

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

IN RE:

PICCADILLY RESTAURANTS, LLC, *et al.*,
DEBTORS

CASE NO. 12-51127

(JOINTLY ADMINISTERED)¹

CHAPTER 11

JUDGE ROBERT SUMMERHAYS

**FIFTH AND FINAL APPLICATION OF GORDON, ARATA, MCCOLLAM,
DUPLANTIS & EAGAN, LLC FOR ALLOWANCE OF FEES AND EXPENSES
AS SPECIAL COUNSEL TO DEBTORS AND DEBTORS-IN-POSSESSION**

NOW INTO COURT, through undersigned counsel, comes the law firm of Gordon, Arata, McCollam, Duplantis & Eagan, LLC (“GAMDE”), who submits this *Fifth and Final Application of Gordon, Arata, Mccollam, Duplantis & Eagan, LLC for Allowance of Fees and Expenses as Special Counsel to Debtors and Debtors-In-Possession* (this “Application”) rendered in connection with GAMDE’s representation as special counsel for the above-captioned debtors and debtors-in-possession (collectively, “Debtors”) during the period from September 21, 2012 through April 16, 2014 (the “Final Application Period”). As part of that request, GAMDE is requesting approval and payment of fees and expenses not previously applied for which were earned during the period of November 1, 2013 through April 16, 2014 (the “Fifth Interim Application Period”). In support, GAMDE represents:

Jurisdiction and Venue

1. On September 11, 2012 (the “Petition Date”), Debtors filed for relief under Chapter 11 of the Bankruptcy Code. Debtors operated their businesses and managed their

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

properties as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

2. Debtors were jointly administrated pursuant to Bankruptcy Code § 105(a) and Bankruptcy Rule 1015(b) (collectively, this “Chapter 11 Case”).

3. No trustee or examiner was appointed. An Official Committee of Unsecured Creditors (the “Unsecured Creditors’ Committee”) was appointed in this Chapter 11 Case on October 23, 2012.

4. On November 14, 2013, Atalaya Administrative, LLC, Atalaya Funding II, LP, Atalaya Special Opportunities Fund IV, LP (Tranche B), and Atalaya Special Opportunities Fund (Cayman) IV LP (Tranche B) and Unsecured Creditors’ Committee filed their *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* (the “Joint Plan”) [Docket No. 1241]. The Joint Plan was immaterially modified on January 11, 2014 by the *Non-Material Modification to the First Amended Joint Chapter 11 Plan for the Debtors Filed by the Official Committee of Unsecured Creditors and Atalaya Administrative, LLC* [Docket No. 1345]

5. On February 13, 2014, this Court entered the *Findings of Fact, 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*. (the “Confirmation Order”) [Docket No. 1420]

6. On April 21, 2014, the *Notice of (A) Entry of Order Confirming the First Amended Joint Chapter 11 Plan of Reorganization of Piccadilly Investments, LLC, Piccadilly*

Restaurants, LLC, and Piccadilly Food Service, LLC, and (B) Notice of Occurrence of the Effective Date to All Creditors, Interest Holders, and Other Parties in Interest. (the “Effective Date Notice”) was entered on the docket of this Chapter 11 Case [Docket No. 1536].

7. Pursuant to the Effective Date Notice, the Effective Date (as defined in the Joint Plan) under the Joint Plan was April 17, 2014.

8. Pursuant to the Confirmation Order, professional fee claims are to be filed within sixty (60) days after the Effective Date. Sixty (60) days after the Effective Date is June 16, 2014. This Application is thus timely filed.

9. The Court has jurisdiction to consider this Application pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Application is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(B). Venue of these proceedings is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

10. The predicates for the relief requested herein are 11 U.S.C. §§ 105(a), 330, 331, and Fed. R. Bankr. P. 9013, the *Order Granting Motion for an Administrative Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals and Committee Members* entered on October 22, 2012 (the “Administrative Order”) [Docket No. 231], and the applicable provisions of the *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330* adopted by the Office of the U.S. Trustee.

11. The Administrative Order provided for retained professionals to submit a monthly fee statement (“Fee Statement”) to the Service Parties (defined in the Administrative Order). Pursuant to the Administrative Order, if no objections were made the Fee Statement within ten (10) days of submission to the Service Parties, Debtors were authorized to pay eighty percent (80%) of the requested fees and one hundred percent (100%) of the expenses as provided in the

Fee Statement. GAMDE submitted Fee Statements for each month during the Application Period, except for April 2014 as set forth hereinafter.

