

No. 22-096

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IN THE  
**Supreme Court of the United States**

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FINANCIAL OVERSIGHT AND MANAGEMENT  
BOARD FOR PUERTO RICO,

*Petitioner,*

*v.*

CENTRO DE PERIODISMO INVESTIGATIVO, INC.,

*Respondent.*

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ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FIRST CIRCUIT

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**JOINT APPENDIX**

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PETITION FOR CERTIORARI FILED JULY 20, 2022  
CERTIORARI GRANTED OCTOBER 3, 2022

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**APPENDIX A — RELEVANT DOCKET ENTRIES**

**RELEVANT DOCKET ENTRIES FROM THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT,  
NO. 21-1301**

<b>Date Filed</b>	<b>Docket Text</b>
04/20/2021	CIVIL CASE docketed. Notice of appeal (doc. #134) filed by Appellant FOMB. Docketing Statement, Transcript Report/Order form, and Appearance form due 05/04/2021. [21-1301] (ALW) [Entered: 04/20/2021 02:47 PM]
***	
04/20/2021	EMERGENCY MOTION to stay - <i>Appellant's Motion for an Emergency Stay and Stay Pending Appeal</i> filed by Appellant FOMB. Certificate of service dated 04/20/2021. [21-1301] (MJB) [Entered: 04/20/2021 8:03 PM]
04/21/2021	RESPONSE to motion to stay [6416556-2] filed by Appellee Centro de Periodismo Investigativo, Inc.. Certificate of service dated 04/21/2021. [21-1301] CLERK'S NOTE: Docket entry was edited to modify the docket text. (JB) [Entered: 04/21/2021 04:40 PM]

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04/21/2021 REPLY to response and motion to stay [6416822-2] filed by Appellant FOMB. Certificate of service dated 04/21/2021. [21-1301] CLERK'S NOTE: Relief selection was incorrect. Correction made by clerk's office. No further action required. (MJB) [Entered: 04/21/2021 11:16 PM]

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04/30/2021 MOTION to expedite *this Appeal* filed by Appellant FOMB. Certificate of service dated 04/30/2021. [21-1301] (TWM) [Entered: 04/30/2021 04:22 PM]

05/03/2021 RESPONSE filed by Appellee Centro de Periodismo Investigativo, Inc. to motion to expedite [6419155-2]. Certificate of service dated 05/03/2021. [21-1301] (JB) [Entered: 05/03/2021 07:37 AM]

05/03/2021 REPLY in support of Appellant's motion to expedite filed by Appellant FOMB to response [6419247-2]. Certificate of service dated 05/03/2021. [21-1301] CLERK'S NOTE: Docket entry was edited to modify the docket text. (TWM) [Entered: 05/03/2021 03:03 PM]

05/03/2021 ORDER entered by Jeffrey R. Howard, Chief Appellate Judge. The motion of the Financial Oversight and Management

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Board for Puerto Rico to expedite this appeal is granted. Appellant's opening brief shall be filed on May 19, 2021; appellee's response brief shall be filed on June 18, 2021; and appellant's reply brief shall be filed on July 9, 2021. Appellant's motion to stay the district court proceedings will be adjudicated in due course. [21-1301] (GAK) [Entered: 05/03/2021 05:00 PM]

- 05/03/2021 EXPEDITED briefing schedule set. Brief due 05/19/2021 for appellant Financial Oversight and Management Board. Brief due 06/18/2021 for appellee Centro de Periodismo Investigativo, Inc.. Reply brief due 07/09/2021 for appellant Financial Oversight and Management Board. Please see the court's general order issued April 20, 2020, requiring the electronic filing of appendices. [21-1301] (ALW) [Entered: 05/03/2021 05:27 PM]
- 05/19/2021 BRIEF tendered by Appellant FOMB. [21-1301] (TWM) [Entered: 05/19/2021 07:45 PM]
- 05/19/2021 APPENDIX tendered by Appellant FOMB and Appellee Centro de Periodismo Investigativo, Inc.. Certificate of service dated 05/19/2021. [21-1301] (TWM) [Entered: 05/19/2021 07:47 PM]



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05/20/2021 APPELLANT'S BRIEF filed by Appellant FOMB. Certificate of service dated 05/19/2021. Nine paper copies identical to that of the electronically filed brief must be submitted so that they are received by the court on or before 05/24/2021. [21-1301] (LIM) [Entered: 05/20/2021 09:17 AM]

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05/20/2021 APPENDIX filed by Appellant FOMB and Appellee Centro de Periodismo Investigativo, Inc. Certificate of service dated 05/19/2021. Five paper copies of the electronically filed appendix must be submitted so that they are received by the court on or before 05/24/2021 [21-1301] (LIM) [Entered: 05/20/2021 09:19 AM]

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06/18/2021 BRIEF tendered by Appellee Centro de Periodismo Investigativo, Inc.. [21-1301] (JB) [Entered: 06/18/2021 03:08 PM]

06/21/2021 APPELLEE'S BRIEF filed by Appellee Centro de Periodismo Investigativo, Inc. Certificate of service dated 06/18/2021. Nine paper copies identical to that of the electronically filed brief must be submitted so that they are received by the court on or before 06/24/2021. [21-1301] (LIM) [Entered: 06/21/2021 08:22 AM]

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06/24/2021 MOTION for leave to file amicus curiae brief in support of Appellee filed by Movant(s) Asociacion de Periodistas de Puerto Rico. Certificate of service dated 06/24/2021. [21-1301] (AMG) [Entered: 06/24/2021 02:22 PM]

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06/25/2021 AMICUS CURIAE BRIEF tendered by Reporters Committee for Freedom of the Press and 27 media organizations. [21-1301] (BDB) [Entered: 06/25/2021 01:07 PM]

06/25/2021 AMICUS CURIAE BRIEF tendered by Latino Justice PRLDEF in Support of Appellee. [21-1301] (RBS) [Entered: 06/25/2021 03:16 PM]

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06/25/2021 MOTION for leave to file amicus curiae brief in support of Appellee filed by Movant(s) Espacios Abiertos; the National Freedom of Information Coalition; the Iowa Freedom of Information Council; and the Nevada Open Government Coalition. Certificate of service dated 06/25/2021. [21-1301] (BCB) [Entered: 06/25/2021 04:47 PM]

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06/28/2021 ORDER directing Movant Asociacion de Periodistas de Puerto Rico to file a conforming brief. A corrected amicus brief must be filed no later than 07/01/2021 . [21-1301]. CLERK'S NOTE: Docket entry was edited to modify the docket text. (ALW) [Entered: 06/28/2021 10:34 AM]

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06/28/2021 AMICUS CURIAE BRIEF filed by Movant LatinoJustice PRLDEF in support of Appellee. Certificate of service dated 06/25/2021. Nine paper copies identical to that of the electronically filed brief must be submitted so that they are received by the court on or before 07/06/2021. [21-1301] (ALW) [Entered: 06/28/2021 01:20 PM]

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06/28/2021 AMICUS CURIAE BRIEF tendered by Asociacion de Periodistas de Puerto Rico. [21-1301] (AMG) [Entered: 06/28/2021 04:09 PM]

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06/29/2021 AMICUS CURIAE BRIEF filed by Amici Curiae Atlantic Monthly Group LLC, Boston Globe Media Partners, LLC, CNN, Center for Investigative

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Reporting, Committee to Protect Journalists, First Look Institute, Inc., Fundamedios Inc., Gannett Gannett, Inc., Inter American Press Association, International Documentary Association, Investigative Reporting Workshop, MPA-The Association of Magazine Media, McClatchy Company, Media Institute, National Press Club, National Press Photographers Association, New England First Amendment Coalition, New England Newspaper and Press Association, Inc., News Leaders Association, News Media Alliance, Online News Association, Pulitzer Center on Crisis Reporting, Radio Television Digital News Association, Reporters Committee for Freedom of the Press, Society of Environmental Journalists, Society of Professional Journalists and Tully Center for Free Speech in support of Appellee. Certificate of service not included. Nine paper copies identical to that of the electronically filed brief must be submitted so that they are received by the court on or before 07/06/2021. [21-1301]. CLERK'S NOTE: Docket entry was edited to modify the docket text. (ALW) [Entered: 06/29/2021 12:37 PM]

06/29/2021 AMICUS CURIAE BRIEF filed by Amicus Curiae Asociacion de Periodistas

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de Puerto Rico in support of Appellee. Certificate of service dated 06/28/2021. Nine paper copies identical to that of the electronically filed brief must be submitted so that they are received by the court on or before 07/06/2021. [21-1301].CLERK'S NOTE: Docket entry was edited to modify the docket text. (ALW) [Entered: 06/29/2021 01:27 PM]

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07/09/2021 ORDER entered: Upon consideration, movants Espacios Abiertos, the National Freedom of Information Coalition, the Iowa Freedom of Information Council, and the Nevada Open Government Coalition's unopposed motion to appear as amicus curiae is allowed. The amicus curiae brief tendered on June 25, 2021 is accepted for filing on this day. [21-1301] (ALW) [Entered: 07/09/2021 12:17 PM]

07/09/2021 AMICUS CURIAE BRIEF filed by Amici Curiae Espacios Abiertos, LLC, IOWA Freedom of Information Council, National Freedom of Information Coalition and Nevada Open Government Coalition in support of Appellee. Certificate of service dated 06/25/2021. Nine paper copies identical to that of the electronically filed brief must be submitted so that they

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are received by the court on or before 07/16/2021. [21-1301](ALW) [Entered: 07/09/2021 12:26 PM]

07/09/2021 BRIEF tendered by Appellant FOMB. [21-1301] (TWM) [Entered: 07/09/2021 03:27 PM]

07/09/2021 REPLY BRIEF filed by Appellant FOMB. Certificate of service dated 07/09/2021. Nine paper copies identical to that of the electronically filed brief must be submitted so that they are received by the court on or before 07/12/2021. [21-1301] (LIM) [Entered: 07/09/2021 03:40 PM]

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10/15/2021 ORDER entered by Sandra L. Lynch, Appellate Judge; Rogeriee Thompson, Appellate Judge and William J. Kayatta, Jr., Appellate Judge: The motion of appellant Financial Oversight and Management Board for Puerto Rico for a stay of district court proceedings is granted pending further order of this court. [21-1301] (ALW) [Entered: 10/15/2021 09:31 AM]

10/28/2021 CASE calendared: Consistent with ongoing efforts to mitigate the risk of community transmission of COVID-19, the court will

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conduct oral argument remotely in this case on Monday, December 6, 2021 at 9:30 a.m., in lieu of in-person appearance. Check-in at 9:00 a.m. before court begins is required. There will be no continuance except for grave cause. Designation form due 11/05/2021. [21-1301] (DJT) [Entered: 10/28/2021 03:09 PM]

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- 12/06/2021 CASE argued. Panel: Sandra L. Lynch, Appellate Judge; Rogeriee Thompson, Appellate Judge and William J. Kayatta, Jr., Appellate Judge. Arguing attorneys: Martin J. Bienenstock for FOMB and Judith Berkan for Centro de Periodismo Investigativo, Inc.. [21-1301] (DJT) [Entered: 12/06/2021 12:28 PM]
- 05/17/2022 OPINION issued by Sandra L. Lynch, Appellate Judge; Rogeriee Thompson, Appellate Judge and William J. Kayatta, Jr., Appellate Judge. Published. [21-1301] (JAW) [Entered: 05/17/2022 03:38 PM]
- 05/17/2022 JUDGMENT entered. Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The district court's order denying the Financial Oversight and Management Board for Puerto Rico's motion to dismiss Centro

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De Periodismo Investigativo, Inc.'s 2019 complaint on the basis of sovereign immunity is affirmed. Costs to Centro De Periodismo Investigativo, Inc. [21-1301] (JAW) [Entered: 05/17/2022 03:54 PM]

- 05/23/2022 ERRATA issued by court to opinion (published) [6496139-2]. [21-1301] (SBT) [Entered: 05/23/2022 09:59 AM]
- 05/31/2022 PETITION for rehearing en banc filed by Appellant FOMB. Served on 05/31/2022. [21-1301] (TWM) [Entered: 05/31/2022 09:18 PM]
- 06/07/2022 ORDER entered by David Barron, Chief Circuit Judge;\* Sandra L. Lynch, Appellate Judge; Rogeriee Thompson, Appellate Judge; William J. Kayatta, Jr., Appellate Judge and Gustavo A. Gelpi, Jr.,\* Appellate Judge: Pursuant to First Circuit Internal Operating Procedure X(C), the petition for rehearing en banc has also been treated as a petition for rehearing before the original panel. The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for



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rehearing and petition for rehearing en banc be denied. **LYNCH, Circuit Judge, dissenting.** I dissent from the denial of en banc rehearing for the reasons stated in my dissent from the majority opinion and in the FOMB's petition. \*Chief Judge Barron and Judge Gelpí are recused and did not participate in the consideration of this matter. [21-1301]. (JAW) [Entered: 06/07/2022 01:11 PM]

- 06/14/2022 MANDATE issued. [21-1301] (JAW) [Entered: 06/14/2022 09:26 AM]
- 06/14/2022 MOTION to recall mandate filed by Appellant FOMB. Served on 06/14/2022. [21-1301] (TWM) [Entered: 06/14/2022 12:46 PM]
- 06/14/2022 ORDER entered: The mandate entered on June 14, 2022 is administratively recalled as it issued in error. [21-1301] (JAW) [Entered: 06/14/2022 02:07 PM]
- 06/14/2022 MOTION to stay mandate filed by Appellant FOMB. Served on 06/14/2022. [21-1301] (JAW) [Entered: 06/14/2022 02:15 PM]
- 06/21/2022 RESPONSE filed by Appellee Centro de Periodismo Investigativo, Inc. to to stay [6501884-2]. Served on 06/21/2022. [21-1301] (JB) [Entered: 06/21/2022 11:53 AM]

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- 06/21/2022 ORDER entered by Rogeriee Thompson, Appellate Judge: Upon consideration, appellant Financial Oversight and Management Board for Puerto Rico's (the Board's) motion to stay mandate is *granted in part*. The issuance of the mandate is hereby stayed for 30 days from the date of this order. If a timely petition for certiorari is filed within that period, the stay of mandate shall continue until final disposition by the United States Supreme Court. If the petition for certiorari is denied, mandate shall issue forthwith. Counsel for the Board is directed to promptly notify the Clerk of this Court both of the filing of any such petition for certiorari and the disposition. [21-1301] (JAW) [Entered: 06/21/2022 04:10 PM]
- 07/20/2022 LETTER regarding filing of petition for a writ of certiorari. filed by Attorney Martin J. Bienenstock for Appellant FOMB. Served on 07/20/2022. [21-1301] (MJB) [Entered: 07/20/2022 04:13 PM]
- 08/03/2022 U.S. SUPREME COURT NOTICE advising a petition for a writ of certiorari was filed on 07/20/2022 and assigned case number 22-96. [21-1301] (JAW) [Entered: 08/03/2022 11:51 AM]

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- 10/04/2022 LETTER regarding *notification that the United States Supreme Court granted the Boards petition for a writ of certiorari* filed by Attorney Martin J. Bienenstock for Appellant FOMB. Served on 10/04/2022. [21-1301] (MJB) [Entered: 10/04/2022 10:59 AM]
- 10/04/2022 U.S.SUPREME COURT ORDER entered on 10/03/2022. The petition for a writ of certiorari was granted. [21-1301] (JAW) [Entered: 10/04/2022 02:39 PM]

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**RELEVANT DOCKET ENTRIES FROM THE  
U.S. DISTRICT COURT  
DISTRICT OF PUERTO RICO  
(SAN JUAN)  
NO. 3:17-CV-01743-JAG-BJM**

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
06/01/2017	1	COMPLAINT <i>for preliminary and permanent injunctive relief and mandamus</i> against Financial Oversight and Management Board for Puerto Rico ( Filing fee \$400 receipt number 0104-5465316.), filed by Centro de Periodismo Investigativo, Inc.. Service due by 8/30/2017, (Attachments: # 1 Category Sheet, # 2 Civil Cover Sheet, # 3 Exhibit address form, # 4 Exhibit address form)(Berkan, Judith) (Entered: 06/01/2017)
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06/02/2017	3	NOTICE OF JUDGE ASSIGNMENT Case has been assigned to Judge Jay A. Garcia-Gregory (arg) (Entered: 06/02/2017)
***		
06/13/2017	5	MOTION to Reassign Case to <i>Judge Laura Taylor Swain</i> filed by Luis F.

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Del-Valle-Emmanuelli on behalf of Financial Oversight and Management Board for Puerto Rico Responses due by 6/27/2017. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Del-Valle-Emmanuelli, Luis) (Entered: 06/13/2017)

06/14/2017 6 ORDER re 5 MOTION to Reassign Case. **Plaintiff shall respond by 6/20/2017.** Signed by Judge Jay A. Garcia-Gregory on 6/14/2017. (AP) (Entered: 06/14/2017)

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06/15/2017 8 RESPONSE in Opposition to Motion filed by Centro de Periodismo Investigativo, Inc. Re: 5 MOTION to Reassign Case to Judge Laura Taylor Swain filed by Financial Oversight and Management Board for Puerto Rico filed by Centro de Periodismo Investigativo, Inc.. (Attachments: # 1 Exhibit Judge Swain's June 13th ruling in Bhatia case)(Berkan, Judith) (Entered: 06/15/2017)

06/16/2017 9 ORDER denying Defendant's 5 Motion to Reassign Case. At this time, the Court sees no reason to transfer this

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case to the docket of Judge Swain. The Court orders the parties to address in further detail whether this action is subject to the automatic stay incorporated into Title III of Promesa. Defendant shall file a brief on this issue on or before 6/26/2017. Plaintiff shall then respond on or before 7/3/2017. For purposes of consistency and clarity, the parties shall refer to Defendant as the Board or Defendant in short in all future filings. Signed by Judge Jay A. Garcia-Gregory on 6/16/2017. (AP) (Entered: 06/16/2017)

06/21/2017 10 MOTION for Extension of Time to File Answer *or Otherwise Plead* re: 9 Order on Motion to Reassign Case,, 1 Complaint, filed by Centro de Periodismo Investigativo, Inc. filed by Luis F. Del-Valle-Emmanuelli on behalf of Financial Oversight and Management Board for Puerto Rico Responses due by 7/5/2017. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Related document(s) 9, 1) (Del-Valle-Emmanuelli, Luis) (Entered: 06/21/2017)

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- 06/21/2017 11 RESPONSE in Opposition to Motion filed by Centro de Periodismo Investigativo, Inc. Re: 10 MOTION for Extension of Time to File Answer *or Otherwise Plead* re: 9 Order on Motion to Reassign Case,, 1 Complaint, filed by Centro de Periodismo Investigativo, Inc. filed by Financial Oversight and Management Board for Puerto Rico filed by Centro de Periodismo Investigativo, Inc.. (Berkan, Judith) (Entered: 06/21/2017)
- 06/23/2017 12 ORDER granting in part 10 MOTION for Extension of Time to File Answer. Defendant's Answer is due on or before 7/14/2017. Signed by Judge Jay A. Garcia-Gregory on 6/23/2017. (AP) (Entered: 06/23/2017)
- 06/26/2017 13 Motion In Compliance *Brief in Support of Application of Automatic Stay* as to 9 Order on Motion to Reassign Case,, filed by Luis F. Del-Valle-Emmanuelli on behalf of Financial Oversight and Management Board for Puerto Rico Responses due by 7/10/2017. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Related document(s) 9) (Del-Valle-Emmanuelli, Luis) (Entered: 06/26/2017)

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- 07/03/2017 14 RESPONSE in Opposition to Motion for *Application of PROMESA stay, and in compliance with Order at Docket 9* filed by All Plaintiffs Re: 13 Motion In Compliance Brief in Support of Application of Automatic Stay as to 9 Order on Motion to Reassign Case,, filed by Financial Oversight and Management Board for Puerto Rico filed by All Plaintiffs. (Attachments: # 1 Exhibit Exhibit A - Judge Young order in Cruz Rodriguez; Exhibit B - Judge Swain's order in Mandamus case by Senator Bhatia; Exhibit C - excerpts from complaint in Rodriguez Perell case)(Berkan, Judith) (Entered: 07/03/2017)
- 07/04/2017 15 MOTION for Leave to File Document Reply filed by Luis F. Del-Valle-Emmanuelli on behalf of Financial Oversight and Management Board for Puerto Rico Responses due by 7/18/2017. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Attachments: # 1 Exhibit)(Del-Valle-Emmanuelli, Luis) (Entered: 07/04/2017)

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- 07/14/2017 17 ORDER granting 15 Motion for Leave to File. Signed by Judge Jay A. Garcia-Gregory on 7/14/2017. (AP) (Entered: 07/14/2017)
- 07/14/2017 18 MEMORANDUM & ORDER STAYING CASE pursuant to 48 U.S.C. sec. 2161(a) and 11 U.S.C. sec. 362(a) and 922. Any request to lift or vacate the stay must be filed in the bankruptcy court in Bankruptcy Case No. 17-BK-03283 (LTS). Signed by Judge Jay A. Garcia-Gregory on 7/14/2017. (AP) (Entered: 07/14/2017)
- 08/21/2017 19 MOTION requesting Order *requiring Board to answer by Aug. 24th*, MOTION for Setting of hearing filed by Judith Berkan on behalf of All Plaintiffs Responses due by 9/5/2017. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Attachments: # 1 Exhibit Order lifting stay)(Berkan, Judith) (Entered: 08/21/2017)
- 08/22/2017 20 RESPONSE to Motion in *Request for Order and Opposition to Hearing* filed by Financial Oversight and Management Board for Puerto Rico Re: 19 MOTION requesting Order *requiring Board to answer by Aug. 24th*

