

**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**

**SECOND APPLICATION FOR AN ORDER *NUNC PRO TUNC*
AUTHORIZING THE EMPLOYMENT AND COMPENSATION OF
CERTAIN PROFESSIONALS UTILIZED IN THE ORDINARY COURSE OF
BUSINESS OF THE DEBTORS' BUSINESS**

NOW IN COURT, through undersigned counsel, come the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"),² who submit this Second Application for an Order *Nunc Pro Tunc* Authorizing the Employment and Compensation of Certain Professionals Utilized in the Ordinary Course of the Debtors' Business (the "Motion"). 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).

BACKGROUND

2. On September 11, 2012 (the "Petition Date"), the Debtors filed for relief under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are

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.

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 creditors was appointed in these Chapter 11 cases on October 23, 2012.

4. The Debtors are jointly administrated pursuant to Bankruptcy Code § 105(a) and Bankruptcy Rule 1015(b).

5. The statutory predicates for the relief requested herein are §§ 105(a), 363(c), 1107(a), and 1108 of the Bankruptcy Code.

RELIEF REQUESTED

6. By this Motion, the Debtors respectfully request authorization *nunc pro tunc* to retain and employ the Ordinary Course Professionals, as defined below, without requiring the submission of separate retention pleadings for each Ordinary Course Professional.

7. The Debtors also ask that they be allowed to pay the Ordinary Course Professionals without need for a fee application.

BASIS FOR RELIEF

8. On September 25, 2012, the Debtors filed an *Application for an Order Nunc Pro Tunc Authorizing the Employment and Compensation of Certain Professionals Utilized in the Ordinary Course of Business* (the “First Application”)(P-141). The First Application requested that this Court enter an order authorizing the Debtors to employ specified, listed professionals. This Court granted the First Application on October 22, 2012 (P-232).

9. Several of Ordinary Course Professionals were inadvertently not listed by the Debtors. The Debtors, therefore, file this second Motion seeking authority to retain and employ, and pay Ordinary Course Professionals on the terms approved by the Court following the First Application and as described below.

10. The Debtors' employees, in the day-to-day performance of their duties, regularly call upon certain outside professionals (collectively, the "Ordinary Course Professionals")³ to assist them in carrying out their assigned responsibilities.

11. The Debtors cannot continue to operate their businesses with sound business practices unless they retain and pay for the services of the Ordinary Course Professionals. The operation of the Debtors' businesses would be hindered if (a) the Debtors were required to submit to the Court an application, affidavit, and proposed retention order for each Ordinary Course Professional, and (b) each Ordinary Course Professional were required to apply for approval of its employment and compensation.

12. Furthermore, a number of the Ordinary Course Professionals are unfamiliar with the fee application procedures employed in bankruptcy cases. Some of the Ordinary Course Professionals might be unwilling to work with the Debtors if these requirements were imposed. The uninterrupted services of the Ordinary Course Professionals is vital to the Debtors continuing operations and their ultimate ability to reorganize. More importantly, the cost of preparing and prosecuting these retention applications and fee applications would be significant and unnecessary because such costs would ultimately be borne by the Debtors' estates.

13. Moreover, a requirement that the Ordinary Course Professionals each file retention pleadings and follow the usual fee application process required of other bankruptcy professionals would flood the Office of the Clerk of Court and the United States Trustee's office with unnecessary fee applications. This Application proposes a procedure to alleviate such a burden for all Ordinary Course Professionals to whom the Debtors pay less than \$50,000 on a three month basis (quarterly reporting). Those to whom the Debtors will pay more than \$50,000

³ The Ordinary Course Professionals utilized or expected to be utilized by the Debtors are identified on Exhibit A hereto. The Debtors reserves their right to supplement Exhibit A.

per quarter must follow the full application process to act as outside counsel to the Debtors.

14. The Debtors anticipate employing, among others, certain of the Ordinary Course Professionals listed on Exhibit A to perform ongoing services during the pendency of this Chapter 11 Case. In particular, outside counsel performing litigation-related services for the Debtors are among the Ordinary Course Professionals that may be listed on Exhibit A. Although most litigation will be stayed upon the commencement of this Chapter 11 Case, the Debtors, out of an abundance of caution, seeks authority to retain the services of the attorneys that may be listed on Exhibit A should circumstances render such services necessary during the pendency of this Chapter case.

