

Hearing Date: February 21, 2019 at 10 AM, EST  
Objection Deadline: February 14, 2019 at 4 PM, EST

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*Counsel to First Majestic Silver Corp.*

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

In re

REPUBLIC METALS REFINING  
CORPORATION, *et al.*,<sup>1</sup>  
Debtors.

Chapter 11

Case No.: 18-13359 (shl)  
(Jointly Administered)

**LIMITED OBJECTION OF FIRST MAJESTIC SILVER CORP. TO  
DEBTORS' AMENDED MOTION TO SELL REMAINING PROPERTY OF THE  
ESTATE FREE AND CLEAR OF ALL LIENS, CLAIMS, RIGHTS, TITLE, INTERESTS  
AND ENCUMBRANCES PURSUANT TO 11 U.S.C. § 363**

First Majestic Silver Corp. and its two subsidiaries, Nusantara de Mexico S.A. de C.V. and Primero Empresa Minera, S.A. de C.V. (collectively, "**First Majestic**"), by and through their undersigned attorneys, hereby submit their limited objection to the Debtors' Amended Motion to Sell Remaining Property of the Estate Free and Clear of All Liens, Claims, Rights, Title,

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<sup>1</sup> 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 38th 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) (the "**Debtors**").

Interests and Encumbrances Pursuant to 11 U.S.C. § 363 filed on February 4, 2019 [ECF No. 563]. First Majestic does not object to the general relief Debtors seek and only objects to the sale of 482 troy ounces of silver (the “**FM Silver**”) purportedly held by First Majestic as Debtors’ consignee.

### **FACTUAL BACKGROUND**

1. On January 31, 2019, the Debtors filed the Motion to Sell Remaining Assets of the Estate Free and Clear of All Liens, Claims, Rights, Title, Interest and Encumbrances Pursuant to 11 U.S.C. § 363 [ECF No. 551], which was thereafter amended on February 4, 2019 [ECF No. 563] (the “**Motion**”).

2. In the Motion, Debtors seek to sell certain assets that were not part of a previously filed motion to sell substantially all of their assets (the “**Remaining Property**”),<sup>2</sup> including the FM Silver, which Debtors assert is property of their estates.

### **ARGUMENT**

#### **The FM Silver Has Already Been Accounted for Upon First Majestic’s Payment to the Debtors.**

3. The Debtors fail to provide any detail regarding the FM Silver, other than to claim that First Majestic holds the silver as consignee. However, based upon a review of its books and records, First Majestic has established that the FM Silver is attributable to a shipment lost in 2016 that, in 2017, was subsequently replaced by RMC and paid for in full by First Majestic.

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<sup>2</sup> On December 21, 2018, the Debtors filed their Motion for Order (I) Authorizing and Approving Procedures for the Sale of the Debtors’ Assets; (II) Scheduling a Sale Hearing; (III) Approving Procedures for Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with the Sale; (IV) Approving Sale of Property Free and Clear of Interests; and (V) Approving Form of Notice of Sale [ECF No. 358] (the “**Sale Motion**”), wherein the Debtors sought approval to sell substantially all of the assets on which the Senior Lenders (as defined therein) asserted blanket liens. On January 11, 2019, the Court entered an order granting primarily all of the relief sought in the Sale Motion [ECF No. 399], with the exception of the approval of the sale. At the hearing held on February 13, 2019, the Court approved the sale to Asahi Holdings, Inc. for \$25,500,000.00.

4. Specifically, on July 28, 2016, Debtor Republic Metals Corporation (“**RMC**”) issued an invoice (Invoice #MAJ23427) to First Majestic indicating that 20,000 troy ounces of silver were transferred to First Majestic’s pool account (the “**FM Pool Account**”). A copy of the invoice is attached hereto as **Exhibit A**.

5. Per First Majestic’s directives, the 20,000 troy ounces of silver in the FM Pool Account were to be distributed as follows:

- 5,000.000 troy ounces to a third party (Monarch);
- 14,003.350 troy ounces to a third party (Sunshine Minting); and
- 996.650 troy ounces to First Majestic in the form of 31 kilo bars.

