

**HEARING DATE AND TIME: FEBRUARY 21, 2019 at 10:00 A.M. (prevailing Eastern Time)**  
**OBJECTION DEADLINE DATE AND TIME: FEBRUARY 20, 2019 at 12:00 NOON (prevailing 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*)  
Katherine C. Fackler (*Admitted Pro Hac Vice*)  
Joanne Gelfand (*Admitted in New York*)  
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	)	Case No. 18-13359 (shl)
CORPORATION, <i>et al.</i> , <sup>1</sup>	)	
	)	(Jointly Administered)
Debtors.	)	
	)	<b>RELATED DOC. NOS. 565</b>

**NOTICE OF HEARING ON SUPPLEMENT TO DEBTORS’ OMNIBUS MOTION FOR APPROVAL OF SETTLEMENT TERMS WITH PREPAID CUSTOMERS PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019 AND 9006**

**PLEASE TAKE NOTICE** that a hearing on the *Supplement to Debtors’ Omnibus Motion for Approval of Settlement Terms with Prepaid Customers Pursuant to Federal Rules of Bankruptcy Procedure 9019 and 9006* (the “First Omnibus 9019 Motion”), will be held on **February 21, 2019 at 10:00 a.m. (prevailing Eastern Time)** in the above-captioned cases, before the Honorable Sean H. Lane, United States Bankruptcy Judge, in Room 701 of the United

<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).

States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), One Bowling Green, New York, New York 10004, or as soon thereafter as counsel may be heard.

**PLEASE TAKE FURTHER NOTICE** that any responses or objections to the First Omnibus 9019 Motion (the “**Objections**”) must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, and shall be filed with the Bankruptcy Court (a) by registered users of the Bankruptcy Court’s case filing system, electronically in accordance with General Order M-399 (which can be found at <http://nysb.uscourts.gov>) and (b) the Chambers of the Honorable Sean H. Lane (“**Chambers**”), United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004; (c) the Debtors, c/o Republic Metals Refining Corporation, (Attn: Scott Avila); (d) the attorneys for the Debtors, Akerman LLP, 2001 Ross Avenue, Suite 3600, Dallas, TX 75201 (Attn: John Mitchell, Esq.) and 98 Southeast Seventh Street, Suite 1100, Miami, FL 3313 (Attn: Andrea S. Hartley, Esq. and Katherine C. Fackler, Esq.); (e) the Office of the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”), U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014 (Attn: Shannon Scott, Esq.); (f) the attorneys for the Creditors’ Committee, if a committee is formed; (g) counsel to any other statutory committee appointed in the Chapter 11 Cases, and (h) all entities that requested notice in these chapter 11 cases under Fed. R. Bankr. P. 2002 so as to be received no later than **February 20, 2019 at 12:00 noon (prevailing Eastern Time)** (the “**Objection Deadline**”).

**PLEASE TAKE FURTHER NOTICE** that if no Objections are timely filed and served with respect to the First Omnibus 9019 Motion, the Debtors may, on or after the Objection Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed

order annexed to the First Omnibus 9019 Motion, which order may be entered with no further notice or opportunity to be heard.

Dated: February 18, 2019

AKERMAN LLP

By: /s/ John E. Mitchell  
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](mailto:john.mitchell@akerman.com)  
E-Mail: [yelena.archiyan@akerman.com](mailto:yelena.archiyan@akerman.com)

-and-

Katherine C. Fackler  
*(Admitted Pro Hac Vice)*  
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Joanne Gelfand  
*(Admitted in New York)*  
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](mailto:andrea.hartley@akerman.com)  
E-Mail: [katherine.fackler@akerman.com](mailto:katherine.fackler@akerman.com)  
E-Mail: [joanne.gelfand@akerman.com](mailto:joanne.gelfand@akerman.com)

*Counsel for Debtors and Debtors-in-Possession*

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

In re:	)	Chapter 11
REPUBLIC METALS REFINING	)	
CORPORATION, <i>et al.</i> , <sup>1</sup>	)	Case No. 18-13359 (shl)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	<b>RELATED DOC. NO. 565</b>

**SUPPLEMENT TO DEBTORS' OMNIBUS MOTION FOR APPROVAL OF  
SETTLEMENT TERMS WITH PREPAID CUSTOMERS PURSUANT  
TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019 AND 9006**

Republic Metals Refining Corporation, Republic Metals Corp. ("RMC") *et al.*, as debtors and debtors-in-possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases" or "Cases"), by and through their undersigned counsel, hereby file their *Supplement to the Omnibus Motion for Approval of Settlement Terms with Prepaid Customers Pursuant to Federal Rules of Bankruptcy Procedure 9019 and 9006* (ECF No. 565) (the "First Omnibus 9019 Motion").

<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 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).

