

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

Autoridad de Energía Eléctrica § de Puerto Rico,	§	Civil No.
Plaintiff,	§	3:17-cv-2000
	§	
v.	§	
Vitol Inc. and Vitol S.A. d/b/a § Vitol S.A., Inc.,	§	
Defendants.	§	

NOTICE OF REMOVAL

(Filed Jul. 26, 2017)

In accordance with 48 U.S.C. § 2166, defendants Vitol S.A. (“VSA”) and Vitol Inc. (“VIC”) jointly file this notice that this civil action, *Autoridad de Energía Eléctrica de Puerto Rico v. Vitol Inc. and Vitol S.A. d/b/a Vitol S.A., Inc.*, Civil No. K AC2012-1174 (905), Commonwealth of Puerto Rico Court of First Instance, San Juan Superior Part, has been removed from the Commonwealth of Puerto Rico Court of First Instance, San Juan Part, in San Juan, Puerto Rico to the United States District Court for the District of Puerto Rico.

I. Overview

1. This case is a dispute between the Puerto Rico Electric Power Authority (“PREPA”), and VIC, an energy supply company based in Houston, Texas. It was litigated for more than six years in the United States

District Court for the District of Puerto Rico, before it was remanded to the Commonwealth Courts in Puerto Rico. That remand decision was recently affirmed by the United States Court of Appeals for the First Circuit. But PREPA's recent filing for protection under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act, 48 U.S.C. § 2164 ("PROMESA"), provides an independent and previously unavailable basis for removal and federal subject matter jurisdiction. Defendants VSA and VIC timely remove this action under PROMESA.

II. Factual Background

2. PREPA entered into six contracts with VIC for the supply of fuel oil during the period from 2005 to 2009. Those contracts were – according to PREPA's own admissions – fully performed by VIC, and PREPA enjoyed the benefits of that performance. But in November 2009, shortly before the last contract was to expire, and as PREPA's financial condition deteriorated, PREPA claimed that its last two contracts with VIC were "null," "void ab initio," and without "any legal effect whatsoever," under a Puerto Rico statute (Law 458) that bars the Puerto Rico government from contracting with parties that have been convicted of certain crimes. PREPA based its claim on a criminal conviction against VSA, VIC's legally independent sister company, in New York state court arising from VSA's participation in the United Nations Oil for Food Programme, which indisputably had nothing to do with the PREPA contracts.

3. By the time PREPA made that claim, however, five of the six fuel supply contracts with VIC had already been fully performed and had expired according to their terms. As for the sixth and final contract, it had not expired at the time PREPA asserted the claims at issue, but it too has long since expired (on January 31, 2010). It, too, had been fully performed, save for one remaining obligation: PREPA's obligation to pay the \$28.4 million it owes VIC. That \$28.4 is for fuel that PREPA requested and accepted in August and September 2009 – *after* PREPA had actual knowledge of VSA's conviction in 2007, and *after* PREPA assured VIC that the last contract would “remain in effect until January 31, 2010,” and that PREPA needed VIC's “cooperation during this period.”

4. In November 2009 and then in December 2012, PREPA sued VIC and its legally independent sister company VSA in two separate actions in the Puerto Rico Commonwealth Courts seeking to “nullify” the six fuel supply contracts and to claw back all \$3.89 billion that PREPA had allegedly paid VIC for the fuel oil – without any offset for the value of the oil VIC had delivered and PREPA had consumed.

5. PREPA's complaint is not that VIC or VSA failed to perform any provision of the contracts. To the contrary, PREPA admits that it has no actual damages, that VIC was its “best supplier,” and that it saved \$60 million over the life of the contracts by contracting with VIC rather than the next-lowest bidder. Rather, as noted above, PREPA claimed that the contracts were “null,” “void ab initio,” and without “any legal

effect whatsoever,” under Puerto Rico’s Law 458 based on the indisputably unrelated conviction of VSA in New York state court.

6. PREPA claims that this alleged (albeit nonexistent) statutory reporting violation allows PREPA to claim an unprecedented (and unconstitutional) statutory penalty – the forfeiture of the full amount of the \$3.89 billion PREPA allegedly paid VIC under the fuel supply contracts without any offset for the value of the fuel oil VIC delivered to PREPA.

III. Procedural Background

7. PREPA filed its initial complaint in the Commonwealth of Puerto Rico Court of First Instance, San Juan Part, on November 4, 2009, in which PREPA sought to nullify the last two contracts between PREPA and VIC. The initial Commonwealth Court action is styled *Autoridad de Energía Eléctrica de Puerto Rico v. Vitol Inc., et al.*, Civil No. K AC2009-1376 (901), Commonwealth of Puerto Rico Court of First Instance, San Juan Superior Part, and is referred to in this Notice as the “2009 Action.”

8. On December 14, 2009, VIC and VSA timely removed the 2009 Action to the United States District Court for the District of Puerto Rico, Case No. 3:09-cv-002242-SJM, on the basis of diversity of citizenship jurisdiction.

9. VIC answered PREPA’s complaint and filed a counterclaim against PREPA for breach of contract

based on PREPA's failure to pay VIC's invoices for the last shipments of fuel oil VIC delivered to PREPA under the final fuel-oil supply contracts with PREPA.

10. On November 28, 2012, PREPA filed a second action in the Commonwealth of Puerto Rico Court of First Instance, San Juan Part, in which PREPA sought to nullify the first four contracts between PREPA and VIC. That second action is styled *Autoridad de Energía Eléctrica de Puerto Rico v. Vitol Inc. and Vitol S.A. d/b/a Vitol S.A., Inc.*, Civil No. K AC2012-1174 (905), and is referred to in this Notice as the "2012 Action."

11. On December 31, 2012, VIC and VSA timely removed the 2012 Action to the United States District Court for the District of Puerto Rico, Case No. 3:12-cv-02062-SJM, on the basis of diversity of citizenship jurisdiction.

12. PREPA alleges materially identical claims and causes of action under Law 458 in the 2009 Action and the 2012 Action. In both cases, PREPA seeks to (a) declare its fuel supply contracts with VIC "null," "void ab initio," and without "any legal effect whatsoever" because of a purported violation of Puerto Rico's Law 458; and (b) obtain a statutory forfeiture of all payments made by PREPA under the contracts for fuel oil that VIC delivered and that PREPA accepted, consumed, and then resold to its electricity customers in Puerto Rico.

13. The 2009 Action and the 2012 Action were consolidated before the District Court and are referred to collectively in this Notice of Removal as the "Action."

14. PREPA repeatedly moved the District Court to remand this Action to the Puerto Rico Commonwealth Court on the basis of forum selection clauses in its contracts with VIC. The District Court accepted removal of the Action and repeatedly denied, without prejudice, PREPA's motions to remand.

