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

MEMORANDUM OF YUCAIPA CORPORATE INITIATIVES FUND I, L.P. IN SUPPORT OF OBJECTION TO FIRST AMENDED JOINT CHAPTER 11 PLAN PROPOSED BY ATALAYA ADMINISTRATIVE LLC AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

Yucaipa Corporate Initiatives Fund I, L.P. ("Yucaipa"), files this memorandum (the "Memorandum") in support of its objection (the "Plan Objection") to the First Amended Joint Chapter 11 Plan (the "Plan")[2] proposed by 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 Official Committee of Unsecured Creditors (the "Committee" and, together with Atalaya, the "Proponents"), filed pursuant to section 1129 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq*. (the "Bankruptcy Code"). In support hereof, Yucaipa respectfully submits as follows:

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

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

PRELIMINARY STATEMENT

1. After a three-day trial on the enterprise value of Piccadilly, the Proponents have failed to meet their burden of demonstrating that the Plan complies with the Bankruptcy Code. Piccadilly has significant equity value. But Atalaya awards itself all of the equity under the Plan and leaves existing equity holders with nothing. As a result, Atalaya will recover value that far exceeds the actual value of its claim while equity holders are deprived of the value of their interests in Piccadilly. This violates the fair and equitable requirements of Bankruptcy Code section 1129(b), which must be satisfied in order to confirm the Plan. And the absence of an alternative plan of reorganization does not exempt this Plan from the requirements of Bankruptcy Code section 1129(b). This Plan, therefore, is unconfirmable without modifications that provide equity holders the value of their interests and reduce Atalaya's recovery to the actual value of its claim.

2. Yucaipa has shown that Piccadilly's enterprise value is $48 million to $59 million with a midpoint of $54 million. The Yucaipa valuation report is the only expert report that relies on the financial projections generated by the Debtors and their professionals, which are the only parties with the unique operational knowledge of Piccadilly and expertise necessary to prepare reliable long-term financial projections. The Debtors also must act in the best interest of the estates and their financial projections were created against the backdrop of this continuing obligation. Because Yucaipa's expert report is methodologically sound and relies on financial projections from the parties best-equipped to forecast future earnings, equity holder recoveries under the Plan should reflect an enterprise value of $54 million.

3. At trial, it became clear that Atalaya's valuation report is not credible. Mr. Lee has a history of producing low-ball enterprise values in contested matters and no real-world

transactional experience in the restaurant industry. Most troubling, however, is Mr. Lee's admission that he does not understand the key assumptions underlying the guest count and average check projections prepared by Deloitte – by far the two most important metrics that drive enterprise value. These flawed assumptions overstate negative trends in guest count and average check and understate positive trends, which artificially depresses Piccadilly's enterprise value.

4. At the same time, the guest count and average check assumptions in the Deloitte financial projections are understandably flawed because they were developed with no input whatsoever from the Debtors. The only regular interaction that Deloitte had with the Debtors was attending monthly DIP budget reporting calls that lasted less than an hour and did not focus on the long-range business plan that the Debtors spent months developing for their go-forward store base of 60 locations. Indeed, it seems Deloitte backed into these critical assumptions in order to tie with William Snyder's "gut feeling" that Piccadilly would not be profitable until 2016. Mr. Snyder's belief is unsupported by actual company data, and Mr. Lee's blind reliance on these flawed projections resulted in a flawed valuation that substantially underestimates Piccadilly's enterprise value.

5. With respect to the report submitted by the Committee, it is not a valuation report. The Committee's expert, Michael Atkinson, confessed to this at trial. Instead of preparing a rigorous valuation report, Mr. Atkinson spent about a week drafting a document that primarily analyzed the implied value of Piccadilly under the Plan. Further, Mr. Atkinson's assertion that the "market has spoken" with respect to the enterprise value of Piccadilly is belied by the fact that Piccadilly has never been through a sales and marketing process. Even Mr. Atkinson, with a deep list of over 500 financial and strategic buyers in the restaurant industry, did not actively

market Piccadilly. His testimony was simply an advocacy piece designed to expeditiously support confirmation of a plan that paid his constituency in full – completely without regard to the significant equity value in Piccadilly.

6. Finally, Atalaya has not proven its claim. Yucaipa has objected to the amount of Atalaya's asserted secured claim and, at trial, Yucaipa showed that Atalaya will receive over $5 million more than the actual amount of its asserted secured claim under the Plan. This also violates the fair and equitable requirement of Bankruptcy Code section 1129(b)(1) and is an independent ground for denying Plan confirmation.

