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

LEX CLAIMS, LLC, et al., Plaintiffs, v. ALEJANDRO GARCÍA PADILLA, et al., Defendants.	Case No. 3:16-cv-02374 (FAB)

OPPOSITION TO DEFENDANTS' MOTION FOR A STAY

Plaintiffs respectfully submit this opposition to defendants' most recent motion to stay this action. See Dkt. 84. Plaintiffs' Second Amended Complaint advances four causes of action under PROMESA that are, for all purposes pertinent to defendants' stay motion, identical to the claim in plaintiffs' First Amended Complaint, which this Court has held is not subject to the PROMESA stay.[1] See Dkt. 32. Like that claim, the PROMESA Claims seek declarations that the Commonwealth's conduct violates numerous sections of PROMESA, and limited injunctive relief preventing prospective enforcement of that unlawful conduct. See Dkt. 78.

Defendants make no effort to contend that the Commonwealth's conduct is consistent with PROMESA. Instead, once again, defendants seek to evade judicial review of the legality of their actions by arguing that this action should be stayed. Defendants' motion—their second such filing in this case—amounts to their fourth request for this Court to reconsider its prior stay ruling, following defendants' motion to dismiss (Dkt. 33, at 15-25), motion for reconsideration (Dkt. 34), and opposition to plaintiffs' motion to amend (Dkt. 49, at 2-18). But sheer repetition has not rendered defendants' arguments any more persuasive. In the end, this lawsuit does not fall within the letter or the spirit of PROMESA's stay provisions, and defendants' resort to the Court's "inherent authority" likewise provides no sound basis for a stay.

Moreover, recent events have only reinforced the importance of promptly resolving plaintiffs' claims under PROMESA. On November 16, 2016, Governor García Padilla issued Executive Order 2016-44 to convene a special session of the Legislative Assembly. Just days after his Administration's policies were comprehensively disavowed by the Commonwealth's electorate,

[1] Consistent with plaintiffs' motion for leave to amend (Dkt. 39), plaintiffs currently seek to prosecute only the first, second, third, and twelfth causes of action of its Second Amended Complaint (the "PROMESA Claims"). Plaintiffs do not currently seek to prosecute the fourth through eleventh causes of action (the "Non-PROMESA Claims").

Governor García Padilla has proposed more than one hundred pieces of legislation, and 88 proposed appointments, for consideration in the special session. If adopted, his proposed legislative agenda would result in roughly $300 million in additional transfers to the Commonwealth's pension programs (over and above the outsized transfers already identified in the Second Amended Complaint). Yet the Commonwealth claims it is unable to fund even a single dollar to pay its Constitutional Debt, which enjoys a constitutional lien and first-priority claim on all of the Commonwealth "available resources." P.R. Cons. art. VI, § 8.

Even as it seeks a stay for the ostensible purpose of facilitating negotiations, the outgoing Administration has made clear its *contempt* for PROMESA's framework for fostering a workable resolution to the Commonwealth's financial situation. On November 18, 2016, the Financial Oversight and Management Board for Puerto Rico (the "Oversight Board") met in Puerto Rico and adopted a timetable "for the Governor to submit revisions" to the Administration's Fiscal Plan, which was submitted in October 2016. See Financial Oversight and Management Board for Puerto Rico, *Oversight Board Holds Third Meeting in Puerto Rico* 2 (Nov. 18, 2016), http://www.juntasupervision.pr.gov/oversightboard/Documents/FINAL.FOMBPR_ThirdMeetingPR_11-18-16%20(ENG).pdf. But Governor García Padilla has now stated that he will refuse to make any modifications to the Fiscal Plan, thereby cutting off any opportunity for collaboration with the Governor's administration during his remaining time in office. See, *e.g.*, Eva Lloréns Vélez, *García Padilla Rejects Oversight Board Request to Amend Draft Fiscal Plan*, Caribbean Business, Nov. 21, 2016, http://caribbeanbusiness.com/governor-defies-new-federal-control-board/. Under these circumstances, the Court should reject defendants' suggestion that plaintiffs' claims must be stalled in deference to a consensual negotiation process that the current Administration has no interest in promoting.