15. The parties thereafter engaged in discovery and PREPA, on the one hand, and VSA and VIC, on the other, then filed and fully briefed cross motions for summary judgment in the Action. Those cross-motions for summary judgment were pending for more than two years, when the Action was administratively re-assigned to a new District Judge by the Chief Judge of the First Circuit on October 7, 2015.

16. After the Action was administratively re-assigned, PREPA filed its Third Motion to Remand. The District Court granted PREPA's Third Motion to Remand on March 16, 2016, and the United States Court of Appeals for the First Circuit affirmed the District Court's remand order on June 13, 2017. Both the District Court's remand order and the First Circuit's order affirming were based exclusively on a ruling that the forum selection clauses in VIC's contracts with PREPA prevented VIC from consenting to VSA's removal, which resulted in a lack of unanimity of consent to removal under 28 U.S.C. § 1446(b)(2)(A). *See* Case No. 3:09-cv-002242-SJM, ECF 334 (D. Ct. Order Granting 3d Mot. to Remand); *Id.*, ECF 341 (1st. Cir. Op.). A petition for panel rehearing and for rehearing en banc is currently pending before the First Circuit.

IV. PREPA Files for Protection Under Title III of PROMESA

17. On July 2, 2017, the Financial Oversight and Management Board for Puerto Rico filed a petition on behalf of PREPA seeking to restructure PREPA's debts under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act, 48 U.S.C. § 2164 ("PROMESA").

18. Title III of PROMESA provides an independent and previously unavailable basis for removal of, and federal subject matter jurisdiction over, this Action. *See* 48 U.S.C. § 2166(a) & (d).

V. Removal Is Timely

19. Today, on July 26, 2017, defendants Vitol S.A. and Vitol Inc. timely filed this notice of removal. *See* 48 U.S.C. § 2166(d); 48 U.S.C. § 2170 (incorporating the Federal Rules of Bankruptcy Procedure as the "Applicable rules of procedure" for Title III cases under PROMESA); Fed. R. Bankr. P. 9027(a)(2); 28 U.S.C. § 1446(b)(1).

20. Defendants Vitol S.A. and Vitol Inc. timely filed this notice of removal within 30 days from the filing of PREPA's Title III petition on July 2, 2017, which is the date upon which the case became removable under Title III of PROMESA.

21. Venue is proper in this district because the United States District Court for the District of Puerto Rico is "the district court for the territory in which the

covered territorial instrumentality is located.” 48 U.S.C. § 2167(a)(2).

VI. Removal Is Proper Under 48 U.S.C. § 2166(d)(1)

22. Section 2166(d)(1) of PROMESA provides for removal of claims or causes of action to federal court “if the district court has jurisdiction of the claim or cause of action under this section.” 48 U.S.C. § 2166(d)(1).

23. This Court has jurisdiction over this Action under 48 U.S.C. § 2166(a)(2), which provides: “The district courts shall have – . . . original but not exclusive jurisdiction of all civil proceedings arising under this subchapter, or arising in or related to cases under this subchapter.” Section 2166(a)(2) is materially identical to 28 U.S.C. § 1334, which provides for federal jurisdiction over cases brought under the Federal Bankruptcy Code.

24. Section 2166(a)(2)’s jurisdictional requirements are met here for two independent reasons: (1) this Action is a case “arising under” Title III of PROMESA or “arising in” a case under Title III of PROMESA; alternatively (2) this Action is a case “related to” PREPA’s case under Title III of PROMESA.

25. First, PREPA’s lawsuit against VSA and VIC, and VIC’s counter-claim against PREPA, are “civil proceedings arising under [Title III of PROMESA] . . . or arising in . . . [a] case[] under this subchapter.” 48

U.S.C. § 2166(a)(2). “Core” proceedings are “[a]rising under” and “arising in” proceedings. *In re Paolo*, 619 F.3d 100, 102 (1st Cir. 2010) (“Proceedings are “related to” a Title 11 case within the meaning of 28 U.S.C. § 1334(b) if they have some potential effect on the bankruptcy estate. Section 1334(b) also confers jurisdiction over proceedings arising under Title 11 or arising in a Title 11 case. These latter categories are ‘core’ proceedings, whereas those merely related to the bankruptcy are ‘non-core.’” (citations omitted)).

26. VIC’s counterclaim against PREPA for recovery of the money PREPA owes VIC for fuel oil that VIC delivered at PREPA’s request is a “core” proceeding and hence is within this Court’s jurisdiction. Under 28 U.S.C. § 157(b)(2), “Core proceedings include, but are not limited to – . . . (B) allowance or disallowance of claims against the estate. . . .” VIC has filed a proof of claim in PREPA’s Title III case for recovery of the amounts at issue on its counterclaim, and PREPA has listed VIC as one of its twenty largest unsecured creditors (based on VIC’s counterclaim) in the schedule filed with its Title III petition. *See In re Fin. Oversight & Mgmt. Bd. for Puerto Rico ex rel. Puerto Rico Electric Power Auth.*, Case No. 17-BK-4780-LTS, ECF 1, at 11. As a result, VIC’s counterclaim is a “core” claim within this Court’s jurisdiction. *See In re S.G. Phillips Constructors, Inc.*, 45 F.3d 702, 705 (2d Cir. 1995) (“[W]hen a creditor files a proof of claim, the bankruptcy court has core jurisdiction to determine that claim, even if it was a prepetition contract claim arising under state law.”).

27. PREPA's claims in the 2009 Action seeking to nullify the last two contracts with VIC under Law 458 and to confiscate all the money paid under those contracts are also core claims because they directly affect the allowance of VIC's claim against PREPA's estate. That is because PREPA's *only* defense to VIC's counterclaim for nonpayment is PREPA's claim that the contracts are void ab initio under Puerto Rico's Law 458. See *In re CBI Holding Co.*, 529 F.3d 432, 461 (2d Cir. 2008) ("As defenses to E & Y's fees claim, these CBI claims also directly affect the allowance of that claim. 'Proceedings can be core by virtue of their nature if . . . the proceedings directly affect a core bankruptcy function.'" (alteration in original) (quoting *In re U.S. Lines, Inc.*, 197 F.3d 631, 637 (2d Cir. 1999))).

28. Similarly, PREPA's claims in the 2012 Action seeking to nullify the first four contracts under Law 458 and to confiscate all the money paid under them are also core claims because they, too, directly affect the allowance or disallowance of VIC's claim against PREPA. PREPA's basis for seeking to nullify the first four contracts is *identical* to its defense to nonpayment on VIC's counterclaim under the last two contracts – the claim that all of PREPA's contracts with VIC are void ab initio and without legal effect under Law 458.

29. Accordingly, resolution of PREPA's affirmative claims as to validity of the first four contracts will determine whether VIC's claim against PREPA under the final contracts is allowed or disallowed: if PREPA's claims as to the validity of the first four contracts fail, VIC's claim will be allowed; if PREPA's claims as to the

validity of the first four contracts succeed, VIC's claim will be disallowed. *In re DPH Holdings Corp.*, 448 F. App'x 134, 137 (2d Cir. 2011) (unpublished) ("Core proceedings include those seeking the 'allowance or disallowance of claims against the estate,' 28 U.S.C. § 157(b)(2)(B), and, here, the resolution of whether Delphi's estate is liable for those workers' claims will determine whether the claims asserted against the estate should be allowed or disallowed.").

