

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

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| In re) TIJUANA FLATS RESTAURANTS,) LLC, <i>et al.</i> , ¹) <div style="text-align: center;">Debtors.)</div> _____) |)))) | Case Nos. 3:24-bk-1122-BAJ and 3:24-bk-1128-BAJ Chapter 11 Jointly Administered Under Case No. 3:24-bk-1128-BAJ |
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**MOTION TO APPROVE
COMPROMISE WITH PUSH, INC.**

Pursuant to Local Rule 2002-4, the Court will consider the relief requested in this paper without further notice or hearing unless a party in interest files a response within 21 days from the date set forth on the proof of service, plus an additional 3 days for service if any party was served by U.S. Mail, or such other period as may be specified in Fed. R. Bankr. P. 9006(f). If you object to the relief requested in this paper, you must file an objection or response electronically with the Clerk of the Court or by mail at 300 North Hogan Street, Suite 3-150, Jacksonville, Florida 32202, and serve a copy on the movant’s attorney, Richard R. Thames, Esq., Thames | Markey, 50 North Laura Street, Suite 1600, Jacksonville, Florida 32202, and any other appropriate person within the time allowed. If you file and serve a response within the time permitted, the Court will either schedule and notify you of a hearing or consider the response and grant or deny the relief requested without a hearing. If you do not file a response within the time permitted, the Court will consider that you do not oppose the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

Debtors, Tijuana Flats Restaurants, LLC and Tijuana Flats #176, LLC (“Debtors” or “Tijuana Flats”), give notice and move the Court pursuant to 11 U.S.C. § 365(a) and

¹ The Federal Employer Identification Number of Tijuana Flats Restaurants, LLC is 47-4472442. The principal address of the Debtor is 2300 Maitland Center Parkway, Suite 306, Maitland, Florida 32751.

Rules 6006 and 9019(a), Federal Rules of Bankruptcy Procedure, for approval of a compromise with Push, Inc. (“Push”), and in support of this motion state:

1. On April 19, 2024 (the “Petition Date”), Tijuana Flats #176, LLC (“TJ 176”), filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).

2. Later that same morning, its parent, Tijuana Flats Restaurants, LLC (“Restaurants, LLC”), filed its voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code.

3. Restaurants, LLC owns and operates 65 “Tijuana Flats” restaurants located across Florida, inclusive of TJ 176. Its restaurants provide fast, casual dining featuring a “Tex-Mex” cuisine.

4. On the Petition Date, Restaurants, LLC and Push were parties to a Scope of Value agreement dated March 1, 2023, (the “Marketing Agreement”), pursuant to which Push agreed, in exchange for a monthly “agency retainer,” to manage the Debtors’ on-line presence and periodically provide content for the Debtors’ Facebook, Instagram and TikTok postings. The initial term of the Marketing Agreement expired December 31, 2023, but was extended in November of 2023 through February of 2024. The Parties continued operating under that same arrangement after February of 2024, based on an email agreement, without the benefit of a formal contract extension.

5. On May 14, 2024, less than one month into their reorganization, but after Push had already ceased providing services to the Debtors, Debtors filed their Motion to Reject Executory Contract with Push, Inc. [Docket No. 127]. The Order Granting Debtors’

Motion to Reject Executory Contract with Push, Inc. [Docket No. 195] was entered on May 30, 2024, which deemed the Marketing Agreement rejected as of May 31, 2024.

6. Push filed its application seeking allowance and payment of administrative expense in the amount of \$53,295.89 on June 28, 2024 (the “Administrative Expense Claim”)[Docket No. 259], requesting \$13,970.89 based on prorated monthly service charges, \$22,000 for intellectual property assets provided to the Debtors and a § 503(b)(9) administrative expense in the amount of \$17,325 for intellectual property assets allegedly delivered to the Debtors postpetition. Push also alleges that Tijuana Flats continued to utilize the materials which it produced following rejection of the Marketing Agreement.

7. In their objection to the Administrative Expense Claim [Docket No. 311], Debtors contend that the services which Push allegedly provided were not induced postpetition, that they did not provide a concrete benefit to the estate, and that Push’s claim is, in part, duplicative. Further, Debtors believe that the request for a § 503(b)(9) priority claim is misplaced as the services which Push provided do not constitute “goods” within the meaning of § 503(b)(9) and, in any event, were provided more than 20 days preceding the Chapter 11 cases, either of which would preclude the allowance of a § 503(b)(9) administrative expense priority claim.

