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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)
)	RELATED DOC. NO. 1082

**DEBTORS' OBJECTION TO EX PARTE MOTION OF
FUNDACIÓN RAFAEL DONDÉ, I.A.P., FOR ENTRY OF AN ORDER GRANTING
LEAVE TO FILE THE SUR-REPLY AND SUPPLEMENTAL DECLARATION**

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"), by and through their undersigned counsel, file their objection to *Ex Parte* Motion of Fundación Rafael Dondé, I.A.P. ("Donde") for Entry of an Order Granting Leave to File the Sur-Reply and Supplemental

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).

Declaration [ECF No. 1082] (the "Ex Parte Motion")². In opposition to the *Ex-Parte* Motion, the Debtors state as follows:

PRELIMINARY STATEMENT

Donde has gone to great lengths to divert the Court's attention from what is a simple stay violation. There are no facts in dispute. The Debtors did not raise any new arguments in the Debtors' Reply and Catala Declaration that were not asserted in the Emergency Motion [ECF No. 1003] (the "Emergency Motion") or that were not in response to Donde's Objection to the Motion [ECF No. 1035] (the "Objection") and supporting declarations [ECF Nos. 1033, 1034].

This Court does not need to interpret Mexican law to find that Donde willfully violated the automatic stay and this Court's Order Approving Uniform Procedures for Resolution of Ownership Disputes (the "Uniform Procedures Order") [ECF No. 395]. Donde, while voluntarily participating in this bankruptcy case and in the customer procedures, filed a criminal complaint against RTMM, Joseph Liberman, and Jason Rubin (the "Criminal Complaint") asserting ownership of the Disputed Assets, seeking to collect on a pre-petition claim related to the Disputed Assets, and seizing RTMM's bank accounts in Mexico. Donde's rights and/or duties under Mexican law are of no import. Donde was obligated to seek relief from the automatic stay and from the Uniform Procedures Order before filing the Criminal Complaint. It did not.

Moreover, Donde requested the parties proceed on the papers. The Debtors consented to Donde's request, subject to submission of their Reply and the Catala Declaration (to which Donde agreed). Had the Debtors proceeded with the hearing, there would have been no further filings. After suggesting the parties cancel the hearing and proceed on the papers, including the Debtors'

² The Debtors dispute and refute the additional allegations and assertions set forth in Donde's Sur-Reply and Supplemental Declaration and incorporate herein by reference the statements and arguments in the Debtors' Emergency Motion, Reply, and the Catala Declaration.

reply and the Catala Declaration, Donde's request for leave to file a sur-reply and additional declaration is duplicitous. Donde's *Ex Parte* Motion should be denied.

OBJECTION

1. There are no facts in dispute, so no evidence is required. This Court does not need to interpret Mexican law in order to find that Donde willfully violated the automatic stay and the Uniform Procedures Order. Rather than seek relief from this Court, Donde chose to commence the criminal proceeding in Mexico. Such conduct was in flagrant disregard of the Court's Uniform Procedures Order and the automatic stay.

2. Donde requested a scheduling call with the Court regarding the Emergency Motion. The parties participated in a scheduling conference with the Court on Monday, May 12, 2019, at 2:00 p.m. The Court denied Donde's request to take discovery and continue the hearing.

3. That evening, Donde's counsel contacted undersigned counsel and requested the parties proceed solely on the papers. *See* Email dated May 13, 2019, at 6:13 p.m. from Donde's counsel to the Debtors' counsel attached as **Composite Exhibit "A"**.

4. In order to accommodate Donde, the Debtors agreed to proceed on the papers provided that would include Debtors' reply and declarations due May 15, 2019. *See* Email dated May 14, 2019, at 12:05 a.m. from Debtors' counsel to Donde's counsel. *See* Composite Exhibit A. Donde agreed. *See* Email dated May 14, 2019, at 12:20 a.m. from Donde's counsel to Debtors' counsel. *See* Composite Exhibit A.

5. Donde contacted the Court requesting the Emergency Motion be decided on the papers "including the debtors' forthcoming reply and declaration in support thereof..." *See* Email dated May 14, 2019, at 3:30 a.m. from Donde's counsel to the Court attached as **Exhibit "B"**.

6. The Court granted the parties' request and canceled the hearing scheduled for May 15, 2019.

7. Donde now reneges on its prior representation to the Court that the Court should decide the issues based on the pleadings filed through and including the Catala Declaration, and seeks the Court's consideration of further irrelevant Mexican authority.

8. In any event, there is no basis for the Court to grant Donde leave to file the Sur-Reply and Supplemental Declaration. The Court need only determine (i) whether Donde's filing of the Criminal Complaint violated the automatic stay and/or the Uniform Procedures Order, and (ii) if a violation occurred, whether the Debtors are entitled to sanctions. The remaining issues raised in Donde's *Ex Parte* Motion are red herrings designed to give Donde another bite at the apple in spite of its decision to proceed without a hearing.