BACKGROUND

7. On September 11, 2012, Piccadilly Restaurants, LLC ("PR"), Piccadilly Food Service, LLC ("PFS"), and Piccadilly Investments, LLC ("PI") (collectively, "Piccadilly" or the "Debtors") filed these chapter 11 cases. They have operated their business as debtors and debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

8. Yucaipa is both the majority holder of equity interests in PI and a general unsecured creditor on account of its Management Services Fee Claim, which has been scheduled by the Debtors in the amount of $452,791.18. *See* Statement of Financial Affairs (Docket No. 263).

9. On October 23, 2012, the Office of the United States Trustee appointed the Committee.

10. On December 13, 2013, Yucaipa, Atalaya and the Committee exchanged valuation expert reports prepared by their experts (respectively, the "Yucaipa Report", the Atalaya Report", and the "Committee Report").

11. On January 6, 2014, Yucaipa filed the *Objection of Yucaipa Corporate Initiatives Fund I, L.P. to Asserted Claim of Atalaya Administrative LLC* (the "Claim Objection") and the Plan Objection, both of which are incorporated herein in their entirety.

12. This Court held its hearing to consider confirmation of the Plan on January 13, 2014 through January 15, 2014.

ARGUMENT

13. The Proponents have the burden of showing that the Plan satisfies the requirements of Bankruptcy Code section 1129. *See In re Hollywood Casino Shreveport*, 2005 WL 4796585, at *6 (Bankr. W.D. La. July 6, 2005) ("To obtain confirmation of the Plan, the Plan Proponents have the burden of proving the elements of sections 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence."); *see also In re Idearc Inc.*, 423 B.R. 138, 159 (Bankr. N.D. Tex. 2009), *subsequently aff'd sub nom.*, 662 F.3d 315 (5th Cir. 2011) (citing to *Heartland Fed. Sav. & Loan Assoc. & Briscoe Enters., Ltd. II (In re Briscoe Enters., Ltd., II)*, 994 F.2d 1160, 1165 (5th Cir. 1993), *cert denied*, 510 U.S. 992, 114 S. Ct. 550, 126 L.Ed.2d 451 (2013)) (further citations omitted)) ("To obtain confirmation of the Plan, the [Plan Proponents] must demonstrate that the Plan satisfies the provisions of section 1129 of the Bankruptcy Code by a preponderance of the evidence."); *In re Cajun Elec. Power Co-op., Inc.*, 230 B.R. 715, 728 (Bankr. M.D. La. 1999). As shown at trial and argued in the Plan Objection, the Proponents have failed to satisfy this burden. Piccadilly's enterprise value range has a midpoint of $54 million, meaning that there is substantial equity value in Piccadilly. Because the Plan provides no recovery to equity holders and instead awards Atalaya this equity value, it is not fair and equitable and violates Bankruptcy Code sections 1129(b)(1) and 1129(b)(2)(C)(i).

I. The Yucaipa Report is the Most Credible Valuation Report and Establishes a $54 Million Midpoint Enterprise Value.[3]

14. The ultimate conclusion of value in the Yucaipa Report – a midpoint value of $54 million – is supported by the report's comprehensive analysis of three valuation methodologies: discounted cash flow, comparable companies, and comparable transactions. As testified to at trial, Ms. Fry employed a standard approach to the methodologies in her comparable companies and comparable transactions analyses and the conclusions from these methodologies are supported by the data in her report. Moreover, the terminal exit multiple methodology in the Imperial Report's discounted cash flow analysis is a well-recognized and commonly accepted discounted cash flow methodology. *See In re Mirant Corp.*, 334 B.R. 800, 844-45 (Bankr. N.D. Tex. 2005) (giving equal weight to terminal exit multiple and perpetuity growth rate methodologies in discounted cash flow analysis); *In re Exide Technologies*, 303 B.R. 48, 64-65 (Bankr. D. Del. 2003) (relying on discounted cash flow analysis based on terminal exit multiple methodology); *In re Bachrach Clothing, Inc.*, 480 B.R. 820, 872 (Bankr. N.D. Ill. 2012) (finding that "the literature indicates that both [the terminal exit multiple and perpetuity growth rate] approaches are commonly used.").