12. GAMDE believes that the time and cost records included in and attached hereto as Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit E, and Exhibit F and made a part hereof, and all other time and cost records referenced herein and made a part hereof, are in compliance with the requirements of LBR.WD 2016-1.

Background

13. On September 25, 2012, Debtors filed an *Application for Order Authorizing the Employment of Gordon, Arata, McCollam, Duplantis & Eagan, LLC and Peter A. Kopfinger as Special Counsel, Nunc Pro Tunc to the Petition Date, Pursuant to § 327(e) of the Bankruptcy Code* [Docket No. 140].

14. On September 26, 2012, the Court entered an *Interim Order Approving the Employment of Gordon, Arata, McCollam, Duplantis & Eagan, LLC and Peter A. Kopfinger as Special Counsel, Nunc Pro Tunc to September 11, 2012* [Docket No. 148].

15. On October 22, 2012, the Court entered a *Final Order Authorizing the Employment of Gordon, Arata, McCollam, Duplantis & Eagan, LLC and Peter A. Kopfinger as Special Counsel, Nunc Pro Tunc to the Petition Date, Pursuant to § 327(e) of the Bankruptcy Code* [Docket No. 230].

Prior Interim Fee Applications and Approvals

16. On December 12, 2012, GAMDE filed its *First Interim Application of Gordon, Arata, McCollam, Duplantis & Eagan, LLC for Allowance of Fees and Expenses as Special Counsel to Debtors and Debtors-In-Possession* for the period of September 21, 2012 through November 31, 2012 [Docket No. 408]. That application and all exhibits attached thereto are

incorporated herein and made a part herein *in extenso*. No objections were filed to that application. This Court entered an Order on January 14, 2013 [Docket No. 461] granting the entirety of GAMDE's requested fees of \$41,491.25 and expenses of \$1,430.42.

17. On April 11, 2013, GAMDE filed its *Second Interim Application of Gordon, Arata, McCollam, Duplantis & Eagan, LLC for Allowance of Fees and Expenses as Special Counsel to Debtors and Debtors-In-Possession* for the period of December 1, 2012 through March 31, 2013 [Docket No. 708]. That application and all exhibits attached thereto are incorporated herein and made a part herein *in extenso*. No objections were filed to that application. This Court entered an Order on May 20, 2013 [Docket No. 821] granting the entirety of GAMDE's requested fees of \$119,851.50 and expenses of \$3,210.57.

18. On July 18, 2013, GAMDE filed its *Third Interim Application of Gordon, Arata, McCollam, Duplantis & Eagan, LLC for Allowance of Fees and Expenses as Special Counsel to Debtors and Debtors-In-Possession* for the period of April 1, 2013 through June 30, 2013 [Docket No. 939]. That application and all exhibits attached thereto are incorporated herein and made a part herein *in extenso*. No objections were filed to that application. This Court entered an Order on August 20, 2013 [Docket No. 1037] granting the entirety of GAMDE's requested fees of \$102,786.75 and expenses of \$2,680.70.

19. On November 22, 2013, GAMDE filed its *Fourth Interim Application of Gordon, Arata, McCollam, Duplantis & Eagan, LLC for Allowance of Fees and Expenses as Special Counsel to Debtors and Debtors-In-Possession* for the period of July 1, 2013 through October 31, 2013 [Docket No. 1253]. No objections were filed to that application. That application and all exhibits attached thereto are incorporated herein and made a part herein *in extenso*. This Court entered an Order on December 20, 2013 [Docket No. 1310] granting the entirety of

GAMDE's requested fees of \$179,134.75 and expenses of \$3,832.08.

Fifth Interim Application Period

20. On December 13, 2013, pursuant to the Administrative Order, GAMDE served on the Service Parties its fourteenth Fee Statement for the period from November 1, 2013 through November 31, 2013. The fourteenth Fee Statement sought compensation in the amount of \$25,428.55, representing \$23,984.50 for fees and \$1,444.05 for necessary expenses incurred. The fourteenth Fee Statement is attached as Exhibit A. GAMDE did not receive any objections to the fourteenth Fee Statement.

21. On January 16, 2014, pursuant to the Administrative Order, GAMDE served on the Service Parties its fifteenth Fee Statement for the period from December 1, 2013 through December 31, 2013. The fifteenth Fee Statement sought compensation in the amount of \$10,537.73, representing \$10,248.75 for fees and \$288.98 for necessary expenses incurred. The fifteenth Fee Statement is attached as Exhibit B. GAMDE did not receive any objections to the fifteenth Fee Statement.

