

**Hearing Date and Time:
January 23, 2019 at 11:00 a.m. (ET)**

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

In re

**REPUBLIC METALS REFINING
CORPORATION, *et al.*,¹**

Debtors.

Chapter 11

Case No. 18-13359 (shl)

(Jointly Administered)

RELATED DOC. NO. 417

**REPLY TO OBJECTION OF FUNDACIÓN RAFAEL DONDÉ, I.A.P. TO
(I) DEBTORS' MOTION FOR AUTHORITY TO PAY CERTAIN DISCRETIONARY
EMPLOYEE BONUSES PURSUANT TO 11 U.S.C. §§ 105 AND 363 AND
(II) DEBTORS' MOTION TO PAY ATTORNEYS' FEES OF CERTAIN DEBTOR
REPRESENTATIVES PURSUANT TO 11 U.S.C. §§ 105(a) AND 363(b)**

Republic Metals Refining Corporation and its affiliated debtors and debtors-in-possession (the "Debtors"), by and through undersigned counsel, file their Reply to the Objection (the "Objection") [Doc. No. 417] of Fundacion Rafael Donde, I.A.P. ("Donde") to the Debtors' (I) Motion for Authority to Pay Certain Discretionary Employee Bonuses Pursuant to 11 U.S.C. §§

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), Republic Carbon Company, LLC, 5295 Northwest 163rd Street, Miami Gardens, FL 33014 (5833), Republic High Tech Metals, LLC, 13001 NW 38 Avenue, Miami, FL 33054 (6102), RMC Diamonds, LLC, 12900 NW 38th Avenue, Miami, FL 33054 (1507), RMC2, LLC, 12900 NW 38th Avenue, Miami, FL 33054 (4696), J & L Republic LLC, 12900 NW 38th Avenue, Miami, FL 33054 (7604); R & R Metals, LLC, 12900 NW 38th Avenue, Miami, FL 33054 (7848), Republic Metals Trading (Shanghai) Co., Ltd., 276 Ningbo Road, Huangpu District, Shanghai, P.R. 200001 China (1639), and Republic Trans Mexico Metals, S.R.L., Francisco I. Madero No. 55 Piso 5, Local 409, Centro Joyero Edificio Central, Delegación Cuauhtémoc, Mexico DF 6000 (2942).

105 and 363 (the "Employee Bonus Motion") [Doc. No. 276] and (ii) Motion to Pay Attorneys' Fees of Certain Debtor Representatives Pursuant to 11 U.S.C. §§ 105(a) and 363(b) (the "Attorneys' Fees Motion") [Doc. No. 368].

Background

The Objection is replete with wholly irrelevant and unfounded accusations about the Debtors' candor and intentions in this Bankruptcy Case, none of which are supported in the record. To the contrary, the Debtors and their counsel have been honest and forthright with the Court and all parties in this case from the outset.

Prior to the filing of the these Bankruptcy Cases, Debtor Republic Trans Mexico Metals, S.R.L. ("RTMM") and Donde had a commercial relationship through which they developed an ordinary course of dealing whereby Donde delivered metals to RTMM and RTMM often shipped those metals to the United States for refining. Donde's allegations in paragraph 2 are patently false: RTMM did not "unlawfully" transfer Donde's property to the United States – in fact, shipment of the metal (which the Debtors contend was not even Donde's property) to the United States was not illegal under Mexican law, and the shipment was made pursuant to the past, ordinary course of business between Donde and RTMM over the past several years.

On December 10, 2018, the Debtors filed the Employee Bonus Motion. A few weeks later, on January 2, 2019, the Debtors filed the Attorneys' Fees Motion. In the intervening time, the Debtors and Donde negotiated the return of certain product in Mexico in and out of Court, following Donde's issuance of a demand letter to the Debtors. Undersigned counsel spoke to or emailed with Donde's counsel on an almost daily basis, and sometimes more than once a day. At no time during any of those conversations did Donde's counsel mention Donde had any concerns about the Employee Bonus Motion or the Attorneys' Fees Motion, nor did they alert any of the

Debtors' attorneys to any issue. Donde and the Debtors ultimately settled by return of product to Donde, and Donde elected to participate in the customer/ownership procedures in the United States. At no point did Donde's counsel raise any concerns to the Debtors about the Employee Bonus Motion or the Employee Bonus Motion.

