

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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In re: :

THE FINANCIAL OVERSIGHT AND :
MANAGEMENT BOARD FOR PUERTO RICO, : PROMESA
: Title III
as representative of :
THE COMMONWEALTH OF PUERTO RICO *et al.*, : Case No. 17-BK-3283 (LTS)
: (Jointly Administered)
Debtors.¹ :

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THE OFFICIAL COMMITTEE OF UNSECURED :
CREDITORS OF THE COMMONWEALTH OF :
PUERTO RICO, :
as agent of :
THE FINANCIAL OVERSIGHT AND :
MANAGEMENT BOARD FOR PUERTO RICO :
as representative of : Adv. Proc. No. 17-00257-LTS
THE COMMONWEALTH OF PUERTO RICO, :
Plaintiff, :
v. :
BETTINA WHYTE, :
as agent of :

¹ The Debtors in these Title III cases, along with each Debtor’s respective Title III case number listed as a bankruptcy case number due to software limitations 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) 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), (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567 (LTS)) (Last Four Digits of Federal Tax ID: 3808), (iv) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284 (LTS)) (Last Four Digits of Federal Tax ID: 8474), and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17-4780 (LTS)) (Last Four Digits of Federal Tax ID: 3747).

THE FINANCIAL OVERSIGHT AND :
MANAGEMENT BOARD FOR PUERTO RICO :
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as representative of :
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THE PUERTO RICO SALES TAX FINANCING :
CORPORATION, :
 :
Defendant. :
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**COMMONWEALTH AGENT’S URGENT MOTION TO EXPEDITE
CONSIDERATION OF ITS URGENT MOTION, PURSUANT TO BANKRUPTCY
CODE SECTION 105(a) AND BANKRUPTCY RULE 9019, FOR ORDER
ESTABLISHING PROCEDURES GOVERNING 5.5% SUT REVENUES
COLLECTED ON OR AFTER JULY 1, 2018**

To the Honorable United States District Court Judge Laura Taylor Swain:

The Official Committee of Unsecured Creditors of all Title III Debtors (other than COFINA) (the “Committee”), as the “Commonwealth Agent” with respect to the “Commonwealth-COFINA Dispute,” as defined in the *Stipulation and Order Approving Procedure to Resolve Commonwealth-COFINA Dispute* [Docket No. 996 in Case No. 17-3283 (LTS)], respectfully files this urgent motion (the “Urgent Motion”) requesting entry of an order, substantially in the form attached hereto as Exhibit A (the “Proposed Order”), for expedited consideration of the *Commonwealth Agent’s Urgent Motion, Pursuant to Bankruptcy Code Section 105(a) and Bankruptcy Rule 9019, for Order Establishing Procedures Governing 5.5% SUT Revenues Collected on or After July 1, 2018* (the “SUT Motion”).² In support of this Urgent Motion, the Commonwealth Agent respectfully states as follows:

RELIEF REQUESTED

1. By this Urgent Motion, the Commonwealth Agent requests entry of the Proposed Order setting an objection deadline for the SUT Motion no later than 5 days after the filing of the

² All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the SUT Motion.

SUT Motion, *i.e.*, by Tuesday, June 19, 2018. The Commonwealth Agent submits that 5 days is more than adequate time for interested parties to prepare objections (if any). The Commonwealth Agent also requests that it be given the opportunity to reply to any objection within 3 days after the objection deadline. The COFINA Agent consents to the foregoing proposed expedited schedule.

JURISDICTION AND VENUE

2. The United States District Court for the District of Puerto Rico has subject matter jurisdiction over this matter pursuant to PROMESA section 306(a).³ Venue is proper pursuant to PROMESA section 307(a).

3. The statutory bases for the relief requested herein are section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9006, made applicable to these Title III cases by sections 301(a) and 310 of PROMESA, Rule 9013-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the District of Puerto Rico (the “Local Rules”), and the Fourth Amended Case Management Procedures [Docket No. 2839 in Case No. 17-3283 (LTS)].

