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

CONSEJO DE SALUD DE LA COMUNIDAD DE LA PLAYA DE PONCE, INC. d/b/a CENTRO DE DIAGNOSTICO Y TRATAMIENTO DE LA PLAYA DE PONCE, **Plaintiff,** **v.** **HON. RAFAEL RODRÍGUEZ-MERCADO, SECRETARY OF THE DEPARTMENT OF HEALTH OF THE COMMONWEALTH OF PUERTO RICO, *et al.*,** **Defendants.**	**CIVIL NO. 06-1260 (GAG)**

MOTION IN COMPLIANCE WITH ORDER

TO THE HONORABLE COURT:

COME NOW the Commonwealth of Puerto Rico and the Secretary of Health, through the undersigned attorney, and without waving any right or defense arising from Title III of Puerto Rico Oversight, Management and Economic Stability Act" ("PROMESA"), 48 U.S.C. §§ 2101 *et seq.* and the Commonwealth's Petition under said Title or under this case and without submitting to the Court's jurisdiction, and very respectfully SETS FORTH and PRAYS:

1. On May 18, 2017, Plaintiff Consejo de Salud de la Playa Ponce ("Consejo"), one of the many Federally Qualified Health Centers ("FQHC") operating in Puerto Rico, sought to renew its challenge to Puerto Rico's disparate treatment in the Medicaid Constitutional scheme (*see generally* **Docket No. 1366**). The Constitutional infirmity has still not been fully addressed nor settled.

2. The United States of America ("USA") filed a response opposing Consejo's request (**Docket No. 1368**) and the Commonwealth stepped in and filed a Reply, tersely laying out its position regarding the disparity (**Docket No. 1370**). And again, after Consejo sought an extension to file its position regarding the USA's grounds to oppose the revisiting of the Constitutional challenge (**Docket No. 1385**), the USA once more opposed the motion yet pressed that the challenge should be addressed in a new lawsuit (**Docket No. 1389**). And recently, Consejo did just that: it filed a new lawsuit against the USA (see **Docket No. 1392-1**) under the caption of *Consejo de Salud de Puerto Rico, Inc., et al., v United States of America, et al.*, Civil No. 18-1045 (GAG).

3. Noting Consejo's efforts to avoid procedural hurdles, the Court ordered the Commonwealth to inform by March 1, 2018, if 1) whether its position "in the captioned case remains unchanged in the new constitutional challenge filed," 2) whether it will "participate in said action" and 3) whether "it is an indispensable party under Rule 19 of the Federal Rules of Civil Procedure." (**Docket No. 1398**)

4. As to the Court's first question, the Commonwealth informs as follows: although U.S. Congress enacted H.R. 1892, titled *Bipartisan Budget Act of 2018*, thereby amending 42 U.S.C. §1308(g)(5) to increase Puerto Rico's funding cap and to provide for 100% Federal Medical Assistance Percentage ("FMAP"), said amendment will only be in effect from the period beginning on January 1, 2018 to September 30, 2019. *Id.*, Title III[1], Section 20301. Certainly, by addressing the island-wide devastation caused by Hurricane Maria, Congress may very well have temporarily stalled Puerto Rico's eminent fall into the Medicaid Cliff. Yet, upon expiration of the period, the disparate treatment in the budget cap and the FMAP remains

[1] H.R. 1892, Title III is appropriately titled Hurricane Maria Relief for Puerto Rico and the Virgin Islands Medicaid Programs.

unchanged –just as Puerto Rico's position *in the new constitutional challenge filed* remains unchanged.

5. As to the Court's second query: will Puerto Rico participate in the new action. The short answer is yes.

6. And finally, as to the Court's third and final question: is Puerto Rico an *indispensable* party under Rule 19 of the Federal Rules of Civil Procedure? The appearing Defendants posit that they are not indispensable. Let us see.

7. Rules 19, 20, 23 and 24 of the Federal Rules of Civil Procedure "aim to achieve judicial economies of scale by resolving related issues in a single lawsuit, while at the same time preventing the single lawsuit from becoming fruitlessly complex or unending. *Pujol v. Shearson/American Express*, 877 F.2d 132, 134 (1st Cir. 1989) (Citations omitted). These rules together seek to involve "as many apparently concerned persons as is compatible with efficiency and due process." Id. (Citations omitted).

8. Fed. R. Civ. P. 19 is relevant to when a lawsuit proceeds "without particular parties whose interests are central to the suit." *Picciotto v. Cont'l Cas. Co.*, 512 F.3d 9, 15 (1st Cir. 2008). The Rule affords for the joinder of *required parties* when feasible, Fed. R. Civ. P. 19(a), and/or for the dismissal of suits when joinder of a *required party* is 1) not feasible and 2) that party is **indispensable** under Fed. R. Civ. P. 19(b). *Bacardí Int'l Ltd. v. V. Suárez & Co.*, 719 F.3d 1, 9 (1st Cir. 2013).

9. Therefore if conducting this analysis, "a court must first determine if an absent party is a required party under Rule 19(a)." *Bacardi* 719 F.3d, at 10. (Citations omitted). Under Rule 19(a), a required Party, a person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction, must be joined as a party if:

> (A) in that person's absence, the court cannot accord complete relief among existing parties; or
> (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
> (i) as a practical matter impair or impede the person's ability to protect the interest; or
> (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Fed. R. Civ. P. 19(a)(1).

10. For purposes of this exercise, the Commonwealth Defendants assume that they are in fact a required Party. Certainly, if Consejo were to prevail, the residents of Puerto Rico and the Commonwealth Defendants would benefit from better services in the Medicaid Program and receive equal treatment under the Laws of the United States. This last bit is of particular interest to the Commonwealth Defendants.

11. However, only if the person is a required party under R. 19(a) (as we assume we are) but joinder **is not feasible**, then "the court must take step two. It must decide, using four factors, whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed." *Pujol v. Shearson/American Express*, 877 F.2d 132, 134 (1st Cir. 1989) (citations omitted). And these four factors are found in Fed. R. Civ. P. 19(b).

12. Because of the interplay between Rules 19, 20, 23 and 24 of the Federal Rules of Civil Procedure, it is unlikely that Consejo shall face the threat of dismissal under a failure to join an indispensable party simply because it is feasible to join the Commonwealth Defendants.

13. On the other hand, "[i]f a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff." Fed. R. Civ. P. 19(a)(2).

14. Therefore, it is the appearing Party's contention that it is not an indispensable party under Fed. R. Civ. P. 19.

15. In light of the above stated, the Commonwealth Defendants respectfully requests from this Honorable Court to take notice of the above, to deem the Order at Docket No. 1398 as complied with, and to issue any order it deem so appropriate.

WHEREFORE the appearing Defendants respectfully request from this Honorable Court to take notice of the above, to deem the Order at Docket No. 1398 as complied with, and to issue any order it deem so appropriate.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico on this 1st day of March 2018.

WANDA VÁZQUEZ GARCED
Secretary of Justice

WANDYMAR BURGOS VARGAS
Deputy Secretary in Charge of Litigation

SUSANA PEÑAGARÍCANO-BROWN
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