

**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**

**MOTION FOR AUTHORITY, IN ACCORDANCE WITH LOCAL BANKRUPTCY
RULE 2016-2, (1) TO PAY INCENTIVE COMPENSATION, AS PART OF
THE DEBTORS' ESTABLISHED PRE-PETITION INCENTIVE PLAN,
TO CERTAIN ELIGIBLE PARTICIPANTS, AND (2) TO CONTINUE TO PAY BASE
COMPENSATION AND BENEFITS TO THE SAME ELIGIBLE PARTICIPANTS,
NUNC PRO TUNC TO THE PETITION DATE**

NOW INTO COURT, through undersigned counsel, come the debtors and debtors-in-possession (collectively, the "Debtors"),² who submit this Motion for Authority, in Accordance with Local Bankruptcy Rule 2016-2, (1) to Pay Incentive Compensation, as Part of the Debtors' Established Pre-Petition Incentive Plan, to Certain Eligible Participants, and (2) to Continue to Pay Base Compensation and Benefits to the same Eligible Participants, *Nunc Pro Tunc* to the Petition Date (the "Motion"). In support of this Motion, the Debtors rely upon the attached

¹ Joint administration requested 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, Piccadilly Food Service, LLC, and Piccadilly Investments, LLC.

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Declaration of Thomas J. Sandeman (the "Sandeman Declaration"), which is attached hereto as **Exhibit A** and incorporated herein by reference, and respectfully represent as follows:

BACKGROUND

1. On September 11, 2012 (the "Petition Date"), the Debtors filed for relief under Chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

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

3. No trustee or examiner has been appointed. An Official Committee of Unsecured Creditors (the "Unsecured Creditors' Committee") was appointed in this Chapter 11 Case on October 23, 2012.

THE PREVIOUS ORDER ON COMPENSATION AND BENEFITS

4. This Court previously granted the Debtors' *Motion for Entry of an Order to (A) Pay All Outstanding Pre-Petition Wages, Salaries, Other Accrued Compensation, Expense Reimbursements, Benefits, and Related Amounts; and (B) Continue Specified Benefit Programs in the Ordinary Course of Business* (Docket #7) filed on September 12, 2012, by Order entered on September 14, 2012 (Docket #50) (the "Compensation and Benefit Order").

5. Pursuant to the Compensation and Benefit Order, this Court granted the Debtors authority to continue to pay, in the ordinary course of business, pre-petition wages, salaries, and

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other accrued compensation, as well as a number of employee related benefits (collectively, the “Employee Obligations”).

RELIEF REQUESTED

6. To the extent that the Compensation and Benefit Order does not cover the relief sought in this Motion, this Motion is being filed to ensure that the Debtors have authority to pay (a) certain incentive compensation (as described below), and (b) base compensation and benefits which is commensurate with the compensation and benefits paid before the Petition Date (as described below).

7. More particularly, by this Motion, the Debtors seek authority to pay certain eligible Participants (as defined below) the incentive compensation that each has earned under the Debtors’ 2012 Incentive Plan (as defined below).

8. By this Motion, the Debtors also seek authority to pay after the Petition Date, *Nunc Pro Tunc* to the Petition Date, base compensation and benefits to the Participants (as defined below) that is commensurate to the compensation and benefits that they received before the Petition Date.

9. The Debtors will file an additional motion, at a later date, regarding Mr. Sandeman’s Employment Agreement and his performance bonus.

THE PRE-PETITION INCENTIVE PLAN

10. Since well before the Petition Date, Piccadilly Restaurants, LLC (“Restaurants”) has had a corporate incentive plan in effect for 2012 (the “Incentive Plan”). A copy of the

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Incentive Plan is attached to this Motion as **Exhibit B**. As stated in the Incentive Plan, the purpose of the Incentive Plan is to encourage its managers to increase profitability and to encourage the growth of Restaurants. (Sandeman Declaration, at Paragraph 2.)

11. To be eligible to participate in the Incentive Plan, an employee must be a current Vice President, Senior Vice President or officer of Restaurants. The following individuals are eligible participants under the Incentive Plan (collectively, the “Participants”): Angele Anson, who is Vice President of Marketing; Jim Ortis, who is the Vice President of Risk Management; Fred Otillo, who is Vice President of Information Technology; Patrick Prudhomme, who is the Vice President of Purchasing; Chris Sanchez, who is the Chief Operating Officer; and Robin Tassin Liggett, who is the Vice President of Benefits and Human Resources; and Keith Brown, Vice President of Food Services. (Sandeman Declaration, at Paragraphs 2 and 3.)

12. Incentive compensation under the Incentive Plan is directly tied to Restaurants’ financial performance, based on a pre-set EBITDA target for the first and last six months of the year. See Exhibit B, and Sandeman Declaration, at Paragraph 4.

