UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

COORS BREWING COMPANY, Plaintiff, v. JUAN CARLOS MÉNDEZ TORRES, SECRETARY OF THE TREASURY DEPARTMENT OF THE COMMONWEALTH OF PUERTO RICO, Defendant.	Civil No. 06-2150 (DRD)

OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

COMES NOW PLAINTIFF Coors Brewing Company ("Coors" or "Plaintiff"), through undersigned counsel, and respectfully avers and prays:

I. SUMMARY

The Magistrate Judge correctly found that the agreement between Coors and the Secretary of the Treasury Department of the Commonwealth of Puerto Rico ("Secretary" or "Defendant") is legally binding upon the parties. The Magistrate Judge also correctly determined that, pursuant to the agreement, this case must now proceed directly and immediately to a final determination on the merits of Coors' pending Motion for Summary Judgment, which seeks a ruling that Puerto Rico's beer tax differential ("Special Exemption") violates the Commerce Clause of the United States Constitution, U.S. Const. art. I, § 8, and Section 3 of the Puerto Rico Federal Relations Act ("FRA"), 48 U.S.C. § 741a.

The Magistrate Judge erred, however, in recommending that the Motion for Summary Judgment be denied. As explained below, and in numerous previous filings in this case, the Special Exemption is *per se* unconstitutional in light of its manifest protectionist purpose and

effect under controlling Supreme Court and Circuit precedent. *See, e.g.*, *Family Winemakers v. Jenkins*, 592 F.3d 1, 13 (1st Cir. 2010). The Magistrate Judge also erred in concluding that there was any basis for recommending that Defendant's most recent Motion to Dismiss be granted. Under the parties' binding agreement, the Secretary voluntarily, knowingly, and deliberately submitted the merits of this case to this Honorable Court's jurisdiction for final decision. *Levin v. Commerce Energy, Inc.*, 130 S. Ct. 2323, 2336 (2010), makes plain that principles of comity are *inapplicable* when, as here, the State itself has voluntarily chosen to submit to a federal forum.

For these reasons, this Honorable Court should reject the Magistrate Judge's recommendation that the Motion for Summary Judgment be denied and reject the recommendation that the Motion to Dismiss be granted.

II. INTRODUCTION

In 2006, Coors filed suit in this Court against the Secretary challenging the Special Exemption under the Commerce Clause and Section 3 of the FRA. Complaint for Declaratory and Injunctive Relief ("Complaint") (Doc. 1). Soon thereafter, Coors filed a Motion for Summary Judgment, as well as Memorandum of Law and a Statement of Material Facts in support of the Motion. *See* Pl.'s Mem. of Law in Support of Mot. for Summ. J. (Doc. 51) ("Pl.'s SJ Mem."); Pl.'s Statement of Material Facts in Support of Mot. for Summ. J. (Doc. 54) ("SMF"). After the case was remanded from the First Circuit, Coors filed a Renewed Motion Tendering Motion for Summary Judgment (Doc. 96). In response, this Court issued an Order to Show Cause "why the Court should not grant the declaratory judgment requested by [Coors]" (Doc. 99).

The Secretary responded by seeking baseless Rule 56(f) discovery. After briefing, a status conference, some encouragement from the Court, and consultation with counsel for Coors

(Doc. 116), Defendant accepted Coors' offer to provide limited discovery in exchange for Defendant's commitment to promptly submit the summary judgment motion for adjudication (Doc. 118). This Court "so ordered" the agreement (Doc. 119) and directed the parties to submit a joint status report on or before December 30, 2009 (Doc. 120). After Coors provided Defendant with the agreed-upon discovery, the parties submitted a joint status report (Doc. 121). In it, the parties informed the Court, *inter alia*, that they would work together to submit a joint stipulation of facts, *id.* ¶ 4, and "ha[d] agreed to hold all other proceedings in abeyance until the Court rules on the Motion for Summary Judgment," *id.* ¶ 13. This Court "so ordered" (Doc. 122) the parties' further agreement. The parties filed a joint stipulation of facts on March 16, 2010 for the self-described "purpose of facilitating the resolution of the Motion for Summary Judgment" (Doc. 137 at 1).

