

**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**

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**RELIEF IS SOUGHT FROM A UNITED STATES DISTRICT JUDGE**

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**MOTION FOR STAY FROM DISTRICT COURT OF  
ORDER CONFIRMING THE FIRST AMENDED JOINT  
CHAPTER 11 PLAN OF PICCADILLY INVESTMENTS, LLC,  
PICCADILLY RESTAURANTS LLC, AND PICCADILLY FOOD SERVICES, LLC**

Yucaipa Corporate Initiatives Fund I, L.P. (“Yucaipa”), files this motion (the “Motion”), pursuant to Rule 8005 of the Federal Rules of Bankruptcy Procedure (“Rule 8005”) and Local Rule 83.4.3 of the United States District Court for the Western District of Louisiana (the “District Court”), for the entry of an order from the District Court staying the effectiveness of the *Findings of Facts, Conclusions of Law, and Order Confirming the First Amended Joint Chapter 11 Plan of Piccadilly Investments, LLC, Piccadilly Restaurants, LLC and Piccadilly Food Service, LLC* [P-1420] (the “Confirmation Order”). In support hereof, Yucaipa respectfully submits as follows:

**BACKGROUND**

1. On September 11, 2012, Piccadilly Restaurants, LLC, Piccadilly Food Service, LLC, and Piccadilly Investments, LLC (“PI”) (collectively, the “Debtors” or “Piccadilly”) filed these chapter 11 cases in the United States Bankruptcy Court for the Western District of Louisiana, Lafayette Division (the “Bankruptcy Court”). They have operated their business as

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<sup>1</sup> 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.).

debtors and debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. 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 [P- 263].<sup>2</sup>

3. On October 23, 2012, the Office of the United States Trustee appointed the Official Committee of Unsecured Creditors (the “Committee”).

4. On November 14, 2013, Atalaya Administrative, LLC (“Atalaya”) and the Committee filed 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), and the Official Committee of Unsecured Creditors* [P-1241] (the “Plan”) and the *First Amended Disclosure Statement for 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), and the Official Committee of Unsecured Creditors* [P-1242] (the “Disclosure Statement”).

5. 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”).

6. On January 6, 2014, Yucaipa filed the *Objection of Yucaipa Corporate Initiatives Fund I, L.P. to First Amended Joint Chapter 11 Plan Proposed by Atalaya Administrative LLC and the Official Committee of Unsecured Creditors* [P-1324] (the “Plan Objection”) and the

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<sup>2</sup> All pleading references refer to the docket in the Bankruptcy Court in the aforementioned case.

*Objection of Yucaipa Corporate Initiatives Fund I, L.P. to Asserted Claim of Atalaya Administrative LLC* [P-1325] (the “Claim Objection”).

7. On January 31, 2014, Yucaipa filed the *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* [P-1377] and filed an amended version on February 3, 2014 [P-1380].

8. On February 13, 2014, the Court entered the Confirmation Order, confirming the Plan and overruling the Plan Objection.

9. On February 27, 2014, Yucaipa filed its *Notice of Appeal of Order Confirming the First Amended Joint Chapter 11 Plan of Piccadilly Investments, LLC, Piccadilly Restaurants, LLC, and Piccadilly Food Service, LCC* [P-1440] (the “Appeal”), which is attached hereto as **Exhibit A**.

10. Also on February 27, 2014, Yucaipa filed its *Motion for Stay of Order Confirming the First Amended Joint Chapter 11 Plan of Piccadilly Investments, LLC, Piccadilly Restaurants LLC, and Piccadilly Food Services, LLC* [P-1443] (the “Initial Stay Motion”) and its *Ex Parte Motion for Expedited Hearing on Motion for Stay of Order Confirming the First Amended Joint Chapter 11 Plan of Piccadilly Investments, LLC, Piccadilly Restaurants LLC, and Piccadilly Food Services LLC* [P-1445] (the “Motion to Expedite”). The Bankruptcy Court granted the Motion to Expedite [P-1451] and held the hearing on the Initial Stay Motion on March 10, 2014.

11. Prior to the hearing on the Initial Stay Motion, on March 10, 2014, Atalaya filed its *Objection to Motion for Stay of Order Confirming the First Amended Joint Chapter 11 Plan of Piccadilly Investments, LLC, Piccadilly Restaurants LLC, and Piccadilly Food Services LLC* [P-1456] and the Committee filed the *Committee’s Objection to Yucaipa Corporation Initiatives*

*Fund I, LP's Motion for Stay of Order Confirming the First Amended Joint Chapter 11 Plan of Piccadilly Investments, LLC, Piccadilly Restaurants LLC, and Piccadilly Food Services LLC* [P-1457].

