UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

In re:	)	
	)	**Chapter 11**
PICCADILLY RESTAURANTS, LLC;	)	
PICCADILLY FOOD SERVICE, LLC; and	)	**Case No. 12-51127**
PICCADILLY INVESTMENTS, LLC	)	
	)	**Jointly Administered**
Debtors.	)	

COMMITTEE'S BRIEF IN SUPPORT OF CONFIRMATION OF THE FIRST AMENDED JOINT CHAPTER 11 PLAN PROPOSED BY ATALAYA ADMINISTRATIVE, LLC AND AFFILIATES AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

The Official Committee of Unsecured Creditors (the "Committee") files this Brief (the "Brief") in Support of Confirmation of the First Amended Joint Chapter 11 Plan of Piccadilly Investments, LLC, Piccadilly Restaurants, LLC, and Piccadilly Food Service, LLC, Proposed by Atalaya Administrative, LLC, Atalaya Funding II, LP, Atalaya Special Opportunities Fund IV, LP (Tranche B), Atalaya Special Opportunities Fund (Cayman) IV LP (Tranche B) (collectively, "Atalaya"), and the Committee [Docket No. 1241] (as may be amended, supplemented or modified from time to time, the "Joint Plan") and in support thereof, respectfully represents as follows:

I. Preliminary Statement

1. On September 11, 2012, the Debtors filed for bankruptcy protection, commencing these cases. The Debtors have accomplished a number of significant goals during these cases, including improving their relationship and pricing terms with their major food supplier, right-sizing the Debtors' leasehold footprint by closing unprofitable store locations and renegotiating leases for remaining locations, and making other financial and operational changes to reflect the current economic realities in the industry in which the Debtors operate. During these cases, the

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Debtors and Yucaipa (as defined herein) filed a joint plan. However, one year after the Debtors' bankruptcy filing, Yucaipa withdrew its joint plan with the Debtors. Yucaipa's joint plan was not confirmable on its face, as it did not appropriately provide for the treatment of all creditors, but rather sought a distribution to equity at the creditors' expense.

2. Atalaya and the Committee negotiated a creditor plan that would allow the Debtors to successfully emerge from bankruptcy, pay their creditors, and continue as a going concern. On September 27, 2013, Atalaya and the Committee filed a joint plan.[1] The Plan is the culmination of months of negotiation between Atalaya and the Committee to produce a consensual plan that creditors would support. The Plan achieves that purpose. Among other things, the Plan maximizes recoveries for the Debtors' creditors and preserves the Debtors' ongoing operations, including jobs for the Debtors' employees. There is no other restructuring alternative. Without the Plan, the Debtors will be unable to reorganize and may be forced to shut down, with all employees losing their jobs. Therefore, confirmation of the Plan is in the best interests of the Debtors, their estates and their creditors.

3. The only remaining objection to the Plan was filed by the Debtors' existing equity holder, Yucaipa. Yucaipa contends that cancellation of its equity interests under the Plan is inappropriate because the value of the Debtors extends to equity. However, Yucaipa's purported "valuation" of the Debtors is technically flawed and contains material errors. If Yucaipa believed its purported valuation, logic and sound business principles dictate that Yucaipa would have stepped in long ago to file a confirmable plan of reorganization that would pay the Debtors' creditors in full and ensure retention of Yucaipa's equity interests. Tellingly, Yucaipa chose not to pursue a confirmable plan or infuse additional capital into the Debtors to preserve its investment. Yucaipa could have pursued its own plan of reorganization. Instead, Yucaipa opted

[1] Atalaya and the Committee filed their first amended joint plan on November 14, 2013.

to try and defeat the *only* plan of reorganization on file, *i.e.*, the creditor-supported Joint Plan. In short, Yucaipa has had ample opportunity to preserve its investment. Cancellation of Yucaipa's equity interests in the Debtors is appropriate because value does not extend to equity.

4. The Joint Plan complies with all relevant sections of the Bankruptcy Code, including sections 1122, 1123 and 1129 of the Bankruptcy Code, as well as the Federal Rules of Procedure. Moreover, the Plan has been overwhelmingly accepted by the Debtors' creditors. For the reasons set forth herein, and based upon the evidence in the record, the Court should overrule Yucaipa's objection and confirm the Plan.

II. Facts

A. The Debtors failed to file a confirmable plan of reorganization during the extended exclusivity period.

5. The Debtors filed for bankruptcy protection on September 11, 2012 (the "Petition Date"). The Debtors operated their businesses and managed their properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On October 23, 2012, the United States Trustee appointed the Committee [Docket No. 238]. No trustee or examiner has been appointed in the bankruptcy cases.

6. Under Section 1121 of the Bankruptcy Code, the Debtors had the exclusive right to propose a Chapter 11 plan. At the Debtors' request, the Court twice extended this exclusivity period [Docket Nos. 417 and 683]. The Court's second extension of exclusivity provided the Debtors the exclusive right to file a plan through July 8, 2013 and to obtain acceptance by September 9, 2013 [Docket No. 683].