Counsel to the Committee, on the other hand, informed Debtors' counsel of its concerns with both Motions, which the Debtors promptly addressed and resolved consensually with the Committee. Had Donde's counsel given Debtors' counsel the courtesy of one telephone call, it is unlikely Donde's counsel would have needed to file the Objection and forced Debtors' counsel to incur time and fees in preparing this Reply. Against that disappointing backdrop, the Debtors make the following Reply.

Reply to Objection to Employee Bonus Motion

Through the Employee Bonus Motion, the Debtors seek to pay certain discretionary bonuses to their mid- and lower-level employees. Donde questions the basis and extent of the proposed bonus payments. As the Court is aware, the Debtors operate a refinery in Miami, which involves numerous safety hazards. The Discretionary Employee Incentive Programs of which the Debtors seek approval are described in detail in Paragraph 11 of the Motion. These Programs are designed to incentivize mid-level employees to assist in the event of an emergency at the Miami facilities and are minimal amounts, and were paid regularly, in the ordinary course of the Debtors' businesses, prior to the bankruptcy filing. At the request of the United States Trustee, the Debtors have been withholding these bonuses, on which these employees depend and rely, pending Court approval. The total amount of bonuses owed between the Petition Date and February 28, 2019², is expected to be a total of no more than \$30,000. Accordingly, the

² February 28, 2019 is the outside closing date for the sale of the Debtors' assets to a third party, at which point the Debtors would no longer pay these bonuses.

proposed bonuses are necessary, reasonable, and fall within the cash collateral budget. Notably, neither the Committee, nor the Senior Lenders, nor the United States Trustee objected to the Employee Bonus Motion. The Debtors respectfully request the Court overrule the Objection and grant the Employee Bonus Motion.

Reply to Objection to Attorneys' Fees Motion

Following receipt of a demand letter from Donde and the commencement of criminal prosecution by EZ Pawn against Joseph Liberman, a representative of RTMM, Mr. Liberman determined to hire personal counsel to assist him in defending Donde's and EZ Pawn's accusations of criminal conduct. In the United States, such actions by Donde and EZ Pawn would be illegal under the Federal Debt Collection Practices Act and sanctionable against Donde and EZ Pawn. Mr. Liberman is neither an insider of the Debtors nor c-suite representative. He is a mid-level manager who was, at all times, acting within the scope of his employment by RTMM. His decision to hire personal counsel following threats of and commenced criminal prosecutions is understandable and imminently reasonable.

As of the filing of the Attorneys' Fees Motion, Mr. Liberman had incurred \$30,000 in attorneys' fees, for which the Debtors seek to reimburse him. Further employment of personal counsel for RTMM representatives, and any amounts paid out, will be subject to the noticing requirements and caps of the Order Authorizing the Debtors' Retention and Compensation of Professionals Utilized by the Debtors in the Ordinary Course of Business [Doc. No. 348]. The Debtors agreed to the same with the Committee, and would have let Donde know of that agreement had Donde made any effort to let the Debtors know of its concerns. Again, only Donde objected to the Motion – the Committee resolved its concerns and the Lenders, and

United States Trustee have voiced no objection whatsoever. Accordingly, the Debtors request the Court grant the Attorneys' Fees Motion.

Conclusion

Based on, *inter alia*, the foregoing, the Debtors respectfully request the Court (i) overrule Donde's Objection, (ii) grant the Employee Bonus Motion and Attorneys' Fees Motion, and (iii) grant such other and further relief as the Court deems just and proper.

Dated: January 18, 2019

AKERMAN LLP

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