30. Alternatively, PREPA's claims against VSA and VIC and VIC's counterclaim against PREPA are "related to" PREPA's Title III Petition and are therefore within this Court's subject matter jurisdiction under § 2166(a)(2). Interpreting § 1334, which is materially identical to (and the basis for) § 2166(a)(2) of PROMESA, the First Circuit has explained that "[t]he statutory grant of 'related to' jurisdiction is quite broad." *In re Boston Regional Med. Ctr., Inc.*, 410 F.3d 100, 105 (1st Cir. 2005). Federal courts have "related to" jurisdiction "as long as the outcome of the litigation 'potentially [could] have some effect on the bankruptcy estate, such as altering debtor's rights, liabilities, options, or freedom of action, or otherwise have an impact upon the handling and administration of the bankrupt estate.'" *Id.* (alteration in original) (quoting *In re G.S.F. Corp.*, 938 F.2d 1467, 1475 (1st Cir. 1991)).

31. That test is plainly satisfied here: "the outcome of" PREPA's claims against VIC and VSA could "potentially have some effect on the bankruptcy estate" because it would affect the amount of funds available to creditors. *See id.* ("Whether or not BRMC prevails

will directly affect the amount of the liquidating dividend paid to creditors. There is, therefore, a fairly close connection between the adversary proceeding and the administration of the bankruptcy estate.”).

VII. Unanimity of Defendants Is Not Required for Removal Under PROMESA

32. Under 48 U.S.C. § 2166(d)(1), “[a] party may remove any claim or cause of action in a civil action . . . if the district court has jurisdiction of the claim or cause of action under this section.” Section 2166(d)(1) is materially identical to 28 U.S.C. § 1452, which provides for removal of claims brought under the Federal Bankruptcy Code, and therefore should be interpreted in the same way.

33. Unanimous consent of defendants is not required to remove claims based on bankruptcy jurisdiction under Section 1452(a). *See Cal. Pub. Employees’ Retirement Sys. v. Worldcom, Inc.*, 368 F.3d 86, 103 (2d Cir. 2004) (“[B]ecause any one ‘party’ can remove under Section 1452(a), removal under that provision, unlike removal under Section 1441(a), does not require the unanimous consent of the defendants.”); *Creasy v. Coleman Furniture Corp.*, 763 F.2d 656, 660 (4th Cir. 1985) (“Under the bankruptcy removal statute, however, any one party has the right to remove the state court action without the consent of the other parties.”); *Townsquare Media, Inc. v. Brill*, 652 F.3d 767, 770 (7th Cir. 2011) (“But in any event section 1452(a) authorizes removal by ‘a party’ (in contrast to section 1441(a), which

authorizes removal by ‘the defendant or the defendants’ – the plural being the basis for the requirement of unanimity), and so has been interpreted to reject the requirement of unanimity.”).

34. VSA and VIC each independently remove this Action. Further, removal is proper because VSA and VIC consent to each other’s removal of this Action and therefore all defendants properly joined and served (VIC and VSA) have consented to removal.

VIII. No Consent to Entry of Final Orders or Judgment by the Bankruptcy Court

35. VSA and VIC do not consent to entry of final orders or judgment by the bankruptcy court.

IX. Removal Papers

36. In accordance with Federal Rule of Bankruptcy Procedure 9027(a)(1), defendants Vitol S.A. and Vitol Inc. attach the following items as part of the Notice of Removal.

37. PREPA’s complaint is attached as **Exhibit 1** (Spanish) and **Exhibit 1-T** (Certified Translation). VSA and VIC’s answer and VIC’s counterclaim is attached as **Exhibit 2**. The federal district court docket sheet for the 2009 Action is attached as **Exhibit 3**. The First Circuit Court of Appeals docket sheet for the 2009 Action is attached as **Exhibit 4**. The federal district court docket sheet for the 2012 Action is attached as **Exhibit 5**. The First Circuit Court of Appeals

docket sheet for the 2012 Action is attached as **Exhibit 6**.

38. A Notice of Filing Exhibits Conventionally, Form D to this Court's CM/ECF Manual, is attached as **Exhibit 7**. The documents filed in the federal district court and First Circuit Court of Appeals in both the 2009 Action and the 2012 Action are too voluminous to file electronically and accordingly are being filed, at the Clerk's direction, with the Court conventionally on a USB drive, filed herewith as **Exhibit 8**, copies of which will be served on all parties of record in this Action.

39. All documents filed in the 2009 Action and 2012 Action in the Commonwealth of Puerto Rico Court of First Instance are attached:

2009 Action	
Exhibit	Description
9	2009/11/4 – Complaint (Spanish)
9-T	2009/11/4 – Complaint (Certified Translation)
10	2009/11/16 – Vitol, Inc. Summons (Spanish)
10-T	2009/11/16 – Vitol, Inc. Summons (Certified Translation)
11	2009/11/16 – Vitol S.A., Inc. Summons (Spanish)
11-T	2009/11/16 – Vitol S.A., Inc. Summons (Certified Translation)
12	2009/11/16 – Fidelity & Deposit Company of Maryland Summons (Spanish)

15a

12-T	2009/11/16 – Fidelity & Deposit Company of Maryland Summons (Certified Translation)
13	2009/11/16 – Carlos M. Benitez, Inc. Summons (Spanish)
13-T	2009/11/16 – Carlos M. Benitez, Inc. Summons (Certified Translation)
14	2009/12/1 – Request for Extension of Time (Spanish)
14-T	2009/12/1 – Request for Extension of Time (Certified Translation)
15	2009/12/1 – Motion Assuming Representation (Spanish)
15-T	2009/12/1 – Motion Assuming Representation (Certified Translation)
16	2009/12/9 – Notification (Spanish)
16-T	2009/12/9 – Notification (Certified Translation)
17	2009/12/15 – Informative Motion Related to Removal (Spanish)
17-T	2009/12/15 – Informative Motion Related to Removal (Certified Translation)
18	2009/12/21 – Notification (Spanish)
18-T	2009/12/21 – Notification (Certified Translation)
19	2010/1/8 – Informative Motion (Spanish)
19-T	2010/1/8 – Informative Motion (Certified Translation)
20	2010/8/26 – Notification of Judgment (Spanish)