7. During the exclusivity period, the Committee actively negotiated with Yucaipa Corporate Initiatives Fund I, L.P. ("Yucaipa"), holder of the Debtors' pre-petition equity. In April 2013, at an in-person meeting in New Orleans, Yucaipa represented to the Committee that

it intended to propose a plan that would pay unsecured creditors in full. Thereafter, it became readily apparent, through rounds of intense negotiations, that Yucaipa would not provide the capital, a guaranty or other support necessary to ensure payment in full to unsecured creditors. Certainly, if there was value in the Debtors' equity, then unsecured creditors would be entitled to payment in full.

8. On July 8, 2013, the last day of the exclusivity period, the Debtors and Yucaipa filed a joint plan [Docket No. 920] (the "Yucaipa Plan"), and the Debtors filed their disclosure statement [Docket No. 921]. The Yucaipa Plan highlights the problems that could not be overcome during the negotiations between the Committee and Yucaipa. The Committee could not support Yucaipa's Plan because it was deficient and unconfirmable on its face for many reasons, including:

- The Yucaipa Plan provided a mere 20 - 40% recovery to unsecured creditors in the form of an unsecured note to be paid from "available" cash flow of the under-capitalized reorganized Debtors, with no guaranty or assurance of performance. See Yucaipa Plan, § 4.5(b).
- Yucaipa's proposed payment of Atalaya's pre-petition secured claim without disclosure of the amount of Atalaya's debt to be paid or an appropriate treatment of Atalaya's secured claim. See Yucaipa Plan, §§ 1.80 and 4.2.
- Yucaipa's failure to provide specifics regarding the timing or funding of the proposed payment of administrative claims, including the $2.3 million administrative claim held by Merchants Company [Docket No. 412]. See Yucaipa Plan, § 3.1.
- The Yucaipa Plan was not appropriately funded, as it relied upon a loan to be made by Yucaipa to the reorganized Debtors in an undisclosed amount bearing an interest rate of 9% per annum. See Yucaipa Plan, § 7.1.
- The Yucaipa Plan was not feasible because it relied upon the Debtors' projected future operations for funding, which appeared to be overly optimistic and speculative (this would be substantiated later by the disparity between the Debtors' projections for and actual performance in 2013, discussed below).
- Broad sweeping releases of Yucaipa and other insiders.

9. Following the hearing held on August 20, 2013, the Court denied the Debtors' third motion to extend exclusivity [Docket No. 1045]. Just before Yucaipa's solicitation deadline was to expire, Yucaipa withdrew the Yucaipa Plan [Docket No. 1066]. Yucaipa and the Debtors failed to confirm a plan, despite having almost a full year to do so, and ultimately withdrew their plan.

B. The Committee and Atalaya filed their joint Plan, which provides a significant return to unsecured creditors and preserves ongoing operations.

10. After termination of the Debtors' exclusivity period, the Committee and Atalaya began intense negotiations of a creditor-supported plan of reorganization. The parties negotiated transaction structures, exchanged term sheets and worked diligently to agree to a restructuring plan. On September 27, 2013, Atalaya and the Committee filed the Joint Plan.

11. The Plan, as amended on November 14, 2013 [Docket No. 1242], provides a significant return to unsecured creditors and pays administrative claimants in full on the Joint Plan's Effective Date[2]. The Joint Plan substantially de-leverages the Debtors and provides a post-Effective Date working capital facility to support and sustain the operations of the Reorganized Debtors. A brief summary of the salient provisions of the Joint Plan is as follows:

- Atalaya will convert $9 million of its pre-petition secured debt to equity and restructure its remaining debt into two term notes accruing interest at 4.75% per annum, secured by senior liens on substantially all the Reorganized Debtors' assets (with a second priority lien in the proceeds of the BP Tort Claim). Joint Plan § 4.2. Atalaya cannot exercise any remedies to collect this debt until the GUC Note (defined below) extended to the unsecured creditors is paid in full, thereby providing unsecured creditors with some certainty of payment. Joint Plan § 4.2(b)(iv).

- Atalaya's $3 million DIP facility will be converted into a term loan payable at 4.75% interest by the Reorganized Debtors three (3) years after the Effective Date, with remedies available only upon payment to the unsecured creditors. Joint Plan § 4.2(b)(i).

- Creditors holding Allowed Unsecured Claims will receive their pro rata share of the $1 million initial payment made by Atalaya. Plan § 4.5(b)(i). The Reorganized Debtors

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.

will execute a promissory note in the principal amount of $4,750,000 (the "GUC Note"), secured by a first priority lien in the Debtors' $1.5 million recovery on the BP Tort Claim. Joint Plan § 4.5(b)(ii). The GUC Note will be paid in the amount of $75,000 per month plus 9% interest, which matures in two years with a balloon payment due on maturity. Id.

- Creditors holding Allowed general unsecured claims of $2,500 or less (and those who elected to opt-in) are included in a convenience class and will receive their pro rata share of $500,000 to be paid in cash on the Effective Date. Joint Plan § 4.4. Convenience claimants should receive full payment of their claims. Any portion of the $500,000 not used to pay Convenience Claims will be distributed to Holders of General Unsecured Claims.

- The Debtors' administrative expenses will be paid in cash and on the Effective Date. Joint Plan § 3.1.

