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Proposed Counsel to the Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

)	
In re:)	Chapter 11
)	
REPUBLIC METALS REFINING)	
CORPORATION, <i>et al.</i> , ¹)	Case No. 18-13359 (___)
)	
Debtors.)	(Joint Administration Pending)

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDER
(I) AUTHORIZING DEBTORS TO (A) PAY PRE-PETITION WAGES
AND OTHER COMPENSATION, AND EMPLOYEE BENEFITS, AND
(B) CONTINUE EXISTING EMPLOYEE BENEFIT PLANS AND
PROGRAMS, (II) AUTHORIZING BANKS AND FINANCIAL
INSTITUTIONS TO PAY ALL CHECKS AND ELECTRONIC PAYMENT
REQUESTS, AND (III) APPROVING THE DEBTORS' DISCRETIONARY
EMPLOYEE INCENTIVE PROGRAMS**

Republic Metals Refining Corporation (“Republic Refining”), Republic Metals Corporation (“Republic Metals”), and Republic Carbon Company, LLC (“Republic Carbon”), as

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Republic Metals Refining Corporation, 15 West 47th Street, Suites 206 and 209, New York, NY 10036 (3194), Republic Metals Corporation, 12900 NW 38th Avenue, Miami, FL 33054 (4378), and Republic Carbon Company, LLC, 5295 Northwest 163rd Street, Miami Gardens, FL 33014 (5833).

debtors and debtors-in-possession (collectively, the “Debtors”), in the above-captioned chapter 11 case (the “Chapter 11 Cases”), by and through undersigned counsel, hereby file this motion (the “Motion”) seeking entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively (collectively, the “Orders”), pursuant to sections 105(a), 363(c)(1), and 507 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) authorizing the Debtors, in their sole discretion, to (a) pay pre-petition wages and other compensation, employee business expense allowances and reimbursements, employee benefits, and (b) continue existing employee benefit plans and programs, (ii) authorizing banks and other financial institutions to receive, process, honor, and pay all checks and electronic payment requests relating to the foregoing, (iii) approving the Debtors' discretionary employee incentive programs, and (iv) granting such other and further relief as requested herein or as the Court (defined herein) otherwise deems necessary or appropriate. In support of this Motion, the Debtors submit the *Declaration of Scott Avila in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), which is being filed contemporaneously herewith and is incorporated herein by reference. In further support of this Motion, the Debtors respectfully state as follows:

JURISDICTION

1. The United States Bankruptcy Court for the Southern District of New York (the “Court”) has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue in the Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105, 363, and 507 of the Bankruptcy Code, as supplemented by Bankruptcy Rules 6003 and 6004 and Local Rule 2015-

2.

BACKGROUND

4. On November 2, 2018 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their property as debtors and debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee has been appointed in these chapter 11 cases.

THE BUSINESS

Overview of Company, Assets and Operations

5. Founded in 1980 by Richard Rubin, the Debtors are an internationally-recognized “Good Delivery” refiner of precious metals with a primary focus on gold and silver. Products include delivery of refined bars of both gold and silver, grains, and minted and casted investment grade coins and bars in gold and silver of various designs and sizes. The Debtors have the capacity to produce approximately 80 million ounces of silver and 350 tons of gold, along with over 55 million pieces of minted products, per annum. Suppliers ship unrefined gold and silver to the Debtors for refining from all over the United States and the Western Hemisphere. Precious metal is refined and, depending on the arrangement with the applicable buyer, the Debtors pay for unrefined metal either by check or wire transfer or delivery of refined product (physical metal) in “metals credit” on the London metals exchange, commonly referred to as “Loco London.” Most often, customers request payment “Loco London.”

6. Debtor RMC's principal office is located at 12900 NW 38th Avenue, Miami, Florida 33054, where RMC runs fully integrated gold and silver refineries (the “Refinery”). The Debtors' books and records are primarily held at this location. Debtor RMRC's principal office and operations are located at 15 West 47th Street, Suites 206 and 209, New York, New York 10036. In New York, RMRC services smaller customers in the New York metropolitan area, such as

jewelry manufacturers, precious metal recyclers, and pawnshops, by purchasing metal from those suppliers, melting it, and sending the melted metals to RMC's Refinery in Florida. Debtor RCC's principal business office is located at 5295 NW 163rd Street, Miami Gardens, Florida 33014, where RCC processes spent carbon from metals mines by drying, homogenizing, sampling, analyzing, and sending to a third party low grade smelter for further processing. The Debtors also maintain offices at leased premises in Los Angeles, Toronto, Shanghai, and Mexico. Upon belief, no material assets are held outside the United States.

7. Collectively, from its two Debtor locations, as well as through non-debtor subsidiaries, the Debtors provide numerous products and services to a diverse base of global mining corporations, financial institutions and jewelry manufacturers. In addition to refining and minting, vaulting, assaying and risk management / hedging services. The Debtors also have a state of the art carbon sampling / processing facility and, prior to the Chapter 11 filing, looked to further develop their market-leading position through new growth opportunities in high technology precious metals products and services.

8. At the Refinery, the Debtors also maintain an ISO9001 and LBMA approved laboratory, as well as a fully-integrated fabricated products division including die design and production, extrusion, flameless casting, machining, and minting of precious metals investment grade products. The Debtors have a segregated small batch refinery within the Refinery where materials with diamonds and other precious stones are treated chemically, thus freeing the precious stones unharmed. The precious metals are refined and reoperated in this circuit as well.

9. The Debtors do not have an office in Lima, Peru, but do have a representative there who manages the Debtors' compliance in Peru and helps secure metal sourcing there.

10. The Debtors also maintain a leased sales office in Shanghai, China for RMC's wholly-owned subsidiary, Republic Metals Trading (Shanghai) Co., Ltd. ("Republic Shanghai") with two representatives who maintain direct contact with the Chinese banks in regards to the bar supply and sales, as well as sourcing consumables (chemicals, supplies, etc.) for the Refinery.

11. The Debtors do not have an office in Los Angeles, but employ a sales manager there who handles all west coast United States refining and product sales efforts. Republic Trans Mexico Metals ("RTMM"), an indirect, wholly-owned subsidiary of RMC, leases an office and melt facility in Mexico City (Madero district) where its 15 independent contractors melt/assay and finance the purchase of precious metals scrap that are sent to the Refinery weekly.

