

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION

IN RE:

PICCADILLY RESTAURANTS, LLC,  
*ET AL.*,

DEBTORS

\* CASE NO. 12-51127  
\*  
\* (JOINT ADMINISTRATION)<sup>1</sup>  
\*  
\* CHAPTER 11  
\*  
\* JUDGE ROBERT SUMMERHAYS

**DEBTORS' OBJECTION TO CLAIM NO. 280 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"),<sup>2</sup> who submit this *Objection to Claim No. 280 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

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<sup>1</sup> 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).

<sup>2</sup> 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 Edward A. Yearby, Sr. (Claim No. 280) and have determined that the claim has prescribed under Louisiana law. 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. 280. Further the Debtors reserve all of their rights to object on any other basis to Claim No. 280.

### **LEGAL STANDARD**

6. 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).

7. 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).

8. In Louisiana, a delictual action is subject to a liberative prescription of one year. La. Civ. Code art. 3492. The prescription commences to run from the day injury or damage is sustained. *Id.*

9. Mr. Yearby claims that a tooth was damaged after he allegedly bit down on a rock on January 12, 2011 at a Piccadilly Cafeteria located in Baton Rouge, Louisiana.

10. Any claim that Mr. Yearby had against the Debtors would have prescribed, therefore on January 12, 2012, prior to the filing of the instant bankruptcy cases. Upon information and belief, Mr. Yearby has not interrupted prescription by filing a lawsuit or any other action (other than his proof of claim) against any of the Debtors.

11. Because Mr. Yearby's cause of action was barred by prescription on the Petition Date, section 108 of the Bankruptcy Code is not implicated. *See Hof v. Chandler (In re Levitron, LLC)*, No. 10-1032, 2011 WL 4024805 n.5 (Bankr. E.D. La. Sept. 9, 2011).

12. Because Claim No. 280 was prescribed as of the Petition Date the Debtors request that the Court disallow in its entirety Claim No. 280.

#### **NOTICE**

13. Notice of this Objection has been provided to Edward A. Yearby, Sr. 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 “A”** (a) granting this Objection, (b) disallowing and expunging Claim No. 280, and (c) granting such other general and equitable relief as is just and proper.

Respectfully submitted,

/s/ Patrick L. McCune

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# **EXHIBIT A**

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION

IN RE:

PICCADILLY RESTAURANTS, LLC,  
ET AL.,

DEBTORS

\* CASE NO. 12-51127  
\*  
\* (JOINT ADMINISTRATION)<sup>1</sup>  
\*  
\* CHAPTER 11  
\*  
\* JUDGE ROBERT SUMMERHAYS

ORDER GRANTING DEBTORS'  
OBJECTION TO CLAIM NO. 280

Considering the *Objection to Claim No. 280 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

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<sup>1</sup> 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”),<sup>2</sup> 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. 280 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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<sup>2</sup> The debtors in these Chapter 11 cases include Piccadilly Restaurants, LLC (“Restaurants”), Piccadilly Food Service, LLC, and Piccadilly Investments, LLC.

**Piccadilly Food Service, LLC, and  
Piccadilly Investments, LLC**