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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.	§	**Hearing Date: September 29, 2009**
	§	**Objection Deadline: September 22, 2009**
	§	**JOINTLY ADMINISTERED**

DEBTORS' MOTION PURSUANT TO SECTIONS 105(a), 363 AND 503 OF THE BANKRUPTCY CODE FOR AUTHORIZATION TO ESTABLISH PERFORMANCE BONUS PLAN FOR FISCAL YEAR 2009

A HEARING WILL BE CONDUCTED ON THIS MATTER ON SEPTEMBER 29, 2009 AT 10:30 AM (CT) 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 SEPTEMBER 22, 2009 AT 4:00 PM (CT). 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.

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:

Background

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

2. The Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

3. A statutory committee of unsecured creditors (the "Creditors' Committee") and a statutory committee of equity interest holders (the "Equity Committee," and together with the Creditors' Committee, the "Committees") have been appointed in these Bankruptcy Cases.

[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.

Pilgrim's Pride's Businesses

4. 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. 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.

5. 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. Pilgrim's Pride's products are sold to foodservice, retail and frozen entrée customers, distributed primarily through retailers, foodservice distributors and restaurants.

Jurisdiction and Venue

6. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

7. By this Motion, the Debtors seek the entry of an order pursuant to sections 363(b)(1), 503(c)(3), and 105(a) of the Bankruptcy Code: (i) approving the FY2009 Performance Bonus Plan (as defined below) and (ii) authorizing the Debtors to implement the FY2009 Performance Bonus Plan.

The Need for an Additional Incentive Plan

8. Pursuant to the Order Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004 for Authorization (i) to Pay Wages, Benefits, and Other Employee Obligations, and (ii) for Financial Institutions to Honor and Process Checks and Transfers Related to Such Obligations [Docket No. 65] (the "Employee Wage and Benefit Order"), entered on December 2, 2008, the Court authorized the Debtors to enter into and implement two plans providing performance-based compensation to certain employees, namely, the Performance Improvement Plan (the "PIP") and the Key Employee Incentive Compensation Agreements (the "Incentive Agreements").

9. The Debtors' Chief Executive Officer ("CEO"), Chief Financial Officer ("CFO"), Executive Vice Presidents, and Senior Vice Presidents ("SVPs"), however, are not eligible to participate in the PIP, and most of the Debtors' SVPs are not party to an Incentive Agreement.[2] Accordingly, unlike many of their industry peers, and inconsistent with prepetition practice, most of the Debtors' employees at the SVP level and above are currently not eligible to receive any form of performance-based incentive pay for fiscal year 2009.

10. In addition, eligibility for awards under the existing PIP and Incentive Agreements is not conditioned upon either the Debtors' businesses achieving specified profit levels, or on the Debtors' emergence from bankruptcy. The Debtors believe that their reorganization would benefit if certain additional key employees were eligible to receive bonuses specifically conditioned upon achieving specified target levels of profits and on the Debtors' emergence from bankruptcy. To the extent that any such employees are already eligible for awards under the PIP or pursuant to an Incentive Agreement, awards would be made pursuant to

[2] Three of the Debtors' employees were promoted to the SVP level after they had already entered into an Incentive Agreement with the Debtors.

a profit-driven incentive plan only to the extent that such award were to exceed any award such employee would be entitled to under an existing plan.

11. Accordingly, consistent with pre-bankruptcy incentive practices, the Debtors seek herein approval of an incentive plan for approximately 80 employees and executives, including those 23 employees at the SVP level and above who are currently not included in any incentive plan, as well as the Debtors' vice presidents, complex managers and select manager-level employees (collectively, the "Key Employees").

12. Each of the Key Employees is tasked with assisting the Debtors through this challenging time. In addition to performing their normal day-to-day responsibilities, the Key Employees have been significantly involved with additional tasks attendant to the Debtors' chapter 11 cases and will continue to participate in such tasks. For example, the Debtors' professionals rely on the knowledge and expertise of these Key Employees to provide information necessary to resolve issues arising in these Bankruptcy Cases and respond to inquiries from the Debtors' thousands of creditors. Such efforts are, and will continue to be, instrumental to the Debtors' reorganization and will ensure that the Debtors' estates achieve the maximum value possible for the benefit of the estate. Furthermore, the Debtors require the expertise of their Key Employees to finalize formulation and negotiation of a plan of reorganization.

