

Hearing Date: October 25, 2017 at 10:00 a.m.

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

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**LIMITED OBJECTION OF THE AD HOC GROUP OF GENERAL OBLIGATION
BONDHOLDERS TO URGENT MOTION FOR ORDER CONCERNING RECEIPT
AND USE OF ANTICIPATED FEDERAL DISASTER RELIEF FUNDS AND
PRESERVING RIGHTS OF PARTIES**

¹ The Debtors in these Title III cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's Federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 04780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

The Ad Hoc Group of General Obligation Bondholders (“GO Group”), consisting of holders of bonds issued or guaranteed by the Commonwealth of Puerto Rico (the “Commonwealth”) and backed by a pledge of its full faith, credit, and taxing power, respectfully submits this Limited Objection to the *Urgent Joint Motion Of The Commonwealth Of Puerto Rico, Puerto Rico Highways And Transportation Authority, Puerto Rico Electric Power Authority, And The Puerto Rico Fiscal Agency And Financial Advisory Authority For Order Concerning Receipt And Use Of Anticipated Federal Disaster Relief Funds And Preserving Rights Of Parties* (Dkt. 1444) (the “Motion”).²

DISCUSSION

At a general level, the GO Group does not object to the relief sought in the Motion. In light of the conditions prevailing in Puerto Rico as a result of Hurricane Maria, the first priority should be insuring that disaster relief funds made available by the federal government are put to their intended use as promptly as possible. Thus, grant funds provided by the Federal Emergency Management Agency (“FEMA”) to the Commonwealth and other eligible recipients (referred to as “Non-Federal Entities” in the motion) for the purpose of disaster relief and recovery should be free of interference by the creditors of the Commonwealth and the Non-Federal Entities, and if the Commonwealth advances funds to a Non-Federal Entity in anticipation of reimbursement by FEMA, those advanced funds should likewise be free of interference by the creditors of the Non-Federal Entity.

² The members of the GO Group filing this Limited Objection are certain funds or entities managed or advised by Aurelius Capital Management, LP, Autonomy Capital (Jersey) LP, FCO Advisors LP, Monarch Alternative Capital LP, and Stone Lion L.P. The GO Group submits this Limited Objection exclusively on its own behalf and does not assume any fiduciary or other duties to any other creditor or person.

However, the proposed order accompanying the Motion (the “Proposed Order”) contains a series of deficiencies, most of them technical or formal, which we explain in detail below. If the Court is otherwise prepared to grant the relief requested in the Motion, the Proposed Order should be modified to correct these deficiencies. Attached as Exhibit A to this Limited Objection is a redline of the Proposed Order, setting forth the changes that would address the deficiencies noted below. In addition, because the insertion of revised definitions into the Proposed Order obscures the changes we have proposed to the defined terms set forth in the Motion, a separate redline is attached as Exhibit B setting forth our proposed changes to these definitions. A clean version of the Proposed Order, as suggested by the GO Group, is attached as Exhibit C.³

1. As an initial matter, the Proposed Order’s scope should be modified so that it covers only funds provided to the Commonwealth by FEMA or by other federal agencies under the Stafford Act, 42 U.S.C. § 5121 *et seq.*, for disaster relief and recovery purposes. The Motion focuses on this category of funds, providing details on the applicable statutory and regulatory restrictions that limit the purposes for which such funds may be used. See Motion 5-10, 12-14. The Motion also asserts that, in addition to FEMA, “[c]ertain other federal agencies, such as U.S. Department of Housing and Urban Development and the U.S. Department of Health and Human Services, may also provide Federal Disaster Relief Funds.” *Id.* at 9. But the Motion does not cite the statutory and regulatory provisions governing the use of any such funds, and it therefore does not explain why the relief requested in the Motion is appropriate as to them. If the Debtors desire additional comfort as to this broader category of federal funds, they should be required to

³ The GO Group intends to confer with the Debtors following the filing of this Limited Objection, in the hope that, through further dialogue, the parties may arrive at consensual resolution of the issues raised herein prior to the hearing scheduled on the Motion.

identify the relevant funds with greater particularity and to establish a legal basis for the requested relief. On the basis of the present Motion, the Proposed Order's terms should not sweep so broadly.