CONCLUSION

WHEREFORE, for the reasons set forth above, the Debtors respectfully request the Court enter an Order (i) denying the *Ex Parte* Motion; and (ii) granting such other and further relief as requested herein or as the Court otherwise deems necessary and appropriate.

[SIGNATURE PAGE TO FOLLOW]

Dated: May 17, 2019

AKERMAN LLP

By: /s/John E. Mitchell

John E. Mitchell

(Admitted *Pro Hac Vice*)

Yelena Archiyan

(Admitted in New York)

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- and -

Andrea S. Hartley

(Admitted *Pro Hac Vice*)

Katherine C. Fackler

(Admitted *Pro Hac Vice*)

Joanne Gelfand

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E-Mail: katherine.fackler@akerman.com

E-Mail: joanne.gelfand@akerman.com

Counsel for Debtors and Debtors-in-Possession

COMPOSITE EXHIBIT A

**EMAILS DATED
MAY 13, 2019, AT 6:13 P.M.,
MAY 14, 2019, AT 12:05 A.M. AND
MAY 14, 2019, AT 12:20 A.M.**

Hartley, Andrea (Ptnr-Mia)

From: Albanese, Rachel <rachel.albanese@dlapiper.com>
Sent: Tuesday, May 14, 2019 12:20 AM
To: Hartley, Andrea (Ptnr-Mia); Fackler, Katherine (Ptnr-Jax); 'andrea.hartley@akerman.com'; 'john.mitchell@akerman.com'; 'katherine.fackler@akerman.com'
Cc: Chesley, Rick; Hans, Richard; Glimp, Cherelle; Riley, David
Subject: RE: Miami Metals / Fundacion Rafael Donde

Thank you, Andrea. We will advise the court and cc your team.

Rachel

Rachel Ehrlich Albanese

DLA Piper
T +1 212.335.4775

From: andrea.hartley@akerman.com <andrea.hartley@akerman.com>
Sent: Tuesday, May 14, 2019 12:05 AM
To: Albanese, Rachel <Rachel.Albanese@us.dlapiper.com>; katherine.fackler@akerman.com; 'andrea.hartley@akerman.com'; 'john.mitchell@akerman.com'; 'katherine.fackler@akerman.com'
Cc: Chesley, Rick <Richard.Chesley@us.dlapiper.com>; Hans, Richard <Richard.Hans@us.dlapiper.com>; Glimp, Cherelle <Cherelle.Glimp@us.dlapiper.com>; Riley, David <David.Riley@us.dlapiper.com>
Subject: RE: Miami Metals / Fundacion Rafael Donde

[EXTERNAL]

Rachel,

We have been traveling this evening. We are agreeable to having the debtors' motion [ECF No. 1003] be determined on the papers (this would include the debtors' reply and declarations in support thereof due Wednesday, May 15, 2019, by 10:00 a.m. pursuant to the court's order [ECF no. 1012]).

Kind regards.

Andrea S. Hartley

Partner
Chair, Bankruptcy & Reorganization Practice Group
Akerman LLP | 98 Southeast Seventh Street, Suite 1100 | Miami, FL 33131
D: 305 982 5682 | F: 305 349 4794
andrea.hartley@akerman.com

From: Albanese, Rachel <rachel.albanese@dlapiper.com>
Sent: Monday, May 13, 2019 6:13 PM
To: Fackler, Katherine (Ptnr-Jax) <katherine.fackler@akerman.com>; Hartley, Andrea (Ptnr-Mia) <andrea.hartley@akerman.com>; 'andrea.hartley@akerman.com'; 'john.mitchell@akerman.com'; 'katherine.fackler@akerman.com'
Cc: Chesley, Rick <richard.chesley@dlapiper.com>; Hans, Richard <richard.hans@dlapiper.com>; Glimp, Cherelle <cherelle.glimp@dlapiper.com>; Riley, David <david.riley@dlapiper.com>
Subject: Re: Miami Metals / Fundacion Rafael Donde
Importance: High

Katie,

We would like to propose that the FRD matter be determined on the papers. This would save all parties the significant cost and expense of a hearing. We have some folks getting on a plane from Mexico in the morning, so we would appreciate if you could let us know your views as soon as possible.

Thank you.