13. Recognizing that the Key Employees possess expertise of great import to the Debtors' ongoing business operations and to the Debtors' reorganization, and in order to align the interests of the Key Employees with those of the Debtors and their creditors, the Debtors have determined, in their reasonable business judgment, that the most effective way to ensure that these Key Employees are sufficiently motivated to maximize the value of any

restructuring is to provide the Key Employees with incentive pay in addition to their base salaries. As a result, on July 29, 2009, the Debtors' board of directors approved, for the fiscal year 2009 ("FY2009"), the proposed Performance Bonus Plan in substantially the form annexed hereto as Exhibit A (the "FY2009 Performance Bonus Plan").

The FY2009 Performance Bonus Plan

14. Prior to the Commencement Date, it was the Debtors' annual practice to provide a profit-driven cash bonus to the Key Employees. Under the Debtors' prepetition performance bonus plan (the "Prepetition Performance Bonus Plan"), each Key Employee received his or her pro rata share of a total bonus pool equal to five percent (5%) of the Debtors' annual earnings before taxes. Each Key Employee's pro rata share of the total bonus pool was based on a factor of that employee's target bonus percentage, as set by the Debtors' compensation committee, multiplied by the amount of such employee's base salary (collectively, the "Prepetition Target Bonus Factors"). This kind of performance bonus plan is common in the Debtors' industry.

15. The goals of the FY2009 Performance Bonus Plan are to: (1) motivate the Debtors' existing employees at the SVP level and above and any other key employees who are currently not included in any incentive plan; (2) align all Key Employees' interests with the goals of the shareholders and creditors to become profitable enough to emerge from bankruptcy; and (3) provide an incentive for all Key Employees to achieve profit goals.

16. No Key Employee shall be eligible for an award under the FY2009 Performance Bonus Plan unless (i) the Debtors' earnings before interest, taxes, depreciation, amortization and restructuring costs, excluding extraordinary charges (as set forth in the Debtors' consolidated statements of income) ("EBITDAR"), reach a defined threshold of at least $225

million in the third and fourth fiscal quarters of 2009, and (ii) the Debtors successfully emerge from bankruptcy. In addition, to be eligible for an award under the FY2009 Performance Bonus Plan, Key Employees must still be in the Debtors' employ on the day immediately preceding the effective date of a confirmed chapter 11 plan in the Debtors' Bankruptcy Cases.

17. Each Key Employee that is eligible for an award under the FY2009 Performance Bonus Plan will receive a cash bonus that is equal to such employee's pro rata share of a pool equal to the sum of (i) $2.6 million, plus (ii) four percent (4%) of any portion of the Debtors' EBITDAR for the third and fourth fiscal quarters of FY2009 that exceeds $225 million, plus (iii) the aggregate amount of the payments that would become payable under the PIP and the Incentive Agreements assuming the performance criteria and conditions to payment were satisfied under such arrangements. Each Key Employee's pro rata share of the total pool available to Key Employees under the Performance Bonus Plan will be based on the factor of such individual's target bonus percentage, as set by the Debtors' Board of Directors, multiplied by the amount of such employee's annualized base salary accrued with respect to FY2009 (the "FY2009 Bonus Factor").[3] Notwithstanding the foregoing, the FY2009 Performance Bonus Plan provides that if the Debtors' EBITDAR for the third and fourth quarters of FY2009 meets or exceeds $325 million, each award pursuant to the plan will be equal to an amount that is at least 100% of the applicable Key Employee's FY2009 Bonus Factor. Key Employees eligible to participate in two or more of the FY2009 Performance Bonus Plan, the PIP and the Incentive Agreements will only receive the highest of the award values; the bonuses under the three schemes are not cumulative.

[3] The Debtors submit that the FY2009 Bonus Factors are similar to the Prepetition Bonus Factors.