BASIS FOR RELIEF REQUESTED

4. Bankruptcy Rule 9006(c)(1) provides that “the court for cause shown may in its discretion with or without motion or notice order the period [for notice] reduced.” Further, Local Rule 9013-1(a) allows a party to request that a court “consider a motion on an expedited basis.” Cause exists to schedule the SUT Motion on an expedited basis.

5. As explained more fully therein, the SUT Motion seeks entry of an order to preserve the *status quo* of the Commonwealth’s and COFINA’s respective rights to the 5.5% SUT revenues collected by the Commonwealth on or after July 1, 2018, while the Agents work towards documenting and obtaining court approval of the settlement set forth in the agreement in

³ References to PROMESA are references to 48 U.S.C. §§ 2101 *et. seq.*

principle, dated June 5, 2018 (the “Agreement in Principle”). The relief requested in the SUT Motion must go into effect prior to July 1, 2018, when the 5.5% SUT revenues begin to flow to BONY under the current flow of funds. It is therefore necessary for the court to consider this matter on an expedited basis.

6. Shortening the notice period should not prejudice any party in interest. First, the SUT Motion is a largely procedural motion filed to maintain the *status quo*, while the Agents work towards documenting and obtaining court approval of the settlement. Second, all parties in interest have been aware, at least since June 7, 2018, that the Commonwealth Agent would seek approval of procedures governing the 5.5% SUT revenues collected on or after July 1, 2018.⁴ In particular, as detailed in the SUT Motion, the Agents initially agreed (effective upon execution of the Agreement in Principle) that the 5.5% SUT revenues collected on or after July 1, 2018 (up to the PSTBA) would be escrowed, subject to certain procedures.⁵ However, after receiving feedback regarding the escrow procedures from affected parties (including certain COFINA debt holders and BONY), the Agents agreed to the less disruptive procedures described above.

7. In addition, two days prior to filing the SUT Motion, the Commonwealth Agent provided a draft of the SUT Motion to counsel of the Puerto Rico Fiscal Agency and Financial Advisory Authority, counsel of the Oversight Board, counsel to the Retiree Committee, and, through counsel of the COFINA Agent, to counsel of BONY, counsel of the COFINA Senior Bondholders Coalition, counsel of the Mutual Fund Group, counsel of the Puerto Rico Funds, counsel of Bonistas del Patio, counsel of Ambac Assurance Corporation, and counsel of National

⁴ A copy of the term sheet documenting the Agreement in Principle was filed with the court on June 7, 2018 [Docket No. 486 in Adv. Proc. No. 17-257 (LTS)].

⁵ Under the contemplated interim escrow procedures the funds would have been released under two circumstances: (a) if the effective date of the settlement occurs with the prescribed timeframe, the escrowed funds would have been allocated to the Commonwealth and COFINA in accordance with the PSTBA shares set forth in the Agreement in Principle; and (b) if the settlement agreement is not executed by August 4, 2018 or COFINA’s Title III plan of adjustment incorporating the settlement is not consummated with 200 days after execution of the settlement agreement, the escrowed funds would have been deemed future SUT revenues.

Public Finance Guarantee Corporation. In addition, the Commonwealth Agent provided a draft of the SUT Motion to counsel for Ad Hoc GO Bondholder Group approximately twenty-four hours prior to filing the SUT Motion.

8. Pursuant to Section I.H. of the *Fourth Amended Case Management Procedures* [Docket No. 2839 in Case No. 17-3283 (LTS)], undersigned counsel certifies that it has engaged in reasonable, good-faith communications with counsel to other interested parties. Moreover, in accordance with Local Bankruptcy Rule 9013-1(a)(2), undersigned counsel certifies that counsel has carefully examined the matter and concluded that there is a true need for an urgent hearing, and that the movant has not created the urgency through lack of due diligence on its part. The undersigned further certifies that movant made a bona fide and good faith effort to resolve the matter without a hearing.

