In re:
REPUBLIC METALS REFINING CORPORATION, et al.,¹
Debtors.

Chapter 11
Case No. 18-13359 (SHL)
(Jointly Administered)

DECLARATION OF JANICE Y. SONG IN SUPPORT OF PRETIUM EXPLORATION INC.'S OBJECTION TO THE DEBTORS' MOTION FOR ENTRY OF A FINAL ORDER (I) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION TO THE SECURED PARTIES, (III) SCHEDULING A FINAL HEARING AND (IV) GRANTING RELATED RELIEF

I, Janice Y. Song, pursuant to Section 1746 of title 28 of the United States Code, hereby declare that the following is true to the best of my knowledge:

1. I am a Director, Treasury of Pretium Exploration Inc. ("Pretium"), a company engaged in exploring and developing precious metal resource properties and an emerging gold producer.

A. PRETIUM

2. Pretium is incorporated under the Business Corporations Act (British Columbia), and owns the Brucejack Mine, an underground gold mine in British Columbia.

3. On September 15, 2015, in connection with obtaining construction financing to support the development of the Brucejack Mine, Pretium entered into an Offtake

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 ("RMC"), 12900 N.W. 38th Avenue, Miami, FL 33054 (4378), and Republic Carbon Company, LLC 5295 Northwest 163rd Street, Miami Gardens, FL 33014 (5833).
Agreement that requires it to sell the first 7,067,000 ounces of refined gold produced at the Brucejack Mine to Orion Co-Investments II (Stream) Limited and BTO Midas L.P., who subsequently sold their Offtake interests to Pretium’s current customers (the “Offtakers”), who pay for the gold in U.S. dollars, at a price based on prevailing market prices around the time of sale.

4. An offtake agreement is an agreement between a producer of a resource and a buyer of a resource to purchase or sell portions of the producer’s future production. Offtake agreements are routinely negotiated prior to the construction of a facility such as a mine, secure a market for the future output of the facility, and thereby enable the resource producer to obtain construction financing.

5. The Offtake Agreement requires Pretium to deliver to the Offtakers “Refined Gold,” defined as “marketable metal bearing material in the form of gold bars or coins” that meets the relevant standards of purity.

6. Pretium satisfies its delivery obligations by transferring Refined Gold to the Offtakers’ bullion accounts in London. Title over the gold is transferred to the Offtakers and revenue recognized upon delivery to the Offtakers’ bullion accounts.

7. The Offtake Agreement requires that, until the gold is delivered by Pretium to the Offtakers’ accounts, Pretium would “be the sole legal and beneficial owner of the Refined Gold credited to the [Offtakers],” and would “have good, valid, and marketable title to such Refined Gold.” Upon delivery, “[t]itle to and risk of loss of or damage to the Refined Gold... pass[es] from” Pretium to the Offtakers.

B. PRETIUM’S RELATIONSHIP WITH RMC

8. After extraction from the Brucejack Mine, gold ore must be processed before Pretium can sell and deliver it to the Offtakers. Pretium handles the initial processing and
refining of the gold ore, which also contains silver, into doré bars (alloys of gold, silver, and other minerals).

9. Pretium then engages third-party refiners to refine the doré into pure gold and silver. The refiners perform this work pursuant to a toll processing arrangement, common in the mining and chemical processing industries, in which the refiner receives a refining fee (a “toll”) plus reimbursement of certain costs connected with the refining process. In the mining industry, it is widely understood that, with a toll processing arrangement, the principal (Pretium) holds title throughout the refining process to the raw ore, semi-processed alloy, and the refined products.

