

HEARING DATE AND TIME: February 21, 2019 at 10:00 a.m. (Eastern Time)
OBJECTION DEADLINE DATE AND TIME: February 18, 2019 at 4:00 p.m. (Eastern Time)

John E. Mitchell (*Admitted Pro Hac Vice*)
Yelena Archiyan (*Admitted in New York*)
AKERMAN LLP
2001 Ross Avenue, Ste. 3600
Dallas, TX 75201
Tel.: (214) 720-4300
Fax: (214) 981-9339

Andrea S. Hartley (*Admitted Pro Hac Vice*)
Joanne Gelfand (*Admitted in New York*)
Katherine C. Fackler (*Admitted Pro Hac Vice*)
AKERMAN LLP
98 Southeast Seventh Street, Ste. 1100
Miami, FL 33131
Tel.: (305) 374-5600
Fax: (305) 374-5095

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 (SHL)
)	
Debtors.)	
)	(Jointly Administered)

**DEBTORS' EXPEDITED MOTION FOR ENTRY OF AN ORDER
EXTENDING THE DEBTORS' EXCLUSIVE PERIODS TO FILE A
CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF
PURSUANT TO SECTION 1121 OF THE BANKRUPTCY CODE**

TO THE HONORABLE SEAN H. LANE,
UNITED STATES BANKRUPTCY JUDGE:

Republic Metals Refining Corporation, *et al.*, (collectively the “Debtors”) as debtors and debtors-in-possession in the above-captioned chapter 11 cases (the “Chapter 11 Cases” or “Cases”), by and through their undersigned counsel, hereby file this motion (the “Motion”) for

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).

entry of an order in the form attached hereto as **Exhibit A** (the "Order") extending the Debtors' exclusive right to file a chapter 11 plan by sixty (60) days through and including May 1, 2019 (the "Filing Exclusivity Period"), and to solicit votes through and including June 30, 2019 (the "Soliciting Exclusivity Period", and together with the Filing Exclusivity Period, the "Exclusivity Periods"), without prejudice to the Debtors' right to seek further extensions to the Exclusivity Periods as may be appropriate under the circumstances then prevailing. In support thereof, the Debtors respectfully represents as follows:

BACKGROUND

1. On November 2, 2018, Republic Metals Refining Corporation, Republic Metals Corporation, and Republic Carbon Company, LLC each filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), initiating these Chapter 11 Cases. On November 21, 2018, Republic High Tech Metals, LLC, RMC Diamonds, LLC, J&L Republic, LLC, R&R Metals, LLC, Republic Metals Trading (Shanghai) Co., Ltd., and Republic Trans Mexico Metals, S.R.L. filed voluntary petitions for relief under the Bankruptcy Code, initiating their Chapter 11 cases.

2. Collectively, 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") form the group of the Debtors' senior lenders (the "Senior Lenders").

3. No trustee has been appointed in these cases. The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108. On November 19, 2018, the United States Trustee gave notice of the

appointment of an Official Committee of Unsecured Creditors ("Creditors Committee") [ECF No. 113].

4. Additional details regarding these chapter 11 cases are available in the *Declaration of Scott Avila, as Chief Restructuring Officer (the "CRO")*, in *Support of Chapter 11 Petitions and First Day Motions (the "First Day Declaration")* [ECF No. 2].

5. The Debtors have made substantial progress towards achieving their operational goals in a short period of time. Significant work, however, remains to be done. The Debtors therefore seek a 60-day extension of the Exclusivity Periods to permit the Debtors to continue working toward their goal of confirming a consensual, value-maximizing chapter 11 plan.

6. In a short amount of time, the Debtors have taken many necessary steps toward a successful liquidation. Among other things, the Debtors have:

- a. stabilized operations and ensured a smooth transition into chapter 11;
- b. coordinated critical efforts in connection with the Debtors' valuable customer and vendor relationships, requiring review and analysis of numerous contracts and leases, including executory contracts and unexpired leases;
- c. completed their schedules of assets and liabilities and statements of financial affairs, which required review and analysis of hundreds of documents, in addition to the assets and contracts of each of the Debtors, culminating in the filing of those documents on January 18, 2019 ;
- d. conducted an auction for the sale of substantially all of the Debtors' assets free and clear of all liens and interests, which auction yielded a successful bidder that has committed to buying the Debtors' assets for \$25,500,000; and
- e. engaged with all key stakeholders and their advisors, including the Senior Lenders and the Creditors Committee, with the ultimate goal of achieving consensus and reducing administrative costs.