12. In the period prior to the Petition Date, there were approximately two hundred (200) salaried and hourly employees of Debtor Republic Metals, approximately four (4) salaried and hourly employees of Debtor Republic Refining, and approximately ten (10) salaried and hourly employees of Debtor Republic Carbon.

13. As required by Local Rule 1007(a)(6), a summary of the Debtors' assets and liabilities is as follows:

Summary of Assets & Liabilities

Estimated as of November 2, 2018

<i>(000's)</i>			
Assets		Liabilities	
Cash	\$ 8,562	Senior Debt	\$ 177,355
Inventory	141,211	Accounts Payable	1,400
Property. Plant and Equipment	25,000	Metal Obligations	86,346
	<u>\$ 174,773</u>		<u>\$ 265,101</u>

ORGANIZATIONAL STRUCTURE

14. RMRC and RMC are each owned 100% by the Amended and Restated Richard Rubin Revocable Trust (the “R. Rubin Trust”). RMC owns 100% of RCC.

15. RMC owns 100% of each of non-debtors Republic Shanghai, Republic High Tech Metals, RMC Diamonds, LLC, RMC2, J&L Republic, LLC, and R&R Metals, LLC. J&L Republic, LLC and R&R Metals, LLC each own 50% of RTMM.

16. Avila is the Chief Restructuring Officer of the Company. The other individuals who comprise the Debtors' existing senior management, and tenure (in years) with the Company, are:

- a. Jason Rubin, President and CEO (11);
- b. David Comite, Treasurer and CFO (20);
- c. Zachary Shair, Refinery Operations Director (7);
- d. James Gavilan, SVP, Business Development (5);
- e. Luis Pena, Head of Global Sales (21);
- f. Alan Silverstein, General Counsel (5);
- g. Richard Lani, Chief Compliance Officer (5);
- h. JR Rao, VP, Environmental Health & Safety (5);
- i. Lindsey Rubin, Corporate Secretary (7); and
- j. Rafael Carbonell, COO (4).

DEBT STRUCTURE

The Senior Lenders and the Second Amended and Restated Intercreditor Agreement

17. The Senior Lenders (defined below) are parties to that certain Second Amended and Restated Intercreditor Agreement dated February 19, 2016, as amended from time to time (the “Intercreditor Agreement”), by and among Bank Hapoalim B.M. (“Hapoalim”), Mitsubishi International Corporation (“Mitsubishi”), Coöperatieve Rabobank U.A., New York Branch

(“Rabobank”), Brown Brothers Harriman & Co. (“BBH”), ICBC Standard Bank Plc (“ICBCS”), Techemet Metal Trading LLC (“Techemet”), Woodforest National Bank (“Woodforest”), Bank Leumi USA (“Leumi”) (Leumi, Rabobank, BBH, Hapoalim, Mitsubishi, ICBCS, Techemet, and Woodforest are collectively, the “Senior Lenders”). RMC acknowledged and agreed to the Intercreditor Agreement.

18. Each Senior Lender is party to its own respective credit documents with the Company. Neither the Intercreditor Agreement nor the Senior Lenders’ credit documents provide for a syndication or consolidation of the obligations owed the Senior Lenders, and no administrative agent is appointed to act for the Senior Lenders.

19. The Senior Lenders assert blanket liens on all assets of RMC, RMRC, and RCC, including all personal and real property, instruments and intangibles. The security interest of each Senior Lender is deemed to be equal priority with the security interest of every other Senior Lender pursuant to the Intercreditor Agreement (except as otherwise expressly provided therein), without regard to the time of attachment or perfection of the security interests, the order of filing financing statements and the giving or failure to give notice of a purchase money security interest.

20. Furthermore, and pursuant the Intercreditor Agreement, after an event of default, with certain exceptions, the Senior Lenders shall share *pro rata* all amounts and collections realized by a Senior Lender from any of RMC's collateral, whether or not such Senior Lender is perfected.

RMC's Loans and Precious Metals Lease Agreements

21. Rabobank agreed to loan to RMC the principal amount of \$45,000,000 at a per annum contract rate of interest in the amount of a margin plus defined “Base Rate” or LIBOR and default rate of interest of 2% over the existing rate or 3.2% over the Base Rate, pursuant to a Promissory Note, Security Agreement and Line Letter Agreement dated on or about June 26, 2017.

22. BBH agreed to loan to RMC the principal amount of \$15,000,000 at a per annum contract rate of interest of Overnight LIBOR (or fixed up to 90 days, at Maker's option) plus 2.00% and default rate of interest of 120% of the rate payable on the due date or demand, pursuant to a Secured Demand Promissory Note and General Security Agreement Letter Agreement dated on or about May 20, 2016.

23. Hapoalim agreed to loan to RMC the principal amount of \$25,000,000 at a per annum contract rate of interest of LIBOR plus agreed margin and a default rate of interest of Hapoalim's prime rate pursuant to an Amended and Restated Promissory Note, Security Agreement and Letter Agreement dated on or about November 10, 2016.

24. Mitsubishi agreed to lease certain precious metals to RMC pursuant to a Metals Lease Agreement dated November 22, 2016.

25. ICBCS agreed to lease a certain amount of silver to RMC pursuant to the FOA Master Netting Agreement (including any annexes, schedules or exhibits thereto) entered into by ICBCS (formerly known as Standard Bank Plc) and RMC dated as of January 19, 2011, as amended and restated from time to time (the "ICBCS Master Netting Agreement").

26. Techemet agreed to lease certain precious metals to RMC a Lease Agreement dated on or about March 6, 2017.

27. Woodforest agreed to loan RMC the principal amount of \$15,000,000 at the per annum contract rate of interest of LIBOR plus 2.25% and default rate at the highest rate allowed by applicable law, pursuant to a Revolving Line of Credit Promissory Note, Security Agreement, and Guaranty of Payment and Performance dated on or about October 30, 2017.

28. Leumi agreed to loan RMC the principal amount of \$25,000,000 at a per annum interest rate of LIBOR plus 2.25% and default rate of the current rate plus 3% pursuant to the Line

of Credit Note (Discretionary) Security Agreement, Letter Agreement and Pledge Agreement dated on or about October 31, 2017.

29. The loan documents described in the foregoing paragraphs are referred to herein collectively, the “Individual Credit Documents”).