16a

20-T	2010/8/26 – Notification of Judgment (Certified Translation)
21	2013/7/16 – Motion Requesting Withdrawal of Representation (Spanish)
21-T	2013/7/16 – Motion Requesting Withdrawal of Representation (Certified Translation)
22	2013/8/1 – Notification (Spanish)
22-T	2013/8/1 – Notification (Certified Translation)
23	2016/6/1 – Notification (Spanish)
23-T	2016/6/1 – Notification (Certified Translation)
24	2016/6/20 – Motion in Compliance with Order (Spanish)
24-T	2016/6/20 – Motion in Compliance with Order (Certified Translation)
25	2016/6/23 – Motion in Compliance with Order and in Opposition to Request for Stay of the Proceedings (Spanish)
25-T	2016/6/23 – Motion in Compliance with Order and in Opposition to Request for Stay of the Proceedings (Certified Translation)
26	2016/7/1 – Reply to Opposition (Spanish)
26-T	2016/7/1 – Reply to Opposition (Certified Translation)
27	2016/7/8 – Notification (Spanish)
27-T	2016/7/8 – Notification (Certified Translation)

28	2016/7/13 – Motion Regarding “Reply to Opposition” (Spanish)
28-T	2016/7/13 – Motion Regarding “Reply to Opposition” (Certified Translation)
29	2016/7/19 – Notification (Spanish)
29-T	2016/7/19 – Notification (Certified Translation)
30	2016/7/19 – Notification of Filing in the Record or Resolution of Motion for Reconsideration (Spanish)
30-T	2016/7/19 – Notification of Filing in the Record or Resolution of Motion for Reconsideration (Certified Translation)
31	2016/7/20 – Notification (Spanish)
31-T	2016/7/20 – Notification (Certified Translation)

	<u>2012 Action</u>
Exhibit	Description
32	2012/11/28 – Complaint (Spanish)
32-T	2012/11/28 – Complaint (Certified Translation)
33	2012/12/6 – Vitol, Inc. Summons (Spanish)
33-T	2012/12/6 – Vitol, Inc. Summons (Certified Translation)
34	2012/12/6 – Vitol S.A. d/b/a Vitol S.A., Inc. Summons (Spanish)
34-T	2012/12/6 – Vitol S.A. d/b/a Vitol S.A., Inc. Summons (Certified Translation)
35	2013/1/3 – Informative Motion Related to Removal (Spanish)

35-T	2013/1/3 – Informative Motion Related to Removal (Certified Translation)
36	2013/1/15 – Notification of Judgment (Spanish)
36-T	2013/1/15 – Notification of Judgment (Certified Translation)
37	2013/9/23 – Notification (Spanish)
37-T	2013/9/23 – Notification (Certified Translation)
38	2016/10/7 – Request for Stay of the Case (Spanish)
38-T	2016/10/7 – Request for Stay of the Case (Certified Translation)
39	2016/10/12 – Informative Motion and in Compliance with Order (Spanish)
39-T	2016/10/12 – Informative Motion and in Compliance with Order (Certified Translation)
40	2016/10/14 – Notification (Spanish)
40-T	2016/10/14 – Notification (Certified Translation)
41	2016/10/14 – Notification (Spanish)
41-T	2016/10/14 – Notification (Certified Translation)
42	2016/10/31 – Motion in Opposition to “Request for Stay of the Case” (Spanish)
42-T	2016/10/31 – Motion in Opposition to “Request for Stay of the Case” (Certified Translation)
43	2016/11/14 – Reply in Support of Request for Stay of Case (Spanish)

43-T	2016/11/14 – Reply in Support of Request for Stay of Case (Certified Translation)
44	2016/11/22 – Notification (Spanish)
44-T	2016/11/22 – Notification (Certified Translation)
45	2016/12/16 – Minutes (Spanish)
45-T	2016/12/16 – Minutes (Certified Transcript)
46	2017/1/20 – Notification (Spanish)
46-T	2017/1/20 – Notification (Certified Translation)

40. Defendants Vitol S.A. and Vitol Inc. are also filing a corporate disclosure statement separately from this notice of removal.

X. Notification to the State Court

41. Defendants Vitol S.A. and Vitol Inc. are providing notice of removal of this action to the Commonwealth of Puerto Rico Court of First Instance, San Juan Part.

Respectfully Submitted,

In San Juan, Puerto Rico, this 26th day of July, 2017.

**THE LAW OFFICES OF
ANDRÉS W. LÓPEZ, P.S.C.**

902 Fernández Juncos Ave.
Miramar
San Juan, Puerto Rico
00907
P.O. Box 13909
San Juan, Puerto Rico
00908
Telephone: (787) 294-9508
Fax: (787) 294-9519

s/ Andrés W. López
ANDRÉS W. LÓPEZ
USDC No. 215311
Andres@awllaw.com

Counsel for Vitol S.A.

**MCCONNELL VALDÉS
LLC**

270 Muñoz Rivera Avenue
Hato Rey, Puerto Rico
00918
P.O. Box 364225
San Juan, Puerto Rico
00936-4225
Telephone: (787) 250-5608/
5813
Fax: (787) 474-9207

s/ Eduardo A. Zayas-
Marxuach
Eduardo A. Zayas-
Marxuach
USDC-PR 216112
ezm@mcvpr.com

SUSMAN GODFREY, LLP

1000 Louisiana Street,
Suite 5100
Houston, Texas 77002
Telephone: (713) 651-9366
Fax: (713) 654-6666

s/ Neal Manne
Neal S. Manne
(Pro Hac Vice forthcoming)
nmanne@susmangodfrey.com

s/ Alexander Kaplan
Alexander L. Kaplan
(Pro Hac Vice forthcoming)
akaplan@susmangodfrey.com

21a

s/ Weston O'Black
Weston L. O'Black
(Pro Hac Vice forthcoming)
woblack@susmangodfrey.com

s/ Michael Kelso
Michael C. Kelso
(Pro Hac Vice forthcoming)
mkelso@susmangodfrey.com

**SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP**

4 Times Square
New York, New York 10036
Telephone: (212) 735-3000
Fax: (212) 735-2000

s/ Jay M. Goffman
Jay M. Goffman
(Pro Hac Vice forthcoming)
jay.goffman@skadden.com

s/ Mark A. McDermott
Mark A. McDermott
(Pro Hac Vice forthcoming)
mark.mcdermott@skad-
den.com

22a

s/ Bram A. Stochlic
Bram A. Stochlic
(Pro Hac Vice forthcoming)
bram.stochlic@skadden.com

Counsel for Vitol Inc.

[Certificate Of Service Omitted]

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

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

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) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) 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); (iv) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780 (LTS)) (Last Four Digits of Federal Tax ID: 3747).

