

HEARING DATE AND TIME: SEPTEMBER 26, 2019 AT 11:00 A.M. (EST)
OBJECTION DEADLINE DATE AND TIME: SEPTEMBER 19, 2019 AT 4:00 P.M. (EST)

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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. 1375

**DEBTORS' NOTICE OF FILING
DECLARATION OF SCOTT AVILA IN SUPPORT OF DEBTORS' MOTION FOR
APPROVAL OF SETTLEMENT AND COMPROMISE WITH PYROPURE INC. D/B/A
PYROMET PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019**

Miami Metals I, Inc. (f/k/a Republic Metals Refining Corporation), *et al.*, (collectively, the “Debtors”), in the above-captioned chapter 11 cases, by and through undersigned counsel, gives notice of filing the *Declaration of Scott Avila in Support of the Debtors’ Motion for*

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).

*Approval of Settlement and Compromise with Pyropure Inc. d/b/a Pyromet Pursuant to Federal
Rule of Bankruptcy Procedure 9019 [ECF No. 1375].*

Dated: September 19, 2019

AKERMAN LLP

By: /s/Katherine C. Fackler

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**DECLARATION OF SCOTT AVILA IN SUPPORT OF
DEBTORS' MOTION FOR APPROVAL OF SETTLEMENT
AND COMPROMISE WITH PYROPURE INC. D/B/A PYROMET
PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019**

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 Miami Metals I, Inc. (f/k/a Republic Metals

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Refining Corporation) ("Miami Metals") and its affiliated debtors and debtors-in-possession (collectively, the "Debtors"), including Miami Metals, II, Inc. f/k/a Republic Metals Corp. ("Miami Metals II"), in the above-captioned chapter 11 cases pending before the United States Bankruptcy Court for the Southern District of New York (the "Court") in support of *Motion for Approval of Settlement and Compromise with Pyropure Inc. d/b/a Pyromet Pursuant to Federal Rule of Bankruptcy Procedure 9019* (**ECF No. 1375**) (the "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.²

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 settlement set forth in the Motion.

5. Coöperatieve Rabobank U.A., New York Branch, Brown Brothers Harriman & Co., Bank Hapoalim B.M., Mitsubishi International Corporation, ICBC Standard Bank PLC, Techemet Metal Trading LLC, Woodforest National Bank and Bank Leumi USA (collectively, the "Senior Lenders") are each party to a credit agreement, master netting agreement or lease agreement with the Debtors entered into prior to the Petition Date.

6. The Senior Lenders assert a lien over all assets of the Debtors, which assets are further subject to the Prepetition Liens and adequate protection liens.

7. Pyromet originally asserted a total claim of approximately \$1.9 million against Debtor, Miami Metals II, which claim was composed of the following:

² Unless otherwise indicated, defined terms herein shall have the meaning as set forth in the Motion.

- (a) Customer Ownership Dispute claim in the amount of \$1,292,680.89 relating to the following raw materials delivered by Pyromet to Miami Metals II prepetition: 732.352 oz of gold, 26,357.727 oz of silver, and 1.651 oz palladium (the "Raw Materials");
- (b) A pool account balance with Miami Metals II comprised of 214.055 oz. of gold, 2,354.353 oz of silver, .347 oz. of platinum, and 9.671 oz. of palladium.
- (c) Metals with a value as of the petition date of \$116,961.03 that Pyromet claims it sold to Miami Metals II.
- (d) Silver bars totaling 7,000 oz. of silver stamped with Pyromet's trademark and packaged for shipment in the possession of Miami Metals II on the petition date.
- (e) Raw materials with a value as of the Petition Date of \$52,977.15 delivered by Pyromet to the Debtors that were in the possession of the Debtors on the petition date.

8. The Debtors partially settled their disputes with Pyromet pursuant to the Order Granting Amended Fourth Omnibus Motion for Approval of Settlements with Customers Pursuant to Federal Rule of Bankruptcy Procedure 9019 [Docket No. 1144] (the "First Settlement").

