

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:	) Case No. 16-23458 JAD
Royal Flush, Inc.,	) Chapter 11
Debtor,)
Royal Flush, Inc.,	) Related Document No. 325-315
Movant,	) Hearing Date: 12/19/17 @ 10:00 a.m.
vs.	) Response Due: 12/12/17
No Respondent.	) Document No. 360

ORDER CONFIRMING
FOURTH AMENDED PLAN OF REORGANIZATION DATED NOVEMBER 13, 2017

AND NOW, this 21st day of December, 2017, upon consideration of:

- (a) The Fourth Amended Plan of Reorganization (the "Plan") dated November 13, 2017, filed by Royal Flush, Inc. ("Debtor" or "Royal Flush") pursuant to Chapter 11, Title 11 of the United States Code, 11 U.S.C. §§101-1330, (the "Bankruptcy Code"); and
- (b) Copies of the Fourth Amended Disclosure Statement, the Plan and ballots for the acceptance or rejection of the Plan having been transmitted to holders of claims against and interests in the Debtor entitled to vote on the Plan; and
- (c) The solicitation of acceptances from holders of claims against and interests in the Debtor having been made within the time and in the manner required by this Court; and
- (d) The acceptances and rejections to the Plan which were received within the time required by this Court from holders of claims against or interest in the Debtor; and
- (e) Class 1 is not impaired and is not entitled to vote; and

(f) The Debtor having received the requisite percentages of favorable votes in Classes 2, 6, 7, 8 and 9 for an acceptance of the Plan by those Classes in accordance with the requirements of Section 1126 of the Bankruptcy Code; and

(g) Classes 3, 4 and 5 did not vote, did not object to confirmation, and are deemed to have accepted the Plan; and

(h) A hearing was held on December 19, 2017, to consider confirmation of the Plan (the "Confirmation Hearing"); and

(i) Proper and timely notice of the Confirmation Hearing having been given in accordance with Section 1128 of the Bankruptcy Code; and

After due deliberation and sufficient cause appearing therefore, the Court hereby finds (in accordance with Bankruptcy Rule 7052), determines, orders, adjudges and decrees in accordance with, inter alia, 11 U.S.C. §§363, 365, 1123, 1126, 1127, 1129(a),1129(b). 1129(d), 1141, 1142 and 1146 and Bankruptcy Rules 3018, 3019 and 9019 that:

1. All capitalized terms defined in the Plan and used in this Order shall have the meanings ascribed thereto in the Plan.

2. Class 1, consisting of priority claims is to receive the treatment required under Section 1129(a)(9), and therefore is not entitled to vote.

3. Classes 2, 6, 7, 8 and 9 are impaired. The Plan has been accepted by the requisite number of Allowed Claims held by creditors in Classes 2, 6, 7, 8 and 9. (11 U.S.C. §1126(b)).

4. Classes 3, 4 and 5 are deemed to have accepted the Plan.

5. The Plan is hereby amended to provide that should the Debtor default with respect to any creditor, such creditor will provide ten (10) days written notice to the Disbursing Agent, Donald R. Calaiaro, Esquire, of such default. Default shall be defined in the underlying Loan Agreement with such creditor. In the event the default is not cured within such ten (10) day period, the creditor will be entitled to exercise its contractual default rights as set forth in its loan documents.

6. The Stipulation between the Debtor and the Commonwealth of Pennsylvania, Department of Revenue, attached hereto as **Exhibit "A"**, is hereby approved.

7. The Stipulation between the Debtor and the Internal Revenue Service, attached hereto as **Exhibit "B"**, is hereby approved.

8. Notwithstanding anything to the contrary in the Plan or this Order, with respect to Guttman Energy ("Guttman"), Guttman being the counterparty to the Credit Application and Customer Agreement ("Guttman Contract") that was the subject of the Consent Motion to Assume Credit Agreement with Guttman Energy [Doc. No. 83] ("Guttman 365 Motion") and approved with the consent of the Committee and FNB through the Stipulation and Consent Order [Doc. No. 165] ("Guttman Order") dated January 9, 2017, satisfaction of Guttman's claim shall be in accordance with the Guttman Order and, in the event of a conflict between the Guttman Order, the Plan, and the Disclosure Statement, the Guttman Order shall control.

