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ATTORNEYS FOR CRYOVAC, INC.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re:	
PILGRIM'S PRIDE CORPORATION	**Case No. 08-45664-dml**
Debtor	**CHAPTER 11**

CRYOVAC, INC.'S OBJECTION TO DEBTOR'S OMNIBUS RESPONSE TO SECTION 503(b)(9) CLAIMS

Cryovac, Inc. ("Cryovac"), by and through its counsel of record J. Michael McBride, P.C., and George B. Cauthen and Jody A. Bedenbaugh files this Objection to *Debtor's Omnibus Response to Section 503(b)(b) Claims* ("Objection") and, in support hereof, respectfully states as follows:

PROCEDURAL HISTORY

1. On December 1, 2008, Pilgrim's Pride Corporation and some of its affiliates filed for relief under Chapter 11 of the United States Bankruptcy Code ("Commencement Date").

2. On the Commencement Date, Debtor filed *Debtor's Motion Pursuant to Section 503(b)(9) of the Bankruptcy Code to Establish and Implement Exclusive and Global Procedures for Submitting*

and Resolving Claims Relating to Goods Received Within Twenty Days Prior to the Commencement Date ("Procedures Motion") [Docket No. 52].

3. On December 31, 2008, the Court entered the *Order Pursuant to Section 503(b)(9) of the Bankruptcy Code to Establish and Implement Exclusive and Global Procedures for Submitting and Resolving Claims Relating to Goods Received Within Twenty Days Prior to the Commencement Date* (the "Procedures Order") [Docket No. 412].

4. Under the Procedures Order, the Court, *inter alia*, granted the Procedures Motion and established March 4, 2009 as the Section 503(b)(9) Bar Date.

CRYOVAC FACTUAL BACKGROUND

5. Since 2002, Cryovac has supplied Pilgrim's Pride with its Cryovac® brand of fresh food packaging products, such as bags, films, absorbent pads, and trays (the "Goods") in the ordinary course of the business of Pilgrim's Pride.

6. In May 2007, Pilgrim's Pride issued a Request for Proposal ("RFP") for the packaging products. In response to the RFP and consistent with the parties' prior arrangement, Cryovac submitted a pricing proposal which provided for certain rebates on Cryovac's products based on sales targets.

7. Cryovac's proposal was the winning bid and the parties entered into negotiations for a long-term contract. The parties failed to reach an agreement on a long-term contract, but Cryovac has continued to supply products to Pilgrim's Pride under the proposed price terms on an open account.

8. During the twenty days preceding the Commencement Date, Debtors received and incurred charges for Cryovac Goods in the amount of $556,799.04 ("503(b)(9) Claim").

9. On March 3, 2009, Cryovac complied with the Procedures Order and submitted its *Request for Payment of Section 503(b)(9) Claims* ("Request") to those entities identified within Procedures Order, as evidenced by the *Notice of Compliance by Cryovac, Inc. with 503(b)(9) Procedures Order* ("Notice") [Docket No. 1048], filed March 3, 2009. A true and correct copy of the Request submitted by Cryovac, Inc. is attached hereto as Exhibit 1 and fully incorporated herein by reference[1].

10. On May 4, 2009, Debtor filed its *Omnibus Response to Section 503(b)(9) Claims* ("Response") [Docket No. 1693], objecting to Cryovac's Request stating, "[v]endor and Debtors are in the process of negotiating a resolution of this claim through an offset. Debtors expect that this claim will be resolved through that process". To clarify it is true that Cryovac and the Debtors are attempting to work out an offset and Cryovac does not wish to be paid twice; however, Cryovac's 503(b)(9) Claims is valid and should be allowed.

OBJECTION

11. Since the RFP was submitted in 2007, Cryovac has provided Pilgrim's Pride with products requested via purchase order and invoiced the full amount due to Pilgrim's Pride, which Pilgrim's Pride paid pursuant to the parties' agreed-upon credit terms. Certain discounts are earned as Pilgrim's Pride orders products and, in the first or second quarter of the next calendar year once all of the previous year's invoices are paid, Cryovac credits or pays Pilgrim's Pride with a rebate in the total amount of the discounts earned in the prior calendar year. Thus, in the first quarter of 2008,

[1] Exhibits A-1 and A-2 to Cryovac's Request have been withheld due to proprietary and confidential information. Cryovac will submit copies to the Court for in-camera inspection, if necessary.

Cryovac made a lump sum payment to Pilgrim's Pride for the rebates earned in 2007; in the first quarter of 2007, Cryovac made a lump sum payment to Pilgrim's Pride for the rebates earned in 2006; and so on.

12. From January 1, 2008 to December 1, 2008, the date of the bankruptcy petition, Pilgrim's Pride earned $1,037,916.00 in rebates ("Prepetition Rebates") which are due to be paid in 2009.

13. The total debt due from Pilgrim's Pride to Cryovac as of the December 1, 2008 petition date is $1,008,291.35[2] ("Prepetition Debt"). As mentioned above, during the twenty days preceding the Commencement Date, Debtors received and incurred charges for Cryovac Goods in the amount of $556,799.04[3] ("503(b)(9) Claim").

14. On March 9, 2009, counsel for Cryovac forwarded a Motion for Relief From Automatic Stay to Permit Offset and/or Recoupment to Debtors' counsel of record, Stephen Youngman, in hopes of the parties entering into an agreed order for the relief requested by Cryovac. As alluded to in Debtor's Response, the parties have been in the process of "negotiating a resolution of this claim through an offset" since that time, but have never reached an agreement.

15. Cryovac has not credited and/or paid the Prepetition Rebates to Debtors account in order to preserve and protect Cryovac's setoff rights under 11 U.S.C. § 553(a).

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[2] This amount is comprised of (i) $866882.11 owed by Debtor Pilgrim's Pride Corporation; and (ii) $141,409.24 owed by Debtor To-Ricos, Inc.

[3] This amount is comprised of (i) $553,482.70 owed by Debtor Pilgrim's Pride Corporation; and (ii) $3,316.34 owed by Debtor To-Ricos, Inc.

16. Simply because the parties are negotiating a setoff does not negate the validity of Cryovac's 503(b)(9) Claim, nor does the Debtor's response state that it is invalid. Thus, this Court should allow the Claim as filed.

WHEREFORE, Cryovac requests an Order (i) denying Debtor's Objection as to Cryovac, Inc., (ii) allowing Cryovac's administrative priority claim in the amount of $556,799.04 pursuant to 11 U.S.C. §503(b)(9), and (iii) for such other and further relief to which it is justly entitled.

DATED: June 1, 2009

Respectfully submitted,

J. MICHAEL MCBRIDE, P.C.

/s/ J. Michael McBride

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ATTORNEYS FOR CRYOVAC, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on **June 1, 2009**, a true and correct copy of the foregoing **Cryovac, Inc.'s Objection to Debtor's Omnibus Response to Section 503(b)(9) Claims** has been served electronically on ECF users via first class mail, postage prepaid on the following:

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