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**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)

**DECLARATION OF ALEJANDRO CATALA GUERRERO
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 44.1**
Relates to Docket No. 1003

I, Alejandro Catala Guerrero, being duly sworn, depose and say as follows:

1. My name is Alejandro Catala Guerrero. I am a partner and attorney at the law firm of Basham, Ringe y Correa, S.C. Unless otherwise stated, the matters contained in this Declaration

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), 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).

are based on my personal knowledge and documents available to me. If called upon to do so, I would testify truthfully about the matters set forth in this Declaration.

2. I obtained my law degree from the Universidad Nuevo Mundo in Mexico City in 1994. I have over 24 years of experience as an attorney with a focus on criminal law. I am currently counseling Debtor Republic Trans Mexico Metals, S.R.L. ("RTMM") in certain matters in Mexico including but not limited to matters related to Fundacion Rafael Donde, I.A.P. ("Donde"). I have, throughout my practice, represented numerous defendants in criminal proceedings.

3. I am very familiar with the criminal law and procedures of Mexico. Prior to preparing this Declaration, I was supplied with, and have read, Rule 44.1 of the Federal Rules of Civil Procedure, applicable in U.S. bankruptcy proceedings pursuant to Bankruptcy Rule of Civil Procedure 9017, and it is my understanding that under those Rules, the court may be advised as to any issue regarding foreign law from any source. Accordingly, this Declaration is being submitted in accordance with that Rule.

4. I have also reviewed the Objection of Fundacion Rafael Donde, I.A.P. to Debtors' Emergency Motion (I) to Enforce the Automatic Stay Against Fundacion Rafael Donde I.A.P., (II) to Hold Fundacion Rafael Donde I.A.P in Contempt of Court, (III) for an Award of Sanctions Against Fundacion Rafael Donde I.A.P. and (IV) for Related Relief. [Docket No. 1035] (the "Objection") and the related Declaration of Alejandro Jaimes Gutierrez [Docket No. 1034] and Declaration of Ricardo Morales Paredes [Dockets 1037 and 1037-1] and Declaration of Rachel Ehrlich Albanese, filed in support of the Objection.

5. In the document signed by Mr. Alejandro Jaimes Gutiérrez², is stated: “...if the Foundation failed to report RTMM’s conduct, if (sic) could be deemed a co-conspirator with RTMM or be liable for concealment...”³

In my opinion, such statement is not accurate, since in accordance with article 22 of the Criminal Code for the City of Mexico, the authorship of, and participation in, a criminal offense shall be attributed to: i) those who commit it by themselves (direct authorship); ii) those who commit it jointly with other individuals (co-authorship); iii) those who commit it using another as an instrument (mediate authorship); iv) those who willfully induce another to commit it (participation by instigation); v) those who intentionally help the author to commit the offense; and vi) those who, after the offense is committed assist the author pursuant to a promise (undertaking) made prior to the offense (participation by complicity).

Article 22 is contained in Title Second, Chapter III, of the above-mentioned code, and can be translated as follows:

TITLE SECOND
THE OFFENCE...
CHAPTER I
FORMS OF COMISSION...
CHAPTER II
ATTEMPT
...
CHAPTER III
AUTHORITY AND PARTICIPATION
ARTICLE 22 (Forms of authorship and participation). Those who carry out any of the following conducts will be deemed responsible for the crime:

² dk001034 filed 05/13/19, case 18-13359

³ Declaration No. 3, dk001034 filed 05/13/19, case 18-13359

I) Those who commit it by themselves;
II) Those who commit it jointly with other individuals;
III) Those who commit it using another as an instrument;
IV) Those who willfully induce another to commit it;
V) Those who intentionally help the author to commit the offense; and
VI) Those who, after the offense is committed assist the author pursuant to a promise made prior to the offense.
Those who only participate in the planning or preparation of the offence, as well as those who induce another, or give assistance, will only respond if the unlawful act reaches, at least, the stage of attempt of the purported offense.
Instigation and complicity referred to in sections IV and V, respectively, are only admissible in intentional crimes.
Hypotheses referred to in sections V and VI, will be punished, as established in article 81 of this Code."

Based on the above, the omission of reporting a criminal offence does not make the person who does not report it responsible for the same, either as an author, or as a participant, much less as a co-conspirator.

The person that does not report the commission of a criminal offence will not be held responsible under the notion of concealment pursuant to article 320 of the Criminal Code for the City of Mexico, since this provision sanctions conducts, not omissions, such as not reporting the commission of a crime.

