

John E. Mitchell (Admitted *Pro Hac Vice*)  
 Yelena Archiyan (Admitted in New York)  
 AKERMAN LLP  
 2001 Ross Avenue, Ste. 3600  
 Dallas, TX 75201  
 Tel.: (214) 720-4300  
 Fax: (214) 981-9339

Andrea S. Hartley (Admitted *Pro Hac Vice*)  
 Joanne Gelfand (Admitted in New York)  
 Katherine C. Fackler (Admitted *Pro Hac Vice*)  
 AKERMAN LLP  
 98 Southeast Seventh Street, Ste. 1100  
 Miami, FL 33131  
 Tel.: (305) 374-5600  
 Fax: (305) 374-5095

*Counsel to the Debtors and Debtors in Possession*

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

In re:	)	Chapter 11
	)	
REPUBLIC METALS REFINING	)	
CORPORATION, <i>et al.</i> , <sup>1</sup>	)	Case No. 18-13359 (shl)
	)	
Debtors.	)	
	)	(Jointly Administered)

**DECLARATION OF SCOTT AVILA IN SUPPORT OF  
 1) DEBTORS’ AMENDED THIRD OMNIBUS MOTION FOR  
 APPROVAL OF SETTLEMENTS WITH CUSTOMERS; AND  
 2) MOTION FOR APPROVAL OF SETTLEMENT  
AGREEMENT WITH WHARF RESOURCES (U.S.A) INC.**

*Relates to ECF No. 632 and 692*

I, SCOTT AVILA, being duly sworn, depose and say as follows:

1. My name is Scott Avila. I am a principal of Paladin Management Group, LLC (“Paladin”), a financial advisory firm. I submit this declaration (the “Declaration”) in my capacity as Chief Restructuring Officer (“CRO”) of Republic Metals Refining Corporation,

---

<sup>1</sup> 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). Where applicable, the Debtors are also referred to herein as the “Company.”

Republic Metals Corporation (“RMC”), Republic Carbon Company, LLC, Republic High Tech Metals, LLC, RMC Diamonds, LLC, RMC2, LLC, J & L Republic, LLC, and R & R Metals, LLC, the debtors and debtors-in-possession (together, the “Debtors” or the “Company”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”) before the United States Bankruptcy Court for the Southern District of New York (the “Court”), in support of *Debtors' Amended Third Omnibus Motion for Approval of Settlements with Customers Pursuant to Fed. R. Bank. P. 9019* (ECF No. 692) (the “Third Omnibus 9019 Motion”) and the *Motion for Approval of Settlement Agreement with Wharf Resources (U.S.A.), Inc. Pursuant to Federal Rule of Bankruptcy Procedure 9019* (ECF No. 632) (the “Wharf 9019 Motion”) filed by the above-captioned Debtors and Debtors-in-possession.

2. I am duly authorized to make this declaration on behalf of the Debtors.

3. A history of the Debtors' businesses and the events leading to these Chapter 11 Cases are set forth in my Declaration, as Chief Restructuring Officer, in Support of Chapter 11 Petitions and First Day Motions (ECF No. 2, the “Avila Declaration”), and can be gleaned from reviewing the entirety of the Court's docket for these Chapter 11 Cases

4. I have personal knowledge of the facts set forth herein and, if called as a witness, I could and would testify in support of the approval of the settlements as set forth herein. Capitalized terms and phrases not otherwise defined herein shall have the meanings ascribed to such terms in the Third Omnibus 9019 Motion and the Wharf 9019 Motion.

5. The Customers claim an ownership interest with respect to specific goods consisting of prepaid packaged goods, other additional inventory, and materials that are segregated and identified.

6. RMC and Lenders dispute those claims and the claim that these goods are property of RMC's bankruptcy estate.

7. RMC with the consent of the Lenders reached settlements with seven customers.

8. The terms of the settlements are as set forth in the Third Omnibus 9019 Motion and the Wharf 9019 Motion.

9. The Third Omnibus 9019 and order thereon shall serve as the settlement agreement between those parties. The Settlement Agreement between Wharf and the Debtors is attached as Exhibit "A" to the Wharf 9019 Motion.