The FY2009 Performance Bonus Plan Should Be Authorized Under Section 363(b) of the Bankruptcy Code

18. Even if the potential payments under the FY2009 Performance Bonus Plan are not in the ordinary course, cause exists under section 363(b) of the Bankruptcy Code to approve the FY2009 Performance Bonus Plan. Section 363(b)(1) of the Bankruptcy Code provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate . . . ." 11 U.S.C. § 363(b)(1).

19. This Court is authorized to approve the Debtors' use of estate property out of the ordinary course of business (at least with respect to a use of property that does not qualify as a transfer to an insider) if a valid business justification supports the Debtors' decision to do so. *See, e.g., In re Cont'l Air Lines, Inc.*, 780 F.2d 1223, 1225 (5th Cir. 1986); *In re Property Co. of Am. Joint Venture.*, 110 B.R. 244, 247 n.5 (Bankr. N.D. Tex. 1990); *In re Quality Beverage Co.*, 181 B.R. 887, 895 (Bankr. S.D. Tex. 1995); *see also In re Chateaugay Corp.*, 973 F.2d 141 (2d Cir. 1992); *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) ("The rule we adopt requires that a judge determining a § 363(b) application expressly find from the evidence presented before him a good business reason to grant the application.").

20. Moreover, with respect to transfers to non-insiders, applicable principles of law attach to a debtor's business decision a strong presumption that it "acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *Official Comm. of Sub. Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1990) (holding that the Delaware business judgment rule has "vitality by analogy" in chapter 11); *see also In re Pilgrim's Pride Corp.*, 401 B.R. 229, 237 (Bankr. N.D. Tex. 2009) (Lynn, J.) ("[I]f a valid business reason is shown for the transaction, the transaction is presumed appropriate."); 7 COLLIER ON BANKRUPTCY ¶ 1108.06 (15th ed. rev.

2006). The business judgment rule is "a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interest of the company." *Integregated Resources, Inc.*, 147 B.R. at 656 (citations omitted). Courts are loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence. *Id.*

21. As discussed further below, the vast majority of the Key Employees do not qualify as "insiders" as defined by Bankruptcy Code section 101(31). Accordingly, with respect to the potential awards to such employees under the FY2009 Performance Bonus Plan, the Debtors' determination to enter into and to implement such plan enjoys the presumption of good faith. As discussed above, the Debtors have no incentive plan in place for those employees at the SVP level and above, and no incentive plan for other Key Employees that is linked to either profits or emergence from chapter 11. Recognizing that short-term incentive goals play an integral part in aligning employee interests with a business's success, and that incentive compensation is the component that can most directly influence individual decision making, the Debtors, in their reasonable business judgment, determined that the potential awards under the FY2009 Performance Bonus Plan will align Key Employees' interests with those of the Debtors' creditors and equity interest holders, and that this incentive compensation will drive overall results. Many of the Key Employees, in addition to their day to day responsibilities in operating the Debtors' businesses will be asked during the period covered by the plan to participate in the negotiation of a confirmable chapter 11 plan, to provide information to the Debtors' professionals necessary to draft the plan and disclosure statement, or will be asked to assist in resolving the thousands of claims that have been asserted against the Debtors' estates. The Debtors believe that the proposed FY2009 Performance Bonus Plan will motivate Key

Employees to take on additional bankruptcy related tasks and perform at their highest and best levels during the chapter 11 reorganization process. In addition, the Debtors believe that the costs related to low morale and low levels of motivation due to lack of incentives and uncertainty surrounding the Debtor's pending emergence from bankruptcy may exceed the total cost of the FY2009 Performance Bonus Plan. Accordingly, even if not an ordinary course transaction, the FY2009 Performance Bonus Plan should be approved as a valid exercise of the Debtors' reasonable business judgment.