9. Except as provided in the Plan the Debtor is hereby discharged from any liability on any "claim" and from all "debt" (as those terms are defined in Section 101 of the Bankruptcy Code) that arose before the Confirmation Date, except for

claims and debts which are reinstated by the express provisions of the Plan, or this Order, and Debtor's liabilities in respect thereof are extinguished completely, whether or not reduced to judgment, liquidated or unliquidated, contingent or non-contingent, asserted or unasserted, fixed or unfixed, matured or unmatured, disputed or undisputed, legal or equitable, known or unknown that arose from any agreement of the Debtor entered into or obligation of Debtor incurred before the Confirmation Date including, without limitation, all interest, if any, on any such debt, whether such interest accrued before or after the date of commencement of the case, and including, without limitation, all debts based upon or arising out of any liability of a kind specified in Bankruptcy Code Sections 502(g), 502(h) and 502(i), whether or not proof of claim is filed or deemed filed under Bankruptcy Code section 502, or the holder of such claim has accepted the Plan, and the Debtor's liabilities for such claims and debts are limited to the amounts Debtor is paying or causing to be paid pursuant to the Plan.

8. Except as otherwise expressly provided in the Plan or this Order on the Consummation Date the reorganized Debtor will be vested with all of the property of the estate, free and clear of all Claims, liens, encumbrances, charges and other interests of creditors and equity security holders other than liens or security interests created by the Plan or this Order or ratified by the Plan or this Order.

9. Except as provided in the Plan any judgment at any time obtained, to the extent that such judgment is a determination of liability of the Debtor with respect to any debt or claim discharged pursuant to the Plan and this Order shall be, and hereby is, rendered null and void.

10. Except as provided in the Plan or this Order all creditors and interest holders of the Debtor or other entities whose debts are discharged or whose rights and interests are terminated by the Plan and this Order, are individually and collectively permanently restrained and enjoined from instituting or continuing any action or employing any process to collect such debts from the Debtor or pursue such interests as liabilities or obligations of the Debtor, or its respective successors.

11. The issuance, transfer, or exchange of securities issued under, or the transfer of any other assets or property pursuant to, or in connection with, this Plan, shall not pursuant to Section 1146 of the Bankruptcy Code, be taxed under any law imposing a stamp tax, transfer tax, or other similar tax.

12. Prior to the Consummation Date of the Plan and in connection with the consummation of the Plan, the Plan and any exhibits thereto may be amended and modified in accordance with Section 1127 in writing by Debtor so long as any such amendment or modification does not adversely change the treatment of the Claim of any creditor or the Interest of any equity security holder nor adversely affect any other rights of any creditor that has not agreed to such amendment or modification.

13. To the extent any Orders entered in these Chapter 11 proceedings conflict with the Plan or this Order, the Plan and this Order shall control, and such Orders are vacated to the extent they conflict with this Order or the Plan. In all other respects such Orders shall remain in full force and effect.

14. All entities, the Claims and Interests of which are dealt with under the Plan shall be, and they hereby are, directed to execute, deliver, file or record any document, and to take any action necessary to implement, effectuate and consummate the Plan in accordance with its terms and all such entities shall be bound

by the terms and provisions of all documents to be executed by them in connection with the Plan, whether or not such documents have been executed by such entities.

15. Exculpation - subject to the occurrence of the effective date, the Debtor's counsel, the official committee of unsecured creditors and/or its professionals (the "exculpated parties") shall not have or incur any liability to any holder of a claim or interest or any other party for any act or omission in connection with, related to, or arising out of, the Debtor's Chapter 11 case and the Plan, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan; provided that the exculpated parties shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan; provided further that nothing in the Plan shall, or shall be deemed to, release the exculpated parties, or exculpate the exculpated parties with respect to their respective obligations or covenants, if any, arising pursuant to the Plan and nothing in the Plan shall be deemed to release the exculpated parties, or exculpate the exculpated parties, with respect to willful misconduct or gross negligence. Nothing herein shall excuse any professional retained in the Debtors' Chapter 11 cases from seeking bankruptcy court approval of professional fees and/or abiding by any Bankruptcy Court order regarding the payment of professional fees.

16. The Plan and its provisions as well as this Order and the findings of fact and conclusions of law contained herein shall be binding upon (i) the Debtor, (ii) Reorganized Debtor and any successors thereof, (iii) any lessor or lessee of property to or of Debtor, (iv) any creditor or equity security holder of the Debtor, whether or not the Claim or Interest of such creditor or equity security holder is impaired under the Plan and whether or not such creditor or equity security holder has accepted the

Plan, and (v) any entity, including any governmental entity who has been provided notice of or a copy of the Plan and Disclosure Statement, whether or not such entity, including any governmental entity has appealed or objected to the Plan.

17. Debtor shall be, and hereby is, authorized and empowered to issue, execute, deliver, file or record any document, and to take any action necessary or appropriate to implement, effectuate, and consummate the Plan in accordance with its terms, including, without limitation, any lease, agreement or indemnity, by-law or charter amendment, whether or not any such document or action is specifically referred to in the Plan or any exhibit thereto and without further application to, or order of, this Court.