## **LEGAL STANDARD<sup>2</sup>**

1. Courts have developed standards to evaluate if a settlement is fair and equitable and identified factors for approval of settlements based on the original framework announced in *TMT Trailer Ferry, Inc.*, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968). The Second Circuit outlined the test for consideration of settlements under the Bankruptcy Rules in *Iridium Operating LLC*, 478 F.3d 452, 462 (2nd Cir. 2007). The factors to be considered are interrelated and require the court to evaluate:

- (1) the balance between the litigation’s possibility of success and the settlement’s future benefits;
- (2) the likelihood of complex and protracted litigation, “with its attendant expense, inconvenience, and delay,” including the difficulty in collecting on the judgment;
- (3) “the paramount interests of the creditors,” including each affected class’s relative benefits “and the degree to which creditors either do not object to or affirmatively support the proposed settlement;”
- (4) whether other parties in interest support the settlement;
- (5) the “competency and experience of counsel” supporting, and “[t]he experience and knowledge of the bankruptcy court judge” reviewing, the settlement;
- (6) “the nature and breadth of releases to be obtained by officers and directors;” and
- (7) “the extent to which the settlement is the product of arm’s length bargaining.”

## **ARGUMENT**

2. The closing of the sale of RMC, Republic Carbon and related Debtors to the court approved, successful bidder is scheduled for February 28, 2019. The settlements balance the Debtors’ uncertain likelihood of success as to the ownership dispute TPM<sup>3</sup> with the future benefit of a settlement. The settlements pave the way for removal of metals from the Debtors’ premises, before the sale closes and the premises are turned over to the buyer.

3. The likelihood of protracted and expensive litigation is unlikely as to the smaller settlements with GMR Gold Inc., Scotsman Coin & Jewelry, Inc. and N.C.F. Florida Corp.,

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<sup>2</sup> The legal discussion set forth in the First Omnibus 9019 Motion is not repeated here.

<sup>3</sup> Unless otherwise indicated, all defined terms shall have the meaning set forth in the First Omnibus 9019 Motion.

which settlements are in regards to disputes totaling below \$50,000. TPM filed a Customer Statement which could lead to litigation, although the amounts involved may not warrant a protracted process.

4. The Senior Lenders and largest creditor of RMC and the related Debtors affirmatively support the proposed settlements. Upon information and belief, the Official committee of Unsecured Creditors has no objection to the settlement. The interests of the creditors are served by curtailing the administrative expenses through the settlements of these smaller claims so that RMC receives a small economic benefit in the form of the cash payments to its estate.

5. The parties to these settlements are all represented by sophisticated counsel and the Court has the knowledge and experience to review on the settlements.

6. No releases are being provided as to any of the settlements.

7. The settlements were the result of arm's length bargaining and the product of voluntary and independent negotiations among each of the Customers, the Debtors, and the Senior Lenders. No special relationships among the parties exist. Upon information and belief, neither the parties nor their counsel are related or affiliates of the other.

8. The settlements, the terms of which are encompassed in the First 9019 Omnibus Motion, are in the best interest of the Debtors' estates, creditors and interested parties. The uncertainty and risk of litigation is avoided together with the attendant administrative expenses. Professionals are freed up for other tasks in these related Chapter 11 cases. Four more disputes are resolved and one more Customer Statement (TPM) is withdrawn.

9. The Debtors submit that the settlements represents a sound and good faith exercise of the business judgment of the Debtors and Scott Avila, in his capacity as CRO. In

exercising his business judgment, Mr. Avila reviewed the terms of the settlements, considered the amounts involved, weighed the benefits against the risk of litigation and took into account the upcoming sale of the Debtor's operations and the ability to settle with Customers without protracted litigation. He also considered the small amounts involved on some of the settlements.

10. Accordingly, the Debtors respectfully request the Court approve the First Omnibus 9019 Motion.

**CONCLUSION**

WHEREFORE, for the reasons set forth above, the Debtors respectfully request the Court enter the Approval Order substantially in the form attached to the First Omnibus 9019 Motion as **Exhibit A** (i) approving the settlements and (ii) granting such other and further relief as requested herein or as the Court otherwise deems necessary and appropriate.

**[SIGNATURE PAGE TO FOLLOW]**

Dated: February 18, 2019

AKERMAN LLP

By: /s/John Mitchell

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](mailto:john.mitchell@akerman.com)  
E-Mail: [Yelena.archiyan@akerman.com](mailto:Yelena.archiyan@akerman.com)

- and -

Andrea S. Hartley  
(Admitted *Pro Hac Vice*)  
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Joanne Gelfand  
(Admitted in New York)  
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](mailto:andrea.hartley@akerman.com)  
E-Mail: [katherine.fackler@akerman.com](mailto:katherine.fackler@akerman.com)  
E-Mail: [joanne.gelfand@akerman.com](mailto:joanne.gelfand@akerman.com)

*Counsel for Debtors and Debtors-in-Possession*