

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

IN RE:

**PICCADILLY RESTAURANTS, LLC,
ET AL.,**

DEBTORS

* **CASE NO. 12-51127**
*
* **(JOINT ADMINISTRATION)¹**
*
* **CHAPTER 11**
*
* **JUDGE ROBERT SUMMERHAYS**

**APPLICATION FOR AN ORDER AUTHORIZING THE EMPLOYMENT AND
COMPENSATION OF MONROE MOXNESS BERG PA, AS OF OCTOBER 3, 2013,
AS AN ORDINARY COURSE OF BUSINESS PROFESSIONAL**

NOW IN COURT, through undersigned counsel, come the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”),² who submit this Application for an Order Authorizing the Employment and Compensation of Monroe Moxness Berg PA, as of October 3, 2013, as an Ordinary Course of Business Professional (the “Application”). In support of this Motion, the Debtors state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

BACKGROUND

2. On September 11, 2012 (the “Petition Date”), the Debtors filed for relief under chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtors are

¹ Jointly administered with *In re Piccadilly Food Service, LLC*, 12-51128 (Bankr. W.D. La. 2012), and *In re Piccadilly Investments, LLC*, 12-51129 (Bankr. W.D. La. 2012).

² The debtors in these Chapter 11 cases include Piccadilly Restaurants, LLC, Piccadilly Food Service, LLC, and Piccadilly Investments, LLC.

operating their businesses and managing their properties as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

3. No trustee or examiner has been appointed. An official committee of unsecured creditors was appointed in these Chapter 11 cases on October 23, 2012.

4. The Debtors are jointly administrated pursuant to Bankruptcy Code § 105(a) and Bankruptcy Rule 1015(b).

5. The statutory predicates for the relief requested herein are §§ 105(a), 327, 363, 1107(a), and 1108 of the Bankruptcy Code.

RELIEF REQUESTED

6. By this Motion, the Debtors respectfully request entry of an Order, substantially similar to **Exhibit A** to this Application, which authorizes the Debtors to retain and compensate Monroe Moxness Berg PA (“Monroe”) as it would an ordinary course of business professional, in an amount not to exceed \$10,000.

BASIS FOR RELIEF

8. On September 25, 2012, the Debtors filed an *Application for an Order Nunc Pro Tunc Authorizing the Employment and Compensation of Certain Professionals Utilized in the Ordinary Course of Business* (the “First Application”) (Docket #141). The First Application requested that this Court enter an order authorizing the Debtors to employ certain legal professionals as listed therein. This Court granted the First Application on October 22, 2012 (Docket #232).

9. Several legal professionals were inadvertently not listed by the Debtors in the First Application. The Debtors, therefore, filed a *Second Application for an Order Nunc Pro Tunc Authorizing the Employment and Compensation of Certain Professionals Utilized in the Ordinary Course of Business* (the “Second Application”) (Docket #322). In the Second

Application, the Debtors sought authority to employ and compensate those additional ordinary course legal professionals on terms approved by the Court. This Court granted the Second Application on December 11, 2012 (Docket #388).

10. The Debtors now seek to retain Monroe to assist them in investigating potential franchising opportunities, which is a practice area in which Monroe is uniquely qualified. The legal work and expenses, however, will not exceed \$10,000, without the Debtors first seeking further Court authority, after notice and hearing.

11. Under these circumstances, the cost of preparing and prosecuting full blown fee applications would be significant and unnecessary when compared to the limited fees that the Debtors propose paying to Monroe. This Application proposes, therefore, the same procedure as the ordinary course of business professionals approved in connection with the First and Second Applications, in order to alleviate the burden on the Debtors' estates, with the limitation being that the fees and expenses that will be paid to Monroe cannot exceed \$10,000. Additionally, the Debtors and Monroe will follow the same procedures that the Court approved for the ordinary course professionals that were approved when this Court granted the First and Second Applications.

12. More particularly, as with the First and Second Applications, the Debtors will file a statement (a "Statement") in the record of these Bankruptcy Cases and will contemporaneously serve such Statement on the following: (a) the secured creditor, Atalaya Administrative, LLC, and its counsel of record, Brent R. McIlwain and David F. Waguespack; (b) the United States Trustee; and (c) the Creditors' Committee appointed in this case on March 15, June 15, September 15, and December 15 of every year that this case is pending. Each Statement shall include the following information: (a) the amount paid as compensation for services rendered

and reimbursement of expenses incurred by Monroe during the previous 120 days; and (b) a general description of the services rendered by Monroe. The Debtors will provide unredacted copies of the bills/invoices of Monroe to the U.S. Trustee *before payment* to Monroe. Additionally, Monroe will provide the U.S. Trustee receipts for all travel related expenses, hotel rooms, meals totaling more than \$25, and individual telephone or conference call charges of more than \$100. If requested, the Debtors will also provide the requested information to the U.S. Trustee on a CD or other digital medium.

