

## **SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“Agreement”) is entered into by and between David Bradlow, Chapter 11 Trustee (“Trustee”) of the estate of Rome Finance Co., Inc., (“Debtor”), Case No. 08-45902 EDJ, filed in the United States Bankruptcy Court for the Northern District of California, Oakland Division (“Bankruptcy Court”) and the California Department of Corporations.

### **RECITALS**

A. On October 15, 2008, the Debtor filed a petition under Chapter 11 of the Bankruptcy Code. David Bradlow is the duly appointed Chapter 11 Trustee.

B. As of the date of the petition, approximately 400 to 500 creditors/investors have invested a total of approximately \$50,000,000 with the Debtor, as evidenced by certain notes/securities (“Note-Holders”).

C. The Trustee met with the Erik Brunkal, Senior Corporations Counsel of the California Department of Corporations (“DOC”) to address the Debtor’s alleged violations of various state laws. The DOC indicated that there is sufficient nexus between the Debtor and the State of California to exert regulatory authority over the Debtor, because the Debtor is allegedly engaged in offering and selling securities and acting as a finance lender or broker within the State of California.

D. The DOC alleges that Debtor is in violation of the California Financial Code (“Financial Code”) §22100, for engaging in the business of a finance lender or broker without obtaining a license from the State of California. The DOC further alleges the Debtor loaned money to consumers without first obtaining a license authorizing them to do so within and from the State of California. Each violation of the Financial Code exposes debtor to a civil fine of up to \$2,500.00 as well as restitution, disgorgement and damages if the DOC were to bring a civil action. (Financial Code section 22713.) These loan contracts could also be deemed void under Financial Code section 22750 if the DOC proves the violations were “willful,” essentially prohibiting Debtor from collecting anything, at all. (Financial Code section 22750.)

E. In California, the offer and sale of unsecured, interest-bearing, promissory notes to investors constitutes the offer and sale of securities regulated under the California Corporate Securities Law of 1968. (California Corporations Code section 25000 et seq., hereinafter “Corporations Code, ” *see* Corporations Code section 25019). The DOC alleges that debtor offered and sold unqualified, non-exempt securities in violation of Corporations Code section 25110 with regard to each and every note it sold to its noteholders/investors..

F. The DOC further alleges that Debtor violated Corporations Code § 25401, in that, the Debtor sold these securities by means of written or oral communications, which included untrue statements and omissions of material facts. Specifically, the DOC asserts that the Debtor’s failure to disclose, verbally and/or in writing, to the note-holder/investors that their investment in the Debtor was a security under the Corporations Code, that debtor was operating without the required licensure, that debtor was receiving 33% discount on the loans debtor made to American servicepersons, that Debtor was in violation of state usury laws, and the Debtor’s

prior bankruptcy all resulted in multiple and sometimes repeated violations of Corporations Code section 25401. Each violation of Corporations Code sections 25110 and 25401 exposes debtor to a civil fine of up to \$25,000.00 as well as restitution, disgorgement and damages if the DOC were to bring a civil action in the California Superior Court. (Corporations Code section 25530 and 25535.)

G. Additionally, the DOC alleges that, pursuant to Financial Code §22750 and the California Constitution, the Debtor intentionally charged, contracted for and received an amount in excess of the charges permitted for consumer loans, and consequently the consumer loan contract may be deemed void. The DOC further alleges that the Debtor violated the Financial Code by intentionally contracting to charge interest and by receiving interest based upon a higher amount of principal, than the actual principal amount that the Debtor advanced to the consumer.

H. In addition to the above, the DOC alleges other violations of state law, within its jurisdiction.

I. The parties desire to resolve their disputes.

NOW, THEREFORE, for good and valuable consideration, including the covenants contained herein, the parties hereto agree as follows:

### **AGREEMENT**

1. Notwithstanding Part 6 of Chapter 4 of the Corporate Securities Law of 1968 (Corporations Code section 25500 et seq.) and Chapter 4 of Division 9 of the California Financial Code (Financial Code section 22700 et seq), Debtor admits jurisdiction of this court over it and the subject matter of this action and stipulates that this court and the DOC have the same jurisdiction and power to enforce all provisions of the California Corporations Code and California Financial Code as well as this agreement to the full extent of the law.