9. Pursuant to the First Settlement, Pyromet now holds the following claims:

- (a) Customer Ownership Dispute claim of approximately \$1,239,703.74 relating to the raw materials (the "Ownership Claim");
- (b) Administrative claim pursuant to 11 U.S.C. § 503(b)(1) totaling \$1,388,660.35 ("Section 503(b)(9) claim"); and
- (c) Unliquidated administrative claim pursuant to 11 U.S.C. § 503(b)(1) based on the Debtors' alleged post-petition conversion of Pyromet's property ("Section 503(b)(1) claim" and together with the 503(b)(9) claim the "Administrative Claims").

10. Pyromet is a bucket 1 customer. Pursuant to its *Memorandum of Decision on Debtors' and Senior Lenders' Joint Motion for Summary Judgment as to Bucket 1 Customers* [Docket No. 1317], the Court placed Pyromet in Silo 1 and held that the Debtors were entitled to entry of a judgment in their favor and against Pyromet finding that the Raw Materials are

property of the Debtors' bankruptcy estates and that Pyromet's Ownership Claim was a general unsecured claim. Pyromet may appeal this ruling.

11. During the ninety (90) days preceding the Petition Date (the "Preference Period"), Pyromet received approximately \$1.21 million in transfers from Miami Metals II (the "Payments"). The Debtors analyzed the customer's potential defenses in any action brought to avoid the Payments, including the defenses of new value and ordinary course of business. Based upon this analysis, the Debtors believe that Pyromet has good faith defenses it could raise in an avoidance action that may reduce their preference exposure to less than \$215,000. Pyromet represents that it intends to vigorously defend any preference action.

12. Pyromet has a liability to the Debtor in the amount of \$25,000 for equipment it purchased from the Debtor post-petition (the "Liability").

13. Pursuant to the Settlement Agreement, Pyromet, RMC, and the Senior Lenders have reached a settlement as to Pyromet's Administrative Claims, the Liability and Pyromet's potential preference exposure:

- (a) Pyromet shall be granted an allowed administrative expense claim against Debtor Miami Metals II under section 503(b)(9) of the Bankruptcy Code in the amount of \$950,000.
- (b) Pyromet is **not** entitled to an administrative claim pursuant to 11 U.S.C. §503(b)(1) against Debtor Miami Metals II. Pyromet shall withdraw or dismiss with prejudice its Application for Administrative Expense [Docket No. 899] upon Court approval of these Settlement Terms.
- (c) Pyromet shall **not** be entitled to any allowed unsecured claim against any of the Debtors.
- (d) In exchange for Pyromet's consideration in reducing its Administrative claim by \$438,660.35, the order approving the settlement shall provide for a release from Miami Metals II in favor of Pyromet as follows:

Debtor, Miami Metals II, for and on behalf of itself and its respective successors and assigns, and its bankruptcy estate shall be deemed to have released and forever discharged Pyromet from any and all claims that have

been or could have been asserted by Miami Metals II against Pyromet concerning Pyromet's commercial relationship with Miami Metals II, including without limitation avoidance actions pursuant to Chapter 5 of the Bankruptcy Code and the Liability.

14. I submit that without this settlement, the estate would have to incur substantial attorney's fees and costs in litigating the allowance of Pyromet's Administrative Claims and preference liability. My review of the Debtors' books and records indicates Pyromet has potential defenses to any action to avoid the Payments as preferential based on new value and ordinary course that could significantly reduce Pyromet's exposure. Further, I believe there is a risk that Pyromet obtains a 503(b)(1) claim if it can show its materials were converted by the Debtors postpetition.

15. In approving this settlement, I reviewed the settlement terms described in paragraph 13 above, considered the amounts involved, and weighed the benefits of settling against the risk of litigation.

16. To the best of my knowledge, this settlement resulted from arm's length negotiations by and between Pyromet, the Debtors, and the Senior Lenders.

17. I believe that the exercise of my business judgment in consenting to the Settlement Agreement was sound and justified.

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

Dated: September 19, 2019

/s/Scott Avila

Scott Avila

Chief Restructuring Officer of Debtors