7. The Debtors' progress thus far has been achieved in no small part due to the breathing room provided by chapter 11. The Debtors believe that maintaining their exclusive right to file and solicit votes on a chapter 11 plan is critical to their ability to complete a value-

maximizing process and achieve their remaining goals as efficiently and expeditiously as possible without the risk of the substantial additional costs and disruption that could follow an expiration of the Exclusivity Periods. Accordingly, the Debtors request an extension of the Exclusivity Periods to allow the Debtors to continue to focus on finalizing the progress to date and to preclude the costly disruption that would occur if competing plans were to be proposed.

JURISDICTION AND VENUE

8. The United States Bankruptcy Court for the Southern District of New York (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. This is a core proceeding under 28 U.S.C. § 157(b). The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

9. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

10. Pursuant to this Motion and section 1121(d)(1) of the Bankruptcy Code, the Debtors seek entry of an order extending the period under section 1121(c) of the Bankruptcy Code in which the Debtors have the exclusive right to solicit acceptances of a chapter 11 plan, through and including May 1, 2019, and to solicit votes through and including June 30, 2019, without prejudice to their right to seek additional and further extensions of this period as may be appropriate under

the circumstances then prevailing. The requested extension is reasonable and necessary given the progress the Debtors have made prior to filing this Motion.

BASIS FOR RELIEF

11. The basis for the relief requested herein are section 1121(d) of the Bankruptcy Code and Bankruptcy Rule 9006.

12. A debtor has the exclusive right to propose a chapter 11 plan for the first 120 days of a chapter 11 case pursuant to section 1121(b) of the Bankruptcy Code. Section 1121(c)(3) of the Bankruptcy Code extends the period of exclusivity for an additional 60 days, to an initial maximum of 180 days, where the debtor has filed a chapter 11 plan and is soliciting votes on such plan. "[T]he point of exclusivity is to promote an environment in which the debtor's business may be rehabilitated and a consensual plan may be negotiated." *See In re Burns and Roe Enters., Inc.*, No. 00-41610 RG, 2005 WL 6289213, at *4 (D.N.J. Nov. 2, 2005) (internal quotation marks omitted). In these chapter 11 cases, the Filing Exclusivity Period and Soliciting Exclusivity Period set forth in sections 1121(b) and 1121(c) of the Bankruptcy Code will expire on March 2, 2019, and May 1, 2019, respectively, absent further order of the Court.

13. Section 1121(d)(1) permits a court to extend a debtor's exclusivity "for cause," subject to certain limitations not relevant here. More specifically, section 1121(d) provides that "on request of a party in interest made within the respective periods . . . of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section." 11 U.S.C. § 1121(d). Although the term "cause" is not defined by the Bankruptcy Code, it is viewed flexibly in this context "in order to allow the debtor to reach an agreement." H.R. Rep. No. 95, 95th Cong., 1st Sess. 232 (1997); *see also In re Public Serv. Co. of New Hampshire*, 88 B.R. 521, 534 (Bankr. D.N.H. 1988) ("legislative intent . . . [is] to promote

maximum flexibility"). A debtor should be given a reasonable opportunity to negotiate an acceptable plan with creditors and to prepare adequate financial and nonfinancial information concerning the ramifications of any proposed plan for disclosure to creditors. *See In re Texaco Inc.*, 76 B.R. 322, 327 (Bankr. S.D.N.Y. 1987).

14. Courts within the Second Circuit and in other jurisdictions have held that the decision to extend the Exclusivity Periods is left to the sound discretion of a bankruptcy court and should be based on the totality of the circumstances in each case. *See, e.g., First Am. Bank of N.Y. v. Southwest. Gloves & Safety Equip., Inc.*, 64 B.R. 963, 965 (D. Del. 1986); *In re Dow Corning Corp.*, 208 B.R. 661, 664 (Bankr. E.D. Mich. 1997); *In re Express One Int'l, Inc.*, 194 B.R. 98, 100 (Bankr. E.D. Tex. 1996); *In re McLean Indus., Inc.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987). In general, as long as debtors give the court "no reason to believe that they are abusing their exclusivity rights . . . [a] requested extension of exclusivity . . . should be granted." *In re Global Crossing Ltd.*, 295 B.R. 726, 730 (Bankr. S.D.N.Y. 2003); *see also In re Borders Grp., Inc.*, 460 B.R. 818, 822 (Bankr. S.D.N.Y. 2011) (noting the debtors' "substantial efforts . . . to stabilize their business and develop a viable exit strategy"). In particular, courts examine a number of factors to determine whether a debtor has had an adequate opportunity to develop, negotiate, and propose a chapter 11 plan and thus whether there is "cause" for extension of the exclusivity periods, including the following:

- a. the size and complexity of the case;
- b. the existence of good faith progress toward reorganization;
- c. the necessity of sufficient time to negotiate a plan of reorganization and prepare adequate information to allow a creditor to determine whether to accept such plan;
- d. whether the debtor is paying its debts as they become due;

- e. whether the debtor has demonstrated reasonable prospects for filing a viable plan;
- f. whether the debtor has made progress negotiating with creditors;
- g. the amount of time which has elapsed in the case;
- h. whether the debtor is seeking an extension to pressure creditors; and
- i. whether an unresolved contingency exists.