6. On July 28, 2016, RMC issued a refining invoice for each of the three transactions, copies of which are attached hereto as **Exhibit B**. Only the refining invoice for the 996.650 troy ounces of silver contained a payment amount of \$348.83 due to RMC (the “**Return Charge**”). The Return Charge was also posted on a separate invoice (the “**Sales Invoice**”) RMC issued to First Majestic, a copy of which is attached hereto as **Exhibit C**.

7. On August 12, 2016, First Majestic received 15 kilo bars (482.25 troy ounces of silver) from RMC. *See* Allocation of Silver Ounces, attached hereto as **Exhibit D**.

8. On August 25, 2016, First Majestic received 1 kilo bar (32.15 troy ounces of silver) from RMC. *See id.*

9. In an email dated March 16, 2017, RMC’s Director of Sales in Mining, Mike Waisome, acknowledged that there were missing kilo bars in the shipment of the 996.65 troy ounces of silver to First Majestic and stated that those missing bars would be replaced as soon as possible. A copy of the email is attached hereto as **Exhibit E**.

10. On April 7, 2017, First Majestic received the missing 15 kilo bars (482.25 troy ounces of silver) from RMC. *See* Exs. C & D.

11. After receiving the 996.65 troy ounces of silver, on April 11, 2017, First Majestic issued a check payable to RMC for the \$348.83 Return Charge, a copy of which is attached hereto as **Exhibit F**.

12. On April 24, 2017, the check cleared. A copy of First Majestic's bank account statement showing proof of clearance is attached hereto as **Exhibit G**.

13. Therefore, the FM Silver that the Debtors allege First Majestic currently holds in consignment was part of a transaction between First Majestic and RMC that was completed almost two years ago, in April 2017, when First Majestic paid \$348.38 to RMC. This payment fully accounted for the FM Silver.

### **CONCLUSION**

14. Based upon the foregoing, First Majestic does not hold the FM Silver as Debtors' consignee such that the FM Silver should not be included in the Debtors' assets to be sold pursuant to the Motion.

WHEREFORE, First Majestic requests that its Limited Objection be sustained and that the Motion be approved consistent with this Limited Objection.

Dated: February 14, 2019  
New York, NY

LECLAIRRYAN, PLLC

/s/ Janice B. Grubin  
Janice B. Grubin  
Ha Young Chung  
885 Third Avenue, 16<sup>th</sup> Floor  
New York, New York 10022  
Tel: (212) 634-5016  
Fax: (212) 634-5062  
Email: [janice.grubin@leclairryan.com](mailto:janice.grubin@leclairryan.com)

*Counsel to First Majestic Silver Corp.*

# **EXHIBIT A**



**Republic Metals Corporation**  
12900 N.W. 38th Avenue  
Miami, FL 33054  
Phone 888-685-8505  
Fax 305-685-8506  
<http://www.republicmetalscorp.com>

**Invoice #: MAJ23427**

3104

July 28, 2016

Minera El Pilon, S.A. de C.V  
Patsy Montenegro  
C. Fanny Anitua No. 2700  
Col Los Angeles  
Durango, Durango C.P. 34076  
Mexico

Dear Patsy Montenegro,

Today we have transferred Metal from your Pool Account to the Pool Account of  
FIRST MAJESTIC SILVER CO  
The following details the transaction:

<b>Metal</b>	<b>Fine Troy Ounces</b>
Silver	20,000.00

If you have any questions, please do not hesitate to call us 888-685-8505

Thank you,

Republic Metals Corporation

NOTE: If weights or number of pieces or any changes specified are found to be incorrect, please advise our sales department within 24 hours of receipt at the above address

In addition to any costs incurred by Republic Metals Corporation in connection with its enforcement of any return of metal or sums due hereunder or enforcement of its rights hereunder, if Republic Metals Corporation employs an attorney to enforce collection of any metals or sums due hereunder, in whole or in part, then Customer will pay a reasonable fee for such attorney's services, including costs, regardless of whether suit is instituted, and whether at trial, on appeal, in mediation, in arbitration or in administrative proceedings.

Acceptance of metal, check, draft, credit card or anyh remittance except legal tender shall not constitute return of metal to RMC or payment until such items are finally returned to RMC or paid and any period to contest any charges reflected on this invoice have expired. Until such time, Republic Metals Corporation shall be deemed to retain title to and a security interest in all goods covered by this invoice to secure the return of metal or the payment of this invoice. Consignee / bailee agrees to return the metal(s) or equal money value in kind.