13. Incentive compensation is paid on a semi-annual basis **if and only if** Restaurants’ meets its pre-set EBITDA target. In order to be eligible to receive incentive compensation under the Incentive Plan, Restaurants must meet 100% of EBITDA target for the applicable period. See Exhibit B, and Sandeman Declaration, at Paragraph 4.

14. Incentive compensation remains an integral part of each Participant’s overall compensation package. Sandeman Declaration, at Paragraph 5.

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15. For the preceding six month period, Restaurants exceeded the pre-set EBITDA target established for the incentive payment under the Incentive Plan, as summarized below.

<u>Description</u>	<u>Actual Results</u>	<u>Target/Plan</u>	<u>Variance</u>
Operating EBITDA	\$2,735	\$2,569	\$166 (6.5% increase)
EBITDA	\$2,709	\$2,539	\$170 (6.7% increase)

Restaurants' EBITDA target called for a **doubling of EBITDA from 2011**. The actual results exceed the target by 6.5% and 6.7%, respectively, for the six month period. Results would have been higher if these Chapter 11 cases not been filed. The Chapter 11 cases resulted in non-recoverable higher prices charged by Merchants FoodService of approximately \$400,000 on the Debtors' proprietary products. Sandeman Declaration, at Paragraph 6.

16. Because Restaurants exceeded the 100% EBITDA target by at least 6%, the Incentive Plan provides that each Participant should receive incentive compensation equal to the Participant's pre-set incentive percentage. The incentive percentage for each of the Participants is 20%, except that one Participant's incentive percentage is 25%. Sandeman Declaration, at Paragraph 7. See Paragraph 17 below.

17. Below is a chart that shows the amount of incentive compensative that each Participant is entitled to receive under the Incentive Plan. One employee was promoted to Vice President on November 2, 2012 and, therefore, is only entitled to incentive compensation under the Incentive Plan based on a prorated period, as set forth in the chart below. Sandeman Declaration, at Paragraph 7.

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			@100% Semi-annual
Participants	Incentive Percentage	Base Comp.	Incentive Compensation
Angele Anson	20%	95,056.00	9,505.60
Keith Brown	20%	82,492.80	2,749.76 *
Jim Ortis	20%	85,134.40	8,513.44
Fred Otilio	20%	142,188.80	14,218.88
Pat Prudhomme	20%	152,193.60	15,219.36
Chris Sanchez	25%	173,201.60	21,650.20
Robin Tassin Liggett	20%	84,572.80	8,457.28
Total:			\$80,314.52

*Prorated amount equal to two months. Brown was promoted to Vice President 11/2/12.

BASE COMPENSATION AND BENEFITS FOR THE PARTICIPANTS

18. The above chart also states the annual base compensation that each Participant receives from Restaurants. The base compensation is paid in bi-weekly installments, subject to all applicable withholding and deductions. All compensation to the Participants has been paid by Restaurants, including all benefits which includes payments and reimbursements of ordinary medical expenses or premiums that are not included in base compensation, and is commensurate with practices before the Petition Date. Sandeman Declaration, at Paragraphs 8 and 9.

19. Even as appointed, and in many instances mid-level, officers of Restaurants, the Participants technically could be considered “insiders” within the meaning of section 101(31)(B)(ii) of the Bankruptcy Code. Therefore, this Motion seeks approval in accordance with Local Bankruptcy Rule 2016-2, *Nunc Pro Tunc* to the Petition Date, to pay each Participant’s base compensation and related benefits, out of an abundance of caution.

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NOTICE

20. Notice of this Motion has been given to the following: (a) the secured creditor, through Atalaya Administrative, LLC, and its counsel of record, Brent R. McIlwain and David F. Waguespack; (b) the thirty (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) the Unsecured Creditors Committee; and (f) the Office of the United States Trustee.

WHEREFORE, the Debtors request that the Court enter an Order substantially similar to the proposed Order attached to this Motion as **Exhibit C**, that (i) grants this Motion, (ii) grants authority to the Debtors to pay the Participants the incentive compensation that each has earned under the Debtors' pre-petition incentive plan, (iii) grants the Debtors authority to pay the base compensation and the benefits of each of the participants, *Nunc Pro Tunc* to the Petition Date, commensurate with the base compensation and benefits that each of the participants received before the Petition Date, and (iv) grants all other legal and equitable relief as is just and proper.

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Respectfully submitted,

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EXHIBITS

EXHIBIT A SANDEMAN DECLARATION

EXHIBIT B 2012 CORPORATE INCENTIVE PLAN

EXHIBIT C PROPOSED ORDER

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