<p>In re:</p> <p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p style="padding-left: 40px;">as representative of</p> <p>PUERTO RICO ELECTRIC POWER AUTHORITY,</p> <p style="padding-left: 40px;">Debtor.</p> <p>----- x</p>	<p>PROMESA Title III No. 17 BK 4780-LTS Re: Docket Nos. 128, 130</p>
---	---

<p>PUERTO RICO ELECTRIC POWER AUTHORITY,</p> <p style="padding-left: 40px;">Plaintiff,</p> <p style="padding-left: 80px;">v.</p> <p>VITOL S.A., <i>et al.</i>,</p> <p style="padding-left: 40px;">Defendants.</p> <p>----- x</p>	<p>PROMESA Title III Adv. Pro. Nos. 17-00218, 17-00221 Re: Docket No. 1</p>
--	--

**PREPA’S MOTION TO STRIKE
FIRST NOTICE OF REMOVAL AND TO
REMAND ADVERSARY PROCEEDINGS
ON EQUITABLE GROUNDS**

(Filed Jan. 16, 2018)

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

For the reasons set out below, the Puerto Rico Electric Power Authority (“*PREPA*”), by and through the Financial Oversight and Management Board for Puerto Rico (the “*FOMB*”), as *PREPA*’s representative

pursuant to section 315(b) of the Puerto Rico Oversight, Management, and Economic Stability Act (“*PROMESA*”),² respectfully requests entry of an order, substantially in the form attached hereto as ***Exhibit A*** (the “*Proposed Order*”), (i) striking from the docket the Notice of Removal filed in Case No. 17-4780 at ECF No. 128 (the “*First Notice*”) because it violates the automatic stay and (ii) remanding *both* Commonwealth Proceedings (defined below) to the Commonwealth of Puerto Rico Court of First Instance.³

PRELIMINARY STATEMENT

1. In 2009, PREPA filed a complaint in the Commonwealth Court of First Instance against Vitol, Inc. (“*VI*”), Vitol S.A. (“*VSA*,” and with *VI*, “*Vitol*”), and certain other related corporate entities arising out of two fuel oil supply contracts. In 2012, PREPA filed a second complaint against Vitol and the related companies arising out of four additional fuel oil supply contracts. In both complaints, PREPA alleged that Vitol violated Commonwealth law by failing to disclose certain information when entering into the contracts with PREPA. Accordingly, PREPA claimed that the contracts were

² *PROMESA* is codified at 48 U.S.C. §§ 2101-2241.

³ For the avoidance of doubt, PREPA seeks to have *both* Commonwealth Proceedings (defined below) adjudicated by the Commonwealth Court of First Instance. In the event the Court orders the First Notice stricken from the docket for violating the automatic stay, the remand relief sought in this Motion would only apply to Second Proceeding (defined below). If the Court does not strike the First Notice from the docket, the remand relief sought would apply to both Commonwealth Proceedings.

void and that any money paid to Vitol or any related company under the contracts must be returned.

2. Vitol removed both cases to the United States District Court for the District of Puerto Rico under 28 U.S.C. § 1441 and filed a counterclaim in connection with the initial complaint. Although the district court originally denied PREPA's motions for remand without prejudice, it later remanded both cases to the Commonwealth Court. The First Circuit affirmed. Vitol now purports to remove the two cases again, this time pursuant to PROMESA's removal provision. *See* PROMESA § 306(d)(1).

3. Vitol's First Notice should be stricken from the docket because, under 11 U.S.C. § 362(a)(1) (incorporated into the Title III case by PROMESA § 301), Vitol's counterclaim against PREPA has been stayed and cannot be removed while the automatic stay is in place. Further, independent of the First Notice's violation of the automatic stay, the Court should remand *both* removed proceedings on equitable grounds pursuant to PROMESA § 306(d)(2). Remand is proper because, *inter alia*, (i) the parties expressly agreed in the fuel oil supply contracts that disputes would be resolved by the courts of the Commonwealth and (ii) PREPA's claims arise under Commonwealth law (not PROMESA or any other federal law).

PROCEDURAL BACKGROUND

4. On November 4, 2009, PREPA filed a complaint against Vitol and several related entities in the

Commonwealth of Puerto Rico Court of First Instance (the “*First Proceeding*”). PREPA alleged that Vitol violated Commonwealth law by failing to disclose at the time VI and PREPA entered into two fuel contracts that VSA had previously pled guilty to grand larceny in the first degree in a New York court. See **Exhibit B** (Translated Complaint in *P.R. Elec. Power Auth. v. Vitol, Inc.*, Case No. 09-02242 (D.P.R.) (ECF No. 1-3)). Commonwealth law prohibited VI from contracting with PREPA because one of its affiliates had been convicted of grand larceny. P.R. Laws Ann., tit. 3, § 928. PREPA alleged that the two subject fuel contracts between VI and PREPA should be voided and payments made by PREPA should be returned. *Id.*

5. Vitol removed the First Proceeding to federal court pursuant to 28 U.S.C. § 1441 based upon diversity jurisdiction. See **Exhibit C** (Notice of Removal in Case No. 09-02242, Dkt. No. 1). It then answered the complaint and counterclaimed against PREPA for approximately \$28.5 million in allegedly unpaid invoices. See **Exhibit D** (Answer to Complaint and Counterclaim in Case No. 09-02242, ECF No. 5).

6. In November 2012, PREPA filed a second complaint in Commonwealth court against the same Vitol entities (the “*Second Proceeding*,” and together with the First Proceeding, the “*Commonwealth Proceedings*”). Based on similar allegations that Vitol had failed to disclose VSA’s grand larceny conviction in connection with four additional fuel oil supply contracts between VI and PREPA, PREPA sought to have the additional contracts voided and sought to have

payments made by PREPA under the contracts returned. See **Exhibit E** (Translated Complaint in *P.R. Elec. Power Auth. v. Vitol, Inc.*, Case No. 12-cv-02062 (D.P.R.) (ECF No. 1-2)). Vitol removed and answered the second complaint in federal court. See **Exhibit F** (Notice of Removal in Case No. 12-cv-02062 (ECF No. 1)); **Exhibit G** (Answer in Case No. 12-cv-02062 (ECF No. 9)).

7. The district court originally denied without prejudice PREPA's motions to remand the cases. The two cases were consolidated in federal court. See Consolidation Order in Case No. 12-cv-02062 (ECF No. 10).

8. In 2015, PREPA again moved to remand the consolidated cases. See **Exhibit H** (Third Motion to Remand, in Case No. 09-02242, ECF No. 322). On March 16, 2016, the district court granted the motion, holding that all six fuel oil supply contracts contained valid forum-selection clauses requiring VI (the contracting Vitol entity) to litigate contractual disputes in the Commonwealth court. It held that, based on those clauses, VI was barred from consenting to remove the cases to federal court. *Autoridad de Energía Eléctrica de P.R. v. Vitol Inc.*, No. 09-cv-2242, 2016 WL 9443738 (D.P.R. Mar. 16, 2016). *Id.* at *5-9.⁴ Because removal

⁴ The forum-selection clauses read: "Also, the contracting parties expressly agree that only the state courts of Puerto Rico will be the courts of competent and exclusive jurisdiction to decide over the judicial controversies that the appearing parties may have among them regarding the terms and conditions of this Contract." See *Autoridad de Energía Eléctrica v. Vitol, Inc., et al.*, Case No. 09-02242, ECF Nos. 39-21 (Article XXII at p. 25), 39-22 (Article XXIV at p. 27), 39-23 (Article XXIII at p. 28), 39-24 (Article

under 28 U.S.C. § 1441 requires unanimous consent from all defendants, *see* 28 U.S.C. § 1446(b)(2)(A), and VI was unable to provide such consent, the court held that removal was improper. The cases were thus remanded. 2016 WL 9443738, at *8-9.