10. I considered the following with respect to the proposed settlements.

**A. USGB LLC ("USGB"):**

11. Prior to the Petition Date, USBG and its affiliate, Wholesale Coins Direct, LLC (collectively, the "USGB Parties"), assert that they ordered, received and are in possession of various metals valued in the amount of \$114,403.86 from Debtor, RMC (composed of approximately 72 ozt. of gold and 2,613 ozt. of silver), and also that they ordered and paid for the purchase of various metals valued in the amount of \$138,749.80 from RMC, both pursuant to a Consignment agreement dated May 12, 2017. RMC claims ownership of the various metals in the possession of USGB under the Consignment Agreement.

12. The principal terms of the settlement with the USGB Parties are that within ten business days after entry of an order approving the Third Omnibus 9019 Motion, the USGB Parties shall make a cash payment of \$57,201 to RMC for the purchase of the consigned materials in their possession. The USGB Parties shall then withdraw their Customer Statement [Docket No. 521]. This settlement resolves the USGB Parties' ownership and recoupment claims. The USGB Parties shall also be entitled to file a proof of claim for any remaining

amounts claimed due and owing. All of the USGB Parties' rights, remedies and defenses with respect to any such proof of claim shall be reserved and preserved. The Debtors reserve the right to object to any proof of claim filed by the USGB Parties pursuant to 11 U.S.C. Section 502(d).

**B. Israel Coins and Medals Corp. Ltd. (“ICMC”):**

13. Prior to the Petition Date, ICMC asserts that it purchased 8,590 1 oz. of silver rounds and paid \$145,072.96 to Debtor RMC. ICMC is listed as a Prepaid Customer on Exhibit A to the Motion to Sell Property of the Estate Free and Clear of all Liens, Claims, and Encumbrances Pursuant to 11 U.S.C. §363 [Docket No. 219] (the “Prepaid Customer Motion”). The 8,590 1 oz. silver rounds are custom goods identifiable in Exhibit C to the Prepaid Customer Motion.

14. The principal terms of the settlement with ICMC are that RMC shall release and ship at ICMC's sole expense the 8,590 rounds of silver. In consideration, ICMC shall make a onetime cash payment in the amount of \$50,000 to RMC's bankruptcy estate upon approval of the settlement. ICMC shall then withdraw its Customer Statement [Docket No. 462] and withdraw its proof of claim

**C. Bayside Metal Exchange (“Bayside”):**

15. Bayside asserts a total claim of \$1,600,360.84 against Debtor RMC. Bayside is listed as a Prepaid Customer on Exhibit A to the Prepaid Customer Motion. This claim is composed of the following:

- i. \$61,720 worth of 10-oz gold bars.
- ii. \$11,978.04 worth of 1-gram gold bars.
- iii. \$402,039.50 worth of 1-oz gold bars.
- iv. \$145,610 worth of 10-oz silver bars.

v. \$271,458.30 worth of 1-oz silver bars.

vi. \$707,555 worth of 1-oz silver rounds.

The amount of \$138,804.79 prepaid by Bayside is listed on Exhibit B to the Prepaid Customer Motion as identified, segregated, pre-paid packaged product.

16. The principal terms of the settlement with Bayside provide that RMC shall release and ship Bayside's pre-paid packaged product in the amount of \$138,804.79 to Bayside at Bayside's sole expense. All parties reserve ownership rights with respect to \$601,327.01 worth of product for which Bayside claims it received UPS notices and the rights thereto shall be resolved pursuant to the Uniform Customer Procedures. Bayside shall be allowed a general unsecured claim against RMC for the remainder of its claim in the amount of \$860,229.04 subject to disallowance under section 502(d) of the Bankruptcy Code. Bayside shall amend its Customer Statement [Docket No. 432] to reflect the foregoing agreement. Bayside shall be responsible for the timely filing of its proof of claim.