15. The Debtors propose to file a statement with the Court and to serve such statement on (a) the secured creditor, Atalaya Administrative, LLC, and its counsel of record, Brent R. McIlwain and David F. Waguespack; (b) the United States Trustee; and (c) any official committee appointed in this case on March 15, June 15, September 15, and December 15 of every year that this case is pending. Such statement shall include the following information for each Ordinary Course Professional: (a) the name of the Ordinary Course Professional; (b) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by that Ordinary Course Professional during the previous 120 days; and (c) a general description of the services rendered by that Ordinary Course Professional. The first such statement shall be served on or before December 15, 2012.

16. The Debtors will provide unredacted copies of the bills/invoices of these Ordinary Course Professionals to the U.S. Trustee before payment. The Ordinary Course Professionals also will provide the U.S. Trustee receipts for all travel related expenses, hotel rooms, meals totaling more than \$25, and individual telephone or conference call charges of more than \$100.

The Debtors will also provide the requested information to the U.S. Trustee on a CD or other digital medium.

17. Although some of the Ordinary Course Professionals hold unsecured claims against the Debtors with respect to pre-petition services rendered, the Debtors do not believe that any of the Ordinary Course Professionals have an interest materially adverse to the Debtors, their creditors, or other parties-in-interest, and thus none would be retained who do not meet, if applicable, the special counsel retention requirements of Section 327(e) of the Bankruptcy Code.

18. In order to ensure that each of the Ordinary Course Professionals is disinterested and does not represent or hold any interest adverse to the Debtors or their estate with respect to the matter on which such professional is employed, the Debtors propose that each Ordinary Course Professional be required to file an Affidavit of Disinterestedness with the Court and to serve copies thereof on the Debtors, the Office of the United States Trustee, counsel to any statutory creditors' committee appointed in this case, and those listed on the Special Notice List (as defined below) prior to or contemporaneous with the first submission to the Debtors of invoices accompanying a request for compensation.

19. To the extent parties-in-interest have questions or concerns related to payments to any Ordinary Course Professionals, the Debtors will supply such parties with additional information regarding the work performed and the fees and expenses incurred to permit such parties to reasonably evaluate such payments.

20. The Ordinary Course Professionals will not be involved in the administration of this Chapter 11 Case but, rather, will provide services in connection with the Debtors' ongoing, non-bankruptcy related issues. As a result, the Debtors do not believe that the Ordinary Course Professionals are "professionals," as that term is used in Section 327 of the Bankruptcy Code,

whose retention must be approved by the Court.⁴ Nevertheless, out of an abundance of caution, the Debtors seek the relief requested in this Application to avoid any subsequent controversy regarding the Debtors' employment and payment of the Ordinary Course Professionals during the pendency of this Chapter 11 Case. The Debtors shall seek specific Court authority to employ all professionals involved in the actual administration of this Chapter 11 Case pursuant to Section 327 of the Bankruptcy Code.

21. The relief requested in this Application has been granted routinely by numerous courts, including this Court. See *In Re East Cameron Partners, LP*, Western District of Louisiana (Lafayette) case no. 08-51207 (Docket ##6 and 99).

NOTICE

22. Notice of this Application has been given to (a) the secured creditor, through Atalaya Administrative, LLC, and its counsel of record, Brent R. McIlwain and David F. Waguespack, (b) the 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) the Unsecured Creditors Committee, and its counsel and (f) the Office of the United States Trustee. The Debtors submit