15. With respect to discounted cash flow, the Yucaipa Report is the only expert report that relies on financial projections prepared by the Debtors and their financial advisor, FTI

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[3] Atalaya is grasping at straws with its assertion that Imperial Capital ("Imperial") was engaged by Yucaipa on a contingency basis. Imperial agreed to a fixed fee within a range (between $125,000 and $200,000) that would be determined by Yucaipa based on the amount of time and resources that Imperial ultimately dedicated to this engagement. For example, at the time of the agreement in June 2013, it was unclear whether Imperial would be required to appear for depositions or provide expert testimony because, among other things, Yucaipa and the Committee were negotiating the terms of a consensual plan of reorganization. Imperial invoiced Yucaipa prior to submitting its valuation report and received payment (a total of $150,000) before the Plan confirmation hearing. Moreover, the cases cited by Atalaya in support of its assertion are inapposite and underscore the distinction between Imperial's fee structure here and a contingency fee. Those cases involve fee structures where financial advisors are paid a percentage of the ultimate recovery awarded to equity holders, which is devoid of any similarities with Imperial's engagement in these cases.

Consulting, Inc. ("FTI"). The Debtors and FTI have the most intimate knowledge and sophisticated understanding of Piccadilly's operations and the drivers of the company's future earnings, having spent months analyzing the performance of every store in the Debtors' portfolio along with the market conditions in each location where the Debtors operate. The company-specific knowledge and expertise of the Debtors and FTI provide a credible foundation for the financial projections that serve as the basis for the Yucaipa Report.[4]

16. On the other hand, the Atalaya Report contains flaws in its comparable companies analysis and is premised upon faulty financial projections prepared by Deloitte. Deloitte developed these projections with no input whatsoever from the Debtors or FTI. Not surprisingly, these projections are far more pessimistic than the Debtors' projections and result in a depressed enterprise value. Because the projections are unsound and skewed to depress enterprise value, they must be discredited, and with them, Atalaya's purported valuation of Piccadilly.

A. The Debtors' Financial Projections are Based on a Store-Level Analysis; Deloitte's Projections are Based on Vague Assumptions.

17. As shown at trial, the Debtors and FTI undertook a painstaking process that required hundreds of hours of working closely together to produce the financial projections. *See* Appendix A, Transcript of Confirmation Hearing Day 3 ("Appendix A (Day 3 Transcript)") at 13:4-8:

> Q. And so, after collecting that information did you actually go back and talk with the company again?

[4] At trial, Mr. Lee posited that the discounted cash flow analysis in the Yucaipa Report included a calculation error because it did not discount Piccadilly cash flows for 2014. As testified by Nicole Fry, Yucaipa's expert witness, this was an assumption used in the discounted cash flow analysis given that the Debtors would not emerge from bankruptcy until 2014, not a calculation error. Nevertheless, removing this assumption from the discounted cash flow analysis would have a negligible effect on Ms. Fry's ultimate valuation conclusion: the valuation range would shift to $46 million – $57 million with a midpoint of $52 million.

A. Oh, constantly. It was a constant process from the day we hit the ground there, through the first sets of comprehensive forecasts that were being produced for review."

At trial, David Beckman described the process in which FTI and the Debtors went through each line item of every Piccadilly store and tested every assumption embedded in the line item projections on a store-by-store basis:

> A. But what that [process] allows you to do is on a very detailed basis, go back and verify all of those assumptions in the model against actual data and talk through all of the issues that are identified with the company.
>
> Q. And in the process of doing that, did FTI meet with the company with respect to each and every store of Piccadilly?
>
> A. Essentially, yes.
>
> Q. Okay.
>
> A. I mean, we would sit down and go through, as I said, the historic data for all the stores, and to the extent there were deviations, then at that point in time we would go back and go through that store with the manager or with the COO, and address any issues that were identified in that analysis.

Id. at 17:9-21.

18. For example, projecting the food cost for any one store required FTI and the Debtors to analyze that store's specific historical food cost trend, consider the unique, store-level variables that factored into this trend, and decide whether these variables should be incorporated into projected food cost. FTI and the Debtors drilled-down on each one of these line items for every store – a true store-by-store analysis with store-level precision. *See id.* at 15:10-22:

> A. So, we took it all the way down to a store by store, by line item by line item basis.
>
> Q. Okay. And so, what were some of the line items that the information was assembled into?
>
> A. Well, it goes all the way from the top to the bottom of a regular P&L. It would be the revenue streams for the company, the different sources for those revenue streams, down through the food costs going into that store, to the labor that's being incurred at that store, and then right through all of the different line items of operating costs; insurance, security, utilities, everything, all the way down to basically capturing what I refer to as a four wall analysis, the four walls of the restaurant.

The Debtors' financial projections are the product of this meticulous store-by-store analysis. Moreover, their projections are consistent with the historical performance of the 60 current Piccadilly stores. *See* Appendix B, 60 Stores Historical and Projected Performance.