2. The Trustee agrees to entry of a permanent injunction against the Debtor preventing Debtor from violating the California Financial and Corporations Codes by either conducting an unlicensed finance lender or broker business in violation of Financial Code section 22100 or by violating the Corporations Code by offering and/or selling unqualified, non-exempt securities or offering and/or selling securities by means of false or misleading written or oral communications or material, misleading omissions of fact in violation of Corporations Code sections 25110 and 25401, respectively.

3. Based on the Debtor's billing cycles, as of April 10, 2009 and April 25, 2009, the interest rate charged under all contracts will be 10% per annum. To the extent consumers perform satisfactorily without any defaults for a 12-month period under the terms of their contracts with the Debtor, the Debtor will take action to remove or correct any unsatisfactory credit information reported to credit agencies. Provided the Debtor reduces the interest rate as noted, under the terms of this agreement between these parties, the Debtor may continue to collect amounts owed under the contracts at issue.

4. The debtor agrees to cooperate with the DOC in the future with regard to the DOC's ongoing investigation of the alleged violations of the California Financial and Corporations Codes, if necessary, with regard to the production of documents, witnesses, and other evidence whether via informal request, via subpoena or via the civil discovery process.

5. After Bankruptcy Court approval of this Agreement (or before, if possible), the Trustee agrees to contact the Financial Services Division, Department of Corporations, to seek those approvals or licenses that may be required under California state law.

6. This Agreement is conditioned upon entry of a final order of the Bankruptcy Court approving the compromise provided for in this Agreement. The Trustee shall move promptly to obtain such an order. For purposes of this Agreement, the Bankruptcy Court order shall be deemed final eleven days after docketing of an unstayed order authorizing the compromise.

7. Except as provided herein, the parties hereto release, remise, acquit, and forever discharge each other and their agents, servants, subsidiaries, attorneys and employees, if any, from any and all liability, claims, demands, actions, causes of action, costs, expenses, attorneys' fees, obligations, and rights (contingent, accrued, inchoate, or otherwise) without limitation, which they have or may have had against any of the parties released hereby arising from or related to the facts and allegations set forth in the Recitals; provided, however, that owners, officers, and directors in their individual capacities are excluded. This mutual general release includes, but is not limited to, any and all known and unknown, foreseen and unforeseen, actual and potential damages and injuries and any and all consequences thereof on account of all such claims, obligations, damages, and injuries arising out of or incurred in connection with the facts giving rise to the facts and allegations set forth in the Recitals, all claims asserted or which relate to the subject matter and could have been asserted, and all claims and all obligations in their favor which exist or might exist on account of the pendency, course of proceedings during, or settlement contemplated herein. This release will be effective once an order authorizing the compromise herein is entered.

8. Each of the parties to this Agreement acknowledges that (a) she/it may hereafter discover facts in addition to or different from those which he/she/it now knows or believes to be true with respect to the claims that are the subject matter of this Agreement, and (b) she/it may have sustained or may yet sustain damages, costs or expenses that are presently unknown and that relate to the claims that are the subject of this Agreement. Each of the parties acknowledges, however, that she/it has negotiated, agreed upon and entered into this Agreement in light of this situation. Accordingly, the parties waive any and all rights which they may have under any state or federal statute or common law principle that would otherwise limit the effect of this Agreement to claims known or suspected at the date on which the parties hereto execute this Agreement. It is further understood and agreed that, as part of the consideration and as inducement for the execution of this Agreement, the parties, with full knowledge and with the specific intent to release all claims, whether known or unknown, do hereby specifically waive the provisions of Section 1542 of the California Civil Code, which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release, the parties expressly acknowledge that this Agreement is intended to include in its effect, without limitation, all claims, known or unknown, which the parties may have which relate to or arise from the facts alleged herein and this Agreement contemplates the extinction of any and all such claims.