BACKGROUND

1. Plaintiffs filed this action on July 20, 2016, to enforce PROMESA's limitations on the Commonwealth's efforts to enact unlawful new measures in the interim period between when the Act was passed and when the Oversight Board established by PROMESA is fully capable of carrying out its mandate. See Dkt. 1. The First Amended Complaint alleged that the Commonwealth has brazenly violated Sections 204(c)(3) and 207 of PROMESA, two critical protections imposed by PROMESA for the benefit of Puerto Rico's creditors, by, among other actions, making extraordinary transfers of the Commonwealth's resources. Those transfers included outsized contributions to the Commonwealth's pension program and authorizing the assumption and restructuring of billions of dollars in debt payable to the insolvent Government Development Bank.

On August 22, 2016, defendants filed their first motion to stay this case, contending that plaintiffs' action was stayed by Section 405(b)(1) of PROMESA. Dkt. 26. At this Court's direction, plaintiffs filed a response on August 25, 2016. Dkt. 28. On September 2, 2016, this Court entered an order holding that PROMESA's stay does not apply to this action for two reasons. Dkt. 32. First, the Court concluded that "[p]laintiffs could not have commenced this lawsuit before PROMESA's enactment because their claims are to enforce provisions of PROMESA by challenging conduct that occurred after PROMESA's enactment." *Id.* at 2. Second, the Court concluded that plaintiffs' lawsuit was not an action "to recover a Liability Claim against the Government of Puerto Rico that arose before the enactment of [PROMESA]," PROMESA § 405(b)(1), because "plaintiffs seek only declaratory and injunctive relief" and thus "do not seek to recover a right to payment that arose before PROMESA's enactment." Dkt. 32, at 3.

Defendants filed a motion to dismiss the First Amended Complaint on September 2, 2016, see Dkt. 33, and a motion for reconsideration of this Court's stay order on September 7,

2016, see Dkt. 34. In both motions, defendants reframed their stay argument under Section 405(b)(6). On September 30, 2016, plaintiffs filed a consolidated opposition to those motions. Dkt. 37. The Court denied both of defendants' motions on November 4, 2016. See Dkts. 75, 79.

Plaintiffs filed a motion for leave to further amend their complaint on October 7, 2016. See Dkt. 39. By that time, it had become evident that the Oversight Board would not be fully operational for a considerable period of time, and that, in the interim, the Commonwealth would continue to divert hundreds of millions of dollars of sales and use tax ("SUT") revenue to the payment of bonds issued by COFINA while maintaining a moratorium on payment of the Constitutional Debt. Plaintiffs thus proposed a Second Amended Complaint that, in addition to raising the then-existing claim under Section 204(c)(3) and Section 207 (now plaintiffs' First Cause of Action), raised new challenges to Governor García Padilla's unlawful Executive Order 2016-30 and the Moratorium Act pursuant to which it was granted, under Section 303(3) and Section 303(1), respectively. Dkt. 39-1 ¶¶ 135-150. Specifically, plaintiffs' Second Cause of Action alleges that, by freezing payments of the Commonwealth's available resources to holders of Constitutional Debt while diverting substantial portions of available resources to holders of COFINA bonds, Executive Order 2016-30 has unlawfully turned the constitutionally required hierarchy of creditor protections and priorities on its head. The Third Cause of Action alleges that the Moratorium Act is preempted by Section 303(1) of PROMESA. Plaintiffs additionally sought leave to file, but not to prosecute at this time, several Non-PROMESA Claims. See Dkt. 39, at 13-14.

On October 24, 2016, defendants filed an opposition to plaintiffs' motion to amend, again repackaging their argument for application of the PROMESA stay. Dkt 49. This Court thereafter granted plaintiffs' motion, "to the extent of allowing the second amended complaint to be filed." Dkt. 76. This Court also held that "[w]hether the First, Second, Third and Twelfth causes

of action may be prosecuted will be decided in due course." *Ibid.* Plaintiffs accordingly filed their Second Amended Complaint on November 4, 2016, with the understanding that they would prosecute only the PROMESA Claims (*i.e.*, the First, Second, Third, and Twelfth Causes of Action). Dkt. 78.

2. On November 7, 2016, defendants filed their current motion for a stay, captioning the filing as a notice of automatic stay. Dkt. 84. On November 16, 2016, the Court ruled that it would consider this filing "as a motion requesting the Court to stay this action, not a notice that it is stayed." Dkt. 103.