# **EXHIBIT B**



Republic Metals Corporation  
12900 N.W. 38th Avenue  
Miami, FL 33054

**REFINING INVOICE# MAJ23528**

DATE: 7/28/2016  
LOT:

# 3119  
FIRST MAJESTIC SILVER CORP.  
RAYMOND POLMAN  
925 W. GEORGIA STREET, SUITE 1805  
VANCOUVER, BC V6C3L2

Metal Returned is .....	Silver
Ounces Being Returned .....	5,000.000
Charges per ounce is .....	\$0.00
Total Return Charge is .....	\$0.00

**REMARKS**

release at Monarch

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SILVER purchased from your pool account to cover charge

SILVER Price :

NOTE: If weights or number of pieces or any changes specified are found to be incorrect, please advise our sales department within 24 hours of receipt at the above address

In addition to any costs incurred by Republic Metals Corporation in connection with its enforcement of any return of metal or sums due hereunder or enforcement of its rights hereunder, if Republic Metals Corporation employs an attorney to enforce collection of any metals or sums due hereunder, in whole or in part, then Customer will pay a reasonable fee for such attorney's services, including costs, regardless of whether suit is instituted, and whether at trial, on appeal, in mediation, in arbitration or in administrative proceedings.

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Republic Metals Corporation  
12900 N.W. 38th Avenue  
Miami, FL 33054

**REFINING INVOICE# MAJ23531**

DATE: 7/28/2016  
LOT:

# 3119  
FIRST MAJESTIC SILVER CORP.  
RAYMOND POLMAN  
925 W. GEORGIA STREET, SUITE 1805  
VANCOUVER, BC V6C3L2

Metal Returned is .....	Silver
Ounces Being Returned .....	14,003.350
Charges per ounce is .....	\$0.06
Total Return Charge is .....	\$840.20

**REMARKS**

ship to Sunshine Minting

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SILVER purchased from your pool account to cover charge

SILVER Price :

NOTE: If weights or number of pieces or any changes specified are found to be incorrect, please advise our sales department within 24 hours of receipt at the above address

In addition to any costs incurred by Republic Metals Corporation in connection with its enforcement of any return of metal or sums due hereunder or enforcement of its rights hereunder, if Republic Metals Corporation employs an attorney to enforce collection of any metals or sums due hereunder, in whole or in part, then Customer will pay a reasonable fee for such attorney's services, including costs, regardless of whether suit is instituted, and whether at trial, on appeal, in mediation, in arbitration or in administrative proceedings.

Acceptance of metal, check, draft, credit card or anyh remittance except legal tender shall not constitute return of metal to RMC or payment until such items are finally returned to RMC or paid and any period to contest any charges reflected on this invoice have expired. Until such time, Republic Metals Corporation shall be deemed to retain title to and a security interest in all goods covered by this invoice to secure the return of metal or the payment of this invoice. Consignee / bailee agrees to return the metal(s) or equal money value in kind.



Republic Metals Corporation  
12900 N.W. 38th Avenue  
Miami, FL 33054

**REFINING INVOICE# MAJ23532**

**DATE: 7/28/2016**

**LOT:**

# 3119  
FIRST MAJESTIC SILVER CORP.  
RAYMOND POLMAN  
925 W. GEORGIA STREET, SUITE 1805  
VANCOUVER, BC V6C3L2

Metal Returned is .....	Silver
Ounces Being Returned.....	996.650
Charges per ounce is .....	\$0.35
Total Return Charge is .....	\$348.83

**REMARKS**

31 First Majestic KG bars -- From pool

SILVER purchased from your pool account to cover charge 0.00

SILVER Price : \$0.00

NOTE: If weights or number of pieces or any changes specified are found to be incorrect, please advise our sales department within 24 hours of receipt at the above address

In addition to any costs incurred by Republic Metals Corporation in connection with its enforcement of any return of metal or sums due hereunder or enforcement of its rights hereunder, if Republic Metals Corporation employs an attorney to enforce collection of any metals or sums due hereunder, in whole or in part, then Customer will pay a reasonable fee for such attorney's services, including costs, regardless of whether suit is instituted, and whether at trial, on appeal, in mediation, in arbitration or in administrative proceedings.