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MOTION for Setting of hearing filed by Centro de Periodismo Investigativo, Inc. filed by Financial Oversight and Management Board for Puerto Rico. (Del-Valle-Emmanuelli, Luis) (Entered: 08/22/2017)

- 08/22/2017 21 ORDER granting in part and denying in part 19 Motion requesting Order; denying without prejudice 19 Motion for Setting. The Board's Response to the Complaint is due by 8/29/2017. The Court will evaluate the need for a hearing after the Board's Response. Signed by Judge Jay A. Garcia-Gregory on 8/22/2017. (AP) (Entered: 08/22/2017)
- 08/29/2017 22 MOTION to Dismiss for Failure to State a Claim *and Lack of Subject Matter Jurisdiction* filed by Luis F. Del-Valle-Emmanuelli on behalf of Financial Oversight and Management Board for Puerto Rico Responses due by 9/12/2017. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Del-Valle-Emmanuelli, Luis) (Entered: 08/29/2017)
- 09/12/2017 23 MOTION for extension of time until september 19, 2017 to oppose the

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motion to dismiss filed by Judith Berkan on behalf of All Plaintiffs Responses due by 9/26/2017. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Berkan, Judith) (Entered: 09/12/2017)

- 09/12/2017 24 ORDER granting 23 Motion for extension of time. **Response due by 12/19/2017.** Signed by Judge Jay A. Garcia-Gregory on 9/12/2017. (ALP) Modified on 9/15/2017 to correct due date(su). (Entered: 09/12/2017)
- 09/18/2017 25 RESPONSE in Opposition to Motion filed by Centro de Periodismo Investigativo, Inc. Re: 22 MOTION to Dismiss for Failure to State a Claim *and Lack of Subject Matter Jurisdiction* filed by Financial Oversight and Management Board for Puerto Rico filed by Centro de Periodismo Investigativo, Inc.. (Berkan, Judith) (Entered: 09/18/2017)
- 10/16/2017 26 Amicus Curiae APPEARANCE entered by Tomas A. Roman-Santos on behalf of Reporters Committee for Freedom of the Press. (Attachments: # 1 Exhibit A - Amicus Curiae Brief, # 2 Exhibit B - Proposed Order) (Roman-Santos, Tomas) (Entered: 10/16/2017)

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- 10/30/2017 28 MOTION for Leave to File Document / *Unopposed Motion for Leave to File Reply in Support of Motion to Dismiss* filed by Luis F. Del-Valle-Emmanuelli on behalf of All Defendants Responses due by 11/13/2017. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Attachments: # 1 Defendant's Reply in Support of Motion to Dismiss)(Del-Valle-Emmanuelli, Luis) (Entered: 10/30/2017)
- 02/07/2018 29 MOTION for Setting *hearing*, MOTION to Expedite *prompt decision on Motion to Dismiss* filed by Judith Berkan on behalf of Centro de Periodismo Investigativo, Inc. Responses due by 2/21/2018. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Berkan, Judith) (Entered: 02/07/2018)
- 02/20/2018 30 \*\*\*STRICKEN ASPER 34 ORDER\*\*\* RESPONSE in Opposition to Motion for Expedited Consideration and Renewed Request for Hearing filed by Financial Oversight and Management Board for Puerto Rico Re: 29 MOTION for Setting *hearing* MOTION to

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*Expedite prompt decision on Motion to Dismiss* filed by Centro de Periodismo Investigativo, Inc. filed by Financial Oversight and Management Board for Puerto Rico. (Del-Valle-Emmanuelli, Luis) Modified on 2/21/2018 (gmm). (Entered: 02/20/2018)

- 02/20/2018 31 MOTION to Strike Re: 30 Response in Opposition to Motion, filed by Financial Oversight and Management Board for Puerto Rico filed by Luis F. Del-Valle-Emmanuelli on behalf of Financial Oversight and Management Board for Puerto Rico Responses due by 3/6/2018. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Related document(s) 30) (Del-Valle-Emmanuelli, Luis) (Entered: 02/20/2018)
- 02/20/2018 32 RESPONSE in Opposition to Motion *for Expedited Consideration and Renewed Request for Hearing* filed by Financial Oversight and Management Board for Puerto Rico Re: 29 MOTION for Setting *hearing* MOTION to Expedite *prompt decision on Motion to Dismiss* filed by Centro de Periodismo Investigativo, Inc. filed by Financial Oversight and Management Board for

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Puerto Rico. (Del-Valle-Emmanuelli, Luis) (Entered: 02/20/2018)

- 02/20/2018 33 ORDER: GRANTING 28 Motion for Leave to File. Signed by Judge Jay A. Garcia-Gregory on 2/20/2018. (ALP) (Entered: 02/20/2018)
- 02/20/2018 34 ORDER: GRANTING 31 Motion to Strike D.E. 30. Signed by Judge Jay A. Garcia-Gregory on 2/20/2018. (ALP) (Entered: 02/20/2018)
- 02/20/2018 35 ORDER: DENYING 29 Motion for Setting; NOTED 29 Motion to Expedite. The Court has the motions under advisement. The Court will file its Opinion as soon as practicable. A hearing at this time is not necessary. Signed by Judge Jay A. Garcia-Gregory on 2/20/2018. (ALP) (Entered: 02/20/2018)
- 05/04/2018 36 OPINION AND ORDER: DENYING 22 Motion to Dismiss for Failure to State a Claim. Signed by Judge Jay A. Garcia-Gregory on 5/4/2018. (ALP) (Entered: 05/04/2018)
- 05/09/2018 37 ORDER REFERRING CASE to Magistrate Judge Bruce McGiverin for an ISC and to set discovery deadlines.

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The parties shall raise any issues they might have regarding the process of producing the documents. The Magistrate shall, in his discretion, hold hearings or create case management orders. All discovery issues shall be addressed by the Magistrate in the first instance. The Magistrate shall set his own procedures to address any discovery issues. Signed by Judge Jay A. Garcia-Gregory on 5/9/2018. (ALP) (Entered: 05/09/2018)

- 05/09/2018 38 MEMORANDUM OF THE CLERK: By Order of Judge Jay A. Garcia-Gregory (Docket No. 37), this case is referred to Magistrate Judge Bruce J. McGiverin for an ISC, to set discovery deadlines, and address discovery issues. Signed by Clerk on 05/09/2018. (gr) (Entered: 05/09/2018)
- 05/18/2018 39 ANSWER to 1 Complaint, filed by Luis F. Del-Valle-Emmanuelli on behalf of Defendant Financial Oversight and Management Board for Puerto Rico.(Del-Valle-Emmanuelli, Luis) (Entered: 05/18/2018)
- 05/23/2018 40 ORDER: **Joint ISC Memorandum is due by 6/4/2018. Initial Scheduling Conference set for 6/6/2018 at 3:30**

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**PM in BJM's Chambers before US Magistrate Judge Bruce J. McGiverin.**  
Signed by US Magistrate Judge Bruce J. McGiverin on 5/23/2018. (jm)  
(Entered: 05/23/2018)

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06/04/2018 50 INITIAL SCHEDULING CONFERENCE MEMORANDUM by Luis Del Valle-Emmanuelli on behalf of All Parties. (Del-Valle-Emmanuelli, Luis) Modified on 6/5/2018 to edit filers (mcm). (Entered: 06/04/2018)

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06/07/2018 52 Minute Entry for proceedings held before US Magistrate Judge Bruce J. McGiverin:Scheduling Conference held on 6/6/2018. The parties are discussing procedures and mechanisms to identify, review, and produce the documents and communications requested. The parties requested, and are granted, until **June 30, 2018** to file a joint informative motion and proposal with the court. If the parties request a further status/scheduling conference, the informative motion shall so state and provide three proposed dates. (McGiverin, Bruce) (Entered: 06/07/2018)



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07/02/2018 54 Joint INFORMATIVE Motion filed by Ricardo Burgos-Vargas on behalf of Financial Oversight and Management Board for Puerto Rico, Centro de Periodismo Investigativo, Inc. Responses due by 7/16/2018. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Burgos-Vargas, Ricardo) Modified on 7/2/2018 to edit filers (mcm). (Entered: 07/02/2018)

07/12/2018 55 JOINT INFORMATIVE Motion regarding progress made by the parties in compliance with the court's order of May 4th, 2018 filed by Judith Berkan on behalf of Centro de Periodismo Investigativo, Inc. Responses due by 7/26/2018. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Berkan, Judith) Modified on to add filers 7/13/2018 (mg). (Entered: 07/12/2018)

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07/31/2018 58 Joint INFORMATIVE Motion regarding the Status of the Proceedings and the Production of Documents filed

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by Luis F. Del-Valle-Emmanuelli on behalf of Financial Oversight and Management Board for Puerto Rico and Centro de Periodismo Investigativo, Inc. Responses due by 8/14/2018. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Del-Valle-Emmanuelli, Luis) Modified on 8/1/2018 to add filers. (mg). (Entered: 07/31/2018)

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08/28/2018 60 Joint INFORMATIVE Motion regarding Status of the Proceedings and the Production of Documents filed by Luis F. Del-Valle-Emmanuelli on behalf of Financial Oversight and Management Board for Puerto Rico Responses & Centro de Periodismo Investigativo, Inc. due by 9/11/2018. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Del-Valle-Emmanuelli, Luis) Modified on 8/29/2018 to add filers (mg). (Entered: 08/28/2018)

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- 09/28/2018 62 Joint INFORMATIVE Motion regarding the Status of the Proceedings and the Production of Documents filed by Luis F. Del-Valle-Emmanuelli on behalf of Financial Oversight and Management Board for Puerto Rico & Centro de Periodismo Investigativo, Inc. Responses due by 10/12/2018. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Del-Valle-Emmanuelli, Luis) Modified on 10/1/2018 to add filers. (mg). (Entered: 09/28/2018)
- 10/30/2018 63 MOTION for Setting of *prompt status conference*, in light of delays in production filed by Judith Berkan on behalf of Centro de Periodismo Investigativo, Inc. Responses due by 11/13/2018. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Berkan, Judith) (Entered: 10/30/2018)
- 11/02/2018 64 RESPONSE to Motion *Response of the Financial Oversight and Management Board to Plaintiffs Motion for Prompt Status Conference* filed by Financial Oversight and Management Board for Puerto Rico Re: 63 MOTION for Setting of *prompt status conference*,

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*in light of delays in production* filed by Centro de Periodismo Investigativo, Inc. filed by Financial Oversight and Management Board for Puerto Rico. (Del-Valle-Emmanuelli, Luis) Modified on 1/30/2019 to replace all caps text. (mg). (Entered: 11/02/2018)

- 11/27/2018 65 Second MOTION for Setting of *Status Conference* filed by Judith Berkan on behalf of Centro de Periodismo Investigativo, Inc. Responses due by 12/11/2018. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Attachments: # 1 Exhibit Exh. A - letter of November 6th, # 2 Exhibit Exh. B - letter of November 7th, # 3 Exhibit Exh. C - letter of November 21) (Berkan, Judith) (Entered: 11/27/2018)
- 12/11/2018 66 RESPONSE to Motion *Response of the Financial Oversight and Management Board to Plaintiffs Motion Reiterating Request for Prompt Status Conference* filed by Financial Oversight and Management Board for Puerto Rico Re: 65 Second MOTION for Setting of *Status Conference* filed by Centro de Periodismo Investigativo, Inc. filed by Financial Oversight and Management Board for Puerto Rico.

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(Del-Valle-Emmanuelli, Luis) Modified on 1/30/2019 to replace all caps text. (mg). (Entered: 12/11/2018)

- 01/15/2019 67 MOTION to Compel, Motion for Contempt, MOTION for Setting filed by Judith Berkan on behalf of Centro de Periodismo Investigativo, Inc. Responses due by 1/29/2019. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Attachments: # 1 Exhibit correspondence - exhibits A-D) (Berkan, Judith) (Entered: 01/15/2019)
- 01/16/2019 68 \*\*\*FILED IN ERROR Incorrect PDF.\*\*\* MOTION Submitting corrected version of Motion at Docket 67 re: 67 MOTION to Compel Motion for Contempt MOTION for Setting filed by Centro de Periodismo Investigativo, Inc. filed by Judith Berkan on behalf of Centro de Periodismo Investigativo, Inc. Responses due by 1/30/2019. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Attachments: # 1 Exhibit Corrected Motion for which substitution of Docket 67 is requested, # 2 Exhibit Exhibits A-D - correspondence between atty. Brenner and atty. Berkan)(Related

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document(s) 67) (Berkan, Judith)  
Modified on 1/18/2019 (mg). (Entered:  
01/16/2019)

- 01/17/2019 69 Amended MOTION for finding of Contempt and the Imposition of Civil Fines against The Financial Oversight and Management Board for Puerto Rico filed by Judith Berkan on behalf of Centro de Periodismo Investigativo, Inc. Responses due by 1/31/2019. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Berkan, Judith) Modified on 1/18/2019 to correct title and event (ab). (Entered: 01/17/2019)
- 01/24/2019 70 ORDER granting in part and denying in part 63 CPI's Motion Requesting Status Conference. The Court understands that the Board has not yet tendered a final batch of documents in response to CPI's requests for production, and that the Board expects to do so by the end of this month. See Docket No. 67-1 at 6. As such, the Parties shall file a Joint Motion by 1/31/2019 informing the Court as to the status of this document production. Thereafter, Magistrate Judge McGiverin will schedule and

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hold a Status Conference (in line with this Court's referral order at Docket No. 37) to address all pending discovery-related disputes, concerns, and questions, including CPI's Motion at Docket No. 69 for a Finding of Contempt and the Imposition of Fines against the Board. This approach is adopted, in part, to avoid piecemeal motions practice and streamline the resolution of related issues. Signed by Judge Jay A. Garcia-Gregory on 1/24/2019. (JG) (Entered: 01/24/2019)

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01/29/2019 72 RESPONSE in Opposition to Motion *Opposition of the Financial Oversight and Management Board to Plaintiffs Amended Motion for Finding of Contempt and Imposition of Civil Fines* filed by Financial Oversight and Management Board for Puerto Rico Re: 67 MOTION to Compel Motion for Contempt MOTION for Setting filed by Centro de Periodismo Investigativo, Inc., 69 Motion for Contempt filed by Centro de Periodismo Investigativo, Inc. filed by Financial Oversight and Management Board for Puerto Rico. (Del-Valle-Emmanuelli, Luis) Modified on 1/30/2019 to replace all caps text. (mg). (Entered: 01/29/2019)

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- 01/31/2019 73 STATUS REPORT *JOINT INFORMATIVE MOTION* by Financial Oversight and Management Board for Puerto Rico and Centro de Periodismo Investigativo, Inc. (Del-Valle-Emmanuelli, Luis) Modified on 2/1/2019 to add filers. (mg). (Entered: 01/31/2019)
- 02/01/2019 74 ORDER noted 73 STATUS REPORT *JOINT INFORMATIVE MOTION*: By February 11, 2019 CPI shall file a brief with legal authority setting forth its position as to the fourth controversy listed at page 3 of the joint informative motion. The Board shall respond by February 18, 2019. **Status Conference is set for 3/1/2019 at 9:00 AM in Courtroom 9 before US Magistrate Judge Bruce J. McGiverin.** Signed by US Magistrate Judge Bruce J. McGiverin on 2/1/2019. (jm) Modified on 2/1/2019 to correct docket text as per Chamber's request (mcm). (Entered: 02/01/2019)
- 02/07/2019 75 Motion In Compliance *with Order* as to 74 Order,,, Set Hearings,, filed by Judith Berkan on behalf of Centro de Periodismo Investigativo, Inc. Responses due by 2/21/2019. NOTE: Pursuant to FRCP 6(a) an



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additional three days does not apply to service done electronically. (Related document(s) 74) (Berkan, Judith) (Entered: 02/07/2019)

02/08/2019 76 MOTION to Amend/Correct Re: 75 Motion In Compliance *with Order* as to 74 Order,, Set Hearings,, filed by Centro de Periodismo Investigativo, Inc., Motion In Compliance filed by Judith Berkan on behalf of Centro de Periodismo Investigativo, Inc. Responses due by 2/22/2019. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Attachments: # 1 Errata)(Related document(s) 75) (Berkan, Judith) (Entered: 02/08/2019)

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02/18/2019 79 RESPONSE to Motion *Response of the Financial Oversight and Management Board to Plaintiffs Amended Motion in Compliance with ORDER at docket number 74* filed by Financial Oversight and Management Board for Puerto Rico Re: 76 MOTION to Amend/Correct Re: 75 Motion In Compliance with Order as to 74 Order,, Set Hearings,, filed by Centro de Periodismo Investigativo, Inc. Motion In Compliance filed by

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Centro de Periodismo Investigativo, Inc. filed by Financial Oversight and Management Board for Puerto Rico. (Attachments: # 1 Exhibit Declaration) (Del-Valle-Emmanuelli, Luis) Modified on 4/2/2019 to replace all caps text. (mg). (Entered: 02/18/2019)

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- 02/19/2019 82 MOTION to Amend/Correct *Motion to Submit Amended/Corrected Declaration* Re: 79 Response to Motion,, filed by Financial Oversight and Management Board for Puerto Rico filed by Luis F. Del-Valle-Emmanuelli on behalf of Financial Oversight and Management Board for Puerto Rico Responses due by 3/5/2019. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Attachments: # 1 Exhibit Declaration) (Related document(s) 79) (Del-Valle-Emmanuelli, Luis) Modified on 4/2/2019 to replace all caps text. (mg). (Entered: 02/19/2019)
- 02/25/2019 83 MOTION Submitting recent letter from the Board filed by Judith Berkan on behalf of Centro de Periodismo Investigativo, Inc. Responses due by

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3/11/2019. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Attachments: # 1 Exhibit february 8, 2019 letter)(Berkan, Judith) (Entered: 02/25/2019)

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03/01/2019 85 INFORMATIVE Motion, Motion In Compliance *with order, attaching letter sent to the Board after today's hearing* filed by Judith Berkan on behalf of Centro de Periodismo Investigativo, Inc. Responses due by 3/15/2019. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Attachments: # 1 Exhibit letter sent to Board on Mar 1 2019, # 2 Exhibit attachment to letter)(Berkan, Judith) (Entered: 03/01/2019)

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03/01/2019 92 Minute Entry for proceedings held before US Magistrate Judge Bruce J. McGiverin:Status Conference held on 3/1/2019. Present for Plaintiff: Atty. Judith Berkan and Atty. Steven Lausell. Present for Defendants: Atty. Guy Brenner, Atty. Laura

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Stafford and Atty. Luis Emmanuelli. The Court noted that the 3 pending issues are: resolve if the disclosure of documents is complete or if is an ongoing process and set schedule, inform the specific areas of dispute at this time, and the procedures to be employed to resolve these disputes. Plaintiff's position is that there are still pending documents to be disclosed. Defendants stated that the disclosure was completed and they agreed to a cut-off date of 4/30/2018. As to the second issue, parties argued about the different categories and the number of documents that are being withheld. Regarding the procedure to resolve issues, the Court pointed out that the parties must meet to try to settle any discrepancy, and if there is no agreement, then the Court should be involved. After hearing the arguments presented by each party, the Court set the following deadlines: Within the next **14 days**, Plaintiff shall send to the Board a letter with the categories and/or sub-categories that has been excluded by the Board and that Plaintiffs are objecting to, including a brief explanation as to why they are objecting. Letter must be filed in this case as an attachment

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to an Informative Motion. **Three weeks** after that, the Board will file a Motion for Protective Order as to all the categories that should be withheld. Two weeks after that filing, Plaintiff can file a response. (Court Reporter DCR / Courtroom 9.) (dv) (Entered: 04/03/2019)

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03/09/2019 87 Transcript of Hearing held on March 1, 2019, before Honorable United States District Court Magistrate Judge Bruce J. McGiverin. Court Reporter/Transcriber Amy Walker, Telephone number prcsr123@gmail.com. **NOTICE RE REDACTION OF TRANSCRIPTS: The parties have seven (7) calendar days to file with the Court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript will be available electronically to the public without redaction after 90 calendar days. The policy is located at [www.prd.uscourts.gov](http://www.prd.uscourts.gov).** Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be

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obtained through PACER.. Redaction Request due 4/1/2019. Redacted Transcript Deadline set for 4/9/2019. Release of Transcript Restriction set for 6/7/2019. (aw) (Entered: 03/09/2019)

- 03/18/2019 88 MOTION for Extension of Time until April 1, 2019 to file To File the Board's Submission and for Leave to File in Excess of The Page Limit Set by Local Rules filed by Luis F. Del-Valle-Emmanuelli on behalf of Financial Oversight and Management Board for Puerto Rico Responses due by 4/1/2019. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Del-Valle-Emmanuelli, Luis) Modified on to replace all caps text. 3/20/2019 (mg). (Entered: 03/18/2019)
- 03/21/2019 89 ORDER granting 88 MOTION for Extension of Time until April 1, 2019 to file To File the Board's Submission and for Leave to File in Excess of The Page Limit Set by Local Rules. Signed by US Magistrate Judge Bruce J. McGiverin on 3/21/2019. (jm) (Entered: 03/21/2019)
- 04/01/2019 90 Motion In Compliance *Motion of the Financial Oversight and Management*