- The Committee Plan provides an Exit Facility extended by Atalaya to the Reorganized Debtors in the principal amount of $6 million, which will fund the Reorganized Debtors' Effective Date payments (including administrative expenses) and provide working capital. Plan § 7.1. The Exit Facility will be a revolving line of credit accruing interest at the rate of 4.75% per year, with a three year term, and will be available to the Reorganized Debtors after confirmation to support their ongoing operations. Id.

12. The Joint Plan contemplates a contribution by Atalaya to the Debtors in the amount of $18 million ($9 million debt-to-equity conversion + $6 million exit facility + $3 million DIP rollup). The Joint Plan provides unsecured creditors substantial recoveries and sustains the Debtors' businesses going forward. The Joint Plan is in the best interests of the Debtors, their estates, and their creditors and should be confirmed.

C. All but one of the Debtors' voting classes voted to accept the Plan.

13. On November 13, 2013, the Court approved the Disclosure Statement filed by the Committee and Atalaya [Docket No. 1242] (the "Disclosure Statement") and established voting and solicitation procedures [Docket No. 1234]. In compliance with this order, the Committee and Atalaya sent solicitation packages to Holders of Claims in each of the Plan's eight (8) Impaired Classes entitled to vote on the Plan [Docket No. 1339].

14. One hundred and one (101) claimants voted on the Plan prior to the voting deadline. See Certification and Declaration of Claims, *et al.*, p. 5, filed January 9, 2014 [Docket No. 1340] (the "Voting Results"). According to the Voting Results, of the seven (7) Classes in which claimants voted, six (6) Classes voted to accept the Joint Plan. Id. These Classes are comprised of the Debtors' principle creditors: the General Unsecured Claims, the Convenience Claims, and the Atalaya secured claims. Id. The only voting class that did not vote to accept the Joint Plan was the Unliquidated Tort claims. In all, ninety-four (94) of the one hundred and one (101) voting claimants voted to accept the Joint Plan. Id.

15. Despite overwhelming support for the Joint Plan expressed by the Debtors' creditors, Yucaipa objected to the Joint Plan [Docket No. 1324]. Yucaipa argues that it is entitled to retain its equity in the Debtors because value extends to equity. However, the market transaction embodied within the Joint Plan (discussed herein) demonstrates that equity has no value.

16. The Joint Plan resolves these bankruptcy cases by providing significant value to the Debtors' unsecured creditors, by paying the Debtors' administrative expenses in full, and by revitalizing the Debtors' businesses for successful post-confirmation operations. The Committee respectfully requests that the Court confirm the Joint Plan.

II. Evidence Presented to the Court at the Confirmation Hearing

17. On January 13 through 15, 2014, the Committee, Atalaya and Yucaipa presented evidence to the Court regarding confirmation of the Joint Plan (the "Confirmation Hearing").[3] The evidence before the Court demonstrates that the Joint Plan presents the best possible

[3] Closing arguments are scheduled for February 4, 2014.

recoveries for unsecured creditors and that Yucaipa's objection should be overruled. A general summary of the evidence presented at the Confirmation Hearing is set forth below.

A. The Plan is the best indication of the Debtors' value because it represents the outcome of protracted negotiations between sophisticated, informed parties.

18. Michael Atkinson, Managing Director of Protiviti, who was qualified by the Court as an expert in business valuation, testified on behalf of the Committee. Mr. Atkinson's testimony is summarized in his expert summary indication of value, admitted by the Court as Proponents' Exhibit J (the "Committee Report").

19. According to Mr. Atkinson, the Debtors' value is most accurately demonstrated by the market transaction contemplated in the Joint Plan, which is the result of a year of intense, arms' length negotiations among three sophisticated parties: the Committee, Yucaipa and Atalaya. Based on the economics of the Joint Plan, Mr. Atkinson opined that the Debtors' value is a maximum of $44 million and is insufficient to pay unsecured creditors in full, leaving equity with no right to distribution. Committee Report, p. 11, ¶ 3(a). Mr. Atkinson's opinion is supported by the following analysis:

- Extensive and independent negotiations with Yucaipa and Atalaya resulted in payments totaling approximately $44 million under the Joint Plan, which includes approximately $33 million in secured claims, $4 million in administrative claims, $237,000 in priority tax claims, and $6.35 million in estimated unsecured claims. Committee Report, p. 10, ¶1(a); p. 14.

- The Joint Plan does not provide for payment in full to unsecured creditors, although it does provide a substantial recovery. While claims objections have not been completed, Mr. Atkinson testified that the value of Allowed unsecured claims will likely exceed the Initial Unsecured Payment, GUC Note, Tort Claims Payment, and Convenience Claim Cap, resulting in less than payment in full. See Plan, pp. 21-25; Committee Report, p. 10, ¶2(a).

- Yucaipa and the Debtors withdrew their plan, and three independent third parties decided not to fund a plan. There is therefore no alternative to the Joint Plan, whether superior or otherwise. See Committee Report, pp. 11 and 12, ¶1(b).

