

**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**

**DEBTORS' OBJECTION TO CLAIM NO. 435 PURSUANT TO SECTIONS 105 AND
502(B) OF THE BANKRUPTCY CODE AND RULES 3001, 3003, AND 3007 OF THE
FEDERAL RULES OF BANKRUPTCY PROCEDURE**

NOW INTO COURT, through undersigned counsel, come the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"),² who submit this *Objection to Claim No. 435 Pursuant to Sections 105 and 502(b) of the Bankruptcy Code and Rules 3001, 3003, and 3007 of the Federal Rules of Bankruptcy Procedure* (this "Objection"). In support of this Objection, 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 a petition for relief under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). 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).

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

Debtors are 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 (the “Unsecured Creditors’ Committee”).

4. The Debtors are jointly administrated pursuant to Bankruptcy Code § 105(a) and Bankruptcy Rule 1015(b). The statutory predicates for the relief requested herein are §§ 105(a) and 502(b) of the Bankruptcy Code.

RELIEF REQUESTED

5. The Debtors have examined the proof of claim of Dora Hudson (Claim No. 435) and have determined that it was filed after the Court-imposed deadlines for filing proofs of claim as set forth in applicable Court Orders. Pursuant to section 502(b) of the Bankruptcy Code, Bankruptcy Rules 3001, 3003 and 3007, the Debtors seek entry of an order disallowing and expunging Claim No. 435. Further the Debtors reserve all of their rights to object on any other basis to Claim No. 435 as to which the Court does not grant the relief requested herein.

THE BAR DATE ORDERS

6. By Order of the Court on January 31, 2013, (the “Bar Date Order”)(Docket # 477) the last day and time for filings proofs of claim against the Debtors was set for March 15, 2013, at 5:00 PM Central Standard Time (the “Bar Date”). A copy of the Bar Date Order is attached hereto as **Exhibit “A.”**

7. In order to be timely-filed, proofs of claim must have been “received on or before the Bar Date.” *See* Ex. A.

8. The Bar Date Order expressly provides that any holder of a claim against the Debtors who is required, but fails, to file a proof of such claim in accordance with the Bar Date

Order on or before the Bar Date shall be forever barred, estopped and enjoined from asserting such Claim against the Debtors or their property, and the Debtors and their property will be forever discharged from any and all indebtedness with respect to such claim. *See* Ex. A.

9. Dora Hudson filed her proof of claim on March 18, 2013. On August, 2, 2013, Ms. Hudson filed a *Motion to Permit Late Filing of Proof of Claim* (Docket # 965). This Court denied Ms. Hudson's motion on October 31, 2013 (Docket # 1209).

LEGAL STANDARD

10. A filed proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). If an objection refuting at least one of the claim's essential allegations is asserted, the claimant has the burden to demonstrate the validity of the claim. *See In re Fidelity Holding Co.*, 837 F.2d 696, 698 (5th Cir. 1988).

11. Section 502(b)(1) of the Bankruptcy Code provides, in relevant part, that a claim may not be allowed to the extent that "such a claim is unenforceable against the debtor and property of the debtor under any agreement or applicable law." 11 U.S.C. § 502(b)(1). Moreover, Section 502(b)(9) of the Bankruptcy Code provides, in relevant part, that a claim may not be allowed to the extent that "proof of such claim is not timely filed." 11 U.S.C. § 502(b)(9).

12. Bar dates are critical to the prompt resolution of bankruptcy cases because they enable a debtor and creditors to know, reasonably promptly, each claim and the amount that is being asserted against the estate. *United States v. Kolstad (In re Kolstad)*, 928 F.2d 171, 173 (5th Cir. 1991). Bar Dates are similar to statutes of limitation and must be strictly observed. *Wilferth v. Faulkner*, No. 06-510, 2006 WL 2913456, at *5 (N.D. Tex. Oct. 11, 2006)(citing *In re Enron Corp.*, 328 B.R. 75, 86 (Bankr. S.D.N.Y. 2005)).

13. The Bar Date Order specifically required that proofs of claim be actually received on or before the Bar Date. Ms. Hudson was provided notice of the Bar Date Order, including the

deadline to file proofs of claim and a clear warning that failure to comply with the Bar Date would result in their claims being barred.

14. Because Claim No. 435 fails to comply with the Bar Date Order and is thus untimely, the Debtors request that the Court enforce its prior Bar Date Order and disallow in its entirety Claim No. 435.