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*Board for Puerto Rico in Compliance with March 1, 2019 ORDER* as to 89 Order on Motion for Extension of Time to File, filed by Luis F. Del-Valle-Emmanuelli on behalf of Financial Oversight and Management Board for Puerto Rico Responses due by 4/15/2019. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Attachments: # 1 Declaration)(Related document(s) 89 ) (Del-Valle-Emmanuelli, Luis) Modified on 4/2/2019 to replace all caps text. (mg). (Entered: 04/01/2019)

04/01/2019

MOTION Submitting Certified Translations of Exhibits to Motion of the Financial Oversight and Management Board for Puerto Rico in Compliance with courts March 1, 2019 ORDER re: 90 Motion In Compliance *MOTION of The Financial Oversight and Management Board for Puerto Rico in Compliance with Courts March 1, 2019 ORDER* as to 89 Order on Motion for Extension of Time to File, filed by Financial Oversight and Management Board for Puerto Rico filed by Luis F. Del-Valle-Emmanuelli on behalf of Financial Oversight and Management Board for Puerto Rico

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Responses due by 4/15/2019. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit) (Related document(s) 90) (Del-Valle-Emmanuelli, Luis) Modified on 4/2/2019 to replace all caps text. (mg). (Entered: 04/01/2019)

04/13/2019 93 RESPONSE in Opposition to Motion filed by Centro de Periodismo Investigativo, Inc. Re: 90 Motion In Compliance *Motion of the Financial Oversight and Management Board for Puerto Rico in Compliance with courts March 1, 2019 ORDER* as to 89 Order on Motion for Extension of Time to File, filed by Financial Oversight and Management Board for Puerto Rico filed by Centro de Periodismo Investigativo, Inc.. (Attachments: # 1 Exhibit Exhibit A - Time-Line and Exhibits thereto, # 2 Exhibit Exhibit B - Press Release of FOMB) (Berkan, Judith) Modified on 4/17/2019 to replace all caps text. (mg). (Entered: 04/13/2019)

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- 04/22/2019 96 MOTION for Leave to File Document *Reply in Support of Motion of the Financial Oversight and Management Board for Puerto Rico in Compliance with Courts March 1, 2019 Order* filed by Luis F. Del-Valle-Emmanuelli on behalf of Financial Oversight and Management Board for Puerto Rico Responses due by 5/6/2019. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Del-Valle-Emmanuelli, Luis) (Entered: 04/22/2019)
- 04/22/2019 97 ORDER granting as requested 96 Motion for Leave to File Document. Reply to be filed by 4/29/2019. Signed by US Magistrate Judge Bruce J. McGiverin on 4/22/2019. (jm) (Entered: 04/22/2019)
- \*\*\*
- 04/29/2019 99 REPLY to Response to Motion *Reply in Support of Motion of the Financial Oversight and Management Board for Puerto Rico in Compliance with Courts March 1, 2019 Order* filed by Financial Oversight and Management Board for Puerto Rico Re: 90 Motion In Compliance *Motion of the Financial*

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*Oversight and Management Board for Puerto Rico in Compliance with Courts March 1, 2019 ORDER* as to 89 Order on Motion for Extension of Time to File, filed by Financial Oversight and Management Board for Puerto Rico filed by Financial Oversight and Management Board for Puerto Rico. (Del-Valle-Emmanuelli, Luis) Modified on 4/30/2019 to edit all caps text.(mg). (Entered: 04/29/2019)

- 05/31/2019 100 REPORTANDRECOMMENDATION re 79 Response to Motion,, filed by Financial Oversight and Management Board for Puerto Rico, 75 Motion In Compliance, filed by Centro de Periodismo Investigativo, Inc. **Objections to R&R due by 6/14/2019.** Signed by US Magistrate Judge Bruce J. McGiverin on May 31, 2019.(McGiverin, Bruce) (Entered: 05/31/2019)
- 06/14/2019 101 OBJECTION to Report and Recommendation *Limited Objection of the Financial Oversight and Management Board for Puerto Rico to Report and Recommendation* filed by Financial Oversight and Management Board for Puerto Rico Re: 100 Report and Recommendation, filed by Financial

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Oversight and Management Board for  
Puerto Rico. (Del-Valle-Emmanuelli,  
Luis) (Entered: 06/14/2019)

- 06/28/2019 102 MOTION for extension of time until July 10, 2019 to Oppose the Board's Limited Objection to the R&R filed by Judith Berkan on behalf of Centro de Periodismo Investigativo, Inc. Responses due by 7/12/2019. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Berkan, Judith) (Entered: 06/28/2019)
- 07/02/2019 103 ORDER granting Plaintiff's 102 Motion for Extension of Time. Response to Defendant's Objections at Docket No. 101 due by 7/10/2019. Signed by Judge Jay A. Garcia-Gregory on 7/2/2019. (JG) (Entered: 07/02/2019)
- 07/09/2019 104 MEMORANDUM in Opposition filed by Centro de Periodismo Investigativo, Inc. Re: 101 Objection to Report and Recommendation, filed by Financial Oversight and Management Board for Puerto Rico filed by Centro de Periodismo Investigativo, Inc.. (Berkan, Judith) (Entered: 07/09/2019)

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- 07/15/2019 105 MOTION for Leave to File Document *Motion for Leave to File Reply in Support of Limited Objection of the Financial Oversight and Management Board for Puerto Rico to Report and Recommendation* filed by Luis F. Del-Valle-Emmanuelli on behalf of Financial Oversight and Management Board for Puerto Rico Responses due by 7/29/2019. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Del-Valle-Emmanuelli, Luis) (Entered: 07/15/2019)
- 07/19/2019 106 ORDER granting 105 Defendant Financial Oversight and Management Board of Puerto Rico's Motion for Leave. Defendant's Reply due by July 22, 2019. Signed by Judge Jay A. Garcia-Gregory on 7/22/2019. (JG) (Entered: 07/19/2019)
- 07/19/2019 107 REPLY to Response to Motion *Reply in Support of the Financial Oversight and Management Board for Puerto Ricos Limited Objection to Report and Recommendation* filed by Financial Oversight and Management Board for Puerto Rico Re: 100, filed by Financial Oversight and Management Board for Puerto Rico. (Del-Valle-Emmanuelli,

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Luis) Modified on 7/23/2019 to edit docket text. (mg). (Entered: 07/19/2019)

- 07/31/2019 108 REPORTANDRECOMMENDATION, and ORDER re 90 Motion In Compliance 93 Response in Opposition to Motion. **Objections to R&R due by 8/14/2019. Privilege logs to be filed by 8/30/19.**Signed by US Magistrate Judge Bruce J. McGiverin on July 31, 2019.(McGiverin, Bruce) (Entered: 07/31/2019)
- 08/12/2019 109 Objection to Report and Recommendation D.E. # 108, re 90 Motion In Compliance *MOTION of The Financial Oversight and Management Board for Puerto Rico in Compliance with Courts March 1, 2019 ORDER* as to 89 Order on Motion for Extension of Time to File, filed by (Berkan, Judith) Modified on 8/13/2019 to correct event, docket title and replace all caps text. (mg). (Entered: 08/12/2019)
- 08/14/2019 110 OBJECTION to Report and Recommendation *The Financial Oversight and Management Board for Puerto Ricos Limited Objection to Report And Recommendation* filed by Financial Oversight and Management Board for Puerto Rico filed by Financial Oversight and Management Board for

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Puerto Rico. (Del-Valle-Emmanuelli, Luis) (Entered: 08/14/2019)

- 08/14/2019 111 MOTION to Stay *Urgent Motion of the Financial Oversight and Management Board for Puerto Rico for Order Confirming Deadline to Produce Privilege Log Pending Review is Not Effective Pursuant to PROMESA § 106(C), or Alternatively for a Stay Pending Review of Magistrate Judges Order* filed by Luis F. Del-Valle-Emmanuelli on behalf of Financial Oversight and Management Board for Puerto Rico Responses due by 8/28/2019. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Del-Valle-Emmanuelli, Luis) (Entered: 08/14/2019)
- 08/14/2019 112 NOTICE *Notice of the Financial Oversight and Management Board for Puerto Ricos Intent to Respond to Plaintiffs Objection* by Financial Oversight and Management Board for Puerto Rico re 109 Appeal of Magistrate Judge Decision to District Court, (Del-Valle-Emmanuelli, Luis) (Entered: 08/14/2019)

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- 08/20/2019 113 RESPONSE in Opposition to Motion *Opp. to Board's Objection to Magistrate' McGiverin's R&R* filed by Centro de Periodismo Investigativo, Inc. Re: 101 Objection to Report and Recommendation, filed by Financial Oversight and Management Board for Puerto Rico filed by Centro de Periodismo Investigativo, Inc.. (Attachments: # 1 Exhibit exh. A - Table of litigation events through March of 2019 - with supporting exhibits, # 2 Exhibit exh. B - transcript of March 1st hearing before Mag. Judge McGiverin) (Berkan, Judith) (Entered: 08/20/2019)
- 08/21/2019 114 MOTION to Amend/Correct *for typographical errors and to correct date* Re: 113 Response in Opposition to Motion,, filed by Centro de Periodismo Investigativo, Inc., 110 Objection to Report and Recommendation, filed by Financial Oversight and Management Board for Puerto Rico filed by Judith Berkan on behalf of Centro de Periodismo Investigativo, Inc. Responses due by 9/4/2019. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Attachments: # 1 Exhibit Exh. A - table of litigation events, # 2 Exhibit transcript of

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March 1 hearing)(Related document(s)  
113, 110) (Berkan, Judith) (Entered:  
08/21/2019)

- 08/26/2019 115 RESPONSE in Opposition to Motion  
*The Financial Oversight and  
Management Board for Puerto Ricos  
Response to Plaintiffs Objection to  
Report and Recommendation* filed by  
Financial Oversight and Management  
Board for Puerto Rico Re: 109 Appeal of  
Magistrate Judge Decision to District  
Court, filed by Centro de Periodismo  
Investigativo, Inc. filed by Financial  
Oversight and Management Board for  
Puerto Rico. (Del-Valle-Emmanuelli,  
Luis) (Entered: 08/26/2019)
- 08/29/2019 116 NOTICE *of No Opposition to the  
Urgent Motion of the Financial  
Oversight and Management Board  
for Puerto Rico for Order Confirming  
Deadline to Produce Privilege Log  
Pending Review is not Effective  
Pursuant to PROMESA § 106(c), or  
Alternatively for a Stay Pending  
Review of Magistrate Judges Order,  
and Request for Entry of Order* by  
Financial Oversight and Management  
Board for Puerto Rico re 111 MOTION  
to Stay *Urgent Motion of the Financial  
Oversight and Management Board*



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*for Puerto Rico for Order Confirming Deadline to Produce Privilege Log Pending Review is Not Effective Pursuant to PROMESA § 106(C), or Alternatively for a Stay Pendi (Attachments: # 1 Exhibit) (Del-Valle-Emmanuelli, Luis) (Entered: 08/29/2019)*

- 08/29/2019 117 NOTICE *Amended Notice of No Opposition to the Urgent Motion of the Financial Oversight and Management Board for Puerto Rico for Order Confirming Deadline to Produce Privilege Log Pending Review is not Effective Pursuant to PROMESA § 106(c), or Alternatively for a Stay Pending Review of Magistrate Judges Order, and Request for Entry of Order re 111 MOTION to Stay, MOTION Requesting Order by Financial Oversight and Management Board for Puerto Rico (Attachments: # 1 Exhibit) (Del-Valle-Emmanuelli, Luis) Modified on 8/30/2019 to add Motion(mcm). (Entered: 08/29/2019)*
- 11/01/2019 118 MOTION to Consolidate Cases *Case No. 17-1743 JAG w Case No. 19-1936 ADC* filed by Judith Berkan on behalf of Centro de Periodismo Investigativo, Inc. Responses due by 11/15/2019.

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NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Berkan, Judith) (Entered: 11/01/2019)

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- 08/04/2020 120 ORDER granting 118 Motion to Consolidate Cases. This case (17-1743 JAG) is hereby consolidated with Civ. No. 19-1936 (ADC), with Judge Aida M. Delgado-Colon's approval. Signed by Judge Jay A. Garcia-Gregory on 8/4/2020. (ERC) Modified on 8/27/2020 to edit docket text as per case no. (mg). (Entered: 08/04/2020)
- 08/27/2020 121 ORDER TO SHOW CAUSE as to why the Court shall not treat Defendant's *Motion to Dismiss* currently pending at Docket No. 10 of Civ. Case 19-1936's docket as a Motion for Judgment on the Pleadings. **Show Cause Response due by 9/15/2020.** Signed by Judge Jay A. Garcia-Gregory on 8/27/2020. (ERC) (Entered: 08/27/2020)
- 09/15/2020 122 Motion In Compliance *Response of the Financial Oversight and Management Board for Puerto Rico to Order to Show Cause Dated August 27, 2020 [ECF No. 121]* as to 121 Order to

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Show Cause, filed by Luis F. Del-Valle-Emmanuelli on behalf of Financial Oversight and Management Board for Puerto Rico Responses due by 9/29/2020. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Related document(s) 121 ) (Del-Valle-Emmanuelli, Luis) (Entered: 09/15/2020)

- 09/15/2020 123 MOTION for extension of time until until Sept. 22 to respond, if necessary, to the Order to Show Cause at Docket 121 filed by Judith Berkan on behalf of Centro de Periodismo Investigativo, Inc. Responses due by 9/29/2020. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Berkan, Judith) (Entered: 09/15/2020)
- 09/16/2020 124 ORDER granting 123 Motion for extension of time. Response is now due by 9/22/2020. Signed by Judge Jay A. Garcia-Gregory on 9/16/2020. (ERC) (Entered: 09/16/2020)
- 09/22/2020 125 RESPONSE TO ORDER TO SHOW CAUSE filed by Centro de Periodismo Investigativo, Inc. Re: 121 Order to Show Cause, filed by Centro

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de Periodismo Investigativo, Inc..  
(Berkan, Judith) (Entered: 09/22/2020)

10/06/2020 126 ORDER TO SHOW CAUSE as to why the Court shall not treat the pleadings as closed in light of: (i) the Court's 120 Order consolidating this case with Case 19-1936; (ii) the Court's ability to treat consolidated cases as a single action under Fed. R. Civ. P. 42(a), *See Bay State HMO Mgmt., Inc. v. Tingley Sys., Inc.*, 181 F.3d 174, 182 (1st Cir. 1999) (holding the consolidation of cases should have been treated as a single action for res judicata purposes); *Hall v. Hall*, 138 S. Ct. 1118, 1131 (2018) (holding that "constituent cases retain their separate identities at least to the extent that a final decision in one is immediately appealable by the losing party", but stating that "[n]one of this means that district courts may not consolidate cases for 'all purposes' in appropriate circumstances. District courts enjoy substantial discretion in deciding whether and to what extent to consolidate cases.") (citing 9A Wright & Miller §2383); (iii) Defendants' 39 Answer. **Show Cause Response due by 10/16/2020.** Defendant's 122 Motion In Compliance is noted. Signed by Judge Jay A. Garcia-Gregory on 10/6/2020. (ERC) (Entered: 10/06/2020)

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- 10/16/2020 127 Motion In Compliance *Response of the Financial Oversight and Management Board for Puerto Rico to Order to Show Cause Dated October 6, 2020 [ECF No. 126]* as to 126 Order to Show Cause,,,,, Terminate Motions,,,,, filed by Luis F. Del-Valle-Emmanuelli on behalf of Financial Oversight and Management Board for Puerto Rico Responses due by 10/30/2020. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Related document(s) 126 ) (Del-Valle-Emmanuelli, Luis) (Entered: 10/16/2020)
- 10/19/2020 128 RESPONSE TO ORDER TO SHOW CAUSE *and request for leave to file instanter* filed by Centro de Periodismo Investigativo, Inc. Re: 126 Order to Show Cause,,,,, Terminate Motions,,,,, filed by Centro de Periodismo Investigativo, Inc.. (Berkan, Judith) (Entered: 10/19/2020)
- 03/23/2021 129 ORDER: (i) noted 77 INFORMATIVE Motion regarding absence from jurisdiction; granting 78 MOTION to Amend/Correct Re: 77 INFORMATIVE Motion regarding absence from jurisdiction; noted 78 INFORMATIVE Motion regarding

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ABSENCE FROM JURISDICTION; and noted 98 INFORMATIVE Motion regarding absence from jurisdiction - atty. Berkan; (ii) noted: 81 MOTION Submitting Certified Translation; and 91 MOTION Submitting CERTIFIED TRANSLATIONS OF EXHIBITS TO MOTION OF THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO IN COMPLIANCE WITH COURTS MARCH 1, 2019 ORDER; and (iii) 83 MOTION Submitting recent letter from the Board. Signed by Judge Jay A. Garcia-Gregory on 3/23/2021. (ERC) (Entered: 03/23/2021)

03/23/2021 130 ORDER denying Defendant's 101 Limited Objection to the Report and Recommendation; and adopting the 100 Report and Recommendation. After considering Defendant's objection and a *de novo* review of the record, the Court determines that the Magistrate Judge's Report & Recommendation is well grounded in both fact and law. Therefore, the Court hereby ADOPTS in its entirety the Magistrate Judge's Report & Recommendation for the reasons stated therein, and accordingly DENIES Plaintiff's 75 motion to compel disclosure of Board

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members' financial statements prior to their appointments. Plaintiff's 76 Motion to Amend/Correct and Defendants 82 Motion to Amend/Correct are granted. Signed by Judge Jay A. Garcia-Gregory on 3/23/2021. (ERC) (Entered: 03/23/2021)

03/23/2021 131 ORDER denying Plaintiff's 109 Objection to the Report and Recommendation; denying Defendant's 110 Limited Objection to the Report and Recommendation; and adopting the 108 Report and Recommendation. After considering the Parties' objections and a *de novo* review of the record, the Court determines that the Magistrate Judge's 108 Report & Recommendation is well grounded in both fact and law, including PROMESA §105 which "ought not be considered without the tempering effects of § 106." Docket No. 100 at 6 (citing Docket No. 36 at 12) (adopted by the Court at Docket No. 130). Therefore, the Court hereby ADOPTS in its entirety the Magistrate Judge's 108 Report & Recommendation for the reasons stated therein, and accordingly denies Plaintiff's 69 motion to compel with respect to the production of: (i) the law enforcement documents, Docket No. 108 at 6;

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and (ii) the fourteen drafts withheld pursuant to PROMESA §208(b), *id.* at 14. **The Court hereby set 4/23/2021 as the deadline for Defendant to comply with the Magistrate Judge's order** to “produce a comprehensive, legally-sufficient privilege log to justify its invocation of privilege for each document which it seeks to withhold: documents with claimed deliberative process privilege, common interest privilege, Title III mediation privilege, PROMESA § 208 protections, and official information privilege.” Docket No. 108 at 16. In light of the above, Defendant's 111 and 117 Motion to Stay are rendered moot. Signed by Judge Jay A. Garcia-Gregory on 3/23/2021. (ERC) (Entered: 03/23/2021)

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03/24/2021 133 ORDER denying 10 Defendant's Motion to Dismiss for Failure to State a Claim, Civ. No. 19-1936, for the reasons stated in the Court's Opinion and Order, Docket No. 36, and the Report and Recommendation, Docket No. 100 (adopted by this Court at Docket No. 130 ). *Cf. Fin. Oversight & Mgmt. Bd. For P.R. v. Aurelius Inv., LLC*, 140 S. Ct. 1649, 1661 (2020) (holding that



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Defendant is a part of the local Puerto Rican government). In short, (i) “§ 105 ought not be considered without the tempering effects of § 106,” Docket No. 100 at 6 (citing Docket No. 36 at 12), § 105 does not provide Defendant with wholesale immunity from disclosures pursuant to Puerto Rico law, *id.*; (ii) while the right to inspect public documents is not absolute, Plaintiff has the right to examine public documents in Defendant’s possession pursuant to Puerto Rico law, *id.* at 36 (citations omitted); (iii) “[p]ursuant to its plenary powers, Congress waived, or in the alternative abrogated, the Board’s sovereign immunity,” Docket No. 36 at 2; and (iv) “PROMESA does not preempt Puerto Rico law granting access to public documents under the Board’s control,” *id.* **Defendant’s Answer to Plaintiff’s Complaint, Civ. No. 19-1936, Docket No. 1, is due by 4/9/2021.** Signed by Judge Jay A. Garcia-Gregory on 3/24/2021. (ERC) (Entered: 03/24/2021)

04/06/2021 134 \*\*\*MODIFIED TO CORRECT  
EVENT\*\*\* NOTICE OF  
INTERLOCUTORY APPEAL as to  
131 Order, 133 Order, by Financial  
Oversight and Management Board for

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Puerto Rico. Filing fee \$505, receipt number 0104-7249783.

