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Attorneys for Debtors and
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

	§	
	§	
In re	§	**Chapter 11**
	§	
PILGRIM'S PRIDE CORPORATION, *et al.*,	§	**Case No. 08-45664 (DML)**
	§	
	§	
Debtors.	§	
	§	
	§	**JOINTLY ADMINISTERED**

DEBTORS' MOTION PURSUANT TO SECTION 362(d) OF THE BANKRUPTCY CODE FOR AUTHORIZATION TO MODIFY THE AUTOMATIC STAY TO PERMIT THE APPEAL OF COUNTERCLAIMS OF DARRELL RADUECHEL

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT THE ELDON B. MAHON U.S. COURTHOUSE, 501 W. TENTH STREET, FORT WORTH, TEXAS. IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING, SPECIFICALLY ANSWERING EACH PARAGRAPH OF THIS PLEADING. YOU MUST FILE YOUR RESPONSE WITH THE CLERK OF THE BANKRUPTCY COURT BY JANUARY 6, 2009 AT 4:00 PM. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PARTIES INCLUDED ON THE MASTER SERVICE LIST FILED WITH THIS COURT; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

IF OBJECTIONS TO THIS MOTION ARE FILED, A HEARING ON THIS MOTION WILL BE HEARD ON JANUARY 13, 2009 AT 10:30 A.M. (CT) AT THE UNITED STATES BANKRUPTCY COURT AT THE ELDON B. MAHON U.S. COURTHOUSE, 501 W. TENTH STREET, FORT WORTH, TEXAS.

TO THE HONORABLE D. MICHAEL LYNN, UNITED STATES BANKRUPTCY JUDGE:

Pilgrim's Pride Corporation ("PPC") and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors in possession (collectively, the "Debtors"),[1] respectfully represent:

I.

Summary of Motion

PPC and PFS are appellants in a matter currently pending before the Eighth Circuit Court of Appeals. Within the appeal, PPC and PFS seek a reversal of the lower court's findings that defendants' actions were not a proximate cause of their damages of approximately $5.5 million. One of the defendants filed a cross appeal for the denial of his counterclaims against PFS, for unpaid compensation. The pursuit of the counterclaims is automatically stayed pursuant to 11 U.S.C. §362. Unless the stay on the counterclaims is lifted, it is likely the Eighth Circuit may defer its consideration of the entire appeal. PPC and PFS do not believe that the dismissal of the

[1] The Debtors in these cases are PPC; PFS Distribution Company; PPC Transportation Company; To-Ricos, Ltd.; To-Ricos Distribution, Ltd.; Pilgrim's Pride Corporation of West Virginia, Inc.; and PPC Marketing, Ltd.

counterclaims will be reversed on appeal. Thus, lifting the stay on the counterclaims, and thereby allowing PPC's and PFS's appeal to continue, would be advantageous to the estate.

II.

Jurisdiction

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334 and 11 U.S.C. §362. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(G).

III.

Background

2. On December 1, 2008, (the "Petition Date"), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are authorized to continue operating their businesses and managing their properties as debtors in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

3. PPC, together with its debtor and non-debtor subsidiaries (collectively, "Pilgrim's Pride"), has one of the best brand names in the chicken industry. It is one of the largest producers of chicken in the United States and the second largest producer in Mexico. Pilgrim's Pride has operations throughout the continental United States, Puerto Rico, and Mexico. Based on the total annual chicken production in 2007 in the United States, the Debtors estimate that Pilgrim's Pride has the highest market share in the United States. Formed in 1946 as a retail feed store partnership between Lonnie A. "Bo" Pilgrim and his brother, Aubrey E. Pilgrim, PPC has been a publicly traded company since 1986.

4. Through vertical integration, Pilgrim's Pride manages the breeding, hatching and growing of chickens. Pilgrim's Pride also manages the processing, preparation, packaging, sale and distribution of its product lines, which Pilgrim's Pride believes has made it one of the highest quality, lowest-cost producers of chicken in North America. In the continental United States, Pilgrim's Pride produces both prepared chicken products and fresh chicken products. In Mexico and Puerto Rico, it

produces exclusively fresh chicken products.

