

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

)	Chapter 11
In re:)	
)	Case No. 21-10918 (CTG)
ALEX AND ANI, LLC, <i>et al.</i> , ¹)	
)	(Jointly Administered)
Debtors.)	
)	
)	

**DECLARATION OF ROBERT TRABUCCO IN SUPPORT OF THE
DEBTORS’ MOTION FOR ENTRY OF AN ORDER (I) APPROVING
THE SETTLEMENT AGREEMENT (II) GRANTING RELATED RELIEF**

I, Robert Trabucco, hereby declare under penalty of perjury:

1. I am the Chief Restructuring Officer and Interim Chief Executive Officer of Alex and Ani, LLC, one of the above captioned debtors and debtors in possession (collectively the “Debtors”).

2. In my capacity as Chief Restructuring Officer and Interim Chief Executive Officer, I am familiar with the Debtors’ overall day-to-day operations, business and financial affairs, and books and records, as well as the Debtors’ restructuring efforts. I have played an active role in management of the Debtors and in development of the Debtors’ business plan.

3. I submit this declaration in support of the *Debtors’ Motion for Entry of an Order (I) Approving the Settlement Agreement, and (II) Granting Related Relief* (the “Motion”) [Docket No. 299].²

¹ The Debtors in these chapter 11 cases, along with the last four digits of each of the Debtors’ respective federal tax identification numbers, are as follows: Alex and Ani, LLC (8360); A and A Shareholding, Co., LLC (7939); Alex and Ani International, LLC (2247); Alex and Ani Retail, LLC (1227); Alex and Ani Assembly, LLC (3215); Alex and Ani California, LLC (6368); Alex and Ani Canada, LLC (3317); Alex and Ani Puerto Rico, LLC (1477); and Alex and Ani South Seas, LLC (8592). The Debtors’ headquarters and mailing address is: 10 Briggs Drive, East Greenwich, RI 02818.

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion or in the *Second Amended Joint Plan of Reorganization of Alex and Ani, LLC and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the “Plan”) [Docket No. 430], as applicable.



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4. I am over the age of 18 and if I were called upon to testify, I could and would testify competently to the facts set forth in this declaration. Except as otherwise indicated herein, all facts set forth in this declaration are based on my personal knowledge of the Debtors' operations and finances, information gathered from my review of relevant documents, and information supplied to me by the Debtors' employees, consultants, or advisors.

Background

I. Summary of the Disputes.

5. On December 30, 2015, David Medeiros, former Senior Vice President of Operations and Acting Chief Operational Officer of Alex and Ani, LLC ("Alex and Ani"), commenced a lawsuit in Rhode Island state court styled *David Medeiros vs. Alex and Ani, LLC, et al.*, Case No. PC-2015-5680 (the "Litigation") against Carolyn Rafaelian, the Debtors' founder and current minority equityholder, Debtor Alex and Ani, and Debtor A and A Shareholding Co., LLC ("A&A Shareholding" and together with Alex and Ani and Ms. Rafaelian, the "Defendants").

6. The complaint asserts that: (a) Debtor A&A Shareholding was required to, but did not, pay Mr. Medeiros the value of certain vested "incentive units" he had been awarded, (b) Mr. Medeiros was wrongfully terminated, (c) the Defendants invaded Mr. Medeiros' privacy, and (d) Mr. Medeiros was discriminated against based on his gender and military affiliation.

7. Mr. Medeiros's claims for gender discrimination and invasion of privacy were subsequently dismissed. The remaining claims concerning incentive units, wrongful termination, and military discrimination were still pending as of the Petition Date. Mr. Medeiros seeks compensatory damages, declaratory and injunctive relief, and attorneys' fees and costs. Mr. Medeiros asserts that damages under his incentive unit count alone are in excess of \$4.5 million, excluding substantial statutory prejudgment interest at twelve percent per annum. R.I. Gen. L. § 9-21-10.

8. There are no outstanding pretrial motions, and the Rhode Island court has already denied the Defendants' motion for summary judgment with regard to Mr. Medeiros's remaining claims.

9. On June 7, 2021, Mr. Medeiros filed a motion seeking a preliminary injunction against Ms. Rafaelian (the "Injunction Motion") to enjoin Ms. Rafaelian from transferring certain assets. As of the date hereof, the Injunction Motion is still pending.