**NOTICE TO COUNSEL: Counsel should register for a First Circuit CM/ECF Appellate Filer Account at <http://pacer.psc.uscourts.gov/cmecf/>. Counsel should also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at <http://www.ca1.uscourts.gov/cmecf> (Del-Valle-Emmanuelli, Luis) Modified on 4/7/2021 edit text (gav). Modified on 4/15/2021 to correct event title (mcm). (Entered: 04/06/2021)**

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04/09/2021 135 MOTION requesting Order Urgent Motion of the Financial Oversight and Management Board for Puerto Rico for Order Confirming PROMESA § 106(c) Automatically Stays the Deadlines Set by the Court in its March 2021 Orders, or Alternatively Staying Such Orders Pending Appeal filed by Luis F. Del-Valle-Emmanuelli on behalf of Financial Oversight and Management Board for Puerto Rico Responses due by 4/23/2021. NOTE: Pursuant to FRCP 6(a) an additional three

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days does not apply to service done electronically. (Del-Valle-Emmanuelli, Luis) Modified on 4/12/2021 remove italics (gav). (Entered: 04/09/2021)

04/12/2021 136 INFORMATIVE Motion regarding nment to respond to Docket No. 135 filed by Judith Berkan on behalf of Centro de Periodismo Investigativo, Inc. Responses due by 4/26/2021. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Berkan, Judith) (Entered: 04/12/2021)

04/15/2021 137 MOTION requesting Order *Motion of the Financial Oversight and Management Board for Puerto Rico to Extend Deadlines Until Court Rules on Urgent Motion* filed by Luis F. Del-Valle-Emmanuelli on behalf of Financial Oversight and Management Board for Puerto Rico Responses due by 4/29/2021. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Del-Valle-Emmanuelli, Luis) (Entered: 04/15/2021)

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- 04/19/2021 139 INFORMATIVE Motion regarding Request for Relief from First Circuit by the Financial Oversight and Management Board for Puerto Rico filed by Luis F. Del-Valle-Emmanuelli on behalf of Financial Oversight and Management Board for Puerto Rico Responses due by 5/3/2021. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Del-Valle-Emmanuelli, Luis) (Entered: 04/19/2021)
- 04/19/2021 140 USCA Case Number 21-1301 for 134 Notice of Interlocutory Appeal filed by Financial Oversight and Management Board for Puerto Rico. (mcm) (Entered: 04/19/2021)
- 04/21/2021 141 ORDER denying *without prejudice* Defendant's 135 MOTION requesting Order and 137 MOTION requesting Order, as the Court lacks jurisdiction in light of Defendant's pending interlocutory appeal. *See* Docket No. 134. And accordingly, the Court vacates the deadline set for the production of a privilege log, Docket No. 131, pending resolution of Defendant's appeal. The Court further notes Plaintiff's 136 INFORMATIVE Motion regarding

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intent to respond to Docket No. 135; and Defendant's 139 INFORMATIVE Motion regarding Request for Relief from First Circuit. Signed by Judge Jay A. Garcia-Gregory on 4/21/2021. (ERC) (Entered: 04/21/2021)

04/23/2021 142 MOTION to Clarify, INFORMATIVE Motion regarding deadlines and jurisdiction filed by Judith Berkan on behalf of Centro de Periodismo Investigativo, Inc. Responses due by 5/7/2021. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Berkan, Judith) (Entered: 04/23/2021)

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05/18/2022 147 USCCA JUDGMENT as to 134 Notice of Interlocutory Appeal filed by Financial Oversight and Management Board for Puerto Rico; The district court's order denying the Financial Oversight and Management Board for Puerto Rico's motion to dismiss Centro De Periodismo Investigativo, Inc.'s 2019 complaint on the basis of sovereign immunity is AFFIRMED. Costs to Centro De Periodismo Investigativo, Inc. (mcm) (Entered: 05/18/2022)

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- 06/21/2022 148 MANDATE of USCA as to 134 Notice of Interlocutory Appeal filed by Financial Oversight and Management Board for Puerto Rico; AFFIRMED; RE: 147 USCCA JUDGMENT. (mcm) (Entered: 06/21/2022)
- 06/21/2022 149 Certified Copy of Order from USCA as to 134 Notice of Interlocutory Appeal filed by Financial Oversight and Management Board for Puerto Rico entered on 6/14/2022; The mandate entered on June 14, 2022 is administratively recalled as it issued in error. (mcm) (Entered: 06/21/2022)
- 08/25/2022 150 ORDER finding as moot 67 MOTION to Compel, Motion for Contempt, and MOTION for Setting in light of the amended filing at Docket No. 69; and noted 90 Motion In Compliance. Signed by Judge Jay A. Garcia-Gregory on 8/25/2022. (ERC) (Entered: 08/25/2022)
- 08/25/2022 151 ORDER denying *without prejudice* 69 Motion for Contempt pending the conclusion of the appeals process. The Parties may refile the motion once it has concluded. Signed by Judge Jay A. Garcia-Gregory on 8/25/2022. (ERC) (Entered: 08/25/2022)

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**RELEVANT DOCKET ENTRIES FROM THE  
U.S. DISTRICT COURT  
DISTRICT OF PUERTO RICO  
(SAN JUAN)  
NO. 3:19-CV-01936-JAG**

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
09/30/2019	1	COMPLAINT against Financial Oversight and Management Board for Puerto Rico, filed by Centro de Periodismo Investigativo, Inc.. Service due by 12/30/2019, (Attachments: # 1 Civil Cover Sheet, # 2 Category Sheet, # 3 Summons)(Lausell-Recurt, Steven) (Entered: 09/30/2019)
10/01/2019	2	NOTICE OF JUDGE ASSIGNMENT Case has been assigned to Judge Aida M. Delgado-Colon (arg) (Entered: 10/01/2019)
***		
10/25/2019	10	MOTION to Dismiss for Failure to State a Claim <i>Defendants Motion to Dismiss Plaintiffs Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6)</i> filed by Luis F. Del-Valle-Emmanuelli on behalf of Financial Oversight and Management Board for Puerto Rico Responses due by 11/8/2019.

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NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Del-Valle-Emmanuelli, Luis) (Entered: 10/25/2019)

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|------------|----|---|
| 11/01/2019 | 15 | INFORMATIVE Motion regarding presentation of Motion to Consolidate filed by Judith Berkan on behalf of Centro de Periodismo Investigativo, Inc. Responses due by 11/15/2019. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Berkan, Judith) (Entered: 11/01/2019) |
| 11/04/2019 | 16 | ORDER noted 15 INFORMATIVE motion. This Court has no objection to the consolidation of the cases in adherence with the Local Rules pertaining consolidation of cases. Signed by Judge Aida M. Delgado-Colon on 11/4/2019. (wm) (Entered: 11/04/2019)  |
| 11/05/2019 | 17 | RESPONSE in Opposition to Motion filed by Centro de Periodismo Investigativo, Inc. Re: 10 MOTION to Dismiss for Failure to State a Claim <i>Defendants Motion to Dismiss</i>  |



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*Plaintiffs Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6)* filed by Financial Oversight and Management Board for Puerto Rico filed by Centro de Periodismo Investigativo, Inc.. (Berkan, Judith) (Entered: 11/05/2019)

- 11/05/2019 18 MOTION Submitting Exhibits re: 17 Response in Opposition to Motion, filed by Centro de Periodismo Investigativo, Inc. filed by Judith Berkan on behalf of Centro de Periodismo Investigativo, Inc. Responses due by 11/20/2019. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Attachments: # 1 Exhibit Exh. A - Docket 36 Opin and Order, # 2 Exhibit Exh. B - R&R, # 3 Exhibit Exh. C - letter Brenner to Berkan Sept 4 2019, # 4 Exhibit Exh. D - Memorandum Order Judge Swain)(Related document(s) 17 ) (Berkan, Judith) Modified on 11/6/2019 to edit docket title (rom). (Entered: 11/05/2019)
- 11/12/2019 19 MOTION for Leave to File Document *Motion for Leave to File Reply in Support of Motion to Dismiss* filed by Luis F. Del-Valle-Emmanuelli on behalf of Financial Oversight and Management Board for Puerto Rico

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Responses due by 11/26/2019. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Attachments: # 1 Exhibit A)(Del-Valle-Emmanuelli, Luis) (Entered: 11/12/2019)

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- 11/25/2019 21 ORDER granting 19 Motion for Leave to File. Defendant is granted 5 days to file the reply as a separate docket entry. Signed by Judge Aida M. Delgado-Colon on 11/25/2019. (wm) (Entered: 11/25/2019)
- 11/25/2019 22 REPLY to Response to Motion *Reply in Support of Motion to Dismiss Plaintiffs Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6)* filed by Financial Oversight and Management Board for Puerto Rico Re: 10 MOTION to Dismiss for Failure to State a Claim *Defendants Motion to Dismiss Plaintiffs Complaint Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6)* filed by Financial Oversight and Management Board for Puerto Rico, 19 MOTION for Leave to File Document *Motion for Leave to File Reply in Support of Motion to Dismiss* filed by Financial Oversight and Management Board

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for Puerto Rico filed by Financial Oversight and Management Board for Puerto Rico. (Del-Valle-Emmanuelli, Luis) (Entered: 11/25/2019)

11/25/2019 23 MOTION Submitting *Certified Translations of Spanish Language Case Law* re: 22 Reply to Response to Motion,, filed by Financial Oversight and Management Board for Puerto Rico filed by Luis F. Del-Valle-Emmanuelli on behalf of Financial Oversight and Management Board for Puerto Rico Responses due by 12/9/2019. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Related document(s) 22 ) (Del-Valle-Emmanuelli, Luis) Modified on 11/26/2019 to edit docket text (rom). (Entered: 11/25/2019)

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08/04/2020 26 Copy of ORDER granting 118 Motion to Consolidate Cases. This case (17-1743 JAG) is hereby consolidated with Civ. No. 19-1936 (ADC), with Judge Aida M. Delgado-Colon's approval. Signed by Judge Jay A. Garcia-Gregory on 8/4/2020. (ERC) (Entered: 08/04/2020. (mg) (Entered: 08/27/2020)

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- 08/26/2020 25 MEMORANDUM OF THE CLERK: Pursuant to the Order entered by Judge Aida M. Delgado-Colon on 11/04/2019 (Docket No. 16) and the Order entered by Judge Jay A. Garcia-Gregory on 08/26/2020 in Civil Case 17-1743 (see, Docket No. 120), this case has been consolidated with Civil Case 17-1743 (JAG) and thus transferred to the docket of Judge Jay A. Garcia-Gregory. Signed by Clerk on 08/26/2020. (ft) (Entered: 08/26/2020)
- 04/09/2021 27 ANSWER to 1 Complaint, filed by Luis F. Del-Valle-Emmanuelli on behalf of Defendant Financial Oversight and Management Board for Puerto Rico.(Del-Valle-Emmanuelli, Luis) (Entered: 04/09/2021)

**APPENDIX B — CERTIFIED TRANSLATION  
OF *BHATIA GAUTIER V. ROSELLÓ NEVARES*,  
ISSUED BY THE SUPREME COURT OF PUERTO  
RICO ON SEPTEMBER 15, 2017**

CERTIFIED TRANSLATION

IN THE SUPREME COURT OF PUERTO RICO

HON. EDUARDO BHATIA GAUTIER, AS  
SPOKESPERSON OF THE POPULAR  
DEMOCRATIC PARTY OF THE SENATE OF  
PUERTO RICO,

*Appellee,*

v.

HON. RICARDO ROSSELLO NEVARES,  
AS GOVERNOR OF PUERTO RICO;  
COMMONWEALTH OF PUERTO RICO,

*Petitioners.*

Certiorari  
2017 TSPR 173  
198 \_\_\_\_\_

Case Number: CC-1017-668

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I, Juan E. Segarra, USCCI #06-067/translator, certify that the foregoing is a true and accurate translation, to the best of my abilities, of the document in Spanish which I have seen.

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*Appendix B*

Date: September 15, 2017

Judicial Region of San Juan, Special Panel OA TA-2017-128

Office of the Attorney General

Luis R. Roman Negrón, Esq.  
Attorney General

Amir Cristina Nieves Villegas, Esq.  
Assistant Attorney General

Attorney of Appellee  
Margarita Mercado Echeagaray, Esq.

Matter:

This document is an official document of the Supreme Court and is subject to the changes and corrections of the official compilation and publication process of the decisions of the Court. Its electronic distribution is made as a public service to the community.

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CERTIFIED TRANSLATION

IN THE SUPREME COURT OF PUERTO RICO

HON. EDUARDO BHATIA GAUTIER, AS  
SPOKESPERSON OF THE POPULAR  
DEMOCRATIC PARTY OF THE SENATE OF  
PUERTO RICO,

*Appellee,*

v.

HON. RICARDO ROSSELLO NEVARES,  
AS GOVERNOR OF PUERTO RICO;  
COMMONWEALTH OF PUERTO RICO,

*Petitioners.*

CC-2017-668

Certiorari

Opinion of the Court issued by the Associate Judge Mr.  
FELIBERTI CINTRON

(Rule 50)

In San Juan, Puerto Rico, on September 15, 2017.

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Due to the great public interest that the matters before us have, we proceed to decide if the dismissal of the case was appropriate, as requested by the Government of Puerto Rico and its Governor, the Hon. Ricardo A. Rossello Nevares (Government or petitioners).<sup>1</sup> Should the decision be that it was not, we need to determine if the lower court's order instructing to produce the proposed budget submitted by the Government to the Financial Oversight Management Board for Puerto Rico (Board) on April 30, 2017, for in camera examination, was timely. Let's see.

**I.**

On May 4, 2017, the Honorable Eduardo Bhatia Gautier (Senator or appellee), as Spokesperson of the Popular Democratic Party in the Puerto Rico Senate, filed before the Court of First Instance a petition of mandamus whereby he requested that the Government be ordered to publish a copy of the Proposed Budget submitted on April 30, 2017, to the Board<sup>2</sup> and to send him a copy.

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1. As it is a dispositive motion, its denial was reviewable by the Court of Appeals via a writ of certiorari, pursuant to Rule 52.1 of Civil Procedure of Puerto Rico, 32 LPRC AP. V (Supl. 2015).

2. Per express provision of the Puerto Rico Oversight Management and Economic Stability Act, (PROMESA Act for its English acronym), 48 USCA sec 2101 et seq, the Governor of Puerto Rico, Hon. Ricardo A. Rossello Nevares was obligated to submit the proposal of the budget before the Financial Oversight Management Board for Puerto Rico (Board), prior to submitting it to the Legislature of Puerto Rico. 48 USCA sec 2142.

It should be noted that Section 101 (c) of the PROMESA Act, 48 USCA sec. 2121(c) states as follows:



*Appendix B*

After various procedural incidents, on June 26, 2017, the Government requested the dismissal<sup>3</sup> of the mandamus petition on the following grounds: (1) that the Senator has no standing; (2) that the cause of action is moot as the proposed final budget was provided to the legislative bodies for their consideration and approval; (3) that the Senator did not comply with the statutory requirements for the filing of a *mandamus* petition, particularly with the requirement of exhausting the parliamentary procedures available prior to going to court, and (4) that granting the request would imply intervening with the duties of the First Executive and of the Legislative Assembly, which would break the separation of powers. It stated, also, that the document requested is confidential, as it is a working document prepared during the deliberation stage prior to

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“SEC 101 FINANCIAL OVERSIGHT MANAGEMENT BOARD.

(c) TREATMENT- An *Oversight Board* pursuant to what is established in this Section-

(1) *Shall be created as an entity within the government of the territory.*

For which it is established pursuant to this title and

(2) Shall not be considered a department, agency, establishment or office of the Federal Government” (our [emphases]).

Puerto Rico Oversight Management and Economic Stability Act, One hundred fourteenth Congress of the United States of America, in the Second Period of Sessions in: <https://juntasupervision.pr.gov/wp-content/uploads/2017/02/PROMESA-SpanishVersion-02-22-17.pdf> (last visit, September 14, 2017).

3. Pursuant to the provisions of Rule 10.2 of Civil Procedure of Puerto Rico, 32 LPRA Ap. V (2010).

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making the final decisions and is therefore, protected by the executive privilege.

On June 29, 2017, the Senator filed an Opposition to the Motion to Dismiss. He alleged that he has standing as he has been exposed to a clear and palpable violation to his prerogatives as a legislator. He equally invoked his constitutional right to access public information and documents. Also, he stated that his petition is not moot, as the Government did not certify that the document that it submitted to the Board is the same that was submitted to the Legislative Assembly. In the alternative, he stated that it is a claim that can be repeated and thus escape judicial revision. On the other hand, he stated that he satisfied all the requirements for the issuance of his mandamus petition. Lastly, he stated that the document requested is not a draft or a pre-decision document that contains the substance of the deliberation procedures prior to adopting the budget, therefore it is not covered by the executive privilege. Therefore, he concluded that it had to be divulged pursuant to the constitutional right to access public information.

On July 17, 2017, the Court of First Instance issued an order wherein it scheduled an argumentative hearing for July 26, 2017, and asked the Senator to: (1) place the court in a position to determine if its mandamus petition turned moot after the approval of the Budget 2017-2018; (2) convince the lower court that the case was not a “transfer of a legislative debate to the judicial forum but a real injury to his legislative prerogatives” and (3) to show that he exhausted all remedies available to him so that

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his right to supervise the process of the approval of the Budget 2017-2018 be allowed and acknowledged". As to the Government, it asked for it to clarify if the information requested by the Senator was made public at any time.<sup>4</sup> Lastly, it required the parties to appear in court prepared to argue their respective positions regarding the nature of the documents requested, that is, if they were public or had any information protected by the executive privilege.

Upon being in possession of the documents of both parties and the joint motion, in which certain facts and documents were stipulated and the controversies in law were outlined, on July 26, 2017, the argumentative hearing was held. That same afternoon, the lower court entered and notified an Order denying the Government's Motion to dismiss. It concluded that the controversy was justiciable, as the Senator had standing and the cause had not turned moot. Consequently, it gave the Government a term of ten (10) days to submit the Proposed Budget in controversy in a sealed envelope for in camera examination. That, with the purpose to examine if pursuant to the executive privilege, it is not appropriate to divulge it. Also, the petitioners had to file a motion in which they would detail the reasons why they claimed that the information requested was privileged. See order of July 26, 2017 issued by the Court of First Instance, page 3.

In disagreement with the decision of the lower court, on August 4, 2017, the Government of Puerto Rico filed a

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4. The Court of First Instance gave the parties until July 21, 2017 to file what was requested in writing.

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*certiorari* and motion in aid of jurisdiction with the Court of Appeals. That same day, such forum notified an order by which it denied the issuance of the writ of *certiorari* requested.<sup>5</sup> In disagreement with such decision, on August 7, 2017, the Government came to us alleging the following errors:

*First Error*

The Court of Appeals erred by not issuing the writ of *certiorari* requested and not reversing the decision of the Court of First Instance that denied the *dispositive* motion of dismissal filed, allowing the case to be seen in the merits, despite it being a matter that is not justiciable as the plaintiff Senator lacks standing and his claim turned moot.

*Second Error*

The Court of Appeals erred by not issuing the writ of *certiorari* requested and not reversing the decision of the Court of First Instance that denied the *dispositive* motion of dismissal filed, allowing the case to be seen in the merits, despite that the plaintiff Senator did not exhaust the remedies available in the legal system before channeling his claim through the judicial forum.

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5. Such Order was signed by the Appellate Judges Ramirez Nazario and Romero Garcia. On the other hand, the Appellate Judge Colom Garcia stated therein that she would have issued the writ.

*Appendix B**Third Error*

The Court of Appeals erred by not reversing the Order of the Court of First Instance that denied dismissing the captioned complaint of *mandamus*, despite that in this case it is not appropriate to issue such extraordinary and privileged writ.

The petitioners also alleged and discussed in the *Urgent Motion Reiterating Dismissal* filed in the lower court, in the *Certiorari* Petition filed with the Court of Appeals and in the *Certiorari* Petition filed with us, that the document requested by the Senator is protected by the executive privilege, therefore it is not appropriate to produce it.<sup>6</sup> On August 7, 2017, the Senator also appeared before us through an Urgent Opposition to the Motion in Aid of Jurisdiction and Opposition to *Certiorari*.

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6. Jointly with the *Certiorari* Petition, the Attorney General, in representation of the Governor and the Government of Puerto Rico (Government or petitioners), filed an Urgent Motion in Aid of Jurisdiction wherein he requested the stay of the proceedings before the lower court, in particular, the effects of the Order issued by such forum on July 26, 2017. In such decision, the Court of First Instance ordered the Government, among other things, to produce the proposed budget in a sealed envelope.

As the last day to submit the document in question was August 7, 2017, and so the controversy would not turn moot that same day we issued an order granting the motion in aid of jurisdiction and staying the proceedings before the Court of First Instance until this Court otherwise stated.

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With the benefit of the appearance of the parties, we issue the writ of certiorari requested and decide the captioned without anything further, pursuant to Rule 50 of the Regulation of this Court, 4 LPRA Ap. XXI-B (2012).