30. As required by Local Rule 1007 (a)(5), the name, address, claim amount, brief description of collateral, estimated value, and statement regarding liens of the Senior Lenders is attached to the First Day Declaration as Attachment A.

SUPPLIER AGREEMENTS

31. RMC is also a party to approximately 35 agreements (each a “Supplier Agreement”), providing for the supplier to deliver materials to RMC such as gold and silver dore bars or other similar raw materials (“Raw Materials”) for refining pursuant to the standards agreed upon in the Supplier Agreement.

32. Generally, upon completion of RMC's obligations to refine the Raw Materials under a Supplier Agreement, the Supplier has the option to elect that RMC transfer the value of the refined material to the Supplier's designated account, or alternatively, may have the “Recoverable Metals” due from each lot of Refined Material transferred to the Supplier's designated metal account.

33. It is estimated that total outstanding Supplier obligations are approximately \$86,346,000.

EVENTS LEADING TO THE CHAPTER 11 FILING

Liquidity Demands on the Company

34. In April 2018, the Debtors discovered a significant discrepancy in its inventory accounting as part of its preparation of 2017 year end financials and quarterly financials for the first quarter, 2018. This led to the Debtors retaining the accounting firm of Eisner-Amper to

conduct a physical inventory. On June 8, 2018, Eisner-Amper conducted the physical inventory and, thereafter, on June 20, 2018, delivered a final report that confirmed inventory discrepancies in the Debtors' books and records.

35. On June 24, 2018 in Miami, the Debtors organized a meeting of the Senior Lenders to discuss the inventory issue. The Debtors' request was for the Senior Lenders to give the Debtors the necessary breathing room to continue to operate as a going concern for the near future in order to further evaluate and understand the inventory issues and develop a plan to either immediately rectify the inventory issues or otherwise restructure the Debtors.

The Default Notices

36. On July 10, 2018, the Senior Lenders served termination, default and demand notices on RMC that among other things, accelerated all debt obligations and terminated lease obligations under the Individual Credit Documents pursuant to the Default Notices (as defined below). On or about July 10, 2018, ICBCS, one of the Senior Lenders, also exercised its rights under the ICBCS Master Netting Agreement and the Unallocated Precious Metals Accounts Agreement dated May 28, 2015 (as novated, amended, restated, modified or supplemented from time to time) between ICBCS and RMC (the "London Clearing Account Agreement") resulting in RMC's loss of access to and use of its London clearinghouse account maintained by ICBCS (the "London Clearing Account"), and for all intents and purposes, ended the Debtors' ability to service customer deliveries via "Loco London" credit transactions. On July 10, 2018, the Senior Lenders issued the following notices to the Debtor:

a. By letter dated July 10, 2018, Rabobank sent RMC a Notice of Demand for Payment Under Line Letter Agreement;

b. By letter dated July 10, 2018, Techemet sent RMC a Notice of Early Termination Date Under Lease Agreement;

c. By letter dated July 10, 2018, BBH sent RMC a Notice of Demand for Payment Under Loan Documents;

d. By letter dated July 10, 2018, Bank Hapoalim B.M., New York Branch sent RMC a Notice of Demand for Payment Under Line Letter Agreement;

e. By letter dated July 10, 2018, Bank Leumi USA sent RMC a Notice of Demand for Payment Under Line Letter Agreement;

f. By letter dated July 10, 2018, Woodforest National Bank sent RMC a Notice of Acceleration and Demand for Payment;

g. By electronic mail dated July 10, 2018, Mitsubishi sent RMC a Notice of Event of Default; and

h. By letter dated July 10, 2018, ICBCS sent RMC a Notice of Liquidation Date and Termination of Transactions Under Master Netting Agreement.

(each of the foregoing, collectively, the “Default Notices”).

The Forbearance Agreement and Sale Process

37. At or about that same time, the Debtors contacted a major, strategic metals refiner about the possible acquisition of the Debtors as a going concern (the “Potential Buyer”). Shortly thereafter, the Potential Buyer produced a letter of intent to acquire the Debtors' business. This lead to an immediate call between the Debtors, the Senior Lenders and the Potential Buyer. As a result of this call, among other reasons, the Senior Lenders agreed to forbear, temporarily, and allow the Debtors to operate in the ordinary course, pending negotiation of a more formal forbearance arrangement to allow the Debtors to pursue a sale with the Potential Buyer, or otherwise to pursue a sale on a broader scale. On or about July 16, 2018, an agreement was reached whereby RMC’s access to and use of its London Clearing Account, and the net credits therein, were restored allowing the Debtors to service customer deliveries via “Loco London” credit transactions.

38. Substantial, extensive negotiations ensued which ultimately resulted in the execution of a Forbearance Agreement on August 7, 2018 (the “Forbearance Agreement”), which

then became effective on August 17, 2018 (the “Forbearance Effective Date”). The Senior Lenders agreed, among other things, to forbear during the Forbearance Period (as defined therein) from making demand for payment under their respective Individual Credit Documents and exercising their respective rights and remedies under or in connection with any and all of the Individual Credit Documents and the Intercreditor Agreement, arising from all Existing Defaults (as defined therein).

39. With the Forbearance Agreement in place, the Company immediately retained SSG Capital (“SSG”) as investment banker to assist with the sale of the Debtors' business to the Potential Buyer, or otherwise market the Debtors' business on a broader scale.

40. Intense and good faith negotiations with the Potential Buyer continued for over three (3) months. No broader marketing effort was undertaken as all parties, including the Debtors and the Senior Lenders, agreed that a broader marketing effort would likely be detrimental to the Debtors' business in light of the nature of the metals refining and trading industry (a very small market and closed knit industry). Despite numerous, lengthy telephone calls, an in-person meeting in New York City, and multiple exchanges of term sheets and offers, the Debtors and the Senior Lenders were unable to reach terms with the Potential Buyer acceptable to the Senior Lenders. The Forbearance Agreement also terminated prior to the Petition Date.

41. On or about October 18, 2018, ICBCS exercised its right to suspend the Debtors' access to the London Clearing Account. Thereafter, the Senior Lenders informed the Debtors that the Senior Lenders were ceasing negotiations with the Potential Buyer.