To implement this concept, the Proposed Order should be changed in two respects. First, the Proposed Order's definition of Federal Disaster Relief Funds should be modified to apply only to funds provided by FEMA or any other federal agency pursuant to the Stafford Act. See Ex. A note 1; Ex. B. Second, the Proposed Order contains several references to "applicable federal law," which are evidently intended to cover situations in which federal agencies other than FEMA may provide funding outside of the Stafford Act's terms. These references to generic federal law should be deleted, so that the relevant restrictions on the use of funds would be provided by the FEMA Agreement and the Project Worksheets that will govern Stafford Act disbursements. See Ex. A. ¶¶ 3-5; see also Ex. A note 1; Ex. B (definition of Disaster Relief Accounts).

2. The Motion's definition of Federal Disaster Relief Funds attempts to address a "double-counting" problem that would arise if the Proposed Order's provisions applied both to funds advanced by the Commonwealth to a Non-Federal Entity in anticipation of federal reimbursement (referred to in the Motion and Proposed Order as Commonwealth Disaster Relief Advances) and to the funds received as reimbursement from the federal government. As the Motion recognizes, it would be inappropriate for the Proposed Order to provide that such reimbursement funds will not be subject to creditor claims, liens, or priorities, because they merely replace the Commonwealth's own resources that were previously transferred to the Non-Federal Entity. Thus, the Motion's definition of Commonwealth Disaster Relief Funds excludes

“funds received by the Commonwealth as reimbursement for Commonwealth Disaster Relief Advances.” Motion 3 n.3.

There are two flaws in the Proposed Order’s response to this double-counting problem. First, it is incomplete because it does not address the conceptually identical scenario in which the Commonwealth spends directly on disaster relief purposes in anticipation of federal reimbursement, rather than advancing funds to a Non-Federal Entity. In that case, as well, the federal reimbursement funds should not be excluded from creditors’ claims, liens, or priorities, because they merely replace funds previously spent by the Commonwealth from its own resources for the purposes designated in the federal program. To address this issue, we suggest broadening the definition of Commonwealth Disaster Relief Advances to include “expenditures by the Commonwealth” that would otherwise qualify under the Motion’s definition. See Ex. A note 1; Ex. B.

Second, the Motion’s definitions of Federal Disaster Relief Funds and Commonwealth Disaster Relief Advances are problematic because they are circular. In particular, the Motion provides that Federal Disaster Relief Funds shall not include amounts received as reimbursement for Commonwealth Disaster Relief Advances, while Commonwealth Disaster Relief Advances are defined as transfers that, among other things, are to be reimbursed by Federal Disaster Relief Funds—a possibility that is logically inconsistent with the exclusion of reimbursement payments from the definition of Federal Disaster Relief Funds. To address this problem, the definition of Commonwealth Disaster Relief advances should be modified to avoid referring to Federal Disaster Relief Funds and to instead describe the applicable sources of federal reimbursement directly. See Ex. A note 1; Ex. B.

3. The Proposed Order should also be modified to provide that the Commonwealth and the Non-Federal Entities shall deposit no funds other than Federal Disaster Relief Funds or Commonwealth Disaster Relief Advances into the Disaster Relief Accounts. That obligation appears to be implicit in the Motion's definition of Disaster Relief Accounts as "segregated, non-commingled" accounts, but it should be made explicit for the avoidance of any doubt since the Proposed Order provides that creditors will not have any claims or liens against Disaster Relief Accounts. See Ex. A ¶ 4. Moreover, the Proposed Order should provide that, if any other funds are improperly deposited into Disaster Relief Accounts in violation of this prohibition, they must be immediately removed upon discovery and that they will remain subject to any lien, encumbrance, priority, or other claim that they would have been otherwise subject to but for the improper deposit. See *id.* Such a provision would ameliorate the unfairness to creditors that would otherwise result from an improper deposit of funds in a Disaster Relief Account.

4. Recognizing that the Commonwealth should be treated, insofar as possible, as a pass-through for Federal Disaster Relief Funds, paragraph 7 of the Proposed Order provides that, if any Federal Disaster Relief Funds become "disobligated," the Commonwealth shall have a priority claim against any Non-Federal Entity to which it transferred such funds, and that this claim shall be a superpriority administrative claim against any debtor in a Title III case. We agree that these protections are reasonable and appropriate. Again, however, we respectfully submit that they are incomplete because they fail to address all circumstances in which a claim in favor of the Commonwealth should be recognized and they do not provide sufficient protections when the Commonwealth transfers funds to a recipient that is not yet a debtor under Title III of PROMESA.