20. Mr. Atkinson utilized a multiple of EBITDA method to confirm his value opinion. As set forth in the Committee Report, Mr. Atkinson normalized the Debtors' EBITDA at $5.8 million. See Committee Report, p. 12, ¶5(a)(i). He then applied an EBITDA multiple of 5.5x to 7.0x, which is based on similar transactions adjusted for various factors specific to the Debtors, and derived a value for the Debtors between $31.9 million and $40.6 million. Id. Mr. Atkinson then added $3.5 million for proceeds of the sale of core assets (including the BP litigation and real property sales), which results in a total indication of value between $35.4 million to $44.1 million. Id. This valuation is insufficient to make any distribution on account of equity. Id.

21. Mr. Atkinson concluded that, whether value is derived from the market transaction embodied within the Joint Plan or a calculation based on the Debtors' historical performance and EBITDA, equity has no value and is not entitled to any distribution.

B. Mathematical valuation techniques based on the Debtors' actual performance yield a value that is insufficient to pay unsecured creditors in full.

22. Atalaya retained Deloitte to conduct a valuation of the Debtors. In connection therewith, Deloitte conducted various valuation analyses based upon the Debtors' actual performance and determined that their value was insufficient to pay unsecured creditors in full, and thus, equity has no value. William Snyder and Richard Lee, both of whom were qualified by the Court as experts in business valuation, testified for Atalaya. Atalaya's valuation report was admitted into evidence as Proponents' Exhibit A (the "Atalaya Report"). The Atalaya Report affirms that the Joint Plan represents the best available outcome for the Debtors' estates and creditors. Atalaya's proposed value of the Debtors and methodologies are summarized below:[4]

[4] The summary provided herein is meant to be a summary of the evidence presented by Atalaya concerning valuation and in no way shall be deemed an admission by or binding upon the Committee, which relies on its own expert, Protiviti, Inc.

1. Atalaya asserts that the Debtors must be valued in light of the historical decline of their businesses and industry segment.

23. Atalaya valued the Debtors against the backdrop of the declining self-service cafeteria industry. According to the Atalaya Report:

> **Trends.** Self Service Cafeterias are seeing fading demand as consumers become more mindful of food quality and healthy eating habits. The industry is expected to record a negative .5 percent CAGR [Compound Annual Growth Rate] over the next five years. As consumer demand for Self Service Cafeterias continues to diminish, locations will shut down as they are no longer profitable.

Atalaya Report, p. 12. The Atalaya Report makes clear that the Debtors' historical performance follows this trend, with the Debtors about half their size now compared to 2005. The Atalaya Report highlights the following statistics, among others:

- Over the past seven (7) years, the Debtors have closed over half of their locations, declining from 128 stores in 2005 to 62 locations as of December 23, 2013. Atalaya Report, p. 6; Proponents' Exhibit B-2.
- Between 2006 and 2013, the Debtors' guest count declined from 33.8 million to 15.3 million, while average revenue per guest increased only slightly. Atalaya Report, p. 7; Proponents' Exhibit B-3.
- Net revenue consistently declined each year between 2006 and 2013, while profit margin slightly declined. Atalaya Report, p. 8; Proponents' Exhibit B-4.
- The Debtors' EBITDA decreased from $14.39 million in 2006 to $3.97 million in 2013, with a low of $2.28 million in 2011. Atalaya Report, p. 9; Proponents' Exhibit B-5.

24. According to Mr. Snyder, these trends negatively impact the value of the Debtors' businesses.

2. Atalaya's mathematical valuation techniques indicate that equity has no value.

25. Atalaya employed the income approach and market approach valuation methodologies and concluded that the fair market value of the Debtors was $29.2 million as of December 2013. Mr. Snyder testified that key indications of value for the Debtors are EBITDA margin, growth prospects, and size. Atalaya considered these factors, but Yucaipa did not.

(a) Atalaya values the Debtors at $29.1 million based on the income approach.

26. Based on the income approach, Atalaya values the Debtors at $29.1 million. See Atalaya Report, p. 19. As explained by Mr. Lee, the income approach determines the present value of a stream of future cash flows to determine the amount for which a reasonable investor would purchase the Debtors as a going concern.

27. Based on actual historic figures, Atalaya projected the Debtors' stream of future free cash flow. See Atalaya Report, pp. 15-17. Mr. Snyder testified that Atalaya's projections are based on a detailed, store-by-store analysis of the Debtors. Atalaya's projections have been much more accurate than the Debtors' projections. For example, the Debtors' projections overstated EBITDA by approximately $3 million in 2013 (*i.e.,* by almost 60%). See Proponents' Exhibit C-4.

28. Atalaya derived an applicable discount rate of 11.5% based upon various factors specific to the Debtors. See Atalaya Report, pp. 18-19. Applying this discount rate to the stream of future free cash flows, and adding existing cash on hand, Atalaya derived a value for the Debtors of approximately $29.1 million. See Atalaya Report, p. 19; Proponents' Exhibit D-1.

(b) Atalaya values the Debtors at $29.3 million based on the market approach.

29. Atalaya also utilized the market approach to value the Debtors and derived a market value of $29.3 million. Atalaya's valuation is based on the Guideline Public Company Method, which derives value by analyzing public companies similar to the Debtors. See Atalaya Report, p. 20.