II. The Founders Settlement Agreement.

10. At the time of the events alleged in the Litigation, Alex and Ani's operating agreement provided for the indemnification of "Loss or Expenses" for any "past or present" manager, director, or officer of Alex and Ani for certain "Covered Acts." Alex and Ani's current operating agreement provides substantively identical indemnification rights, as does A&A Shareholding's currently effective limited liability company agreement (which provides for indemnification "to the full extent permitted under the Delaware Act.") and the version of that agreement in effect at the time of the events alleged in the Litigation. Ms. Rafaelian was and is a covered individual under these agreements. Consequently, the Debtors have potential indemnification obligations to Ms. Rafaelian arising out of the allegations raised in the Litigation.

11. On the Petition Date, the Debtors entered into a settlement agreement with Ms. Rafaelian and others (the "Founders Settlement Agreement"), pursuant to which, among other things, Ms. Rafaelian will sell certain interests under the Debtors' second lien credit facility to a third party purchaser and the parties to the settlement will provide mutual releases. Notably, these releases expressly exclude the release of any indemnification claim Ms. Rafaelian has against the Debtors. This exclusion was expressly required by Ms. Rafaelian as a condition of the RSA and was intended to cover indemnification of the Litigation specifically.

The Material Terms of the Proposed Settlement Agreement

12. The Settlement Agreement resolves significant litigation and removes unnecessary distraction and cost from these chapter 11 cases.

13. Pursuant to the Settlement Agreement:

- the Debtors shall pay Mr. Medeiros a total amount of Seven Hundred Twenty-Five Thousand Dollars (\$725,000) (the “Settlement Amount”) in full and final satisfaction of all claims asserted by Mr. Medeiros against Ms. Rafaelian and the Debtors;
- The Settlement Amount shall be paid as follows:
 - One Hundred Thousand Dollars (\$100,000) within ten (10) business days of the Settlement Effective Date.
 - Six Hundred Twenty-Five Thousand Dollars (\$625,000) on or as soon as reasonably practicable following (a) the effective date of the Debtors’ plan of reorganization or (b) closing of a sale of all or substantially all of the Debtors’ assets.
- Mr. Medeiros shall dismiss the complaint with prejudice within three (3) business days of entry of an order by the Court approving the Settlement Agreement.
- Mr. Medeiros, on the one hand, and Ms. Rafaelian and the Debtors, on the other hand, shall provide mutual releases.
- All of Mr. Medeiros’ claims, now or hereafter beneficially owned, shall be deemed satisfied in full by the Settlement Amount, and any other claims scheduled or filed by Mr. Medeiros in the Chapter 11 Cases shall be deemed satisfied in full by the receipt of the Settlement Amount.
- Mr. Medeiros shall (i) not oppose or impede confirmation of the Debtors’ Plan or consummation of any sale transaction; and (ii) not opt out of any non-debtor third-party release that is included in Bankruptcy Court approved ballot for the Debtors’ Plan.
- Mr. Medeiros shall indemnify the Debtors and Ms. Rafaelian against any and all loss from any and all further claims, demands or actions, including but not limited to, any and all known or unknown liens, claims for taxes on account of or related to the Settlement Payment, and any and all past, present and future liens, claims, demands or actions, known or unknown, arising in any way out of the Settlement Amount payment.

14. The Settlement Agreement, including the dismissal of the Litigation, provides valuable certainty to the Debtors and their stakeholders, and minimizes the risk, cost, and delay

associated with any potential litigation thereof. Absent the Settlement Agreement, the Debtors were obligated, pursuant to the terms of the RSA, to seek to extend the automatic stay to Ms. Rafaelian in the Litigation. Such proceedings likely would be costly and distracting at a time when the Debtors are focused on securing a swift exit from chapter 11. Moreover, if the Debtors were unsuccessful in their efforts to extend the automatic stay, the Debtors would have been forced to prepare for a trial. Even though the Litigation was stayed as to the Debtors, failure to prepare and participate in the trial could have prejudicially impacted the Debtors' defenses to Mr. Medeiros's claims in the Litigation. Even putting aside the substantial damages Mr. Medeiros seeks, the costs of litigating the automatic stay motion and participating in trial and trial preparation efforts could meet or exceed the Settlement Amount.

