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

In re:

REPUBLIC METALS REFINING
CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 18-13359 (SHL)

(Jointly Administered)

**Related to ECF Nos. 10, 54, 78, 227, 277,
373, 395, 454, 637, 648**

**SUPPLEMENTAL CUSTOMER STATEMENT OF FUNDACIÓN RAFAEL
DONDÉ, I.A.P. IN ACCORDANCE WITH THE ORDER APPROVING
UNIFORM PROCEDURES FOR RESOLUTION OF OWNERSHIP DISPUTES**

In accordance with the *Order Approving Uniform Procedures for Resolution of Ownership Disputes* [ECF No. 395] (the “Protocol”), Fundación Rafael Dondé, I.A.P. (the “Foundation”)¹ hereby submits this *Supplemental Customer Statement of Fundación Rafael Dondé, I.A.P. in Accordance With the Order Approving Uniform Procedures for Resolution of Ownership Disputes* (the “Supplemental Customer Statement”)² in response to the *Omnibus Response of the Senior Lenders to Customer Statements Pursuant to Order Approving Uniform*

¹ The address of the Foundation and its telephone number are as follows: Monte de Piedad 3, colonia Centro, alcaldía de Cuauhtémoc, Ciudad de México, 06000, telephone number +52-55 5130-3100.

² Capitalized terms used but not defined in this Supplemental Customer Statement have the meaning ascribed to such terms in the *Customer Statement of Fundación Rafael Dondé, I.A.P. in Accordance With the Order Approving Uniform Procedures for Resolution of Ownership Disputes* [ECF No. 454] (the “Customer Statement”) or the Protocol, as applicable.

Procedures for Resolution of Ownership Disputes [ECF No. 637] (the “Lenders’ Response”) and the *Debtors’ Omnibus Response to Customer Statements Pursuant to the Order Approving Uniform Procedures for Resolution of Ownership Disputes* [ECF No. 648] (the “Debtors’ Response”) and, together with the Lenders’ Response, the “Responses”) and respectfully states as follows:

SUPPLEMENTAL CUSTOMER STATEMENT

1. The Foundation incorporates the Objection and Customer Statement as if fully set forth herein.

2. As previously explained, the Foundation is a not-for-profit organization that, for more than 100 years, has provided high-impact educational programs, emotional support and health and wellness services to nearly 75,000 low-income children in Mexico. The Foundation also offers financial products and services that benefit economically disadvantaged families, such as providing low interest rate loans and other services free of charge. The Foundation’s philanthropic programs are financed, in part, by periodically delivering to RTMM gold and silver that it receives as collateral from its customers to melt and/or sell as authorized by the Foundation. The Foundation is not similarly situated to any other Customers.

3. Unlike the other Customers, the Foundation’s claims fall into three broad categories: (1) criminal claims under the Mexican Federal Criminal Code (*Código Penal Federal*), the Criminal Code for the Federal District (*Código Penal para el Distrito Federal, Ciudad de México*) and other relevant laws (together, the “Mexican Criminal Claims”); (2) claims against RTMM for breach of the Service Agreement arising under Mexican law (the “Non-Bankruptcy Claims”); and (3) claims arising under the Bankruptcy Code (the

“Bankruptcy Claims” and, together with the Mexican Criminal Claims and the Non-Bankruptcy Claims, the “Foundation’s Claims”).

THE RESPONSES ARE INADEQUATE

4. Neither of the Responses addresses the Foundation’s Claims, cites Mexican law or otherwise substantively responds to the arguments set out in the Foundation’s Customer Statement, which defeats the purpose of the Protocol.

5. The Responses apparently lump the Foundation in with those Customers who assert claims for bailment under Florida law, but this is a misreading of the Foundation’s Customer Statement. Although the Lenders and the Debtors summarily assert that Florida law controls all ownership dispute issues, Lenders’ Response ¶ 42, Debtors’ Response ¶¶ 65-70, their analysis relies on the Standard Terms and other connections to the Debtors in Florida—none of which are applicable to the Foundation. The Foundation’s relationship with RTMM is governed by the non-standard Service Agreement, which is not subject to Florida law (or the law of any other U.S. jurisdiction) and does not incorporate the Standard Terms. The Foundation’s only connection to Florida in this matter is the Debtors’ criminal conversion and transportation of the Foundation’s Assets to Florida without authorization.³ The Foundation’s business relationship is with RTMM and all related contacts occurred in Mexico. Although the Lenders and the Debtors attempt to define the issues so that all Customers are governed by the same law, the Foundation is distinct, and Mexican law governs its ownership rights. The Foundation’s Claims plainly do not include a claim for bailment under Florida law and, other than the Bankruptcy Claims, arise under Mexican law.⁴

³ The Foundation did not consent, expressly or implicitly, to RTMM’s transfer of the FRD Gold or FRD Silver to the United States or the sale of the FRD Gold or FRD Silver by RMC, RMRC or any other Debtor.

⁴ The Foundation reserves all of its rights to assert other claims, including a bailment claim, under U.S. law if it is determined that Mexican law does not apply to its ownership dispute.