22. On February 17, 2014, pursuant to the Administrative Order, GAMDE served on the Service Parties its sixteenth Fee Statement for the period from January 1, 2014 through January 31, 2014. The sixteenth Fee Statement sought compensation in the amount of \$16,417.58, representing \$16,204.50 for fees and \$213.08 for necessary expenses incurred. The sixteenth Fee Statement is attached as Exhibit C. GAMDE did not receive any objections to the sixteenth Fee Statement.

23. On March 17, 2014, pursuant to the Administrative Order, GAMDE served on the Service Parties its seventeenth Fee Statement for the period from February 1, 2014 through February 28, 2014. The seventeenth Fee Statement sought compensation in the amount of

\$19,471.60, representing \$19,131.50 for fees and \$340.10 for necessary expenses incurred. The seventeenth Fee Statement is attached as Exhibit D. GAMDE did not receive any objections to the seventeenth Fee Statement.

24. On April 15, 2014, pursuant to the Administrative Order, GAMDE served on the Service Parties its eighteenth Fee Statement for the period from March 1, 2014 through March 31, 2014. The eighteenth Fee Statement sought compensation in the amount of \$15,256.00, representing \$14,855.00 for fees and \$401.00 for necessary expenses incurred. The eighteenth Fee Statement is attached as Exhibit E. GAMDE did not receive any objections to the eighteenth Fee Statement.

25. For the period of April 1, 2014 through April 16, 2014, GAMDE rendered services to Debtor totaling \$6,422.25, representing \$6,078.25 for fees and \$344.00 for necessary expenses. GAMDE did not circulate a Fee Statement for the April time given the short month, GAMDE not seeking any payment from Debtors for the April 2014 time, and the filing of this Application. The time and expense records for services rendered for April 2014 are attached as Exhibit F.

Services Performed During the Fifth Interim Application Period

26. GAMDE provided significant legal services as Special Counsel to Debtors during the Fifth Interim Application Period, which services include, but are not limited to the following:

- a. Attend to sale matters for property located in Tamarac, Florida;
- b. Attend to sale matters on Druid Hills property (purchase and sale agreement, lease, closing, and related matters);
- c. Attend to various restaurant location lease matters (lease amendments/modifications, SNDA's, estoppel certificates, etc.);

- d. Drafting/revising/cancellation of interim lease for Druid Hills location;
- e. Attend to sale matters on St. Ann property;
- f. Attend to parking lease matter in Augusta;
- g. Attend to office lease (revisions);
- h. Attend to notice of lease for office lease;
- i. Attend to collection matter regarding certain nursing homes;
- j. Attend to post-closing sale matters regarding Warner Robins;
- k. Consulting, drafting and re-redrafts regarding various business agreements (Ecolab, RMS, AMG, etc.);
- l. Attend to defense of suit under the Americans With Disabilities Act, as amended (“ADA”); and
- m. Several other real estate and general business matters as requested by Debtors from time to time.

Interim Fees and Expenses Requested for the Fifth Interim Application Period

27. During the Fifth Interim Application Period, GAMDE’s legal fees and costs for services provided to Debtors as special counsel totaled \$93,533.71, representing \$90,502.50 in fees and \$3,031.21 in necessary expenses. Exhibits A, B, C, D, and F contain: (i) itemized descriptions of the services performed, (ii) the date the services were performed, (iii) the amount of time spent performing those services, (iv) the identity of the person performing the services, and (v) a listing of all expenses incurred during the Application Period. GAMDE bills clients at \$0.10 per page for photocopies. Additionally, the expenses incurred include the actual cost of automated research and courier service. Mileage is calculated at the rate accorded by the Internal Revenue Service. Long distance charges represent actual cost of calls. Conference call charges

represent actual cost of conference calls. Fax and telecopies are charged at \$0.75 per page. GAMDE submits that all effort was made to keep out-of-pocket expenses at a minimum and that such expenses are reasonable based on the services provided heretofore by GAMDE.

28. All members of GAMDE involved in this case have made a deliberate effort to avoid any unnecessary duplication of work. GAMDE believes no unnecessary duplication has occurred.

29. GAMDE has not shared or agreed to share with any other entity or law firm the compensation received, allowance of which is requested herein, except to the extent that the funds received may be distributed to members of GAMDE. All professional services for which allowance is requested herein were performed by GAMDE, its attorneys, and its staff members for and on behalf of Debtors and not on behalf of any other entity or party in interest.