12. On March 10, 2014, the Bankruptcy Court denied the Initial Stay Motion [P-1459, P-1460].<sup>3</sup>

13. On March 13, 2014, Yucaipa filed its *Statement of Issues on Appeal and Designation of Items for the Record on Appeal by Yucaipa Corporate Initiatives Fund I, L.P.* [P-1466] (the "Statement and Designation"), which is attached hereto as **Exhibit B**.

### **LAW AND ARGUMENT**

14. In determining whether to grant a stay pending appeal, courts apply the following factors: "(i) likelihood of success on the merits; (ii) irreparable injury if the stay is not granted; (ii) absence of substantial harm to the other parties from granting the stay; and (iv) service to the public interest from granting the stay." *Hunt v. Bankers Trust Co.*, 799 F.2d 1060, 1067 (5th Cir. 1986).

15. While the moving party must show satisfactory evidence of all four criteria, no one criterion controls, and "not all of the four conditions need be given equal weight. These factors are not to be applied in a vacuum but instead must be viewed in light of the importance of the right of appeal and preservation of the status quo during the appeal." *See, e.g., In re Miraj & Sons, Inc.*, 201 B.R. 23, 26 (Bankr. D. Mass. 1996) (citations and internal quotes omitted); *In re Howley*, 38 B.R. 314, 315 (Bankr. D. Minn. 1984).

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<sup>3</sup> On information and belief, Atalaya had not decided on an effective date for the Plan as of March 6, 2014. Atalaya also did not provide an indication as to when the Plan would go effective during the Initial Stay Motion hearing.

**A. Likelihood of Success on the Merits**

16. In its Appeal, Yucaipa intends to challenge various legal and factual determinations made by the Bankruptcy Court. Among other things, Yucaipa intends to argue that the Bankruptcy Court erred in its legal and factual ruling that the Plan was fair and equitable under Bankruptcy Code sections 1129(b)(1) and 1129(b)(2)(C)(i).

17. The valuation produced by Deloitte Financial Services in the Atalaya Report is based on financial projections built upon unfounded and incorrect assumptions that overstate negative trends in guest count and average check and understate positive trends, which artificially depress Piccadilly's enterprise value. Atalaya provided inadequate evidentiary support for these assumptions given their foundational role in the discounted cash flow analysis of the Atalaya Report. Thus, the Bankruptcy Court's reliance on the Atalaya Report to find that the Plan does not violate the fair and equitable requirements of Bankruptcy Code section 1129(b), despite the flawed assumptions on which the Atalaya Report relies, is error.

18. Yucaipa also intends to show that the Bankruptcy Court erred as matter of law by dismissing and not addressing the Claim Objection because the Bankruptcy Court found Piccadilly to have a \$32 million enterprise value. See Exhibit C, Excerpt; Ruling of Plan Confirmation Hearing, Before the Honorable Robert Summerhays, United States Bankruptcy Judge ("Transcript of Confirmation Ruling") at 17:20-23. The Bankruptcy Court should have considered the merits of the Claim Objection because it is a violation of the fair and equitable requirement of Bankruptcy Code section 1129(b) for Atalaya to receive a recovery that exceeds the value of its actual claim. Moreover, a reduction of Atalaya's allowed claim will result in a reduced debt load for the company, which benefits all other parties in interest, including Yucaipa as both an unsecured creditor and holder of interests in PI.

**B. Yucaipa Will Suffer a Risk of Irreparable Harm if the Stay Is Not Granted**

19. If the Confirmation Order is not stayed, Yucaipa may suffer irreparable harm by losing its right to appeal the Confirmation Order. The Confirmation Order provides for the immediate cancellation of all existing PI interests under the Plan. The occurrence of the Plan effective date creates a risk that Yucaipa's Appeal of the Confirmation Order could be deemed equitably moot.<sup>4</sup> See *Compania Internacional Financiera S.A. v. Calpine Corp. (In re Calpine Corp.)*, 390 B.R. 508, 517 (S.D.N.Y. 2008) (appeal of an order confirming a plan that cancelled existing equity was moot because the plan had been substantially consummated and the equity holders did not seek a stay pending appeal).