NOTICE

15. Notice of this Objection has been provided to Dora Hudson through her counsel of record and 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 in the form attached as **Exhibit "B"** (a) granting this Objection, (b) disallowing and expunging Claim No. 435, and (c) granting such other general and equitable relief as is just and proper.

Respectfully submitted,

/s/ Mark A. Mintz

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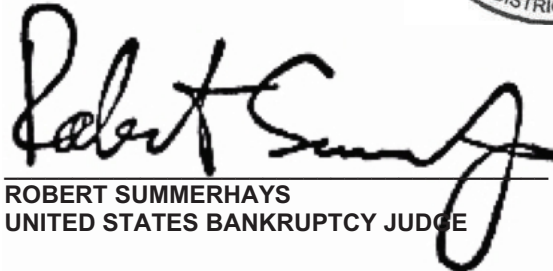
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Exhibit A



SO ORDERED.

SIGNED January 31, 2013.


ROBERT SUMMERHAYS
UNITED STATES BANKRUPTCY JUDGE

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 (A) ESTABLISHING A BAR DATE FOR FILING
PROOFS OF CLAIM, (B) APPROVING THE BAR DATE NOTICE,
AND (C) APPROVING MAILING PROCEDURES**

Came on for hearing, this 29th day of January, 2013, the Motion for an Order (A) Establishing a Bar Date for Filing Proofs of Claim, (B) Approving the Bar Date Notice, and (C) Approving Mailing Procedures (the "Motion"), filed in the above-captioned bankruptcy cases

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).

(collectively, the “Chapter 11 Case”) by the debtors and debtors-in-possession (collectively, the “Debtors”),² on January 4, 2013 (Docket #444); the Court concluding that it has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, and that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O) finds sufficient cause supports the relief sought in the Motion; accordingly,

IT IS ORDERED that the Motion be and the same is hereby **GRANTED**.

IT IS FURTHER ORDERED that, except as otherwise provided herein, each person or entity (including, without limitation, each individual, partnership, joint venture, limited liability company, corporation, estate, trust and governmental unit) that asserts a claim (as defined in section 101 of the Bankruptcy Code) against the Debtors that arose before the Petition Date (such claim being a “Pre-Petition Claim”) must file a written proof of claim which substantially conforms to Official Form No. 10 of the Federal Rules of Bankruptcy Procedure, so as to be received on or before the Bar Date by either mail or delivery by hand, courier, or overnight service to the office of the Clerk of this Bankruptcy Court, **no later than 5:00 p.m. (Central Standard Time), on March 15, 2013** (the “Bar Date”).

IT IS FURTHER ORDERED that the following content requirements for proofs of claim apply to all persons or entities filing a proof of claim in these jointly administered cases:

- (a) All persons or entities asserting claims against more than one Debtor in these jointly administered cases must file a separate proof of claim for each Debtor,
- (b) Any person or entity submitting a proof of claim in these jointly administered cases is required to identify on their proof of claim form

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

the name of the one Debtor to which the proof of claim applies along with the applicable bankruptcy case number for that Debtor,

- (c) A proof of claim which does not identify any Debtor will be deemed as filed only against Piccadilly Restaurants, LLC,
- (d) If a proof of claim inappropriately states that it is filed against Piccadilly Restaurants, LLC, and also Piccadilly Investments, LLC, and/or Piccadilly Food Service, LLC, that proof of claim will be deemed to be filed only against Piccadilly Restaurants, LLC.
- (e) If a proof of claim inappropriately states that it is submitted against both Piccadilly Investments, LLC and Piccadilly Food Service, LLC, and does not list Piccadilly Restaurants, LLC, such proof of claim shall be treated as if it were filed only against the first Debtor listed in the proof of claim.

IT IS FURTHER ORDERED that any holder of a Pre-Petition Claim against the Debtors who is required, but fails, to file a proof of claim in respect of such Pre-Petition Claim in accordance with this Order (the “Bar Date Order”) on or before the Bar Date will forever be barred, estopped and enjoined from asserting such Pre-Petition Claim against the Debtors or their property, and the Debtors and their property will be forever discharged from any and all indebtedness or liability with respect to such Pre-Petition Claim.