Rachel

Rachel Ehrlich Albanese
DLA Piper
T +1 212.335.4775

From: katherine.fackler@akerman.com
Sent: May 13, 2019 12:00 PM
To: Rachel.Albanese@us.dlapiper.com; andrea.hartley@akerman.com; 'andrea.hartley@akerman.com'; 'john.mitchell@akerman.com'; 'katherine.fackler@akerman.com'
Cc: Richard.Chesley@us.dlapiper.com; Richard.Hans@us.dlapiper.com; Cherelle.Glimp@us.dlapiper.com; David.Riley@us.dlapiper.com
Subject: RE: Miami Metals / Fundacion Rafael Donde

[EXTERNAL]

Rachel,

Attached is the Debtors' Exhibit and Witness List for Wednesday. We reserve the right to amend it before the hearing. Please forward your client's list at your earliest convenience.

Best,

Katie

From: Albanese, Rachel <rachel.albanese@dlapiper.com>
Sent: Monday, May 13, 2019 11:40 AM
To: Hartley, Andrea (Ptrn-Mia) <andrea.hartley@akerman.com>; 'andrea.hartley@akerman.com'; 'john.mitchell@akerman.com'; 'katherine.fackler@akerman.com'
Cc: Chesley, Rick <richard.chesley@dlapiper.com>; Hans, Richard <richard.hans@dlapiper.com>; Glimp, Cherelle <cherelle.glimp@dlapiper.com>; Riley, David <david.riley@dlapiper.com>
Subject: RE: Miami Metals / Fundacion Rafael Donde

Andrea,

The court will hold a scheduling call at 2pm ET today. Please use the following dial in –

888-472-4293

Code 4291254#

Rachel

Rachel Ehrlich Albanese

DLA Piper

T +1 212.335.4775

From: andrea.hartley@akerman.com <andrea.hartley@akerman.com>
Sent: Saturday, May 11, 2019 3:17 PM
To: Albanese, Rachel <Rachel.Albanese@us.dlapiper.com>; 'andrea.hartley@akerman.com'; 'john.mitchell@akerman.com'; 'katherine.fackler@akerman.com'
Cc: Chesley, Rick <Richard.Chesley@us.dlapiper.com>; Hans, Richard <Richard.Hans@us.dlapiper.com>; Glimp, Cherelle <Cherelle.Glimp@us.dlapiper.com>; Riley, David <David.Riley@us.dlapiper.com>
Subject: RE: Miami Metals / Fundacion Rafael Donde

[EXTERNAL]

Rachel,

We are available anytime on Monday for the scheduling call with chambers. We will forward our witness list to you on Monday.

Kind regards.

Andrea S. Hartley

Partner

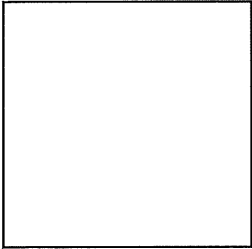
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From: Albanese, Rachel <rachel.albanese@dlapiper.com>

Sent: Friday, May 10, 2019 8:19 PM

To: 'andrea.hartley@akerman.com'; 'john.mitchell@akerman.com'; 'katherine.fackler@akerman.com'

Cc: Chesley, Rick <richard.chesley@dlapiper.com>; Hans, Richard <richard.hans@dlapiper.com>; Glimp, Cherelle <cherelle.glimp@dlapiper.com>; Riley, David <david.riley@dlapiper.com>

Subject: Miami Metals / Fundacion Rafael Donde

Andrea,

I am writing regarding the evidentiary hearing currently scheduled for May 15, 2019 at 2:00 p.m. ET on *Debtors' Emergency Motion (I) To Enforce 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* [ECF No. 1003]. By Monday, May 13, 2019, at 12:00 noon ET, please provide us with a list of witnesses on which the Debtors intend to rely in support of their motion.

Additionally, we intend to contact chambers on Monday morning to request a scheduling call. Please let us know your availability for such a call as soon as possible.

Regards,
Rachel

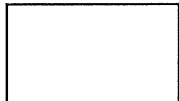
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Partner

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EXHIBIT B

EMAIL DATED MAY 14, 2019, AT 3:30 A.M.

Hartley, Andrea (Ptrn-Mia)

From: Albanese, Rachel <rachel.albanese@dlapiper.com>
Sent: Tuesday, May 14, 2019 3:30 AM
To: 'shl.chambers@nysb.uscourts.gov'; 'shl.orders@nysb.uscourts.gov'
Cc: Chesley, Rick; Hans, Richard; Hartley, Andrea (Ptrn-Mia); Fackler, Katherine (Ptrn-Jax); Mitchell, John (Ptrn-Dal)
Subject: In re Miami Metals, Case No. 18-13359 (SHL)

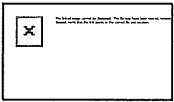
Dear Judge Lane:

The parties have conferred and are amenable to having the debtors' stay motion [ECF No. 1003] decided on the papers, including the debtors' forthcoming reply and declaration in support thereof, and canceling Wednesday's 2pm hearing. Please let us know whether this is acceptable to the Court.

Thank you for your consideration.

Respectfully,
Rachel Albanese

Rachel Ehrlich Albanese
Partner
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