22. In the context of operating under chapter 11, the establishment of an employee incentive program pursuant to section 363(b)(1) of the Bankruptcy Code has been authorized by numerous courts and is recognized as an essential part of a successful bankruptcy case. *See, e.g., In re Nortel Networks, Inc.*, Case No. 09-10138 (Bankr. D.Del. March 20, 2009) (approving key executive incentive plan with respect to eight executives who were members of the debtor's senior leadership team, and increasing to $14.7 million the maximum amount payable thereunder); *In re Sharper Image Corp.*. No 08-10322 (KG) (Bankr. D. Del. June 26, 2008) (approving incentive plan to employees and senior management for performance related to a wind-down process); *In re American Home Mortgage Holdings, Inc., et al.*, No. 07-11-047 (CJS) (Bankr. D. Del. Nov. 28, 2007) (approving incentive plan to senior management for, among other things, performance related to wind-down process); *In re New Century TRS Holdings, Inc., et al.*, No. 07-10416 (KJC) (Bankr. D. Del. May 25, 2007) (approving sale-related incentive plan to senior management and retention and incentive pay to certain non-management employees); *In re Global Home Products, LLC, et al.*, No. 06-10340 (JG) (Bankr. D. Del. May 30, 2006) (approving sale-related incentive plan); *In re Nobex Corp.*, No. 05-20050 (MFW) (Bankr. D. Del. Jan. 19, 2006) (same); *In re Musicland Holding Corp.*, Case No. 06-

10064 (Bankr. S.D.N.Y. Aug. 11, 2006) (SMB) (approving supplemental incentive program for senior management employees, including the chief executive officer and the chief financial officer); *In re Calpine Corp.*, Case No. 05-60200 (Bankr. S.D.N.Y. May 15, 2006) (BRL) (approving implementation of four separate incentive programs linked to goals that benefited the estate and creditors). For the reasons set forth above, the FY2009 Performance Bonus Plan is reasonable, necessary, and in the best interests of the Debtors, their estates, and creditors.

The FY2009 Performance Bonus Plan Should Additionally Be Authorized Pursuant to Section 105(a) of the Bankruptcy Code

23. Section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). The Debtors believe that the FY2009 Performance Bonus Plan is critical to their ability to maximize returns to all creditors. The FY2009 Performance Bonus Plan is necessary and appropriate because it rewards Key Employees for their efforts to perform their best and maximize the value of the Debtors' estates.

The FY2009 Performance Bonus Plan Should Be Authorized Under Section 503(c) of the Bankruptcy Code

24. Sections 503(c)(1) and (2) of the Bankruptcy Code provide criteria for courts to use in approving certain types of payments to insiders. Specifically, section 503(c)(1) establishes specific standards that must be met before a bankruptcy court may authorize payments made to an insider "for the purpose of inducing such person to remain with the debtor's business." 11 U.S.C. § 503(c)(1). Section 503(c)(2) of the Bankruptcy Code establishes standards that must be met before a bankruptcy court may authorize severance payments made to insiders. 11 U.S.C. § 503(c)(2). For the reasons that follow, sections 503(c)(1) and (2) are inapplicable here and therefore do not bar the relief requested.

25. First, sections 503(c)(1) and (c)(2) expressly do *not* apply to Key Employees that are not insiders (the "Non-Insider Employees"). Section 101(31) of the Bankruptcy Code defines an "insider" to be, in pertinent part, a director, an officer, or a person in control of the debtor, or a relative of any of these persons. 11 U.S.C. § 101(31). None of the Non-Insider Employees are members of the Debtors' board of directors (the "Board"). Moreover, even those of the Non-Insider Employees who have titles such as "vice president" exercise day to day operations, human resources, legal, finance and related functions. They are not "officers" or "persons in control" of the Debtors within the meaning of section 101(31). *See In re NMI Systems*, 179 B.R. 357, 369–70 (Bankr. D.C. 1995) (holding that employee's title of vice president, coupled with his mid-management responsibilities of running the company's consulting division, were insufficient facts to establish that such employee was an "officer" of the debtor); *see also Kunz v. U.S. Bank (In re Kunz)*, 335 B.R. 170, 175 n.19 (10th Cir. 2005) (collecting cases recognizing that title alone, without evidence of control, is insufficient to confer insider status).

26. As the Non-Insider Employees do not set corporate policy or exercise influence over the payments made to them by the Debtors, closer scrutiny reserved for non-arms' length payments is not warranted. *See, e.g., CEP Holdings, LLC*, 2006 WL 3422665 (Bankr. N.D. Ohio Nov. 28, 2006). Accordingly, sections 503(c)(1) and 503(c)(2) should not apply to the Non-Insider Employees and do not bar implementation of the FY2009 Performance Bonus Plan, with respect to such employees, under section 363 of the Bankruptcy Code.