19. The Deloitte financial projections, unlike those of FTI and the Debtors, are not based on a true store-by-store analysis where each store is considered as a separate business with input from store management and the local factors affecting such store (e.g., entry of new competition, exit of existing competition, job creation as a result of new employers or new projects, weather conditions, store management turnover, proximity of competition, and spending on capital expenditures) are analyzed and considered. Instead, without analyzing any store level-data with the Debtors and FTI, Mr. Snyder formed a belief, based largely on anecdotal experience with a different cafeteria chain 10 years ago, that Piccadilly will not be profitable for the next two years. Deloitte then created foundational assumptions for its financial model geared towards producing projections consistent with Mr. Snyder's beliefs. Deloitte did not share these assumptions with the Debtors and thus had no check on whether they were reasonable (they are not). *See* Transcript of Confirmation Hearing Day 1 ("Appendix A (Day 1 Transcript)") at 187:15-17:

> Q. And before we filed these projections, did you share these projections with the company?
> A. We did. We sent the summary projections, not the model . . . .

In fact, Mr. Synder admitted at trial that he never had a face-to-face meeting with anyone within the management ranks of the Debtors until after Deloitte finalized its financial projections, and even then Deloitte failed to use that meeting to obtain feedback on its financial projections. The disconnect between Deloitte and the Debtors in this process is remarkable. Mr. Snyder attended

a few short DIP budget calls – a stark contrast to the weeks on end FTI spent working with the Debtors to develop financial projections.

20. Given this deficiency in contact with the Debtors, Mr. Snyder's top-down approach to creating the financial projections is likely the only way Deloitte could develop any projections. But backing into assumptions in order to "prove" Mr. Snyder's unsubstantiated beliefs about Piccadilly's future performance, rather than developing store-level assumptions grounded in store-level data lacks the rigor necessary to support the confiscatory treatment of Yucaipa in these cases. And this approach generated a set of faulty assumptions that resulted in financial projections riddled with defects because they apply the same faulty assumptions to every store and ignore unique, store-level differences that should factor into any set of financial projections. In short, the Deloitte projections are not a store-by-store analysis, they are simply guesswork designed to support a low value and the Atalaya Plan.

21. The defects in Deloitte's assumptions are particularly glaring with respect to guest count and average check – the metrics Mr. Snyder testified to as the most critical factors in projecting Piccadilly's success at trial. *See* Appendix C, Comparison of Forecast Assumptions. Specifically, the Deloitte projections arbitrarily weight a negative trend in guest count three times heavier than a positive trend. *See* Yucaipa Trial Exhibit 11 at ACM0043082, ACM0043084. Mr. Snyder rotely applies the very same assumption to the guest count for every store. This mechanical approach artificially depresses guest count and, with it, Mr. Lee's enterprise value conclusion, which simply incorporates this assumption.

22. The effect that this weighting disparity has in driving down projected guest count is dramatic. A store with a 10% increase in guest count in 2013 is projected to have just a 2.5% increase in 2014. But a store with a 10% decrease in guest count in 2013 is projected to have a

7.5% decrease in 2014. The Deloitte projections also overweight decreases in average check and underweight increases. *See* Yucaipa Trial Exhibit 11 at ACM0043082, ACM0043085. At trial, Mr. Snyder did not provide any detail about why this weighting is appropriate, other than to say the assumptions fit with his sense that Piccadilly would be unprofitable for two years. But the logic behind these critical assumptions cannot simply be intuition from someone who has no on-site experience at Piccadilly or with its management; it must be grounded in store-level data. Mr. Snyder's inability to point to concrete data that supports these critical assumptions is not credible.

23. Mr. Snyder also did not address at trial why the Deloitte projections overlook the future growth of Piccadilly Food Service ("PFS"), a segment with over 40% compounded annual growth from 2010 to 2012. *See* Yucaipa Trial Exhibit 3 at 21; *see also* Appendix C. As shown in the Debtors' financial projections, PFS is a strong business segment of Piccadilly, one that is projected to generate substantial revenue upon the Debtors' emergence from bankruptcy. *See* Yucaipa Trial Exhibit 7 at 5-6; Yucaipa Trial Exhibits 8, 9; *see also* Appendix C.

24. Indeed, even Mr. Snyder had to acknowledge that a business segment like PFS is especially vulnerable to the overhang of bankruptcy, because it depends on long-term contracts with institutional clients that may be reluctant to enter into such contracts with a bankrupt entity. And the Proponents were aware of the Debtors' bullish view of PFS based on the Debtors' financial projections. Thus, Deloitte has no excuse for dismissing this historically strong growth segment of the Debtors' business in its projections. This is a very significant reason to reject the Deloitte valuation as unsupportably low.

25. Ultimately, the Deloitte financial projections should be discredited because they are based on unsupported assumptions without any store-level analysis, ignore the tremendous growth potential of PFS, and artificially depress Piccadilly's enterprise value.