30. Under this approach, Atalaya narrowed a list of forty-five (45) public companies to nine (9) comparable to the Debtors. See Atalaya Report, p. 20. The Debtors lagged behind each of these nine companies in almost every category. Atalaya Report, pp. 21-22. Atalaya concluded that a willing buyer would pay no more than the low end of the guideline public

company range for the Debtors, or 6.1x the Debtors' last twelve months' EBIDTA. Applying this multiple and an adjusted multiple to projected 2014 EBITDA, Atalaya concluded the Debtors value was $29.3 million under the Guideline Public Company Method. See Atalaya report, p. 23 and Exhibits 7 and 8 thereto.

(c) Atalaya's valuation techniques yield a reconciled value of $29.2 million.

31. Atalaya's valuation techniques yielded a value of $29.1 million based on the income approach and $29.3 million based on the Guideline Public Company method. Applying equal weight to both methodologies, Atalaya contends that the Debtors' value as of December 2013 was $29.2 million. Even assuming Atalaya's asserted value is correct, it is insufficient to pay unsecured creditors in full, leaving equity with no value.

3. Yucaipa's proposed value is unreliable and technically flawed.

32. In support of its objection, Yucaipa relies upon the valuation report prepared by Imperial Capital. See Proponents' Exhibit H (the "Yucaipa Report"). In support of the Yucaipa Report, Yucaipa relied upon the testimony of two witnesses: Nicole Fry, an investment banker with Imperial Capital, and fact witness, David Beckman, an employee of FTI Consulting, the Debtors' financial advisor.[5] Mr. Beckman was not qualified as an expert witness by the Court.

33. Yucaipa believes the Debtors should be valued somewhere between $48 million and $59 million, with a midpoint of $54 million. See Yucaipa Report, p. 12. However, Yucaipa's proposed valuation is unreliable and technically flawed. A summary of the most salient flaws is set forth below.

[5] FTI Consulting was engaged as Debtors' financial advisor from March 2013 through December 2013.

(a) Yucaipa's asserted value is more than what Yucaipa was willing to invest in the Debtors.

34. Yucaipa's proposed value of $54 million is more than Yucaipa was willing to invest in the Debtors. The transaction proposed by Yucaipa in the Yucaipa Plan was not equivalent to a $54 million valuation. If Yucaipa truly believed the Debtors were worth $54 million, Yucaipa had sufficient opportunity to propose a confirmable plan by investing that amount and thereby retain its equity. It did not.

35. Further, neither Atalaya nor any third party investors were willing to infuse $54 million into the Debtors' businesses. Rather, Atalaya and the Committee presented the best option for the unsecured creditors, which is memorialized in the heavily negotiated Joint Plan. Among other things, the Joint Plan calls for Atalaya to convert $9 million of its debt to equity, delay payment of its $3 million DIP Facility, and advance a new facility to the Reorganized Debtors of up to $6 million. The Joint Plan provides the unsecured creditors with significant recoveries and preserves the Debtors' on-going operations. As testified to by Mr. Atkinson, the Debtors' value was tested in connection with plan negotiations, and that value is accurately reflected by the agreed-upon Joint Plan.

(b) Yucaipa's asserted value is unsupported and technically flawed.

36. The Yucaipa Report is technically flawed, as follows:

(i) The Yucaipa Report is based on stale and incorrect financial projections that Yucaipa did not independently verify.

37. The Yucaipa Report is based on stale and incorrect financial projections that Yucaipa did not independently verify, which materially overstate the Debtors' value. The Yucaipa Report concedes in its disclaimer that:

> All budgets, projections, financial analysis, reports and other information with respect to Piccadilly's operations contained herein have been prepared by the management of the Company and their advisors and involve numerous and significant subjective determinations made by such management and their advisors…Imperial has relied, **without independent investigation or verification**, on the accuracy and completeness of all such information and the conclusions contained herein are conditioned upon such information being accurate and complete in all respects.

Yucaipa Report, p. 2 (emphasis added).

(ii) Actual performance was materially poorer than projected performance.

38. As demonstrated at the confirmation hearing, the underlying projections generated by the Debtors and FTI are flawed because the Debtors' actual financial performance was materially poorer than the 2013 financial projections. The Debtors' actual EBITDA for 2013 was $3.97 million, while the Debtors projected a 2013 EBITDA of $6.87 million. See Yucaipa Report, p. 8; Proponents' Exhibit C-4. The disparity between Yucaipa's projections and the Debtors' actual performance appears in July 2013 (when Yucaipa and the Debtors proposed the Yucaipa Plan), and the financial projections were never updated or revised. Proponents' Exhibit C-4. Because these material differences were never corrected, Yucaipa's financial projections for 2014 through 2017 are inflated.

39. Moreover, according to Mr. Snyder, the cafeteria industry is in decline, and the Debtors follow that trend. See also Atalaya Report, pp. 7-9; 12. Yet, the Yucaipa Report assumes the Debtors' EBITDA will grow considerably each year, eclipsing the Debtors' 2006 performance by 2016 despite the general decline in the Debtors' industry, reduction in store locations, and a relatively stagnant average guest check. See Proponents' Exhibit D-12; Atalaya Report, pp. 7-9; 12.