Our proposed changes to paragraph 7 address these issues by providing that the Commonwealth shall have a “Reimbursement Claim” against the Non-Federal Entity to which funds were transferred whenever Federal Disaster Relief Funds are “disobligated, de-obligated, disallowed, or are otherwise required to be reimbursed, repaid or returned to the federal government, or to the extent the Commonwealth fails to receive reimbursement from the federal government for any Commonwealth Disaster Relief Advances or the Commonwealth is required to reimburse, repay, or return any funds made available by, disbursed by, or otherwise provided by any federal agency that reimbursed a Commonwealth Disaster Relief Advance, the Commonwealth.” Ex. A ¶ 7. In addition, because the notion of a superpriority administrative claim does not make sense in the context of a Non-Federal Entity that is not a debtor in a case under Title III of PROMESA, our proposed changes to paragraph 7 would require the Commonwealth to condition transfers to any such Non-Federal Entity on the prior grant of a lien in favor of the Commonwealth, provided that such lien would not prime holders of preexisting valid liens. See *id.* Finally, we propose modifying the definitions of Federal Disaster Relief Funds and Commonwealth Disaster Relief Advances to provide, solely for the avoidance of doubt, that these terms do not encompass Reimbursement Claims or funds received by the Commonwealth on account of Reimbursement Claims, which, again, eliminates any potential “double counting” issues. See Ex. A note 1; Ex. B.

5. We propose deleting the provision in paragraph 2 of the Proposed Order stating that Federal Disaster Relief Funds, Commonwealth Disaster Relief Advances, and Disaster Relief Funds “shall not be considered available funds, revenues, or resources for any purpose in connection with any restructuring proceeding under Title III of PROMESA.” Ex. A ¶ 2. The Motion does not explain why that provision is necessary, especially in light of the language in

paragraph 2 stating that such funds and accounts will not be subject to claims, liens, encumbrances, or other claims by pre-existing creditors and the language in paragraphs 3 and 4 stating that Federal Disaster Relief Funds and Commonwealth Disaster Relief Advances shall be used only as provided by federal law.

6. We agree that the reservation of rights language in paragraph 8 of the Proposed Order is generally appropriate but suggest that a few minor modifications are warranted.

First, the language stating that the Order shall be without prejudice to any party's rights to assert arguments with respect to "proceeds" of Federal Disaster Relief Funds should be deleted. See Ex. A. ¶ 8. No other provision of the Proposed Order suggests that the Proposed Order could have any effect with respect to such proceeds, but retaining this language in paragraph 8 could lead to an unwarranted inference that other provisions of the Proposed Order do in fact address such proceeds. The language should therefore be deleted.

Second, the reservation of rights should extend beyond Federal Disaster Relief Funds to encompass Commonwealth Disaster Relief Advances and Disaster Relief Advances. Ex. A. ¶ 8. There is no evident reason for excluding these items from the scope of paragraph 8.

Third, in order to track language elsewhere in the Proposed Order, the reservation of rights should be expanded to include "encumbrances" and "other claims." Ex. A. ¶ 8. Again, there is no evident reason for exclusion of these items from the scope of paragraph 8.

7. In two instances, the Proposed Order uses the phrase "instrumentalities of the Commonwealth, including public corporations" when it appears that the defined term Non-Federal Entities would be a better fit. We propose using the defined term. See Ex. A ¶¶ 3, 4.

8. Under the Motion's definition, funds that are "earmarked" by FEMA may qualify as Federal Disaster Relief Funds. Motion 3 n.3. In our view, this language has the potential to

create confusion because, unlike the other portions of the definition, it suggests that funds may become Federal Disaster Relief funds while they are still in the federal government's custody. The Motion does not explain why that result would be desirable. We therefore suggest that the "earmarked" language be deleted. See Ex. A note 1; Ex. B.

9. The Motion's definition of Disaster Relief Accounts includes only accounts established in the name of an instrumentality to which Federal Disaster Relief Funds or Commonwealth Disaster Relief Advances are transferred. See Motion 10-11. To the extent that any Federal Disaster Relief Funds are allocated for spending by the Commonwealth itself, however, those funds should be deposited into a segregated, non-comingled account in the Commonwealth's name. The definition of Disaster Relief Accounts should be modified accordingly to encompass accounts established in the Commonwealth's name. See Ex. A note 1; Ex. B.

CONCLUSION

The Court should deny the Motion unless the Proposed Order is revised as set forth in Exhibit A to this Limited Objection.

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Dated: October 19, 2017

/s/ Ramón Rivera Morales

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EXHIBIT A

Proposed Order

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

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO *et al.*,

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO HIGHWAYS AND
TRANSPORTATION AUTHORITY,

Debtor.