**II.****A. Standing**

The courts can only evaluate those cases that are justiciable. *Asoc. Fotoperiodistas v. Rivera Schatz*, 180 DPR 920 (2011). A controversy is not justiciable when: (1) it seeks to solve a political question; (2) one of the parties lacks standing; (3) facts after the beginning of the case turned the controversy moot; (4) the parties are trying to obtain a consulting opinion or (5) a case that is not ripe. *Id.*

Particularly, we have defined standing as the capacity that is required to the movant of an action to appear as a litigator before the court, efficiently take procedural actions, and this way obtain a binding judgment. R. Hernandez Colon, *Practica Juridica de Puerto Rico, Derecho procesal civil*, San Juan, Pubs. LexisNexis de Puerto Rico, Inc., 2017, page 121; J.A. Echevarria Vargas, *Procedimiento Civil Puertorriqueño*, 1st ed., rev., Colombia, [s. Ed.] 2012, page 132. The standing doctrine has the purpose to show the adjudicating forum that the plaintiff's interest in the case is such that, with all likelihood, it will vigorously prosecute its cause of action. *Sánchez et al v. Srio. De Justicia et al*, 157 DPR 360 (2002); *Hernandez Agosto v. Romero Barceló*, 112 DPR 407 (1982).

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To demonstrate that he has standing, the movant has to establish that: “(1) he has suffered a clear and palpable damage; (2) that such damage is real, immediate and precise, not abstract or hypothetical; (3) there is a connection between the damages suffered and the cause of action exercised, and (4) that the cause of action stems from the Constitution or a law”. *Sánchez et al v. Srío. De Justicia et al.*, supra, page 371. Also, see, *Torres Montalvo v. Gobernador ELA*, 194 DPR 760 (2016); *Hernandez Torres v. Hernandez Colon et al*, 131 DPR 593 (1992). We have stated before that these criteria must be interpreted flexibly and liberally when it is an action against agencies and government offices. *Asoc. De Maestros v. Srío. de Educacion*, 156 DPR 754 (2002)<sup>7</sup>. Also, an analysis of the allegations must be made in the most favorable and liberal way for the movant of the case. *García Oyola v. JCA*, 142 DPR 532 (1997); *Col. Ópticos de P.R. v. Vani Visual Center*, 124 DPR 559 (1989); *Salas Soler v. Srío. De Agricultura*, 102 DPR 716 (1974).<sup>8</sup>

As to the standing of legislators, we have acknowledged, among other instances, that they have standing to “vindicate a personal interest in the full exercise of their legislative duties affected by actions or omissions of the executive power”<sup>9</sup> *Noriega v. Hernandez Colon*,

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7. Also, see J.A. Echevarria Vargas, *Procedimiento Civil Puertorriqueño*, 1ra ed. Rev. Colombia, [s. Ed.], 2012, page 132.

8. Id.

9. It must be noted that we have also acknowledged standing to a legislator, for example to “Defend an individual traditional interest related to the legislative process and invoked in front of

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135 DPR 406, 428 (1994). Also, see, *Hernandez Torres v. Gobernador*, 129 DPR 824 (1992). In those scenarios, he must show that he has constitutional or legal rights or that have been lacerated.

Also, for a legislator to show that he has standing he must comply with the requirements demanded to lay persons. *Hernandez Torres v. Hernandez Colon et al*, supra. For that he will have to establish he has suffered a clear and immediate damage to his legislative prerogatives. *Id.* When complying with such demand he must ensure that he is not invoking an abstract and unrelated prerogative to the exercise of his legislative duties. *Id.* In particular, when a member of the legislature alleges that he has been affected because he has not been able to carry out his supervision duty adequately, he must have in mind that this only implies counting with the reasonable and necessary mechanisms that allow full participation in all stages of the legislative process. *Id.* As to the claim of the right to supervise, the legislator must exhaust all the remedies he has available so that right is allowed and acknowledged. *Id.* Also, the legislator must prove there is a connection between the damage allegedly suffered and the action exercised. *Id.*

The Government alleged, among other things, that the appellee lacked standing based on the following premises:

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officers of such body in his individual capacity as legislator as in representation of a group of such Body: *Noriega v. Hernandez Colon*, 135 DPR 406, 428 (1994). Also, to “refute an illegal action of the executive” as authorized representative of the Senate or House of Representatives. *Id.*



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(1) that the allegations of the Senator were generic; (2) that the Senator did not show how his legislative prerogatives were diminished upon not obtaining the proposed budget requested; (3) that the legislative prerogatives, as to the approval of the budget, are activated when the Governor submits it to the Legislature; (4) that there is not a governmental duty to divulge the “first draft” of the proposed budget, therefore no clear and palpable damage was suffered that justified the Senator’s claim, and (5) that the appellee did not exhaust the Senate’s procedures specifically designed to channel the requests for information of its members.

After an analysis of the applicable law and of the information on the file, we believe that the appellee has standing to make his claim in his capacity as Senator. Let’s see.

The appellee stated, among other things, that “[t]he lack of access to the budget document adopted by the Governor and sent to the Board, has limited and injured the faculty of Senator Bhatia to exercise his prerogative and role as legislator and to evaluate and approve the budget *counting with the benefit of a public document that influences the decision regarding the suitability of the budget submitted for the Senate’s consideration.* (Emphasis provided). Opposition to Motion to Dismiss, page 9. Afterwards, he added that “[t]he refusal of the Governor to divulge and provide Senator Bhatia the budget adopted by the Governor and sent to the Board has interfered and keeps interfering with Senator Bhatia’s prerogatives to *evaluate the budget with the benefit of*

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*scrutinizing all the documents that have served as a base for the presentation of the proposed budget approved by the Board to the Legislature.* Opposition to Motion to Dismiss, page 10. He also stated that his prerogative to ensure the adequacy of the procedures of approval of budget and to supervise the transparency between the First Executive and the Board was limited.

To that effect, we believe that the appellee specified his claim regarding to how the absence of the document in question affected his analytical procedure, prior to the approval of the budget submitted to the legislative bodies. Also, it should be noted that the claim of the Senator, in his official capacity, was based in the constitutional right to access the public information.<sup>10</sup> We then believe that the appellee, in his role as legislator, validly claimed that he suffered a clear and palpable damage that impacted his legislative prerogatives, which was produced by limiting the access to what he alleges is public information, infringing the aforementioned constitutional right. Also, there is a connection between the damage claimed and the cause of action exercised.

Lastly, and as we will see below, inasmuch as appellee appeared in his capacity as Senator, on the grounds of

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10. It is important to mention, that different to the prior cases regarding the standing of legislators, in this situation the controversy did not originate in the legislative arena, but as an individual claim of the Senator in his official capacity to comply with his legislative duties. This way, there is no risk that the decision of this Forum interferes with the separation of powers between the Legislative Branch and Judicial Branch.

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his constitutional right to access public information and specified how the transgression to that right affected his legislative prerogatives, we understand that it was not necessary for him to exhaust no parliamentary procedure before going to the judicial forum.

**B. Mootness**

As mentioned before, mootness is one of the doctrines that narrows the limits of the judicial function. *C.E.E. v., Depto. de Estado*, 134 DPR 927 (1993). It requires that, in every case filed with a court, there is a real controversy between the parties. *Amador Roberts et als v. ELA*, 191 DPR 268 (2014). A case turns moot when the controversy in question succumbs to the passing of time, because changes occurred in the facts or the law, and it turns inexistent. *IG Builders et al v. BBVAPR*, 185 DPR 307 (2012); *UPR v. Laborde Torres y otros*, 180 DPR 253 (2010); *Emp. Pur. Des., Inc. v. H.I.E.Tel.*, 150 DPR 924 (2000). That will have as a consequence that the decision that in its day the court makes will have no practical effect between the parties. *IG Builders et al. v. BBVAPR*, supra. That is,

[t]he courts lose their jurisdiction on a case for mootness when there are changes during the judicial process of a particular controversy that make it not current, so that the remedy that the court may enter may not have any real effect as to that controversy. *C.E.E. v. Depto. De Estado*, supra, page 935.

Due to constitutional obligation (lack of case or controversy) or for reason of judicial auto limitation, the

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courts must abstain from considering the merits of a case when we determine that the case has turned moot. *Presidente de la Cámara v. Gobernador*, 167 DPR 149 (2006); *Asoc. De Periodistas v. Gonzalez*, 127 DPR 704 (1991). However, there can be scenarios in which the courts will see a case, even it is clearly moot. *Emp. Pur. Des., Inc. v. H.I.E. Tel.*, supra; *C.E.E. v. Depto de Estado*, supra. Pursuant to the foregoing, the exceptions to mootness will operate when: (1) a matter is brought to the judicial forum that is recurrent or susceptible of occurring again and that it tends to avoid judicial review; (2) when the fact situation has been modified by defendant but the change appears to not be permanent, and (3) when aspects of the controversy turn moot, but collateral consequences subsist. *Asoc. Fotoperiodistas v. Rivera Schatz*, supra; *Rullan v. Faz Alzamora*, 166 DPR 742 (2006).

In this case, the Government alleged that the controversy turned moot upon concluding the approval process of the Budget for the fiscal year 2017-2018 and in consideration that the Senator had the opportunity to evaluate it when it was submitted to the legislative bodies.

However, we coincide with the primary forum that the petitioners never showed that, in effect, the document that was submitted for the consideration and evaluation of the legislative bodies was the same that was submitted to the Board on April 30, 2017. In view of the foregoing, we believe that this litigation could have become moot *if the same document that was requested had been divulged*, but that was not the case.<sup>11</sup>

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11. On July 17, 2017, the Court of First Instance ordered the Government to clarify if the information requested by the Hon.

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On the other hand, regardless that the budget was approved, as it regards *another* document that has not been produced, *if it is public*, the Government would have to produce it, *unless some privilege applies which prevents it*.

As a result of the foregoing, we conclude that the matter object of this writ has not turned moot.

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Eduardo Bhatia Gautier (Senator or appellee) had been made public. That because, as the lower court stated, “from the arguments of Rossello Nevares it appears that the information requested by Bhatia Gautier-the Proposed Budget submitted by Rossello Nevares to the Board on April 30, 2017 is not the same information which was made public by defendants” See page 4 of the Order issued by the Court of First Instance on July 17, 2017. In response to the foregoing, on July 21, 2017, the Government filed a Motion in Compliance with Order in which it held that “the Budget submitted to the Legislative Assembly was the one approved by the Financial Oversight and Management Board *after incorporating* the amendments it requested from the Governor, pursuant to the process provided in PROMESA. The draft of the budget provided to the Board has not been made public, it being a working document that had to be-as it in fact was-reviewed by the Financial Oversight and Management Board and returned to the Governor to then submit the final version to the Legislative Assembly”. (Emphasis in original). See page 6 of the *Motion in Compliance with Order* filed by the Government with the lower court on July 21, 2017. Also, in the *Certiorari* Petition filed with us the Government alleged that the appellee did not specify its claim of diminishment of his legislative prerogatives by “not counting with the draft of initial proposal of the budget that the Governor submitted to the Board, *a document that is not the proposed budget that was submitted for the consideration of the legislature, for its discussion, analysis and approval*”. (Italics in original; bold and underline provided). See page 15 of *Certiorari* Petition.

*Appendix B***C. Mandamus**

The Code of Civil Procedure establishes the mandamus as a “highly privileged” extraordinary writ addressed to a person or entity with the purpose of judicially demanding the compliance of a ministerial duty of the position he/it occupies. Art. 650 of the Code of Civil Procedure, 32 LPRA sec. 3422 (2004). In other words, there is a certain obligation that does not admit the exercise of discretion in its compliance. *AMPR v. Srio. Educacion, E.L.A.*, 178 DPR 253 (2010); *Baez Galib y otros v. C.E.E. II*, 152 DPR 382 (2000) due to its privileged nature, the very law provides that the mandamus is not appropriate when there are adequate and efficient remedies available to the movant. Art. 651 of the Code of Civil Procedure, 32 LPRA sec. 3423 (2004). Also, as a general rule, prior to going to the court, the interested party must have appealed to the officer responsible of complying with the ministerial obligation demanded. *AMPR v. Srio. Educacion, ELA*, supra. The requirement to appeal is excused when doing so would have been useless or the duty that is claimed is public. That is, that it affects the general public and not just the movant of the action filed. *Id.*

On the other hand, we have acknowledged that, ordinarily, the *mandamus* is the right mechanism to accomplish the examination and to obtain copy of public documents. *Ortiz v. Panel F.E.I.*, 155 DPR 219 (2001).

When handling a *mandamus* petition, the courts evaluate the possible impact of their decision in the implied public interests and try to avoid an inappropriate

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interference with the matters of the executive power. *AMPR v. Srio. Educación, E.L.A.*, supra; *Báez Galib y otros v. C.E.E. II*, supra; *Noriega v. Hernandez Colon*, supra.

The petitioners argue that the *mandamus* petition submitted in this case is defective for two (2) reasons. First, they argue that the Senator, on a personal level, did not send a previous request to the Governor. To that effect, they argue that the letter sent by the appellee requesting copy of the document in question was sent only in his capacity as Senator. Also, they support the dismissal of the *mandamus* petition arguing that the appellee did not exhaust the remedies provided in the Regulation of the Senate of Puerto Rico, adopted through R. of S. 13 of January 9, 2017 (Regulation of the Senate) that establishes a procedure to request documents in the official capacity through the Senate.

**i. Request**

The petitioners argue that the Senator did not send a request for production of the document in his personal capacity. They hold that in the letter<sup>12</sup> sent to the Governor

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12. Said letter reads as follows, in pertinent part:

“I have learned, that the past Sunday, April 30, 2017, your work team submitted to the Financial Oversight and Management Board a Proposed Budget corresponding to the fiscal year 2017-2018, as required in the Federal Law PROMESA, 48 U.S.C. §2101. Our Supreme Court has discussed extensively the matter of access to information and has established clearly and unequivocally that the information in possession of the State is public and must be made

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for that purpose, dated May 2, 2017, the appellee appeared exclusively in his capacity as legislator. We coincide with this opinion.

To begin, the document was drafted in official paper of the Senate of Puerto Rico, in which the name of appellee appeared as Spokesperson of the Popular Democratic Party. At no time in the letter did he suggest that his claim to the constitutional right to the access of the information was in another role that was not that of a public officer. Also, when examining the mandamus petition filed barely two (2) days after having sent that letter, we can corroborate that the arguments of the Senator as stated therein, were strictly geared in his official capacity. It is not until after that the motion to dismiss the case was filed, that the appellee amended its certiorari petition to insert references to his personal character for the first time.

On the other hand, it is not in controversy that the Senator, in his official capacity, sent a previous request to the Governor for the production of the document in question. Now, it is necessary to examine if in that capacity he was also obligated to comply with a previous procedure.

**ii. Regulation of the Senate**

The petitioners center their argument against the viability of the writ of mandamus filed by the Senator

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accessible to the citizenship in general. That is why that I request that you make public a copy of the Proposed Budget and share a copy with this officer immediately.



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in his capacity as legislator, for allegedly not using the remedies available in law to channel the claim through the Regulation of the Senate.

The investigative power of the Legislative Assembly is an integral component of its legislative duty. On the one part, this power serves as a valuable mechanism to carry out those necessary investigations for future legislation. *Pueblo v. Perez Casillas*, 117 DPR 380 (1986). Also, aside from promulgating laws, this Body has other duties that are vital and lead to enforce our democratic system of government. Among those, the supervision of the government, promote the debate of matters of general interest and keep the country informed of the public events, are highlighted. *Rullan v. Fas Alzamora*, supra; *Silva v. Hernandez Agosto*, 118 DPR 45 (1986); *Pueblo v. Perez Casillas*, supra; statement of motives of the Law no. 100 of June 23, 1955, as amended, 2 LPRA 151 (2009) (Law No. 100). This investigative process is commonly made through different commissions or sub commissions of both bodies. *Pueblo v. Perez Casillas*, supra; *Silva v. Hernandez Agosto*, supra.

The faculty of the Legislative Assembly to force the appearance of witnesses and the production of documents appears in the Political Code. As part of the statutory process, it is required that any summons to that effect be signed, be it by the President of the Senate, of the House of Representatives or of the commission before which the witness must appear. Art. 31 of the Law No. 100, 32 LPRA sec. 151(a).

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In case of breach, the Legislative Assembly has the discretion to use, either the penal way or the civil judicial process to demand compliance with what is provided in the subpoena. Therefore, it is authorized to present the matter to the Secretary of Justice who will “have the duty to form the corresponding accusations before the Court of First Instance”. Art. 34 of the Political Code, 2 LPRC sec. 154 (2009). The filing of charges is not discretionary. That is, if the statutory requirements are met, the attorney general has the duty to begin a criminal procedure. *Pueblo v. Perez Casillas*, supra. Also, it can go to court to demand compliance through a civil contempt procedure. Art. 34-A of the Political Code, 2 LPRC sec. 154a (2009).

In accordance with the foregoing, and with the purpose of making viable these extensive investigative faculties, the Regulation of the Senate was promoted whereby the mechanism applicable for the formal issuance of subpoenas is implanted. Therefore, Rule 13 of the Regulation of the Senate governs what is related to subpoenas that form part of procedures before legislative commissions. In these cases, it is required that the subpoena has the signature of the President of the Senate or the President of the corresponding commission. Rule 13, sec. 13.14 of the Regulation of the Senate.

On the other hand, Rule 18 of the Regulation of the Senate regulates the procedure regarding the Orders of the Senate. Among others, it defines the term “Order” as that measure used by the Body to form petitions of the Senate, and order studies or investigations. Rule 18, sec. 18.1(a) and sec. 18.1(d) of the Regulation of the

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Senate. In the event that a senator is interested in requesting information to any of the other Branches of the Government, its officers or employees, “in the name of the Senate”, must submit a verbal or written petition before the Body to that effect, and if there is an objection, the petition will be taken to a vote. If, after complying with the corresponding procedures, the officer or employee concerned does not comply with the aforementioned requirement, the Senate can go to court to demand its compliance. Rule 18, sec. 18.2 of the Regulation of the Senate.

As we can tell, the Regulation of the Senate has two (2) alternate methods for the senators to obtain documents through the regulation process. First, pursuant to Rule 13 of the Regulation the subpoena is authorized to produce documents as part of the duties to investigate, study or evaluate some legislative measure or matter under the consideration of a commission of the Legislative Body, prior authorization of the President of the Senate or of the senator presiding it. As the request in controversy in this case is not associated to any commission, this provision is not applicable.

Rule 18, sec. 18.2 of the Regulation of the Senate is also not applicable to the controversy before us. This provision provides the process to follow when some legislator wants to obtain information from officers of any of the Branches of Government through an Order in the name of the Senate. This method is highly effective inasmuch as it establishes a mechanism to compel the divulgence of the information required through the process of judicial contempt.

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However, nothing prevents a senator, pursuant to his constitutional right to access to the information, to request public information directly from some officer or government entity. However, upon doing so, he cannot count with the benefit of the procedure to compel production of the information requested, as provided in the Regulation of the Senate. If he wants to enforce his request, the movant must do process the corresponding judicial mandate on his own.

Therefore, we reject the argument based in the alleged breach of the Senator with the provisions of the Regulation of the Senate.

In conclusion, the Senator could use the writ of mandamus to make his claim.

**D. Constitutional Right to Access Public Information**

More than three decades ago already, in *Soto v. Srio. De Justicia*, 112 DPR 477 (1982) we acknowledged the right to press and of the citizens in general to have access to public information as a fundamental right of constitutional rank. This right is firmly related to the exercise of the rights of liberty of speech, press, association formally stated in Art. II, sec. 4 of the Constitution of Puerto Rico, LPRA, Tome I (2016). *Trans Ad. De P.R. v. Junta de Subastas*, 174 DPR 56 (2008); *Ortiz v. Dir. Adm. De los Tribunales*, 152 DPR 161 (2000).

The access to public information is a fundamental pillar in every democratic society. This knowledge allows

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the citizens to evaluate and supervise the public duty adequately and contribute to an effective participation of citizens in the governmental procedures that impact its social environment. *Trans Ad de P.R. v. Junta de Subastas*, supra; *Colon Cabrera v. Caribbean Petroleum*, 170 DPR 582 (2007). This adds to the transparency in the governmental duty and promotes a healthy public administration. C.F. Ramos Hernandez, *Acceso a la información, transparencia y participación política*, 85 Rev. Jur. UPR No. 4, page 1015 (2016).

We cannot forget that, in our political reality, the government as an entity, exists because of the People it serves.

Whatever is the definition that we assign to the term “democracy” its main principle is that the political power must reside in the people and that the governors exercise their duties for the people and by their mandate. The people governing itself would be bad if the people were not aware of what happened in the management of their matters. E. Rivera Ramos, *La libertad de información: necesidad de su reglamentación en Puerto Rico*, 44 Rev. Jur. UPR, Nos. 1-2, page 69 (1975).

Also, it is not possible to effectively exercise the rights protected under Art. II, Sec. 4 of the Constitution of Puerto Rico, supra, if there is no record of the duties of those elected to govern.

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The premise is simple, if the People are not duly informed of the way in which the public duty is performed, their liberty to express, through vote or otherwise their satisfaction or lack of satisfaction with the persons, rules or procedures that govern them, will be impaired. *Ortiz v. Dir. Adm. De los Tribunales*, supra, page 175.

Art 409 of the Code of Civil Procedure acknowledges the right of every citizen to inspect and copy any public document of Puerto Rico. 32 LPRA sec. 1781 (2004). Now, the right to the information does not operate by itself. It is necessary that the document that wants to be divulged has in fact that public condition. *Ortiz v. Dir. Adm. De los Tribunales*, supra. Our system defines the term “public document” as follows:

[E]very document that is originated, conserved or received in any office of the Commonwealth of Puerto Rico pursuant to the law and related to the management of the public matters and that pursuant to what is provided in sec. 1002 of this title is kept [...] permanently or temporarily as proof of the transactions or for its legal value. It includes those produced electronically that meet with the requirements established by laws and regulations. Art. 3(b) of Law No. 5 of December 8, 1955, Law of Administration of Public Documents of Puerto Rico, as amended, 3 LPRA sec. 1001(b) (2011).

