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

_____	)	Chapter 11
In re:	)	
REPUBLIC METALS REFINING	)	Case No. 18-13359 (SHL)
CORPORATION, <i>et al.</i> ,	)	
	)	
Debtors.	)	(Jointly Administered)
_____	)	

**AMENDED CUSTOMER STATEMENT OF CLAIMED OWNERSHIP  
INTEREST AND CLAIMS BY MID-STATES RECYCLING, INC.**

Pursuant to the Court's *Order Approving Uniform Procedures For Resolution Of Ownership Disputes*, entered in the above-captioned chapter 11 cases on January 11, 2019 (ECF No. 395) (the "Order"), Mid-States Recycling, Inc. ("MSR") by its undersigned attorneys, hereby submits its Statement of Claimed Ownership And Claims.

On January 18, 2018, MSR submitted its Statement of Claimed Ownership Interest and Claims (ECF No. 476) as required under the terms of the Order. On that same date, other customers likewise filed their statements of claimed ownership. On February 18, 2019, the Senior Lenders filed an omnibus response to all of the customers' statements of claimed ownership (ECF No. 637) (the "Senior Lenders' Response"). Debtors also filed an omnibus response on February 18, 2019 (ECF No. 648) ("Debtor's Response"). Pursuant to Section 2(g) of the Order, customers were permitted to amend or supplement their initial ownership claims in response to the Debtors' and Senior Lenders' Responses.

**I. Information Required By Order, Section 2(c)(i).**

***The customer:***

Mid-States Recycling, Inc.  
1841 Busse Highway  
Des Plaines, IL 60016 (USA)  
Telephone: (800) 551-0083  
MSR is identified in Debtors' records as customer no. 895

***Counsel for the customer:***

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**II. Description of Assets in Which Customer Claims  
Ownership Interest (Order, Section 2(c)(ii)).**

MSR claims ownership in gold and silver in Debtor's possession. First, MSR claims ownership of the metal in MSR's pool account at Debtors. MSR's pool account has a balance of 107,363.049 oz of silver and 31.245 oz of gold. In addition to the metal in MSR's pool account, MSR also owns certain silver goods that MSR purchased from Debtors prior to the Debtor's bankruptcy petition date, which goods were never delivered to MSR. The purchased goods are comprised of 4,000 oz. of silver shot and 1,000 oz. of silver buffalo coins (the "Purchased Metal"). Finally, MSR claims ownership by virtue of reclamation of goods having an aggregate value of \$963,070.05, delivered by MSR in 13 separately designated lots. Descriptions of each such lot, including the lot number assigned to each lot by the Debtors, the date it was received by Debtors, the value of each lot, and a description of the goods in each lot, including applicable quantities, are set forth in Exhibit "A" to MSR's initial ownership statement (ECF 476).

**III. MSR's Claims Against Debtors (Order, Section 2(c)(iii)).**

On November 15, 2018, MSR made a timely reclamation demand upon Debtors pursuant to Section 546(c) of Title 11 of the United States Code (the "the Bankruptcy Code") and Fla.

Stat. § 672.702. On November 19, 2018, MSR filed notice of its reclamation demand in Debtor Republic Metals Refining Corporation's ("RMRC") bankruptcy case. See ECF No. 112. MSR incorporates into this statement all the matters set forth in, and annexed to, its notice of reclamation.

With respect to the Purchase Metal, the Debtors have acknowledged that MSR's purchase was not only prepaid, but packaged. See ECF No. 219-2. These goods have a value of \$72,610.00. MSR claims ownership of these goods.