**D. Vancouver Gold Buyer (“Vancouver”):**

17. Prior to the Filing Date, Vancouver delivered raw materials to RMC approximately valued at \$250,072.45, composed approximately of the following:

i. 754.07 oz. of gold.

ii. 24.25 oz. of platinum.

iii. 528.86 oz. of silver.

iv. 8.73 oz. of palladium.

RMC is in possession of identified and segregated materials previously delivered by Vancouver with an estimated value as of the petition date of \$88,242 (approximately 103 oz of raw ore identified as PT BAR - RL161555, RL161701, and RL161701 which are composed of 47 oz. of

gold, 9 oz. of silver, 25 oz. of platinum, 9 oz. of palladium). Vancouver claims an ownership interest in these segregated materials and RMC contends the materials are property of its bankruptcy estate.

18. The principal terms of the settlement are that Vancouver shall pick up, at its sole expense, the identified and segregated materials and RMC's bankruptcy estate shall disclaim any ownership in same. Vancouver shall be entitled to an allowed unsecured claim in the amount of \$162,072. However, Vancouver may participate in the Section 503(b)(9) procedures proposed by the Debtors and subject to Court approval for the purpose of seeking administrative priority as to the **maximum** amount of \$121,372.84. The unsecured claim in the amount of \$162,072 shall be subsequently disallowed and stricken to the extent that the claim in the amount of \$121,372.84 is granted priority under Section 503(b)(9). There shall be no double recoveries. The remaining portion of the claim in the amount of \$40,457.61 shall be treated as an allowed unsecured claim. Vancouver shall withdraw its Customer Statement [Docket No. 465]. Vancouver shall be responsible for timely filing its proof of claim.

**E. Prince & Izant Co. (“P&I”):**

19. P&I claims ownership in 400 Troy ounces of gold grain (the “Goods”) which Goods are in RMC’s possession and are segregated and identified, prepaid and packaged, with a value as of the Petition Date of \$492,780. The Debtor and Senior Lenders claim the Goods belong to the bankruptcy estate of RMC.

20. The principal terms of the settlement with P&I are that upon entry of a final order approving the Third Omnibus 9019 Motion, RMC shall release and ship to P&I, which shipping shall be at P&I’s sole expense, seventy percent (70%) of the Goods representing 280 Troy oz. (the “Released Goods”). P&I shall be deemed to disclaim any ownership interest in the

remaining 120 Troy oz. and the Debtors shall be free to immediately liquidate the remaining Goods with all liens thereon to attach to the proceeds of sale to the same extent, order and priority in which they existed on the Petition Date. P&I shall have an allowed general unsecured claim against RMC in the amount of \$147,834; provided, however, that such claim shall be subject to potential disallowance only pursuant to section 502(d) of the Bankruptcy Code. P&I shall withdraw with prejudice its Customer Statement [Docket No. 461] and its Objection to the Use of Cash Collateral [Docket No. 202] upon approval of the settlement by the Bankruptcy Court pursuant to the Final Order and the shipment of the Released Goods to P&I.

**F. APMEX, Inc (“APMEX”):**

21. APMEX claims \$7,621,268 against RMC for prepaid product. RMC is in possession of identified, prepaid and segregated product for APMEX (total value of \$1,903,797.30 as of the petition date consisting of 1,097 ounces of gold and 37,500 ounces of silver) (the “APMEX Goods”).

22. The principal terms of the settlement with APMEX are that upon approval of the settlement by the Bankruptcy Court: 1) Debtor shall disclaim any interest in the APMEX Goods; 2) APMEX shall pay RMC the total amount of \$190,397.73; 3) APMEX shall arrange to pick up and ship the APMEX Goods at its own expense; and 4) APMEX shall withdraw its customer ownership statement and cash collateral objection. APMEX will be granted an allowed general unsecured claim against RMC for \$5,717,470.70 (which is the difference of their total prepaid claim of \$7,621,268 less the \$1,903,797.30 of materials being returned). The allowed claim shall be subject to disallowance under Section 502(d) of the Bankruptcy Code. No releases are being exchanged.