Recap of Significant Services Performed During the Final Application Period

30. GAMDE provided significant legal services as Special Counsel to Debtors during the Final Application Period (other than those listed above), which services included, but are not limited to the following

- a. Negotiation and preparation of various agreements/documents in connection with the swap of properties between Master Lease Pool I and Master Lease Pool II (Master Agreement and closing documents);
- b. Participated in drafting motion for approval of Master Agreement in connection with the proposed swap transactions;
- c. Preparation of purchase and sale agreement Pool II property located in Atlanta, Georgia;
- d. Assisted Debtors counsel in several lease rejection matters (Master Lease II,

- Smyrna, Georgia lease, location leases, etc.);
- e. Re-writes to beverage agreements (Coke and Dr Pepper agreements);
 - f. Attend to all sale matters regarding the sale of real property located in Warner Robins, Georgia;
 - g. Attend to all sale matters regarding the sale of real property located in Ocala, Florida;
 - h. Assist in motions to sell real estate located in Florida and Georgia;
 - i. Attend to office lease revisions;
 - j. Assisted Debtors counsel in plan and disclosure statement matters; and
 - k. Revisions to food distribution agreement with The Merchants Company d/b/a Merchants Foodservice (“Merchants”).

31. Of particular importance to the successful reorganization of Piccadilly Restaurants, LLC (“Restaurants”) were the (i) swap transaction (swap of those certain properties between Master Lease Pool I and Master Lease Pool II) and the rejection of Master Lease II, and (ii) renegotiation of the food distribution agreement with The Merchants Company. Without the successful outcome of either of the swap transaction or the renegotiation of the Merchants food distribution agreement, Restaurants would not have been able to reorganize resulting in the liquidation of Restaurants.

32. The swap transaction was extremely complicated as it involved two separate master leases under which Restaurants was the lessee. Each master lease, by its terms, was an unitary and unseverable instrument thus making the rejection of individual restaurant locations covered by a master lease extremely difficult (or not doable as advanced by the lessors under the master leases). Restaurants, with GAMDE’s assistance, was able to negotiate a deal with both

lessors under the master leases to swap profitable restaurant locations for unprofitable restaurant locations such that one master lease pool was profitable and the other master lease pool was unprofitable. Part of the entire deal was for Restaurants to reject the reconstituted master lease containing the unprofitable restaurant locations. Achieving this swap transaction required extensive negotiations, documenting the transaction, and obtaining this Court's approval of the entire transaction. The outcome obtained was a complete success for Restaurants as the swap transaction alone resulted in an overall annual benefit to Restaurants' EBITDA in the range of \$1.1 to \$1.3 million (the expiration date of the rejected master lease was August 31, 2021).

33. Prior to the Petition Date, Merchants was Restaurants' primary source of food and supplies, selling and deliver to Restaurants approximately ninety percent (90%) of Restaurants food and supplies. During the Chapter 11 Case, Restaurants, with GAMDE's assistance, was able to fully negotiate and document a new two (2) year food distribution agreement, Restaurants entry into which was approved by this Court, that resulted in an uninterrupted supply of food and supplies from Merchants at prices and credit terms to Restaurants that were generally equal to or better than the prices and credit terms with Merchants prior to the Petition Date. The monetary benefit to Restaurants over the two (2) year term of the renegotiated Merchants food distribution agreement will be approximately \$600,000.

34. GAMDE's efforts in the Chapter 11 Case, just resulting from the work done in connection with the swap transaction and the renegotiation of the Merchants' food distribution agreement, resulted in millions of dollars of monetary benefit to Piccadilly Restaurants, LLC – a combination of direct cash in to Piccadilly Restaurants, LLC (sale of properties) and savings to Piccadilly Restaurants, LLC (*e.g.*, savings from the renegotiation food distribution agreement, pool property swaps and lease rejection, Coke and Dr. Pepper agreements, location lease

rejections, new office lease, etc.).

Fee Calculation

35. “The Fifth Circuit uses the ‘lodestar’ method to calculate attorneys’ fees.” *Transamerican Natural Gas Corp. v. Zapata P’ship, Ltd. (In re Fender)*, 12 F.3d 480, 487 (5th Cir. 1994) (citation omitted). The lodestar is the number of hours reasonably expended multiplied by “the prevailing hourly rate in the community for similar work.” *Id.* The request for fees is then adjusted upward or downward based on the factors identified in *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d. 714 (5th Cir. 1974). A detailed description of the application of each of these factors relevant to this Application is set forth below.