15. Finally, the Settlement Agreement removes a potential impediment to the Founders Settlement Agreement that underpins the Debtors' restructuring support agreement. The Injunction Motion sought, among other things, to "freez[e]" Ms. Rafaelian's "personal assets, bank accounts and any other property held by her personally or a trust for her benefit." (Medeiros Mot. for Preliminary Injunction at 1). While the precise scope of Mr. Medeiros's request is unclear, it at least arguably seeks relief that would preclude Ms. Rafaelian from disposing of the portion of the Debtors' secured debt that she indirectly holds. Accordingly, if successful, the Injunction Motion may have prohibited Ms. Rafaelian from selling her interests under the Debtors' second lien credit facility, an essential element of the Founders Settlement Agreement. Moreover, the Settlement Agreement brings closure to any potential go forward exposure of the Debtors to indemnification obligations owed to or claimed by Ms. Rafaelian.

Discussion

16. I believe the terms of the Settlement Agreement are fair and reasonable and that the best interests of the Debtors' estates and creditors will be served by entry of the Order.

17. While the Debtors are confident in the merits of their legal position with respect to the claims, the litigation of these disputes would be factually complex and detailed, time consuming, and expensive, with the outcome uncertain.

18. As an initial matter, given the evidentiary and legal prejudice the Debtors could face if the Medeiros trial proceeds solely against Ms. Rafaelian, as well as as their potential indemnification obligations to Ms. Rafaelian, the Debtors would need to be integrally involved in both the trial, and pretrial preparation efforts. The Debtors estimate that these efforts would easily be in the low to mid hundreds of thousands of dollars of fees. In addition, as noted above, the Debtors are obligated under the RSA to file a motion to extend the automatic stay of the Medeiros litigation to Ms. Rafaelian. Litigating that motion (which Mr. Medeiros's counsel has indicated Mr. Medeiros would oppose) would also be a costly endeavor and, when combined with the costs of trial preparation, legal fees alone could easily meet or exceed the Settlement Amount. Moreover, while the Settlement Agreement is justifiable based on the cost of litigation alone, the uncertainty of any jury verdict and the substantial damages Mr. Medeiros seeks (his claimed damages would exceed \$6.7 million, inclusive of prejudgment interest) further demonstrates the reasonableness of the Settlement Amount. As noted above, the Court has already denied two pretrial motions directed at Mr. Medeiros's remaining claims, meaning that they will be tried to a jury.

19. Moreover, the Debtors have determined in the exercise of their business judgment that the terms of the Settlement Agreement are fair and reasonable and that approval of the Settlement Agreement is in the best interests of the Debtors and their stakeholders. The Settlement Agreement, including the dismissal of the Litigation, resolves the disputes among the parties in an efficient and consensual manner, provides finality and eliminates the inherent risk

and uncertainty related thereto. The Settlement Agreement saves the Debtors the additional expense and distraction of further litigation, including filing a motion to extend the automatic stay to non-Debtor Defendant Ms. Rafaelian, which the Debtors are obligated to file under the RSA. Moreover, if the Debtors were unsuccessful in their efforts to extend the automatic stay, the Debtors would have been forced to prepare for a trial. Even though the Litigation was stayed as to the Debtors, failure to prepare and participate in the trial could have prejudicial impact on the litigation of Mr. Medeiros's claims against the Debtors in these proceedings. Importantly, the Settlement Agreement reduces the cost of any potential indemnification obligations owed to Ms. Rafaelian in connection with the litigation, and eliminates the inherent risk and uncertainty related thereto.

20. In light of the foregoing, I believe that the Settlement Agreement is a reasonable compromise of the outstanding disputes between the parties and will deliver significant value to the Debtors and their estates, which will inure to the benefit of all parties in interest. Importantly, the Settlement Amount is less than 25% of the aggregate amount of damages Mr. Medeiros is seeking in the Litigation and is comparable to the projected recovery under the Plan to holders of Allowed Go-Forward Vendor Claims.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: September 21, 2021

/s/ Robert Trabucco

Name: Robert Trabucco

Title: Chief Restructuring Officer
Alex and Ani, LLC