42. Notwithstanding what appeared to be the cessation of discussions with the Potential Buyer, and concurrently during the Debtors' preparations for Chapter 11, the Debtors, Lenders and Potential Buyer continued to discuss what, if any, acquisition prior to and outside of a Chapter 11

might be possible. By October 26, 2018, the parties were extremely close to finalizing the material terms of an immediate, going concern acquisition of the Debtors by the Potential Purchaser, with the last open diligence items to be resolved by October 31, 2018.

43. Unfortunately, the Potential Buyer, Debtors and Lenders were unable to finalize the terms of an acquisition by the end of the day, October 31. With limited cash, and the inability to trade metals or deliver refined goods, the Debtors commenced these proceedings on November 2, 2018, to run an orderly sale process of their assets and operations. It is the Debtors intent to attempt to sell the Company as a going concern, but if unsuccessful, the Debtors will engage in a process to liquidate their assets and inventory for the ratable benefit of their creditors.

44. On or about October 18, 2018, ICBCS exercised its right to suspend the Debtors' access to the London Clearing Account. With marginal cash, and the inability to trade metals or deliver refined goods, the Debtors commenced these proceedings on November 2, 2018, for the purpose of liquidating their inventory and running an orderly sales process for their assets and operations.

45. In consultation with their professionals, the Debtors have diligently evaluated a number of options to address the Debtor's current financial issues, including retaining a Chief Restructuring Officer, Scott Avila of Paladin Management Group, LLC.

46. Additional details regarding the Debtor's business, assets, capital structure, and the circumstances leading to the filing of these Chapter 11 Cases are set forth in the First Day Declaration filed contemporaneously herewith and incorporated herein by reference as though set forth in full.

WAGE AND BENEFIT OBLIGATIONS

A. Wages and Salaries

47. As set forth in the First Day Declaration, the Debtors anticipate continuing operations at the Refinery for the near term while the Debtors wind down their business in an orderly manner. The Debtors' success in its liquidation efforts will be highly dependent on the continued support and performance of its workforce.

48. The Debtors employees perform a broad spectrum of services for the Debtors, including, without limitation, marketing, ensuring compliance with various regulatory scheme, various operational, technical, and managerial roles at the Refinery and related laboratories, finance and accounting, and information technology services (the "Employees").

49. In the period prior to the Petition Date, there were approximately two hundred (200) salaried and hourly employees of Debtor Republic Metals, approximately four (4) salaried and hourly employees of Debtor Republic Refining, and approximately ten (10) salaried and hourly employees of Debtor Republic Carbon.

50. The Debtors use UltiPro as payroll processing software, but fund their payroll in-house. The Debtors' Employees are paid on a weekly basis, with the exception of Rose Rubin, who is paid monthly.

51. In connection with the salaries and wages paid to Employees, the Debtors also handle, as required by law, withholding from their Employees' wages amounts related to federal, state, and local income taxes, as well as social security and medicare taxes (collectively, the "Employee Withholding Taxes") and remit same to the applicable taxing authorities, along with the employer portion of these taxes. The Debtors currently have one (1) employee requiring deduction of certain amounts such as garnishments, child support and service charges, and similar deductions.

52. The Debtors have made small loans (\$1,500-\$20,000) to Employees on an interest-free basis (the “Employee Loans”), which loans are repaid by the Employees by deduction from the Employees' paychecks. The current balance of the Employee Loans is approximately \$7,000.

53. A vast majority of the Employees rely exclusively on the payments and other benefits they receive from the Debtors for their basic living necessities. If the Debtors do not pay the obligations for compensation, benefits and reimbursable expenses, the Employees will face significant financial difficulties. Moreover, employee morale and loyalty will be jeopardized at a time when the support of the Employees is critical to the Debtors' success. In the absence of honoring the Debtors' pre-petition obligations to the Employees, the Employees may seek alternative employment opportunities. Accordingly, it is essential to pay and honor obligations to Employees.

54. As of the Petition Date, the Debtors estimate the aggregate amount of accrued Employee Wages (excluding Payroll Taxes and Deductions, as defined below) earned prior to the Petition Date, that remain unpaid, totals approximately \$50,000 (the “Unpaid Wages”).

55. By this Motion, the Debtors request authority to pay all Unpaid Wages to the Employees in the ordinary course of business. The Debtors have made careful inquiries and have taken diligent steps to ensure that none of the Employees is owed more than \$12,850 for Unpaid Wages as of the Petition Date. Accordingly, the Debtors believe no individual employee will be paid more than the statutory priority cap if this Court grants the requested relief.

B. Employee Business Expenses

56. In the ordinary course of the Debtors' business and as is customary with most large businesses, the Debtors reimburse Employees for certain expenses the Employees incur in the scope of their employment (the “Reimbursable Expenses”). Most employees initially incur and pay such expenses by using corporate credit cards. The Reimbursable Expenses are largely

composed of ordinary and necessary expenses including cell phone, internet, hotel and airfare charges, meals, equipment, marketing inserts, airfare, tolls, parking, mileage, employee incentives, and postage.

57. As of the Petition Date, the Debtors estimate that approximately \$40,000 of Reimbursable Expenses are charged on a monthly basis to the corporate credit cards. An additional \$30,000 per month is typically submitted for reimbursement outside of what is charged to the corporate credit cards.

58. It would be patently inequitable to require Employees to personally bear any approved business-related expenses they incurred in furtherance of their responsibilities as Employees.

59. Accordingly, the Debtors request authority, in its discretion and in the exercise of their business judgment, to continue to honor all of the Employees Reimbursable Expenses in the ordinary course of business, regardless of when such obligations arose and to continue to use the corporate credit cards.

C. Honoring Prepetition Checks and Electronic Transfers

60. The Debtors request that, to the extent of funds on deposit, all applicable banks and other financial institutions shall be directed to receive, process, honor and pay all checks presented for payment and to honor all funds transfer requests made by the Employees, whether such checks were presented or funds transfer requests were submitted prior to, or subsequent to, the Petition Date, Debtors estimate prepetition checks in transit aggregate up to \$20,000. Further, the Debtors request authority to issue post-petition checks, or to effect post-petition funds transfer requests in replacement of any checks or funds transfer requests with respect to its pre-petition Employee obligations, dishonored or denied as a consequence of the commencement of the Chapter 11 Cases.

D. Health Care Programs

61. The Debtors offer health insurance to Employees through United Healthcare, as well as various other plans for dental, vision, COBRA, and mental wellness (the “Health Insurance Programs”).