Therefore, the right to information is not absolute and will be subject to those limitations that by imperious need,

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the State imposes. *Ortiz v. Dir. Adm. De los Tribunales*, supra. However, these restrictions must be duly justified because the access to the public information cannot be denied in a capricious and arbitrary way. *Colon Cabrera v. Caribbean Petroleum*, supra. And it is that due to its condition of fundamental right, to prevail, the restrictions imposed by the governmental apparatus must respond to an urgent interest of the State. *Nieves v. Junta*, 160 DPR 97 (2003); *Noriega v. Gobernador*, 130 DPR 919 (1992).

In our jurisdiction, there is no specific legislation to delimit the access of governmental documents to the public scrutiny.<sup>13</sup> *Colon Cabrera v. Caribbean Petroleum*, supra. Now, through the controversies brought to our consideration to address this problem, we have been able to delineate the following instances in which the State is allowed to validly claim the confidentiality of information in its power. These are, when: (a) a law so declares; (2) the communication is protected by one of the evidentiary privileges that the citizens may invoke; (3) reveal the information may injure the fundamental rights of third parties; (4) it deals with the identity of a confidante and (5) it is ‘official information’ pursuant to Rule 514 of Evidence, 2009, 32 LPRA Ap. VI (2010) (formerly Rule 31 of Evidence). *Colon Cabrera v. Caribbean Petroleum*,

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13. Different from our legal system, in the federal level, this matter has been regulated by statute and the evaluation of the requests of governmental information addressed to the different components of the Executive Branches is regulated by the provisions of the Freedom of Information Act (FOIA), 5 USCA sec. 552 (2007). This statute applies exclusively to the agencies of the Executive Branch of the Federal Government and does not apply to the Government of Puerto Rico. See 5 USCA sec. 551 (1)(C) (2007 y Supl. 2015) and 5 USCA sec. 552 (f)(1) (2007 y Supl. 2015).

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supra. It is important to have in mind that the State has the burden to prove the application, if any, of the exceptions numbered above to validate its claim to confidentiality. *Colon Cabrera v. Caribbean Petroleum*, supra.

**E. Privilege of the Official Information-In General**

A claim of confidentiality on the part of the government can prosper when it deals with official privileged information, among others. *Colon Cabrera v. Caribbean Petroleum*, supra; *Santiago v. Bobb y El Mundo, Inc.*, 117 DPR 153 (1986). Therefore, Rule 514 of Evidence, supra, establishes in our system the privilege of official information.<sup>14</sup> Said provision defines “official information” as that acquired in confidence by a person that is an officer or public employee in the carrying out of his duty that has not been officially revealed nor is accessible to the public until the moment the privilege is invoked.” Rule 514(a) of Evidence, supra.<sup>15</sup>

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14. In the absence of special legislation to regulate the privilege of official information in our jurisdiction, it is appropriate to use, as supplemental law in this matter, Rule 514 of Evidence, 32 LPRA Ap. VI (2010). E.L. Chiesa Aponte, *Tratado de Derecho Probatorio*, Republica Dominicana, Ed. Corripio (s. Year) T.I. pages 304-305, based in *Santiago v. Bobb y El Mundo, Inc.* 117 DPR 153 (1986). It should be noted that the mentioned *Tratado de Derecho Probatorio* of professor Chiesa Aponte analyses the reversed Rule 31 of Evidence of 1979, 32 LPRA Ap. IV, which is equal to and substantively identical to the current Rule 514 of Evidence, supra. See, also, E.L. Chiesa Aponte, *Reglas de Evidencia Comentadas*, San Juan, Ed. Situm, 2016, page 164.

15. To determine if some information was acquired in confidence the totality of the circumstances surrounding the communication, as its own nature” must be considered. Chiesa Aponte, *Tratado de*



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This privilege is activated “if the court concludes that the matter is official information and divulging it is forbidden by law, or divulging the information in the action would be prejudicial to the interests of the government.”

‘Rule 514(b) of Evidence, *supra*.<sup>16</sup>

Professor Chiesa Aponte, explains that:

The privilege is based, on one hand, on the need that the government has to maintain confidentiality of certain information for the good progress of the government, particularly regarding the frank discussion of the governmental alternatives or possible courses of action to handle the multiple social problems, economic and otherwise-of the State [...]”. E.L. Chiesa Aponte, *Tratado de derecho probatorio*, Republica Dominicana, Ed. Corripio, [s. year], T.I., page 292.

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derecho probatorio, op. cit. page 307, quoting *Santiago v. Bobb y El Mundo, Inc.*, *supra*, page 162. For example in the context of an administrative entity, in *Lopez Vives v. Policia de P.R.*, 188 DPR 219, 233-234 (1987) we stated that, upon a claim of confidentiality on the part of the government, it must be examined, among other things, “the own nature and content of the document, and the effect of divulging it over interests of the State.”

16. Now, to establish the privilege, it is not enough to demonstrate that divulging it would be prejudicial to the interests of the government we have to “deal with the degree of prejudice in comparison with the prejudice suffered by the person or entity that requests the information if the divulgation is ordered.” Chiesa Aponte, *Tratado de derecho probatorio*, op cit, page 308.

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Now, this privilege is not absolute, but qualified, subject to an analysis of balance of interests. Chiesa Aponte, *Tratado de derecho probatorio*, op. cit. page 292. Therefore, *upon evaluation, one has to weigh on the one hand, the need that the government keep certain sensitive information confidential and the prejudice that can invoke the government and on the other hand, the need of the party that requests the information and his right to obtain it.* E.L. Chiesa Aponte, *Reglas de Evidencia Comentadas*, San Juan, Ed. Situm, 2016, page 164. Therefore, one can only speak of the privilege when “it deals with official information” and if the balance of interests is inclined in favor of confidentiality”. Chiesa Aponte, *Tratado de Derecho Probatorio*, op. cit. page 307. *When claiming the confidentiality of official information, it is the government that has to prove in a precise and unequivocal manner the applicability of the privilege. Santiago v. Bobb y El Mundo, Inc., supra.*

As we previously explained, “[t]he high hierarchy of the constitutional right to information makes difficult the governmental claim of confidentiality, particularly in the absence of a regulatory statute.” Chiesa Aponte, *Tratado de Derecho Probatorio*, op cit. page 304. See, also, *Colon Cabrera v. Caribbean Petroleum*, supra. In that line, given the lack of legislation that delimits the privilege, it “must be scrutinized with particular zealouslyness”. Chiesa Aponte, *Tratado de Derecho Probatorio*, op cit. page 304, quoting *Pena Clos v. Cartagena Ortiz*, 114 DPR 576, 599 (1983).<sup>17</sup>

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17. In the same way, “the statutes that restrict the right to access to governmental information are object of the strict judicial scrutiny and are interpreted restrictively”. Chiesa Aponte, *Tratado*

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Therefore, upon a balance inclined against the privilege, the government-at its time- must have the obligation to “present evidence and show the existence of the compelling interest of greater hierarchy than the values protected by this right of freedom of information of the citizens.” Chiesa Aponte, *Tratado de Derecho Probatorio*, op cit., page 308, quoting *Noriega v. Gobernador*, supra, page 938. In consideration of that, the government cannot invoke the privilege generally. *Santiago v. Bobb y el Mundo, Inc.* supra, see also, Chiesa Aponte, *Tratado de Derecho probatorio*, op it. Page 310.

In sum, the courts must be careful in lightly granting any request for confidentiality of the State”. *Santiago v. Bobb y El Mundo, Inc.*, supra, page 159. When evaluating if the privilege should be granted, “[t]he alternatives of in camera examination or providing limited access to the confidential file are always available.” Chiesa Aponte, *Tratado de derecho probatorio*, op. cit., page 310<sup>18</sup>. Now, as we will discuss later on, the option of in

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de Derecho Probatorio op. cit., page 305. See, also, *Soto v. Srio. De Justicia*, 112 DPR 477 (1982).

18. When we are before a claim of privilege regarding official information, “the skepticism regarding the intervention and judicial revision that is advised regarding the (privilege over) the secrets of state {...}” does not apply. Chiesa Aponte, *Tratado de derecho probatorio*, op. cit., page 295. Note that the secrets of state are a high rank privilege in consideration of the aspects of natural security, which includes military secrets. Chiesa Aponte, *Tratado de derecho probatorio*, op. cit., page 288. Therefore, in case of state secrets, the privilege could be acknowledged without need for an in camera examination. Chiesa Aponte, *Tratado de Derecho Probatorio*, op.

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camera examination can be limited in consideration to the circumstances present in each case.

**F. Privilege of Official Information-The decisional information in the Deliberative Procedures of Public Policy**

Among the fundamental categories of privileged official information is the one used by public officers during the deliberative procedures related to the development of public policy. Chiesa Aponte, *Tratado de derecho probatorio*, op. cit., pages 292-293.<sup>19</sup> This category of the privilege of official information seeks to “promote the most frank communication between governmental officers in charge of deciding and enforcing the public policy of the State”. Chiesa Aponte, *Tratado de Derecho Probatorio*, op. cit., page 293<sup>20</sup>. Pursuant to the foregoing, we believe that professor Chiesa refers to the deliberative process

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cit, pages 289-290, discussing the case of *United States v. Reynolds*, 345 US 1 (1953).

19. Note that, prior to this case, we had not had the opportunity to express ourselves in this category, acknowledged in the federal arena. However, we will discuss it inasmuch as it illustrates us regarding its applicability in relation to the privilege of official information discussed before.

20. In United States, this privilege is regulated by the fifth exception of the FOIA, which expressly protects communications (letters and memorandums) within an agency, as well as between agencies of government. 5 USCA sec. 552(b)(5) (2007). See Chiesa Aponte, *Tratado de derecho probatorio*, op. cit. Page 293, and 26A Wright and Graham, *Federal Practice and Procedure: Evidence Sec. 5680* (1992).

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privilege. See 6 Moore's Federal Practice Sec. 26.52[5] (3rd ed. 2016) and 26 A Wright & Graham, Federal Practice and Procedure: Evidence Sec. 5680 (1992).

This privilege prevents the quality of the governmental decisions and the consulting duties of the agencies from being affected. P.F. Rothstein and S.W. Crump, Federal Testimonial Privileges: Evidentiary Privileges Relating to Witnesses & Documents in Federal Law Cases, 2nd ed., West, 2012, Sec. 5:3, pages 431-432. In that line, it has been acknowledged that "[...] a substantial public interest exists in maintaining and ensuring full, frank, open exchanges of ideas between members of the agency and other advisors and the decision maker". Rothstein and Crump, *op. cit.*, page 433. Also, upon restricting the access to this type of communications protects "against *premature disclosure* of proposed policies and decisions before they have been finally formulated or adopted." (Emphasis provided). Rothstein and Crump, *op. cit.*, page 436.

To benefit from the deliberative process privilege, the government must comply with the following process: (1) the head of the agency that controls the information must claim it formally, after pondering it; (2) an officer from the agency must provide the precise reasons why the confidentiality of the documents is claimed, and (3) the government must identify and describe the information or the documents that it wants to protect. Moore's Federal Practice, *supra*, page 26-412.10(1). See also, *United States v. Reynolds*, 345 US 1 (1953).

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Also, it should be noted that the privilege *has extended through case law to protect budget requests of an agency*. Wright & Graham, *supra*, page 133.

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Also, for the privilege to be activated, the government must show that the document in question is “deliberative” and “pre-decisional”. Moore’s Federal Practice, *supra*, page 26-412.8. An information is deliberative inasmuch as it relates to a process in which the public policy is developed or formulated. Moore’s Federal Practice, *supra*, page 26-412.9. A pre-decisional document is when it is prepared to assist in the taking of decisions of the government, that is, prior to taking them. Moore’s Federal Practice, *supra*, pages 26-412.8 and 26-412.9<sup>21</sup>

Pursuant to the foregoing, this privilege does not cover what is related to factual matters.<sup>22</sup> Chiesa Aponte, *Tratado de Derecho Probatorio*, *op. cit.*, page 293. Also it does not protect objective material or documents in which the agency adopts its position on a matter or controversy. Moore’s Federal Practice, *supra*, pages 26-412.6 and 26-412.7. For example, this privilege does not include “advisory opinions, recommendations, and

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21. To determine if a document is pre-decisional, you can take into account the purpose of the consulting and the effect that the divulgation could cause on the discussions and the taking of decisions within or between the concerned agency (ies), that is, “[...] the purpose of the advice and whether disclosure of the communication would be the type that is likely to chill intra-and inter-agency discussion and decision-making”. 6 Moore’s Federal Practice Sec. 26. 52[5], page 26-412.9 (3rd ed. 2016)

22. In various federal forums it has been determined that the factual matters may be covered by the referenced privilege inasmuch as they are interwoven with decisional procedures or protected deliberative materials. Moore’s Federal Practice, *supra* page 26-412.7 *esc.* 24.2.

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communications relating to policy formulations”. Moore’s Federal Practice, *supra*, page 26-412.8.

*To determine if this privilege prevails, as the privilege of official information, the court must make an analysis of balance of interests.* Chiesa Aponte, *Tratado d Derecho Probatorio*, op. cit., page 293. Among the factors that the court must consider when pondering the balance of interests, are: “[...] the interests of the private litigant, the need for accurate judicial fact finding, the public’s interest in learning how effectively the government is operating, the relevance of the evidence sought, the availability of other evidence, the role of the government in the litigation and issues involved, and the impact on the effectiveness of government employees”. Moore’s Federal Practice, *supra*, 2012, page 26-412.11. Also, the impact that the divulgation in the process of frankly discussing the policies and decisions in question must be evaluated. *F.T.C. v. Warner Commun. Inc.*, 742 F. 2d 1156 (9th Cir. 1984). In sum, this privilege can budge when it is fully demonstrated that there is a particularized need to obtain the information which is of greater weight than the reasons for confidentiality. Moore’s Federal Practice, *supra*, page 26-412.11.

The courts must be flexible at the moment of evaluating this privilege to then ensure the protection of the deliberation process. Moore’s Federal Practice, *supra*, 2016, page 26-412.10. However, our evidentiary system demands a restrictive interpretation when determining

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the existence of a privilege. Rule 518 of Evidence, 32 LPRA Ap. VI (2010).<sup>23</sup>

**G. Executive Privilege**

The executive privilege was acknowledged in our system in *Pena Clos v. Cartagena Ortiz*, supra, derived from the Constitution of Puerto Rico. Art. I, Sec. 2 and Art. IV, Secs. 1 and 4, Const. PR, LPRA, Tome 1 (2016).<sup>24</sup>

This privilege seeks to protect the communications between the First Executive and his respective subordinates, counselors or assistants. Chiesa Aponte, Reglas de Evidencia Comentadas, op. cit. page 165, J.J. Alvarez Gonzalez, Derecho constitucional de Puerto Rico y relaciones constitucionales con los Estados Unidos, Bogota, Ed. Temis, 2009, page 363; Chiesa Aponte, Tratado de derecho probatorio, op. Cit. Page 311.

In comparison with the privilege of state secrets, the executive privilege is of lesser hierarchy. Chiesa Aponte, Reglas de Evidencia Comentadas, op. cit., page 165. This

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23. This restrictive interpretation does not apply to the privileges of constitutional rank established in Rule 501, 502 and 512 of Evidence, 32 LPRA Ap. VI (2010).

24. Therefore, the privilege was not adopted as corollary of the principle of separation of powers. Chiesa Aponte, Reglas de Evidencia Comentadas, op. cit. page 165, when discussing the case of *Pena Clos v. Cartagena Ortiz*, 114 DPR 576 (1983) See, also, J.J., Alvarez Gonzalez, Derecho constitucional de Puerto Rico y relaciones constitucionales con los Estados Unidos, Bogota, Ed. Temis, 2009, page 363.



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last one is qualified, therefore it does not give the Executive Branch an absolute faculty of “retaining information over the basis of its alleged confidentiality” *Pena Clos v. Cartagena Ortiz*, supra, page 598. See Wright & Graham, supra, page 52. Therefore we must reiterate that “a naked allegation of public privilege, without support in adequate legislation must be scrutinized zealously.” *Pena Clos v. Cartagena Ortiz*, supra, page 599.

Therefore, “at the end, the Judicial Branch also has to precise the frontiers of that [privilege]”. *Pena Clos v. Cartagena Ortiz*, supra, page 598. Also, see, *United States v. Nixon*, 418 US 683 (1974) and Chiesa Aponte, *Tratado de Derecho Probatorio*, op. Cit. Page 312. For that, as we stated, the “method to weigh the conflicting interests” has been used. *Pena Clos v. Cartagena Ortiz*, supra, page 598. See, also, *United States v. Nixon*, supra.

**H. In Camera Examination**

For its illustration value, we must discuss the federal case law based on the Freedom of Information Act (FOIA), 5 USCA sec. 552 (2007) as to the need for an in camera examination. Let’s see.

Despite that the FOIA, 5 USCA 552 (a)(4)(B) (2007), allows the review of documents in chambers, the federal forums have stated in reiterated occasions that this alternative is unfavorable in cases where certain governmental privileges are claimed. See, for example, *Smith v. US Marshals Serv.*, 517 Fed. Appx. 542 (9th Cir. 2013); *Lion Raisins v. US Dept. of Agriculture*, 354

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F. 3d 1072 (9th Cir. 2004) revoked in part in others by *Animal Legal Def. Fund v. US Food & Drug Admin.*, 836 F. 3d 987 (9th Cir. 2016); *Turner v. US Dept. of the Treasury* No. 15-cv000007-DAD-SKO, 2017 WL 1106030 (E.D. Cal. 2017); *Truthout v. Dept. of Justice*, 20 F. Supp 3d 760 (E.D. Cal. 2014), aff'd, 667 F Appx 637 (9th Cir. 2016).<sup>25</sup> Also, it should not be the first alternative, as the State, initially must be given an opportunity to justify and demonstrate its claim of confidentiality. *Lion Raisins v. U.S. Dept. of Agriculture*, supra; *Conservation Force v. Jewell*, 66 F. Supp. 3d 46 (DDC 2014), aff'd, No. 15-5131, 2015 WL 9309920 (D.C. Cir. 2015); *Truthout v. Dept. of Justice*, supra. This can be accomplished allowing the State to present a detailed explanation of the privilege claimed, which may substitute the in camera examination of the document in dispute. *Solers, Inc. v. Internal Revenue Serv.*, 827 F. 3d 323 (4th Cir. 2016); *Hamdan v. U.S. Dept. of Justice*, 797 F 3d 759 (9th Cir. 2015); *Ethyl Corp. v. U.S. E.P.A.*, 25 F 3d 1241 (4th Cir. 1994). In other words, the court may rest in the supplemental evidence to determine if the privileged claimed by the State is appropriate. *Lane v. Dept. of Interior*, 523 F. 3d 1128 (9th Cir. 2008); *Lion Raising v. U.S. Dept. of Agriculture*, supra. If determining, in this stage, that the privilege is appropriate, the in camera examination will not be required. *Lewis v. I.R.S.* 823 F. 2d 375 (9th Cir. 1987).

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25. See also, *Lane v. Dept. of Interior*, 523 F 3d 1128 (9th Cir. 2008); *Schell v. US Dept. of Health & Human Services*, 843 F 2d 933 (6th Cir. 1988); *Mead Data Cent. Inc. v. US Dept. of Air Force*, 566 F d 242 (D.C. Cir. 1977) and 33 Wright & Koch, Federal Practice and Procedure; Judicial Review Sec. 8440, page 524

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For purposes of this case, we find it very revealing and pertinent what is stated in the legislative history of one of the amendments of the FOIA regarding the examination of documents in camera. As stated:

H.R. 12471 amends the present law to permit such in camera examination at the discretion of the court. While in camera examination need not be automatic, in many situations it will plainly be necessary and appropriate. *Before the court orders in camera inspection, the Government should be given the opportunity to establish by means of testimony or detailed affidavits that the documents are clearly exempt from disclosure.* The burden remains on the Government under this law. (Emphasis provided. S. Rep. No. 93-1200 page 9 (1974) reprinted in 1974 USCCAN 6285, 6287-88. See also, *Lewis v. I.R.S.*, supra, page 378 esc. 4.

In sum, in some particular cases, the in camera examination can be unnecessary. See: *Hamdan v. U.S. Dept. of Justice*, supra; *Aids Healthcare Foundation v. Leavitt*, 256 Fed. Appx. 954 (9th Cir. 2007); *Lion Raisins v. U.S. Dept. of Agriculture*, supra; *Vaughn v. Rosen*, 484 F. 2d 820 (D.C. Cir. 1973); *Turner v. U.S. Dept. of the Treasury*, supra. In particular in the case of *Lion Raisins v. U.S. Dept. of Agriculture*, supra, it was determined that as there was no controversy as to the type of information in the document in question, the in camera inspection would be a futile exercise.<sup>26</sup>

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26. See, *Harvey's Wagon Wheel, Inc. v. N.L.R.B.*, 550 F. 2d 1139 (9th Cir. 1976).

