

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

**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**

Yucaipa Corporate Initiatives Fund I, L.P. (“Yucaipa”), files this objection (the “Objection”), pursuant to section 1129 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) to confirmation of the First Amended Joint Chapter 11 Plan of Reorganization (the “Plan”)² 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) (collectively, “Atalaya”) and the Official Committee of Unsecured Creditors (the “Committee” and, together with Atalaya, the “Proponents”). In support hereof, Yucaipa respectfully submits as follows:

¹ 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.).

² Capitalized terms used but otherwise not defined herein shall have the meanings ascribed to them in the Plan.

PRELIMINARY STATEMENT

1. The Plan cannot be confirmed. Piccadilly has significant equity value. Yet the Plan provides no recovery to equity holders. Instead, Atalaya has awarded itself a windfall – it will convert \$9 million of debt in exchange for equity worth at least \$19 million.³ Atalaya also seeks to lock in its inflated secured claim under the Plan, layering \$5 million in unwarranted interest, fees and letter of credit obligations on top of its actual claim. In sum, the Plan violates Bankruptcy Code section 1129(b) and is unconfirmable because Piccadilly's equity has value, but the Plan provides equity holders nothing while Atalaya's recovery under the Plan vastly exceeds its actual secured claim.

2. Piccadilly's enterprise value is between \$48 million to \$59 million with a midpoint of \$54 million under the Yucaipa valuation analysis. This is the only expert report that relies on the financial projections generated by the Debtors and their professionals. The Debtors and their professionals are the only parties with the combination of unique operational knowledge of Piccadilly and expertise necessary to prepare accurate long-term financial projections. The Debtors also must act in the best interest of the estates and their financial projections were created against the backdrop of this continuing obligation. Because Yucaipa's expert report is methodologically sound and relies on financial projections from the parties best equipped to forecast future earnings, equity holder recoveries should reflect an enterprise value of \$54 million.

3. Unlike the Yucaipa valuation analysis, Atalaya's expert report is premised upon faulty financial projections prepared by the secured lender's financial advisor who has no experience running a cafeteria chain and no firsthand knowledge of the Debtors' operations.

³ Assumes the midpoint valuation of \$54 million established by the Yucaipa Report (defined below).
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This professional was not working inside the company; it works to maximize the value of only one party's interest – Atalaya. The financial projections reflect this objective. As expected, they lead to a depressed enterprise value that supports Atalaya's windfall under the Plan. Because the projections are unsound and skewed to depress enterprise value, they must be discredited, and with them, Atalaya's purported valuation of Piccadilly.

4. Moreover, the Committee's expert report proposes an enterprise value range without considering any long-term financial projections. Instead, it relies largely on the implied enterprise value under the Plan and anecdotal observations. This approach lacks the methodological rigor necessary to support a sound estimate of Piccadilly's enterprise value.

BACKGROUND

5. On September 11, 2012, Piccadilly Restaurants, LLC ("PR"), Piccadilly Food Service, LLC ("PFS"), and Piccadilly Investments, LLC ("PI") (collectively, "Piccadilly" or the "Debtors") filed these chapter 11 cases. They have operated their business as debtors and debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

6. 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 (Docket No. 263)).

7. On October 23, 2012, the Office of the United States Trustee appointed the Committee.

8. On March 15, 2013, Atalaya filed its proof of claim (Claim No. 2-1), asserting a prepetition secured claim of not less than \$28,104,722.20 (the "Atalaya Claim").

9. On March 19, 2013, the Committee commenced an adversary proceeding against Atalaya by filing its *Complaint to Determine the Extent, Validity and Priority of Liens and Security Interests Asserted by Atalaya Administrative, LLC* (Case No. 13-05009, Docket No. 1).

10. On September 27, 2013, the Plan Proponents filed the *Disclosure Statement for the 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* (Docket No. 1124) (the “Disclosure Statement”) and the *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* (Docket No. 1123).