- A. **The Time and Labor Expended** – During the Final Application Period, the time expended by GAMDE for legal services was commensurate with the factual and legal issues involved in the representation of Debtors.
- B. **Experience, Reputation and Ability** – Professional services rendered in this case have been performed by attorneys with broad experience and a high level of skill in the areas for which they have been employed. GAMDE submit that its attorneys, with varying levels of experience and seniority, have been used effectively and efficiently to meet the requirement of the tasks assigned. GAMDE’s expertise and experience in these matters enabled the case to progress in an efficient manner to the benefit of the estate and the creditors. The bulk of the work performed by GAMDE has been performed by **Peter A. Kopfinger**. Any other attorney[s] providing services to Debtors on this case devoted less significant time, but maximum assistance depending on the particular specialty of each attorney. GAMDE submits that the fees for time expended, and rates charged for such services are reasonable given the experience and special knowledge of each attorney working on the case.
- C. **The Skills Required for Performance of Services** – GAMDE’s attorneys have appeared before courts in this district and throughout Louisiana in bankruptcy cases on behalf of Debtors, creditors, trustees, and receivers for many years. Applicant believes and respectfully submits that they are highly regarded in the areas of bankruptcy law, commercial litigation, property and other transactions, business law, and the law of secured transactions in the State of Louisiana. GAMDE’s attorneys possess the experience, reputation, and ability to merit an award of the requested compensation and reimbursement.
- D. **The Novelty and Difficulty of Issues** – The issues in this case were not particularly novel or overly difficult.

- E. The Customary Fees** – GAMDE has applied for allowance of compensation for fees that reflect its billing rates charged to clients by GAMDE. GAMDE believes that its customary fees for services are equal to or below those of other firms in the national bankruptcy community and within the range of fees approved for attorneys of similar experience within the Louisiana bankruptcy courts.
- F. The Amount Involved and the Results Obtained** – GAMDE successfully completed lease matters for various store locations; GAMDE’s successful resolution of the Regions collection claim; GAMDE assistance in the defense of ADA litigation; GAMDE assistance in closing of the Druid Hills transaction; and GAMDE assistance in successful negotiation of various business contracts and the other successes outlined hereinabove.
- G. Preclusion from Other Employment** – Although GAMDE was not precluded from other employment during the representation of Debtors as Special Counsel during the Final Application Period, GAMDE did spend many hours on Debtors’ projects which could have been spent on other files or other matters.
- H. Contingent Nature of Fees** – These fees were contingent to the extent that all fees due counsel in a pending bankruptcy proceeding are contingent upon the success of the case, the availability of cash, review by the Office of the U.S. Trustees, and the approval of the Court.
- I. Time Limitations and Other Circumstances** – Many of the tasks completed by GAMDE were performed on abbreviated time deadlines customary with the nature of the projects and/or the existence of this Chapter 11 Case.
- J. The Undesirability of the Case** – This case was not particularly undesirable, but involved substantial time and expedited effort.
- K. The Nature and Length of the Professional Relationship with the Client** – GAMDE represented Piccadilly Restaurants, L.L.C. and Piccadilly Food Service, L.L.C. in various general business matters including, without limitation, real estate matters, contract matters, and litigation matters for approximately three years prior to the Petition Date. GAMDE also advised Piccadilly Restaurants, LLC and Piccadilly Food Service, L.L.C. on various bankruptcy related matters during the year prior to the Petition Date.
- L. Awards in Similar Cases** – GAMDE submits that an order of compensation on the basis provided for is comparable to that awarded in similar cases in the Western District of Louisiana and bankruptcy courts within Louisiana. In comparison to the fees and costs requested by other parties-in-interest and their counsel, the fees and costs requested herein are fair and reasonable, and have resulted in a demonstrable benefit to the estate.

Conclusion

36. GAMDE submits that the services it has provided to the Debtors were of direct

benefit to the estate. For these reasons and the reasons set forth above, the compensation sought is reasonable in light of professional services provided.

WHEREFORE, GAMDE prays that an Order be entered:

(a) Granting GAMDE allowance and payment of compensation on account of their representation as Special Counsel for Debtors during the Fifth Interim Application Period in the amount of \$90,502.50, and the reimbursement of expenses in the aggregate amount of \$3,031.21, for a total of \$93,533.71; and

(b) Granting GAMDE allowance and payment of compensation on a final basis on account of their representation as Special Counsel for Debtors during the Final Application Period in the amount of \$533,766.75, and the reimbursement of expenses in the aggregate amount of \$14,184.98, for a total of \$547,951.73; and

(c) Such other general, legal or equitable relief as is appropriate and just under the circumstances.

Respectfully submitted,

**GORDON, ARATA, MCCOLLAM,
DUPLANTIS & EAGAN, LLC**

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