

HEARING DATE AND TIME: May 15, 2019 at 2:00 p.m. (Eastern Time)
OBJECTION DEADLINE DATE AND TIME: May 8, 2019 at 4:00 p.m. (Eastern Time)

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
)	
MIAMI METALS I, INC., <i>et al.</i> ¹)	Case No. 18-13359 (shl)
)	
Debtors.)	(Jointly Administered)
)	

**SECOND OMNIBUS MOTION OF DEBTORS PURSUANT TO
11 U.S.C. §§ 105(a) AND 365(a) AND FED. R. BANKR. P. 6006 FOR ENTRY OF
AN ORDER AUTHORIZING REJECTION OF CERTAIN EXECUTORY CONTRACTS
AND UNEXPIRED LEASES EFFECTIVE MAY 31, 2019**

THIS MOTION SEEKS TO REJECT CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES. PARTIES RECEIVING THIS OMNIBUS MOTION SHOULD REVIEW IT IN ITS ENTIRETY TO SEE IF THEIR NAME(S) AND CONTRACTS AND/OR LEASE(S) APPEAR IN THE MOTION AND/OR THE ATTACHED EXHIBITS TO DETERMINE WHETHER THE RELIEF REQUESTED AFFECTS THEIR LEASE(S).

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Miami Metals I, Inc. (f/k/a Republic Metals Refining Corporation), 15 West 47th Street, Suites 206 and 209, New York, NY 10036 (3194); Miami Metals II, Inc. (f/k/a Republic Metals Corporation), 12900 NW 38th Avenue, Miami, FL 33054 (4378); Miami Metals III LLC (f/k/a Republic Carbon Company), LLC, 5295 Northwest 163rd Street, Miami Gardens, FL 33014 (5833); Miami Metals IV LLC (f/k/a J & L Republic LLC, 12900 NW 38th Avenue, Miami, FL 33054 (7604); Miami Metals V LLC (f/k/a R & R Metals, LLC), 12900 NW 38th Avenue, Miami, FL 33054 (7848); Miami Metals VI (f/k/a RMC Diamonds, LLC), 12900 NW 38th Avenue, Miami, FL 33054 (1507); Miami Metals VII (f/k/a RMC2, LLC, 12900 NW 38th Avenue, Miami, FL 33054 (4696); Miami Metals VIII (f/k/a Republic High Tech Metals, LLC), 13001 NW 38 Avenue, Miami, FL 33054 (6102), 12900 NW 38th Avenue, Miami, FL 33054 (1507); 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).

Miami Metals I, Inc., *et al.*, as debtors and debtors-in-possession (collectively the "Debtors") in the above-captioned Chapter 11 cases (the "Chapter 11 Cases"), move the Court for entry of an Order in the form attached hereto as **Exhibit A** (the "Proposed Order"), pursuant to 11 U.S.C. §§ 105(a) and 365(a) of title 11 of the United States Code (the "Bankruptcy Code"), Bankruptcy Rule 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 6006-1 and 9006-1(b) of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules"), authorizing the Debtors to reject certain executory contracts and unexpired leases listed and described on the schedule attached hereto as **Exhibit B** ("Rejected Agreements Schedule"), including any amendments or modifications thereto (each, a "Rejected Agreement" and, collectively, the "Rejected Agreements" and the counterparty thereto, the "Counterparty"), effective as of May 31, 2019 (the "Rejection Effective Date"), and respectfully represent as follows in support of this motion (the "Motion"):

Background

1. On November 2, 2018, Republic Metals Refining Corporation, Republic Metals Corporation, and Republic Carbon Company, LLC each filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"), initiating these Chapter 11 Cases. On November 21, 2018, Republic High Tech Metals, LLC, RMC Diamonds, LLC, J&L Republic, LLC, R&R Metals, LLC, Republic Metals Trading (Shanghai) Co., Ltd., and Republic Trans Mexico Metals, S.R.L. filed voluntary petitions for relief under the Bankruptcy Code, initiating their Chapter 11 cases.

2. No trustee has been appointed in these cases. The Debtors continue to operate their businesses and manage their properties as Debtors in possession pursuant to 11 U.S.C. §§

1107(a) and 1109. On November 19, 2018, the United States Trustee gave notice of the appointment of an Official Committee of Unsecured Creditors ("Creditors Committee") [ECF No. 113].

3. Additional details regarding the Debtors and their assets, liabilities, and operations are set forth in the *Declaration of Scott Avila, as Chief Restructuring Officer, in Support of Chapter 11 Petitions and First Day Motions* [ECF No. 2.]

Jurisdiction and Venue

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012.

5. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

6. The Debtors confirm their consent, pursuant to Bankruptcy Rule 7008, to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

8. Pursuant to sections 365(a) and 105(a) of the Bankruptcy Code, Bankruptcy Rule 6006, and Local Rule 6006-1, the Debtors respectfully request authority to reject certain executory contracts and unexpired leases listed and described on the Rejected Agreements Schedule attached hereto as **Exhibit B**, including any amendments or modifications thereto, effective as the Rejection Effective Date.

Rejected Agreements

9. On February 21, 2019, the Bankruptcy Court entered an Order (A) Approving Sale of Substantially All of Debtors' Assets "Free and Clear" of All Liens, Claims, Encumbrances and Other Interests, (B) Approving Assumption and Assignment of Executory Contracts and Unexpired Leases, and (C) Granting Related Relief [ECF No. 658] (the "Final Sale Order").

10. The Final Sale Order authorizes, *inter alia*, the Debtors to sell substantially all of their assets to the winning bidder at the auction, Asahi Holdings, Inc. ("Asahi").

11. The Debtors have determined that the Rejected Agreements, as identified on **Exhibit B**, should be rejected because the Debtors no longer need the related leased premises and/or contract services, and Asahi does not want to assume the Rejected Agreements. The Debtors have determined that rejecting the Rejected Agreements is in the best interests of the Debtors' estates and will eliminate unnecessary obligations of the Debtors.

Basis for Relief

12. Section 365(a) of the Bankruptcy Code provides that a debtor in possession "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The standard applied to determine whether the rejection of an executory contract or unexpired lease should be authorized is the "business judgment" standard. *See In re Penn Traffic Co.*, 524 F.3d 373, 383 (2d Cir. 2008); *In re Old Carco LLC*, 406 B.R. 180, 188 (Bankr. S.D.N.Y. 2009).

13. Courts defer to a debtor's business judgment in rejecting an executory contract or unexpired lease, and upon finding that a debtor has exercised its sound business judgment, approve the rejection under section 365(a) of the Bankruptcy Code. *See NLRB v. Bildisco &*

Bildisco, 465 U.S. 513, 523 (1984) (recognizing business judgment standard used to approve rejection of executory contracts or unexpired leases); *Nostas Assocs. v. Costich (In re Klein Sleep Prods., Inc.)*, 78 F.3d 18, 25 (2d Cir. 1996) (recognizing the business judgment standard used to approve rejection of executory contracts).

14. The business judgment standard is not a strict standard; it requires only a showing that either assumption or rejection of the executory contract or unexpired lease will benefit the debtor's estate. *See In re Helm*, 335 B.R. 528, 538 (Bankr. S.D.N.Y. 1996) ("To meet the business judgment test, the debtor in possession must 'establish that rejection will benefit the estate.'") (citation omitted); *In re Balco Equities Ltd, Inc.*, 323 B.R. 85, 99 (Bankr. S.D.N.Y. 2005) ("In determining whether the debtor has employed reasonable business discretion, the court for the most part must only determine that the rejection will likely benefit the estate.") (quoting *In re G Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994)). Further, under the business judgment standard "a debtor's decision to reject an executory contract must be summarily affirmed unless it is the product of 'bad faith, or whim or caprice.'" *In re Trans World Airlines, Inc.*, 261 B.R. 103, 121 (Bankr. D. Del. 2001).

15. Section 105(a) provides additional authority to the Court to grant the relief requested herein. Section 105(a) of the Bankruptcy Code provides that the court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Section 105(a) allows the bankruptcy court to "craft flexible remedies that, while not expressly authorized by the [Bankruptcy] Code, effect the result the [Bankruptcy] Code was designed to obtain." *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 235-36 (3d Cir. 2004) (citing *Official Comm. of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery*, 330 F.3d 548, 568 (3d Cir. 2003)).

16. The Debtors and Mr. Avila, as Chief Restructuring Officer, have reviewed the Rejected Leases and determined, in their sound business judgment, that the Rejected Agreements are no longer necessary for, or beneficial to, the Debtors' business the Debtors no longer need the related leased premises and/or contract services, and Asahi does not intend to assume the Rejected Agreements. Therefore, maintaining the Rejected Agreements will create an unnecessary and burdensome expense for the Debtors' estates. Failure to reject the Rejected Agreements could result in the incurrence of additional administrative or other claims against the Debtors' estates that would constitute an unnecessary drain on the Debtors' limited assets. Accordingly, the Debtors submit that rejecting the Rejected Agreements is a reasonable exercise of the Debtors' business judgment and will preserve assets of the estates to help maximize distributions to all creditors.

