

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

In re)	
TIJUANA FLATS RESTAURANTS, LLC, <i>et al.</i> ¹)	Case Nos. 3:24-bk-1122-BAJ and 3:24-bk-1128-BAJ
Debtors.)	Chapter 11
_____)	Jointly Administered Under Case No. 3:24-bk-1128-BAJ

**EMERGENCY MOTION FOR AUTHORITY
TO INCUR DEBT WITH ADMINISTRATIVE EXPENSE
PRIORITY UNDER § 364(b) OF THE BANKRUPTCY CODE**

Tijuana Flats #176, LLC and Tijuana Flats Restaurants, LLC (collectively, the “Debtors”), move the Court for the entry of an interim and final order pursuant to 11 U.S.C. § 364(b), and Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure authorizing them to incur emergency post-petition financing with administrative expense priority from Flatheads, LLC, and in support of the motion state:

Jurisdiction and Authority

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue in the Middle District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

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.

2. The statutory predicates for the relief requested by this Motion 11 U.S.C. §§ 105, 361 and 364, and Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure.

Background

3. 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”).

4. 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.

5. The Debtors are continuing in possession of their properties and are managing their businesses, as debtors in possession, pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

6. The Debtors own and operate 65 “Tijuana Flats” restaurants, the majority of which are located across Central Florida.

7. The restaurants all operate from leased locations. The aggregate monthly payment(s) required under the real property leases is approximately \$591,195, which is one of Debtors’ largest monthly operating expenses.

8. The Debtors arrived in this Chapter 11 case in severe financial distress due primarily to inflationary pressures which compressed profit margins and store profitability. Those same inflationary pressures affected the Debtors’ top line revenues as many customers could not afford even the low-cost casual dining experience offered by the Debtors.

9. Since filing their petitions, the Debtors have made significant improvement in sales, with average daily revenues now totaling \$221,293. In fact, the Debtors are poised to file their joint Chapter 11 plan of reorganization with the intention of exiting this Chapter 11 process by year-end.

10. Nature has thrown the Debtors a “curve-ball,” however, via Hurricane Milton. On October 5, 2024, Governor Ron DeSantis declared a state of emergency for thirty-five counties located across Central Florida (Executive Order 24-214), with mandatory evacuations in a number of communities on Florida’s West Coast. The state of emergency was enlarged to fifty-one counties on October 6, 2024 (Executive Order 24-215).

11. Hurricane Milton made landfall on October 9, 2024, devastating a wide swath of Central Florida. Among other things, the hurricane has caused wide-spread loss of power throughout the region, has interrupted the Debtors’ supply chain, and has kept customers away as they deal with survival issues. Needless to say, Hurricane Milton has severely impacted the Debtors’ ability to operate its restaurants.

12. The Debtors were therefore forced to close the vast majority of their locations for 48 to 72 hours, with at least ten stores located at the center of the devastation still being shuttered.

13. As a result, the Debtors have suffered an unexpected loss of revenues in excess of \$665,000.² A substantial amount of perishable products have been lost due to power outages and will need to be replaced at a significant cost to the Debtors. Debtors estimate those losses to exceed \$85,000. This loss comes on the heels of a \$250,000 loss

² Estimated. A number of stores remain closed. Damages are thus continuing to accrue.

in revenues only two weeks earlier due to Hurricane Helene. The Debtors will therefore have insufficient funds to pay November rents in a timely manner or to meet other ongoing obligations.

14. The Debtors have concurrently herewith filed a motion to suspend or defer payment of the November rents for each of their locations. The relief requested by that motion provides only \$591,195 in liquidity to the Debtors, which is insufficient to cover the expected operational shortfalls occasioned by the two hurricanes. The relief requested by that motion will not be realized until November. The Debtors therefore have an immediate need for an injection of cash in order to preserve and protect their going concern value.

15. The Debtors do maintain a business interruption and personal property loss policy which may cover some of the losses. That reimbursement process will take roughly six months before any benefits are received.

16. Debtors' equity holder, Flatheads, LLC, has been reserving funds to facilitate an exit from these Chapter 11 proceedings. Given the exigent circumstances now faced by the Debtors, Flatheads is willing to advance \$1,200,000 to the Debtors as an emergency loan, provided its loan receives administrative expense priority.

17. The funds advanced by Flatheads will:

- (a) be used solely and exclusively to pay actual and necessary costs and expenses associated with operating the business;
- (b) bear interest at the rate of four and one-half percent (4.5%);
- (c) constitute an allowed administrative expense of the bankruptcy estates of each of the Debtors pursuant to §§ 503(b), 507(a)(1)(C) and 507(a)(2) of the Bankruptcy Code; and

- (d) be repaid in connection with the Debtors' exit from this Chapter 11 proceeding from available insurance, or, at Flatheads' sole election, be forgiven as a new value contribution to the Debtors in exchange for retention of its equity interests in the Debtor.

Argument

A. Approval of Financing.

17. Normally, a Chapter 11 debtor is authorized to obtain credit and incur unsecured debt in the ordinary course of business without the necessity of obtaining Court approval. 11 U.S.C. § 364(a).