In a final attempt to avoid adjudication of the merits of Coors' suit, however, the Secretary subsequently filed a second Motion to Dismiss seeking to relitigate the question whether principles of comity required dismissal (Doc. 144). Coors promptly filed an opposition to the Motion to Dismiss, in which it argued, *inter alia*, that the motion was filed in breach of the parties' agreement to submit the merits of the summary judgment motion for resolution without further delay. Coors' Opp. to Def.'s July 14, 2010 Mot. to Dismiss (Doc. 151) ("MTD Opp."). On December 29, 2010, this Honorable Court referred the matter to the Honorable Magistrate Judge Justo Arenas (Doc. 160) for resolution. On February 10, 2011, the Magistrate Judge issued a Report and Recommendation ("R&R") (Doc. 167), in which he recommended that this Honorable Court: (1) enforce the parties' voluntary agreement to adjudicate the merits of this dispute in federal court; (2) deny Coors' Motion for Summary Judgment; and (3) grant the Secretary's Motion to Dismiss. Coors agrees with the Magistrate Judge that the parties'

agreement is binding and requires resolution of the pending Motion for Summary Judgment. As explained below, however, Coors respectfully requests that this Honorable Court reject the Magistrate Judge's recommendation and instead grant Coors' Motion for Summary Judgment, deny the Secretary's Motion to Dismiss, and grant Judgment to Coors as a matter of law in accordance with Rule 56 of the Federal Rules of Civil Procedure.

III. OBJECTIONS TO THE REPORT AND RECOMMENDATION

Coors agrees with the Magistrate Judge's recommendation that the stipulation between the parties should be enforced according to its terms and, as a result, that this case should be adjudicated on the merits in federal court. R&R at 20-24. However, as thoroughly explained in Coors' previous filings, as well as for the reasons set forth below, Coors hereby respectfully objects to the Magistrate Judge's recommendation that Coors' Motion for Summary Judgment be denied and that the Secretary's Motion to Dismiss be granted. *Id*. at 24-54.

1. The Magistrate Judge correctly concluded that the parties' voluntary agreement to adjudicate the merits of this dispute is binding and enforceable. *Id*. at 20-24; *see also id.* at 22-23 (stating that where stipulations do not involve questions of law they are "are generally abided by courts" and that parties "must consider both sides of the double-edged sword before agreeing to stipulations"). The Magistrate Judge thus also correctly found that the stipulation expressly required the Court to determinate whether Coors is entitled to summary judgment on its claim that the Special Exemption violates the Commerce Clause and Section 3 of the FRA. *Id*. at 23-24. As the Supreme Court recently explained, "[i]f the State voluntarily chooses to submit to a federal forum, principles of comity do not demand that the federal court force the case back into the State's own system." *Levin v. Commerce Energy, Inc.*, 130 S. Ct. 2323, 2336 (2010) (quoting *Ohio Bureau of Emp't Servs. v. Hodory*, 431 U.S. 471, 480 (1977)); *see also Brown v. Hotel and Restaurant Emps. and Bartenders Int'l Union Local 54*, 468 U.S. 491, 500 n.9 (1984).

As the Magistrate Judge correctly concluded, that is exactly what happened here. R&R at 21, 23 (explaining that the Secretary cannot be "exonerate[d] . . . of his commitments under the joint agreement" and that the Secretary did not "attempt to invalidate the stipulations as a challenge to the motion for summary judgment").

2. Although the Magistrate Judge correctly found that the stipulation required immediate resolution of Coors' summary judgment motion, he incorrectly recommended rejection of Coors' challenge to the Special Exemption on the merits. *Id*. at 24-41. The "dormant" aspect of the Commerce Clause, which Section 3 of the FRA parallels, *San Juan Trading Co. v. Sancho*, 114 F.2d 969, 974 (1st Cir. 1940), "directly limits the power of the States to discriminate against interstate commerce," *New Energy Co. v. Limbach*, 486 U.S. 269, 273 (1988). As an initial matter, the Magistrate Judge correctly concluded that the Commerce Clause applies to Puerto Rico. R&R at 28 n.15. For the reasons set forth below, however, the Magistrate Judge erred in determining that Special Exemption is not unconstitutionally discriminatory either in purpose or in effect. *Id*. at 31-38.