NOTICE

9. Notice of this Urgent Motion has been provided to the following entities, or their counsel, if known: (i) the U.S. Trustee; (ii) the Office of the United State Attorney for the District of Puerto Rico; (iii) the Oversight Board; (iv) the Puerto Rico Fiscal Agency and Financial Advisory Authority; (v) the official committee of retirees; (vi) the insurers of the bonds issued or guaranteed by the Debtors; (vii) counsel to certain ad hoc groups of holders of bonds issued or guaranteed by the Debtors;⁶ (viii) Bettina Whyte, as agent of COFINA; (ix) BONY, and (x) all parties that have filed a notice of appearance in the Title III Cases.

NO PRIOR REQUEST

10. No previous request for the relief requested herein has been made to this or any other court.

⁶ Which include the Mutual Fund Group, the Ad Hoc Group of General Obligation Bondholders, the COFINA Senior Bondholders' Coalition, and the QTCB Noteholder Group, each as such group is defined at Docket Nos. 28, 68, 216, and 134, respectively.

WHEREFORE, for the above reasons, the Commonwealth Agent respectfully requests that the court enter the Proposed Order expediting consideration of the SUT Motion, and granting such other relief as the court deems just and proper.

Dated: June 14, 2018

/s/ G. Alexander Bongartz

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Local Counsel to the Official Committee of Unsecured Creditors

EXHIBIT A

Proposed Order

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

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In re: :
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THE FINANCIAL OVERSIGHT AND :
MANAGEMENT BOARD FOR PUERTO RICO, : PROMESA
 : Title III
as representative of :
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 : Case No. 17-BK-3283 (LTS)
THE COMMONWEALTH OF PUERTO RICO *et al.*, :
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CREDITORS OF THE COMMONWEALTH OF :
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THE FINANCIAL OVERSIGHT AND :
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THE COMMONWEALTH OF PUERTO RICO, :
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Plaintiff, :
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ORDER EXPEDITING CONSIDERATION OF COMMONWEALTH AGENT’S URGENT MOTION, PURSUANT TO BANKRUPTCY CODE SECTION 105(a) AND BANKRUPTCY RULE 9019, FOR ORDER ESTABLISHING PROCEDURES GOVERNING 5.5% SUT REVENUES COLLECTED ON OR AFTER JULY 1, 2018

Upon consideration of the *Commonwealth Agent’s Urgent Motion to Expedite Consideration of Its Urgent Motion, Pursuant to Bankruptcy Code Section 105(a) and Bankruptcy Rule 9019, for Order Establishing Procedures Governing 5.5% SUT Revenues Collected on or After July 1, 2018* (the “Urgent Motion”),² the court hereby FINDS AND DETERMINES that (i) the court has jurisdiction to consider the Urgent Motion and the relief requested therein pursuant to section 306 of PROMESA; (ii) venue is proper before this court pursuant to section 307(a) of PROMESA; (iii) cause exists to shorten the notice period as requested in the Urgent Motion; and (iv) due and proper notice of the Urgent Motion has been provided under the particular circumstances and no other or further notice need be provided.

Accordingly, it is hereby ORDERED THAT:

1. The Urgent Motion is GRANTED as set forth herein.
2. Objections or responses, if any, to the SUT Motion must be filed and served (in accordance with the Fourth Amended Case Management Procedures Order) by [____][a./ p.]m. **(Atlantic Standard Time) on June __, 2018.**

² All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Urgent Motion.

3. Replies in further support of the SUT Motion must be filed and served (in accordance with the Fourth Amended Case Management Procedures Order) by [____][a./ p.]m. **(Atlantic Standard Time) on June __, 2018.**

4. The court shall determine whether to schedule a hearing on the SUT Motion after the filing of the Commonwealth Agent's reply (if any).

5. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

6. The Commonwealth Agent is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

7. The court retains jurisdiction over any disputes relating to the interpretation or implementation of this Order.

Dated: June __, 2018

HONORABLE LAURA TAYLOR SWAIN
UNITED STATES DISTRICT JUDGE