Bankruptcy Rule 6006 is Satisfied

15. Bankruptcy Rule 6006(a) provides that a "proceeding to assume, reject, or assign an executory contract or unexpired lease . . . is governed by Rule 9014." Fed. R. Bankr. P. 6006(a). In turn, Bankruptcy Rule 9014 states that "[i]n a contested matter . . . not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Fed. R. Bankr. P. 9014(a).

16. Bankruptcy Rule 6006(e) allows a debtor to consolidate, in a single motion, requests for the authority to reject multiple executory contracts or unexpired leases that are among different parties, subject to Bankruptcy Rule 6006(f). *See* Fed. R. Bankr. P. 6006(e). Bankruptcy Rule 6006(f) requires, in part, that such omnibus motion must: (i) "state in a conspicuous place that parties receiving the omnibus motion should locate their names and

their contracts or leases listed in the motion”; (ii) “list parties alphabetically and identify the corresponding contract or lease”; (iii) “be numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases”; and (iv) “be limited to no more than 100 executory contracts or unexpired leases.” Fed. R. Bankr. P. 6006(f).

17. Here, the Debtors have provided notice to the Counterparties to the Rejected Agreements such that they can take appropriate action. In addition, this Motion provides a conspicuous notice that the parties receiving it should locate their names and agreements, includes the Counterparties to the Rejected Agreements in alphabetical order, and identifies the contracts and leases to be rejected. This Motion and the notice provided to the Lease Counterparties and other parties in interest are thus sufficient under Bankruptcy Rule 6006. To the extent the Motion does not comply with Bankruptcy Rule 6006, the Debtors respectfully request a waiver.

18. In view of the foregoing, the Debtors respectfully request that the Court approve the rejection of the Rejected Agreements pursuant to sections 105(a) and 365(a) of the Bankruptcy Code and Bankruptcy Rule 6006 in the manner requested herein.

Motion Practice

19. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Local Rule 9013-1(a).

Reservation of Rights

20. Nothing contained in this Motion or any actions taken by the Debtors pursuant to relief granted is intended or should be construed as: (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver or limitation of the Debtors' rights under the

Bankruptcy Code or any other applicable law; (iii) a waiver by the Debtors of their rights to dispute the amount of, basis for, or validity of any claim, including, but not limited to, any rejection damages claim; (iv) a waiver by the Debtors of their right to dispute or assert that the Rejected Agreements were breached by the Counterparty and/or terminated prior to the date of entry of the Proposed Order; (v) a waiver or limitation of the Debtors' right to assert at a later date that the Rejected Agreements are not executory contracts or unexpired leases, as applicable; or (vi) a concession or evidence that any Rejected Agreement has not expired, been terminated, or otherwise currently is not in full force and effect.

Notice

21. Notice of this Motion has been provided, in accordance with the *Order (I) Establishing Certain Notice, Case Management, and Administrative Procedures* [ECF No. 55], to: (i) the Office of the U.S. Trustee; (ii) the holders of the 30 largest unsecured claims against the Debtors; (iii) the United States Attorney's Office for the Southern District of New York; (iv) the Internal Revenue Service; (v) each Counterparty; (vi) counsel to the Official Committee of Unsecured Creditors; (vii) counsel to the Debtors' prepetition senior secured lenders; and (vi) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

No Prior Request

22. No prior request for the relief sought in this motion has been made to this or any other court.

WHEREFORE the Debtors respectfully request entry of an order in substantially the form attached hereto as **Exhibit A** (i) authorizing the Debtors to reject the Rejected Agreements

described on the Rejected Agreements Schedule attached hereto as **Exhibit B**, and (ii) granting such other and further relief as the Court deems just and proper.

Dated: April 23, 2019

AKERMAN LLP

By: /s/Katherine C. Fackler

Katherine C. Fackler (Admitted *Pro Hac Vice*)

Andrea S. Hartley (Admitted *Pro Hac Vice*)

Joanne Gelfand (Admitted in New York)

AKERMAN LLP

98 Southeast Seventh Street, Suite 1100

Miami, FL 3313

Tel.: (305) 374-5600

Fax: (305) 374-5095

E-Mail: andrea.hartley@akerman.com

E-Mail: joanne.gelfand@akerman.com

E-Mail: katherine.fackler@akerman.com

-and-

John E. Mitchell (Admitted *Pro Hac Vice*)

Yelena Archiyan (Admitted in New York)

AKERMAN LLP

2001 Ross Avenue, Suite 3600

Dallas, TX 75201

Tel.: (214) 720-4300

Fax: (214) 981-9339

E-Mail: john.mitchell@akerman.com

E-Mail: yelena.archiyan@akerman.com

Counsel for Debtors and Debtors-in-Possession

EXHIBIT A

PROPOSED ORDER

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

In re:)	Chapter 11
)	
MIAMI METALS I, INC., <i>et al.</i> ¹)	Case No. 18-13359 (shl)
)	
Debtors.)	(Jointly Administered)
)	