18. The Debtor shall comply with the provisions of Bankruptcy Rule 3020(c) which relate to providing notice of the entry of the Confirmation Order as provided in Bankruptcy Rule 2002(f).

19. The Court shall retain jurisdiction in accordance with, and as limited by, the Plan and 11 U.S.C. §1142.

20. To the extent the terms of the Plan and this Order conflict, this Order shall control.

21. Upon the occurrence of the Effective Date, the Committee shall be dissolved and the Committee, its members and its Professionals shall be relieved of any further duties or obligations in the Bankruptcy Case.

FILED
12/21/17 2:00 pm
CLERK
U.S. BANKRUPTCY
COURT - WDP

By the Court.



jsf

Jeffery A. Deller, Chief Judge
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE: Bankruptcy Case No. 16-23458 JAD

ROYAL FLUSH, INC.
Debtor,

Chapter 11

COMMONWEALTH OF
PENNSYLVANIA, PENNSYLVANIA
DEPARTMENT OF REVENUE
Movant

Hearing Date: December 19, 2017
Time: 10:00am

vs.

Related to Document No. 315
Document No.

ROYAL FLUSH, INC.
Respondent

**STIPULATION AND AGREEMENT BETWEEN THE DEBTOR
AND THE PENNSYLVANIA DEPARTMENT OF REVENUE**

IT IS HEREBY STIPULATED AND AGREED by and between Royal Flush, Inc., Debtor, and the Commonwealth of Pennsylvania, Department of Revenue, as represented by the Office of Attorney General, by Robert C. Edmundson, Senior Deputy Attorney General, as follows:

1. The Pennsylvania Department of Revenue has asserted claims against the above referenced Debtor which consist of the following: 1

- A. Administrative.....\$586.44
- B. Secured.....\$-0-
- C. Priority.....\$71,653.46
- D. Unsecured Non-Priority.....\$3,990.03

1 The Debtor agrees not to challenge the amount or classification of the aforesaid claims.

2. Revenue's claim shall be paid pursuant to the proposed Bankruptcy Plan in the manner required by 11 U.S.C. 1129(a)(9)(a)(c) and more specifically payment will be made as follows:

A). The administrative claim is partially estimated because of the Debtors failure to file its 2016 corporate tax return. The Debtor shall pay \$473.85 on the Plan Effective Date representing the assessed administrative sales and use tax and withholding tax claim. The 2016 corporation tax return shall be filed and paid within 60 days of the Plan Effective Date.

B). The Debtor will remit monthly payments of \$1,305.00 commencing 30 days after the Plan Effective Date for a period of 60 months representing full payment of the priority claim, with statutory interest of 4% per annum.

C). The unsecured penalty claim of \$3,990.03 shall be treated in the same manner as the other unsecured creditors.

3. All payments specified in paragraph 2 shall be made to the Office of Attorney General, to the attention of Robert C. Edmundson, Manor Complex, 564 Forbes Avenue, Pittsburgh, Pennsylvania 15219.

4. The Pennsylvania Department of Revenue may apply each monthly payment to the claim for unpaid taxes and interest as it, in its sole discretion, may determine.

5. All statutes of limitations on the collection of any Commonwealth taxes due from the Debtor or involved in the plan are suspended during the pendency of the bankruptcy proceeding and the term of this stipulation and agreement, and for one year thereafter.

6. In the event that the Debtor fails to make any of the payments specified in paragraph 2 or incurs post confirmation tax obligations, the Commonwealth of Pennsylvania may pursue collection of the outstanding balance of the account utilizing its statutory remedies.

7. No tax liability accruing prior to the confirmation of the plan is discharged until paid in full, except general unsecured creditors shall be paid as provided in the Plan.

8. To the extent that any Commonwealth tax liens attached to any property owned by the Debtor as of the date of the filing of the petition in this case, such property shall remain subject to such Commonwealth tax liens until such time as the amount of liens has been fully satisfied.

9. The Debtor shall timely file and pay all taxes incurred from the date of Plan Confirmation through the time that all obligations due pursuant to this Stipulation are paid in full.

10. Until such time as all obligations due pursuant to this Stipulation are paid in full, the Commonwealth may administratively apply any tax credits or refunds otherwise owed to the Debtors to any outstanding indebtedness.


11. Any tax, interest and penalty not encompassed within this Stipulation that is subsequently determined to be owing shall be paid by an increase in the specified monthly payments and no priority or administrative tax liability shall be deemed discharged until paid in full.

12. The Commonwealths statutory ability to enter assessments against non-debtor parties it deems responsible per the provisions of 72 P.S. 7225 and 72 P.S. 7320 is not restricted or otherwise limited by the instant Stipulation.

13. The priority claims asserted by the Commonwealth in the instant bankruptcy shall be afforded no lower priority in any subsequent bankruptcy the Debtors may file prior to the completion of the payments required by this Stipulation.