(iii) Relying on PFS to significantly increase EBITDA is unrealistic.

40. Yucaipa believes that the Debtors' optimistic projections are justified by what the future holds for Piccadilly Food Service, LLC ("PFS"), but these projections have no evidentiary support. Notwithstanding PFS's performance in 2013, the Debtors' projections overstate EBITDA by almost $3 million. See Proponents' Exhibit C-4. Mr. Beckman testified that the Debtors' projections should have been revised for this overstatement, but never were because no one asked him to make the revisions.

41. Mr. Snyder testified that the marginal benefit to each additional PFS customer is small, the average check for a PFS customer is about half the size of a cafeteria customer, and the profit margin is extremely thin, so relying on PFS for such a material boost in EBITDA would be unrealistic. Messrs. Atkinson, Snyder and Lee each testified that the Debtors were unable to break out financial performance and projections specific to PFS to permit the Committee and Atalaya to perform an independent analysis.

42. Relying on PFS to double EBITDA for 2013 did not come to fruition and therefore is not a reliable basis for assuming steep and annual EBITDA growth for the Debtors through 2017. The Debtors' financial projections are inflated and not supported by the evidence.

Consequently, the Yucaipa Report materially overstates the Debtors' value and cannot be relied on by this Court.

(iv) Correcting technical flaws substantially reduces appraised value.

43. Various errors in the Yucaipa Report resulted in an inflated value, which call into question the accuracy and reliability of the Yucaipa Report. These errors include: (1) a mathematical mistake made in Yucaipa's discounted cash flow analysis; (2) use of old and unsupported projections, and (3) failure to adjust for size in the public company comparison.

(A) Mathematical mistake in the discounted cash flow analysis.

44. The discounted cash flow analysis in the Yucaipa Report contains a material math error that significantly impacts value. As explained by Mr. Atkinson and Mr. Lee, the future cash flows in the Yucaipa Report are discounted back one (1) less year than required, so the present value of each future cash flow is incorrect. According to Mr. Atkinson, this mistake overstates Yucaipa's discounted cash flow value range by approximately $10 million. Thus, the $56 to $78 million range proposed by Yucaipa should instead be properly reduced to approximately $45 to $64 million. While Ms. Fry gave a justification for the math error on the stand, her reasoning contradicts her deposition testimony, during which Ms. Fry stated, "You discount each [cash flow], you discount the first one one year, the second one two years, and the third one three years." The disparity in Ms. Fry's testimony calls into question her justification before the Court for Yucaipa's math error.

(B) Adjustment based on updated and supportable financial projections.

45. Mr. Atkinson testified that utilizing correct financial projections would further reduce Yucaipa's discounted cash flow projections to a range of $36 to $51 million.

(C) Appropriate adjustment for size of comparable companies.

46. Yucaipa failed to appropriately adjust for the Debtors' size in its comparable company analysis. The Yucaipa Report compares the Debtors to eight (8) public competitors. See Yucaipa Report, p. 14. Five (45) of these eight (8) companies had revenue for the last twelve (12) months of approximately or significantly above $1 billion, which is substantially higher than the Debtors' revenue for the same period. Id., p. 15. Yucaipa makes no adjustment for this disparity in deriving its valuation multiple range. Id., pp. 14-15. According to Mr. Atkinson, applying an appropriate size adjustment would result in a reduction of the valuation range for the Debtors to $36 to $51 million.

(D) Correct methodology reveals that Yucaipa overstates the Debtors' value.

47. Yucaipa asserts that the Debtors' value is between $48 million and $59 million based on its unweighted averages of the value ranges derived with its discounted cash flow, comparable companies and comparable M&A transaction analyses.

48. Mr. Atkinson testified that the application of the adjustments set out above to correct Yucaipa's methodological mistakes would result in the following changes:

- Yucaipa's discounted cash flow analysis utilizing proper math and financial projections results in a valuation of $36 million to $51 million.
- Appropriate size adjustment to Yucaipa's comparable companies analysis results in a valuation range between $41 and $47 million.

49. In summary, the correct valuation midpoint based on Yucaipa's valuation summary, correcting only the above-referenced errors, would be approximately $43 million, even assuming the other assumptions and methods in the Yucaipa Report were correct (which the

Committee does not concede).[6] Yucaipa Report, p. 12. According to Mr. Atkinson, the Joint Plan indicates the Debtors' maximum value is $44 million. Committee Report, p. 11. Each of these values is insufficient to pay unsecured creditors in full, and thus, equity has no value.

III. Law and Argument

50. The Plan represents the outcome of long, tedious and intense negotiations among sophisticated and informed parties and provides a significant distribution to unsecured creditors. Other than the objection lodged by Yucaipa, all objections to the Joint Plan have been consensually resolved.

51. The Committee and Atalaya have established that the Plan complies with section 1129 of the Bankruptcy Code. The Plan's compliance with section 1129 was extensively briefed in Atalaya's Memorandum of Law in Support of Confirmation filed on January 10, 2014 [Docket No. 1342].[7] Since the Plan's compliance with section 1129 has already been demonstrated in sufficient detail to the Court, the Committee will focus on and address Yucaipa's section 1129(b) objection below.