PROMESA Title III

No. 17 BK 3567-LTS

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's Federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 04780-LTS) (Last Four Digits of Federal Tax ID: 3747) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO ELECTRIC POWER
AUTHORITY,

Debtor.

PROMESA Title III

No. 17 BK 4780-LTS

(Jointly Administered)

**[PROPOSED] ORDER GRANTING URGENT JOINT MOTION OF THE
COMMONWEALTH OF PUERTO RICO, PUERTO RICO HIGHWAYS AND
TRANSPORTATION AUTHORITY, PUERTO RICO ELECTRIC POWER
AUTHORITY, AND THE PUERTO RICO FISCAL AGENCY AND FINANCIAL
ADVISORY AUTHORITY FOR ORDER CONCERNING RECEIPT AND USE OF
ANTICIPATED FEDERAL DISASTER RELIEF FUNDS AND PRESERVING
RIGHTS OF PARTIES**

Upon consideration of the *Urgent Joint Motion of the Commonwealth of Puerto Rico, Puerto Rico Highways and Transportation Authority, and Puerto Rico Electric Power Authority, and the Puerto Rico Fiscal Agency and Financial Advisory Authority for Order Concerning Receipt and Use of Anticipated Federal Disaster Relief Funds and Preserving Rights of Parties* (the “Urgent Motion”) filed jointly by the Financial Oversight and Management Board for Puerto Rico (the “FOMB”), as the representative of the Commonwealth of Puerto Rico (the “Commonwealth” or “Puerto Rico”), Puerto Rico Highways and Transportation Authority (“HTA”), and Puerto Rico Electric Power Authority (“PREPA”) (collectively, the “Debtors”) in these Title III cases pursuant to section 315(b) of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”), 48 U.S.C. §§ 2101-2241, and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”), as the entity authorized to act on behalf of the Debtors pursuant to the authority granted to it under the

Enabling Act of the Fiscal Agency and Financial Advisory Authority, Act 2-2017; the Court having jurisdiction pursuant to PROMESA section 306(a); it appearing that venue is proper pursuant to PROMESA section 307(a); and the Court having found that the relief requested in the Urgent Motion is in the best interest of the Debtors, their creditors, and other parties in interest; and the Court having found that the FOMB and AAFAF, as co-movants, provided adequate and appropriate notice of the Urgent Motion under the circumstances and that no other or further notice is required; and the Court having reviewed the Urgent Motion and having heard statements in support of the Urgent Motion at a hearing held before the Court (the “Hearing”); and the Court having determined that the legal and factual bases set forth in the Urgent Motion and at the Hearing establish just cause for the relief granted herein; and any objections to the relief granted herein having been withdrawn or are overruled on the merits; and after due deliberation and sufficient cause appearing therefore, it is HEREBY ORDERED THAT:

1. The Urgent Motion is GRANTED to the extent set forth herein;
2. All Federal Disaster Relief Funds,² Commonwealth Disaster Relief Advances,

² All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Urgent Motion: except that:

- “Federal Disaster Relief Funds” shall mean “funds made available by, disbursed by, and/or otherwise provided by the Federal Emergency Management Agency (“FEMA”), or any other federal agency pursuant to the Stafford Act, 42 U.S.C. § 5121 et seq., to the Commonwealth and Non-Federal Entities for the purpose of providing emergency assistance, disaster relief, and/or recovery and restorative assistance in the form of grants; provided, however, that Federal Disaster Relief Funds shall not include funds received by the Commonwealth as reimbursement for Commonwealth Disaster Relief Advances; and provided further, for the avoidance of doubt, that Federal Disaster Relief Funds shall not include any Reimbursement Claim or any funds received by the Commonwealth on account of any Reimbursement Claim.”
- “Commonwealth Disaster Relief Advances” shall mean “advances by the Commonwealth to Non-Federal Entities of, or expenditures by the Commonwealth from, funds other than Federal Disaster Relief Funds, to pay the costs of a project approved by a federal agency, including FEMA, and to be reimbursed by funds made available by, disbursed by, and/or otherwise provided by FEMA or any other federal agency pursuant to the Stafford Act, 42

and Disaster Relief Accounts shall not be subject to any liens, encumbrances, priorities, or other claims by pre-existing creditors in any form whatsoever, ~~and such funds and accounts shall not be considered available funds, revenues, or resources for any purpose in connection with any restructuring proceeding under Title III of PROMESA;~~

