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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

REPUBLIC METALS REFINING  
CORPORATION, et al.

Case No. 18-13359 (SHL)

(Jointly Administered)

Debtors.

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**OBJECTION OF SAN DIEGO GOLD EXCHANGE TO  
DEBTORS' MOTION TO SELL REMAINING ASSETS OF THE  
ESTATE FREE AND CLEAR OF ALL LIENS, CLAIMS, RIGHTS, TITLE,  
INTERESTS AND ENCUMBRANCES PURSUANT TO 11 U.S.C. § 363**

San Diego Gold Exchange ("SD Gold"), by and through its undersigned counsel, submits this objection and reservation of rights with respect to debtors Republic Metals Refining Corporation's, et al. (the "Debtors") Motion to Sell Remaining Assets of the Estate Free and Clear of All Liens, Claims, Rights, Title, Interests and Encumbrances Pursuant to section 363 under title 11 of the United States Code (the "Bankruptcy Code") (ECF No. 551, as amended at ECF No. 563) (hereinafter, the "Sale Motion"). In support of SD Gold's objection and reservation of rights (the "Objection") it is respectfully alleged as follows:

1. SD Gold Exchange deals in the purchase and sale of gold and silver. Prior to the instant bankruptcy proceeding, SD Gold had purchased gold and silver bars from the Debtors at the behest of SD Gold's customers. SD Gold also would sell scrap gold and silver to the Debtors.

2. By Sale Invoice dated October 12, 2018, Republic Metals agreed to sell SD Gold gold and silver bars for the amount of \$60,361.00, as was its customary practice in the mounts

leading up to petition date (the “Purchase Order”). On October 17, 2018, SD Gold wired the funds for the total amount of the invoice. On November 2, 2018, the debtors filed for relief under chapter 11 and failed to deliver the Goods to SD Gold.

3. On October 16, 2018, SD Gold also provided scrap gold to Republic Metals to which Republic Metals was to return an amount of \$6,129.62.

### ARGUMENT

4. Debtors are attempting to sell property, that through their prior pleadings, affirmatively acknowledged had been pre-paid and packaged pursuant to SD Gold’s Purchase Order (*See* ECF No. 219—Exs. A & B). Despite this, the Debtors are attempting to sell the pre-paid and packaged product that has been earmarked for SD Gold free and clear of any liens, claims, rights, or encumbrances.

5. The pre-paid and packaged product does not constitute property of the Debtors’ bankruptcy estate and should not be subject to sale. “Although property of the estate for purposes of [Bankruptcy Code] § 541 has been interpreted broadly, the concept is not without limits” (*In re S.W. Bach & Co.*, 435 B.R. 866, 878 [Bankr. S.D.N.Y. 2010]). And crucially, if ownership to the property is in dispute, the court must determine ownership before authorizing the sale of the property (*See Darby v Zimmerman [In re Popp]*, 323 B.R. 260, 266 [B.A.P. 9<sup>th</sup> Cir. 2005]).

6. Interpreting the property rights under Florida Law, SD Gold is a buyer in the ordinary course of business (*see* Fla. Stat. Ann. § 671.201[9]) and obtained a special property and insurable interest in the pre-paid and packaged goods (the “Packaged Goods”) when the Packaged Goods were marked by the Debtors as the goods to which the underlying agreement to the Purchase Order referred (*See* Fla. Stat. Ann. § 672.501(1)(b)). Crucially, a buyer in the ordinary course takes the property free and clear from any security interest created by the seller (*See* Fla. Stat. Ann. § 679.320).

7. Here, the Debtors packaged the Packaged Goods for SD Gold pursuant to the sales agreement, and specifically earmarked those gold and silver bars for delivery to SD Gold. Therefore, the Packaged Goods were “identified” for purposes of the Florida UCC, and SD Gold is entitled to the Packaged Goods free and clear from any interest created by the debtors.

8. In addition, the Florida UCC provides that title to goods pass from the seller to the buyer in any manner and on any condition agreed upon by the parties (*See Fla. Stat. Ann. § 672.401[1]*). Here, Republic Metal’s invoice specifically states:

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 any [*sic*] period to contest any charges reflected on this invoice have expired. Until such time, [RMC] 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.

(*See SD Gold’s Ownership Statement, ECF No. 584*).

9. By the terms of Republic Metal’s invoice, title is transferred to SD Gold upon payment-in-full of the Sales Invoices—which occurred on October 17, 2018.

10. Therefore, title to the Goods vested in SD Gold upon payment of the Sales Invoice.

11. Thus, the Sale Motion should be denied as the property is not property of the Debtors’ bankruptcy estate.

**RESERVATION OF RIGHTS**

SD Gold reserves the right to amend/modify/supplement this Objection and further joins all other objections to the Sale Motion raised by similarly situated customers, to the extent not inconsistent herewith. Nothing herein shall constitute a waiver of SD Gold's rights under the Bankruptcy Code or applicable state law.

**Dated: February 14, 2019**  
**Syosset, New York**

**THE LAW OFFICES OF MARK J. FRIEDMAN P.C.**  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 14th day of February, 2019, a true and correct copy of the above and foregoing was served on all parties entitled to notice via the Court's ECF system.

*/s/Thomas J. Frank*  
Thomas J. Frank