II. The Valuation Conclusion of the Atalaya Report is Not Credible.

26. For its valuation report, Atalaya hired a Richard Lee from Deloitte. The Richard Lee curriculum vitae lists eight representative matters in which he has provided expert testimony. *See* Yucaipa Trial Exhibit 11 (Deloitte Report) at Appendix 3. In almost all of these matters, ranging from divorce proceedings to shareholder oppression actions, Mr. Lee testified on behalf of a client whose interests are best supported by presenting a low valuation. *See* Appendix A (Day 1 Transcript) at 96:3-106:11. With this background, it is not a surprise that the Atalaya Report conclusion came in so far below the Imperial valuation.

27. The Atalaya Report posits an enterprise value for Piccadilly that is even $15 million less than the implied enterprise value under the Plan. Three flawed components of the Atalaya Report are responsible for this depressed valuation conclusion. First, Mr. Lee's discounted cash flow analysis is wrong because it relies on Deloitte's faulty financial projections. As discussed above, these top-down projections are based on improper global assumptions that Deloitte created in a vacuum with no input from the Debtors and ignore the growth potential of PFS. Moreover, these projections were admittedly created to help Atalaya gear up for a valuation fight. *See id.* at 179:17-25:

Q. And did the role change in the beginning of 2013?

A. It did. It appeared like Atalaya realized there wasn't going to get -- there may not be a deal cut with Yucaipa, and that was anything they would be willing to accept. So, they came to us and said, "Hey, can you build a model of what this thing is going to do? We want to know what it's going to do, and what our options are, and we want a valuation." So, starting at the very beginning of 2013, we built a model of the company and Richard started a valuation.

28. Second, Mr. Lee failed to include more than $2 million in documented savings from store closures and other cost savings (including the renegotiated supply contract with Merchants) in the adjusted 2013 EBITDA used in his comparable companies analysis. It is a mistake to exclude these savings from adjusted 2013 EBITDA because Piccadilly will continue to benefit from these substantial cost savings – year over year. Even the Committee's expert included the majority of these cost savings in his adjusted 2013 EBITDA calculation.

29. Finally, Mr. Lee dedicated a substantial part of his comparable companies analysis to ranking certain aggregate financial metrics and historical trends of Piccadilly against other restaurants, purportedly as indicators of Piccadilly's financial condition. But ranking aggregate numbers like total assets and total revenue are misleading because the rankings will inevitably favor larger companies even if they are not necessarily healthier companies.

30. Moreover, the Lee analysis of historical trends incorrectly included approximately 40 to 60 now-closed stores (depending on the relevant year). Because the store closures were value-enhancing (the closed stores were losing money), Piccadilly is a healthier company today with 60 stores than it was with 120 stores. In order to understand historical financial performance as it relates to Piccadilly as an enterprise today, closed stores must be excluded from the calculus. Thus, the Lee analysis of the Piccadilly historical trends should have calculated the trends of only the 60 stores that are currently in the Piccadilly portfolio, which have been positive. *See* Appendix B. Yet Mr. Lee did not embrace this basic notion in preparing his analysis and instead included stores that are no longer being operated by the Debtors essentially manufacturing a declining revenue performance. At trial, however, Mr. Lee recognized that his analysis was flawed and testified that the Debtors' go-forward portfolio of 60

stores are "basically flat" in terms of their historical revenue performance. Appendix A (Day 1 Transcript) at 132:15.

A. Deloitte's Financial Projections Are Unsupported and Mr. Lee Did Not Closely Test them for Reasonableness.

31. As discussed above, the Deloitte financial projections are overly pessimistic. The uniform assumptions applied to every store ignore the unique store-level issues faced by each Piccadilly restaurant. And the fact that the guest count and average check assumptions overweigh negative trends and under weigh positive trends without any data-driven explanation – *i.e.* one rooted in an analysis of the underlying store-level data – renders the projections incredible.

32. Mr. Lee testified that he reviewed the financial projections for reasonableness. It seems elementary that any expert relying on Piccadilly financial projections would evaluate the guest count and average check assumptions, the two most important assumptions driving these projections. But Mr. Lee confessed that he did not really understand these assumptions. To be clear, he did not simply lack a sophisticated understanding of the effect of these assumptions in the financial model, he had absolutely no understanding of these critical assumptions and could not even describe them at a high level:

Q. So, since we have this in front of us; it says 14 to 17 guest count changes driven by 14. Guest count adjustments include: 25 percent of prior year plus change, or 7[5] percent of the prior year minus. What does that mean?
A. You're going to have to ask William Snyder. I don't know.
Q. You don't know?
A. No, I don't.
Q. How about the references to average check changes? Check adjustments include: 75 percent of prior year plus change, or the same prior year minus change. Do you know what that means?
A. I'm not aware. I know that the model is driven based on historical performance, and there's assumptions around increases or decreases, but I don't know the specifics of those assumptions, no.