62. Both the Debtors and the Employees contribute to the premium payment requirements for these plans, however, the Debtors pay approximately \$170,000 per month for their portions of the medical premium.

63. By this Motion, the Debtors seek authority to: (a) continue to provide the Health Insurance Programs for the Employees in the ordinary course of business; (b) continue to honor obligations under such benefit programs, including any premiums and administrative fees; and (c) pay any amounts owed the Health Insurance Programs to the extent that they remain unpaid as of the Petition Date.

E. Vacation, Sick, Holiday and Leave Benefits

64. The Debtors provide certain of the Employees with paid vacation time (the “Vacation Time”) as well as paid sick time and other paid time off (collectively, with the Vacation Time, the “Paid Time Off”). These programs are typical and customary, and continuing to offer them is necessary for the Employees to remain during the liquidation of the Debtors’ business affairs.

65. Because Vacation Time and Paid Time Off are accrued and used by Employees based on the anniversary date each employee was hired by the Debtors, it is difficult to precisely quantify the cost of accrued Vacation Time and Paid Time Off as of the Petition Date. However, the Debtors estimate that as of the Petition Date the value of Vacation Time is approximately \$350,000.

66. By this Motion, the Debtors seek authority to: (a) continue to provide Paid Time Off to the Employees in the ordinary course of business; and (b) pay any amounts the Debtors owe to Employees on account of Paid Time Off to the extent that such amounts remain unpaid as of the Petition Date.

F. Employee Incentive and Bonus Programs

67. The Debtors have discretionary incentive plans designed to provide additional compensation and other benefits to Employees to encourage exceptional Employee performance for the benefit of the Debtors' business (collectively, the "Discretionary Employee Incentive Programs").

68. The Discretionary Employee Incentive Programs include:

- discretionary yearly bonuses paid in the first quarter of each year, and based upon the Employee's performance in the previous year;
- an additional incentive for silver smelters paid once per quarter at the beginning of the following quarter, which is based on six (6) categories of performance;
- a \$60 per payroll incentive for employees who participate in the voluntary emergency responder program;
- a \$20-50 discretionary bonus paid by the Department of Environmental Health and Safety; and
- monthly and quarterly safety incentive bonuses.

69. The Debtors typically pay approximately \$6,000-7,000 per month under the Discretionary Employee Incentive Programs. Subject to the requirements of section 503 of the Bankruptcy Code, the Debtors request authority to continue to honor each of the Discretionary Employee Incentive Programs after the Petition Date, as such programs may be modified, amended, or supplemented from time to time in the ordinary course of the Debtors' operations, including payment of any pre-Petition amounts outstanding on account of the Discretionary Employee Incentive Programs, solely upon entry of a Final Order granting this Motion.

G. Other Benefit Programs

70. The Debtors also provide disability insurance and a 401(k) retirement savings plan. These programs are typically and customary, and continuing to offer them is necessary for the Employees to remain during the orderly liquidation of the Debtors' business affairs.

RELIEF REQUESTED

71. By this Motion, the Debtors request entry of an Order (a) authorizing the Debtors to pay, in their sole discretion, all payments required under or related to Employee Wages, Unpaid Wages, Reimbursable Expenses, Payroll Taxes, and Deductions (each as defined above and collectively, the "Employee Compensation"); (b) authorizing the Debtors to continue to satisfy or honor, in their sole discretion, Paid Time Off Policies (collectively, the "Employee Benefits" and, together with the Employee Compensation, the "Employee Obligations")² and all costs incident to the foregoing, and to continue to honor its practices, programs and policies for its Employees, as those practices, programs and policies were in effect as of the Petition Date and as such practices, programs and policies may be modified, amended, or supplemented from time to time in the ordinary course of the Debtors' business; and (c) authorizing and directing the applicable banks and other financial institutions (collectively, the "Disbursement Banks") to receive, process and pay any and all checks drawn on the Debtors' payroll and general disbursement accounts (collectively, the "Disbursement Accounts"), and automatic payroll transfers to the extent that those checks or transfers relate to any of the foregoing; and (d) approving the Discretionary Employee Incentive Programs.

² The Debtors believe that the Employee Obligations described herein constitute a comprehensive list of such obligations. To the extent any plan, program or other obligation was inadvertently omitted, however, the term "Employee Obligations" includes such plan, program or other obligation.

72. Additionally, the Debtors seek authority to honor, pay, satisfy, or remit all claims and pre-petition obligations related to the Discretionary Employee Incentive Programs.

BASIS FOR RELIEF

73. To maintain the Debtors' operations and preserve the value of the Debtors' estates, it is essential that the Debtors continue to operate, to the extent possible, in the ordinary course of business. To achieve that result, the Debtors must retain the uninterrupted service and loyalty of its lifeline, which is the Employees. Payment of the Employee Compensation and continuation or satisfaction of the Employee Obligations and related arrangements is essential to this goal.³ Accordingly, the Debtors submit that the relief requested herein is critical to their ability to operate effectively and to preserve the value of their estates throughout these Chapter 11 Cases and, therefore, is in the best interests of the Debtors and the estates. Moreover, this relief is necessary to avoid immediate and irreparable harm to the Debtors and the estates.

The Court Should Authorize the Debtors to Honor Employee Obligations

74. Pursuant to sections 507(a)(4) and (a)(5) of the Bankruptcy Code, certain of the unpaid Employee Obligations are entitled to priority treatment in an amount up to \$12,850 for each individual Employee (the "Statutory Cap"). *See* 11 U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured claims for (i) wages, salaries, or commissions, including vacation, severance and sick leave pay earned by an individual, and (ii) contributions to an employee benefit plan); 11 U.S.C. § 507(a)(4) (providing that allowed unsecured claims for "(A) wages, salaries, or commissions, including vacation severance, and sick leave pay earned by an individual; or (B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor . . ." up to \$12,850 per individual are entitled to a fourth priority ahead of

³ For the avoidance of doubt, the Debtors are not seeking blanket authority to cash out accrued pre-petition Paid Time Off or to otherwise deviate from its prepetition policies.

general unsecured claims); 11 U.S.C. § 507(a)(5) (providing that “allowed unsecured claims for contributions to an employee benefit plan . . .,” with offsets for payments made under section 507(a)(4), are entitled to a fifth priority).