5. Although Pilgrim's Pride primarily produces chicken products, its operations also include, inter alia, pork breeder and growout operations and operation of two captive insurance companies, all through non-debtors. Pilgrim's Pride products are sold to foodservice, retail and frozen entrée customers, distributed primarily through retailers, food service distributors and restaurants.

6. As of November 25, 2008, Pilgrim's Pride had approximately 47,900 employees in North America. As of September 27, 2008, its unaudited financial statements reflected $8.5 billion of revenue for the prior 12-month period, assets of approximately $3.3 billion, and liabilities of approximately $3 billion.

IV.

Facts Specific to Motion

7. PPC and PFS are plaintiffs in a lawsuit originating in the Southern District of Iowa (the "Raduechel Lawsuit") where they are asserting claims against (i) two former employees of PFS, Darrell Raduechel ("Raduechel") and Barry Spain ("Spain"); (ii) Raduechel's and Spain's bank, MidwestOne Bank & Trust, and its executive, Steven Hicks (the "Bank Defendants"); and (iii) Raduechel's and Spain's accounting firm, Theobald Donohue & Thompson, PC, and its CEO, Richard Donohue (the "Accounting Defendants").

8. The Raduechel Lawsuit was initiated by PPC and PFS after discovering that Raduechel and Spain, two top managers at PFS' distribution center in Oskaloosa, Iowa, secretly formed a rival firm, solicited all key personnel to join them, and diverted PFS' top customers. PPC and PFS brought claims against Raduechel and Spain for breach of their fiduciary duties and misappropriation of PFS' trade secrets.

9. After an evidentiary hearing, the district court granted PFS a preliminary injunction, which effectively put the rival firm out of business.[2] After the preliminary injunction was granted, PPC and PFS pursued their claims for approximately $5.5 million in damages, adding the Bank Defendants and the Accounting Defendants as defendants on aiding and abetting and trade secret misappropriation grounds.

10. Raduechel brought counterclaims against PFS, for unpaid compensation, (the "Counterclaims") alleging that he was wrongfully denied a bonus under PFS' "Sales/Distribution Branch Incentive Plan." PPC and PFS filed a motion to dismiss the Counterclaims for failure to state a cause of action pursuant to Rule 12(b)(6), which the district court granted.[3]

11. The district court subsequently granted summary judgment in favor of PPC and PFS on liability against Raduechel and Spain for breach of fiduciary duty and trade secret misappropriation.[4]

12. The Raduechel Lawsuit proceeded to trial on the claims against Raduechel and Spain, as to proximate cause and damages, and on plaintiffs' secondary liability claims against the Bank Defendants and Accounting Defendants. After a nine day trial, the jury returned a defense verdict on February 27, 2007, finding, among other things, that Raduechel's and Spain's breach of fiduciary duties or misappropriation of trade secrets were not a proximate cause of plaintiffs' damages, and that neither the Bank Defendants nor the Accounting Defendants conspired with Raduechel and Spain, or aided and abetted Raduechel's and Spain's wrongful actions.

13. PPC and PFS appealed the adverse judgment to the Eighth Circuit Court of Appeals. Raduechel also took a cross appeal from the earlier dismissal of the Counterclaims.

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[2] See, *PFS Distribution Co. v. Raduechel*, 332 F. Supp. 2d 1236 (S.D. Iowa 2004).

[3] See, *PFS Distribution Co. v. Raduechel*, 387 F.Supp.2d 1020 (S.D. Iowa 2005).

[4] See, *PFS Distribution Co. v. Raduechel*, 492 F.Supp.2d 1061, 1064-1072 (S.D. Iowa, 2007).

V.

Relief Requested

14. Raduechel's Counterclaims are subject to the automatic stay under 11 U.S.C. §362, but the claims of PPC and PFS are not subject to the stay. Although the Eighth Circuit could decide PPC's and PFS' appeal without considering Raduechel's cross-appeal, it is unlikely that the Court of Appeals will take a "piecemeal" approach. Unless the stay on the Counterclaims is lifted, it is likely the Eighth Circuit will defer its consideration of the entire appeal.