See Appendix A (Day 1 Transcript) at 138:3-18. The failure to diligence, or even comprehend, the key assumptions behind the Deloitte financial projections sheds doubt on the rigor with which Mr. Lee tested their reasonableness. Instead, it seems that Mr. Lee was given a set of projections and dutifully and mechanically inputted these numbers into his discounted cash flow formula. Thus, the Lee discounted cash flow analysis blindly relies on the flawed Deloitte projections and therefore should also be completely discredited.

33. The credibility of the Lee testimony is also impeached by his statement that Mr. Synder "looked at the revenue and expenses of each individual store locations and took into account the specific characteristics and expectations of those individual store locations." *Id.* at 118:3-6. Yet the Deloitte financial projections on their face make clear that Mr. Snyder did no such thing. Mr. Snyder simply applied the same assumptions to every store and ignored unique, store-level differences that are a material factor in the creation of reliable financial projections generally, and in the Piccadilly projections specifically.

34. Mr. Lee also testified that Mr. Snyder "had a variety of discussions with management, and looked at a lot of records in order to reach the conclusions that he did with regards to the projections for each location." *Id.* at 119:6-8. But Mr. Snyder testified that he did not obtain any feedback on the Deloitte financial projections from the Debtors and did not meet with the Debtors in person until *after* the Deloitte financial projections were finalized.

35. Finally, Mr. Lee does not seem to understand the Debtors' historical financial performance. At trial, Mr. Lee testified that the Debtors "never hit [a] 6.7 percent EBITDA margin." *Id.* at 140:3-4. Yet the Debtors' go-forward portfolio of 60 locations generated an EBITDA margin of more than 7.0% in every year from 2007 through 2010. *See* Appendix B.

B. Mr. Lee's Comparable Companies Analysis is Incorrect.

1. The Comparable Companies Analysis Wrongly Excludes Recurring Cost Savings from Adjusted 2013 EBITDA.

36. In addition to relying on flawed financial projections in his discounted cash flow analysis, Mr. Lee's comparable companies analysis is defective. A valuation using the comparable companies analysis depends, in part, on the Piccadilly adjusted 2013 EBITDA. A multiple derived through an analysis of comparable companies is then applied to adjusted 2013 EBITDA to produce a valuation using this methodology.

37. Adjusted 2013 EBITDA is the Piccadilly operating EBITDA plus any additional adjustments. All three expert reports agree that the Piccadilly unadjusted 2013 operating EBITDA is approximately $4.2 million. But, unlike the Yucaipa Report and Committee Report, Mr. Lee inexplicably ignores approximately $2 million in cost saving adjustments. *See* Appendix D, Starting Point EBITDA Comparison.

38. These adjustments include approximately $1.27 million in savings from closing unprofitable stores and $720,000 in rent reductions and reduced vendor costs. They should be included in adjusted 2013 EBITDA because they will continue to add value (through cost savings) to Piccadilly in future years. With these adjustments, Piccadilly's 2013 EBITDA is $6.3 million. Both FTI and the Yucaipa expert, Ms. Fry, agree that is the correct number. Similarly, the Committee Report includes the majority of these adjustments and calculates adjusted 2013 EBITDA as $5.8 million. But Mr. Lee departs from this approach and excludes the cost savings in the adjusted 2013 EBITDA of $3.8 million used in his report. *See id.* Mr. Lee's refusal to account for cost savings in his adjusted 2013 EBITDA calculation – an adjustment that even the Committee Report includes – is a methodological defect that depresses the valuation conclusion in his comparable companies analysis.

2. Mr. Lee's Comparable Companies Multiple is Too Low Because His Analysis Includes Rankings in Irrelevant Categories and He Fails to Account for Piccadilly's Current 60 Store Footprint.

39. The multiple Mr. Lee uses in his comparable companies analysis is too low, in part, because he ranks companies in categories of irrelevant financial metrics measured in the aggregate, for example, total assets, total revenue over the last twelve months, and total EBITDA over the last twelve months. *See* Yucaipa Trial Exhibit 2 *(*Atalaya Report) at 21. Ranking companies based on these aggregate metrics provides no insight into the financial condition of these companies. It simply results in ranking larger companies higher than smaller companies because larger companies have more assets and more revenue on an aggregate basis. Piccadilly is the smallest company (by total assets) of the comparable group Mr. Lee selected, which places it in the bottom of these rankings. Because the aggregate financial metrics prejudice smaller companies – Piccadilly in particular – they should not inform the decision of selecting the right multiple to apply to Piccadilly's adjusted 2013 EBITDA.