MSR might have additional claims against Debtors (and possibly the Senior Lenders and various individuals) based on tort theory arising from the Debtors' failure to inform MSR, or misleading MSR, as to Debtors' true financial condition at a critical point in time. Debtors resolved to file bankruptcy on October 18, 2018. See ECF No. 1, p. 6 of 15 (resolution of Debtors' board of directors to file a petition under chapter 11 of the Bankruptcy Code, signed by Debtors' board members on October 18, 2018). To the extent Debtors knowing or intentionally allowed customers such as MSR to continue to deliver goods to Debtors at a point in time when Debtors were insolvent and were already contemplating bankruptcy, while knowing that the customers were unaware of Debtor insolvency and bankruptcy plans, MSR may have tort and equity based claims that would prevent Debtors from acquiring title to the goods that MSR delivered to Debtors. Likewise, evidence of affirmative steps taken by the Debtors designed or intended to defeat or undermine customers' reclamation rights, if revealed in discovery or otherwise, would give rise to such claims. MSR reserves its rights to assert such claims as and when additional information is disclosed or discovered.

**IV. Summary of Legal Basis For Ownership Claims (Order, Section 2(c)(iv)).**

***a. Reclamation goods***

MSR claims ownership of the goods subject to its reclamation notice. The goods are comprised of the gold and silver delivered by MSR to Debtors within 45 days of Debtor's bankruptcy petition date. MSR's reclamation notice was timely issued pursuant to applicable provisions of state law and Section 546(c) of the Bankruptcy Code. MSR claims that by operation of the reclamation, it owns the goods subject to the reclamation.

***b. Pool Account Metal***

MSR submits that Debtors served as a nothing more than bailee for the metal in its pool account. Under the contractual terms and conditions between MSR and Debtors, Debtors were always under a clear and unambiguous obligation to return metal, of like kind, to MSR until MSR sold it to them. MSR incorporates the arguments asserted by other customers regarding ownership of pool account metals, including, but not limited to, the legal argument asserted by Cyber-Fox Trading, Inc. in its customer statement of ownership of pool account metal (ECF No. 441).

***c. Purchased Metal***

As previously discussed, MSR purchased and prepaid for 5,000 oz of silver, in the form silver shot (4,000 oz.) and Silver Buffalo coins (1,000 oz.). Those goods were prepackaged (prior to the Petition Date for delivery to MSR but were never shipped out to MSR. Because those goods were segregated from Debtor's general inventory; identified as product specifically sold to MSR; paid for by MSR, and packaged for delivery to MSR, title vested in MSR in those goods.

***d. Other Potential Claims***

In addition to the foregoing, principles of equitable estoppel may apply to prevent the vesting of title in MSR's goods in Debtors. The doctrine of equitable estoppel has long been part

of Florida common law jurisprudence and is appropriately applied when the particular facts in a case justify it. Steen v. Scott, 144 Fla. 702 (1940). As previously discussed, Debtors allowed, indeed encouraged, customers, including MSR, to continue to ship goods to Debtors entirely ignorant of the fact that Debtors were insolvent and had resolved to file bankruptcy. It also appears that the Debtors took steps to defeat customers' reclamation rights by comingling and processing customer goods before the parties had reached express agreements to settle the value of the goods - a clear departure from the Debtor's previous practices. These circumstances may well result in application of the doctrine of equitable estoppel to prevent the vesting of title to the goods in Debtors.

**V. Governing Law.**

Florida.

**VII. Any Additional Information Deemed Relevant by such Customer.**

Pursuant to the Order, the Debtors and the Senior Lenders were required to submit, as part of their responses to the customers' statements of claimed ownership, *inter alia*, a "summary of the legal basis for the Customer's Ownership Claim, including the legal basis for asserting that the Assets are property of the Debtors' estates." See Order, Section 2(d)(iv) and (e)(iv).

However, both the Debtors' and the Senior Lenders' Responses contain extensive arguments, many of which are highly fact specific. MSR cannot fully and fairly respond to the Debtors' and the Senior Lender's arguments until completion of discovery, which is only now beginning. As such, MSR reserves its right to respond to the Debtors' and Senior Lenders' legal and factual arguments once discovery has been completed.

Furthermore, MSR submits this statement with full reservation of its rights to reclamation under § 546(c) and to a priority administrative expense claim under § 503(b).

Dated: New Haven, CT  
March 11, 2019

MID-STATES RECYCLING INC.

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was served by CM/ECF and/or mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

*/s/ Robert M. Fleischer*

Robert M. Fleischer