27. Aside from the Non-Insider Employees, the Debtors recognize that certain Key Employees may qualify as "insiders" pursuant to section 101(31) of the Bankruptcy Code. Nonetheless, sections 503(c)(1) and 503(c)(2) are not applicable. By its plain meaning, section

503(c)(1) of the Bankruptcy Code applies solely to payments made for the purpose of inducing an insider to remain in the debtor's employ, while section 503(c)(2) addresses only severance payments. Neither provision applies to performance-based incentive plans such as the FY2009 Performance Bonus Plan.

28. The potential awards available to Key Employees pursuant to the FY2009 Performance Bonus Plan are not substitutes for severance pay. Unlike severance payments, such awards are not linked to any termination of Key Employees' employment with the Debtors. Rather, to the extent that any Key Employee receives an award under the FY2009 Performance Bonus Plan, such award will be based solely upon achievement by the Debtors of certain EBITDAR targets and consummation of a confirmed chapter 11 plan.

29. Nor are the potential FY2009 Performance Bonus Plan payments to Key Employees intended to provide such employees a bonus for remaining in the Debtors' employ. Where a debtor proposes an incentive plan that seeks to motivate its employees to provide services at the highest and best levels, and where such plan or payments are not primarily motivated by retention or in the nature of severance, the fact that the proposed plan may have retentive effects does *not* render the plan one aimed at retaining as opposed to incentivizing employees. As one bankruptcy court has recently explained, the "fact . . . that all compensation has a retention element does not reduce" or prevent a finding that a debtor's "primary goal" is to "create value by motivating performance." *In re Global Home Products, LLC*, 369 B.R. 778, 786 (Bankr. D.Del. 2007). Because it is a basic principle of business that "[a]ll companies seek to retain employees they value by fairly compensating them[,]" a debtor's proposal to provide incentive pay to key employees during the course of its case, including insiders, should not be prohibited simply because it has some retentive effects. *Id.; accord In re Nellson Nutraceutical,*

Inc., 369 B.R. 787 (Bankr. D. Del 2007) (despite proposed modification of bonus compensation program resulting in some retentive effect, modification was proposed for the primary purpose of motivating employees and, thus, was not precluded or restricted by section 503(c)(1); court held that section 503(c)(1) is only applicable where a debtor seeks to make a transfer to an insider for the "*primary*" purpose of inducing such person to remain with the debtor's business) (emphasis in original); *In re Dana Corp.*, 358 B.R. 567, 103 (Bankr. S.D.N.Y. 2006) (finding that merely because a plan has some retentive effect does not mean the plan, overall, is retentive rather than incentive-oriented in nature).

30. Even if it may be argued that the FY2009 Performance Bonus Plan has some retentive effects, section 503(c)(1) does not apply. The FY2009 Performance Bonus Plan is simply that – a plan *primarily* aimed at motivating employees to perform at their highest and best levels during these chapter 11 cases. The FY2009 Performance Bonus Plan provides a strategic incentive that will help motivate the Key Employees and that aligns such employees' interests with those of the Debtors' creditors and equity interest holders. Although a Key Employee must be employed with the Debtors through their successful emergence from bankruptcy to remain eligible for an award, that requirement merely ensures that Key Employees remain motivated to guide the Debtors through confirmation and consummation of a chapter 11 plan. Absent such incentive pay, the Debtors are concerned that the Key Employees will not perform at their highest and best levels, thereby jeopardizing the value of the Debtors' businesses and the potential recovery of the Debtors' creditors. Accordingly, the FY2009 Performance Bonus Plan is not prohibited by Bankruptcy Code sections 503(c)(1) and 503(c)(2).

31. Finally, even with respect to those Key Employees qualifying as insiders, the FY2009 Performance Bonus Plan is authorized under section 503(c)(3) of the Bankruptcy

Code. The standard for reviewing a non-ordinary course transfer to an "officer[]" or "manager[]" (or at least those officers or managers that qualify as "insiders" under the Bankruptcy Code), is qualified by section 503(c)(3) of the Bankruptcy Code. *In re Pilgrim's Pride Corp.*, 401 B.R. 229, 236–37 (Bankr. N.D. Tex. 2009) (Lynn, J.). Section 503(c)(3) permits such a transfer if "justified by the facts and circumstances of the case." 11 U.S.C. § 503(c)(3); *In re Pilgrim's Pride Corp.*, 401 B.R. at 237–40. Under section 503(c)(3), the Court may authorize such a transfer if the Court "make[s] its own determination that the transaction will serve the interests of creditors and the debtor's estate." *Id.* at 237.