See In re Adelpia Commc'ns Corp., 336 B.R. 610, 674 (Bankr. S.D.N.Y. 2006); *In re Cent. Jersey Airport Servs., LLC*, 282 B.R. 176, 185 (Bankr. D.N.J. 2002); *McLean Indus.*, 87 B.R. at 834; *see also Dow Corning*, 208 B.R. at 664-65 (identifying the above factors and noting that courts generally rely on the same factors to determine whether exclusivity should be extended); *In re Friedman's Inc.*, 336 B.R. 884, 888 (Bankr. D. Ga. 2005) (same).

15. Not all of these factors are relevant to every case and courts use only the relevant subset of the above factors to determine whether cause exists to grant an exclusivity extension in a particular chapter 11 case. *See, e.g., Express One*, 194 B.R. at 100 (identifying four of the factors as relevant in determining whether "cause" exists to extend exclusivity); *In re United Press Int'l, Inc.*, 60 B.R. 265, 269 (Bankr. D.D.C. 1986) (finding that the debtor showed "cause" to extend exclusivity based upon three of the factors); *In re Texaco, Inc.*, 76 B.R. at 327 (holding that size and complexity of the chapter 11 case provided sufficient cause to extend exclusivity). For example, both Congress and courts have recognized that the size and complexity of a debtor's case alone may constitute cause for extension of a debtor's exclusive periods to file a plan and solicit acceptances. H.R. No. 95-595, at 231-232, 406 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 6191 ("[I]f an unusually large company were to seek reorganization under chapter 11, the court would probably need to extend the time in order to allow the debtor to reach an agreement."); *see also Texaco*, 76 B.R. at 326 ("The large size of the debtor and the consequent difficulty in formulating

a plan of reorganization for a huge debtor with a complex financial structure are important factors which generally constitute cause for extending the exclusivity periods.").

16. Since filing their respective voluntary petitions for relief under chapter 11 of Bankruptcy Code on November 2, 2018 and November 21, 2018 (the "Petition Dates"), the Debtors have engaged with their stakeholders and their advisors, including the Creditors Committee and the Senior Lenders, in an effort to reach consensus on the terms of the Debtors' orderly transition into bankruptcy, sale process, and ultimate liquidation. Over the course of this time, the Debtors have secured authority to honor wages and continue existing employee benefit plans, programs, and initiatives; coordinated critical efforts in connection with the Debtors' valuable customer and vendor relationships; completed their schedules of assets and liabilities and statement of financial affairs; and conducted an auction for the sale of substantially all of the Debtors' assets free and clear of all liens and interests.

17. An extension of the Exclusivity Periods will provide the Debtors with the necessary time to complete their initiatives while these cases are administered as efficiently as possible for the benefit of the Debtors' stakeholders and other parties in interest.

18. The Debtors submit that sufficient "cause" exists pursuant to section 1121(d) of the Bankruptcy Code to extend the Exclusivity Periods as provided herein. Each of the relevant factors weighs in favor of an extension of the Exclusivity Periods:

- a. The Debtors' Chapter 11 Cases Are Large and Complex. These chapter 11 cases involve ten Debtor entities, which, in the period prior to the Petition Dates, had over two hundred employees and approximately \$265,000,000 in liabilities. Since commencing the cases, the Debtors have undertaken significant operational initiatives to reduce business operations and run a complicated, extensive sale process, which has demanded substantial attention from the Debtors' management and advisors.
- b. The Debtors Have Made Good-Faith Progress Towards Exiting Chapter 11. The Debtors have made significant progress in marketing their business

through various operational initiatives, including through stabilizing operations and ensuring a smooth transition into chapter 11 through the approval of a number of first day motions; coordinating critical efforts in connection with the Debtors' valuable customer and vendor relationships; and conducting an auction for the sale of substantially all of the Debtors' assets free and clear of all liens and interests. The auction yielded a successful bidder that has committed to buying the Debtors' assets for \$25,500,000. The Debtors will continue to negotiate in good faith with key stakeholders on the terms of any chapter 11 plan.