9. The First Circuit affirmed the remand order. 859 F.3d 140 (1st Cir. 2017). In so doing, the Court held that the forum-selection clauses in the fuel contracts were “plainly mandatory” and “encompass the claims at issue,” *id.* at 146, and it rejected Vitol’s argument that the clauses were unreasonable or unjust, *id.* at 147. The Court went on to hold that, because VI could not consent to removal, the unanimity required by 28 U.S.C. § 1441 was defeated and removal was improper. *Id.* at 145, 148.

10. Vitol petitioned for panel rehearing and rehearing *en banc*. Case No. 16-1438, Doc. No. 117171816. While that petition was pending, PREPA commenced its Title III case. In light of the Title III case, the First Circuit held that the petition for rehearing was stayed “insofar as it concerns [Vitol’s] counterclaim against PREPA.” *See Exhibit I* (Order dated Oct. 2, 2017 in Case No. 16-1438). The petition for rehearing was denied in all other respects. *Id.*⁵

11. After PREPA’s commencement of its Title III case – and while still pursuing removal of the cases

XXIII at p. 25), 39-25 (Article XXII at p. 24), and 39-26 (Article XXIV at p. 24).

⁵ Vitol has very recently filed a petition for certiorari seeking review of the First Circuit decision by the Supreme Court.

under 28 U.S.C. § 1441 – Vitol removed the Commonwealth Proceedings to this Court, this time invoking PROMESA § 306(d). For the reasons set out below, this latest attempt to force PREPA to litigate its claims in federal court should be rejected.

ARGUMENT

I. THE FIRST NOTICE VIOLATES THE AUTOMATIC STAY.

12. PREPA filed its Title III case on July 2, 2017. Upon filing, an automatic stay was triggered under PROMESA § 301 (incorporating 11 U.S.C. §§ 362 and 922 into a Title III case). This automatic stay covers any claim against PREPA that was commenced before the Title III case was filed. 11 U.S.C. § 362(a)(1); see PROMESA §§ 301(a), 301(c)(5). “The automatic stay is extremely broad in scope and, ‘aside from the limited exceptions of subsection (b), applies to almost any type of formal or informal action taken against the debtor or the property of the estate.’” *Rentas v. Serrano (In re Garcia)*, 553 B.R. 1, 17 (Bankr. D.P.R. 2016) (citing Alan N. Resnick & Henry J. Sommer, 3 Collier on Bankruptcy ¶ 362.03 (16th ed. 2015)).

13. The First Notice should be stricken on the ground that it purports to remove a prepetition counterclaim against PREPA that has been stayed. Pursuant to 11 U.S.C. § 362(a)(1), made applicable to this Title III Case by PROMESA section 301(a), “the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the

debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title” is stayed once a Title III case is commenced. Section 362(a)(1) stays both claims asserted against PREPA and counterclaims asserted against PREPA in cases that PREPA initiated. *See Koolik v. Markowitz*, 40 F.3d 567, 568 (2d Cir. 1994).

14. As recognized by the First Circuit, the counterclaim filed by Vitol in the First Proceeding was stayed at the time PREPA filed its Title III petition. *See Autoridad de Energia Electrica de P.R. v. Vitol S.A.*, Case No. 16-1438 (1st Cir. Oct. 2, 2017) (“In light of appellee PREPA’s PROMESA Title III case and the parties’ responses to this court’s August 9, 2017 order, the petition for panel rehearing and rehearing *en banc* is stayed insofar as it concerns [Vitol’s] counterclaim against PREPA.”). Because the counterclaim has been stayed, Vitol may not remove the counterclaim to federal court unless the stay is lifted. *See Bankr. R. 9027* (incorporated into the Title III case by PROMESA § 310).

15. Because the First Notice purports to remove Vitol’s stayed counterclaim along with the rest of the First Proceeding, it violates the automatic stay and must be stricken from the docket. *See F & M Bank and Trust Co. v. Owens*, 2013 U.S. Dist. LEXIS 107127 at *4-5 (E.D. Mo. July 31, 2013) (“The Court finds that Plaintiff failed to obtain relief from the automatic stay prior to filing its Notice of Removal of this matter.

Plaintiff's action was taken in violation of the automatic stay, and is therefore void."); *In re Hoskins*, 266 B.R. 872, 877 (W.D. Mo. 2001) ("[A]ctions stayed by a bankruptcy filing include removing a pending state court lawsuit to the bankruptcy court if the claim or cause of action is subject to the automatic stay."); *In re Cedar Funding, Inc.*, No. 08-52709 CN, 2010 WL 5125375, at *2-3 (Bankr. N.D. Cal. Dec. 9, 2010) (removal of a state court action stayed pursuant to § 362 is premature if done prior to the entry of an order lifting the stay); *Phillips v. Federal Deposit Ins. Corp. (In re Phillips)*, 124 B.R. 712, 716 n.7 (Bankr. W.D. Tex. 1991) (FDIC "violated the automatic stay established by the bankruptcy filing when it removed the state collection and foreclosure action to federal court post-petition without relief from stay").

II. BOTH COMMONWEALTH PROCEEDINGS SHOULD BE REMANDED TO THE COMMONWEALTH COURT ON EQUITABLE GROUNDS.

16. Independent of the First Notice's violation of the automatic stay, the Court should remand *both* Commonwealth Proceedings on equitable grounds.⁶ PROMESA allows the Court to remand an action removed under PROMESA section 306(d)(1) on any equitable ground. *See* PROMESA § 306(d)(2). PROMESA's remand provision is nearly identical in form to its

⁶ If the Court chooses to strike the First Notice, however, the requested remand relief in this Motion would only apply to the Second Proceeding.

Bankruptcy Title 11 analog, codified at 28 U.S.C. § 1452(b). Courts consider the following factors when deciding whether to remand a removed action for equitable reasons under § 1452(b): (i) the effect of the action on the administration of the bankruptcy estate; (ii) the extent to which issues of state law predominate; (iii) the difficulty of applicable state law; (iv) comity; (v) the relatedness or remoteness of the action to the bankruptcy case; (vi) the existence of a right to a jury trial; and (vii) prejudice to the party involuntarily removed from state court. *Work/Family Directions v. Children's Discovery Ctrs. (In re Santa Clara Cnty. Care Consortium)*, 223 B.R. 40, 46 (1st Cir. B.A.P. 1998); *Longchamps Elec., Inc. v. Rothenberg (In re Wrenn Assocs.)*, 2004 Bankr. LEXIS 1083, at *19-20 (Bankr. D.N.H. July 26, 2004). Here, those factors militate heavily in favor of remand.