11. On October 18, 2013, Yucaipa filed its objection to the Disclosure Statement (Docket No. 1165).

12. On November 13, 2013, the Court approved the Disclosure Statement (Docket No. 1234).

13. 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”). The Yucaipa Report is attached hereto as **Exhibit A**.

14. On January 6, 2014, Yucaipa filed the *Objection of Yucaipa Corporate Initiatives Fund I, L.P. to Asserted Claim of Atalaya Administrative LLC* (the “Claim Objection”). This Objection incorporates the Claim Objection in its entirety.

ARGUMENT

15. Plan proponents have the burden of showing that the plan satisfies the requirements of Bankruptcy Code section 1129. *In re Fur Creations by Varriale Ltd.*, 188 B.R. 754, 760 (Bankr. S.D.N.Y. 1995); *In re Texaco Inc.*, 84 B.R. 889, 891 (Bankr. S.D.N.Y. 1988). The Proponents fail to satisfy this burden because the Plan violates Bankruptcy Code sections 1129(b)(1) and 1129(b)(2)(C)(i).

I. The Plan Is Not Fair and Equitable

A. The Yucaipa Report Establishes a \$54 Million Midpoint Enterprise Value.

16. The Yucaipa Report values Piccadilly between \$48 million and \$59 million, with a midpoint of \$54 million. The details of this report will be presented by witness testimony at the confirmation hearing.

17. On the other hand, the Atalaya Report is premised upon faulty financial projections prepared by professionals engaged by the secured lender to support its plan of reorganization with no substantive input from the Debtors. Not surprisingly, Atalaya’s self-serving financial projections are far more pessimistic than the Debtors’ projections and yield a depressed enterprise value. The numerous discrepancies in this valuation will be presented at the confirmation hearing and may be the subject of supplemental briefing after depositions have concluded.

18. The Committee Report also has material deficiencies. Among other things, their methodology does not include the “discounted cash flow” and “comparable companies”

valuation methodologies generally relied on to determine value. *See In re Mirant Corp.*, 334 B.R. 800, 816 (Bankr. N.D. Tex. 2005) (“The court has found in numerous opinions support for valuation of a chapter 11 debtor through the use of the DCF Method and the Comparable Method The court finds these methods of valuation the most likely to ensure that Mirant Group is valued based on the worth of its future ability to produce income.”). The Committee Report calculates Plan value and relies on that as an indicator of enterprise value. But Piccadilly’s implied value under the Plan (which is less than Piccadilly’s actual enterprise value) is the core of the valuation dispute between Yucaipa and the Proponents. As with the Atalaya Report, the numerous discrepancies in this valuation will be presented at the confirmation hearing and may be the subject of supplemental briefing after depositions have concluded.

B. Yucaipa Is Not Receiving the Value of Its Interests Under the Plan.

19. The Plan is not fair and equitable because it provides equity holders nothing on account of their interests even though Piccadilly has substantial equity value. Section 1129(b)(2)(C)(i) of the Bankruptcy Code requires that, “[w]ith respect to a class of interests – the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to . . . the value of such interest.”

20. Piccadilly has a midpoint enterprise value of \$54 million. Atalaya’s conversion of secured prepetition debt for equity in Reorganized Piccadilly grossly undervalues the company’s equity. Atalaya alleges that it is converting \$9 million of debt for 100% of the equity – equity worth at least \$19 million (the “Equity Conversion”). Yucaipa (and any other old equity holders) are entitled to the difference in value between total enterprise value and total claims. That difference is “the value” of their interests in the Debtors as required by Bankruptcy Code

section 1129(b)(2)(C)(i). This amount, if Atalaya is actually converting \$9 million of its secured claim, is \$10 million. Based upon the Claim Objection, however, the Atalaya claim should be reduced by at least \$5 million. Thus, the true equity value here may be closer to \$15 million. Without receiving this value, Bankruptcy Code section 1129(b)(2)(C)(i) bars confirmation of the Plan.