However, Debtor acknowledges that this Settlement Agreement and Mutual Release resulting in permanent injunctions against the Debtor shall not prohibit or preclude any other federal or state or county agency from initiating any other prosecution based upon the facts and circumstances the DOC alleges resulted in statutory violations in this matter or based upon any other facts or acts of the Debtor which may violate federal or state law. Debtor agrees and acknowledges that nothing in this settlement, mutual release, or the Court's order of permanent injunction shall preclude the Commissioner of the DOC or his agents or employees, to the extent authorized by law, from referring any evidence or information regarding this matter to any district attorney or any other state or federal law enforcement official, or from assisting, cooperating, or co-prosecuting with regards to any investigation and/or action brought by any other federal, state or county agency. Debtor further agrees and acknowledges that nothing in this settlement and mutual release shall bind or otherwise prevent any other federal, state, or county agency from the performance of its duties. Other than the parties to this action, the California Department of Corporations and the Debtor, this settlement and release is not effective between, nor does it affect the rights of, any other parties or persons, be they corporate, governmental or individual. Specifically, this agreement is not intended to extend to any other corporate entities or any of the individual control persons, investors, managers, directors, officers, or owners of the debtor, to any of the investors in the debtor, to any of the consumer borrowers and is not intended to waive or settle or compromise any claims any individuals may have against the debtor or any claims that the DOC may have against any persons or entities other than the Debtor: Rome Finance Co., Inc.

9. All notices or other documents under this Agreement shall be in writing and delivered personally or mailed by first-class mail, postage prepaid, to the parties as follows:

Trustee:	David Bradlow c/o Michael A. Isaacs Luce, Forward, Hamilton & Scripps LLP 121 Spear Street, Suite 200 San Francisco, CA 94105
Department of Corporations:	Erik Brunkal Senior Corporations Counsel California Department of Corporations 1515 K St., Suite 200 Sacramento, CA 95814

10. The parties to this Agreement, and each of them, covenant and agree never to commence or prosecute any action against the other either individually or on behalf of others based in whole or in part upon any claim, cause of action, obligation, or liability as stated herein.

11. The parties agree that neither the execution of this Agreement nor any act taken in performance of its terms is, or shall be construed as, an admission by any part of any liability or responsibility. Each party expressly denies any liability and states that this Agreement is executed solely for the purpose of economically resolving each parties' claim(s).

12. Each of the parties to this Agreement hereby represents and warrants that he/it has not assigned or otherwise transferred any claim he/it may have had against the other, or asserted any such claim in any other action or proceeding.

13. This Agreement shall be construed and interpreted in accordance with the laws of the State of California. The Bankruptcy Court shall have exclusive jurisdiction over any disputes that may arise over the form, terms or substance of this Agreement.

14. In connection with the preparation, review, and approval of this Agreement, each party shall bear its own costs and attorneys' fees.

15. The parties to this Agreement acknowledge that no promise or inducement has been offered except as herein set forth and that they execute this Agreement without reliance upon any statement or representation by any of the other parties or their representatives concerning the nature and extent of the injuries and/or damages and/or legal liability therefor.

16. This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered by this Agreement. This Agreement may be amended only by written agreement, signed by the party or parties to be bound by the amendment. Parol evidence shall be inadmissible to show agreement by and among the parties to any term or condition contrary to or in addition to those terms and conditions contained in this Agreement. The parties stipulate and agree that if any paragraph, clause, or provision of this settlement, mutual release, and the Order of permanent injunction contemplated herein is held invalid or unenforceable, such a decision shall affect only the paragraph, clause or provision so construed or interpreted, and the invalidity shall not affect the provisions of the settlement, mutual release and order of permanent injunction that can be given effect without the invalid provisions, and, to this end, the provisions are declared by the DOC and the Debtor to be severable.

17. This Agreement shall be construed broadly to accomplish the intent and purpose of the parties, as such intent and purpose is stated above.

18. The parties to this Agreement acknowledge that (a) they have read this Agreement, (b) they understand the force and effect of this Agreement, and (c) they have agreed to sign and enter into this Agreement freely and willingly after opportunity to consult with counsel.

19. This Agreement may be executed in counterparts by the parties hereto, each of which shall be deemed an original, and which together shall constitute one and the same instrument, having the same force and effect as if a single original had been executed by all parties.

20. This Agreement shall be deemed for all purposes, to have been drafted by all the parties hereto. There shall be no presumption against or by reason of the identity of the drafter.

21. Subject to Bankruptcy Court approval, after notice and a hearing as provided for by 11 U.S.C. § 102, each person executing this Agreement on behalf of an entity represents and warrants to the others that he/she has authority to execute this Agreement on behalf of and to bind the entity thereto.

22. This Agreement shall be binding upon, and shall inure to the benefit of, the predecessors, successors, heirs, receivers, and assigns of the parties, and each of them. There are no third party beneficiaries to this Agreement.