"Discrimination against interstate commerce in favor of local business or investment is *per se* invalid, save in a narrow class of cases in which the [defendant] can demonstrate, under rigorous scrutiny, that it has no other means to advance a legitimate local interest." C & A *Carbone, Inc. v. Town of Clarkstown, N.Y.*, 511 U.S. 383, 392 (1994) (citation omitted). Discrimination, for purposes of the dormant Commerce Clause, means "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." *Or. Waste Sys., Inc v. Dep't of Envtl. Quality*, 511 U.S. 93, 99 (1994); *Maryland v. Louisiana*, 451 U.S. 725, 754 (1981). State laws "can discriminate against out-of-state interests in three different ways: (a) facially, (b) purposefully, or (c) in practical effect." *E. Ky. Resources v.*

Fiscal Court of Magoffin County, Ky., 127 F.3d 532, 540 (6th Cir. 1997) (citation omitted); *Bacchus Imports Ltd. v. Dias*, 468 U.S. 263, 270 (1984) ("A finding that state legislation constitutes economic protectionism may be made on the basis of either discriminatory purpose or discriminatory effect." (citations and quotations omitted)).

The Magistrate Judge chiefly focused on the fact that the Special Exemption does not facially discriminate against out-of-state competitors and includes a purportedly neutral statement of legislative purpose. R&R 31-34. In so doing, the Magistrate Judge disregarded the Supreme Court's admonition that facial neutrality does not control whether a statute purposefully discriminates against interstate commerce. *W. Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 201 (1994) ("Our Commerce Clause jurisprudence is not so rigid as to be controlled by the form by which a State erects barriers to commerce."); *Best & Co., Inc. v. Maxwell*, 311 U.S. 454, 455 (1940) ("The Commerce Clause forbids discrimination, whether forthright or ingenious."). "The crucial inquiry, therefore, must be directed to determining whether [the statute] is basically a protectionist measure, or whether it can fairly be viewed as a law directed to legitimate local concerns[.]" *Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978). The Magistrate Judge thus was obligated to "look to direct and indirect evidence to determine whether a state adopted a statute with a discriminatory purpose," *Smithfield Foods, Inc. v. Miller*, 367 F.3d 1061, 1065 (8th Cir. 2004), including statements by lawmakers, the circumstances surrounding the enactment of the legislation, and the statute's historical background, *Waste Mgmt. Holdings, Inc. v. Gilmore*, 252 F.3d 316, 336 (4th Cir. 2001); *McNeilus Truck & Mfg., Inc. v. Ohio*, 226 F.3d 429, 443 (6th Cir. 2000); *Jones v. Gale*, 470 F.3d 1261, 1269 (8th Cir. 2006). Indeed, the First Circuit last year reiterated that "the methodology for determining legislative purpose when a state statute is allegedly motivated by an intent to discriminate against interstate commerce" requires a court to

examine "statutory text, context, and legislative history" as well as "whether the statute was closely tailored to achieve the legislative purpose." *Family Winemakers v. Jenkins*, 592 F.3d 1, 13 (1st Cir. 2010) (internal citation and quotation omitted)).

Had the Magistrate Judge evaluated the Special Exemption under this standard, he would have recommended granting Coors' motion. The statute's historical background and legislative record conclusively demonstrate that it is a protectionist measure designed to insulate local industry from out-of-state competition. Pl.'s SJ Mem. at 15-20; SMF ¶¶ 1-90. As Coors has explained, the Superior Court of Puerto Rico, the only court to address the actual legislative purpose of the Special Exemption, has candidly explained that the "evident" purpose of the tax differential was "to create a protectionist mechanism for local breweries." *U.S. Brewers Ass'n, Inc. v. César Pérez*, No. PE-78-1137, at 42-43 (P.R. Super. Ct. Dec. 12, 1978); SMF ¶¶ 3-8. Indeed, the Magistrate Judge acknowledged that "for at least some of the legislature, protection for Cervecería India was an express rationale for passing" the Special Exemption, but he chose to discount this evidence because it "d[id] not represent the entire legislature." R&R at 35. Statements by key legislators, however, are "precisely the kind of evidence the Supreme Court has looked to in previous Commerce Clause cases challenging a statute as discriminatory in purpose." *Family Winemakers*, 592 F.3d at 7 n.4 (citing *Minn. v. Clover Leaf Creamery Co.*, 449 U.S. 456, 465-68 (1981); *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 352 (1977)). As in *Family Winemakers*, these were not "isolated" statements; the record reflects that an overwhelming number of key legislators advocated for the passage of the Special Exemption, as then-House Treasury Committee Chairman Zayas Seijo candidly announced, "to maintain the protection of Cervecería India based on its production." SMF ¶ 64; *see also id.* ¶¶ 30-73. Put simply, the legislative record "is brimming with protectionist rhetoric," *SDDS, Inc. v. South*