40. The ranking of comparable company historic revenue trends should also be discounted from the Lee comparable companies analysis because it incorrectly includes closed Piccadilly stores (up to approximately 60 in total) in its calculation of historical trends. An analysis of revenue trends that includes Piccadilly's closed stores weighs down the revenue trends of the 60 Piccadilly stores currently in operation. The performance of the now-closed stores is irrelevant to an analysis of historic revenue trends because those stores are not part of the current Piccadilly restaurant portfolio. Piccadilly is healthier today with 60 stores than it was when over 100 stores were in operation. For Piccadilly's historic revenue trends to be relevant to Piccadilly as an enterprise today, only the trends of the 60 current stores should be considered. The net revenue of these stores over the last five years has been positive every year. *See*

Appendix B. Mr. Lee's failure to analyze only the 60 stores in operation and exclude the closed stores resulted in an incorrect calculation of Piccadilly's revenue trends that negatively impacted Piccadilly's ranking in these categories. Consequently, Mr. Lee's historic revenue trend rankings are not accurate and should not guide the appropriate multiple used in the comparable companies analysis.

41. The multiple range of comparable companies in the Atalaya Report is 26.3x to 6.1x. Mr. Lee applied the lowest multiple to Piccadilly because of Piccadilly's low ranking when comparing the financial metrics he selected. But these comparative rankings are misleading for the reasons discussed above. After correcting for the flaws in the Lee methodology, the Piccadilly performance against comparable companies improves. Thus, the multiple in the comparable companies analysis should be higher than 6.1x, which is the lowest comparable company multiple in the Atalaya Report.

III. The Committee Report is Not a Valuation.

42. The Committee Report has material deficiencies. At trial, Michael Atkinson, the professional that prepared the report, admitted that the Committee Report is not a valuation analysis. The Committee Report calculates Plan value and relies on that calculation as an indicator of enterprise value. But the Piccadilly implied value under the Plan (which is less than Piccadilly's actual enterprise value) is the core of the valuation dispute between Yucaipa and the Proponents.

43. Mr. Atkinson also proclaims in his report that equity has no value because the "market has spoken." Yucaipa Trial Exhibit 3 (Protiviti Report) at 10. In reality, only Atalaya has spoken. And the Bankruptcy Code does not require Yucaipa, as an equity holder, to prove that equity value exists by bidding on Piccadilly or investing new money – that is simply not the

law. In order to credibly assert that the market has spoken, Piccadilly must have been actively shopped to the market. But a marketing and sales process has not been conducted. Mr. Atkinson has a list of over 500 hundred financial and strategic buyers in the restaurant industry; he did not contact any parties on this list. Here, the market has not spoken, it has been silent because it has been ignored.

44. Furthermore, the Committee Report lacks methodological rigor because the discounted cash flow and comparable companies valuation methodologies generally relied on to determine value are absent. *See In re Mirant Corp.*, 334 B.R. at 816 ("The court has found in numerous opinions support for valuation of a chapter 11 debtor through the use of the DCF Method and the Comparable Method . . . . The court finds these methods of valuation the most likely to ensure that Mirant Group is valued based on the worth of its future ability to produce income.").

45. Although the Committee Report does not include a discounted cash flow analysis, it does consider illustrative historical transactions and provides an indicative EBITDA multiple range of 8.5x to 9.0x. *See* Yucaipa Trial Exhibit 3 (Protiviti Report) at 19. But the Committee Report stops this analysis after identifying the multiple range. If this analysis is completed, these multiples result in a $49 million to $52 million valuation when applying the Committee Report's $5.8 million adjusted 2013 EBITDA. Instead of the 8.5x to 9.0x multiple range, the Committee Report multiplies LTM Adjusted EBITDA against unsupported EBITDA multiples that produce a proposed enterprise value nearly identical to the implied value under the Plan. *See id.* at 12. Based on Mr. Atkinson's testimony at trial, it is clear that the "Atkinson Methodology" does not involve a comprehensive valuation analysis, rather it is a tool to maximize unsecured creditor recoveries without regard for the rights of equity holders.

IV. Equity Holders Are Entitled to a Recovery After All Claims Against the Debtors Are Satisfied, Which Amount to Less Than $44 Million.

