

**HEARING DATE AND TIME: February 27, 2019 at 2:00 p.m. (Eastern Time)**  
**OBJECTION DEADLINE DATE AND TIME: February 22, 2019 at 5:00 p.m. (Eastern Time)**

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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. 599</b>

**SUPPLEMENT TO DEBTORS' SECOND OMNIBUS MOTION FOR APPROVAL OF  
SETTLEMENTS PURSUANT TO FEDERAL RULE  
OF BANKRUPTCY PROCEDURE 9019**

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 Second Omnibus Motion for Approval of Settlement Terms with Prepaid Customers pursuant to Federal Rules of Bankruptcy Procedure 9019 and 9006 (ECF No. 599) pursuant to Federal Rules of Bankruptcy Procedure 9019 (the "Second 9019 Omnibus 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 ownerships 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 My Gold<sup>3</sup> and M.K. Management involving approximately \$76,000 and

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

\$23,000 respectively. The likelihood of protracted and expensive litigation between Marigold and RMC is real as the ownership disputes as to the Carbon Material are excluded from the Uniform Procedures Governing Ownership Disputes. See Docket No. 395. Therefore, the Debtor anticipates that Marigold will file an adversary proceeding as to the ownership issue which will include a request for a preliminary injunction enjoining the sale of the carbons in which they claim ownership. Pyromet's Customer Statement includes an ownership dispute relating to the pool account which is resolved through the settlement. The litigation as to the pool accounts promises to be protracted and expensive.

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 claims so that ownership litigation is reduced and RMC receives a small economic benefit for the smaller settlements.

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.

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

8. The settlements, the terms of which are encompassed in the Second 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, including one carbon, are resolved and one more Customer Statement (My Gold) is withdrawn.

9. The Debtors submit that the settlements represent 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 all the carbon 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 Omnibus Motions.

### **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 Second 9019 Omnibus 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.

Dated: February 18, 2019

AKERMAN LLP

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