15. Section 362(d)(1) of the Bankruptcy Code allows courts to grant relief from the automatic stay for cause. 11 U.S.C. 362(d)(1). Cause to lift the automatic stay for a limited purpose exists in this case because it would be advantageous for the Debtors to obtain a ruling from the Eighth Circuit Court of Appeal on this issue.

16. More specifically, PPC and PFS believe that cause exists to modify the stay in that both of the arguments on appeal have been fully briefed. Oral argument on the appeal, while since continued, was scheduled for Friday, December 12, 2008. In short, almost all of the work relevant to the pending appeal has been completed. Only oral argument remains.

17. If the claims of PPC and PFS are ultimately successful it could result in the award of approximately $5.5 million in damages. Furthermore, PPC and PFS do not believe that the dismissal of the Counterclaims will be reversed on appeal. Thus, lifting the stay on the Counterclaims would be advantageous to PPC and PFS.

18. Nonetheless, PPC and PFS do not seek to lift the stay in its entirety. Rather, PPC and PFS request that the stay be modified to allow the Counterclaims to be pursued but only to allow the Eighth Circuit Court of Appeals to hear oral argument and deliver a ruling. The automatic stay remains in place even if the dismissal of the counter claims is reversed and remanded to a lower court. PPC and PFS reserve the right to seek further relief from this Court after such point in time.

WHEREFORE, PPC and PFS respectfully requests that the Court enter an order (a) granting this Motion; (b) lifting the stay on the Counterclaims but only to allow the Eighth Circuit Court of Appeals to hear oral argument and deliver a ruling; and (c) granting PPC and PFS such other and further relief to which they are entitled.

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IV.

Notice

19. Notice of this Motion has been provided to: (i) the Office of the United States Trustee; (ii) counsel to the committee of unsecured creditors; (iii) counsel to the Debtors' prepetition secured lenders; and (iv) counsel to the Agent to the Debtors' postpetition lenders (collectively, the "Notice Parties"). The Debtors submit that no other or further notice need be provided.

Dated: December 20, 2008
Fort Worth, Texas

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Debtors in Possession

CERTIFICATE OF CONFERENCE

I, the undersigned counsel for PPC and PFS in the aforementioned litigation, do hereby certify that on December 4, 2008, I exchanged e-mails with Gordon Fischer, counsel for Darrell Raduechel, who agreed to lifting the stay as to the counterclaim so that the parties may proceed with argument on all aspects of the appeal.

/s/ John M. Murphy, by permission Elliot D. Schuler_____
John M. Murphy

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

In re	§	**Chapter 11**
PILGRIM'S PRIDE CORPORATION, *et al.*,	§	**Case No. 08-45664 (DML)**
Debtors.	§	
	§	**JOINTLY ADMINISTERED**

ORDER PURSUANT TO SECTION 362(d) OF THE BANKRUPTCY CODE AUTHORIZING THE MODIFICATION OF THE AUTOMATIC STAY TO PERMIT THE APPEAL OF COUNTERCLAIMS OF DARRELL RADUECHEL

Upon the motion, dated December 20, 2008 (the "Motion"), of Pilgrim's Pride Corporation ("PPC") and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors in possession (collectively, the "Debtors"),[1] pursuant to section 362(d) of the Bankruptcy

[1] The Debtors in these cases are PPC; PFS Distribution Company; PPC Transportation Company; To-Ricos, Ltd.; To-Ricos Distribution, Ltd.; Pilgrim's Pride Corporation of West Virginia, Inc.; and PPC Marketing, Ltd.

Code[1] for authority to modify the automatic stay to permit the appeal of the Counterclaims, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, and it appearing that no other or further notice need be provided; and no objections or responses to the Motion having been filed; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their creditors, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted; and it is further

ORDERED that the automatic stay is hereby lifted with respect to the Counterclaims solely to allow PPC to exhaust its appellate remedies before the Eighth Circuit Court of Appeals or the United States Supreme Court; and it is further

ORDERED that the automatic stay shall apply to all other proceedings relating to the Counterclaims; and it is further

ORDERED that this Court hereby retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

End of Order # #

[1] Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Motion.