14. This Stipulation and Agreement shall be deemed incorporated in the Plan of Reorganization and shall supercede the terms of such Plan in the event of a conflict between the documents.

/s/


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Counsel for Debtor,
Royal Flush, Inc.

JOSH SHAPIRO
ATTORNEY GENERAL

By/s/ Robert C. Edmundson
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Office of Attorney General
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(412) 565-2575
Email: redmundson@attorneygeneral.gov

It is so ORDERED,

UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:)	
)	
ROYAL FLUSH, INC.,	)	Bank. No. 16-23458 JAD
)	
	)	Chapter 11
Debtor.)	
)	
)	
UNITED STATES OF AMERICA,)	
)	
	)	Related to
Movant,	)	Document Nos. 315 and 325
)	
vs.)	
)	
	)	Hearing Date
	)	12/19/17 @ 10:00 AM
ROYAL FLUSH, INC.,)	
)	
)	
Respondent.)	

STIPULATION AND AGREED ORDER

IT IS HEREBY STIPULATED and AGREED by and between Royal Flush, Inc., Debtor, and the United States of America, as represented by Soo C. Song, Acting United States Attorney for the Western District of Pennsylvania, as follows:

1. The prepetition claim of the Internal Revenue Service in the total amount of \$318,652.96 shall be paid as follows:

a. The unsecured priority claims totaling \$304,210.04, together with interest thereon at the rate of 4 percent per annum, shall be paid in monthly installments of \$5,602.49 over a sixty (60) month period. The first such installment shall be

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due on the last day of the month following the month of the plan confirmation date of the plan, and each subsequent payment shall be due on the last day of each month thereafter until such time as the amount of such claim plus interest has been fully paid.

b. The general unsecured claim of \$14,442.92 shall be paid in accordance with the treatment given to other general unsecured creditors under the plan.

2. Any unpaid federal tax liabilities of the Debtor arising between the filing of the petition in this case and the confirmation of the plan of reorganization will be paid in full on or before the plan effective date.

3. All monthly payments specified in paragraph 1 above shall be made payable to the United States Treasury and sent to the Insolvency Unit, Internal Revenue Service, William S. Moorhead Federal Building, Room 711B, 1000 Liberty Ave., Pittsburgh, Pennsylvania 15222.

4. Any refunds or credits to which the Debtor may become entitled at any time before the tax liability mentioned in paragraph 1 has become fully satisfied may be credited administratively against the outstanding balance. In the event any refund check or checks are received by the Debtor prior to the full satisfaction of the tax liability, such check or checks shall be endorsed according to law and mailed to the Insolvency Unit, Internal Revenue Service, William S. Moorhead Federal Building, Room 711B, 1000 Liberty Ave., Pittsburgh, Pennsylvania 15222.

5. In the event that the Debtor fails to make any of the payments specified in paragraph 1 above or fails to comply with any of its postconfirmation federal tax obligations, the Internal Revenue Service may pursue collection of all unpaid preconfirmation and postconfirmation liabilities through any means authorized by the Internal Revenue Code or other applicable law, including levy and seizure of the Debtor's assets. Notwithstanding the foregoing, the Debtor shall have thirty (30) days to cure all delinquent plan payments and postconfirmation tax liabilities. This thirty day period shall commence upon the issuance of a written notice of plan default by the Internal Revenue Service to the Debtor.

6. The period allowed to the Internal Revenue Service under I.R.C. § 6502(a) to collect the assessed taxes, interest, penalties, and any other additions thereon, which are still owed by the Debtor after the plan effective date shall be suspended for the period of time that payment of these tax debts is made according to this Stipulation and Agreement, unless and until a substantial default of these payments shall occur, and for six months thereafter in accordance with I.R.C. § 6503(h)(2). A substantial default regarding payments shall have occurred when a payment of the tax debt required by this Stipulation has not been timely made, the Service has provided the Debtor with written notice of the default, and the Debtor has failed to cure the default within 30 days of the Service mailing written notice of default to the Debtor.

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7. Should the Debtor file another bankruptcy petition before completing the terms of this Stipulation, this Stipulation is null and void and the claims of the IRS retain their status as tax claims; they are not reduced to claims under this agreement. Notwithstanding the foregoing, the claims of the IRS will have no lower priority in any subsequent bankruptcy than they do in this case.

8. This Stipulation shall be deemed incorporated in the confirmed plan of reorganization and shall control the treatment of the federal tax claims in this case.

ROYAL FLUSH, INC.

Debtor

By: *Carroll Brumley*

SOO C. SONG
United States Attorney

BY: 

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It is so ordered.

UNITED STATES BANKRUPTCY JUDGE