ARGUMENT

I. PROMESA Does Not Stay This Action

Defendants contend (at 6-17) that plaintiffs' PROMESA Claims are stayed by Section 405(b) of PROMESA. That is incorrect. As we have previously explained, plaintiffs' request for declaratory and injunctive relief under PROMESA cannot conceivably be characterized as an action that could have been commenced before PROMESA's enactment, or as an effort to recover or collect on plaintiffs' bonds, to control property, or to enforce a lien.

A. The PROMESA Claims Are Not Stayed By Section 405(b)(1)

1. Invoking Section 405(b)(1) of PROMESA, defendants first contend that all of plaintiffs' claims—including the PROMESA Claims—are subject to the stay because plaintiffs have acknowledged that their Non-PROMESA Claims, which plaintiffs do not seek to prosecute at the present time, are stayed by PROMESA § 405(b)(1). Dkt. 84, at 7. Because Section 405(b)(1) stays the continuation of an "action or proceeding" against the Government of Puerto Rico that could have been brought prior to PROMESA's enactment, defendants contend that it applies even to claims that *could not* have been brought before the enactment of PROMESA if those

claims are in the same actions as other claims that could have been prosecuted before PROMESA's enactment. Dkt. 84, at 7.

But it is well settled that, under analogous provisions of the Bankruptcy Code, "[a]ll proceedings in a single case are not lumped together for purposes of automatic stay analysis." *Mar. Elec. Co. v. United Jersey Bank*, 959 F.2d 1194, 1204 (3d Cir. 1991). To the contrary, "[m]ultiple claim . . . litigation must be disaggregated so that particular claims . . . are treated independently when determining which of their respective proceedings are subject to the bankruptcy stay." *Id.* at 1204-1205; see also *In re Mid-Atl. Handling Sys., LLC*, 304 B.R. 111, 128 (Bankr. D.N.J. 2003) ("Especially in multiple claim and multiple party litigation, it is the function of the court to analyze each claim independently in determining whether the automatic stay should apply to that particular claim."). Defendants identify no basis for a different result under PROMESA's stay provision.

2. Defendants also recycle their argument that Section 405(b)(1) applies because plaintiffs' Second and Third Causes of Action—which arise *under* PROMESA—could have been brought *before* PROMESA's enactment. Defendants argue that these claims are, in substance, a challenge to the Commonwealth's purported assignment of SUT revenues to COFINA, and "have nothing to do with PROMESA." Dkt. 84, at 8. This argument is meritless.

As an initial matter, defendants do not explain how this argument would apply to the Third Cause of Action, which simply challenges the Commonwealth's Moratorium Act under Section 303(1) of PROMESA. Unlike the Second Cause of Action, this claim does not turn on the Commonwealth's continued, unlawful diversion of available resources to COFINA.

Plaintiffs' Second Cause of Action arises under PROMESA itself, and challenges Executive Order 2016-30, which was not promulgated until after PROMESA was passed. As a result,

it is nonsensical to say that the claim could have been brought prior to PROMESA's enactment. Indeed, defendants' argument here is simply a variation on their previously rejected argument that plaintiffs' suit should have been stayed because it was, in some respects, "similar" to an action plaintiffs brought in New York before PROMESA's enactment. See Dkt. 26, at 4.

In response to this obvious incongruity, defendants deny (at 7-9) that plaintiffs' claim can be understood as arising out of Section 303 of PROMESA. Instead, defendants seek to recharacterize plaintiffs' challenge to Executive Order 2016-30 as merely a challenge to the Commonwealth's purported assignment of SUT revenues to COFINA, which occurred before PROMESA's enactment. But defendants cite no authority for the proposition that PROMESA's stay provision may be invoked by characterizing an action as something different from what plaintiffs have pleaded.