3. All Federal Disaster Relief Funds shall be received by the Commonwealth and deposited by ~~it or the instrumentality of the Commonwealth, including public corporations, or~~ the Non-Federal Entity to which such funds are transferred solely into Disaster Relief Accounts and shall be used solely for the purposes designated in the FEMA Agreement, and/or any governing Project Worksheet, ~~and/or applicable federal law;~~

4. Any Commonwealth Disaster Relief Advances shall be received and deposited by ~~instrumentalities of the Commonwealth, including public corporations,~~ Non-Federal Entities into Disaster Relief Accounts and used solely for the purposes set forth in the FEMA Agreement, and/or any governing Project Worksheet, ~~and/or applicable federal law.~~ The Commonwealth and the Non-Federal Entities shall not deposit any funds, other than Federal Disaster Relief Funds and Commonwealth Disaster Relief Advances into Disaster Relief Accounts; provided, however, that, notwithstanding the foregoing prohibition, in the event that any funds are so deposited, such funds shall, immediately upon discovery, be transferred out of such accounts and remain subject to any lien, encumbrance, priority, or other claim that such

U.S.C. § 5121 et seq., to the Commonwealth and Non-Federal Entities for the purpose of providing emergency assistance, disaster relief, and/or recovery and restorative assistance in the form of grants; provided, for the avoidance of doubt, that Commonwealth Disaster Relief Advances shall not include any Reimbursement Claim or any funds received by the Commonwealth on account of any Reimbursement Claim.”

- “Disaster Relief Accounts” shall mean “new, segregated, non-commingled, unencumbered accounts held in the name of the Commonwealth or of the instrumentality to whom the funds have been allocated according to a governing Project Worksheet.”

funds would have otherwise been subject to but for the improper deposit of such funds in a Disaster Relief Account;

5. No creditor of the Commonwealth or any Non-Federal Entity shall assert a lien on or priority to or shall exercise any remedies against any Federal Disaster Relief Funds, Commonwealth Disaster Relief Advances, or Disaster Relief Accounts whether held by the Commonwealth or Non-Federal Entities, or be entitled to take any enforcement action against such funds or accounts or interfere in any way with the payment of Federal Disaster Relief Funds or Commonwealth Disaster Relief Advances to parties entitled to such payment, in each case so long as such funds and accounts are used ~~in accordance with any restrictions imposed by or agreements reached with FEMA and/or applicable federal laws~~ solely for the purposes set forth in the FEMA Agreement and/or any governing Project Worksheet;

6. No creditor shall be entitled to adequate protection premised on the Commonwealth's or any Non-Federal Entity's use of Federal Disaster Relief Funds or Commonwealth Disaster Relief Advances;

7. To the extent any Federal Disaster Relief Funds become disobligated, ~~the Commonwealth, as recipient of such funds,~~ de-obligated, disallowed, unallowed, or are otherwise required to be reimbursed, repaid or returned to the federal government, or to the extent the Commonwealth fails to receive reimbursement from the federal government for any Commonwealth Disaster Relief Advances or the Commonwealth is required to reimburse, repay, or return any funds made available by, disbursed by, or otherwise provided by any federal agency that reimbursed a Commonwealth Disaster Relief Advance, the Commonwealth shall have a ~~priority~~ claim against the Non-Federal Entity to which it transferred Federal Disaster Relief Funds or made a Commonwealth Disaster Relief Advance

~~(such funds, which~~ claim, a “Reimbursement Claim”). To the extent the Commonwealth asserts a Reimbursement Claim against a Non-Federal Entity that is a debtor under Title III of PROMESA, such Reimbursement Claim shall be a superpriority administrative expense claim against any debtor in a case in such Non-Federal Entity’s Title III Case. To the extent the Commonwealth seeks to transfer Federal Disaster Relief Funds or make Commonwealth Disaster Relief Advances to a Non-Federal Entity that is not a debtor under Title III of PROMESA, the Commonwealth shall condition such transfer of Federal Disaster Relief Funds or Commonwealth Disaster Relief Advances on the prior grant from such Non-Federal Entity of a lien in favor of the Commonwealth on all of that Non-Federal Entity’s real and personal property, in what whatever form, wherever located, and whether now or hereafter existing, and all parts thereof, all accessions thereto, and all replacements therefor, which lien shall be immediately perfected and shall secure all potential Reimbursement Claims; provided, however, that to the extent such Non-Federal Entity’s real and personal property are subject to an existing, valid, and enforceable lien in favor of another party, then the lien granted to the Commonwealth shall be junior to such existing, valid, and enforceable lien to the extent required under applicable agreements and law;