C. Atalaya’s Equity Conversion under the Plan Provides Atalaya a Recovery that Far Exceeds the Face Value of Its Claim.

21. The Plan also violates the “fair and equitable” requirement of Bankruptcy Code section 1129(b)(1) because it extinguishes the interests of equity holders while providing Atalaya a recovery that exceeds 100% of the value of its claim. “It’s undisputed that the ‘fair and equitable’ requirement encompasses a rule that a senior class cannot receive more than full compensation for its claims.” *In re Chemtura Corp.*, 439 B.R. 561, 592 (Bankr. S.D.N.Y. 2010); *see also In re Exide Technologies*, 303 B.R. 48, 61 (Bankr. D. Del. 2003) (citation omitted) (“Courts have decided that a ‘corollary of the absolute priority rule is that a senior class cannot receive more than full compensation for its claims.’”); 7 Collier Bankruptcy Manual ¶ 1129.03[4][a][ii] (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev. 2007) (“The second major component of the ‘fair and equitable’ requirement is that no creditor or interest holder be paid a ‘premium’ over the allowed amount of its claim. Once the participant receives or retains property equal to its claim, it may receive no more.”).

22. The Plan provides Atalaya with a windfall far in excess of the full amount of its claim. As discussed above, Atalaya is converting only \$9 million of secured debt in exchange for equity worth approximately \$19 million or more under the Plan’s capital structure. Putting aside the disputed face value of Atalaya’s claim, Atalaya will recover \$10 million above the face value of its claim through the Equity Conversion. The Plan is simply a mechanism to take the

equity of a valuable company at a deep discount while leaving existing equity holders with nothing. Because the Equity Conversion awards Atalaya a recovery that grossly exceeds the value of its claim, Bankruptcy Code section 1129(b)(1) prohibits confirmation of the Plan.

D. The Plan Substantially Overstates the Amount and Priority of Atalaya's Claim.

23. Atalaya is using the Plan to lock in its asserted secured claim, which exceeds the actual amount of its secured claim by at least \$5 million. Atalaya has asserted a prepetition secured claim of at least \$28.1 million plus approximately \$4.2 million in postpetition interest at the default rate. As argued in the Claim Objection, Atalaya has overstated its prepetition secured claim by at least \$3.9 million and the amount of postpetition interest that it is owed by \$1.25 million. Atalaya recovering over \$5 million more than the actual value of its claim is another violation of Bankruptcy Code section 1129(b)(1) and an independent ground for denying confirmation.⁴

24. First, the Atalaya Claim improperly includes almost \$1 million of interest and fees asserted under the Amended and Restated Loan and Security Agreement (the "Prepetition Facility"). These amounts are the result of: (i) overcharges on interest, (ii) interest calculation errors, (iii) unsupported and disputed claims for legal fees, and (iv) incorrect payment in kind interest capitalizations. Upon information and belief, these amounts cannot be reconciled with the Debtors' books and records. (*See Disclosure Statement for the Joint Chapter 11 Plan of Reorganization of Piccadilly Restaurants, LLC, Piccadilly Food Service, LLC, and Piccadilly Investments, LLC, Proposed by the Debtors and Yucaipa Corporate Initiatives Fund I, L.P., Dated As of July 8, 2013* (Docket No. 920), § III.D).

⁴ Yucaipa has filed the Claims Objection to the Atalaya Claim contemporaneously herewith.
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25. Second, Atalaya asserts that \$2.92 million of its alleged secured claim is based on an undrawn, uncollateralized letter of credit (the “L/C”) issued by Wells Fargo for which Atalaya has indemnified Wells Fargo. Atalaya, however, has no direct obligations to fund the L/C under the Prepetition Facility. It only indemnifies Wells Fargo. As a result, any obligations Atalaya has with respect to the L/C are unsecured and not covered by the Prepetition Facility. Moreover, as of October 31, 2013, the L/C amount has been reduced to \$2.42 million. Atalaya, however, has ignored this reduction and continues to assert a \$2.92 million secured claim on account of the L/C in the Plan. (*See* Plan, § 4.2). Atalaya has no right to any recovery on account of the undrawn, uncollateralized L/C as a secured claim.