In any event, defendants' proposed recharacterization of plaintiffs' claim is mistaken. Executive Order 2016-30 is properly subject to challenge under Section 303(3) of PROMESA. That is because the executive order unlawfully subordinated the rights of holders of the Constitutional Debt to holders of bonds issued by COFINA by denying payment on the Constitutional Debt while COFINA continues to receive available resources in the form of SUT revenues. Although it is true that this claim implicates the constitutional validity of the Commonwealth's assignment of SUT revenues to COFINA—that question must be resolved in order to determine that the SUT revenues diverted to COFINA are indeed available resources under the Puerto Rico Constitution—the fact remains that the legal injury plaintiffs seek to remedy here stems from Executive Order 2016-30 and therefore implicates Section 303(3) of PROMESA. Defendants simply disagree with Congress's decision in PROMESA to preempt such actions that are unlawful under Puerto Rico law.

B. The PROMESA Claims Are Not Stayed By Section 405(b)(6)

Defendants next contend that plaintiffs' PROMESA claims are stayed by Section 405(b)(6) of PROMESA, which stays "any act to collect, assess, or recover a Liability Claim against the Government of Puerto Rico that arose before" PROMESA's enactment. Defendants simply rehash this argument from their motion to dismiss the First Amended Complaint, their motion for reconsideration of the Court's stay order, and their opposition to plaintiffs' motion to amend. See Dkt. 33, at 17-18; Dkt. 34, at 10-12; Dkt. 49, at 3-5. As explained in our prior briefs, however, the argument is forfeited, having been raised only after the Court's ruling on the applicability of the stay. See, *e.g.*, Dkt. 37, at 22-23.[2]

In any event, defendants' argument under Section 405(b)(6) is meritless, for the reasons we have previously explained. See, *e.g.*, Dkt. 37, at 23-25. The fact that the provision applies broadly within its intended domain—extending the stay to *any* steps to collect on a creditor's pre-petition claim against the debtor—does not suggest that it applies *beyond* that scope to actions that are not aimed at recovery on a claim. The cases defendants cite—each of which involved an effort by a creditor to *collect* on its claim—only reinforce this conclusion. See *Matter of Holland*, 21 B.R. 681, 687 (Bankr. N.D. Ind. 1982) (credit union transferred funds from debtor's account to satisfy pre-petition debt); *Divane v. A & C Elec. Co.*, 193 B.R. 856, 861 (N.D. Ill. 1996) (union employee benefit plan's letter to employees amounted to "harassment or coercion"

[2] Defendants argue (Dkt. 84, at 2) that their forfeiture should be excused because "[a]n amended complaint, once filed, normally supersedes the antecedent complaint," rendering "the earlier complaint . . . a dead letter" that "no longer performs any function in the case." *Connectu LLC v. Zuckerberg*, 522 F.3d 82, 91 (1st Cir. 2008). But that principle simply means that the allegations of plaintiffs' Second Amended Complaint will supersede those in the First Amended Complaint. Defendants cite no authority for the proposition that this rule enables them to resurrect long-since forfeited legal challenges to the Court's prior legal ruling. Indeed, what defendants are proposing is to treat *this Court's prior ruling* on the applicability of the stay as a "dead letter," *ibid.*, a result for which *Zuckerberg* provides no support.

designed to seek payment on prepetition debt); *In re Guinn*, 102 B.R. 838, 841 (Bankr. N.D. Ala. 1989) (credit union refused to accept mortgage payments from debtor, in an effort to coerce payment of unsecured debts); *In re Trevino*, 535 B.R. 110, 149 (Bankr. S.D. Tex. 2015) (creditor threatened to bill debtor for pre-petition debts following bankruptcy discharge in order to coerce payment). Here, plaintiffs have disclaimed any attempt to collect on their bonds in this action, so Section 405(b)(6) is inapplicable.

Defendants also contend that cases under the Bankruptcy Code have applied the automatic stay to any challenge to a transaction between a debtor and a third party that is, in any way, related to the plaintiff creditor's underlying claim against the debtor. See Dkt. 84, at 11-12. But the cited cases do not support this proposition, let alone imposition of a stay here. Defendants' cases involved creditors seeking to directly recover funds from third parties who were alleged to have received fraudulent transfers from a bankrupt debtor. See *In re Colonial Realty Co.*, 980 F.2d 125, 127 (2d Cir. 1992); *In re Teleservices Grp., Inc.*, 463 B.R. 28, 31 (Bankr. W.D. Mich. 2012); *In re Saunders*, 101 B.R. 303, 304 (Bankr. N.D. Fla. 1989). The courts held that, although the creditors' actions were directed against third parties, they were nonetheless actions brought to recover "a claim against the debtor" within the meaning of Section 362(a)(6), because the creditors' rights to demand such recoveries were premised on their underlying claims against the debtor *and* were brought to satisfy those very claims. See, *e.g.*, *In re Saunders*, 101 B.R. at 305 (emphasizing that, "[a]bsent a claim against the debtor, there is no independent basis for the action against the transferee"). That the Code stays actions to recover money from third parties to satisfy pre-petition debts does not remotely suggest that PROMESA's stay should be applied to cases, like this one, that "seek only declaratory and injunctive relief." Dkt. 32, at 3.