32. In making a determination that a transfer to an insider is justified by the circumstances, the Court may consider such factors as (i) whether the negotiation of the transaction bears hallmarks of independence, such as the active participation of independent, non-recipient employees or advisors; (ii) the harm that may be done to the Debtors' reorganization prospects if the Motion is not granted and the fears that prompted the Debtors to enter into the proposed transaction are realized; (iii) whether the Debtors have provided a sound business reason for the transaction; (iv) whether the estate receives commensurate value; and (v) the cost of the transaction vis-à-vis the extent of the Debtors' businesses and annual revenues. *Id.* at 237–238. In addition, the Court need not find that the transaction is the best possible deal for the estate, assuming that application of the facts to these factors otherwise weighs in favor of approving the transaction. *Id.* at 237 n.14.

33. Here, the FY2009 Performance Bonus Plan was approved by the members of PPC's board of directors. No individual who is a potential recipient of an award under the FY2009 Performance Bonus Plan participated in the vote approving the plan. In addition, the Debtors' Chief Restructuring Officer, William Snyder (the "CRO") (who holds a position in

these Bankruptcy Cases that is similar to that of an independent advisor and who himself is not a recipient under the FY2009 Performance Bonus Plan), actively participated in the negotiation of the FY2009 Performance Bonus Plan.

34. With the CRO's assistance, the Debtors determined, as described above, that the benefits of the FY2009 Performance Bonus Plan outweigh its cost and that the proposed FY2009 Performance Bonus Plan will motivate employees to perform at their highest and best levels during the chapter 11 reorganization process, minimizing the Debtors' liabilities and creating additional value, and thereby maximizing return to creditors and equity interest holders. Finally, the Debtors note that the total amount of incentive pay proposed under the FY2009 Performance Bonus Plan is relatively modest compared to the size of the Debtors' estates and the importance of the Key Employees to any reorganization efforts.

35. As it is primarily crafted to preserve and enhance value, particularly at this critical juncture in the Debtors' chapter 11 cases, the FY2009 Performance Bonus Plan should be approved as to all Key Employees as a valid exercise of the Debtors' business judgment and as justified by the facts and circumstances of these cases.

Notice

36. Notice of this Motion has been provided to: (i) the Office of the United States Trustee; (ii) counsel to the Creditors' Committee and counsel to the Equity Committee; (iii) counsel to the Debtors' prepetition secured lenders; (iv) counsel to the Agent to the DIP Lenders; and (v) all parties on the Master Service List filed with this Court (collectively, the "Notice Parties"). The Debtors submit that no other or further notice need be provided.

No Previous Request

37. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE the Debtors respectfully request that the Court (i) approve the FY2009 Performance Bonus Plan; (ii) authorize the Debtors to implement the FY2009 Performance Bonus Plan; and (iii) grant such other and further relief as is just.

Dated: September 4, 2009
Fort Worth, Texas

/s/ Stephen A. Youngman

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Exhibit A

Pilgrim's Pride Corporation
FY2009 Performance Bonus Plan

PILGRIM'S PRIDE CORPORATION

FY2009 PERFORMANCE BONUS PLAN

Pilgrim's Pride Corporation (the "Company") hereby establishes the Pilgrim's Pride Corporation FY2009 Performance Bonus Plan (the "Plan"). The purpose of the Plan is to advance the interests of Pilgrim's Pride Corporation and its stockholders by establishing a direct relationship between the payment of cash bonuses to certain of the Company's officers and other key employees and the performance of the Company.

1. ADMINISTRATION.

(a) The Plan shall be administered by the Company's Compensation Committee (the "Committee").