13. Attached as **Exhibit B** is a Declaration of Disinterestedness, in order to ensure that Monroe is disinterested and does not represent or hold any interest adverse to the Debtors or their estate with respect to the matter on which such professional is employed.

14. Monroe will not be involved in the administration of these Chapter 11 cases. Instead, as previously described, Monroe will provide services in connection with evaluating the Debtors' franchising opportunities.

15. As a result, the Debtors do not believe that the attorneys at Monroe are "professionals," as that term is used in section 327 of the Bankruptcy Code.³ Nevertheless, out of an abundance of caution, the Debtors seek the relief requested in this Application to avoid any

³ See e.g., *Elstead v. Nolden (In re That's Entertainment Markt'g Group, Inc.)*, 168 B.R. 226, 230 (N.D. Cal. 1994) (only the retention of professionals whose duties are central to the administration of the estate require prior court approval under section 327); *In re Madison Mgmt. Group, Inc.*, 137 B.R. 275, 283 (Bankr. N.D. Ill. 1992) (same); *In re Sieling Assocs. Ltd. P'ship*, 128 B.R. 721, 723 (Bankr. E.D. Va. 1991) (same); *In re Riker Indus., Inc.*, 122 B.R. 964, 973 (Bankr. N.D. Ohio 1990) (no need for section 327 approval of the fees of a management and consulting firm that performed only "routine administrative functions," and whose "services were not central to [the] bankruptcy case"); *In re D'Lites of Am., Inc.*, 108 B.R. 352, 353 (Bankr. N.D. Ga. 1989) (section 327 approval is not necessary for "one who provides services to the debtor that are necessary regardless of whether petition was filed"); *In re Fretheim*, 102 B.R. 298, 299 (Bankr. D. Conn. 1989)(only those professionals involved in the actual reorganization effort, rather than debtor's ongoing business, require approval under section 327); *In re Pacific Forest Indust., Inc.*, 95 B.R. 740, 743 (Bankr. C.D. Cal. 1989); *In re Johns-Manville Corp.*, 60 B.R. 612, 619 (Bankr. S.D.N.Y. 1989) (only those professionals involved in the actual reorganization effort, rather than the debtor's ongoing business, require approval under section 327).

subsequent controversy regarding the Debtors' employment and the payment of Monroe during the pendency of these Chapter 11 cases. The Debtors shall seek specific Court authority to employ Monroe Moxness Berg PA, as of October 3, 2013, and authority to compensate Monroe as ordinary course of business professionals, pursuant to section 327 of the Bankruptcy Code, and consistent with procedures set forth in the First and Second Applications.

NOTICE

16. Notice of this Application has been given to (a) the secured creditor, through Atalaya Administrative, LLC, and its counsel of record, Brent R. McIlwain and David F. Waguespack, (b) the 30 largest unsecured creditors, the identity of which may be amended from time to time, (c) the twenty (20) additional random unsecured creditors, (d) all parties who have requested special notice pursuant to Bankruptcy Rule 2002, (e) counsel for the Unsecured Creditors' Committee, and (f) the Office of the United States Trustee. The Debtors submit that no further notice is necessary for this Court to enter an Order granting the relief requested herein.

WHEREFORE, the Debtors pray that the Court enter an Order, substantially similar to **Exhibit A**, (a) granting this Motion, (b) authorizing the Debtors to retain and compensate Monroe Moxness Berg PA, as of October 3, 2013, as it would an ordinary course of business professional, and (c) granting such other general and equitable relief as is just and proper.

