

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

IN RE:

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

DEBTORS

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

**DEBTORS' MOTION TO PARTIALLY VACATE PRIOR ORDER, DECLARE ENTRY
ON CLAIM REGISTRY NULL AND VOID AND OBJECTION TO DUPLICATIVE
PROOF OF CLAIM**

NOW INTO COURT, through undersigned counsel, come the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"),² who submit this *Motion to Partially Vacate Prior Order, Declare Entry On Claim Registry Null and Void, and Objection to Duplicative Proof of Claim* (this "Motion"). This Motion is designed to address several side effects of a data entry error by the clerk's office. In support of this Motion, the Debtors state as follows:

JURISDICTION AND VENUE

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

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

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

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 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.

5. On October 9, 2012, Office Depot filed a proof of claim for \$26,206.56 which was assigned claim number 66.

6. The claim register shows that thereafter, on the same day - October 9, 2012 - San Jamar, Inc., (whose name appears on the relevant proof of claim as The Colman Group Inc. d/b/a San Jamar-Chef Revival) filed a proof of claim for \$259.80 which was assigned claim number 68.

7. Claim number 67, the claim in between Office Depot's claim (66) and San Jamar, Inc.'s claim (68), is simply the result of a data entry error by the clerk, and thus the Debtors pray herein that the Court disallow the proof of claim associated with claim number 67 and declare the claim registry entry associated with claim number 67 null and void.

8. After registering Office Depot's proof of claim (66), when the clerk initially moved to register the proof of claim of San Jamar, Inc., the clerk's office accidentally inserted a duplicate of the Office Depot proof of claim (66) into the next slot on the Court's registry, 67,

but under the label of San Jamar, Inc. Shortly thereafter, the clerk discovered this error, and the Court's online registry of claims now includes the following remarks under claim number 67: "(67-1) WRONG PDF ATTACHED – TO BE REFILED BY CLERK. (ss) 10/9/12". The clerk then created a new claims registry entry for San Jamar, Inc., claim number 68, which properly linked to the PDF of San Jamar, Inc.'s proof of claim rather than a duplicate of the PDF of Office Depot's proof of claim.

9. The above-described situation has created some confusion.

10. For while claim number 67 is the result of an error and bears the above-quoted remarks, it is otherwise labeled as a normal, valid claim for San Jamar, Inc., on the Court's online register of claims, and the proof of claim which is retrieved when one clicks on claim number 67 is a proof of claim for Office Depot which is not obviously marked as an erroneously registered duplicate claim.

11. Consequently, an initial analysis of claims by the Debtors registered duplicate claims for Office Depot, namely claim numbers 66 and 67.

12. Thereafter, the Debtors filed their First Omnibus Objection to Duplicate Claims [Dkt. No. 897] on June 27, 2013, which targeted these and other duplicate claims.

13. However, the Debtor's First Omnibus Objection sought to disallow claim number 66, the properly labeled Office Depot proof of claim, as a duplicate, rather than the Office Depot claim accidentally filed under the erroneous label of San Jamar, Inc., i.e., claim number 67.

14. The Court granted the Debtors' First Omnibus Objection by an order signed and filed on August 20, 2013 [Dkt. No. 1033]. Accordingly, claim number 66, the properly labeled and linked Office Depot claim on the Court's claim registry, was disallowed, while claim number 67, the Office Depot proof of claim tied to the erroneous San Jamar, Inc. label, remains

untouched. Debtors attempt to remedy this situation by requesting herein that the judgment on the First Omnibus Objection be vacated insofar as it concerns claim number 66.

15. Recently, on February 4, 2014, the Debtors filed their Twelfth Omnibus Objection to Claims which seeks to reduce certain proofs of claim totals to match the totals reflected on Debtors' books and records. Office Depot's proof of claim was one of the subjects of this objection, and, after noting the above-described errors, counsel for the Debtors filed the books and records objection concerning Office Depot against claim number 66, which is presently disallowed, instead of claim number 67, with the knowledge that if the Court corrects the errors described herein, claim number 67 will be disallowed, and claim number 66 will serve as Office Depot's proof of claim.

RELIEF REQUESTED AND LEGAL AUTHORITY

16. To remedy the situation described above, Debtors first move for an order partially vacating the Court's Order Granting Debtors' First Omnibus Objection To Duplicate Claims [Dkt. No. 1033], but only insofar as that order concerns the Office Depot proof of claim assigned claim number 66.

17. Given the circumstances of this case, the Court has the authority to grant this relief under Rule 9024 of the Federal Rules of Bankruptcy Procedure, and Rule 60 of the Federal Rules of Civil Procedure. This request is also timely under Rule 60, as it has been less than a year after the hearing on the Debtor's First Omnibus Objection, held on August 13, 2013 [Dkt. No. 989], and the entry of the Order thereon on August 20, 2013 [Dkt. No. 1033].