More fundamentally, the relief sought by plaintiffs here is different in critical respects from the relief sought in the decisions defendants cite. Recovery by individual creditors on fraudulent transfer claims arguably threatens to upset the Bankruptcy Code's judgment that the power to avoid fraudulent transfers should generally be exercised by the bankruptcy trustee, with all creditors sharing in the trustee's recovery. See 11 U.S.C. § 548; *In re Saunders*, 101 B.R. at 306. The risk addressed is that one creditor's individual recovery will diminish the resources available for other creditors. The relief sought in this case, by contrast, would *prevent* the Commonwealth from dissipating assets through continued unlawful conduct.

C. The PROMESA Claims Are Not Stayed By Section 405(b)(3)

Defendants also contend that plaintiffs' PROMESA Claims are stayed by Section 405(b)(3) of PROMESA, which applies to "any act to obtain possession of property of the Government of Puerto Rico or of property from the Government of Puerto Rico or to exercise control over property of the Government of Puerto Rico." PROMESA § 405(b)(3). Like defendants' argument under Section 405(b)(6), however, this argument comes far too late: As defendants' acknowledge (at 12), their Section 405(b)(3) argument would apply not only to plaintiffs' COFINA-related claims, but also to plaintiffs' request for an injunction halting the Commonwealth's ongoing dissipation of revenues that have been clawed back for the purpose of paying the Constitutional Debt, and to plaintiffs' challenges to certain appropriations in the Commonwealth's Fiscal Year 2017 budget. Those are aspects of the claims raised in plaintiffs' *First* Amended Complaint under Sections 204(c)(3) and 207; defendants thus have no justification for waiting to raise this argument until they filed their opposition to plaintiffs' motion to amend.

In any event, Section 405(b)(3) does not stay plaintiffs' PROMESA Claims. As an initial matter, defendants do not contend that the claims seek to "obtain possession" of the Common-

wealth's property. And with good reason: The PROMESA Claims seek to enjoin the ongoing, unlawful dissipation of assets caused by the Commonwealth's violations of PROMESA, but they do not seek to transfer these assets to plaintiffs.

Nor do defendants' cases under Section 362(a)(3) of the Bankruptcy Code establish that the PROMESA Claims are acts "to exercise control" over the Commonwealth's property. As the court explained in *In re Weidenbenner*, 521 B.R. 74 (Bankr. S.D.N.Y. 2014) (cited at Dkt. 84, at 13), the Bankruptcy Code stays acts "to exercise control" over a debtor's property because, "at some point, 'control' over another's property becomes constructive possession." *Id.* at 79. Here, however, plaintiffs seek negative injunctive relief that would prevent the Commonwealth from continuing to dissipate assets in violation of federal law. This request for court-ordered protection is a far cry from the unilateral freeze of a debtor's bank account addressed in *Weidenbenner*. See 521 B.R. at 79-80 (stressing that "Wells Fargo simply decided to place a freeze on property of the estate and unilaterally determined who was allowed to access it"). Indeed, the approach plaintiffs have taken here effectuates the stay's purpose of "preserving estate assets," *id.* at 81, and it tracks how the *Weidenbenner* court held the bank *should* have proceeded, see *id.* at 80 (noting that "Wells Fargo could have sought direction from the bankruptcy court . . . regarding the account funds"); see also *In re Patterson*, 967 F.2d 505, 511 (11th Cir. 1992) (holding that the credit union should have initiated court proceedings regarding disposition of debtor's account, rather than unilaterally setting off the funds against debt owed to credit union). Under these circumstances, the PROMESA Claims cannot fairly be characterized as seeking to obtain "constructive possession" of the Commonwealth's assets.