17. *First*, the claims and counterclaims primarily raise questions of Commonwealth law. PREPA's claims are premised upon Commonwealth contract law and upon a difficult Commonwealth statute, Law 458, which places certain requirements on parties contracting with Commonwealth entities. P.R. Laws Ann., tit. 3, § 928. Moreover, Vitol's counterclaim sounds in breach-of-contract, which is governed by Commonwealth law. The Commonwealth Court of First Instance has the expertise and experience required to interpret Law 458 and to adjudicate the other issues of Commonwealth law raised in these cases, and it therefore would be equitable to remand the proceedings to that court.

18. *Second*, PREPA would be prejudiced if it were forced to litigate in federal court because it would not receive the benefit of the forum-selection clauses for which it bargained. PREPA negotiated for a forum-selection clause in its fuel oil supply contracts with VI. The First Circuit has previously determined that those clauses are mandatory, valid, and encompass the disputes at issue. *See Vitol*, 859 F.3d at 145-47. Unless the cases are remanded, PREPA would lose the benefit of those provisions because it would have to litigate its claims in federal court notwithstanding the parties' selection of a different forum. Conversely, Vitol would not be unduly prejudiced by a remand because it previously agreed that the disputes at issue would be adjudicated in the courts of the Commonwealth.

19. *Third*, the Commonwealth Proceedings will have little effect on the administration of the Title III Case. The Commonwealth Proceedings are still in their early stages, and there is no indication that they will be settled or resolved in the near future. As a consequence, it is virtually certain that PREPA's plan of adjustment will be confirmed long before the Commonwealth Proceedings are finally adjudicated.

20. *Fourth*, there is a "strong presumption against removal." *See, e.g., Natale v. Pfizer Inc.*, 379 F. Supp. 2d 161, 172 (D. Mass. 2005) (citations omitted); *Biglari Import & Export, Inc. v. Nationwide Mut. Fire Ins. Co.*, 142 B.R. 777, 782 (Bankr. W.D. Tex. 1992) ("[T]he trustee's choice of forum is normally paramount when it comes to remand under § 1452, and will in the usual case be respected by the court.").

21. For all of these reasons, it would be both equitable and efficient for the Court to remand the Commonwealth Proceedings to the courts of the Commonwealth, where PREPA and Vitol agreed such disputes would be resolved in the first place. Courts within the First Circuit have granted motions for equitable remand in similar circumstances. *See, e.g., Newfound Lake Marina, Inc. v. Sumac Corp. (In re Newfound Lake Marina, Inc.)*, 2008 Bankr. LEXIS 3013, at *10-11 (Bankr. D.N.H. Nov. 6, 2008) (action remanded because, *inter alia*, the debtors' intended to implement their reorganization plan without regard to the action, state law issues predominated over the action, and the underlying issues did not require special expertise in bankruptcy law or in-depth familiarity with the debtors' bankruptcy case); *River Valley Country Day Sch. v. Evarts (In re Evarts)*, 2006 Bankr. LEXIS 360, at *10 (Bankr. D.N.H. Mar. 14, 2006) (“[C]omity and the state’s interest in developing its own law and applying it to its own citizens suggest remand is appropriate. In the Court’s view, deciding the issues raised in the Suit requires no special expertise in bankruptcy or familiarity with the Debtors’ bankruptcy case. The events that form the basis for the Suit occurred prepetition.”).

CONCLUSION

22. For the foregoing reasons, PREPA respectfully requests entry of the Proposed Order, (i) striking the First Notice from the docket and (ii) remanding the

Commonwealth Proceedings to the Commonwealth Court of First Instance.

NOTICE

23. PREPA has provided notice of this Motion to: (a) the Office of the United States Trustee for the District of Puerto Rico; (b) the indenture trustees and/or agents, as applicable, for PREPA's bonds; (c) the entities on the list of creditors holding the 20 largest unsecured claims against PREPA; (d) the Office of the United States Attorney for the District of Puerto Rico; (e) counsel to AAFAF; (f) the Puerto Rico Department of Justice; (g) the Other Interested Parties;⁷ and (h) all parties filing a notice of appearance in this Title III Case. PREPA submits that, in light of the nature of the relief requested, no further notice need be given.

RESERVATION OF RIGHTS

24. PREPA files this motion without prejudice to, or waiver of, its rights pursuant to PROMESA section 305. By this Motion, PREPA does not provide any consent (of PREPA or the Oversight Board) otherwise required by section 305.

WHEREFORE PREPA respectfully requests the Court enter the Proposed Order (a) granting the

⁷ The "Other Interested Parties" include the following: (i) counsel to certain of the insurers and trustees of the bonds issued by PREPA; and (ii) counsel to certain ad hoc groups of holders of bonds issued by PREPA.

37a

Motion, and (b) granting PREPA such other relief as is just and proper.

Dated:
January 16, 2018
San Juan, Puerto Rico

Respectfully submitted,
/s/ Martin J. Bienenstock

Martin J. Bienenstock
Paul V. Possinger
Ehud Barak
Maja Zerjal
(Admitted Pro Hac Vice)
PROSKAUER ROSE LLP
Eleven Times Square
New York, NY 10036
Tel: (212) 969-3000
Fax: (212) 969-2900

/s/ Hermann D. Bauer

Hermann D. Bauer
USDC No. 215205
O'NEILL & BORGES LLC
250 Muñoz Rivera Ave.,
Suite 800
San Juan, PR 00918-1813
Tel: (787) 764-8181
Fax: (787) 753-8944

*Attorneys for the Financial
Oversight and Management
Board for Puerto Rico, as
representative for PREPA*

Exhibit A

Proposed Order

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

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

----- x

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) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) 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); (iv) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780 (LTS)) (Last Four Digits of Federal Tax ID: 3747).

<p>In re:</p> <p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p>as representative of</p> <p>PUERTO RICO ELECTRIC POWER AUTHORITY,</p> <p>Debtor.</p>	<p>PROMESA Title III No. 17 BK 4780-LTS Re: Docket Nos. 128, 130, ___</p>
--	--

----- x	
<p>PUERTO RICO ELECTRIC POWER AUTHORITY</p> <p>Plaintiff,</p> <p>v.</p> <p>VITOL S.A., <i>et al.</i>,</p> <p>Defendants.</p>	<p>PROMESA Title III Adv. Pro. Nos. 17-00218, 17-00221 Re: Docket Nos. 1, ___</p>
----- x	

**ORDER GRANTING PREPA’S MOTION
TO STRIKE FIRST NOTICE OF REMOVAL AND
TO REMAND ADVERSARY PROCEEDINGS
ON EQUITABLE GROUNDS**

Upon *PREPA’s Motion to Strike First Notice of Removal and to Remand Adversary Proceedings on Equitable Grounds* (the “*Motion*”);¹ and the Court having found it has subject matter jurisdiction over this matter pursuant to section 306(a) of PROMESA; and it

¹ Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

appearing that venue in this district is proper pursuant to section 307(a) of PROMESA; and the Court having found that the relief requested in the Motion is in the best interests of PREPA, its creditors, and other parties in interest; and the Court having found that PREPA provided adequate and appropriate notice of the Motion under the circumstances and that no other or further notice is required; and the Court having reviewed the Motion and having heard the statements of counsel in support of the 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 Motion and at the Hearing establish just cause for the relief granted herein; and any objections to the relief requested herein having been withdrawn or overruled on the merits; and upon the record herein, after due deliberation thereon, the Court having found that good and sufficient cause exists for the granting of the relief as set forth herein,

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED**; and
 - a. The First Notice of Removal appearing as Docket Number 128 in Case No. 17-4780 is hereby struck from the docket; *and*
 - b. Adversary Proceeding Nos. 17-00218 and 17-00221 are hereby remanded to the Commonwealth Court of First Instance, San Juan Part, pursuant to PROMESA § 306(d)(2).