75. The Debtors are not seeking to satisfy the Employee Obligations in amounts that exceed the Statutory Cap in the aggregate per employee, as calculated under sections 507(a)(4) and (a)(5) of the Bankruptcy Code. Accordingly, granting the relief sought with respect to compensation affects only the timing of payments to Employees. Indeed, the Debtors submit that payment of Employee Obligations up to the Statutory Cap per individual will enhance value for the benefit of the Debtors' estates because it will help ensure that the Employees will continue to provide vital services to the Debtors at this critical juncture. In addition, to the extent that the Debtors are authorized, in a reasonable exercise of their business judgment, to honor or satisfy the Employee Obligations on a post-petition basis in the ordinary course of business, such payments will enhance the value of the Debtors' estates by preserving the going-concern value of the Debtors' business.

Payment of Certain of the Employee Obligations is Required by Law

76. The Debtors also seek authority to pay Payroll Taxes and other Deductions to the appropriate entities. These amounts principally represent employee earnings that Employees, governments and judicial authorities have designated for withholding from Employees' paychecks. Indeed, certain withholdings, including child support and alimony payments, are not property of the Debtors' estates because the Debtors have withheld such amounts from Employees' paychecks on another party's behalf. *See* 11 U.S.C. §§ 541(b)(7) and (d) (amounts withheld from employee paychecks by employer for contribution to employee benefit plan are not property of the estate). In addition to causing undue hardship to certain Employees, the failure to pay such Payroll Taxes

and Deductions may result in the Debtors being inundated with inquiries from taxing authorities and garnishors regarding its failure to submit, among other things, taxes and child support and alimony payments, which are not the Debtors' property but have been withheld from Employee paychecks. Moreover, if the Debtors cannot remit these amounts, the affected Employees may face legal action and/or imprisonment due to the Debtors' failure to submit these payments.

77. Further, applicable federal and state laws require the Debtors to withhold certain tax payments from Employees' paychecks and to pay such amounts to the appropriate taxing authority. *See* 26 U.S.C. §§ 6672 and 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95-96 (3rd. Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); *DuCharmes & Co. v. State of Michigan (In re DuCharmes & Co.)*, 852 F.2d 194, 195-96 (6th Cir. 1988) (per curiam) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). Moreover, because the Payroll Taxes are not property of the Debtors' estates, the Debtors request the Court authorize the Debtors to transmit the Payroll Taxes to the proper parties in the ordinary course of business.

Satisfaction of the Employee Obligations is Warranted under the Doctrine of Necessity

78. Courts generally acknowledge that, under appropriate circumstances, a court may authorize a debtor to pay (or provide special treatment for) certain prepetition obligations. *See, e.g., In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (recognizing that “[i]f payment of a pre- petition claim 'is essential to the continued operation of [the debtor], payment may be authorized.”); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding sound business justification for payment of certain pre-petition claims); *In re Tropical Sportswear Int'l Corp.*, 320 B.R. 15, 20 (Bankr. M.D. Fla. 2005) (holding that “[Bankruptcy Code] section 363 is a source for authority to make critical vendor payments, and section 105 is used to

fill in the blanks.”). When authorizing such payments, courts have relied upon several legal theories rooted in Bankruptcy Code sections 1107(a), 1108, 363(b), and 105(a).

79. Courts have also authorized payment of prepetition claims in appropriate circumstances pursuant to section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code, courts may permit pre-plan payments of prepetition obligations when such payments are essential to the continued operation of the debtor's business. *See In re UNR Indus., Inc.*, B.R. 506, 520 (Bankr. N.D. Ill. 1992), *rev'd on other grounds, sub nom. Rohn, Inc. v. Bloomington Factory Workers (In re UNR Indus., Inc.)*, 173 B.R. 149 (N.D. Ill. 1994) (permitting the debtor to pay prepetition claims of suppliers or employees whose continued cooperation is essential to the debtors' successful reorganization); *In re Ionosphere Clubs, Inc.*, 98 B.R. at 177 (finding that section 105 of the Bankruptcy Code empowers bankruptcy courts to authorize payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor).

80. The Debtors submit that the relief requested herein will benefit the Debtors' estates and its creditors by allowing the Debtors' business operations to continue without interruption while the Debtors seek a successful and orderly sale of their assets and/or to liquidate their assets. Absent such payments, the Employees may seek alternative employment opportunities. Such a development will deplete the Debtors' workforce, hinder or preclude the Debtors' ability to successfully and orderly sell their assets and wind down their businesses.

Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers

81. To facilitate the implementation of the requested relief, the Debtors further requests that the Court authorize and direct all Disbursement Banks to receive, process, honor and pay any and all checks drawn or electronic fund transfers from the Disbursement Accounts whether such checks or transfer requests were presented before or after the Petition Date, to the extent that such checks or electronic fund transfers are expressly identified by the Debtors as relating directly to the authorized payments with respect to the Employee Obligations. The Debtors also seek authority to issue new post-petition checks or electronic fund transfer requests that may be dishonored or rejected as a result of the filing of these Chapter 11 Cases.

RESERVATION OF RIGHTS

82. To the extent that any contract or agreement in connection with any of the Employee Obligations or the Discretionary Employee Incentive Programs is based upon or deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, the Debtors do not, at this time intend to assume or reject such contract or agreement. As such, the Court's authorization of payment shall not be deemed to constitute an assumption of such contract or agreement pursuant to section 365 of the Bankruptcy Code. The Debtors are currently reviewing all of its contracts and agreements and reserve all rights with respect thereto. Nothing herein shall acknowledge, grant, or otherwise permit any right of offset or recoupment by a non-debtor with respect to any claim asserted against the Debtors. If the Court grants the relief sought herein, any payments made pursuant to the Court's order are not intended and should not be construed as an admission to the validity of any claim or a waiver of the rights of the Debtors to dispute such claim subsequently.

83. Additionally, except as expressly stated herein, nothing contained herein is intended or should be construed as (a) an agreement or admission by the Debtors as to the validity of any claim against its estate, (b) a waiver or impairment of the Debtors' right to dispute any claim on any grounds, (c) a promise by the Debtors to pay any claim, or (d) an implication or admission by the Debtors that such claim is payable pursuant to an Order granting the relief requested in this Motion.