20. Yucaipa simply seeks the opportunity to build its case and pursue its legal right to appeal the Confirmation Order. Even the possibility of permitting the Plan to strip Yucaipa of its right to the value of its interests in PI while, at the same time, depriving Yucaipa of its right to appeal the Confirmation Order and show that such a loss of its equity interests violates Bankruptcy Code section 1129(b), outweighs the harm (if any) to other parties if a stay is granted. Accordingly, Yucaipa respectfully submits that the Confirmation Order must be stayed in order to prevent potential irreparable harm.

**C. There Will Be No Substantial Harm to Other Parties if the Stay is Granted**

21. Piccadilly has continued to operate during its bankruptcy cases. Its operations will continue during the pendency of the Appeal. Thus, no party to these bankruptcy cases will suffer substantial harm if the Confirmation Order is stayed pending appeal.

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<sup>4</sup> Yucaipa contends that even if the Plan effective date occurs, it should not render Yucaipa's appeal of the Confirmation Order equitably moot.

**D. Granting the Stay is in the Public Interest**

22. Granting a stay pending appeal is in the public interest. “Plans providing management and/or senior creditors with the majority of stock or options in the reorganized company is a strong indicator that the company is being undervalued [in debtor’s disclosure statements], resulting in a windfall for management and the senior creditors.” *See In re Exide Techs.*, 303 B.R. 48, 60 (Bankr. D. Del. 2003).

23. When equity holders are “squeezed out” in non-bankruptcy corporate transactions, they can seek redress and obtain “fair value” for their equity through statutory appraisal actions. *See. e.g., Hintmann v. Fred Weber, Inc.*, No. 12839, 1998 WL 83052 (Del. Ch. Feb. 17, 1998) (unpublished decision). But when equity holders are wiped out in bankruptcy, the only protection available is the proper application of law by the court. The inability to obtain appellate review, and therefore, direction regarding critical issues of bankruptcy law, including the proper (and improper) valuation methods, will repudiate the important public policy identified by Congress of protecting the interests of a debtor's equity holders.

24. Furthermore, the public has an interest in the fair and efficient bankruptcy system. The confirmation of a plan that contravenes the Bankruptcy Code is clearly outside the public interest. This factor also weighs in favor of the District Court granting the stay sought in the Motion.

**E. Yucaipa Should Not Be Required to Post a Supersedeas Bond**

25. Rule 8005 provides that “the district court *may* condition the relief it grants under this rule on the filing of a bond or other appropriate security.” Fed. R. Bankr. P. 8005 (emphasis added). “The reason for requiring a bond is to secure the prevailing party against any loss that

might be sustained as a result of an ineffectual appeal.” *Quarles v. Miller*, 193 B.R. 779, 782 (W.D. Va. 1996) (internal quotes omitted). As discussed above, the Appeal will not harm the reorganized Debtors, Atalaya, or any other party in interest.

26. “The posting of a supersedeas bond is not a prerequisite to obtaining a stay pending appeal; rather, [it] is discretionary.” *Quarles*, 193 B.R. at 782; *see also, In re United Merchants & Mfrs., Inc.*, 138 B.R. 426,430 (D. Del. 1992)(stay pending appeal granted without requiring a bond); *In re Byrd*, 172 B.R. 970, 974 (Bankr. W.D. Wash. 1994) (“[T]he court has discretion to grant a stay pending appeal under Rules 8005 and 7062(c) and it need not require the posting of a supersedeas bond.”). Accordingly, Yucaipa submits that no bond should be required.

#### **DESIGNATION OF RECORD AND PARTIES IN INTEREST**

27. Pursuant to Local Rule 83.4.3, a “designation of the portions of the record of the proceedings in the [B]ankruptcy [C]ourt that will reasonably be necessary or pertinent for consideration of the motion by the district court” must be included within a motion seeking relief from the District Court. This designation is contained within the Statement and Designation.

28. Local Rule 83.4.3 also requires a “list showing each party with an interest in the motion and for each party shown, their attorney along with such attorney’s mailing address.” This list is contained within the Appeal.

#### **CONCLUSION**

**WHEREFORE** Yucaipa respectfully requests that the District Court: (i) grant the Motion or any other appropriate relief while the subject of the appeal is pending; (ii) find that a bond in connection with the Motion is not required; and (iii) grant such other further relief as may be just and proper.



Dated: March 14, 2014.

**Respectfully submitted,**

/s/ Tristan Manthey

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 14th day of March, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM-ECF system, which will send notification of such filing to all parties requesting electronic service, and served a copy of the above and foregoing upon the persons/entities on the attached service list.

/s/ Tristan Manthey  
TRISTAN E. MANTHEY