Acceptance of metal, check, draft, credit card or any remittance except legal tender shall not constitute return of metal to RMC or payment until such items are finally returned to RMC or paid and any period to contest any charges reflected on this invoice have expired. Until such time, Republic Metals Corporation shall be deemed to retain title to and a security interest in all goods covered by this invoice to secure the return of metal or the payment of this invoice. Consignee / bailee agrees to return the metal(s) or equal money value in kind.

# **EXHIBIT C**

#3119  
 FIRST MAJESTIC SILVER CORP.  
 RAYMOND POLMAN  
 925 W. GEORGIA STREET, SUITE 180  
 VANCOUVER, V6C3L2  
 Canada



Republic Metals Corporation  
 12900 N.W. 38th Avenue  
 Miami, FL 33054  
 Phone 888-685-8505  
 Fax 305-685-8506  
<http://www.republicmetalscorp.com>

Sales Invoice No.: MAJ23532

Sales Invoice Date: 07/28/16



Ticket No.	Description	Quantity UofM	Price	Premium Discount	Amount
0	Return Fee-Silver 1Kg 999 First Majestic	996.650	0.0000	0.3500 /oz	\$348.83

3x kilo bars  
 minting fee

↓  
 Republic

Total: \$348.83

\* 3x kilo bars from Republic to FMSC;  
 quantity measured in ounces and  
 price measured per ounce.

Received August 12, 2016

15x SBI - kilo bars

total ounces: 482.25

500269

COMPANY	FMSC
ACCT. No.	19-4876
CHEQUE No.	
AMT PAID	
DATE PAID	
EXTENSIONS	5/22/16
APPROVED	<i>[Signature]</i>

\* Received remaining 15x SBI kilo bars April 7, 2017 *[Signature]*

NOTE: If weights or number of pieces specified are found to be incorrect, please advise our sales department within 24 hours of receipt at the above address. \*

In addition to any costs incurred by Republic Metals Corporation in connection with its enforcement of any return of metal or sums due hereunder or enforcement of its rights hereunder, if Republic Metals Corporation employs an attorney to enforce collection of any metals or sums due hereunder, in whole or in part, then Customer will pay a reasonable fee for such attorney services, including costs, regardless of whether suit is instituted, and whether at trial, on appeal, in mediation, in arbitration or in administrative proceedings.

Acceptance of metal, check, draft, credit card or any remittance except legal tender shall not constitute return of metal to RMC or payment until such items are finally returned to RMC or paid any any period to contest any charges reflected on this invoice have expired. Until such time, Republic Metals Corporation shall be deemed to retain title to and a security interest in all goods covered by this invoice to secure the return of metal or the payment of this invoice. Consignee / bailee agrees to return the metal(s) or equal money value in kind.

Subject to RMC Standard Terms and General Operating Conditions which are available upon request or at [www.republicmetalscorp.com/terms.pdf](http://www.republicmetalscorp.com/terms.pdf).

# **EXHIBIT D**

**First Majestic Silver Corp.  
Allocation of Silver Ounces  
As at December 31, 2018**

**Mine**      **MEP**  
**Date**      28-Jul-16  
**Invoice reference**      MAJ23427

**Deposit into FM Pool Account (Oz)**      20,000.000

**Withdrawal from FM Pool  
Account**

	<b>Date</b>	<b>Invoice reference</b>	
Transfer from RM to Monarch	28-Jul-16	MAJ23528	(5,000.00)
Transfer from RM to Sunshine Minting	28-Jul-16	MAJ23531	(14,003.35)
Transfer from RM to FMSC	12-Aug-16	MAJ23532	(482.25)
Transfer from RM to FMSC	25-Aug-16	MAJ23532	(32.15)
Transfer from RM to FMSC	07-Apr-17	MAJ23532*	(482.25)

Metal balance for MAJ23427:      0

\*This shipment represents the 15 kilo bars that went missing from the August 12, 2016 shipment, as acknowledged by Mike Waisome in the email dated March 16, 2017. *See Ex. E.*