2. Nothing herein is intended to, shall constitute, or shall be deemed to constitute PREPA's or the Oversight Board's consent, pursuant to PROMESA section 305, to this Court's interference with (a) any of the political or governmental powers of PREPA, (b) any of the property or revenues of PREPA, or (c) the use or enjoyment of PREPA of any income-producing property.

3. Notwithstanding any applicability of any Bankruptcy Rule, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

4. PREPA and the Oversight Board, as PREPA's representative, are authorized to take all actions, and to execute all documents, necessary or appropriate to effectuate the relief granted in this Order.

5. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated:

February __, 2018

Honorable Laura Taylor Swain
United States District Judge

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

-----	x	
In re:	:	
THE FINANCIAL	:	PROMESA
OVERSIGHT AND	:	Title III
MANAGEMENT BOARD	:	No. 17 BK 3283-LTS
FOR PUERTO RICO,	:	
as representative of	:	(Jointly Administered)
THE COMMONWEALTH	:	
OF PUERTO RICO, <i>et al.</i> ,	:	
Debtors.	:	
-----	x	
-----	x	
In re:	:	
THE FINANCIAL	:	PROMESA
OVERSIGHT AND	:	Title III
MANAGEMENT BOARD	:	No. 17 BK 4780-LTS
FOR PUERTO RICO,	:	
as representative of	:	
PUERTO RICO ELECTRIC	:	
POWER AUTHORITY, <i>et al.</i> ,	:	
Debtor.	:	
-----	x	
-----	x	
PUERTO RICO ELECTRIC	:	
POWER AUTHORITY	:	PROMESA
Plaintiff,	:	Title III
v.	:	Adv. Pro. No. 17-218-
	:	LTS in Case No. 17
VITOL S.A., <i>et al.</i> ,	:	BK 4780-LTS and Adv.
Defendants.	:	Proc. No. 17-221-LTS
-----	x	in 17 BK 4780-LTS

SECOND INFORMATIVE MOTION
REGARDING CONSENSUAL EXTENSION OF
DEADLINE FOR VITOL INC. AND VITOL S.A.
TO FILE OBJECTIONS OR RESPONSES TO
PREPA’S MOTION TO STRIKE FIRST NOTICE
OF REMOVAL AND TO REMAND
ADVERSARY PROCEEDINGS ON
EQUITABLE GROUNDS

(Filed Feb. 23, 2018)

To the Honorable United States District Judge Laura Taylor Swain:

1. Vitol Inc. and Vitol S.A. respectfully file this second informative motion notifying the Court of a consensual extension of the deadline for Vitol Inc. and Vitol S.A. to file objections or responses to the *Motion to Strike First Notice of Removal and to Remand Adversary Proceedings on Equitable Grounds* [Docket No. 533] (the “*Motion*”) filed by the Puerto Rico Electric Power Authority (“*PREPA*”), by and through the Financial Oversight and Management Board for Puerto Rico (the “*FOMB*”), as PREPA’s representative pursuant to section 315(b) of the Puerto Rico Oversight, Management, and Economic Stability Act (“*PROMESA*”).

2. On January 17, 2018, the Court entered its Order Scheduling Briefing on PREPA’s Motion to Strike First Notice of Removal and to Remand Adversary Proceedings on Equitable Grounds [Docket No. 537] (the “*Scheduling Order*”). The Scheduling Order (i) set January 31, 2018 as the deadline for Vitol Inc. and Vitol

S.A. to file opposition papers to the Motion, and (ii) set February 7, 2018 as the deadline for PREPA and the FOMB to file any reply papers.

3. On January 25, 2018, Vitol Inc. and Vitol S.A. filed the first Informative Motion Regarding Consensual Extension of Deadline for Vitol Inc. and Vitol S.A. to File Objections or Responses to PREPA's Motion to Strike First Notice of Removal and to Remand Adversary Proceedings on Equitable Grounds [Docket No. 544] (the "*First Informative Motion*"). The First Informative Motion (i) extended the deadline for Vitol Inc. and Vitol S.A. to file opposition papers to the Motion to February 23, 2018, and (ii) extended the deadline for PREPA and the FOMB to file any reply papers to March 2, 2018.

4. To continue to facilitate negotiations among the parties, Vitol Inc. and Vitol S.A. and the FOMB have consensually agreed to further extend such deadlines. Accordingly, the parties have agreed that (i) 12:00 am (Eastern Standard Time) on April 14, 2018 will be the deadline for Vitol Inc. and Vitol S.A. to file opposition papers to the Motion, and (ii) 12:00 am (Eastern Standard Time) on April 21, 2018 will be the deadline for PREPA and the FOMB to file any reply papers.

45a

Dated: New York, New York
February 23, 2018

SKADDEN, ARPS, SLATE,
MEAGHER & FLOM LLP

By: /s/ Jay M. Goffman

Jay M. Goffman

(admitted *pro hac vice*)

Four Times Square

New York, New York 10036-6522

Telephone: (212) 735-3000

Fax: (212) 735-2000

MCCONNELL VALDÉS LLC

By: /s/ Eduardo A. Zayas-Marxuach

Eduardo A. Zayas-Marxuach

USDC-PR 216112

270 Muñoz Rivera Avenue

Hato Rey, Puerto Rico 00918

P.O. Box 364225

San Juan, Puerto Rico 00936-4225

Telephone: (787) 250-5608 / 5813

Fax: (787) 474-9207

Email: ezm@mcvpr.com

THE LAW OFFICES OF ANDRÉS W.
LÓPEZ, P.S.C.

By: /s/ Andrés W. López

Andrés W. López

USDC No. 215311

902 Fernández Juncos Ave.

Miramar

San Juan, Puerto Rico 00907

46a

P.O. Box 13909
San Juan, Puerto Rico 00908
Telephone: (787) 294-9508
Fax: (787) 294-9519
Email: Andres@awllaw.com

Counsel for Vitol Inc. and Vitol S.A.

[Certificate Of Service Omitted]