D. The PROMESA Claims Are Not Stayed By Section 405(b)(4) Or Section 405(b)(5)

Finally, defendants repeat their argument that the PROMESA Claims should be stayed under Sections 405(b)(4) and 405(b)(5) of PROMESA, which apply to "act[s] to create, perfect, or enforce any lien against property of the Government of Puerto Rico." See Dkt. 84, at 14-17. But here, too, defendants have no justification for their delay in raising this argument. Plaintiffs' *First* Amended Complaint alleged that the Commonwealth's Constitutional Debt has a "first claim and lien on all available resources of the Commonwealth." Dkt. 25, ¶ 41; see also *id.* ¶¶ 3, 5. For that reason, this argument could have been raised well before defendants' opposition to plaintiffs' motion to amend, where it first surfaced. See Dkt. 49, at 7-9.

In any event, defendants are wrong that the PROMESA Claims fall within the scope of Sections 405(b)(4) and 405(b)(5). Plaintiffs' PROMESA Claims do not seek to "create" or "perfect" a lien; as the proposed Second Amended Complaint alleges, plaintiffs' first claim to and constitutional lien on the Commonwealth's available resources arise by operation of Article VI of the Puerto Rico Constitution. See Dkt. 39-1, ¶¶ 63-66. No further step is necessary to "create" or "perfect" them. Likewise, defendants cite no case establishing—or even suggesting—that plaintiffs' claims seeking to enjoin ongoing violations of federal law should be understood as acts seeking to "enforce" a lien. That characterization would be surpassingly odd, moreover, given that the PROMESA Claims do *not* seek to have any of the Commonwealth's available resources applied to payment of plaintiffs' bonds. Compare, *e.g.*, *In re Ward*, 837 F.2d 124, 125-126 (3d Cir. 1988) (Bankruptcy Code's automatic stay bars actions to foreclose on pledged collateral).

* * *

For the reasons set forth above, the PROMESA Claims are not subject to the PROMESA stay, and no showing of cause is therefore necessary with respect to these claims. In the event, however, that the Court were to reverse its prior ruling and determine that certain components of the relief plaintiffs seek are stayed, the appropriate course would be to hold that the stay extends *only* to such forms of relief. At a minimum, plaintiffs should be permitted to pursue their claims for declarations that the Commonwealth's conduct violates Sections 204(c)(3) and 207 of PROMESA, and that Executive Order 2016-30 and the Moratorium Act, as applied to the Constitutional Debt, are preempted by Sections 303(3) and 303(1), respectively. Such purely declaratory relief cannot conceivably be characterized as an effort to recover or collect on plaintiffs' bonds, to control property, or to enforce a lien. And although plaintiffs' claims for injunctive relief are critical to protecting plaintiffs from the Commonwealth's ongoing violations, a purely declaratory judgment regarding the legality of the Commonwealth's actions would constitute meaningful relief by clarifying the legal rules of the road. See pp. 15-16, *infra*.

II. This Court's Inherent Authority Does Not Justify Imposition Of A Stay

Defendants also contend that, even if the PROMESA stay does not apply, the Court should nonetheless stay this action in an exercise of its inherent authority. See Dkt. 84, at 17-18. The Court should reject that request.

A. For starters, defendants get statutory interpretation backwards when they contend that allowing this case to proceed would "contravene the express purposes of PROMESA." Dkt. 84, at 17. It is axiomatic that the enacted text controls over generalized notions of statutory purpose: "[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253–254 (1992). A litigant's dissatisfaction with the enacted text does not license a court "to search for and apply an

overarching legislative purpose to each section of the statute." *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 461 (2002). Thus, if this Court concludes—as it should—that Section 405(b) does not stay this action, then defendants' invocation of PROMESA's "purposes" cannot justify the imposition of a stay.

Nor does resort to the Court's "inherent power to stay litigation," *Marquis v. FDIC*, 965 F.2d 1148, 1154 (1st Cir. 1992), make sense in this context, where Section 405(b) of PROMESA sets forth a detailed and finely reticulated list of actions to which the PROMESA stay applies. Congress has directly addressed the question, and its determination that certain categories of cases should be stayed reflects its judgment that others should *not* be stayed.