(b) The Committee shall have the authority, subject to the limitations set forth in the Plan, to interpret the Plan and to adopt, amend and rescind such rules and regulations as, in its opinion, are necessary for the administration of the Plan and to make such other determinations deemed necessary or advisable for the administration of the Plan. All decisions, determinations and interpretations of the Committee relating to the Plan shall be final and conclusive on the Company and all Participants under the Plan.

(c) The Committee may employ such accountants, legal counsel, consultants and agents as it may deem desirable for the administration of the Plan and may rely upon any opinion received from any counsel or consultant and any computation received from any consultant or agent. Expenses incurred by the Committee in the engagement of such counsel, consultants or agents shall be paid by the Company. No member or former member of the Committee shall be liable for any action or determination made in good faith with respect to the Plan.

2. PARTICIPANTS AND BONUSES.

(a) The persons eligible to participate ("Participants") for the fiscal year ("Fiscal Year") of the Company ending September 26, 2009 shall be comprised of the Company's Chief Executive Officer, Chief Financial Officer, Executive Vice Presidents, Senior Vice Presidents, Vice Presidents and such other officers or positions of the Company or other key employees of the Company and any subsidiary of the Company as the Committee may specify. Subsidiary means any "subsidiary corporation" as defined in Section 424(f) of the Internal Revenue Code of 1986, as amended (the "Code") or any other entity of which a majority of the outstanding voting stock or voting power is beneficially owned directly or indirectly by the Company.

(b) For the Fiscal Year ending September 26, 2009, except as provided in Section 2(e) hereof, each Participant who is employed by the Company or one of its subsidiaries on the date immediately prior to the date of the Company's emergence from Chapter 11 bankruptcy (the "Vesting Date") shall be entitled to receive a cash bonus with respect to such Fiscal Year. The amount of the cash bonus shall be equal to (i) the amount of such Participant's Bonus Factor (as described in paragraph (c)), divided by (ii) the sum of the Bonus Factors for all of the Participants, multiplied by (iii) the sum of (A) $2.6 million if the Company's earnings before interest, taxes, depreciation, amortization and restructuring costs ("EBITDAR") for the third and fourth fiscal quarters combined equals $225 million, plus (B) an amount equal to 4% of the excess of EBITDAR greater than $225 million, excluding

extraordinary charges (in each case, as set forth on the Company's consolidated statements of income) for the third and fourth quarters of Fiscal Year 2009 with respect to which the bonus is being calculated, plus (C) the aggregate amount of the payments that would become payable under the Key Employee Incentive Compensation Agreements (the "KEIC Agreements") and under the Company Performance Improvement Plan (the "PIP") assuming the performance criteria and conditions to payment were satisfied under such arrangements (the "Bonus Pool Amount"). In no event, however, shall any cash bonus determined under this Section 2(b) be less than 100% of a Participant's Bonus Factor upon the Company achieving $325 million in EBITDAR for the third and fourth fiscal quarters combined in Fiscal Year 2009.

(c) Except as provided in the following sentence, each Participant's Bonus Factor is equal to (x) the target bonus percentage for a Participant established by the Board of Directors of the Company multiplied by (y) the amount of a Participant's base salary accrued with respect to Fiscal Year 2009. Any Participant whose first day of employment or death occurred after the first day of the third quarter of Fiscal Year 2009 shall receive a prorated Bonus Factor based on the ratio of the number of days the Participant was employed by the Company or any subsidiary during the third and fourth fiscal quarters of Fiscal Year 2009 to the total number of days during the third and fourth fiscal quarters of Fiscal Year 2009.

(d) Notwithstanding the provisions of Sections 2(b) and 2(c) hereof, (i) the Committee shall retain the right, in its sole discretion, to reduce, increase or eliminate, prior to the payment thereof, the amount of any bonus that would otherwise be due hereunder to a Participant or cause the aggregate amount of such bonuses to exceed the Bonus Pool Amount for such Fiscal Year.

(e) In the event of a Participant's death prior to the Vesting Date, the Participant's estate shall be entitled to a prorated bonus based on the calculation set forth in Section 2(c) hereof. The Committee may, in its sole discretion, provide for full or partial payment of the bonus upon a Participant's termination of employment for other reasons, including, but not limited to, the Participant's disability or retirement prior to the Vesting Date, provided the payment of the bonus is made in compliance with Section 409A of the Code.