# **EXHIBIT E**

**Cesar Carrasco**

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**From:** Chantel Neumeyer  
**Sent:** February 11, 2019 11:18 AM  
**To:** Cesar Carrasco  
**Subject:** FW: Missing Kg Bars

See below – Mike Waisome to Keith re: the missing kilo bars

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**From:** Chantel Neumeyer  
**Sent:** Thursday, March 16, 2017 2:58 PM  
**To:** Keith Neumeyer <keith@firstmajestic.com>  
**Subject:** RE: Missing Kg Bars

Thanks

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**From:** Keith Neumeyer  
**Sent:** Thursday, March 16, 2017 2:56 PM  
**To:** Chantel Neumeyer <chantel@firstmajestic.com>  
**Subject:** Fwd: Missing Kg Bars

See below.

Keith Neumeyer, CEO  
First Majestic Silver Corp.  
from my iPad

Begin forwarded message:

**From:** Mike Waisome <M.Waisome@republicmetalscorp.com>  
**Date:** March 16, 2017 at 4:30:09 PM EDT  
**To:** Keith Neumeyer <keith@firstmajestic.com>  
**Subject:** Missing Kg Bars

Keith,

It was good to see you last week. Just wanted to let you know that I'm resolving the issue with the missing kg bars. I'm working on getting replacements sent out asap. I'll keep you updated as to when this is done. I'll have Drew be in touch with Chantel as well.

Thanks  
Mike

**Michael Waisome**  
Director of Sales - Mining  
Republic Metals Corporation  
12900 NW 38th Ave  
Miami, FL 33054  
Main 888-685-8505 | Direct 305-685-8505 ext 8659 | Fax 305-685-8506

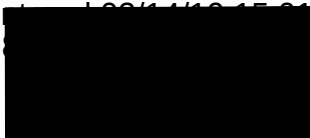


# **EXHIBIT F**



1805 - 925 GEORGIA ST. W.  
VANCOUVER, BC V6C 3L2  
Tel: (604) 688-3033

Pg 1



DATE: 04/11/2017

MM/DD/YYYY

**PAY** THREE HUNDRED FORTY-EIGHT



USD\*\*\*\*\*348.83\*

U.S. FUNDS

TO THE ORDER OF

Republic Metals Corporation  
12900 NW 38TH AVE.  
MIAMI FL 33054  
USA



FIRST MAJESTIC SILVER CORP.

PER [Signature]  
PER [Signature]

⑈050761⑈



FIRST MAJESTIC SILVER CORP.

CHEQUE NO. 050761



072816 MAJ23532

348.83

CHEQUE NO.

0.00

348.83

FIRST MAJESTIC SILVER CORP.

CHEQUE NO.

050761



SECURITY FEATURES INCLUDED - SEE REVERSE  
CONTIENIR DES CARACTÉRISTIQUES DE SÉCURITÉ - VOIR A L'ENVERS

00000050761 [REDACTED]

DATE: 04/11/2017

MM / DD / YYYY

THREE HUNDRED FORTY-EIGHT [REDACTED]

USD\*\*\*\*\*348.83\*

Republic Metals Corporation  
12900 NW 38TH AVE.  
MIAMI FL 33054  
USA

Carry forward:	USD	348.83	0.00	348.83
[REDACTED]	072816 MAJ23532	348.83	0.00	348.83

# **EXHIBIT G**

Date	Transaction Details	Withdrawals	Deposits	Balance (DR=Debit)
24APR2017	[REDACTED]	CHEQUE 000000050761 \$	348.83	[REDACTED]
[REDACTED]				

[REDACTED]



Account Number: [REDACTED]

Total Number of Cheques: [REDACTED]

Page 7 of 7



Cheque # 000000050761

\$348.83 USD

**fm**  
FIRST MAJESTIC  
185- 888 GEORGIA ST. W  
VANCOUVER, BC V6C 3L3  
Tel: (604) 688-3333

DATE: 04/11/2017

050761

PAY THREE HUNDRED FORTY-EIGHT

USD 348.83

TO THE ORDER OF Republic Metals Corporation  
12900 NW 38TH AVE  
MIAMI FL 33064  
USA

050761