Article 320 is contained in Title Twenty First, Chapter VI of the above-mentioned code, and can be translated as follows:

"CONCEALMENT BY FAVORING
ARTICLE 320. He who after the commission of a crime, and without having participated therein, shall be sanctioned with

imprisonment from six months to five years, and fined between one hundred and five hundred days, if he:

I.- Helps, in any way, the offender to dodge the investigation or to evade it;

II. Conceals or favors the concealment of the person responsible for the offence, or hides, alters, disables, destroys, removes, or disappears the signs, instruments or other elements of evidence of the offence;

III. Conceals or secures for the accused, or sentenced the instrument, the object, the product or the benefit of the offence;

IV.- Required by the authority, does not provide the information he has, and is needed for the offence, or for the arrest or apprehension of the offender; or

V.- Does not procure, through the legal means at his disposal and without risk to his person, the consummation of offences he knows are to be committed or are being committed, except if he is under the obligation to face the risk, in which case the provisions of this article or in other norms shall apply."

6. Mr. Alejandro Jaimes also quotes article 222 of the National Code of Criminal Procedures. Said provision establishes a generic duty of individuals to report those offences which they have knowledge; however, such generic duty implies no responsibility. Only in very few cases, the criminal law establishes liability for not reporting an offence such as: in the case of crimes public servants gain knowledge of due to their functions; or sexual offences in which the victims are minors.

Further, the conduct described by Donde, in the criminal complaint refers to the possible commission of an offence that can only be investigated at the request of the alleged victim. The Spanish name of this motion is “*querrela*”; and therefore, the victim may or may not file the same.

Consistent with the foregoing, mention must be made to the provisions of article 94, section IV and 100, paragraphs first and third of the Criminal Code for the City of Mexico.

Those articles can be translated as follows:

“Article 94.- (Causes for Extinction). The right to punish and power to execute sanctions and restraining measures will be extinguished by: ... IV.- The pardon granted by the offended party in those offences which require filing of a “querrela”, or any other equivalent act;...”

Article 100.- (Extinction by pardon granted by the offended party). Pardon granted by the offended party, or the person with authority to grant the same, extinguishes the right to punish in regard to offences prosecutable by “querrela” ...

...For the extinction of the right to punish, it will be sufficient that the authorized person expresses that the affected right has been satisfied...”

Based on the foregoing, in my opinion, Mr. Ricardo Morales’ declaration is inaccurate, when he states: “8. *This circumstance allows the person who presents a complaint, at any time, that is, in case of reparation of the damage, can grant the pardon...*”, since the law does not require redress of the alleged damage as a condition for granting the pardon; to the contrary and according to the law, it is sufficient that the offended party states that the affected right has been satisfied.

Now, pursuant to articles 30, 37 and 42 of the Criminal Code for the City of Mexico, in general terms, criminal procedure seeks, among other objectives, to impose monetary sanctions.

These sanctions include reparation of damages, that is to say, for instance and according to the nature of the offence, restitution of the property obtained by means of the offence, including its yieldings. Therefore, should the criminal procedure initiated by Donde is followed, is clear that it is necessarily aimed at recovering the alleged monetary damage derived from the facts denounced.

To illustrate the above, Donde's objective is merely to redress its alleged damage, as evidenced by the fact that in its "*querella*", among other actions, Donde requests the agent of the attorney general office to issue official communications to: i) the Director of the Public Commercial and Real Estate Registry in Mexico City advising the existence of the investigation, for it to be recorded in the commercial folio of RTMM; and ii) the President of the National Banking and Securities Commission requesting the accounts and securities held by the accused parties, Messrs. Joseph Liberman Sourasky and/or Jason Rubin and/or RTMM to be frozen.

7. The Law on Private Assistance Institutions for the City of Mexico does not impose any legal obligation to initiate criminal proceedings. Article 45 of such law refers to the authority of the Board of Trustees ("Patronos") to exercise the actions and defenses which may correspond to the institution.

In turn, article 46, establishes, in general terms, that the Board of Trustees is subject to civil and criminal liability for conducts carried out by the trustees in the exercise of their duties, not for not reporting actions/omissions which may affect the trustees or the institution, as Mr. Alejandro Jaimes asserts.

8. Regarding the "trust abuse crime", it is worth mentioning that according to Mexican criminal legislation, the ownership of the asset(s) in dispute is one of the essential elements which are needed to be proven within a criminal investigation, for the criminal authority to be in a position to decide whether the criminal offense has been committed.

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

Executed in Mexico City on May 14, 2019.


/s/ _____
Alejandro Catala Guerrero
Counsel for RTMM in Mexico