8. This Order shall be without prejudice to: (i) any party’s rights under applicable agreements or applicable law to assert a lien, encumbrance, priority, or other claim against any property other than Federal Disaster Relief Funds, Commonwealth Disaster Relief Advances, or Disaster Relief Accounts, or to argue solely for the purposes of determining the extent of its claim or treatment in respect of such claim that the Federal Disaster Relief Funds ~~or the proceeds thereof,~~ Commonwealth Disaster Relief Advances, or Disaster Relief Accounts, would, notwithstanding any restrictions under applicable federal law and/or this ~~order~~ Order, be

subject to that party's lien-~~or~~ encumbrance, priority, or other claim, or otherwise subject to the terms of agreement with creditors or any rights granted under the terms of applicable agreements or law; and (ii) the right of the Commonwealth, any Non-Federal Entity, federal agency, or other party to dispute the same;

9. Immediately upon entry by the Court of this Order, (i) AAFAF, the Commonwealth, the Non-Federal Entities, and the FOMB, as the Debtors' representative in the Title III cases, are authorized to take all actions, and to execute all documents, necessary or appropriate, to effectuate the relief granted herein, and (ii) this Order shall be binding on all entities having received prior notice of the Urgent Motion;

10. The Court shall retain exclusive jurisdiction to hear and determine any and all disputes related to or arising from the implementation, interpretation, and enforcement of this order.

SO ORDERED.

Dated: October_____, 2017

HON. LAURA TAYLOR SWAIN
United States District Judge

EXHIBIT B

Proposed Revisions To Definitions

- “Federal Disaster Relief Funds” means “funds made available by, disbursed by, and/or otherwise ~~earmarked or~~ provided by the Federal Emergency Management Agency (“FEMA”), or any other federal agency pursuant to the Stafford Act, 42 U.S.C. § 5121 et seq., to the Commonwealth and Non-Federal Entities ~~(defined below), whether directly or indirectly,~~ for the purpose of providing emergency assistance, disaster relief, and/or recovery and restorative assistance in the form of grants; provided, however, that Federal Disaster Relief Funds shall not include funds received by the Commonwealth as reimbursement for Commonwealth Disaster Relief Advances; and provided further, for the avoidance of doubt, that Federal Disaster Relief Funds shall not include any Reimbursement Claim or any funds received by the Commonwealth on account of any Reimbursement Claim.”
- “Commonwealth Disaster Relief Advances” means “advances by the Commonwealth ~~of to~~ Non-Federal Entities of, or expenditures by the Commonwealth from, funds other than Federal Disaster Relief Funds ~~to any Commonwealth instrumentality, including public corporations,~~ to pay the costs of a project approved by a federal agency, including FEMA, and to be reimbursed by ~~Federal Disaster Relief Funds~~ funds made available by, disbursed by, and/or otherwise provided by FEMA or any other federal agency pursuant to the Stafford Act, 42 U.S.C. § 5121 et seq., to the Commonwealth and Non-Federal Entities for the purpose of providing emergency assistance, disaster relief, and/or recovery and restorative assistance in the form of grants; provided, for the avoidance of doubt, that Commonwealth Disaster Relief Advances shall not include any Reimbursement Claim or any funds received by the Commonwealth on account of any Reimbursement Claim.”
- “Disaster Relief Accounts” means “new, segregated, non-commingled, unencumbered accounts held in the name of the Commonwealth or of the instrumentality to whom the funds have been allocated according to a governing Project Worksheet ~~or otherwise under applicable law.~~”

EXHIBIT C

Proposed Order

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

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO *et al.*,

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

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as representative of

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PROMESA Title III

No. 17 BK 3567-LTS

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In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO ELECTRIC POWER
AUTHORITY,

Debtor.

PROMESA Title III

No. 17 BK 4780-LTS

(Jointly Administered)

**[PROPOSED] ORDER GRANTING URGENT JOINT MOTION OF THE
COMMONWEALTH OF PUERTO RICO, PUERTO RICO HIGHWAYS AND
TRANSPORTATION AUTHORITY, PUERTO RICO ELECTRIC POWER
AUTHORITY, AND THE PUERTO RICO FISCAL AGENCY AND FINANCIAL
ADVISORY AUTHORITY FOR ORDER CONCERNING RECEIPT AND USE OF
ANTICIPATED FEDERAL DISASTER RELIEF FUNDS AND PRESERVING
RIGHTS OF PARTIES**