Against this backdrop, it would take a truly extraordinary showing to override Congress's judgment that no stay is appropriate in this case. At a minimum, such a showing would have to marshal considerations that are particular to this case, rather than generalized considerations that would apply to any litigation involving the government of Puerto Rico, and which Congress must surely have weighed in determining the categories of cases to which the PROMESA stay would apply. But such generalized considerations are all that defendants invoke here. They argue that each of plaintiffs' proposed claims should be stayed based on a generalized concern with "piecemeal litigation." Dkt. 84, at 17. That suggestion is unavailing, however, because the supposed risk of "piecemeal litigation" here is simply the result of Congress's decision that some claims, and not others, should be stayed—an implication that Congress considered when it determined which claims should be stayed by Section 405(b). Refusing to permit plaintiffs to pursue claims that plainly are not stayed by PROMESA merely because plaintiffs may have other claims to pursue in the future would upset Congress's careful judgment about where to draw the

line. And as explained above (p. 6, *supra*), claim-by-claim consideration is the norm in bankruptcy proceedings.

B. Defendants' request for a stay is also mistaken because allowing plaintiffs' claims to proceed would affirmatively advance PROMESA's objectives, rather than undermine them. That conclusion follows from the basic nature of plaintiffs' PROMESA Claims. Indeed, it is difficult to see how a claim to enforce *PROMESA itself* could ever be understood as undermining PROMESA's purposes. By definition, adjudicating plaintiffs' PROMESA Claims will advance PROMESA's objectives.

Practical considerations point in the same direction. For example, although defendants posit (at 18) that purportedly "piecemeal litigation" will inhibit efforts to advance an orderly restructuring process, the fact is that adjudicating plaintiffs' Second Cause of Action, under Section 303(3) of PROMESA, will promote voluntary negotiations between the Commonwealth, the Oversight Board, and creditors. Indeed, as we have previously explained in detail in our response to the intervention motion filed by the Oversight Board (Dkt. 110, at 14-15), resolving this claim—and, in particular, holding that the Commonwealth's purported assignment of SUT revenues to COFINA is not valid and enforceable—would facilitate such negotiations. It would make clear that the SUT revenues purportedly assigned to COFINA—some $51 billion over the next four decades—remain "available resources" subject to the Constitutional Debt's constitutional lien and first-priority claim, thus greatly enhancing the Oversight Board's and the Commonwealth's ability to extract appropriate concessions from holders of COFINA bonds. And it would free up vast quantities of current and future revenues that may be used to fund essential services, other current expenditures, capital improvements, and payments on the Common-

wealth's lawful Constitutional Debt, thereby facilitating the Oversight Board's task of promptly arriving at a consensual solution to the Commonwealth's strained financial situation.

It is also passing strange for defendants to invoke the desirability of an "orderly" restructuring process at a time when the outgoing Administration has sought to shortcut that process by rejecting the Oversight Board's request to present modifications to the Administration's proposed Fiscal Plan. The outgoing Administration has chosen obstruction rather than constructive engagement with the Board and creditors. It is thus the height of irony for defendants to suggest that staying this litigation would foster voluntary negotiations. And to make matters worse, the outgoing Administration has endeavored to enshrine its rejected political commitments through a blizzard of new enactments and personnel appointments during its last days in office. See p. 2, *supra*.

It is now obvious that the outgoing Administration has no interest in being a credible participant in negotiations with the Commonwealth's creditors. There is thus no warrant for defendants' suggestion that the Court should take the extraordinary step of imposing an *extra-statutory* stay in this action to facilitate such negotiations. To the contrary, holding defendants accountable for their unabashed and repeated violations of PROMESA will move this difficult process forward and foster the goal shared by plaintiffs and the Oversight Board (but apparently not the Commonwealth defendants): restoring Puerto Rico to fiscal and economic health as expeditiously and consensually as possible.

CONCLUSION

Defendants' motion to stay this action should be denied.

November 28, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE: It is hereby certified that on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record which are CM/ECF system participants at their corresponding e-mail addresses and which, pursuant to Local Civil Rule 5.1(b)(2), constitutes the equivalent service.

/s/ J. Ramón Rivera Morales
J. Ramón Rivera Morales