DEBTORS SATISFY BANKRUPTCY RULE 6003

84. Bankruptcy Rule 6003 provides that, “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding . . . a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate . . . [.]” Fed. R. Bankr. P. 6003(b). The Debtors submit that, because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein, Bankruptcy Rule 6003 has been satisfied.

WAIVER OF BANKRUPTCY RULE 6004(a) AND 6004(h)

85. To implement the foregoing successfully, the Debtors respectfully request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” As set forth above, the payments proposed herein are essential to prevent potentially irreparable damage to the Debtors' operations, value, and ability to reorganize. Accordingly, the Debtors submit ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent it applies.

NOTICE

86. The Debtors will provide notice of this Motion to: (a) the Office of the U.S. Trustee for the Southern District of New York; (b) the parties listed in the consolidated list of thirty (30) largest unsecured creditors filed by the Debtors in these Chapter 11 Cases; (c) the United States Attorney's Office for the Southern District of New York; (d) the Internal Revenue Service; (e) the Disbursement Banks; and (f) any other party entitled to notice pursuant to Local Rule 9013-1(b). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, for the reasons set forth above and in the First Day Declaration, the Debtors respectfully request the Court enter the Interim Order and Final Order substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively: (i) authorizing the Debtors, in their sole discretion, to (a) pay pre-petition wages and other compensation, employee business expense allowances and reimbursements, and employee benefits, and (b) continue existing employee benefit plans and programs, (ii) authorizing banks and other financial institutions to receive, process, honor, and pay all checks and electronic payment requests relating to the foregoing, (iii) approval of the Discretionary Employee Incentive Programs, and (iv) granting such other and further relief.

Dated: New York, New York
November 2, 2018

AKERMAN LLP

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Proposed Counsel for Debtors and Debtors-in-Possession

EXHIBIT A

PROPOSED INTERIM ORDER

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
REPUBLIC METALS REFINING CORPORATION, <i>et al.</i> , ¹)	Case No. 18-13359 (___)
)	
Debtors.)	(Joint Administration Pending)

INTERIM ORDER (I) AUTHORIZING DEBTORS TO (A) PAY PRE-PETITION WAGES AND OTHER COMPENSATION, AND EMPLOYEE BENEFITS, AND (B) CONTINUE EXISTING EMPLOYEE BENEFIT PLANS AND PROGRAMS, (II) AUTHORIZING BANKS AND FINANCIAL INSTITUTIONS TO PAY ALL CHECKS AND ELECTRONIC PAYMENT REQUESTS; AND (III) APPROVING THE DEBTORS' DISCRETIONARY EMPLOYEE INCENTIVE PROGRAMS

Upon the motion (the "Motion")² of the Republic Metals Refining Corporation and its debtor affiliates (collectively, the "Debtors"), as debtors and debtors-in-possession in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), for entry of an interim order (the "Interim Order"), pursuant to sections 105(a), 363(c)(1), 507, 1107, and 1108 of title 11 of the United States Code (the "Bankruptcy Code"), and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (i) authorizing the Debtors, in their sole discretion, to (a) pay pre-petition amounts relating to the Employee Obligations, and (b) continue existing Employee Benefit Programs, (ii) scheduling a hearing date to be held within four (4) weeks of the Petition Date to consider approval of the Discretionary Employee Incentive Programs on a final basis, (iii) authorizing the Disbursement Banks to process and honor related transfers, all as more fully set forth in the Motion; and the Court having jurisdiction to consider

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Republic Metals Refining Corporation, 15 West 47th Street, Suites 206 and 209, New York, NY 10036 (3194), Republic Metals Corporation, 12900 NW 38th Avenue, Miami, FL 33054 (4378), and Republic Carbon Company, LLC, 5295 Northwest 163rd Street, Miami Gardens, FL 33014 (5833).

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion or the First Day Declaration, as applicable.

the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in the Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, its creditors, and other parties-in-interest; and the Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and the Court having reviewed and considered the Motion and the First Day Declaration, and the Court having heard the statements in support of the relief requested in the Motion at a hearing before the Court on November __, 2018 (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED**:

1. The Motion is **GRANTED**, on an interim basis, as set forth herein.
2. The Debtors are authorized, but not directed, in a reasonable exercise of their business judgment, to pay, satisfy or continue to satisfy the Employee Obligations to the extent described in the Motion, in accordance with the Debtors' pre-petition policies and practices. The Debtors shall not pay any amounts set forth in this paragraph over the Statutory Cap of \$12,850.00 to any individual Employee on account of such Employee's pre-petition Employee Obligations, not including Reimbursable Expenses. Additionally, the Debtors shall provide to the United States Trustee, in a reasonable timeframe, but as soon as practicable, a list of all payments made, by payee and amount, pursuant to this Order and Paragraph.

3. The Debtors are authorized, in their sole discretion, to continue to honor the Employee Benefits, as applicable, in the ordinary course of business.

4. The Discretionary Employee Incentive Programs are hereby approved and the Debtors are authorized, in their sole discretion, to continue to operate the Discretionary Employee Incentive Programs in the ordinary course of business. However, nothing in this Order is intended to grant the Debtors authority to make payments related to employee retention plans, severance plans, or other payments under 11 U.S.C. § 503(c).

5. Each of the Disbursement Banks at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion is authorized to (i) receive, process, honor, and pay all checks presented for the payment of prepetition obligations and honor all fund transfer requests made by the Employees related thereto only upon the Debtors' representation that such payment or transfer is authorized by an Order of this Court; and (ii) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of the Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

6. The Debtors are authorized, but not directed, to issue new post-petition checks, or effect new electronic funds transfers, on account of prepetition obligations, and to replace any prepetition checks or electronic fund transfer requests with respect to their Pre-petition Employee obligations dishonored or denied as a consequence of the commencement of the Debtors' Chapter 11 Cases.

7. Notwithstanding anything in the Motion or this Order to the contrary, any payment made by the Debtors pursuant to the authority granted herein shall be subject to any order authorizing the Debtors' access to and use of cash collateral.

8. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in the Motion nor this Order nor any payment made pursuant to this Order shall constitute, nor is it intended to constitute, (i) an admission as to the validity or priority of any claim or lien against the Debtors, (ii) a waiver of the Debtors' rights to subsequently dispute such claim or lien, or (iii) the approval, assumption, adoption or rejection of any agreement, contract, or lease between the Debtors or any third party under section 365 of the Bankruptcy Code.