10. In or about November 2016, Pretium was searching for refiners to process the doré produced from the Brucejack Mine and requested a proposal from RMC. In an email dated November 14, 2016, Joe Ovsenek (of Pretium) explained in the clearest terms to Jason Rubin and Michael Waisome (of RMC) that RMC, if engaged by Pretium as a refiner, would be processing doré to be sold and delivered by Pretium to the Offtakers pursuant to the Offtake Agreement: “As part of the construction financing of the Brucejack Mine, [Pretium] agreed to sell under an offtake agreement . . . the first 7,067,000 ounces of gold produced at the Brucejack Mine to business units of Orion Mine Finance (“Orion”) and Blackstone Tactical Opportunities (“Blackstone”). Pursuant to the terms of the Offtake Agreement, we are required to deliver to Orion and Blackstone refined gold after each outturn by credits to their respective pool accounts (London based brokerage accounts).” (Emphasis added).

11. In or around May 27, 2017, RMC and Pretium entered into an agreement governing RMC’s work as a refiner. That agreement was deemed effective as of June 1, 2017. In connection with negotiating that agreement, on April 12, 2017, RMC’s business development
director, Elan Farbiaz, provided Pretium with a presentation touting RMC’s unique ability to ensure that Pretium doré, if processed at RMC’s facilities, would be traceable for all subsequent uses and users. Farbiaz wrote that RMC was “the only refiner that can segregate feedstocks or material and deliver a fine Au or Ag production from a single derivation.” “Au” and “Ag” are the chemical symbols for gold and silver, respectively. The RMC presentation elaborated that RMC’s proprietary tracing program (the “Peace of Mined” refining process) was “the only means available to maintain a direct link from the mine-site, thus allowing end-users and consumers of this metal to trace the gold and silver all the way back to its original and credible source.” (Emphasis original).

12. A year later, in June 2018, RMC and Pretium renewed their refining agreement on substantially the same terms (with minor changes to the estimated quantities of gold and silver to be refined by RMC) (the “Refining Services Agreement”). As in the original 2017 refining agreement between the parties, Section 22 of the Refining Services Agreement provides that the “substantive law of this Agreement shall be the laws of the Province of British Columbia and the federal laws of Canada applicable therein.”

13. Under Section 2.1 of the Refining Services Agreement (as well as the 2017 agreement), RMC would arrange for the delivery of doré bars from Pretium. RMC would then weigh, melt, and purify the doré into pure gold and silver. In accordance with Sections 6.5(b)-(d) of the Refining Services Agreement, Pretium and RMC would then conduct an “Assay Exchange”—i.e., a comparison of their respective, independent determinations of how much pure gold and silver was extracted from the doré. If the two determinations were within a small enough margin, Pretium and RMC would agree to the “final settlement” of ounce amounts. If
not, an independent “umpire” would resolve the specific amounts of gold and silver to be credited to Pretium.

14. Under section 6.1(b) of the Refining Services Agreement, Pretium had a right to be, and was, represented during the weighing, first melting, and sampling stages of the refining process. Through its representative, Pretium closely monitored the weighing, melting, and sampling operations to ensure that RMC did not misallocate or undercount Pretium’s gold and silver. RMC segregated Pretium’s gold before it was refined and used crucibles (melting pots) dedicated to Pretium for refining Pretium’s doré bars. Further, as noted, RMC touted the fact that it could trace refined gold derived from Pretium’s doré bars back to Pretium.

15. The Refining Services Agreement expressly contemplated in Section 7.2 that Pretium would “operate on a toll basis,” in which the specific gold and silver refined from Pretium’s doré “shall be transferred to [Pretium’s] designated metal account(s).” Accordingly, RMC did not pay Pretium for the doré bars after taking delivery of them, or at any other point. Nor did it pay Pretium for the pure gold and silver yielded by the refining process. Rather, in Section 4.1(a) of the Refining Services Agreement, RMC’s economics were limited to those of a service provider, and it was compensated for its refining services by a “Treatment Charge.” Under Section 4.1(a), the Treatment Charge was a *de minimis* fixed fee, calculated based on the troy ounces of doré weight delivered by Pretium to RMC. Pursuant to Sections 3.3 and 4.1(a) of the Refining Services Agreement, in exchange for refining Pretium’s doré bars (each shipment of which had a market value of millions of dollars), RMC would be entitled to a nominal Treatment Charge, as well as reimbursement of its shipping charges, nothing more. In addition, in Section 2.3(a) of the Refining Services Agreement, RMC reserved the right to pass on to Pretium
surcharges associated with the handling or transportation of the doré bars. Pretium would pay these charges with some of the silver yielded by the refining process.