**G. Wharf Resources (U.S.A.), Inc.**

23. Wharf asserts that (i) on or about June 30, 2018, the Debtors received from Wharf two lots of carbon material (the "Carbon Material") divided into 10 "supersack" bags (the "June Containers"); (ii) in the aggregate, the Carbon Material in the June Containers weighed 10,554 kg; (iii) the Carbon Material in the June Containers was assayed and valued at \$438,860 ; (iv) following assay, the Carbon Material from the June Containers was sold or otherwise disposed of in the ordinary course of business; and (v) RMC has not paid Wharf any amounts as to the June Containers.

24. Wharf further asserts that (i) in addition to the June Containers, on or about October 4, 2018, the Debtors received from Wharf two lots of Carbon Material divided into 14 "supersack" bags (the "October Containers," and together with the June Containers, the "Disputed Containers"); (ii) in the aggregate, the Carbon Material in the October Containers weighed 13,880.3 kg; (iii) the Carbon Material in the October Containers was assayed and valued at \$342,356 ;(iv) following assay, the Carbon Material from the October Containers was not commingled with other Carbon Materials in the possession of the Debtors, and currently remains segregated by the Debtors at their facilities; and (v) RMC has not paid Wharf any amounts as to the October Containers.

25. The principal terms of the settlement with Wharf are as follows:

i. Wharf shall disclaim any interest in the Carbon Materials in the June Containers valued at \$438,860;

ii. Wharf will disclaim any interest in 20% (measured by weight, approximately 2,776 kg) of the aggregate Carbon Materials in the October Containers;

iii. the Debtors shall be entitled to liquidate their share in the Carbon Materials in the October Containers in the ordinary course of business or pursuant to Order of the Court, including by shipment to third party processors, and the proceeds thereof shall be deposited in a debtor-in-possession account with all liens thereon

to attach to such proceeds to the same extent, order and priority in which they existed on the Petition Date;

iv. the Debtors will disclaim any interest in the other 80% of the Carbon Materials in the October Containers (measured by weight, approximately 11,104 kg) and Wharf shall pick up its share of the Carbon Material at its sole cost and expense;

v. Wharf shall have the right to have its third party representative (Axiom Scientific) present at the Debtors' premises to inspect and witness the weighing, separation and shipment of the Carbon Materials pursuant to the terms of this Agreement;

vi. Wharf shall have an allowed general unsecured claim against RMC in the amount of \$507,331.00 (the "Allowed Claim") on account of the June Containers and the Debtors' share of the October Containers; provided that the Allowed Claim shall be subject to disallowance under Section 502(d) of the Bankruptcy Code. Wharf shall not be required to file a proof of claim for the Allowed Claim. The Debtors shall instruct their claims agent Donlin Recano & Company, Inc. to enter the Allowed Claim in the claims register;

vii. Upon the entry of an order approving this Agreement, Wharf shall amend the Cash Collateral Objection and the Customer Statement to reflect the withdrawal with prejudice of Wharf's participation in the Uniform Customer Ownership Procedures (however, the Cash Collateral Objection and Customer Statement shall remain pending and in full force and effect with respect to Wharf's affiliates).

26. RMC is not providing releases for any of the settlements referenced in Third Omnibus 9019 Motion or in the settlement with Wharf. All Chapter five claims are preserved.

27. In exercising business judgment in approving these settlements I considered the following: (1) the risk and expense of litigation; (2) the dollar amounts involved; (3) the closing of the sale of the Debtors' operations to Asahi and the need to remove all inventory from premises; and (4) the fact that Senior Lenders' consent to the settlements and no objection is anticipated from the UCC.

28. Additionally, as to the settlement with Wharf, the consummation of that settlement will resolve all claims of the Debtors' carbon customers.

29. I believe that the exercise of my business judgment in consenting to the settlements was sound and justified.

30. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/Scott Avila

Scott Avila

Chief Restructuring Officer of Debtors