Upon consideration of the *Urgent Joint Motion of the Commonwealth of Puerto Rico, Puerto Rico Highways and Transportation Authority, and Puerto Rico Electric Power Authority, and the Puerto Rico Fiscal Agency and Financial Advisory Authority for Order Concerning Receipt and Use of Anticipated Federal Disaster Relief Funds and Preserving Rights of Parties* (the “Urgent Motion”) filed jointly by the Financial Oversight and Management Board for Puerto Rico (the “FOMB”), as the representative of the Commonwealth of Puerto Rico (the “Commonwealth” or “Puerto Rico”), Puerto Rico Highways and Transportation Authority (“HTA”), and Puerto Rico Electric Power Authority (“PREPA”) (collectively, the “Debtors”) in these Title III cases pursuant to section 315(b) of the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”), 48 U.S.C. §§ 2101-2241, and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”), as the entity authorized to act on behalf of the Debtors pursuant to the authority

granted to it under the *Enabling Act of the Fiscal Agency and Financial Advisory Authority*, Act 2-2017; the Court having jurisdiction pursuant to PROMESA section 306(a); it appearing that venue is proper pursuant to PROMESA section 307(a); and the Court having found that the relief requested in the Urgent Motion is in the best interest of the Debtors, their creditors, and other parties in interest; and the Court having found that the FOMB and AAFAF, as co-movants, provided adequate and appropriate notice of the Urgent Motion under the circumstances and that no other or further notice is required; and the Court having reviewed the Urgent Motion and having heard statements in support of the Urgent Motion at a hearing held before the Court (the “Hearing”); and the Court having determined that the legal and factual bases set forth in the Urgent Motion and at the Hearing establish just cause for the relief granted herein; and any objections to the relief granted herein having been withdrawn or are overruled on the merits; and after due deliberation and sufficient cause appearing therefore, it is HEREBY ORDERED THAT:

1. The Urgent Motion is GRANTED to the extent set forth herein;
2. All Federal Disaster Relief Funds,² Commonwealth Disaster Relief Advances,

² All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Urgent Motion; except that:

- “Federal Disaster Relief Funds” shall mean “funds made available by, disbursed by, and/or otherwise provided by the Federal Emergency Management Agency (“FEMA”), or any other federal agency pursuant to the Stafford Act, 42 U.S.C. § 5121 *et seq.*, to the Commonwealth and Non-Federal Entities for the purpose of providing emergency assistance, disaster relief, and/or recovery and restorative assistance in the form of grants; *provided, however*, that Federal Disaster Relief Funds shall not include funds received by the Commonwealth as reimbursement for Commonwealth Disaster Relief Advances; and *provided further*, for the avoidance of doubt, that Federal Disaster Relief Funds shall not include any Reimbursement Claim or any funds received by the Commonwealth on account of any Reimbursement Claim.”
- “Commonwealth Disaster Relief Advances” shall mean “advances by the Commonwealth to Non-Federal Entities of, or expenditures by the Commonwealth from, funds other than Federal Disaster Relief Funds, to pay the costs of a project approved by a federal agency,

and Disaster Relief Accounts shall not be subject to any liens, encumbrances, priorities, or other claims by pre-existing creditors in any form whatsoever;

3. All Federal Disaster Relief Funds shall be received by the Commonwealth and deposited by the Commonwealth or the Non-Federal Entity to which such funds are transferred solely into Disaster Relief Accounts and shall be used solely for the purposes designated in the FEMA Agreement and/or any governing Project Worksheet;

4. Any Commonwealth Disaster Relief Advances shall be received and deposited by Non-Federal Entities into Disaster Relief Accounts and used solely for the purposes set forth in the FEMA Agreement and/or any governing Project Worksheet. The Commonwealth and the Non-Federal Entities shall not deposit any funds, other than Federal Disaster Relief Funds and Commonwealth Disaster Relief Advances into Disaster Relief Accounts; *provided, however,* that, notwithstanding the foregoing prohibition, in the event that any funds are so deposited, such funds shall, immediately upon discovery, be transferred out of such accounts and remain subject to any lien, encumbrance, priority, or other claim that such funds would have otherwise been subject to but for the improper deposit of such funds in a Disaster Relief Account;

5. No creditor of the Commonwealth or any Non-Federal Entity shall assert a lien

including FEMA, and to be reimbursed by funds made available by, disbursed by, and/or otherwise provided by FEMA or any other federal agency pursuant to the Stafford Act, 42 U.S.C. § 5121 *et seq.*, to the Commonwealth and Non-Federal Entities for the purpose of providing emergency assistance, disaster relief, and/or recovery and restorative assistance in the form of grants; *provided,* for the avoidance of doubt, that Commonwealth Disaster Relief Advances shall not include any Reimbursement Claim or any funds received by the Commonwealth on account of any Reimbursement Claim.”