Dakota, 47 F.3d 263, 268 (8th Cir. 1995), confirming that the Commonwealth "intended to benefit its local [beer] industry, and that it did so in particular ways whose effects on out-of-state [brewers] could easily be foreseen," *Family Winemakers*, 592 F.3d at 14; *see also* Pl.'s Supp. Mot. Advising the Court of Recent Authority in Support of Mot. for Summ. J. (Doc. 125) ("Pl.'s Supp. Mot.") at 3-5; Pl.'s Reply to Response to Supplemental Mot. (Doc. 133) ("Pl.'s Supp. Reply") at 2-8.

The Magistrate Judge also incorrectly concluded that the Special Exemption does not have a discriminatory effect on out-of-state brewers. R&R at 36-38. The Supreme Court and the First Circuit have consistently invalidated state laws that disproportionately benefit local industry or disproportionately burden out-of-state competitors. *See, e.g.*, *Hunt*, 432 U.S. at 349; *Bacchus*, 468 U.S. at 271; *W. Lynn Creamery*, 512 U.S. at 194-95; *Camps Newfound/Owatonna, Inc. v. Harrison, Me.*, 520 U.S. 564, 579-80 (1997); *Walgreen Co. v. Rullan*, 405 F.3d 50, 52 (1st Cir. 2005). Most recently, the First Circuit struck down Massachusetts's strikingly similar wine gallonage law as discriminatory in effect because it "confer[red] a clear competitive advantage to 'small' wineries, which include all Massachusetts's wineries, and create[d] a clear comparative disadvantage for 'large' wineries, none of which are in Massachusetts." *Family Winemakers*, 592 F.3d at 11. As the Court explained, the "ultimate effect" of the law's gallonage cap was "to artificially limit the playing field in this market in a way that enables Massachusetts's wineries to gain market share against their out-of-state competitors." *Id*. at 12; *see also* Pl.'s Supp. Mot. at 4-6; Pl.'s Supp. Reply at 8-10.

In light of *Family Winemakers*, as well as the other decisions relied upon by Coors in support of its summary judgment motion, the Magistrate Judge should have recommended striking down the Special Exemption as discriminatory in both purpose and effect. Pl.'s SJ

Mem. at 20-23. Just as all Massachusetts wineries qualified for the small winery shipping license under the gallonage cap, while nearly all out-of-state wineries did not, all local brewers in Puerto Rico "fall neatly" under the Special Exemption's cap and thus are entitled to the reduced tax rate, while nearly 94% of off-island brewers (including Coors) do not qualify. *See Family Winemakers*, 592 F.3d at 16; *see also Walgreen*, 405 F.3d at 55. And, like the Massachusetts law, which burdened out-of-state-wineries with higher distribution costs compared to in-state wineries, the Special Exemption imposes higher costs on off-island products than those of the local brewer. The ultimate effect of the Special Exemption, like the Massachusetts law, thus has been to increase the market share of the local brewer at the expense of off-island brewers as a class. Pl.'s S.J. Mem. at 22-23; SMF ¶¶ 91-100. "[A] law burden[ing] a group whose members [are] entirely out-of-state and benefit[ing] a class whose members [are] largely but not wholly located in-state" is "impermissibly discriminatory in effect." *Family Winemakers*, 592 F.3d at 13; *see also Gov't Suppliers Consol. Servs., Inc. v. Bayh*, 975 F.2d 1267, 1279 (7th Cir. 1992).