⁴ See e.g., *Elstead v. Nolden (In re That's Entertainment Markt'g Group, Inc.)*, 168 B.R. 226, 230 (N.D. Cal. 1994)(only the retention of professionals whose duties are central to the administration of the estate require prior court approval under Section 327); *In re Madison Mgmt. Group, Inc.*, 137 B.R. 275, 283 (Bankr. N.D. Ill. 1992) (same); *In re Sieling Assocs. Ltd. P'ship*, 128 B.R. 721, 723 (Bankr. E.D. Va. 1991) (same); *In re Riker Indus., Inc.*, 122 B.R. 964, 973 (Bankr. N.D. Ohio 1990) (no need for Section 327 approval of the fees of a management and consulting firm that performed only "routine administrative functions," and whose "services were not central to [the] bankruptcy case"); *In re D'Lites of Am., Inc.*, 108 B.R. 352, 353 (Bankr. N.D. Ga. 1989) (Section 327 approval is not necessary for "one who provides services to the debtor that are necessary regardless of whether petition was filed"); *In re Fretheim*, 102 B.R. 298, 299 (Bankr. D. Conn. 1989) (only those professionals involved in the actual reorganization effort, rather than debtor's ongoing business, require approval under Section 327); *In re Pacific Forest Indust., Inc.*, 95 B.R. 740, 743 (Bankr. C.D. Cal. 1989); *In re Johns-Manville Corp.*, 60 B.R. 612, 619 (Bankr. S.D.N.Y. 1989) (only those professionals involved in the actual reorganization effort, rather than the debtor's ongoing business, require approval under Section 327).

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, attached as Exhibit B, (i) granting this Motion, (ii) authorizing the Debtors to retain and employ the Ordinary Course Professionals *nunc pro tunc*, and (iii) granting such other general and equitable relief as is just and proper.

Respectfully submitted,

/s/ Mark A. Mintz

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Attorneys for Piccadilly Restaurants, LLC,

Piccadilly Food Service, LLC, and

Piccadilly Investments, LLC

EXHIBIT A

<u>NAME OF PROFESSIONAL</u>	<u>DEBTOR</u>	<u>SERVICES</u>
Rabalais, Unland & Lorio	Piccadilly Restaurants, LLC	Attorneys real estate, general liability, personal injury and workers' compensation matters
Murphey Sibley	Piccadilly Restaurants, LLC	Attorneys real estate, general liability, personal injury and workers' compensation matters
Luks, Santaniello, Petnillo and Jones	Piccadilly Restaurants, LLC	Attorneys real estate, general liability, personal injury and workers' compensation matters
Pugh, Accardo, Haas & Radecker, LLC	Piccadilly Restaurants, LLC	Attorneys real estate, general liability, personal injury and workers' compensation matters
Francisco Blanco, LP	Piccadilly Restaurants, LLC	Attorneys real estate, general liability, personal injury and workers' compensation matters
McDonald, Patrick, Poston, Hemphill & Roper, LLC	Piccadilly Restaurants, LLC	Attorneys real estate, general liability, personal injury and workers' compensation matters
McLemore Law Firm	Piccadilly Restaurants, LLC	Attorneys real estate, general liability, personal injury and workers' compensation matters
Andy Schreck	Piccadilly Restaurants, LLC	Attorneys real estate, general liability, personal injury and workers' compensation matters
Wilson, Jones, Carter & Baxley	Piccadilly Restaurants, LLC	Attorneys real estate, general liability, personal injury and workers' compensation matters
Breazeale, Sachse & Wilson, L.L.P	Piccadilly Restaurants, LLC	Attorneys real estate, general liability, personal injury and workers' compensation matters

<u>NAME OF PROFESSIONAL</u>	<u>DEBTOR</u>	<u>SERVICES</u>
Preston O. Cockey, Jr., P.A.,	Piccadilly Restaurants, LLC	Attorneys Florida real estate, general liability, personal injury and workers' compensation matters
Arnall Golden Gregory, LLP	Piccadilly Restaurants, LLC	Attorneys Georgia real estate,

EXHIBIT B

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

IN RE:

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

DEBTORS

* **CASE NO. 12-51127**
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* **(JOINT ADMINISTRATION)⁵**
*
* **CHAPTER 11**
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* **JUDGE ROBERT SUMMERHAYS**

**ORDER *NUNC PRO TUNC* AUTHORIZING EMPLOYMENT AND COMPENSATION
OF CERTAIN PROFESSIONALS UTILIZED IN THE ORDINARY
COURSE OF THE DEBTORS' BUSINESS**

Upon consideration of the Second Motion for an Order *Nunc Pro Tunc* Authorizing Employment and Compensation of Certain Professionals Utilized in the Ordinary Course of the Debtors' Business pursuant to 11 U.S.C. § 327(a) of the Bankruptcy Code (the "Motion"),

⁵ 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).