18. Assuming the above-requested relief is granted, the Debtors also object to claim number 67, as the proof of claim for Office Depot which is currently linked to claim number 67, is a duplicate of the Office Depot proof of claim linked to claim number 66. Accordingly, the

Office Depot proof of claim currently labeled claim number 67 should be disallowed and expunged by order of this Court.

19. The Court has authority to take this action pursuant to 11 U.S.C. § 502(B) and Rule 3007 of the Federal Rules of Bankruptcy Procedure.

20. Debtors' further request an Order be entered declaring that claim number 67 is the result of a data entry error, that it is null and void in its entirety, and that the Clerk should make a notation on the claims register reflecting this revised status.

21. The Court has the authority to take such action under 11 U.S.C. § 105(a).

NOTICE

22. Notice of this Motion has been provided to Office Depot, San Jamar, Inc. 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 the above discussed Motion and sustaining the above-discussed Objection, (b) vacating the Court's Order Granting Debtors' First Omnibus Objection To Duplicate Claims [Dkt. No. 1033], but only insofar as that Order concerns the Office Depot proof of claim assigned claim number 66, (c) disallowing and expunging claim number 67, (d) declaring that claim number 67 is the result of a data entry error, that it is null and void in its entirety, and ordering the Clerk to note this revised claim status on the claims register and (e)

granting such other general and equitable relief as is just and proper.

Respectfully submitted,

/s/ Patrick L. McCune

R. PATRICK VANCE (#13008)

ELIZABETH J. FUTRELL (#05863)

MARK A. MINTZ (#31878)

TYLER J. RENCH (#34049)

Jones Walker LLP

201 St. Charles Avenue, 51st Floor

New Orleans, Louisiana 70170

Telephone: (504) 582-8000/ Direct: (504) 582-8194

Direct Facsimile: (504) 589-8194

Email: pvance@joneswalker.com

Email: efutrell@joneswalker.com

Email: mmintz@joneswalker.com

Email: trench@joneswalker.com

AND

PATRICK L. McCUNE (#31863)

Jones, Walker, Waechter, Poitevent,

Carrère & Denègre, L.L.P.

Four United Plaza

8555 United Plaza Blvd.

Baton Rouge, Louisiana 70809

Telephone: (225) 248-2150

Facsimile: (225) 248-3350

Email: pmccune@joneswalker.com

Attorneys for Piccadilly Restaurants, LLC,

Piccadilly Food Service, LLC, and

Piccadilly Investments, LLC

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

IN RE:

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

DEBTORS

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

**ORDER GRANTING DEBTORS'
MOTION TO PARTIALLY VACATE PRIOR ORDER, DECLARE ENTRY ON CLAIM
REGISTRY NULL AND VOID AND OBJECTION TO DUPLICATIVE PROOF OF
CLAIM**

Considering the *Motion to Partially Vacate Prior Order, Declare Entry On Claim Registry Null and Void, and Objection to Duplicative Proof of Claim* (this "Motion & Objection") (Dkt. No. ___), filed on behalf of Debtors and Debtors-in-possession (collectively, the

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

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

IT IS ORDERED that the Motion is GRANTED and the Objection is SUSTAINED;

IT IS FURTHER ORDERED that Claim No. 67 is disallowed and expunged; and

IT IS FURTHER DECLARED that Claim No. 67 is the result of a data entry error, and therefore, that it is null and void in its entirety; and

IT IS FURTHER ORDERED that the Clerk make a notation on the claims register indicating this revised status of Claim No. 67; and

IT IS FURTHER ORDERED that the Court’s Order Granting Debtors’ First Omnibus Objection To Duplicate Claims [Dkt. No. 1033], is vacated, but only insofar as that Order concerns Claim No. 66; 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.

###

This Order was prepared and is being submitted by:

R. PATRICK VANCE (#13008)
ELIZABETH J. FUTRELL (#05863)
MARK A. MINTZ (#31878)
TYLER J. RENCH (#34049)
Jones Walker LLP
201 St. Charles Avenue, 51st Floor
New Orleans, Louisiana 70170
Telephone: (504) 582-8000 / Direct: 582-8194
Direct Facsimile: (504) 589-8194
Email: pvance@joneswalker.com
Email: efutrell@joneswalker.com
Email: mmintz@joneswalker.com

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

Email: trench@joneswalker.com

AND

PATRICK L. McCUNE (#31863)
Jones, Walker, Waechter, Poitevent,
Carrère & Denègre, L.L.P.
Four United Plaza
8555 United Plaza Blvd.
Baton Rouge, Louisiana 70809
Telephone: (225) 248-2150
Facsimile: (225) 248-3350
Email: pmccune@joneswalker.com

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