Finally, the Special Exemption cannot overcome the "virtually per se" rule of invalidity to which state laws that discriminate against interstate commerce are subject. *Dep't of Revenue v. Davis*, 553 U.S. 328, 338 (2008) (citation omitted). Because both the purpose and effect of the Special Exemption—*i.e.*, protection of the local beer industry from the rigors of interstate competition—is the statute's constitutional defect, the Secretary is unable to "demonstrate both that the statute serves a legitimate local purpose, and that this purpose could not be served as well by available nondiscriminatory means" as a matter of law. *Maine v. Taylor*, 477 U.S. 131, 138 (1986) (citation and quotation omitted). "[T]he promotion of in-state business by discriminating against non resident competitors is not a legitimate state purpose." *Starlight Sugar, Inc. v. Soto*, 909 F. Supp. 853, 858 (D.P.R. 1995) (internal citations and quotation

omitted); *Bacchus*, 468 U.S. at 272-73 ("It has long been the law that States may not 'build up [their] domestic commerce by means of unequal and oppressive burdens upon the industry and business of other States.' . . . [I]t is irrelevant to the Commerce Clause inquiry that the motivation of the legislature was the desire to aid the makers of the locally produced beverage rather than harm to out-of-state producers."). As the Supreme Court has explained, legislation motivated by a desire to save a struggling local enterprise "constitutes economic protectionism in every sense of the phrase." *Id* at 272 (citation omitted).[1] Accordingly, Coors is entitled to judgment as a matter of law on its claims that the Special Exemptions violates the dormant Commerce Clause and Section 3 of the FRA.[2]

3. The Magistrate Judge also erred in recommending that this Court grant the Secretary's Motion to Dismiss. R&R at 41-54. As explained above, because the parties' stipulation is binding and requires the adjudication of this dispute on the merits, there is no basis for dismissing this lawsuit on comity grounds. Where, as here, the State itself has voluntarily submitted to a federal forum, notions of comity are *inapplicable*. *See Levin*, 130 S. Ct. at 2336; *see also* MTD Opp. at 6-9. This point in itself is sufficient to render *Levin* irrelevant. Moreover,

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[1] The Magistrate Judge also recommended that this Honorable Court declare the Special Exemption constitutional under the standard set forth in *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). R&R at 39-41. As the Magistrate Judge acknowledges, however, Coors has only reserved the right to bring such a claim in the event that its pending Motion for Summary Judgment is denied—Coors has not yet sought summary judgment under *Pike*. R&R at 39; *see also* FEDERAL PROCEDURE, LAWYERS EDITION, 27A Fed. Proc. § 62:739 (2006) ("The denial of a motion for summary judgment does not bar the moving party from making a second motion for summary judgment."). As a result, the Magistrate Judge's resolution of this question was premature and his recommendation thus should be rejected on that basis.

[2] Because the Special Exemption violates the dormant Commerce Clause and Section 3 of the FRA, the Secretary has violated Section 1983 of Title 42 of the United States Code and is thus liable for Coors' attorneys' fees under Section 1988(b). *See* Complaint (Doc. 1) at 27 ("Request for Relief"); *see also* Pl.'s SJ Mem. at 25 and n.6 (citing *Carbana v. Cruz*, 588 F. Supp. 80, 82 (D.P.R. 1984); *Berrios v. Inter Am. Univ.*, 535 F.2d 1330, 1331 n.3 (1st Cir. 1976)).

because the Special Exemption violates the dormant Commerce Clause and the FRA, Coors is now entitled to summary judgment, which constitutes a final decision on the merits. *See* Fed. R. Civ. P. 56(a) ("The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."). Accordingly, the Magistrate Judge should have recommended that this Court grant Coors judgment as a matter of law on its meritorious claims instead of recommending that the motion to dismiss be granted.