16. Pretium retained absolute discretion on whether to sell or demand the return of its refined gold and silver. As set forth in Section 7 of the Refining Services Agreement, RMC could only purchase the refined gold and silver from Pretium if, and only if, Pretium chose to sell to RMC at the end of the refining process. Otherwise, Sections 7.2 and 7.3 of the agreement required RMC to transfer the gold and silver to accounts “designated” by Pretium. Section 17 of the agreement also prevented RMC from assigning its rights under the Refining Services Agreement to another party without Pretium’s consent.

17. In the course of its relationship with Pretium, RMC unequivocally admitted that its role was limited to that of a service provider, not a purchaser of Pretium’s gold and silver. In June 2017, in connection with Pretium’s first shipment of doré to RMC, I contacted RMC’s Waisome to confirm the logistics for how payment and credits would be executed under the 2017 version of the parties’ refining agreement (which, for all relevant purposes, is identical to the Refining Services Agreement). In an email dated June 22, 2017, I explained that Pretium’s understanding of the arrangement was that: “Gold is to be delivered to designated account(s) in London,” and that the silver, less amounts applied to RMC’s refining fees and related costs, was “to be transferred to Pretium’s bank account.” In a reply email dated June 23, 2017, Waisome confirmed that RMC shared this understanding as follows: “We’re aware of the transfer instructions for outturn. We will be acting as a ‘toll’ refiner and transferring the ounces to your bank account on the scheduled outturn date. . . .” Id. (emphasis added). And that is what happened for every shipment until the weeks immediately preceding RMC’s bankruptcy filing.
18. Consistent with RMC’s limited role as a toll processor that refined Pretium’s doré bars, and consistent with Pretium’s continued ownership of its doré bars (prefining) and pure gold and silver (post-refining), in Section 2.1(a) of the Refining Services Agreement, RMC acknowledged that it would be “liable to [Pretium] for any and all loss of or damage” to the metals while they remained in its custody.

19. Along the same lines, in Section 3.1 of the Refining Services Agreement, RMC promised Pretium that it would “employ prudent security procedures to safeguard the” metals, and “carry adequate insurance to cover the risk of loss or damage” to the metals (measures to which Pretium would be indifferent if it did not retain ownership). On information and belief, solely to enable RMC to insure Pretium’s doré and refined gold and silver, the Refining Services Agreement in Section 4.1(b) provided that RMC would take bare possessory title over the doré and refined metals when they were in its custody, even while Pretium retained all other ownership rights over the metals. Section 4.1(b) states: “Title to all Material and Recoverable Metals produced therefrom (without duplication) shall pass and remain with the Refiner upon delivery of Material at the Refiner’s facility.”

20. In Section 12.1(a) of the Refining Services Agreement, RMC also promised to protect Pretium’s ownership interest in that metal by agreeing to “indemnify and hold harmless” Pretium against “all . . . losses, . . . costs, damages, and/or expenses whatsoever . . . in respect of . . . damage to property directly resulting from the performance of” RMC’s refining services,” and, in Section 15.3, it promised to “indemnify and hold” Pretium “harmless for any and all damages to” the refined metals “that may arise from the testing and refining” of the doré “or any metal produced therefrom.”

C. THE SUBJECT SHIPMENTS

21. On the following dates, Pretium delivered doré bars to RMC.
Date Delivered | Pretium Shipment ID | RMC Shipment ID | Kgs of Doré Bars
--- | --- | --- | ---
9/6/2018 | RMC-2018-14 | L180934 | 183
9/12/2018 | RMC-2018-15 | L181047 & L181048 | 240
10/5/2018 | RMC-2018-16 | L181464 & L181465 | 203
10/17/2018 | RMC-2018-17 | L181705 | 164

22. For the first three lots, RMC refined the doré bars and, at Pretium’s sole direction, delivered refined gold to bullion accounts held by the Offtakers in London in the following amounts and on the following dates.

