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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

REPUBLIC METALS REFINING  
CORPORATION, et al.,

Chapter 7  
Case No. 18-13359 (SHL)  
(Jointly Administered)

Debtors.

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**SUPPLEMENT TO JAMES AVERY CRAFTSMAN, INC'S CUSTOMER STATEMENT**

James Avery Craftsman, Inc. ("James Avery"), by and through its undersigned counsel, submits this supplement to its customer statement (the "Statement") [doc. 512] concerning ownership of certain silver fine metal grain pursuant to and in accordance with the Order Approving Uniform Procedures for Resolution of Ownership Disputes [doc. 395] dated January 11, 2019.

In the Statement, James Avery asserted three primary positions as to why it was entitled to the turnover of 30,524 ozt of "AG Grain", i.e. fine silver metal grain, identified by the Debtors in Exhibit "C" to the Sale Motion and valued by them at \$433,747.00, or the proceeds of sale of that grain.

The three primary grounds asserted by James Avery are that it is a buyer in the ordinary course, it took title upon payment pursuant to its contract, and, alternatively, that equity requires the imposition of a constructive trust against the grain or the proceeds of sale.

The transaction between James Avery and the debtor Republic Metals Corporation (“RMC”) is unlike most of the other customer disputes that are the subject of the Court’s Procedures Order in that James Avery has not asserted an ownership interest in raw materials. Instead, James Avery was a prepaid customer purchasing silver grain meeting its unique, modified ASTM specification.

In their omnibus responses to the customer statements, neither the Debtors nor the Senior Lenders have contested the facts demonstrated in the Statement concerning the underlying prepaid transaction between James Avery and RMC, James Avery’s unique requirements, or the fact that the Debtors disclosed finished goods meeting James Avery’s modified specification having a value exactly equal to that paid for the balance of 30,524 ozt by James Avery on Exhibit “C” to the Sale Motion.

Notwithstanding that these facts have not been disputed, the Debtors and Senior Lenders are proceeding with the sale of this grain. Permitting the sale to proceed and also allowing the Debtors and Senior Lenders to retain the proceeds of sale would result in a “double recovery” by them as they have already enjoyed the proceeds of sale paid by James Avery. Instead, to the extent the Court permits the sale, they should be required to pay the proceeds of sale of this grain, together with its accrual value, to James Avery.

Neither the Debtors’ response nor that of the Senior Lenders speak to the particulars of the Statement. Instead, each only reference James Avery by name once on a schedule to their respective responses.

The Debtors’ response omits discussion of the revised form of contract governing James Avery’s transaction with RMC and that fact that any ambiguities must be construed against RMC as the drafter of the terms and conditions.

As acknowledged by the Debtors in their response, under Fla. Stat. Ann. § 672.401(1) title to goods under a contract of sale pass upon identification and satisfaction of the conditions explicitly agreed by the parties, namely payment in this instance. See Debtors’ Response, pp. 16-17. James Avery’s goods were specifically identified, such that title passed upon identification by RMC and payment by James Avery.

Debtors’ response speaks to the bailment claims made by other customer and alludes to certain UCC provisions pertaining to the Debtors’ relationship as a buyer to certain customer sellers of goods. However, Debtors’ response fails to address the specific legal positions asserted by James Avery, with the exception of stating that a constructive trust is not warranted because “Customers cannot identify the specific property they contend should be held in trust.” See Debtors’ Response, p. 31. Debtors’ assertion is inapplicable to James Avery given its modified specification and the Debtors’ acknowledgement that the exact amount pre-purchased by James Avery was within its possession on the date of RMC’s bankruptcy filing. Moreover, the Statement makes a *prima facie* showing of each of the elements identified in paragraph “89” to the Debtors’ response.

On Schedule D to the Debtors’ response, they state the following concerning James Avery’s claim, at page 15:

18-13359-shl Doc 648-4 Filed 02/19/19 Entered 02/19/19 21:58:31 Exhibit D -  
Schedule Describing Status of Assets Pg 15 of 17

Customer	ECF No.	Debtor Entity	Assets (As claimed by Customer in applicable Customer Statement)	Location Assets as of Petition Date	Location of assets as of February 15, 2019
James Avery Craftsman, Inc.	512	RMC	30,524 ozt. of silver grain Fine silver metal grain, valued at \$433,747.00 as being pre-paid, but not packaged	Materials were not yet picked from inventory as of petition date	Sold or otherwise irretrievable

As evidenced by the identification of James Avery’s fine silver metal grain valued at \$433,747.00 in Exhibit “C” to the Sale Motion, the asset was not irretrievable as claimed by the Debtors. In fact, 23,000 ozt of this grain was reported as ready for delivery on November 1.

The Debtors have failed to contest James Avery's status as a buyer in the ordinary course or dispute that the pre-purchased goods were identifiable given the modified specification. As noted in the Statement, it is not mere coincidence that the Debtors' value of the grain is an amount equal to the purchase price for the balance owed to James Avery.

Although the Senior Lenders have attempted to generically contest that any customer is a buyer in the ordinary course, they fail to address how the facts demonstrated in the Statement do not qualify James Avery as such a buyer. As noted in the Senior Lenders' response,

Fla. Stat. § 672.716 provides, in pertinent part:

(1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

See Senior Lenders' Response, pp. 35-36.

James Avery has demonstrated, and the Senior Lenders have failed to contest, that the goods purchased by James Avery were unique such that it is entitled to recover the grain or to receive the proceeds from its sale.

For the foregoing reasons, the Debtors' response and that of the Senior Lenders should be overruled and James Avery should be determined to have a superior interest in the grain. As such, James Avery is entitled to deliver of the grain, or, in the alternative, the proceeds of sale, inclusive of any accrual in value.

James Avery reserves its right to further supplement its Statement and brief the legal arguments raised by the Debtors and Senior Lenders in their responses following the completion of discovery.

Dated: Wantagh, New York  
March 11, 2019

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