In any event, even if the Secretary were not operating under a binding agreement to submit this case to this Honorable Court for a final decision on the merits of Coors' claims in the Motion for Summary Judgment, Motion to Dismiss would still have to be denied because the Puerto Rico courts are not "an adequate state-court forum . . . to hear and decide" its federal claims. *Levin*, 130 S. Ct. at 2330. First, these courts will not provide Coors a "full hearing . . . at which [it] may raise any and all constitutional objections" to the Special Exemption. *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 514 (1981) (citations and quotations omitted). The Puerto Rico Supreme Court will almost certainly refuse to evaluate Coors' claims based on its rote application of *stare decisis* notwithstanding the fact that its prior decisions were based on different facts and were decided under a different legal standard. MTD Opp. at 9-11. Second, given that court's refusal to consider legislative history, it is "at best 'speculative' whether the [Puerto Rico] courts [will] follow[] the federal constitutional rule" governing dormant Commerce Clause challenges. *Rosewell*, 450 U.S. at 517 n.21 (quoting *Hillsborough v. Cromwell*, 326 U.S. 620, 625-26 (1946)); *see also* MTD Opp. at 11-13.[3] And third, forcing

[3] Although the First Circuit previously rejected the argument that the Puerto Rico courts are effectively closed to dormant Commerce Clause challenges, it did so in part because it believed the Puerto Rico Supreme Court had "not fully set forth its view" of the dormant

Coors to begin this litigation anew in the Puerto Rico courts would require "ineffectual activity" as Coors would be asked to file "repetitive suits on the same issue" to obtain relief. *Rosewell*, 450 U.S. at 518 and n.22; *see also* MTD Opp. at 13. In sum, this case presents the quintessential circumstance where dismissal under principles of comity is inappropriate.[4]

IV. CONCLUSION

For these reasons, Coors respectfully requests that this Honorable Court reject that portion of the R&R that recommends denial of Coors' Motion for Summary Judgment and grant of Defendant's Motion to Dismiss. Accordingly, Coors respectfully requests that Court enter judgment in its favor as a matter of law.

Commerce Clause. *Carrier Corp. v. Perez*, 677 F.2d 162, 165 (1st Cir. 1982). But the concurring opinions in *Puerto Rican Beer Importers Ass'n, Inc. v. Commonwealth of Puerto Rico*, 171 D.P.R. 140 (2007) (Doc. 47), clearly show that the Puerto Rico Supreme Court will not respect the First Circuit's resolution of this question. *Compare Antilles Cement Corp. v. Acevedo Vilá*, 408 F.3d 41, 46 (1st Cir. 2005), *with Beer Importers*, (Doc. 47 at 7-8) (Fuster, J., concurring); *see also Antilles Cement*, 408 F.3d at 37, 44. *Beer Importers* also has now made clear that henceforth all constitutional challenges to the beer tax regime will be routinely disposed of on *stare decisis* grounds and that the Puerto Rico Supreme Court intends to continue to employ this doctrine as a means of avoiding the question whether the Clause applies in these sorts of cases. Thus, it is now plain that the Court will not fairly resolve dormant Commerce Clause challenges against the beer tax regime, whatever it might do in other dormant Commerce Clause cases.

[4] In any event, "[c]omity considerations . . . are properly treated as questions of whether a court *should*, in its discretion, decline to exercise subject matter jurisdiction that it already possesses." *McBee v. Delica Co., Ltd.*, 417 F.3d 107, 111 (1st Cir. 2005) (emphasis added). Accordingly, broad equitable considerations—beyond the availability of a "plain, adequate and complete" remedy—bear on whether this Court should exercise jurisdiction. *See, e.g. Lambrix v. Singletary,* 520 U.S. 518, 523 (1997). Equity does not support dismissal at this juncture. As the Magistrate Judge explained, by filing the Motion to Dismiss, the Secretary is in blatant disregard of his voluntary commitment to Coors and to this Court to adjudicate the merits of this dispute in this federal forum, R&R at 20-24, and Coors in good faith relied upon and has fully performed its obligations under the agreement, MTD Opp. at 12. Moreover, the Secretary entered in the agreement after consciously and deliberately opting against further judicial review of the First Circuit's decision in this case and after the Supreme Court granted certiorari in *Levin*. *See id.* at 13-15. The Secretary should not be rewarded for breaching a court-ordered stipulation into which he knowingly entered. *Id.* at 13-14. The Secretary should not have been permitted to even file this motion—let alone have it granted it on discretionary grounds. *Id*. at 5-9.

Respectfully submitted on this 17th day of February, 2011.

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CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notification of the filing to the following: Wandymar Burgos Vargas, Federal Litigation Division, Puerto Rico Department of Justice.

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