46. While Yucaipa disputes that the Atkinson calculation of the implied value under the Plan reflects Piccadilly's enterprise value, Yucaipa agrees with the Atkinson assertion that, under the Plan, equity holders are entitled to a recovery after $44 million in claims are satisfied (subject to reductions in Atalaya's claim as provided in the Claim Objection and below). *See* Yucaipa Trial Exhibit 3 (Protiviti Report) at 11, 14 ("As a result, a valuation in excess of $44 million (at a minimum) would be required before existing equity could have any value.").

47. At trial, Mr. Snyder conflated the claims asserted against the Debtors (approximately $46 million by Atalaya's calculation) and going-concern operational liabilities (approximately $10 million) and incorrectly stated that $56 million of liabilities, as opposed to $44 million of claims, must be satisfied before equity holders receive a recovery under the Plan. Appendix A (Day 3 Transcript) at 213:23-214:17. This is wrong, opportune and should erode both Mr. Snyder's and Atalaya's credibility. First, this assertion shows that Mr. Snyder misunderstands how the Bankruptcy Code governs stakeholder recoveries in chapter 11 reorganizations (as opposed to liquidations). Second, the fact that Atalaya embraces this obvious mistake is a tacit admission of the Yucaipa $54 million valuation.

48. As in all chapter 11 reorganizations, here, the Debtors going-concern liabilities are not classified as claims in the Plan and are not otherwise recognized in the Plan – but passed through and paid in the ordinary course of business. They will not be satisfied under the Plan. They are merely carry-forward liabilities that Piccadilly will satisfy as appropriate in the ordinary course. Going forward, the new equity in Reorganized Piccadilly will be subject to these liabilities to the extent they are valid and senior in priority to equity. And as recognized by Mr. Atkinson, because these asserted going-concern liabilities are not claims satisfied by the

Plan and will remain with the Reorganized Debtors upon emergence from bankruptcy to be satisfied in the ordinary course, they do not need to be paid-off (and will not be paid-off) before equity holders are entitled to a recovery under the Plan.

V. The Plan Substantially Overstates the Amount and Priority of Atalaya's Claim and Atalaya has Not Proven Otherwise.

49. The Atalaya Claim is overstated and, as a result, Atalaya will receive a recovery under the Plan in excess of the actual value of its claim. At trial, and in conjunction with the Claim Objection, Yucaipa introduced evidence that showed that Atalaya has overstated its secured claim by over $3.5 million of dollars on account of improper fees and interest charges, in addition to asserting a secured claim for the L/C.[5] *See* Yucaipa Trial Exhibits 17, 18; Appendix A (Day 3 Transcript) at 37:13-39:4.

50. Because Yucaipa has made an evidentiary showing that supports its objection to the asserted amount of Atalaya's claim, Atalaya has the burden to prove the validity of its claim. *In re Allegheny Intern., Inc.*, 954 F.2d 167, 173-74 (3rd Cir. 1992) ("[T]he objector must produce evidence which, if believed, would refute at least one of the allegations that is essential to the claim's legal sufficiency. If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence."). Atalaya has not satisfied this burden. In fact, it has offered no evidence to support its position with respect to the disputed elements of its asserted secured claim. Thus, the Plan also violates the fair and equitable requirement of

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[5] This amount does not include the $1.39 million of default rate postpetition interest that asserted by Atalaya, which Yucaipa disputes as legally improper for the reasons stated in its Plan Objection and Claim Objection. In addition, at trial, Atalaya conceded that its claim with respect to the letter of credit issued by Wells Fargo (the "L/C") must be reduced from approximately $2.9 million to $2.4 million.

Bankruptcy Code section 1129(b) because it treats Atalaya as though it holds a secured claim for these disputed amounts.

CONCLUSION

51. This Plan is unconfirmable because it is not fair and equitable as required by Bankruptcy Code section 1129(b). The fact that this Plan is the only plan currently available for consideration by the Court does not mean that the Court should excuse it from the requirements of the Bankruptcy Code. Alternatives exist that will make this Plan confirmable. Perhaps the most reasonable remedy for the Plan's infirmities is to require that equity holders receive equity under the Plan that equals value of their interests and reduce Atalaya's recovery to the actual value of its claim. Without these modifications, however, this Plan cannot be confirmed.

RESERVATION OF RIGHTS

52. As of this date, Yucaipa has not received the transcript from the second day of the Plan confirmation hearing. Accordingly, to the extent permitted by the Court, Yucaipa reserves the right to modify or supplement this Memorandum to incorporate this transcript prior to the hearing on confirmation of the Plan scheduled for February 4, 2014.

WHEREFORE, Yucaipa respectfully requests that this Court deny confirmation of the Plan.

Dated: January 31, 2014

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