- “Disaster Relief Accounts” shall mean “new, segregated, non-commingled, unencumbered accounts held in the name of the Commonwealth or of the instrumentality to whom the funds have been allocated according to a governing Project Worksheet.”

on or priority to or shall exercise any remedies against any Federal Disaster Relief Funds, Commonwealth Disaster Relief Advances, or Disaster Relief Accounts whether held by the Commonwealth or Non-Federal Entities, or be entitled to take any enforcement action against such funds or accounts or interfere in any way with the payment of Federal Disaster Relief Funds or Commonwealth Disaster Relief Advances to parties entitled to such payment, in each case so long as such funds and accounts are used solely for the purposes set forth in the FEMA Agreement and/or any governing Project Worksheet;

6. No creditor shall be entitled to adequate protection premised on the Commonwealth's or any Non-Federal Entity's use of Federal Disaster Relief Funds or Commonwealth Disaster Relief Advances;

7. To the extent any Federal Disaster Relief Funds become disobligated, de-obligated, disallowed, unallowed, or are otherwise required to be reimbursed, repaid or returned to the federal government, or to the extent the Commonwealth fails to receive reimbursement from the federal government for any Commonwealth Disaster Relief Advances or the Commonwealth is required to reimburse, repay, or return any funds made available by, disbursed by, or otherwise provided by any federal agency that reimbursed a Commonwealth Disaster Relief Advance, the Commonwealth shall have a claim against the Non-Federal Entity to which it transferred Federal Disaster Relief Funds or made a Commonwealth Disaster Relief Advance (such claim, a "Reimbursement Claim"). To the extent the Commonwealth asserts a Reimbursement Claim against a Non-Federal Entity that is a debtor under Title III of PROMESA, such Reimbursement Claim shall be a superpriority administrative expense claim in such Non-Federal Entity's Title III Case. To the extent the Commonwealth seeks to transfer Federal Disaster Relief Funds or make Commonwealth

Disaster Relief Advances to a Non-Federal Entity that is not a debtor under Title III of PROMESA, the Commonwealth shall condition such transfer of Federal Disaster Relief Funds or Commonwealth Disaster Relief Advances on the prior grant from such Non-Federal Entity of a lien in favor of the Commonwealth on all of that Non-Federal Entity's real and personal property, in what whatever form, wherever located, and whether now or hereafter existing, and all parts thereof, all accessions thereto, and all replacements therefor, which lien shall be immediately perfected and shall secure all potential Reimbursement Claims; *provided, however*, that to the extent such Non-Federal Entity's real and personal property are subject to an existing, valid, and enforceable lien in favor of another party, then the lien granted to the Commonwealth shall be junior to such existing, valid, and enforceable lien to the extent required under applicable agreements and law;

8. This Order shall be without prejudice to: (i) any party's rights under applicable agreements or applicable law to assert a lien, encumbrance, priority, or other claim against any property other than Federal Disaster Relief Funds, Commonwealth Disaster Relief Advances, or Disaster Relief Accounts, or to argue solely for the purposes of determining the extent of its claim or treatment in respect of such claim that the Federal Disaster Relief Funds, Commonwealth Disaster Relief Advances, or Disaster Relief Accounts, would, notwithstanding any restrictions under applicable federal law and/or this Order, be subject to that party's lien, encumbrance, priority, or other claim, or otherwise subject to the terms of agreement with creditors or any rights granted under the terms of applicable agreements or law; and (ii) the right of the Commonwealth, any Non-Federal Entity, federal agency, or other party to dispute the same;

9. Immediately upon entry by the Court of this Order, (i) AAFAF, the

Commonwealth, the Non-Federal Entities, and the FOMB, as the Debtors' representative in the Title III cases, are authorized to take all actions, and to execute all documents, necessary or appropriate, to effectuate the relief granted herein, and (ii) this Order shall be binding on all entities having received prior notice of the Urgent Motion;

10. The Court shall retain exclusive jurisdiction to hear and determine any and all disputes related to or arising from the implementation, interpretation, and enforcement of this order.

SO ORDERED.

Dated: October_____, 2017

HON. LAURA TAYLOR SWAIN
United States District Judge