3. PAYMENT OF BONUSES.

Each bonus awarded to a Participant hereunder shall be payable to a Participant no later than March 15 of the calendar year immediately following the date the Company emerges from Chapter 11 bankruptcy. For clarity, it is the intent for this bonus payment to qualify as a short-term deferral under Section 409A of the Code.

4. PARTICIPATION IN OTHER PERFORMANCE BONUS OR INCENTIVE PLANS OR AGREEMENTS.

Anything in this Plan to the contrary notwithstanding, if a Participant also participates in the PIP or is a party to a KEIC Agreement, the Participant shall be eligible to receive a payment only under the plan or agreement (but not under more than one arrangement) that provides for the highest payment with respect to the Fiscal Year ended September 26, 2009.

5. NON-TRANSFERABILITY.

No rights or benefits granted in the Plan may be transferred, assigned, pledged or hypothecated in any manner, by operation of law or otherwise, other than by will or by the laws of descent and distribution or pursuant to a qualified domestic relations order as defined by Section 414(p)

of the Code, or Title I of the Employee Retirement Income Security Act of 1974, as amended, or the rules thereunder, and shall not be subject to execution, attachment or similar process.

6. NO FIDUCIARY RELATIONSHIP.

The Board of Directors and the officers of the Company shall have no duty to manage or operate in order to maximize the benefits granted to the Participants hereunder, but rather shall have full discretionary power to make all management and operational decisions based on their determination of their respective best interests. This Plan shall not be construed to create a fiduciary relationship between such Board or the officers of the Company and the Participants.

7. GOVERNING LAW.

This Plan, and all controversies arising thereunder or related thereto, shall be governed by and construed in accordance with the laws of the State of Texas without regard to principles of conflict of laws that would apply any other law.

8. NO EMPLOYMENT GUARANTEE.

Nothing in this Plan shall be construed as an employment contract or a guarantee of continued employment. The rights of any Participant shall only be those as are expressly set forth in this Plan.

9. TAXES.

The Company shall be entitled to deduct from amounts payable hereunder any sums required by federal, state or local tax law to be withheld with respect to such payments.

10. GENERAL CREDITOR STATUS.

The Participants shall, in no event, be regarded as standing in any position, if at all, other than as a general creditor of the Company with respect to any rights derived from the existence of the Plan and shall receive only the Company's unfunded and unsecured promise to pay benefits under the Plan.

11. CAPTIONS.

The captions in the Plan are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Plan or any of the provisions hereof.

* * * *

I hereby certify that the foregoing Plan was duly adopted by the Board of Directors of Pilgrim's Pride Corporation on _____ __, 2009.

* * * * *

I hereby certify that the foregoing Plan was approved by the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, pursuant to a joint Chapter 11 plan of reorganization pursuant to Section 1121(a) of the United States Code, on _____ __, 2009.

Executed on this ____ day of _____, 2009.

_____

Corporate Secretary

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
SECTIONS 105(a), 363 AND 503 OF THE
BANKRUPTCY CODE AUTHORIZING THE DEBTORS TO
ESTABLISH A PERFORMANCE BONUS PLAN FOR FISCAL YEAR 2009
(Related to Docket No. [ ])

Upon the motion, dated September 4, 2009 (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"), pursuant to sections 105(a), 363 and 503 of the Bankruptcy Code for authorization to establish the

FY2009 Performance Bonus Plan,[1] 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 the appearances of all interested parties having been noted in the record of the hearing (the "Hearing"); and upon the record of the Hearing, and all of the proceedings had before the Court; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates and their creditors; 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 pursuant to sections 105(a), 363(b), and 503(c) of the Bankruptcy Code, the FY2009 Performance Bonus Plan is approved; and it is further

ORDERED that the Debtors are authorized, but not required, to make payments to all Key Employees in accordance with the FY2009 Performance Bonus Plan; and it is further

ORDERED that nothing in this Order or any payment by the Debtors under the FY2009 Performance Bonus Plan shall be deemed an assumption of any executory

[1] Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion.

contract or otherwise affect the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of the FY2009 Performance Bonus Plan and/or this Order.

END OF ORDER