IT IS FURTHER ORDERED, in accord with the Motion, that creditors holding or wishing to assert the following types of Pre-Petition Claims against the Debtors need not file a proof of claim on or before the Bar Date with respect to such Pre-Petition Claims:

- (a) Any Pre-Petition Claim for which a proof of claim against the Debtors utilizing a claim form which substantially conforms to Official Form No. 10 of the Federal Rules of Bankruptcy Procedure has already been properly filed with the Clerk of this Court;
- (b) Any Pre-Petition Claim (i) which is listed on the Debtors' Schedules of Liabilities (the "Schedules"), (ii) which is not described in such Schedules as "disputed," "contingent," or "unliquidated," and (iii) the holder of such Pre-Petition Claim does not dispute the amount, priority, status or nature of such Pre-Petition Claim as set forth in the Schedules;
- (c) Any Pre-Petition Claim to the extent that such Pre-Petition Claim has been paid by the Debtors with the authorization of this Court; and
- (d) Any Pre-Petition Claim that has been fixed and allowed by an order of this Court entered on or before the Bar Date.

IT IS FURTHER ORDERED that any rejection damage claims arising during this Chapter 11 Case under sections 365(g) and 502(g) of the Bankruptcy Code must be filed by the later of (a) thirty (30) days after the effective date of such rejection as provided by an order of this Court or pursuant to a notice under procedures approved by this Court, and (b) the Bar Date. Proofs of claim for any other Pre-Petition Claims with respect to a lease or contract must be filed no later than the Bar Date.

IT IS FURTHER ORDERED that any holder of any Pre-Petition Claim who is required, but fails, to file a proof of claim in accordance with this Bar Date Order on or before the Bar Date will not be permitted to vote to accept or reject any plan of reorganization or liquidation or participate in any distribution in the Chapter 11 Case on account of such Pre-

Petition Claim, or to receive any further notices regarding or on account of such Pre-Petition Claim.

IT IS FURTHER ORDERED that the Notice of entry of this Bar Date Order and the Bar Date, substantially in the form of the notice attached to the Motion as Exhibit 2 (the “Bar Date Notice”), will be given by the Debtors to the following (collectively, the “Service Parties”):

- (a) The Office of the United States Trustee;
- (b) Each member of any Committee appointed pursuant to the Bankruptcy Code, and any attorneys for such a Committee;
- (c) All holders of Pre-Petition Claims listed on the Schedules at the addresses stated therein;
- (d) All current and recent employees of the Debtors;
- (e) The district director of the Internal Revenue Service for the Western District of Louisiana, and all taxing authorities for the jurisdictions in which the Debtors conduct business;
- (f) All the landlords and leasing agents to whom the Debtors remit payments pursuant to their leases of non-residential real property;
- (g) All persons and entities requesting notice, pursuant to Bankruptcy Rule 2002, as of the entry of the proposed Bar Date Order; and
- (h) All persons and entities listed on the Court’s mailing matrix on the date this Bar Date Order is entered.

IT IS FURTHER ORDERED that such Bar Date Notice is approved in all respects, and is deemed good, adequate and sufficient notice if served upon the foregoing Service Parties by

being deposited in the United States mail, postage prepaid, within 10 days from the date of this Order.

IT IS FURTHER ORDERED that, so long as the initial mailing of the Bar Date Notice occurs within 10 days of the entry of this Order, the Debtors may make supplemental mailings of the Bar Date Notice up to twenty-three (23) days in advance of the Bar Date, as may be necessary in situations where (a) notices are returned by the post office with forwarding addresses, necessitating a re-mailing to the new addresses, (b) certain parties acting on behalf of parties in interest decline to pass along notices to such parties and, instead, forward the Debtors the names and addresses for direct mailing, and (c) additional potential claimants become known to the Debtors.

IT IS FURTHER ORDERED, that the Court will retain jurisdiction over the Debtors with respect to any matters, claims, rights or disputes arising from or related to the Motion or implementation of this Bar Date Order.

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This Bar Date Order submitted by:

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Exhibit B

**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 GRANTING DEBTORS'
OBJECTION TO CLAIM NO. 435**

Considering the *Objection to Claim No. 435 Pursuant to Sections 105 and 502(b) of the Bankruptcy Code and Rules 3001, 3003, and 3007 of the Federal Rules of Bankruptcy Procedure* (this "Objection") (Dkt. No. __), filed on behalf of Debtors and Debtors-in-possession

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).

(collectively, the “Debtors”),² and upon the record of these chapter 11 cases and due deliberation thereon, and good and sufficient cause appearing therefor,

IT IS ORDERED that the Objection is SUSTAINED;

IT IS FURTHER ORDERED that Claim No. 435 is disallowed and expunged; and

IT IS FURTHER ORDERED that this Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order.

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This Order was prepared and is being submitted by:

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

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