

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

<p>In re:</p> <p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p>as representative of</p> <p>THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i>,</p> <p>Debtors.¹</p>	<p>PROMESA</p> <p>Title III</p> <p>Case No. 17-BK-3283 (LTS)</p> <p>(Jointly Administered)</p>
<p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p>as representative of</p> <p>THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i>,</p> <p>and</p> <p>THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF ALL TITLE III DEBTORS (OTHER THAN COFINA),</p> <p>Plaintiffs,</p> <p>and</p> <p>THE OFFICIAL COMMITTEE OF RETIRED EMPLOYEES OF PUERTO RICO,</p> <p>Plaintiff-Intervenor,</p>	<p>Adv. Pro. No. 18-00149</p> <p><u>JOINDER TO MOTION TO DISMISS COUNTERCLAIMS</u></p>

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 (the "Commonwealth") (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), and (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).

<p>v.</p> <p>PUERTO RICO PUBLIC BUILDINGS AUTHORITY,</p> <p style="text-align: center;">Defendant,</p> <p style="text-align: center;">and</p> <p>PBA FUNDS, ASSURED GUARANTY CORP., ASSURED GUARANTY MUNICIPAL CORP., THE QTCB NOTEHOLDER GROUP, NATIONAL PUBLIC FINANCE GUARANTEE CORPORATION, AMBAC ASSURANCE CORPORATION, AND THE LAWFUL CONSTITUTIONAL DEBT COALITION,</p> <p style="text-align: center;">Defendant-Intervenors.</p>	
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**JOINDER OF PLAINTIFF-INTERVENOR, THE OFFICIAL
COMMITTEE OF RETIRED EMPLOYEES OF PUERTO RICO,
TO THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD
FOR PUERTO RICO’S MOTION TO DISMISS OR STRIKE ASSURED
GUARANTY CORP.’S AND ASSURED GAURANTY
MUNICIPAL CORP.’S COUNTERCLAIM**

Plaintiff-Intervenor, the Official Committee of Retired Employees of Puerto Rico (the “**Retiree Committee**”) hereby submits this joinder to the *Financial Oversight and Management Board for Puerto Rico’s Motion to Dismiss or Strike Assured Guaranty Corp.’s and Assured Guaranty Municipal Corp.’s Counterclaim* (Adv. Dkt. 76) (the “**Motion**”), and respectfully states as follows:

1. The Retiree Committee joins the Oversight Board’s Motion to dismiss or strike Assured Guaranty Corp.’s and Assured Guaranty Municipal Corp.’s (collectively, the “**Assured Parties**”) counterclaims pursuant to Fed. R. Civ. P. 12(b)(6) or Fed. R. Civ. P. 12(f).

2. As this Court previously has held, “[w]hen a counterclaim is merely the ‘mirror image’ of an opposing party’s claim and the counterclaim serves no independent purpose, the

counterclaim may be dismissed.” *Worldwide Home Products, Inc. v. Bed Bath and Beyond, Inc.*, No. 11 Civ. 03633 (LTS), 2013 WL 247839, at *2 (S.D.N.Y. Jan. 22, 2013). The court also noted that to “determine whether a counterclaim is merely a mirror image of a claim, the court must consider whether a case or controversy would still exist in connection with the counterclaim if the court entered a judgment dismissing the opponent’s claim.” *Id.*

3. The Assured Parties’ counterclaims are the type of mirror image claims that courts routinely dismiss or strike. The Assured Parties’ counterclaims ask this Court to decide the exact same question as the Plaintiffs’ Complaint: whether the PBA’s purported leases are true leases or disguised financing transactions. Because the Assured Parties’ counterclaims “merely restate the declaration sought by the plaintiff from the opposite perspective,” the counterclaims are “duplicative” and allowing them to stand will “complicate the pleadings.” *Penn Mut. Life Ins. Co. v. GreatBanc Trust Co.*, No. 09-cv-6129, 2010 WL 2928054, at *4 (N.D. Ill. July 21, 2010). Further, dismissing the counterclaims will not deprive the Assured Parties of their day in court as the “redundant” nature of the counterclaims ensures the Assured Parties “will be afforded the opportunity to have the Court hear their arguments ... in connection with [plaintiff’s] claim for declaratory judgment.” *Allstate Ins. Co. v. Martinez*, No. 3:11-cv-574 (VLB), 2012 WL 1379666, at * 4 (D. Conn. Apr. 20, 2012). Accordingly, the Assured Parties’ counterclaims should be dismissed. *See, e.g., Worldwide Home Products, Inc. v. Bed Bath and Beyond, Inc.*, 2013 WL 247839, at *2; *Smith v. BarnesandNoble.com, LLC*, No. 1:12-cv-04374 (ALC), 2014 WL 1088955, at *1 (S.D.N.Y. Mar. 18, 2014) (dismissing counterclaim where they “seek to resolve legal and factual issues indistinguishable from those raised by Plaintiff’s complaint”).

WHEREFORE, the Retiree Committee respectfully requests that the Court enter an order granting the Motion and such other relief as may be just.

Dated: April 24, 2019

JENNER & BLOCK LLP

BENNAZAR, GARCÍA & MILIÁN, C.S.P.

By:

By:

/s/ Robert Gordon

/s/ A.J. Bennazar-Zequeira

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