8. In addition to the foregoing, Restaurants, LLC filed an adversary proceeding against Push to recover the approximate \$85,898 in payments which Push received in the 90 days preceding the Petition Date as preferential transfers within the meaning of 11 U.S.C. §§ 547 and 550. The adversary proceeding is styled as *Tijuana Flats Restaurants, LLC v. Push, Incorporated*; Adversary Proceeding No. 24-ap-00082-BAJ (the “Adversary Proceeding”). Push, for its part, denies that the transfers were preferential and

further asserts that it provided “new value” to the Debtors after receipt of the subject payments which would potentially extinguish any exposure Push might have relating to the payments.

9. The Administrative Expense Claim and the Adversary Proceeding are currently scheduled for trial on January 7, 2025.

10. Both parties are confident in their positions if the disputes described above were to be litigated. The parties recognize, however, that the cost of litigating their disputes could exceed the net benefits available to either and have therefore agreed to compromise their disputes in the manner set forth in the Settlement Agreement attached hereto as **Exhibit A**.

The Compromise

11. The material terms of the compromise are as follows:
- a. The Parties agree to a “walk away” settlement whereby each Party will dismiss all pending litigation and release all claims between them. Accordingly, and subject to Bankruptcy Court Approval (as defined below), Push shall withdraw the Administrative Expense Claim, and Debtors shall dismiss the Adversary Proceeding, each with prejudice, within seven (7) days of Bankruptcy Court Approval.
 - b. Tijuana Flats shall retain a perpetual, exclusive, and non-cancelable license to utilize all copyrightable materials which Push may have directly or indirectly produced for Tijuana Flats without any further compensation or remuneration to Push; provided, however, that Push may continue to utilize the materials produced for Tijuana Flats for its own portfolio purposes.
 - c. All pending litigation between the Parties shall be stayed pending Bankruptcy Court Approval of this Agreement, and, if necessary, shall jointly move for a continuance of the January 7, 2025, trials to allow such approval to be obtained.

- d. Each Party shall bear its own fees and costs in connection with the matters described and settled herein, as well as all attorney fees and costs incurred in connection with the negotiation, preparation and implementation of this Agreement.

Requested Relief

12. By this motion, the Debtors seek the entry of an order approving the above-described compromise with Push.

13. Bankruptcy Rule 9019 provides, in pertinent part, that “[o]n motion ... and after notice and a hearing, the Court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019.

14. The Court should approve the settlement only when the settlement is fair and equitable and in the best interest of the estate. *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980); *see also, Depoister v. Mary M. Holloway Found.*, 36 F.3d 582, 586 (7th Cir.1994). The Court must compare the “terms of the compromise with the likely rewards of litigation.” *In re Jackson Brewing Co.*, 624 F.2d at 602. In the Eleventh Circuit, Courts are instructed to consider the following standards or factors in determining whether to grant a Bankruptcy Rule 9019 motion to approve a compromise or settlement: (a) the probability of success in the litigation; (b) the difficulties in collection; (c) the complexity of the litigation, and the expense, inconvenience, and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views. *Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.)*, 898 F.2d 1544 (11th Cir. 1990).

15. The decision to approve a compromise is within the discretion of the Court and is warranted where the settlement is found to be reasonable and fair in light of the

particular circumstances of the case. *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968). The settlement need not be the best that could have been achieved, but need only fall “within the reasonable range of litigation possibilities”, *In re Penn Central Transp. Co.*, 596 F.2d 1102, 1114 (3d Cir. 1979), and not “below the lowest point in the range of reasonableness.” *U.S. ex rel. Rahman v. Oncology Assoc., P.C.*, 269 B.R. 139, 149-50 (D. Md. 2001), *aff’d*, 2003 WL 1735258 (4th Cir. 2003) *quoting Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983); *see also, In re Arrow Air, Inc.*, 85 B.R. 886, 891 (Bankr. S.D. Fla. 1988).

16. After distilling the various claims and potential defenses, Restaurant, LLC and Push have determined that their respective claims nearly offset one another, and that the cost of pursuing or defending the subject claims and executing on any judgment awarded will likely consume any net benefit either party may achieve through a continuation of the litigation. The parties have therefore determined that a “walk away” settlement and dismissal of all claims between them the best course of action.

17. Application of the *Justice Oaks II* factors to the justification outlined above thus establishes that the Settlement Agreement is well within the range of reasonableness and in the best interests of the Debtors’ estates, and their creditors. Accordingly, the Debtors respectfully submit that the Settlement Agreement should be approved.

WHEREFORE, the Debtors request entry of an order (i) approving the compromise with Push, and (ii) granting such other relief as the Court may deem appropriate.

DATED this 3rd day of January, 2025.

THAMES | MARKEY

/s/ Richard R. Thames

By _____
Richard R. Thames
Bradley R. Markey

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EXHIBIT “A”

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered into this ^{31st} day of January, 2025 (the “Effective Date”), by and between TIJUANA FLATS TIJUANA FLATS (“Tijuana Flats” or “Debtor”) and PUSH, INC (“Push”) (each, individually, a “Party”; collectively, the “Parties”).