18. Without question, the proposed emergency relief loan from Flatheads is not an ordinary course transaction. Resort to § 364(b) is therefore required. This section provides:

The court, after notice and a hearing, may authorize the trustee to obtain unsecured credit or to incur unsecured debt other than under subsection (a) of this section, allowable under section 503(b)(1) of this title as an administrative expense.

11 U.S.C. § 364(b).

19. As set forth above, emergency funding is absolutely essential to preserve the going-concern value of the Debtors' businesses due to the unanticipated interruption in business attributable to Hurricane Milton.

20. Continuation of operations will benefit 1,200 employees, 65 landlords and numerous small businesses who provide support services to the Debtors. Approval of the emergency funding is therefore in the best interests of creditors and the estates.

B. Interim Approval Should Be Granted.

18. Rules 4001(b) and 4001(c) of the Federal Rules of Bankruptcy Procedure provide that a final hearing on a motion to obtain credit pursuant to § 364 may not be commenced earlier than 15 days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on this Motion and to authorize the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to the debtors' estates.

19. Pursuant to Rules 4001(b) and 4001(c), the Debtors request that the Court conduct an expedited preliminary hearing on this Motion and grant the relief requested in the proposed interim order so as to (i) preserve, protect and attempt to maximize the value of the estates of the Debtors, and (ii) avoid the immediate and irreparable harm and prejudice to the estates of the Debtors and all parties in interest. To the extent funds have been advanced out of necessity prior to the hearing on this Motion, Debtors request the relief be granted on a *nunc pro tunc* basis.

20. The estates of the Debtors will be immediately and irreparably harmed absent authorization from the Court to obtain credit as requested on an interim basis pending a final hearing on this Motion.

WHEREFORE, the Debtors respectfully request that the Court enter an order in substantially the form attached hereto as **Exhibit A** (i) authorizing the Debtors to obtain emergency post-petition financing from Flatheads, LLC, and (ii) granting such other relief as the Court deems appropriate.

THAMES | MARKEY

/s/ Richard R. Thames

By _____

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EXHIBIT “A”

**UNITED STATES BANKRUPTCY COURT
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JACKSONVILLE DIVISION**

In re)	
TIJUANA FLATS RESTAURANTS, LLC, <i>et al.</i> ¹)	Case Nos. 3:24-bk-1122-BAJ and 3:24-bk-1128-BAJ
Debtors.)	Chapter 11
_____)	Jointly Administered Under Case No. 3:24-bk-1128-BAJ

**INTERIM ORDER GRANTING
EMERGENCY MOTION FOR AUTHORITY
TO INCUR DEBT WITH ADMINISTRATIVE EXPENSE
PRIORITY UNDER § 364(b) OF THE BANKRUPTCY CODE**

This Chapter 11 case came before the Court on October _____, 2024, upon the debtors, Tijuana Flats #176, LLC and Tijuana Flats Restaurants, LLC (“Debtors”), Emergency Motion for Authority to Incur Debt with Administrative Expense Priority Under § 364(b) of the Bankruptcy Code (the “Motion”) [Docket No. ____]. Upon consideration of the Motion and any responses or

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opposition thereto, and the findings made at the hearing held on October ____, 2024, it is ORDERED:

1. The Motion is hereby granted in its entirety on an interim basis.
2. Debtors are authorized to borrow \$1,200,000 from Flatheads, LLC as described in the Motion.
3. All advances made by Flatheads, LLC in connection with Hurricanes Helene and Milton shall be entitled to administrative expense priority as an actual and necessary cost of preserving the estates, whether advanced prior to or subsequent to the entry of this Order.
4. Debtors are hereby authorized, without the need of further Order of this Court, to repay the advances from the proceeds of any insurance proceeds received on account of the business interruption occasioned by Hurricanes Helene and Milton, whether such funds were advanced prior to or subsequent to the entry of this Order.
5. This Order shall be binding upon and inure to the benefit of the Debtors and their respective successors and assigns, including without limitation, any Chapter 11 or Chapter 7 trustee hereinafter appointed.
6. The terms and conditions of this Order shall be immediately effective and enforceable notwithstanding the provisions of Fed. R. Bankr. Proc. 6004 to the extent applicable.
7. The interim authority granted by this Order shall remain in effect until further Order of this Court on the Motion.
8. Accordingly, Flatheads, LLC is an “entity that is extending credit in good faith,” as that phrase is used in §364(e) of the Bankruptcy Code, and both Flatheads, LLC

and the Debtors are entitled to the protections afforded under §364(e) of the Bankruptcy Code. This Order is subject to, and Flatheads, LLC is entitled to, on an interim basis, the benefits of the provisions of §364(e) of the Bankruptcy Code.

9. The Debtors shall serve a copy of this Order on the Office of the United States Trustee and any other person or entities that were served with the Motion within three (3) business days after its entry. If no party-in-interest files with this Court and serves an objection to the entry of this Order by _____, 2024, then this Order will automatically become a Final Order. In any party-in-interest files and serves a timely objection, the Court shall conduct a hearing on _____, 2024, at _____ a.m./p.m. at _____ to consider such objection. Any objection to the entry of this Order as a Final Order must be in writing and set forth the factual and legal bases for the objection and shall be served and filed on counsel for Debtors, and the Office of the United States Trustee, no later than _____, 2024.