26. Finally, Atalaya asserts that it is owed approximately \$4.2 million of postpetition interest based on interest accrual at the default rate. Atalaya is not, however, entitled to default rate interest. The Fifth Circuit has found that default rate interest is permissible “unless ‘the higher rate would produce an inequitable . . . result.’” *Matter of Southland Corp.*, 160 F.3d 1059-60 (5th Cir. 1998); *Bradford v. Crozier (In re Laymon)*, 958 F.2d 72, 75 (5th Cir. 1992) (“whether the . . . default rate, rather than the . . . pre-default rate, should apply in this case must be decided by examining the equities involved.”).

27. “There is no particular list of factors that courts must consider when they are balancing the equities.” *In re Yazoo Pipeline Co., L.P.*, No. 08-38121, 2009 WL 2857863, at * 3 (Bankr. S.D. Tex. Aug. 31, 2009) (citing *Southland*, 160 F.3d at 1060). Instead, courts “exalt the individual circumstances of a case over the law’s hard and fast rules.” *Southland*, 160 F.3d at 1060.

28. Granting Atalaya postpetition interest at the default rate in this case would be inequitable. First, the difference between default rate interest and contractual interest is

significant. The non-default contract rate under the Prepetition Facility is 8.75% for the revolver obligations and 15% for the term loan obligations. The default rate penalty adds another 4% to each non-default rate – more than a 45% increase in the revolver rate and a 25% increase in the term loan rate. Some courts have refused to enforce default rate interest when it is significantly higher than the contract rate. *Matter of Terry Ltd. Partnership*, 27 F.3d 241, 243 (7th Cir. 1994) (“Courts have found the presumption to be sufficiently rebutted in cases where the contract rate was significantly higher than the predefault rate without any justification offered for the spread.”). Here, Atalaya cannot justify this default rate. In addition to the spread between interest rates, Piccadilly has substantial equity value yet the Plan provides equity holders with nothing. It is inequitable for Atalaya to soak up value by collecting default rate postpetition interest while asserting that equity holders have no right to a recovery. Thus, Atalaya should only receive postpetition interest at the non-default contract rate under the Prepetition Facility.

29. In sum, Atalaya’s recovery exceeds 100% of the value of its claim because it (i) is wrongly and unfairly taking 100% of the equity in the Reorganized Debtors at a deeply discounted conversion rate and (ii) has wrongly included \$1 million of fees and interest, the \$2.9 million L/C, and \$1.25 million of default rate interest as part of its asserted secured claim. In total, Atalaya seeks to recover more than \$5 million above the actual amount of its asserted secured claim. Atalaya’s inflated claim under the Plan allows it to recover more than the actual value of its secured claim and is another violation of the fair and equitable requirement of Bankruptcy Code section 1129(b) and is unconfirmable.

RESERVATION OF RIGHTS

30. Yucaipa reserves all rights to modify or supplement this Objection any time prior to the confirmation hearing for the Plan pursuant to the terms of the *Agreed Order Granting*

*Joint Expedited Motion of Chapter 11 Plan Proponents to Establish Plan Confirmation
Discovery Scheduling Order (Docket No. 1300).*

WHEREFORE, Yucaipa respectfully requests that this Court deny confirmation of the Plan.

Dated: January 6, 2014

By: /s/ Tristan Manthey
Tristan Manthey
tmanthey@hellerdraper.com
**HELLER, DRAPER, PATRICK &
HORN, LLC**
650 Poydras Street, Suite 2500
New Orleans, LA 70130

-AND-

Thomas Walper (Admitted Pro Hac Vice)
thomas.walper@mto.com
California Bar No. 96667
Daniel J. Harris (Admitted Pro Hac Vice)
Daniel.harris@mto.com
California Bar No. 291300
MUNGER, TOLLES & OLSON, LLP
355 South Grand Avenue
Los Angeles, CA 90071

*Counsel for Yucaipa Corporate Initiatives
Fund I, L.P.*