(Docket #141) filed on September 25, 2012, wherein Piccadilly Restaurants, LLC *et al.* (the “Debtors”) request that this Court enter an order pursuant to 11 U.S.C. § 327(a) authorizing the Debtors to employ and retain the professionals listed on Exhibit A of the Motion. This Court finds that (a) the professionals listed by the Debtors neither represent nor hold an interest adverse to the Debtors or to the estate and are disinterested persons, (b) the professionals are qualified to provide services to the Debtors under §§ 327(a) and (e) of the Bankruptcy Code, and (c) employment of the listed professionals would best serve the interests of the Debtors and the Debtors’ estates; and after due deliberation and cause appearing therefor;

IT IS ORDERED that, pursuant to 11 U.S.C. §§ 327(a) and (e), the Debtors are authorized to retain, employ, and compensate the entities listed on Exhibit A as attorneys for the Debtors in this Chapter 11 case effective as of the Petition Date (as defined in the Motion), upon the terms and conditions of the employment set forth in the Motion.

IT IS FURTHER ORDERED that each Ordinary Course Professional file an Affidavit of Disinterestedness with the Court and serve copies upon the Debtors, the Office of the United States Trustee, counsel to any statutory creditors’ committee appointed in this case, and those listed on the Special Notice List, prior to or contemporaneous with the first submission to the Debtors of invoices accompanying a request for compensation.

IT IS FURTHER ORDERED that all Ordinary Course Professionals to whom the Debtors pays less than \$50,000 on a three-month basis (quarterly reporting) will not have to file retention pleadings or follow the usual fee application process. Those to whom the Debtors will pay more than \$50,000 per quarter must follow the full application process to act as outside counsel to the Debtors.

IT IS FURTHER ORDERED that the Debtors will provide unredacted copies of the bills/invoices of these Ordinary Course Professionals to the United States Trustee before payment. The Ordinary Course Professionals also will provide the United States Trustee receipts for all travel related expenses, hotel rooms, meals totaling more than \$25, and individual telephone or conference call charges of more than \$100. The Debtors will also provide the requested information to the United States Trustee on a CD or other digital medium.

IT IS FURTHER ORDERED that the Debtors file a statement with the Court and serve such statement on the United States Trustee and any official committee appointed in this case on March 15, June 15, September 15, and December 15 of every year that this case is pending. Such statement shall include the following information for each Ordinary Course Professional: (a) the name of the Ordinary Course Professional; (b) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by such Ordinary Course Professional during the previous 120 days, and (c) a general description of the services rendered by each Ordinary Course Professional.

IT IS FURTHER ORDERED that, the Debtors will give notice by mailing this Order, the Application, and the Statement to Notice of this Application to (a) the secured creditor; (b) the thirty (30) largest unsecured creditors; (c) twenty (20) additional random unsecured creditors; (d) all parties who have filed a notice of appearance and request for notice; (e) the United States Trustee; (f) all parties who have requested special notice pursuant to Bankruptcy Rule 2002; and (h) the Unsecured Creditors Committee, if appointed.

IT IS FURTHER ORDERED that, any objection that any listed professional is precluded from serving as an attorney to Debtors in this Chapter 11 Case under 11 U.S.C.

§§ 327(a) and (e) that arises from disclosure contained in the Statement may be made by any creditor or equity interest holder, provided any such objection will be made promptly.

IT IS FURTHER ORDERED that, all compensation for services rendered and reimbursement for expenses incurred during this Chapter 11 Case will be paid as provided by order of this Court.

IT IS FURTHER ORDERED that notwithstanding anything herein to the contrary, the authority granted herein is subject to any requirements and limitations imposed upon the Debtors under any Court order regarding debtor-in-possession financing and/or cash collateral use and any approved budget therein. Nothing contained herein shall, or shall be deemed to, modify, amend or alter such order or approved budget.

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This Order was prepared and is being submitted by:

R. PATRICK VANCE (#13008)
ELIZABETH J. FUTRELL (#05863)
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