Preliminary Statement. Tijuana Flats owns and operates 66 “Tijuana Flats” restaurants located across Florida. Its restaurants provide fast, casual dining featuring a “Tex-Mex” cuisine.

On April 19, 2024 (the “Petition Date”) Tijuana Flats (“Tijuana Flats”), filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”).

On the Petition Date, Tijuana Flats and Push were Parties to a Scope of Value Agreement dated March 1, 2023, (the “Marketing Agreement”), pursuant to which Push agreed, in exchange for a monthly “agency retainer,” to manage Tijuana Flats on-line presence and periodically provide content for Tijuana Flats’ Facebook, Instagram and Tik-Tok postings. The initial term of the Marketing Agreement expired December 31, 2023, but was extended in November of 2023 through February of 2024. The Parties continued operating under that same arrangement after February of 2024 based on an email agreement without the benefit of a formal contract extension.

On May 14, 2024, Tijuana Flats filed its Motion to Reject Executory Contract with Push, Inc. [Doc. No. 127]. The Order Granting Debtors’ Motion to Reject Executory Contract with Push, Inc. [Doc. No. 195] was entered on May 30, 2024, which deemed the Marketing Agreement rejected as of May 31, 2024. Push alleges that Tijuana Flats continued to utilize the materials which it produced following rejection of the Marketing Agreement, and that Tijuana Flats may owe Push additional compensation for such use.

On June 28, 2024, Push filed an application seeking allowance and payment of administrative expense in the amount of \$53,295.89 (“the Administration Expense Claim”) [Docket No. 259]. Debtor’s Objection to Push’s Application was filed August 8, 2024 [Docket No. 331].

Push received payments totaling \$85,898.06 from Tijuana Flats in the 90 days preceding the Petition Date. The Debtors contend that the transfers were “preferential” within the meaning of 11 U.S.C. § 547, and filed Adversary Proceeding No. 3:24-ap-0082-BAJ (the “Adversary Proceeding”) against Push to avoid same.

The Administrative Expense Claim and the Adversary Proceeding are currently scheduled for trial on January 7, 2025.

Resolution of the foregoing issues will be time-consuming and expensive with uncertain results. Therefore, in order to eliminate the expense and uncertainty attended the

forgoing disputes, the Parties agree to settle their disputes on the terms outlined below without admission of any kind.

Agreement

1. **Recitals.** The statements set forth in the Preliminary Statement are true and correct.

2. **Settlement.** The Parties agree to a “walk away” settlement whereby each Party will dismiss all pending litigation and release all claims between them. Accordingly, and subject to Bankruptcy Court Approval (as defined below), Push shall withdraw the Administrative Expense Claim, and Debtors shall dismiss the Adversary Proceeding, each with prejudice, within seven (7) days of Bankruptcy Court Approval.

3. **Perpetual License.** Push hereby grants to Tijuana Flats, and Tijuana Flats shall retain, a perpetual, exclusive, and non-cancelable license to utilize all copyrightable materials which Push may have directly or indirectly produced for Tijuana Flats without any further compensation or remuneration to Push. Notwithstanding the foregoing, Push may continue to use the materials produced for Tijuana Flats for portfolio use only as an example of works created by Push.

4. **Stay of Litigation.** The Parties agree to stay all pending litigation between them pending Bankruptcy Court Approval of this Agreement, and, if necessary, shall jointly move for a continuance of the January 7, 2025, trials to allow such approval to be obtained.

5. **Mutual Release.** Upon Bankruptcy Court Approval, the Parties, on behalf of their respective agents, attorneys, successors, predecessors, affiliates, heirs, personal representatives and assigns, shall be deemed to have released each other and their respective successors, assigns from any and all claims, liabilities, actions and causes of action, which either of them may have arising out of or relating to their prior business relationship. The Parties agree that the foregoing release and waiver is intended to be as broad and inclusive as permitted by the laws of the State of Florida. The foregoing notwithstanding, nothing herein shall be construed as a release or waiver of any obligation of a Party as set forth in this Agreement.

6. **Bankruptcy Court Approval.** This compromise and settlement is subject to approval by the United States Bankruptcy Court following such notice as may be required by Rule 9019, Federal Rules of Bankruptcy Procedures. Debtor shall file a motion seeking such approval within seven (7) days of the execution of this Agreement.

7. **Binding Effect.** This Agreement is and shall be binding upon and inure to the benefit of the Parties, their heirs, personal representatives, successors and assigns following Bankruptcy Court Approval.