6. The Lenders’ Response recognizes that the Foundation’s agreement with RTMM is not based on the standard Refining Agreement (as defined in the Lenders’ Response). Lenders’ Response ¶ 67 & n. 19-20. Nevertheless, the Lenders do not analyze or even respond to the Foundation’s unique agreement or the Foundation’s Claims; instead, they baldly assert that the Foundation cannot “establish a valid bailment or trace its purported property.” *Id.* ¶ 20.

7. The Debtors’ Response is even more deficient than that of the Lenders: it includes no specific argument or legal citations with respect to the Foundation’s Claims and completely ignores the criminal claims the Foundation holds against the Debtors and their principals. Moreover, in the Debtors’ schedule purporting to “describe” the status of the Assets, they fail to identify the Foundation’s cash Sale Proceeds in the amount of MEX\$ 75,520,712.40 (USD\$ 3,757,476.02) and to confirm the amount of the Foundation’s Assets based on the Debtors’ books and records. *See* Debtors’ Response, Ex. D.

THE FOUNDATION’S CLAIMS ARE “DEEMED APPROVED”

8. Paragraph 2(f) of the Protocol provides that “[i]f neither the Debtors nor the Senior Lenders file a Response to the claims asserted by a Customer Statement by the Response Deadline, then the Customer’s ownership claim shall be deemed approved.” Protocol ¶ 2(f).

9. As explained above, neither the Lenders nor the Debtors responded to the Foundation’s Claims:

Foundation’s Claim	Lenders’ Response	Debtors’ Response
Mexican Criminal Claims	None	None
Non-Bankruptcy Claims (arising under Mexican law)	None	None
Bankruptcy Claims	None	None

10. Because neither the Lenders nor the Debtors responded “to the claims asserted by [the Foundation’s] Customer Statement” (*i.e.*, the Foundation’s Claims), the Foundation’s

Customer ownership claims automatically are “deemed approved” under the terms of the Protocol. *Id.* ¶ 2(f).

**ALTERNATIVELY, DEBTORS’ RESPONSE IS UNTIMELY AND, THEREFORE,
BARRED**

11. The Debtors’ Response was deliberately untimely and the consequences of their dilatory filing are severe—and dispositive.

12. Paragraph 2(d) of the Protocol, which was heavily negotiated and approved by the Court, fixes the Debtors’ response deadline at February 18, 2019 (the “Response Deadline”). Although the Debtors contend that Bankruptcy Rule 9006 extends the Response Deadline because February 18, 2019 was a holiday (Washington’s Birthday), Debtors’ Response, at 1 n.2, courts have universally held that Bankruptcy Rule 9006 does *not* extend fixed deadlines set by court order, such as the fixed-date Response Deadline. *In re MF Glob. Inc.*, No. 11-2790 (MG) SIPA, 2014 WL 1320094, at *5 (Bankr. S.D.N.Y. Apr. 1, 2014) (quoting Fed. R. Bankr. P. advisory committee notes to 2009 Amendments (“The time-computation provisions of subdivision (a) apply only when a time period must be computed. They do not apply when a fixed time to act is set.”) and finding that claims were untimely filed on June 4, 2012 (a Monday) when the case commencement notice set a fixed date for filing of June 2, 2012 (a Saturday)); *see also In re Froiland*, 589 B.R. 309, 315 (Bankr. W.D. Tex. 2018) (“[T]he Court concludes that Bankruptcy Rule 9006(a) does not extend a deadline for filing pleadings when the date is a legal holiday, if a fixed-date deadline has been set by order of a court.”) (collecting cases).

13. Accordingly, contrary to the Debtors’ assertion, Bankruptcy Rule 9006(a) did not extend the Response Deadline and the Debtors’ Response was untimely. The Debtors’ dilatory filing is no ministerial mistake—paragraph 2(f) of the Protocol sets forth the consequences for the Debtors’ delay: “If neither the Debtors nor the Senior Lenders file a Response to the claims

asserted by a Customer Statement **by the Response Deadline**, then the Customer's ownership claim shall be deemed approved." Protocol ¶ 2(f) (emphasis added). Accordingly, because the Debtors failed to comply with the Response Deadline, the Protocol compels the result that the Foundation's ownership claims are deemed approved, at least with respect to the Debtors.

RESERVATION OF RIGHTS

14. The Foundation reserves all of its rights, including but not limited to amending or supplementing this Supplemental Customer Statement to assert any claims the Foundation may have to the extent the Bankruptcy Court concludes that U.S. law applies to the instant ownership dispute.

15. Moreover, the Foundation reserves the right to respond to the arguments contained in the Debtors' Response and the Lenders' Response in the briefing to be submitted in the metal ownership litigation, to dispute any factual allegations contained in the Debtors' Response and the Lenders' Response after discovery has closed, to bring a dispositive motion on the bases identified herein or other applicable grounds, and to take any and all appropriate action to protect its rights and interests, including the interests of the 75,000 children and their families who depend on the Foundation for educational, psychological and economic support.

Dated: New York, New York
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DLA PIPER LLP (US)

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