**ORDER GRANTING SECOND OMNIBUS MOTION OF DEBTORS PURSUANT
TO 11 U.S.C. §§ 105(a) AND 365(a) AND FED. R. BANKR. P. 6006 FOR ENTRY
OF AN ORDER AUTHORIZING REJECTION OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES EFFECTIVE MAY 31, 2019**

Upon the Second Omnibus Motion (the "Motion") [Doc. No. ____],² of Miami Metals I, Inc., et al., the above-captioned Debtors and Debtors-in-Possession (collectively the "Debtors"), for entry of an order authorizing, pursuant to 11 U.S.C. §§ 105(a) and 365(a) of title 11 of the United States Code (the "Bankruptcy Code"), Bankruptcy Rule 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 6006-1 and 9006-1(b) of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules"), the Debtors to reject certain executory contracts and unexpired leases listed and described on the schedule attached hereto as Exhibit 1 ("Rejected Agreements Schedule"), including any amendments or modifications thereto (each, a "Rejected Agreement" and, collectively, the "Rejected

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Miami Metals I, Inc. (f/k/a Republic Metals Refining Corporation), 15 West 47th Street, Suites 206 and 209, New York, NY 10036 (3194); Miami Metals II, Inc. (f/k/a Republic Metals Corporation), 12900 NW 38th Avenue, Miami, FL 33054 (4378); Miami Metals III LLC (f/k/a Republic Carbon Company), LLC, 5295 Northwest 163rd Street, Miami Gardens, FL 33014 (5833); Miami Metals IV LLC (f/k/a J & L Republic LLC, 12900 NW 38th Avenue, Miami, FL 33054 (7604); Miami Metals V LLC (f/k/a R & R Metals, LLC), 12900 NW 38th Avenue, Miami, FL 33054 (7848); Miami Metals VI (f/k/a RMC Diamonds, LLC), 12900 NW 38th Avenue, Miami, FL 33054 (1507); Miami Metals VII (f/k/a RMC2, LLC, 12900 NW 38th Avenue, Miami, FL 33054 (4696); Miami Metals VIII (f/k/a Republic High Tech Metals, LLC), 13001 NW 38 Avenue, Miami, FL 33054 (6102), 12900 NW 38th Avenue, Miami, FL 33054 (1507); 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).

² Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Agreements" and the counterparty thereto, the "Counterparty"), effective as of May 31, 2019, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and this proceeding being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that notice of the Motion as set forth therein is sufficient under the circumstances, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interests of the Debtors' estates, creditors, and other parties-in-interest; and upon all of the proceedings had before the Court; and after due deliberation and cause appearing;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. Pursuant to section 365 of the Bankruptcy Code and Bankruptcy Rule 6006, the Debtors' rejection of the Rejected Agreements described on **Schedule 1** attached hereto, as of the Rejection Effective Date (as defined in the Motion), is approved.
3. Each non-Debtor counterparty to a Rejected Agreement shall have thirty (30) days following entry of this Order to file a claim for any damages arising out of or related to a Rejected Lease.
4. The Debtors are authorized to take any additional actions as are necessary or appropriate to implement and effectuate the rejections approved hereby.

5. The Motion satisfies Bankruptcy Rules 2002, 6006. and 9014.

6. This Court shall retain jurisdiction to hear and determine all matters arising from
or related to this Order.

Dated: New York, New York
May __, 2019

PROPOSED

HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

SCHEDULE 1
REJECTED LEASES

EXHIBIT B

REJECTED LEASES SCHEDULE

EXHIBIT B

SCHEDULE OF REJECTED AGREEMENTS

No.	Counterparty	Debtor(s)	Agreement Description	Agreement Date	Rejection Effective Date
1.	Jason Ross Rubin Enterprises, LLC	Miami Metals I, LLC, fka Republic Metals Corporation	3859 N.W. 125th Street, Opa Locka, FL 33054 Oral Lease Agreement	Unknown	May 31, 2019
2.	Jason Ross Rubin Enterprises, LLC	Miami Metals I, LLC, fka Republic Metals Corporation	3863 N.W. 125th Street, Opa Locka, FL 33054 Oral Lease Agreement	Unknown	May 31, 2019
3.	MacNeill Group	Miami Metals I, LLC, fka Republic Metals Corporation	Flood Insurance Policy	September 17, 2018	May 31, 2019
4.	Richard Rubin-Lindjay Investments, LLC	Republic High Tech Metals, LLC	13001 N.W. 38th Avenue, Opa Locka, FL 33054 Warehouse Lease Agreement	December 17, 2017	May 31, 2019