A. The Plan satisfies requirements of Section 1129(b) of the Bankruptcy Code.

52. Section 1129(b) of the Bankruptcy Code permits the Court to "cram down" a plan over the dissenting vote of an impaired class or classes of claims or equity interests and confirm a plan notwithstanding such dissenting votes. See 11 U.S.C. § 1129(b)(1). Section 1129(b)(1) of the Bankruptcy Code provides, in pertinent part, that:

> Notwithstanding § 510(a) of this title, if all of the applicable requirements of [§ 1129(a) of the Bankruptcy Code] other than [the requirement contained in § 1129(a)(8)] are met with respect to a plan, the court on request of the proponent of the plan, shall

[6] This midpoint is derived from a minimum of $35 million and adjusted maximum of $51 million. Yucaipa Report, p. 12.

[7] The Committee joins in and adopts Atalaya's analysis and argument regarding the Plan's compliance with section 1129 of the Bankruptcy Code, which is incorporated herein by reference.

> confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1129(b)(1). Thus, the Court may "cram down" a plan over the dissenting vote of an impaired class or classes as long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to such dissenting class or classes. The plan proponent bears the burden of proof by a preponderance of evidence. Federal Savings Association Enterprises v. Briscoe Enters., Ltd. II (In re Briscoe Enters., Ltd. II), 994 F.2d 1160, 1163-64 (5th Cir.), cert. denied, 510 U.S. 992 (1993).

53. For the reasons set forth below, the Plan does not discriminate unfairly, and is fair and equitable with respect to Yucaipa's equity interests and, accordingly, the Plan can be confirmed pursuant to section 1129(b) of the Bankruptcy Code.

1. The Plan does not unfairly discriminate against Yucaipa's equity interests.

54. The Plan does not "unfairly discriminate" against Yucaipa's equity interests. While not specifically defined, a plan does not unfairly discriminate against a class of creditors "if the plan protects the legal rights of a dissenting class in a manner consistent with the treatment of other classes whose legal rights are intertwined with those of the dissenting class…." In re Mortgage Inv. Co. of El Paso, Tex., 111 B.R. 604, 614 (Bankr. W.D. Tex. 1990) (internal quotations omitted). To determine whether a plan unfairly discriminates against a class of creditors, courts generally focus on whether various classes of creditors and interest holders of the same priority are treated differently in a way that cannot be justified by the Bankruptcy Code. See e.g. In re Armstrong World Indus., Inc., 348 B.R. 111, 121 (D. Del. 2006) ("Generally speaking, this standard ensures that a dissenting class will receive relative value equal to the value given to all other similarly situated classes. The pertinent inquiry is not whether the plan

discriminates, but whether the proposed discrimination is 'unfair.'") (internal quotations omitted); and In re Sentry Operating Co. of Tex., Inc., 264 B.R. 850, 863-64 (Bankr. S.D. Tex. 2001) (prohibiting unjustified discrimination between claims and interest holders of equal rank).

55. The Plan does not unfairly discriminate against Yucaipa's equity interests in the Debtors. Yucaipa's equity interests are limited to PR Class 8. See Disclosure Statement, p. 20, ¶III.A. PR Class 8 is the only class of equity interests in Piccadilly Restaurants, LLC. See Plan, p. 24, § 4.8. As such, no class of interests with similar legal rights to those of PR Class 8 exists because there are no other classes of interests in Piccadilly Restaurants, LLC. Accordingly, the Plan cannot and does not unfairly discriminate against Yucaipa's PR Class 8 equity interests.

2. The Plan's treatment of Yucaipa's equity interests is fair and equitable.

56. Section 1129(b)(2)(C) of the Bankruptcy Code provides that a plan is "fair and equitable" with respect to a class of equity interests as long as holders of junior interests do not receive or retain under the plan on account of such junior interests any property. See 11 U.S.C. §§ 1129(b)(2)(C)(ii).

57. Yucaipa's equity interests in the Debtors are extinguished under the Plan. See Plan, p. 24, § 4.8. The Plan, which is the Debtors' only existing reorganization option, does not completely pay the unsecured creditors in full and ascribes no value to equity. Cancellation of Yucaipa's equity interests is fair and equitable because the value of the Debtors' estates does not extend beyond unsecured creditors. Cancellation of equity interests where equity is found to have no value is appropriate. See In re Toy & Sports Warehouse, Inc., 37 B.R. 141, 152-53 (Bankr. S.D.N.Y. 1984) (finding cancellation of equity interests fair and equitable under section 1129(b)(2) where unsecured creditors did not receive payment in full and equity had no value).

58. The Plan was filed after a year of protracted negotiations among the Committee, Atalaya and Yucaipa, all of which are informed, sophisticated parties. During the process, Yucaipa was never itself willing to inject sufficient funds to preserve its equity interests. Yucaipa cannot now claim that preservation of such equity has value. To do so defies logic and sound business principles and is contrary to Yucaipa's inactions with respect to preservation of its equity interests in the Debtors.

59. Accordingly, the Plan is fair and equitable in its treatment of PR Class 8 (Yucaipa equity interests), and, therefore, complies with section 1129(b) of the Bankruptcy Code.