- c. An Extension of the Exclusivity Periods Will Not Prejudice Creditors. The Debtors are requesting an extension of the Exclusivity Periods to maintain focus on completing their operational initiatives and to allow the liquidation process to continue unhindered by competing plans. Continued exclusivity will permit the Debtors to maintain flexibility so competing plans do not derail the Debtors' liquidation process. Moreover, throughout these chapter 11 cases, the Debtors have had ongoing and transparent communications with the major stakeholders, including the Creditors Committee. Extending the Exclusivity Periods will benefit the Debtors' estates, their creditors, and all other key parties in interest.
- d. The Debtors Have Demonstrated Reasonable Prospects for Filing a Viable Plan. As discussed above, during their short time in chapter 11, the Debtors have already taken significant steps toward confirmation of a plan, including the preparation and filing of their schedules of assets and liabilities and statements of financial affairs, conducting a successful auction, and ongoing dialogue and communication with various stakeholders, including the advisors for the Creditors Committee.
- e. These Cases Are Less Than Four Months Old. This is the Debtors' first request for an extension of the Exclusivity Periods. As discussed above, in just over three months, the Debtors have accomplished a great deal and continue to work diligently towards liquidation.
- f. An Extension Will Not Pressure Creditors. The Debtors are not seeking an extension of the Exclusivity Periods to pressure or prejudice any of their stakeholders. All creditor groups or their advisors have had an opportunity to actively participate in substantive discussions with the Debtors throughout these chapter 11 cases. The Debtors are seeking an extension of the Exclusivity Periods to preserve and capitalize on the progress made to date in their negotiations.

19. An objective analysis of the relevant factors demonstrates that the Debtors are doing everything that they should be doing as chapter 11 debtors to facilitate a successful

conclusion to these chapter 11 cases. Accordingly, the Debtors respectfully submit that sufficient cause exists to extend the Exclusivity Periods as provided herein.

MOTION PRACTICE

15. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Local Rule 9013-1(a).

NOTICE

20. Notice of this Motion has been provided, in accordance with the *Order Establishing Certain Notice, Case Management, and Administrative Procedures* [ECF No. 55], to: (i) the Office of the U.S. Trustee; (ii) the holders of the 30 largest unsecured claims against the Debtors; (iii) the United States Attorney's Office for the Southern District of New York; (iv) the Internal Revenue Service; (v) counsel to the Official Committee of Unsecured Creditors; (vi) counsel to the Debtors' prepetition Senior Lenders; and (vii) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

NO PRIOR REQUEST

21. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: February 5, 2019

AKERMAN LLP

By: /s/Katherine C. Fackler

Andrea S. Hartley (Admitted *Pro Hac Vice*)

Joanne Gelfand (Admitted in New York)

Katherine C. Fackler (Admitted *Pro Hac Vice*)

AKERMAN LLP

98 Southeast Seventh Street, Suite 1100

Miami, FL 3313

Tel.: (305) 374-5600

Fax: (305) 374-5095

E-Mail: andrea.hartley@akerman.com

E-Mail: joanne.gelfand@akerman.com

E-Mail: katherine.fackler@akerman.com

-and-

John E. Mitchell (Admitted *Pro Hac Vice*)

Yelena Archiyan (Admitted in New York)

AKERMAN LLP

2001 Ross Avenue, Suite 3600

Dallas, TX 75201

Tel.: (214) 720-4300

Fax: (214) 981-9339

E-Mail: john.mitchell@akerman.com

E-Mail: yelena.archiyan@akerman.com

Counsel for Debtors and Debtors-in-Possession

EXHIBIT A

PROPOSED 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 (SHL)
)	
Debtors.)	(Jointly Administered)

**ORDER EXTENDING THE DEBTORS' EXCLUSIVE PERIODS TO FILE A
CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF
PURSUANT TO SECTION 1121 OF THE BANKRUPTCY CODE**

Upon the Motion, dated February 5, 2019 (the "Motion") [Doc. No. ____],² of Republic Metals Refining Corporation, et al., the above-captioned Debtors and Debtors-in-Possession (collectively the "Debtors"), for entry of an order extending the Debtors' Filing Exclusivity Period through and including May 1, 2019, and the Debtors' Soliciting Exclusivity Period through and including June 30, 2019, without prejudice to the Debtors' right to seek further extensions to the Exclusivity Periods, all as more fully described 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 1334 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this proceeding being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that notice of the Motion as set

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).

² Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

forth therein is sufficient under the circumstances, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interests of the Debtors' estates, creditors, and other parties-in-interest; and upon all of the proceedings had before the Court; and after due deliberation and cause appearing;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. Pursuant to section 1121(d) of the Bankruptcy Code, the Debtors' Filing Exclusivity Period pursuant to section 1121(b) of the Bankruptcy Code is hereby extended through and including May 1, 2019.
3. Pursuant to section 1121(d) of the Bankruptcy Code, the Debtors' Soliciting Exclusivity Period pursuant to section 1121(c) of the Bankruptcy Code is hereby extended through and including June 30, 2019.
4. Nothing herein shall prejudice (a) the Debtors' rights to seek further extensions of the Exclusivity Periods consistent with section 1121(d) of the Bankruptcy Code, or (b) the rights of any party in interest to object to any further extension requests.
5. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.
6. This Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

Dated: New York, New York
February __, 2019

PROPOSED

HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE