an unlawful application of Section 601 of PROMESA;

(c) Enjoining Defendants from unlawfully applying Section 601 of PROMESA and ordering them to certify the Modifications under the RSA as a Qualifying Modification;

(d) Issuing a writ of mandamus to Defendants under federal law requiring Defendants to comply with their duties under PROMESA and certify the Modifications under the RSA as a Qualifying Modification;

(e) Awarding Plaintiffs costs and reasonable attorneys' fees; and

(f) Granting Plaintiffs such other and further relief as this Court may deem just and proper.

RESPECTFULLY SUBMITTED, in San Juan, Puerto Rico, this 26th day of June, 2017.

Dated: June 26, 2017

San Juan, Puerto Rico

**ADSUAR MUÑIZ GOYCO
SEDA & PÉREZ-OCHOA, P.S.C.**

WEIL, GOTSHAL & MANGES LLP

By: /s/ Eric Pérez-Ochoa
Eric Pérez-Ochoa
USDC-PR No. 206314

By: /s/ Jonathan D. Polkes
Jonathan D. Polkes
(pro hac vice admission forthcoming)
Marcia Goldstein
(pro hac vice admission forthcoming)
Salvatore A. Romanello
(pro hac vice admission forthcoming)
Gregory Silbert
(pro hac vice admission forthcoming)
Kelly DiBlasi
(pro hac vice admission forthcoming)
Gabriel A. Morgan
(pro hac vice admission forthcoming)

/s/ Luis A. Oliver Fraticelli
Luis A. Oliver Fraticelli
USDC-PR No. 209204

/s/Lourdes Arroyo-Portela
Lourdes Arroyo Portela
USDC-PR No. 226501

/s/ Alexandra Casellas-Cabrera
Alexandra Casellas-Cabrera
USDC-PR No. 301010

208 Ponce de León Avenue,
Suite 1600
San Juan, PR 00936
787.756.9000 (Phone)
787.756.9010 (Fax)
epo@amgprlaw.com
loliver@amgprlaw.com
larroyo@amgprlaw.com
acasellas@amgprlaw.com

767 Fifth Avenue
New York, N.Y. 10153
(212) 310-8000 (Phone)
(212) 310-8007 (Fax)
jonathan.polkes@weil.com
marcia.goldstein@weil.com
salvatore.romanello@weil.com
gregory.silbert@weil.com
kelly.dibiasi@weil.com
gabriel.morgan@weil.com

Attorneys for National Public Finance Guarantee Corporation

**CASELLAS ALCOVER & BURGOS
P.S.C.**

By: /s/ Heriberto Burgos Pérez

Heriberto Burgos Pérez

USDC-PR 204809

Ricardo F. Casellas-Sánchez

USDC-PR 203114

Diana Pérez-Seda

USDC-PR 232014

P.O. Box 364924

San Juan, PR 00936-4924

Telephone: (787) 756-1400

Facsimile: (787) 756-1401

Email: hburgos@cabprlaw.com

rcasellas@cabprlaw.com

dperez@cabprlaw.com

**CADWALADER, WICKERSHAM &
TAFT LLP**

By: /s/ Howard R. Hawkins

Howard R. Hawkins, Jr.

(pro hac vice admission forthcoming)

Mark C. Ellenberg

(pro hac vice admission forthcoming)

Nathan Bull

(pro hac vice admission forthcoming)

Ellen Halstead

(pro hac vice admission forthcoming)

Thomas J. Curtin

(pro hac vice admission forthcoming)

Casey J. Servais

(pro hac vice admission forthcoming)

200 Liberty Street

New York, NY 10281

Telephone: (212) 504-6000

Facsimile: (212) 406-6666

Email: howard.hawkins@cwt.com

mark.ellenberg@cwt.com

nathan.bull@cwt.com

ellen.halstead@cwt.com

thomas.curtin@cwt.com

casey.servais@cwt.com

Attorneys for Assured Guaranty Corp. and Assured Guaranty Municipal Corp.