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Now, when the file and the supplemental evidence of the State does not satisfactorily justify the governmental privilege, then the court can examine the documents in dispute in camera. *Islamic Shura Council of Southern California v. F.B.I.*, 635 3rd 1160 (9th Cir. 2011); *Lane v. Dept. of Interior*, supra. See, also, 33 Wright & Koch, Federal Practice and Procedure: Judicial Review Sec. 8440, page 524 (2006).<sup>27</sup>

**III.**

In this case, the lower court determined that to evaluate if the document in dispute is of public nature and if it is protected by a privilege an in camera examination of it had to be made.<sup>28</sup> In the writ of certiorari before us, the Government alleged that the in camera examination of a work document constitutes an inappropriate interference with the procedures and duties of the Executive Branch.<sup>29</sup> In particular, it was argued that governmental privileges exist that protect the confidentiality of documents related to the exercise of the prerogatives and duties of the Governor, to wit: *the executive privilege* and *the deliberative procedures privilege*.

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27. We should not lose sight that even if cautionary measures are taken the in camera examination involves certain risks to the confidentiality of the information. 33 Wright & Kosh, Federal Practice and Procedure: Judicial Review Sec. 8440, page 524 (2006).

28. See pages 2-3 of the Order of July 26, 2017 issued by the Court of First Instance.

29. Certiorari Petition, page 23.

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In that line, the petitioners argued that the proposed budget in dispute “constitutes an interagency communication produced during the course of a deliberative process and of budget public policy formulation of such officer.” (Referring to the Governor)<sup>30</sup> On the other hand, the Senator claimed that he has the constitutional right to access of public information.

Based on the foregoing, we conclude that, in the present case there is a genuine and justiciable controversy of law between the parties. As it is a matter of great public interest that interposes constitutional rights of members of the other two Branches of Government, it is necessary to intervene in this moment to consider the need to examine the document in question a priori in camera, as ordered by the lower court.<sup>31</sup>

The in camera examination could be the vehicle to use in the adequate context. See, *Santiago v. Bobb y El Mundo, Inc.*, supra. Now, as we are dealing with a controversy of law and due to the type of document

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30. Certiorari Petition, page 24. The petitioners objected also to the presentation of the document in controversy before the Court of First Instance for in camera examination. See page 19 of the Certiorari Petition (In this case the lower court clearly abused its discretion when agreeing to resolve Senator Bhatia Gautier’s claim on the merits, ordering the First Executive to provide the document in dispute, in a sealed envelope, to inspect it in camera and determine if it is confidential”).

31. As stated above, the usefulness of the inspection in camera has been acknowledged on multiple occasions as a supplemental vehicle to resolve conflicts regarding claims of privilege.

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in question, we believe that, in the present case, an in camera examination of it at this time would not assist to the analysis of the balance of interests. It is sufficient to examine final proposed budget to know what the document in dispute consists of.

Therefore, we ask ourselves, what exactly is it that could be found upon inspecting the document in question with the purpose of making a decision in the case? We cannot think how this can be relevant to *the real controversy in the case, to wit: if the State can meet its evidentiary burden to support the privileges claimed*. Of course, prior to that it should be determined if the document in question is effectively of a public nature.

In order to make a decision, in the balance of interests, as to whether or not there is a privilege in this case, the parties must *first*, put the court in a position as to what the interests in conflict are. Afterwards, if important reasons emerge, and the court understands that the examination of the document in question is *essential* to its analysis, *then* the lower court can request the document for an in camera examination. *Not before*.

We must remember that in this case, the State claimed some governmental privileges based in the alleged confidentiality of the document in dispute. Among these it alleged the executive privilege, which has a constitutional foundation. In light of a claim of a privilege of this nature, the courts must be very careful in the management of the information in controversy. So much so, that the production of the document for in camera examination must not be ordered unless it is *strictly necessary*.

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Consequently, we are of the opinion that, in this case, the lower court correctly denied the motion to dismiss filed by the Government but should have initially ordered the parties to submit their respective memorandums of law so they could put it in a position to determine if the document is of a public nature and if so, if the alleged privileges are appropriate.<sup>32</sup> Only then, and in consideration of the balance of the interests implied could the lower court determine if the alleged privileges are appropriate.

On the contrary, the lower court ordered the production of the document in question for in camera examination, before determining if it was of a public nature and resolving if the confidentiality of the document itself is protected by any of the alleged privileges. *It abused its discretion in doing so.*

*Therefore, we conclude that the Court of Appeals erred when refusing to issue the writ that was filed, as well as the lower court when ordering the production of the document in question, for in camera examination at the stage it did it, without having the specific justifications of the State to refuse to divulge it.*

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32. It should be mentioned, that through its Order of July 26, 2017, the Court of First Instance not only ordered the Government to produce “the Proposed Budget presented to the Board on April 30, 2017 for an in camera examination” but also to “file a motion explaining in detail the reasons why the information requested, or part of it, qualifies for the application of the privilege invoked.”(Emphasis in the original). See Order of July 26, 2017, page 3.

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**IV.**

Pursuant to what was stated above, without further proceeding, and pursuant to Rule 50 of the Regulation of this Court, *supra*, the writ of certiorari requested is issued and we partly reverse the Order of July 26, 2017, issued by the Court of First Instance regarding the production of the document in controversy for in camera examination. Aside from this, such Order is confirmed in the other matters that are not incompatible with what is stated herein. The stay ordered is lifted and the case is returned to the lower court so the proceedings can resume pursuant to what is stated in this Opinion.

Judgment will be entered accordingly.

ROBERTO FELIBERTI CINTRON  
Associate Judge



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CERTIFIED TRANSLATION

IN THE SUPREME COURT OF PUERTO RICO

HON. EDUARDO BHATIA GAUTIER, AS  
SPOKESPERSON OF THE POPULAR  
DEMOCRATIC PARTY OF THE SENATE OF  
PUERTO RICO,

*Appellee,*

v.

HON. RICARDO ROSSELLO NEVARES,  
AS GOVERNOR OF PUERTO RICO;  
COMMONWEALTH OF PUERTO RICO,

*Petitioners.*

*Certiorari*

**JUDGMENT**

In San Juan, Puerto Rico, on September 15, 2017.

For the grounds stated in the above Opinion, which is fully incorporated into this Judgment, without further

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I, Juan E. Segarra, USCCI #06-067/translator, certify that the foregoing is a true and accurate translation, to the best of my abilities, of the document in Spanish which I have seen.

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proceeding pursuant to Rule 50 of the Regulation of this Court, 4 LPRA Ap. XXI-B (2012), the writ of certiorari requested is issued and the Order of July 26, 2017 issued by the Court of First Instance as to the production of the document in controversy for the in camera examination is reversed in part. Aside from this, such Order is confirmed in all other matters not incompatible with what is stated in the Opinion. The stay order is lifted and the case is returned to the lower court for the proceedings to resume in accordance to what is stated in the Opinion.

Immediately notify by telephone, fax or e-mail and subsequently by regular mail.

In agreement by the Court and certified by the Acting Secretary of the Supreme Court. The Associate Judge Mr. Kolthoff Caraballo issued an Opinion in Conformity. The President Judge Oronoz Rodriguez, the Associate Judge Mrs. Rodriguez Rodriguez, the Associate Judge Mr. Estrella Martinez and the Associate Judge Colon Perez issued Dissident Opinions.

Sonny Isabel Ramos Zeno  
Acting Secretary of the Supreme Court

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**APPENDIX C — TRANSCRIPT OF A HEARING  
HELD AT THE UNITED STATES DISTRICT  
COURT FOR THE DISTRICT OF PUERTO RICO  
IN CASE NO. 3:17-CV-01743 ON MARCH 1, 2019**

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

Docket No. 17-1743

CENTRO DE PERIODISMO INVESTIGATIVO, INC.,

*Plaintiff,*

v.

FEDERAL OVERSIGHT AND MANAGEMENT  
BOARD FOR PUERTO RICO,

*Defendant.*

San Juan, Puerto Rico  
March 1, 2019

**HEARING BEFORE THE HONORABLE JUDGE  
BRUCE M. MCGIVERIN, UNITED STATES  
MAGISTRATE JUDGE.**

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COURTROOM DEPUTY: Civil case 17-1743, Centro de Periodismo Investigativo versus Financial Oversight and Management Board for Puerto Rico. On behalf of the plaintiffs, Counsel Judith Berkan and Steven Lausell.

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On behalf of defendants, Counsels Guy Brenner, Laura Stafford, Luis Del Valle -- and Luis Del Valle.

THE COURT: Okay. Good morning to everybody.

This case is set for a status conference. I in particular have three things on the agenda I'd like to address. And the first is whether the Board's disclosure of documents setting aside disputes about withheld documents, for the time being, whether the Board's disclosure is complete or whether that is something ongoing that we need to set a schedule for. So that's question number one.

Question number two or the issue number two I have is if the parties can inform me with as much specificity, or at least with reasonable specificity, I don't want to burden ourselves with minutia, with reasonable specificity, as to what are the areas of dispute at this time, what is -- what is currently in dispute.

And then third, and relatedly, what procedures should be employed to resolve those disputes. What -- how to -- I mean, I guess if it's -- if I'm going to be resolving these disputes, how do I get the information that I need to put me in a place to resolve those disputes.

Okay. As to the first issue, just the overall schedule and status of disclosure, I know that there was a recent disclosure made. Plaintiff filed an informative motion as to a letter regarding that disclosure and some withholdings that were made. And I saw that referred to somewhere as the final disclosure. I think in one of Judge Garcia's Orders.

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But are disclosures ongoing, periodic? How would you characterize that?

MS. BERKAN: There is -- sorry. For the record, Judith Berkan.

There have been several disclosures, July 31st I believe, August 7th, I may be off on the date, and there were a number of certifications. There were less problematic problems with those first disclosures, but there are still some which may be able to be worked out. But the main issue comes up with the communications.

We asked for communications between the Board and the state government, and communications between the Board and --

THE COURT: Okay. I think you are leaping ahead to issue two, but I'd like to pause on issue one for the moment.

MS. BERKAN: Okay. So the issue I think is combined. That's why -- and I also have some issues with the issues, but we'll deal with that later.

But there have been some, you know, surreptitions (ph) and things like that, that -- in a large disclosure in October and another large disclosure at the end of January.

THE COURT: Recently. That's the most recent --

MS. BERKAN: That's the issue of disclosures. If you want to go to problems with disclosures, I can go --

THE COURT: I do not.

MS. BERKAN: You do not.

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THE COURT: I want to take care of the first issue first. All right.

MR. BRENNER: Your Honor, Guy Brenner for the Oversight Board.

From the Board's perspective, we responded to all of the requests, the 16 requests that are at issue in this matter. And from our perspective, the production or provision of documents is complete, not putting aside the issues that have been raised by plaintiff in this matter.

THE COURT: So you believe they are complete?

MR. BRENNER: Correct.

THE COURT: What about the situation of -- I mean the Board still exists, is still doing work. What about documents that continue to be produced, generated, created? Wouldn't those be subject to some future disclosure?

MR. BRENNER: Well, in early --

THE COURT: Or how would you propose to handle that situation?

MR. BRENNER: Well, early on, one of our early meet and confers we addressed this very issue with plaintiff and agreed that there would be a cut off date, which was April 30th of last year. So there's no --

THE COURT: But that would be all documents generated that came into the Board's possession by April 30?

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MR. BRENNER: Correct.

THE COURT: Okay. So as far as the Board is concerned, you've responded to the request, setting aside again the issue of documents you have withheld that plaintiffs contend were wrong themselves.

Okay. Ms. Berkan, do you want to respond?

MS. BERKAN: I just wanted to say that in the early days of litigation, we obviously tried to negotiate in good faith. And at that point our good faith response was, to the suggestion of a cut off, April 30th, because we didn't expect to be in court a year later, not having received a bunch of documents.

So I think that's to the CPI, though I have to admit that we did make that agreement. There may be reason to revisit it, just because -- issue two about the withholding of the documents, that they've withheld more documents than they've given.

THE COURT: Okay. So I -- my take away from this is at least at this time, and again setting aside the important issue of documents that have been withheld, the Board has produced the documents that it intends to produce, and that there's no purpose of setting a further schedule that, you know, in 90 days you produce more documents, so on and so forth.

Is that a fair understanding?

MR. BRENNER: That's the Board's position.

THE COURT: All right. Okay. So let's get to the second issue. The Board has withheld a number of documents.

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How many, I have no idea. I'm not sure plaintiff has any idea. The Board has -- there was a letter that the plaintiff attached to a recent motion where the Board categorizes I think six different categories of documents that the Board has withheld.

I understand the Board did a similar thing in previous disclosures. Are the categories roughly the same in both disclosures or are there different ones?

MS. BERKAN: There's overlap, the three of them, and then there's two additional ones that are in the October 31st letter, and I believe, if I'm not mistaken, three additional ones that are in the January 29th letter.

THE COURT: Okay.

MS. BERKAN: You're saying that we don't have an idea. We do have an idea, and that's why I felt comfortable coming up here and saying that I believe more than half the documents have been withheld. So I'm not comfortable with it. Ninety days, they've got to do it. They have categorized and withheld them.

But without going into detail, just on the numbers question, there was a letter on July 15th, if I'm not mistaken, 2018, which we received from the Board. In that -- we were trying to negotiate at that point how the search was going to be done.

So we were talking about keywords and e-mail domains and all that. And at that point, the Board informed us that there were 40 thousand documents that were generated by e-mail domain search. And we have received the correspondence, only 18 thousand and some.



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So I believe that there's some 22 thousand that have been not produced. I mean, I'm interpreting, but, you know, we didn't get a lot of information from the Board as to how they were withholding.

THE COURT: A lot of documents.

MS. BERKAN: A lot of documents that have not been produced.

THE COURT: Okay.

MS. BERKAN: And we are very frustrated, and a grievance like we made last year -- as I said, because I thought there would be production pretty fully over the summer, something like that. We're over a year and a half later, and it has been two and a half years since our original request.

THE COURT: Okay. How can -- I'd just like to get a universe of the categories of documents that have been withheld, so then we can start intelligently thinking about how we resolve this dispute.

MS. BERKAN: You mean by category or by numbers?

THE COURT: By --

MS. BERKAN: I can show you the categories.

THE COURT: By category. And I don't know who's in the best position to address that, whether that would be plaintiff or whether that would be the Board, but I will hear from both.

MS. BERKAN: Well, I've done an analysis of the documents withheld. I have it in a table here. But in the

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February 8th communication, which was with respect to the January 29th disclosure, the documents withheld are --

THE COURT: Referring to the letter?

MS. BERKAN: The letter, yes. And there's one, two, three, four, five --

THE COURT: Six different categories, matches in that letter.

MS. BERKAN: Yeah, six, because -- let me talk about ones that are common to both. Those are confidential, pre-decisional documents according to just the broad category, without going into the description.

And then there's a law enforcement -- interview with law enforcement proceeding. Then there's two categories which are in both documents which are harmful to markets, adverse effect on economy, and harmful to public interest and harm the Board's ability to do its duties.

THE COURT: That's the sixth category.

MS. BERKAN: In addition, in the November 21st letter, which came almost fully a month after the disclosure, actually a month and two weeks after the disclosure, this was the first we noticed that there were documents missing, because some of the documents referred to other documents or e-mail chains.

And in that one, they also claim Title III mediation documents. And the law enforcement is in that, but not in the February 8th letter. I'm sorry. Law enforcement is only in the November. When you get to the February

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8th letter, in addition to the two that are common, which are the harmful to the economy, harmful to the Board, there is an allegation about common interest agreement with AAFAF.

THE COURT: Right.

MS. BERKAN: AAFAF, the financial agent of the Commonwealth. And a particular prohibition onto a -- stemming from 28 -- 208(b), Section 208(b) of the --

THE COURT: PROMESA Act.

MS. BERKAN: Of PROMESA, which has to do with reports on tax abatements. And then for the first time they talk about official delivery -- official documents privilege.

THE COURT: Rule 514 documents.

MS. BERKAN: Rule 514. Though that, in the case law, is kind of tied up with deliberate privilege. So I think I've been accurate in stating what the categories are.

THE COURT: As described by the Board.

MS. BERKAN: As described by the Board.

They also, as to me -- I'm giving you the keynotes. They also give a description of what documents are broadly in that category, which we obviously think is insufficient, but we'll address that when the Court wants to address it.

THE COURT: Yes. We're getting there.

MS. BERKAN: Thank you.

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THE COURT: Okay. Let me hear from the Board as to that. What is my laundry list for universe of documents that are in dispute at this point? Does your letter of February 8, combined with -- what was the date of the previous letter?

MS. BERKAN: November 21st.

THE COURT: Okay. If I were to look at those two, would that be the universe of the documents that have been withheld?

MR. BRENNER: Correct, with the exception of the pre-appointment financial disclosure documents.

THE COURT: Yes. Okay. Yeah. Which I've -- which was briefed separately.

MR. BRENNER: Correct.

THE COURT: That issue was briefed separately. Okay. Which you contend is just not a public document under the part of the statute that defines public documents.

MR. BRENNER: Correct.

THE COURT: Okay. So is that the list of six or eight categories?

MR. BRENNER: Correct. We provided a comprehensive list, one per each of the communication productions, detailing the bases on which we withheld documents that would otherwise have been produced.

THE COURT: Okay. Response to the documents that were withheld for some reason.

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Now, okay, so jumping to the third category, what am I to do with this? How can -- or what are -- what are the parties going to do with this?

First I want to make sure that the parties have exhausted whatever -- as to each or one or some of these issues, any meet and confer requirements that are required both under the local rules and under Judge Garcia's Order, which is pretty clear that I am not to step in until the parties have, you know, done that.

But if in some or all of these categories, if there is something the parties can do amongst themselves before the Court has to make a decision on that, and -- I would be interested in hearing about that. And it -- part of it may anticipate Ms. Berkan's concern that does she, or much less the Court, have enough information to see whether these documents have properly been withheld under any of these categories.

I guess the antecedent question to that is whether these -- some or all of these categories are actually legally legitimate reasons to withhold. But I guess there will be two steps in that question. But, I mean, short of -- I mean, you don't know what you don't know. And so how -- the Board's in I think a better or at least an initial position to tell the Court what information I need to decide whether these are properly being withheld.

MR. BRENNER: So Your Honor, just as an initial point, I'd like to note for the record that although we're obviously here today because of issues with the production, I'd like to say that despite the Board's contentions with respect to jurisdiction, which I will not get into, and

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we've noted, as well as issues regarding Section 105 of PROMESA, the Board has been responsive and has been working with CPI and has provided responsive documents to every single one of the 16 requested categories of documents, except for those that were already publicly available to which we pointed CPI and that -- the detail in the briefing.

With respect to the documents that have been withheld, it's not surprising that they raise a lot of thorny issues because the requests that these fall into are requests for all communications between governmental entities. To our knowledge, this isn't typically -- we are aware of no circumstance where this type of request has been made in the context of Puerto Rico's right to access public documents.

So this is in some ways -- we did not contest the scope of the request, but instead tried to work with the request and provide the information, because we recognize that there is a public interest in obtaining information within reason and subject to limits set by the Court.

With respect to the types of bases on which to not produce -- not provide documents, this is a judicially created right, and the exceptions are judicially created as well. We -- the Board is, I think all would agree, a unique entity that has been set up for a unique circumstance. And so to some extent, there will be reasons for withholding documents that may not be currently explored in the case law.

But in terms of how to proceed, getting to your direct question, we would be happy to engage with CPI. We've

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always been willing to engage with CPI. I believe their latest brief acknowledged that point.

There's been very little engagement on the issues of privilege and how to move forward. Rather, there's been requests for status conferences and motions for contempt, which we believe are fully unwarranted. And we're willing to continue to discuss whatever questions they have.

To the extent that they have concerns about the privilege logs, we provided a log that is consistent with the Federal Rules. It provides the information they need if they would like to contest our withholding. And so in terms of how to proceed, it seems to -- it seems to the Board a period of time in which we can attempt to directly interact over the concerns they have, and when we are unable to reach those -- reach any agreements, subject to the meet and confer requirements of Local Rule 26, CPI can move to compel the production of documents, and we can brief it before the Court and the Court can make decisions.

THE COURT: Okay. And I guess what does -- I mean, I would like to encourage the meet and confer process, but maybe I should be asking CPI this: What would CPI need to be able to intelligently address these claims for withholding in a meet and confer context?

MS. BERKAN: There's a couple issues. I'm sorry if I'm not going to go directly to your question, as I did, but I have to respond to some of these I would say. These are some of the nicest people in the world. When you call them, they come to us. They see us. You know, it's not personally against these people.

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And I do want to say they've been very nice in the process, but the problem is we were not informed at the very beginning. If they knew they were going to have these concerns, they should have addressed them to the Court, because the Court Order says so.

The Rule -- the page 34 of Judge Garcia's Order says they have to -- they have the burden and they have to file for a Protective Order. That has never been done. The categories have gotten broader. The categories are not recognized under Puerto Rico law, which is the substantive law that is applied. So, you know the --

THE COURT: Well, I --

MS. BERKAN: The scope issue --

THE COURT: I think several of them are, but --

MS. BERKAN: Oh, I can tell you which ones are exactly. There are five categories under the Puerto Rico law, and they're on page 34 of Judge Garcia's Opinion.

