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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 ALEX MORNINGSTAR CORP.**

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"), Alex Morningstar Corp. d/b/a Morningstar's ("AMC"), by its undersigned attorneys, hereby submits its Statement of Claimed Ownership And Claims.

On January 18, 2018, AMC submitted its Statement of Claimed Ownership Interest and Claims (ECF No. 478) 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:

Alex Morningstar Corp. d/b/a Morningstar's
2000 Hollywood Blvd.
Hollywood, FL 33020 (USA)
AMC is identified in Debtors' records as customer no. 1639

Counsel for the customer:

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

AMC claims ownership of gold and silver, delivered by AMC and received by Debtors¹. This claim is comprised of 204.76 troy oz. of gold and 61.91 troy oz. of silver. This material was delivered to Debtor on October 5, 2018 and designated by Debtors as Lot no. L181483.

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

On November 20, 2018, AMC 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 Section 2-702 of the Uniform Commercial Code for metal delivered to Debtors in Lot no. L181483. On November 20, 2018, AMC filed notice of its reclamation demand in Debtor Republic Metals Refining Corporation's ("RMRC") bankruptcy case. See ECF No. 1119. Pursuant to its reclamation demand, AMC is entitled to reclaim gold and silver valued at \$253,202.30. AMC incorporates into this statement all matters set forth in, and annexed to, its notice of reclamation.

¹ Except to the extent that a term is otherwise defined herein, defined terms shall have the definitions assigned to such terms in the Order Approving Uniform Procedures For Resolution Of Ownership Disputes entered on January 11, 2019 (ECF No. 395).

AMC 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 AMC, or misleading AMC, 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 AMC 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, AMC may have tort and equity based claims that would prevent Debtors from acquiring title to the goods that AMC delivered to Debtors. Likewise, evidence of affirmative steps taken by the Debtors designed or intended to defeat or undermine customers' reclamation rights under Section 503(b)(9), if revealed in discovery or otherwise, would give rise to such claims. AMC 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).

Pursuant to industry custom and practice, and pursuant to the custom and practice followed by the AMC and the Debtors in their dealings with each other, AMC continued to own goods it shipped to Debtors until AMC and Debtors reached an agreement to settle the value of those goods. This was never a passive process - AMC and Debtors always exchanged and compared assay values for each lot of precious metal bearing material delivered by AMC to Debtors. Unless and until AMC and Debtors affirmatively and expressly agreed on the settlement of each lot, AMC retained the right to retrieve the goods back from Debtors. With respect to Lot L181483, AMC and Debtors never reached agreement to settle that lot. Consequently, title to the goods contained in that lot never passed to Debtors.

Under these circumstances, given the parties' failure to reach an express settlement, per their prior custom and practice, and industry custom and practice, Debtors' rights in the goods delivered by AMC never exceed the rights of a bailee. Mere possession of goods, as in a bailment, is not sufficient under the UCC to establish "rights" of the debtor in the collateral. Welding Metals v. Foothill Capital Corp., No. 3:92-cv-00067 (WWE), 1997 U.S. Dist. LEXIS 7672, at * 18-19 (D. Conn. April 14, 1997). Courts considering contracts that have both sale and bailment characteristics, as is the case here, will examine the all the surrounding circumstances to determine if there was bailment. See United States v. Fleet Nat'l Bank (in re Handy and Harman Refining Group, Inc.), 271 B.R. 732, 736 (Bankr. D. Conn.) (holding that question whether Debtor's possession of U.S. Mint's coins was that of a bailee presented a question of fact). Until the parties expressly agreed to settle on the value of goods delivered by AMC to Debtors, Debtor had nothing more than naked possession of AMC's goods and the rights of a bailee and none more.

In addition to the foregoing, principles of equitable estoppel may apply to prevent the vesting of title in AMC'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 AMC, 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 frustrate 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. AMC 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, AMC reserves its right to respond to the Debtors' and Senior Lenders' legal and factual arguments once discovery has been completed.

Furthermore, AMC 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

ALEX MORNINGSTAR CORP. d/b/a
MORNINGSTAR'S

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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