B. Resolution of the Adversary Proceeding by the Plan is appropriate.

60. On March 19, 2013, the Committee filed an adversary proceeding against Atalaya to determine the extent, validity, amount, and priority of its alleged liens and security interests in the Debtors' assets (the "Adversary Proceeding"). See Adv. Proc. No. 13-05009.

61. The Joint Plan sets forth and implements a settlement (the "Settlement") reached between Atalaya and the Committee that resolves the Adversary Proceeding, including all unresolved, disputed issues therein. In exchange for funding the Joint Plan and other concessions agreed to by Atalaya that will maximize recoveries for the Debtors' general unsecured creditors and ensure the Debtors' continued operations, the Committee has agreed to dismiss the Adversary Proceeding. These agreements and concessions were the result of good faith, arms' length negotiations between Atalaya and the Committee.

62. The Committee submits that the Settlement is fair, reasonable and in the best interests of the Debtors, their estates and their creditors. The Settlement paves the way for a Joint Plan that will provide significant recoveries to unsecured creditors where none would otherwise exist and provide the Debtors with the necessary working capital to ensure and sustain

the Debtors' continued operations post-bankruptcy. Because unsecured creditors will realize substantial recoveries under the Joint Plan, there is no economic incentive to pursue litigation. By ending the litigation, Atalaya will be able to focus all of its resources on the Reorganized Debtors, including their continued operations, thereby helping to ensure that the Reorganized Debtors and Atalaya are able to fulfill their obligations under the Joint Plan with respect to unsecured creditors, among others.

63. The Settlement will permit the prompt resolution of the bankruptcy cases, enhance the Reorganized Debtors' success post-bankruptcy, and provide maximum recoveries for creditors. As stated herein, there is no restructuring alternative other than the Joint Plan. Without the Joint Plan, which is made possible by the Settlement, the Debtors will be forced to shutter their businesses, with employees losing their jobs and creditors receiving little, if any, recoveries. The Settlement avoids such a dire outcome. Accordingly, the Committee believes that the consensual resolution of the Adversary Proceeding, as provided for under the Settlement embodied in the terms of the Joint Plan, is in the best interests of the Debtors, their estates and their creditors.

64. Considering the Joint Plan (and the Settlement embodied therein) and the evidence adduced at the Confirmation Hearing, the Committee submits that the Court is well positioned to determine that the Settlement falls well within the "range of reasonableness" and should be approved pursuant to Bankruptcy Rule 9019.[8] Pursuant to Bankruptcy Rule 9019, and

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[8] The Joint Plan resolves the Adversary Proceeding pursuant to Bankruptcy Rule 9019. Settlements of disputed claims should be approved upon satisfaction of three (3) factors: (i) probability of success of litigation, with due consideration given for the uncertainty in fact and law; (ii) the complexity and likely duration of the litigation and any other attendant expense, inconvenience and delay; and (iii) all other facts bearing upon the wisdom of the compromise. In re Jackson Brewing Co., 624 F.2d 599, 602 (5th Cir. 1980). The third prong must satisfy two (2) factors: (a) whether the compromise is in the best interests of the creditors, with deference given to their reasonable views; and (b) the extent to which settlement is truly the product of arms' length bargaining rather than fraud or collusion. In re Cajun Elec. Power Co-op, 119 F.3d 349, 356 (5th Cir. 1997). For the reasons set forth herein and

in consideration for the distributions and other benefits provided under the Joint Plan, the Committee believes that the Settlement embodied in the terms of the Joint Plan constitutes a good faith compromise and settlement and should be approved, pursuant to Bankruptcy Rule 9019, in conjunction with confirmation of the Joint Plan.

IV. **Conclusion**

The Plan represents the culmination of a year of arms' length negotiations between informed, sophisticated and interested parties. The proposed distribution to unsecured creditors is substantial, and confirmation of the Plan is in the best interests of the Debtors' creditors and estates. The evidence and argument demonstrate that the Plan satisfies section 1129 of the Bankruptcy Code. The Committee respectfully requests that the Court confirm the Plan.

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the evidence admitted into the record at the Confirmation Hearing, the Committee believes that resolution of the Adversary Proceeding by the Settlement embodied in the Joint Plan satisfies the foregoing factors.

Dated: January 31, 2014.

Respectfully submitted,

GREENBERG TRAURIG, LLP

By: /s/ Shari L. Heyen
Shari L. Heyen (Admitted *Pro Hac Vice*)
HeyenS@gtlaw.com
Texas State Bar No. 09564750
David R. Eastlake (Admitted *Pro Hac Vice*)
EastlakeD@gtlaw.com
Texas State Bar No. 24074165
1000 Louisiana, Suite 1700
Houston, Texas 77002
Telephone: 713-374-3564
Facsimile: 713-374-3505

- and –

David B. Kurzweil (Admitted *Pro Hac Vice*)
KurzweilD@gtlaw.com
Lee B. Hart (Admitted *Pro Hac Vice*)
HartLe@gtlaw.com
Terminus 200
3333 Piedmont Road, NE, Suite 2500
Atlanta, Georgia 30327
Telephone: 678-553-2100
Facsimile: 678-553-2269

Counsel to the Official Committee of Unsecured Creditors