THE COURT: Yes, the law --

MS. BERKAN: But harmful to markets, harmful to the economy are not those things. And deliberative privilege can be very much abused. We just don't know what they are. And I would have to disagree with Mr. Brenner about the -- what was I going to say? I'm sorry.

The ones that are recognized under Puerto Rico law, there is an -- I believe the Federal Rules apply with respect to how the privilege must be asserted. And I can cite case after case after case that says that they cannot assert it in the broad categories they've given to us. And



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the explanation, and the second broad category, harmful to markets, these are e-mails and documents which are harmful to markets, doesn't cut it. And we have a problem here.

And I mean, I came to the Court with a radical motion, which was a Motion for Contempt, because my other attempts to do this in a status conference that would have perhaps moved this along, we've gotten to this point where I had to say here that our original April 30th cut off, I don't know if we still will agree to that.

This is a journalistic organization. Giving 90 days to -- for them to enumerate the documents in a way that's categorical but in compliance with the Rule, is it a category but not the category that they're talking about, giving them that kind of leeway will totally impede the journalistic value of the documents.

And this has been a year-long process. I can show you every letter. I can show -- there's been a great deal of work.

THE COURT: Okay. No --

MS. BERKAN: A great deal of conferral. And we got to this point where we needed to call the attention of the Court, because there was no Protective Order filed. There was not --

THE COURT: I understand all that. What I would like to address at this time, in Judge Garcia's Order, at page 34, it says, the Magistrate Judge will handle the discovery disputes provided the parties have complied with and met the meet and confer requirements of Local Rule 26. Okay?

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So I want to know whether that has been exhausted, whether there is something that -- some additional information that CPI could have that the Board could provide or CPI could intelligently address. And if it's not, then we would move to -- I mean, if there's simply no possibility under the meet and confer requirements, then I'm happy to move to how the Court will resolve these issues.

MS. BERKAN: I think we have to. I mean, I just don't see this moving. I just see letters that come, you know, ten days after the productions. A couple of times -- with respect to the October 12th production, we pointed out whole pages that were redacted. We pointed out places where there was a legitimate, which we have not questioned, personal identifier redaction, but it redacted a whole bunch of other stuff.

And on those particular documents, they have been responsive, but the problem is that doesn't give us what we need. That just says, look, I saw -- I have examples here of pages that are totally redacted, that kind of thing.

And I'm sure with their typical niceness, they would come back and provide each individual, but I believe we're talking about a production that was supposed to be 40 thousand and is 18 thousand, which means that the exception has consumed the rule. So this is not getting us anywhere.

THE COURT: Okay. May I hear from the Board as to that issue?

MR. BRENNER: Your Honor, I think we briefed this, and I think it's -- I think the reading of Judge

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Garcia Gregory's Order makes it clear that we're not required to seek the Court's leave before not producing documents. It discusses specifically that we can deny access to documents, this is on page 29, explaining the basis for denial, and that if CPI is unsatisfied, they can seek judicial review.

So the notion that there is some requirement, either in the Order or otherwise, that the Board has to seek permission before withholding documents is not correct and puts the cart before the horse.

THE COURT: Well, is it -- I would agree that in the meet and confer requirement, as long as the parties are trying to work this out amongst themselves, it makes sense that you send a letter like you sent saying these are the types of documents we have withheld and if we can talk about this. But when then there is no agreement, then I have to ask myself, the law in Judge Garcia's Order seems to be that the general rule is disclosure. And withholding should be the exception to that rule based on he gives five different categories at page 34 of the documents that should be with -- that could be withheld. And that is based on case law from the Supreme Court of Puerto Rico.

It's not clear to me whether that is an exclusive list. It might not be. I'd have to look at that Opinion from the Supreme Court of Puerto Rico.

You seem to be suggesting that the Board is a sui generis entity and there might be other reasons that the law should allow disclosure. And you might be right, but at some point, isn't the Board in a better position to inform the Court intelligently as to why it is withholding

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these things, given the general rule of disclosure in that withholding is the exception?

I mean, I've looked at your letter. I don't know, in a lot of instances and without more information, whether I could make an intelligent decision based on what -- the information you've provided in the letter. It -- for at least some of the categories. So what can you do so -- and isn't the rule of privilege usually that the person who is asserting the privilege has the burden of showing that that privilege applies?

MR. BRENNER: Well, there may be a burden to show that the privilege applies, but in terms of determining what the issues are in dispute, for example, one of the bases on which documents were not produced was Section 208 of PROMESA, which provides that the Board is not permitted to produce the documents that are provided to it and --

THE COURT: And I would see if the documents you are withholding fall into that category, that that could fall under the category of when a law so declares, which is the first category Judge Garcia recognized.

So my next question, just to use this as an example, is how do I know that those documents actually fall or should be actually put in that box that you've labeled?

MR. BRENNER: So the Federal Rules of Civil Procedure, the issues of privilege as this Court is well aware are well established in the Rules, and they provide for a process by which a party asserts privilege, there is duty of candor to the Court, and duty of candor to opposing

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counsel and to the opposing party. And the privileges are asserted in some form of a communication.

Sometimes it's a log. Other times it can be a categorical document, which is what was provided here, which coincidentally is the same type of document that Judge Dein in Title III proceedings found to be wholly appropriate in these circumstances, for documents that are similarly covered by both requests. And then in those circumstances, in my experience, the parties meet and confer, and if there's a dispute, there's a Motion to Compel over the documents --

THE COURT: Or there could be a Motion for Protective Order. I mean, it's -- the Rules allows for either side to initiate this.

MR. BRENNER: But I would say in this case it makes more -- we do not know what categories CPI is actually objecting to. If CPI wants to bring issues to the forefront to indicate that they feel that documents that, you know, the Board has identified, that -- for example, the Board is engaged in a mediation, Court Ordered mediation that's subject to a Confidentiality Order. Communications that -- with U.S. Federal Judges who are managing and supervising that mediation were caught up in the very broad request.

It seems silly for the Board to brief that issue before this Court if CPI is not challenging whether or not those documents are properly withheld. It would seem -- that would seem to me to be something where it's not necessary to burden the Board and consequently the people of Puerto Rico with unnecessary briefing.

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So it seems to us that the proper approach is for CPI to address the documents that they think need to be produced. We provided, for example, with deliberate process privilege, a litany of categories with the types of documents that were communicated with Federal or Commonwealth agencies. And they can specifically identify the ones that they believe don't fall within the privilege. And then we can brief that, and we can -- and then the Court can make a decision.

THE COURT: Okay. Ms. Berkan.

MS. BERKAN: Yes. First of all, it's not surprising that Mr. Brenner has picked the two categories which in a conferral we did we said we probably had no problems with, as long as the documents really fell into those categories. 208(b) refuses -- actually prohibits the Board from disclosing the report on tax abatements. We have no problem with them refusing to provide that if that's really what they're refusing to provide, which as Your Honor has stated, is very difficult to tell from that letter.

It's not that we haven't addressed this. We have. And from the beginning, we have said the categories are harmful to the economy, harmful to the interests of the Board. Those categories, as such, are not adequate.

The other -- I want to address, I have to address the assertion that Judge Garcia's Order put the burden on us. If you look at page 29, where Judge Garcia talks about somebody requesting, seeking judicial review, it is within the context of an analysis of conflict preemption. And it's just giving an example. And we did seek judicial review.

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When did we seek judicial review? On June 1st, 2017, when we filed this case.

But if you go to page 34, and all the jurisprudence under Puerto Rico law, if you go there -- and Puerto Rico is the substantive law of this case. If you go there, you will see that the onus is on the Board to seek a Protective Order. In the Protective Order, they would have to list -- they don't have to list every document. It's true that categories, assertions of privilege are recognized. I have all the cases here. But categorical are things like this: E-mails -- if it were an attorney-client privilege, e-mails between Judith Berkan and her attorney encompassing the period of October 1st to November 6 in which legal advice was sought. If I saw that in any case, assuming good faith, that they're not throwing other things into it, I would say okay, I can't challenge that privilege.

That's not what we have here. We have categories that are broad. If you look at the Board's opposition to our Motion to Compel, I believe, or the last motion, if you look at it, they talk about that categorical descriptions are commonplace. I believe that's what they say. And they have no authority for that.

But I looked, and there's a lot of cases that allow categorical descriptions of the nature of what I just described, not the categorical descriptions that they have here. So in response, I don't recall what the Judge's question was, but I do recall what Mr. Brenner said, and I had to address these things.

The other thing is that the Board keeps bringing up that they still reject the jurisdiction of the Court,

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and they've been so generous and they're doing this voluntarily. I just -- you know, that's very hard for an attorney to take, because I would never say that to a Court, that we're not going to -- you know, if we follow your Order, it's because we are nice people and we're doing it. And they're very nice people. They say they did not contest the scope. We're hearing that right now. That was not what they were saying. They said they would comply. And compliance means each and every category.

By the time we got this finally to this stage of the litigation, which was with your status conference on June -- in June of last year, by the time we got to this stage, several of the requests had been mooted out because precisely time had passed and now they were on the website. And they would generously tell us where they were on the website. But, you know, this is something that it is their burden. This is an Order by Judge Garcia. He is a Federal Court Judge.

The sui generis nature of the Board, no one has said that that means that they can totally aggregate the Constitution of Puerto Rico. In fact, all the contrary has been said, at least by Judge Garcia, that the Constitution of Puerto Rico applies.

So they have to give us the documents unless they are subject to legitimate privileges, and privileges recognized under Puerto Rico law, or I'll use it -- or a good faith argument for extension of Puerto Rico law, though that hasn't been decided. No case of the Supreme Court has said anything other than those five categories that the Judge listed in the most recent case of Bhatia.



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So the Board, if they wanted to contest the scope, they should have challenged the Order, moved for reconsideration, gone out, not to say we're giving you this voluntarily but we're deciding what we're giving you. And I haven't heard from them.

And perhaps I'm misreading the record, but we looked at that thing about the 40 thousand documents that they said that would -- that would be generated by domain names, so I assume those are correspondence. And we've gotten 18 thousand and some. So, you know, that's --

THE COURT: But going back to the first thing you said, that there were some areas of agreement, that the Board cited a couple instances of areas where you suggested that no, you would not require -- request disclosure of that, yes, that would fall under some protective privilege, is there any work that the parties can do together to simply narrow it down for the issues that I ultimately would have to decide?

MS. BERKAN: I don't believe so, because every time we discuss it, it's just the Board makes their decisions and what we do doesn't change a lot of things.

THE COURT: Well --

MS. BERKAN: So I think, just to be clear, the law --

THE COURT: So are you suggesting --

MS. BERKAN: The mediation document --

THE COURT: -- that the Board has to file a Protective Order that would say and argue to the Court, demonstrate

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to the Court why they don't have to produce mediation-related documents?

MS. BERKAN: I believe there's --

THE COURT: Which you said you don't seem to think that they would have to, and that you had indicated as much to them.

MS. BERKAN: That I don't think they would have to? Is that -- I'm sorry. I didn't understand your last comment, Judge.

THE COURT: Do you think the Board would have to brief to the Court and move for a Protective Order why they should not have to disclose mediation-related documents?

MS. BERKAN: No. Well, let me be clear. The only thing with the two categories that I told them in the conferral conference, that we were pretty much on board with those two categories, I want to make sure that the mediation documents, the communications, the settlement memos, all that kind of thing -- I mean, I've been in enough mediations to know that those are presumptively confidential. But if there are attachments to those documents that in and of themselves are discoverable, then I would want to know.

So I would need some kind of log on that to be sure, but that's the least of our problems, mediation-related documents and 208(b), which was in the February 9th letter -- February 8th letter. But the problem, the basic problem, Judge, is we don't have a privilege log. We've

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moved the Court for contempt. We want something immediate. I don't want a schedule that has, you know, 30 days to do this briefing.

They know what the documents are and we don't. I don't know how many attorney hours from the Proskauer firm have gone into identifying the documents. I am sure that they have gone and had some kind of index or log of every single document. And I don't know why they should be allowed to now initiate a process. And I will go back to Judge Garcia's Order, because I think it's really deceptive to say that seeking judicial review is our burden, because if you read the Order, that is not the context in which that was said.

So I do believe there has to be a mechanism and it has to be very short in time. And really, I --

THE COURT: Well, that is the right of the parties --

MS. BERKAN: And we have not abandoned --

THE COURT: -- to -- if I have to look through thousands of pages of documents, I'm telling you it's not going to be very short in time. It might be a year from now. So be careful what you're asking for.

MS. BERKAN: No. And I mean, that's what the cases said, that the descriptions have to be sufficient for a review that's effective without having the Judge going through a thousand documents. There's a case that says exactly that from the First Circuit. It's called *Roe versus Liberty*, and it says you can't -- you know, it's burdensome to put before a Judge four thousand documents. And I agree.

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But the categorical descriptions that we've been given are worthless. They do not help us or the Court to determine whether there's merit, except for those two points, which are the points that we've discussed of possible agreement.

THE COURT: Okay. Do you want to respond?

MR. BRENNER: Your Honor, I'll start by saying that I find it somewhat strange that the Board is being criticized for cooperating instead of appealing this matter and producing, you know, tens of thousands of pages of documents.

To the idea that the Board is willy-nilly deciding what to produce and what not to produce, that is wholly inaccurate. The Board is taking its approach to this seriously, and has produced a -- and has expended significant time and energy and expense to go through the documents and produce those that it was able to produce, and withhold the ones that it felt it had a good faith basis to withhold based on the law. The notion that the Board is willy-nilly deciding what to produce and what not to produce is wholly inaccurate.

After we produced -- and I think if you look at the record, you'll see, after we produced our categorical log, that was met with the demand to produce a privilege log, the traditional line by line privilege log, which we said we were not going to do given the volume of documents that were at issue and the case law saying we didn't have to do that. That was met by motion practice in this Court.

To the extent that there is any effort, you know, that would be useful to discuss this matter, we are always open

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to doing that, but we have never heard that, you know, we'd be willing to, you know, drop any objection to the mediation documents if you can assure us of X, Y and Z. That conversation has never happened.

What we're met with is a Motion for Contempt. And so at this point, Your Honor, if we're dealing with, you know, thousands of documents which we don't know whether they really contest or do not contest or more information would be helpful to them understanding that, then I don't see how that benefits anybody, the people of Puerto Rico, this Court, CPI. And if we have any disputes, then we have to bring them to the Court.

THE COURT: Okay. All right. Here's what I want the parties to do. I want, 14 days from today, plaintiffs to send a letter to the Board, to counsel for the Board saying specifically which of the categories that have been excluded by the Board plaintiffs -- or sub categories, if it comes to that, plaintiffs are objecting to. Two of them are very clear what they are. But just so that they will have that. And a brief reason why plaintiffs are objecting to that.

It doesn't have to be a legal brief. It can be a few sentences, whatever. And put the Board on notice as to which of these categories plaintiffs think are not legitimate exclusions. Okay. And two weeks from today, plaintiffs will send that letter to the Board and just file it as an attachment to an Informative Motion to the Court.

Two weeks after that, the Board -- so the Board will be on notice as to what -- precisely what categories

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plaintiffs do not think are legitimate. Two weeks after that, the Board will file a Motion for Protective Order as to all of the categories that the Board still thinks justify withholding.

Two weeks after that, plaintiffs can file a Response. Okay?

MS. BERKAN: I realize that's the Court's Order. I want to express my objection for several reasons. One is today they know the two categories that we have, and we also discussed it in a conferral meeting that was on the phone. I don't have the exact date.

THE COURT: But I --

MS. BERKAN: But I don't need two weeks --

THE COURT: I've asked you several times for specific information as to that, and you said, this I might not have a problem. I want you to put it in writing. I want you to put it in writing to them and to the Court.

MS. BERKAN: I can do that today. I can do that today. And then we should shorten the time for them to respond, because they are the ones who know which documents they are. They know these objection -- our position.

THE COURT: If you want to voluntarily -- I'm going to give you two weeks, but if you do it earlier, then they have two weeks to file their motion. Okay?

MS. BERKAN: But then it will be, again, on a categorical basis that is not recognized under Rule 26.

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THE COURT: Counsel, you're -- I don't know what --

MS. BERKAN: The categorical basis --

THE COURT: Counsel, please don't interrupt me.

MS. BERKAN: I'm sorry, Your Honor.

THE COURT: I don't know what they're going to file, but I am putting them on notice that if you file a Motion for Protective Order, you have to put the Court in a situation to respond to that. And if it -- if you're filing a Motion for Protective Order, and it's just some very broad-brushed vague categories, I might well find that you have not met your burden on that.

So it would behoove the Board, if they file a Motion for Protective Order, to give me the information where I can intelligently decide. And if that means some kind of an expanded -- expanded privilege log, then it would behoove the Board to do that. If I simply don't feel I have had the information, I may well decide the Board has not met its burden.

MS. BERKAN: And the consequence of that, according to the case law, is waiver.

THE COURT: Counsel.

MS. BERKAN: It's just that this is going to go on forever.

THE COURT: Counsel, you can argue that. You can argue that, and you will get your opportunity to respond in writing. Okay?

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MS. BERKAN: Okay. So what's -- assuming I can do this, I maybe over spoke, let's say not today it should be -- but we'll be finishing the hearing. There's no problem. They know our position. And then how long would they have to do what exactly after that?

I'm sorry, Your Honor.

THE COURT: I'm going to give them two weeks.

MS. BERKAN: To do what?

THE COURT: To file a Motion --

MS. BERKAN: Okay.

THE COURT: -- for Protective Order for any of the documents that they were withholding that you are objecting to the fact that they are withholding them.

MS. BERKAN: And it's two weeks from whenever they got my letter, not 14 days plus 14 days.

THE COURT: Two weeks from when you file the Informative Motion that you have sent the letter --

MR. BRENNER: Okay.

THE COURT: -- and that they have received the letter. Don't send it by snail mail.

MS. BERKAN: No. This is all by e-mail. And they have several lawyers. They'll get it.

THE COURT: All right.

MS. BERKAN: I don't think that's been a problem.



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THE COURT: Counsel?

MR. BRENNER: Understanding what CPI's position will be on this request, given the detail and the burden that has been discussed here today, two weeks to provide a detailed Protective Order is probably -- is not probably, it will be insufficient time given the volume of materials that we have to assert over in the Protective Order. And for that reason, I ask for three weeks.

And given that we're going to get this letter apparently today, we'd like three weeks, because I can tell you that the letter I anticipate will basically say that everything needs to be produced.

THE COURT: Okay.

MR. BRENNER: So we are asking for three weeks.

THE COURT: Well, I would urge plaintiffs, if there are some categories that plaintiffs actually -- plaintiff actually thinks are legitimate, you know, to so acknowledge in your letter.

MS. BERKAN: Of course.

THE COURT: All right.

MS. BERKAN: I don't know how many documents we're talking about. I assume they all went through review, so there must be some kind of index somewhere that they have. I mean, I'm not going to object to the three weeks if they say they need that, because one week or -- after all this time --

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THE COURT: How much time would you need --

MS. BERKAN: But I don't know what the numbers are, but I assume they reviewed --

THE COURT: How much time would you need to respond? Is two weeks sufficient for you to respond after you get their motion?

MS. BERKAN: I'll try to do it as quickly as possible, but two -- well, it's hard to know, because I don't know if they will list documents.

THE COURT: I understand. But I will put it for two weeks now, and if you need more time, you can always file a motion --

MS. BERKAN: Okay. That's fine. Yes.

THE COURT: -- for more time. All right?

Okay. The other, there is of course --

UNIDENTIFIED PERSON: (Indiscernible.)

THE COURT: Three weeks for the Board, and two weeks after the Board files for plaintiffs. And if plaintiffs need more time, they can -- plaintiff can request more time. And there should not be a problem with that.

There is of course the Motion for Contempt, which I see as part and parcel of this whole process. I don't really see how I can determine whether the Board is in contempt and wrongly withholding things without rolling up our sleeves and actually seeing if they are wrongfully withholding things, which is the process I have outlined.

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So I have not lost sight of the Motion for Contempt, but suffice to say I'm holding it in abeyance while this discovery process and the litigation of the discovery process moves forward. Is that understood?

MS. BERKAN: We appreciate that, Your Honor.

THE COURT: All right.

MR. BRENNER: May I?

THE COURT: Yes, sir.

MR. BRENNER: Your Honor, on the Motion for Contempt, I just, for the record, want to note that the standard for holding an entity in contempt is not even -- isn't even close to being made here. There's no Orders that have been even remotely violated by the Board's conduct.

And so while I appreciate that the Court wants to hold the Motion in abeyance, I put forth on behalf of the Board that no matter what the outcome is of the upcoming briefing, the outcome of the Motion for Contempt is -- should be that there was no Order that we violated and therefore, no Order of Contempt or Sanction should be imposed on the Board.

THE COURT: Okay. Well, I think plaintiffs would argue that Judge Garcia's opinion has been violated --

MS. BERKAN: That's correct, Your Honor.

MR. BRENNER: They --

THE COURT: -- but your point is noted.

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MR. BRENNER: And it's supposed to be clear and unambiguously.

THE COURT: All right. Thank you.

Okay. I look forward to your filings.

MS. BERKAN: Thank you, Your Honor.

MR. BRENNER: Thank you, Your Honor.

COURTROOM DEPUTY: All rise.

(At 10:02 AM, proceedings concluded.)