

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

REPUBLIC METALS REFINING
CORPORATION, et al.,¹

Debtors.

Chapter 11

Case No. 18-13359 (SHL)

(Jointly Administered)

**YAMANA GOLD INC.'S *EX PARTE* MOTION FOR ENTRY OF AN ORDER
TO (I) FILE A DOCUMENT UNDER SEAL AND (II) REDACT
COMMERCIALY SENSITIVE, NONPUBLIC INFORMATION**

Yamana Gold Inc. ("Yamana") files this motion (the "Motion") for entry of an order (the "Proposed Order"), substantially in the form attached hereto as **Exhibit A**: (a) authorizing Yamana to redact commercially sensitive, non-public information in *Yamana Gold Inc.'s Amended Customer Statement of Claimed Ownership Interest and Claims* (the "Redacted Document"); (b) authorizing Yamana to file an unredacted version of the Redacted Document under seal; and (c) directing that the sealed and redacted information shall remain under seal and not be made available to anyone, except as specifically provided in the Proposed Order, without the consent of Yamana or further order of the Court. In support of this Motion, Yamana respectfully states as follows:

¹ 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).

Jurisdiction

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are section 107(b)(1) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9077-1(b) of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the “Local Bankruptcy Rules”).

Relief Requested

4. By this Motion, and at the request of the Debtors who have demanded that certain information disclosed in the Redacted Document remain confidential, Yamana respectfully requests entry of the Proposed Order (a) authorizing Yamana to redact commercially sensitive, non-public information in the Redacted Document, (b) authorizing Yamana to file an unredacted version of the Redacted Document under seal, and (c) directing that the Redacted Document shall remain under seal and not be made available to anyone, except as specifically provided in the Order, without the consent of Yamana or further order of the Court.

Basis for Relief

5. Section 107(b) of the Bankruptcy Code authorizes the Court to issue orders to protect entities from potential harm caused by the disclosure of confidential information. In particular, section 107(b) provides that:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may—(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information

11 U.S.C. § 107(b)(1).

6. In addition, Bankruptcy Rule 9018 provides that:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires . . . to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information

Fed. R. Bankr. P. 9018.

7. In granting relief under section 107(b) of the Bankruptcy Code, “[t]he court determines whether the subject documents fall within the provisions of § 107(b) and the appropriate remedy if they do.” *In re Barney’s, Inc.*, 201 B.R. 703, 707 (Bankr. S.D.N.Y. 1996). If the documents in question fall within the parameters of section 107(b), “the court is required to protect a requesting interested party and has no discretion to deny the application.” *In re Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994); *see also In re Lomas Fin. Corp.*, No. 90 Civ. 7827 (LLS), 1991 WL 21231, at *2 (S.D.N.Y. Feb. 11, 1991) (noting the broad scope of the term “commercial information”).

8. The Second Circuit has held that section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018 do “not require that commercial information be the equivalent of a trade secret before protecting such information.” *Orion*, 21 F.3d at 28. Indeed, this Court has stated that it “is required to grant that relief upon the motion of a party in interest, assuming the information is of the type listed in section 107(b)” of the Bankruptcy Code. *In re Global Crossing, Ltd.*, 295 B.R. 720, 723 n.7 (Bankr. S.D.N.Y. 2003).

9. In addition, the Second Circuit has held that a party seeking to seal information is only required to show that the information is confidential and commercial, and no showing of “good cause” is necessary. *See, e.g., Orion*, 21 F.3d at 28. Thus, a bankruptcy court may enter a seal order under the broad confidentiality protections

in bankruptcy proceedings where necessary to protect commercial information. *See Global Crossing*, 295 B.R. at 725 (finding that the “whole point of [Bankruptcy Rule 9018] is to protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury”).

10. The Redacted Document contains business information concerning the Debtors that the Debtors request remain confidential—specifically, the terms of the two contracts that govern Republic Metals Corporation’s provision of refining services for Yamana. Both contracts contain confidentiality provisions. While Yamana consents to the disclosure of the contracts in their entirety, the Debtors contend that the public disclosure of certain information contained in the Redacted Document could cause commercial injury to the Debtors and have not waived the confidentiality provisions with respect to portions of the Redacted Document. In accordance with the above, Yamana seeks authority to file the Redacted Document under seal and in redacted form because the redacted information constitutes confidential commercial information that falls within the parameters of section 107(b) of the Bankruptcy Code.² Yamana respectfully submits that good cause exists for the relief requested and no alternative method would adequately protect the parties’ commercial interests. Upon entry of the Order granting the relief requested in this Motion, Yamana will file the Redacted Document under seal and the proposed redacted version of the Redacted Document on the public docket.

11. Yamana will deliver a copy of the Redacted Document and an unredacted version of the Redacted Document to the Court for in camera review, and to

² The specific redactions in the Redacted Document and its accompanying exhibits are identical to redactions requested by the Debtors in *Yamana Gold Inc.’s Limited Objection to Debtor’s Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Use Cash Collateral, (II) Granting Adequate Protection to the Secured Parties, (III) Scheduling a Final Hearing and (IV) Granting Related Relief* (Docket No. 162). The United States Trustee has consented to those redactions. *See Notice of Filing of Revised Proposed Order to (I) File A Document Under Seal and (II) Redact Commercially Sensitive, Nonpublic Information* (Docket No. 366).

the following parties, or their counsel, on a confidential basis: (a) the U.S. Trustee, (b) the Debtors, and (c) the Secured Lenders.

Notice

12. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the Southern District of New York; (b) counsel to the Debtors; (c) counsel to the Secured Lenders, and (d) all parties requesting service in these cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, Yamana submits that no other or further notice is required.

Prior Request

13. On January 18, 2019, Yamana filed a motion substantially similar to this Motion but relating to Yamana's *Customer Statement of Claimed Ownership Interest and Claims* [Docket Nos. 485, 490].

14. However, no prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, for the reasons set forth herein, Yamana respectfully requests that the Court enter the Order, substantially in the form attached hereto as **Exhibit A**: granting the relief requested herein and granting such other relief as is just and proper.

Dated: March 11, 2019
New York, New York

Respectfully submitted,
SELENDY & GAY PLLC

By: /s/ David S. Flugman

David L. Elsberg
David S. Flugman
SELENDY & GAY PLLC
1290 Avenue of the Americas
New York, NY 10104
Telephone: (212) 390-9000
E-mail: delsberg@selendygay.com
dflugman@selendygay.com

Attorneys for Yamana Gold Inc.