

JAFFE RAITT HEUER & WEISS, P.C.
Paul R. Hage (pro hac vice)
27777 Franklin Rd., Suite 2500
Southfield, MI 48034
Telephone: (248) 351-3000
phage@jaffelaw.com

*Counsel to The Gold Refinery, LLC
and Norman Bean*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

REPUBLIC METALS REFINING
CORPORATION, *et. al.*

Debtor.

Chapter 11

Case No. 18-13359 (SHL)
Jointly Administered

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**JOINDER AND OBJECTION 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 [Doc. 551, 563]**

The Gold Refinery, LLC and Norman Bean (collectively, “TGR”), by and through their undersigned counsel, respectfully state as follows in support of their *Joinder and Objection 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*:

1. On January 11, 2019, this Court entered its *Order Approving Uniform Procedures for Resolution of Ownership Disputes* [Doc. No. 395] (the “Ownership Dispute Procedures Order”) which set forth a comprehensive procedure for the Court to determine ownership of various raw metals for which certain parties, including TGR, assert a bailment relationship exists.

2. On January 18, 2019, TGR filed its *Statement of Claimed Ownership Interest* [Doc. No. 466] (the “TGR Ownership Statement”) wherein it asserted, in detail, that a bailment relationship exists with respect to certain high-karat gold and precious metals that it delivered to the Debtors (collectively, the “Bean Gold”) several years before the commencement of these bankruptcy cases.

3. The Debtors’ *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* (the “Motion to Sell”) proposes to sell certain unidentified assets that either are not property of the estate or are subject to disputed ownership claims, or are the identifiable and traceable proceeds of such assets, which assets would therefore also not be property of the bankruptcy estate. *See, e.g., In re Mishkin*, 138 B.R. 410, 412 (Bankr. S.D.N.Y. 1992).

4. “A bankruptcy court may not allow the sale of property as ‘property of the estate’ without first determining whether the property is property of the estate.” *In re Whitehall Jewelers Holdings, Inc.*, 2008 WL 2951974, at *4 (Bankr. D. Del. July 28, 2008); *see also Hey v. Silver Beach, LLC (In re Silver Beach, LLC)*, 2009 WL 7809002 (9th Cir. BAP Nov. 3, 2009) (collecting authorities recognizing that property that is not part of the bankruptcy estate is not subject to sale pursuant to 11 U.S.C. § 363). If ownership of an asset is in dispute, the court must determine ownership before authorizing a sale of such property. *See Darby v. Zimmerman (In re Popp)*, 323 B.R. 260, 266 (B.A.P. 9th Cir. 2005); *In re C.W. Mining Co.*, 2010 Bankr. LEXIS 2262, at *41 (Bankr. D. Utah Jul. 14, 2010) (“The Trustee may only sell property of the bankruptcy estate and if there is a bona fide dispute as to ownership an adversary proceeding may be required.”); *see also* 3 COLLIER ON BANKRUPTCY ¶ 363.01 (16th ed. 2010) (“If ownership is in dispute, the court should determine ownership before authorizing a sale.”).

5. The Motion to Sell provides almost no information regarding the property that the Debtors propose to be sell, or the process by which the Debtors propose to sell it. To the extent that the Debtors propose to sell the Bean Gold, TGR objects to such sale.

6. For the reasons detailed in the TGR Ownership Statement, the Bean Gold is not property of the Debtors' bankruptcy estate and, thus, cannot be sold by the Debtors.

7. TGR joins in any objections to the Motion to Sell filed by similarly situated parties, and reserve their right to amend and/or supplement this objection as is necessary or proper.

WHEREFORE, TGR respectfully requests that the Motion to Sell be denied.

Respectfully submitted,

JAFFE RAITT HEUER & WEISS, P.C.

By: /s/ Paul R. Hage
Paul R. Hage (pro hac vice)
27777 Franklin Rd., Suite 2500
Southfield, MI 48034
Telephone: (248) 351-3000
phage@jaffelaw.com

*Counsel to The Gold Refinery, LLC
and Norman Bean*

Dated: February 14, 2019.

CERTIFICATE OF SERVICE

I, Paul R. Hage, hereby certify that on this 14th day of February, 2019, I caused to be served a copy of the *Joinder and Objection 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* to be served by this Court's CM/ECF System.

Respectfully submitted,

JAFFE RAITT HEUER & WEISS, P.C.

By: /s/ Paul R. Hage
Paul R. Hage (pro hac vice)
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