Date Transferred | Pretium Shipment ID | RMC Shipment ID | Refined Au (Oz.)
--- | --- | --- | ---
9/14/2018 | RMC-2018-14 | L180934 | 3200
9/20/2018 | RMC-2018-15 | L181047 & L181048 | 4080
10/15/2018 | RMC-2018-16 | L181464 & L181465 | 3520

23. RMC retained a fraction of the refined gold produced from these lots, as well as all of the silver, pending the conclusion of a final reconciliation process with Pretium.

Pretium Shipment ID | RMC Shipment ID | Original Delivery Date | Au (Oz.) Pending | Ag (Oz.) Pending
--- | --- | --- | --- | ---
RMC-2018-14 | L180934 | 9/6/2018 | 91.365 | 2,004.384

24. On the completion of that reconciliation process, RMC was to deliver the refined gold to the Offtakers’ accounts.

25. In addition, as noted, on October 17, 2018, Pretium delivered 164 kg of doré bars to RMC (Pretium Shipment ID RMC-2018-17; RMC Shipment ID L181705). RMC
first-melted these doré bars on October 18, 2018 into an estimated 3,212.299 ounces of gold and 1,768.667 ounces of silver.

26. The refined gold from Pretium’s October 17 delivery was scheduled to be transferred to the Offtakers’ accounts on October 25, 2018. But, on October 23, 2018, RMC’s Global Sales Head, Luis Pena, wrote to Pretium:

We are pleased to inform you that [RMC] is in the process of imminently establishing an alliance with the world’s largest gold refiner. The alliance will enable us to provide a broader array of services and allow for the infusion of state-of-the-art technology, improved working processes and more investment which will make [RMC] the best refinery in the Americas. As part of the process to consummate this transaction, [RMC] will be temporarily idling its operation during the week of October 22nd in order to conduct an inventory count. We thank you for your patience and loyalty, and will be updating you in due course.

27. Relying on RMC’s assurance that its operations would be only “temporarily idl[ed]” during one week in October to facilitate the closing of a transaction that would improve RMC’s operations, Pretium had no inkling that anything at RMC was amiss, and it believed that the refined gold and silver derived from its October 17 delivery would be transferred to its Offtakers’ accounts when RMC’s operations ceased “temporarily idling.”

28. As of its Chapter 11 petition date, RMC had not transferred Pretium’s refined gold and silver from the October 17 delivery to Pretium’s account or the designated Offtaker accounts and, upon information and belief, RMC also retained significant amounts of refined gold and silver from three earlier Pretium deliveries, which were the subject of a pending reconciliation process.

29. Altogether, based on provisional assay results, Pretium believes that on the petition date RMC (and/or its affiliate Debtors) held 4,056.126 ounces of pure gold and 8,600.818 ounces of pure silver owned by Pretium (the “Pretium Metals”).
30. On November 15, 2018, without prejudice to its position that it owns the Pretium Metals, Pretium served a demand for reclamation of the Pretium Metals upon RMC. See ECF Dkt. Nos. 99 & 99-1.

31. On November 19, 2018, the Debtors responded by email to Pretium’s demand, writing that the Pretium Metals that are the subject of the demand “were consumed,” meaning that they were “refined with the ore of other customers” and purportedly “commingled into finished product (bars, coins, etc.).” Upon information and belief, based on RMC’s past admissions, see supra ¶ 11, RMC’s purported commingling of the Pretium Metals does not impair RMC’s ability to trace them back to Pretium’s doré.

I declare under penalty of perjury that the foregoing is true and correct

Dated: Vancouver, British Columbia
November 21, 2018

[Signature]

Janice Y. Song