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Respectfully submitted,

/s/Elizabeth J. Futrell

R. PATRICK VANCE (#13008)

ELIZABETH J. FUTRELL (#05863)

MARK A. MINTZ (#31878)

TYLER J. RENCH (#34049)

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**Attorneys for Piccadilly Restaurants, LLC,
Piccadilly Food Service, LLC, and
Piccadilly Investments, LLC**

Exhibit A

EXHIBIT A; PROPOSED ORDER

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

IN RE:

**PICCADILLY RESTAURANTS, LLC,
ET AL.,**

DEBTORS

* **CASE NO. 12-51127**
*
* **(JOINT ADMINISTRATION)¹**
*
* **CHAPTER 11**
*
* **JUDGE ROBERT SUMMERHAYS**

**ORDER AUTHORIZING THE EMPLOYMENT AND COMPENSATION
OF MONROE MOXNESS BERG PA, AS OF OCTOBER 3, 2013,
AS AN ORDINARY COURSE OF BUSINESS PROFESSIONAL**

Considering the Application for an Order Authorizing the Employment and Compensation of Monroe Moxness Berg PA (“Monroe”), as of October 3, 2013, as Ordinary Course of Business Professionals (the “Application”) (Docket #___), and considering the

¹ Jointly administered with *In re Piccadilly Food Service, LLC*, 12-51128 (Bankr. W.D. La. 2012), and *In re Piccadilly Investments, LLC*, 12-51129 (Bankr. W.D. La. 2012).

Declaration of Disinterestedness accompanying the Application as **Exhibit B**, this Court finds that (a) Monroe neither represents nor hold an interest adverse to the Debtors or to the estates and is a “disinterested person,” (b) Monroe is qualified to provide services to the Debtors under § 327(a) and §327(e) of the Bankruptcy Code, and (c) the employment of Monroe would best serve the interests of the Debtors and their estates; and after due deliberation and cause appearing therefore;

IT IS ORDERED that, pursuant to 11 U.S.C. §§ 327(a) and (e), the Debtors are authorized to retain, employ, and compensate Monroe as attorneys for the Debtors in these Chapter 11 cases, effective as of October 3, 2013, in an amount not to exceed \$10,000.

IT IS FURTHER ORDERED that Monroe and the Debtors will provide unredacted copies of Monroe’s bills/invoices to the United States Trustee before payment. Monroe also will provide the United States Trustee receipts for all travel related expenses, hotel rooms, meals totaling more than \$25, and individual telephone or conference call charges of more than \$100. Upon request, the Debtors will also provide the requested information to the Office of the United States Trustee on a CD or other digital medium.

IT IS FURTHER ORDERED that, the Debtors will give notice by mailing this Order and the Application to (a) the secured creditor, Atalaya Administrative, LLC, (b) the thirty (30) largest unsecured creditors, (c) twenty (20) additional random unsecured creditors, (d) all parties who have filed a notice of appearance and request for notice, (e) the United States Trustee, (f) all parties who have requested special notice pursuant to Bankruptcy Rule 2002, and (h) counsel to the Unsecured Creditors’ Committee.

IT IS FURTHER ORDERED that all compensation for services rendered and reimbursement for expenses incurred during these Chapter 11 Cases will be paid as provided by order of this Court.

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This Order was prepared and is being submitted by:

R. PATRICK VANCE (#13008)
ELIZABETH J. FUTRELL (#05863)
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TYLER J. RENCH (#34049)
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**Attorneys for Piccadilly Restaurants, LLC
Piccadilly Food Service, LLC and
Piccadilly Investments, LLC**

Exhibit B

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

IN RE:

**PICCADILLY RESTAURANTS, LLC,
ET AL.,**

DEBTORS

* CASE NO. 12-51127
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* (JOINT ADMINISTRATION)¹
*
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**DECLARATION OF JAMES A. WAHL IN SUPPORT OF APPLICATION
FOR AN ORDER AUTHORIZING THE RETENTION AND COMPENSATION
OF MONROE MOXNESS BERG PA**

I, James A. Wahl, hereby declare, under penalty of perjury, as follows:

1. I am a shareholder of the firm of Monroe Moxness Berg PA ("Monroe" or the "Firm"). I submit this Declaration (this "Declaration") on behalf of Monroe in support of the application (the "Application")² of the above-captioned debtors and debtors in possession (the "Debtors") for the entry of an order, pursuant to section 327 of the United States Bankruptcy Code (the "Bankruptcy Code") and Rule 2014(a) of the Federal Rules of Bankruptcy Procedure, authorizing the Debtors to employ and compensate Monroe as they compensate ordinary course professional for the Debtors.

2. This Declaration is based on my personal knowledge and my review of Firm records, which I have custody and control over in the course and scope of my practice and which are maintained by the Firm in the course of its regularly conducted legal activities.

¹ Jointly administered with *In re Piccadilly Food Service, LLC*, 12-51128 (Bankr. W.D. La. 2012), and *In re Piccadilly Investments, LLC*, 12-51129 (Bankr. W.D. La. 2012).

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Application.