9. Entry of this Order is necessary to avoid immediate and irreparable harm. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

10. Adequate notice of the Motion has been provided. Such notice satisfies the requirements of Bankruptcy Rule 6004(a).

11. Notwithstanding Bankruptcy Rules 6004(h), 7062, and 9014, the terms and conditions of this Order are immediately effective and enforceable upon its entry.

12. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

13. The Court retains jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

14. The Debtors shall serve this Interim Order within 48 hours of its entry via first class U.S. mail on the Notice Parties.

15. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2018 at _____ p.m. (**Prevailing Eastern Time**) and any objections or responses to the entry of a final order on the Motion shall be in writing, filed with the Court, and served upon the following parties: (a) proposed counsel for the Debtors, Akerman LLP, 666 Fifth Avenue, 20th Floor, New York, New York 10103 (Attn: Susan Balaschak, Esq.) and Akerman LLP, 98 Southeast Seventh Street, Ste. 1100, Miami, Florida 331311 (Attn: Katherine C. Fackler, Esq.); (b) the Office of the United States Trustee, 201 Varick Street, Ste. 1006, New York, New York 10014; and (c) counsel to any official committee of unsecured creditors appointed in these cases so as to be actually received on or prior to **4:00 p.m. (Prevailing Eastern Time)** on _____, 2018. In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

Dated: New York, New York
November __, 2018

PROPOSED

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B
PROPOSED FINAL ORDER

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
REPUBLIC METALS REFINING CORPORATION, <i>et al.</i> , ¹)	Case No. 18-13359 (___)
)	
Debtors.)	(Joint Administration Pending)

**FINAL ORDER (I) AUTHORIZING DEBTORS TO (A) PAY PRE-PETITION WAGES AND OTHER COMPENSATION, AND EMPLOYEE BENEFITS, AND (B) CONTINUE EXISTING EMPLOYEE BENEFIT PLANS AND PROGRAMS, (II) APPROVING THE DEBTORS' DISCRETIONARY EMPLOYEE INCENTIVE PROGRAMS, AND (III) AUTHORIZING BANKS TO HONOR AND PROCESS
RELATED CHECKS AND TRANSFERS**

Upon the motion (the "Motion")² of Republic Metals Refining Corporation, Republic Metals Corporation, and Republic Carbon Company, LLC, as debtors and debtors-in-possession (collectively the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), for entry of a final order pursuant to sections 105(a), 363(c)(1), 507, 1107, and 1108 of title 11 of the United States Code (the "Bankruptcy Code"), and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (i) authorizing the Debtors, in their sole discretion, to (a) pay pre-petition amounts relating to the Employee Obligations, and (b) continue existing Employee Benefit Programs, and (ii) authorizing the Disbursement Banks to process and honor related transfers, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Republic Metals Refining Corporation, 15 West 47th Street, Suites 206 and 209, New York, NY 10036 (3194), Republic Metals Corporation, 12900 NW 38th Avenue, Miami, FL 33054 (4378), and Republic Carbon Company, LLC, 5295 Northwest 163rd Street, Miami Gardens, FL 33014 (5833).

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion or the First Day Declaration, as applicable.

1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in the Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, creditors, and other parties-in-interest; and the Court having authority to enter a final order on the Motion; and the Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and the Court having reviewed and considered the Motion and the First Day Declaration, and the Court having heard the statements in support of the relief requested in the Motion at a hearing before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED**:

1. The Motion is **GRANTED** as set forth herein.
2. The Debtors are authorized, but not directed, in a reasonable exercise of their business judgment, to pay, satisfy or continue to satisfy the Employee Obligations to the extent described in the Motion, in accordance with the Debtors' pre-petition policies and practices. The Debtors shall not pay any amounts set forth in this paragraph over the Statutory Cap of \$12,850.00 to any individual Employee on account of such Employee's pre-petition Employee Obligations, not including Reimbursable Expenses. Additionally, the Debtors shall provide to the United States Trustee, in a reasonable timeframe, but as soon as practicable, a list of all payments made, by payee and amount, pursuant to this Order and Paragraph.

3. The Debtors are authorized, in their sole discretion, to continue to honor the Employee Benefits, as applicable, in the ordinary course of business.

4. The Discretionary Employee Incentive Programs are hereby approved and the Debtors are authorized, in their sole discretion, to continue to operate the Discretionary Employee Incentive Programs in the ordinary course of business. However, nothing in this Order is intended to grant the Debtors authority to make payments related to employee retention plans, severance plans, or other payments under 11 U.S.C. § 503(c).

5. Each of the Disbursement Banks at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion is authorized to (i) receive, process, honor, and pay all checks presented for the payment of prepetition obligations and honor all fund transfer requests made by the Employees related thereto only upon the Debtors' representation that such payment or transfer is authorized by an Order of this Court; and (ii) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of the Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

6. The Debtors are authorized, but not directed, to issue new post-petition checks, or effect new electronic funds transfers, on account of prepetition obligations, and to replace any prepetition checks or electronic fund transfer requests with respect to their Pre-petition Employee obligations dishonored or denied as a consequence of the commencement of the Debtors' Chapter 11 Cases.

7. Notwithstanding anything in the Motion or this Order to the contrary, any payment made by the Debtors pursuant to the authority granted herein shall be subject to any order authorizing the Debtors' access to and use of cash collateral.

8. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in the Motion nor this Order nor any payment made pursuant to this Order shall constitute, nor is it intended to constitute, (i) an admission as to the validity or priority of any claim or lien against the Debtors, (ii) a waiver of the Debtors' rights to subsequently dispute such claim or lien, or (iii) the approval, assumption, adoption or rejection of any agreement, contract, or lease between the Debtors or any third party under section 365 of the Bankruptcy Code.

9. Entry of this Order is necessary to avoid immediate and irreparable harm. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

10. Adequate notice of the Motion has been provided. Such notice satisfies the requirements of Bankruptcy Rule 6004(a).

11. Notwithstanding Bankruptcy Rules 6004(h), 7062, and 9014, the terms and conditions of this Order are immediately effective and enforceable upon its entry.

12. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

13. The Court retains jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

Dated: New York, New York
November __, 2018

PROPOSED

UNITED STATES BANKRUPTCY JUDGE