MONROE'S DISINTERESTEDNESS

3. In connection with the preparation of this Declaration, the Firm conducted a review of its contacts with the Debtors, their affiliates and certain entities holding large claims against or interests in the Debtors that were made known to Monroe (collectively, the "Parties"), and as are listed on Schedule A to this Declaration. The Firm's review, completed under my supervision, consisted of a query of the Parties within an internal computer database containing names of individuals and entities that are current or recent former clients of Monroe. To the best of my knowledge, neither the Firm, nor any of its shareholders, associates, or staff members are a creditor, an equity security holder, or an insider of any of the Debtors.

4. Before the Petition Date, the Firm represented one of the Debtors, Piccadilly Restaurants, LLC ("Restaurants"), from time to time, in 2007 and 2008, with the last fee statement being sent by Monroe to Restaurants in April 2008, and being paid by Restaurants in May 2008.

5. Monroe is not a "creditor" with respect to fees, expenses or otherwise, within the meaning of section 101(10) of the Bankruptcy Code.

6. Further, neither I nor any other shareholder of Monroe is a holder of any outstanding debt instruments or membership interests in any of the Debtors.

7. Monroe has not reviewed the relationship that its attorneys and staff may have with employees within the U.S. Trustee's office in this District, but will do so upon being provided with a list of such persons by the office of the U.S. Trustee.

8. To the best of my knowledge, Monroe is a "disinterested person," as that term is defined in section 101(14) of the Bankruptcy Code, in that Monroe:

- a. Is not a creditor, an equity security holder, or an insider of the Debtors;
- b. Is not and was not an investment banker for any outstanding security of the Debtors;
- c. Has not been, within three years before the date of the filing of the Debtors' Chapter 11 petitions, (i) an investment banker for a security of the debtors or (ii) an attorney for such an investment banker in connection with the offer, sale, or issuance of a security of the Debtors; and
- d. Was not, within two years before the date of filing of the Debtors' Chapter 11 petitions, a director, officer, or employee of the Debtors or of any investment banker as specified in subparagraph (b) or (c) of this paragraph.

9. Additionally, to the best of my knowledge and based upon the results of the conflicts search described in this Declaration, Monroe neither holds nor represents an interest adverse to the Debtors within the meaning of section 327(a) for the Bankruptcy Code.

**PROFESSIONAL COMPENSATION
AND SERVICES TO BE PROVIDED**

10. To the best of my knowledge, no commitments have been made or received by Monroe with respect to compensation or payment in connection with the proposed engagement by the Debtors, other than in accordance with the provisions of the Bankruptcy Code. Further, there is no agreement or understanding between Monroe and any other entity for the sharing of compensation to be received for services to these Debtors.

11. Monroe does not hold a retainer from any of the Debtors or any other party for the services to be rendered to the Debtors.

12. I am the co-chair of the Firm's Franchise, Distribution and Intellectual Property group at Monroe. Specialties of my Firm and the members of my group include advice concerning franchising opportunities and negotiating and closing franchise transactions.

CONCLUSION

12. This Declaration is provided in accordance with section 327 of the Bankruptcy Code and Bankruptcy Rule 2014.

Pursuant to section 1746 of title 28 of the United States Code, the undersigned declares that the foregoing is true and correct, under penalty of perjury.

Executed on this 4th day of October, 2013.



JAMES A. WAHL

**EXHIBIT A TO DECLARATION
PICCADILLY RESTAURANTS LLC: LIST OF MOST SIGNIFICANT CREDITORS
AND PARTIES IN INTEREST FOR CONFLICTS CHECK**

Officers and Directors

Thomas J. Sandeman
Robert Bermingham
Christ Sanchez

Debtholders

Atalaya Capital Management, LP
Atalaya Administrative, as Agent

To 20 Unsecured Creditors

Andrews Sports Company
Capital City Produce
Chandler's Parts
Charlie Sciara & Son, Inc.
Cheeks Elec & A/C, Inc.
Cintas Corp.
Crescent Business Machines
Ecolab Pest Elimination
Ecolab, Inc.
J.S. Thomas Services, Inc.
Merchants Food Service
Peter Mayer Advertising
Rocktenn CP, LLC
St. Louis County
Superior Commercial Services
Technical Services
Trademasters, Inc.
Traditions
W.W. Grainger

Other Professionals in Case

FTI Consulting
Protiviti, Inc.
Jones Walker, LLP
Greenberg Taurig, LLP
Patton Boggs, LLP
Jeffrey Cornish

Equity Security Holders

Yucaipa Companies