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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
FORTH WORTH DIVISION**

IN RE:)	
)	
PILGRIM'S PRIDE CORPORATION, et al.)	
)	Case No. 08-45664-dml
)	Chapter 11
Debtors.)	(Jointly Administered)
)	

MOTION FOR LEAVE TO FILE PROOF OF CLAIM OUT OF TIME

IntegriTax, a creditor the above-captioned, jointly administered bankruptcy cases (the "Bankruptcy Cases"), files this *Motion for Leave to File Proof of Claim Out of Time* (the "Motion"), and respectfully shows the Court as follows:

JURISDICTION

1. On December 1, 2008, (the "Petition Date"), the Pilgrim's Pride Corporation ("Pilgrim's Pride") and certain of its affiliates (the "Affiliate Debtors" and together with Pilgrim's Pride, the "Debtors") filed separate voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

2. The Debtors' bankruptcy cases are being jointly administered under the caption above. The Debtors remain in possession of their assets and continue to manage their businesses as debtors-in-possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. On December 7, 2008, the Office of the United States Trustee appointed an

Official Committee of Unsecured Creditors for the Debtors.

4. This Court has jurisdiction over this Motion, pursuant to 28 U.S.C. §§ 157 and 1334.
5. Venue is proper in this District, pursuant to 28 U.S.C. § 1408.
6. This matter is a core proceeding, pursuant to 28 U.S.C. § 157(b)(2)(B).
7. The statutory predicate for the relief sought in this Motion is Rule 9006(b) of the Federal Rules of Bankruptcy Procedure (the “Rules”).

STATEMENT OF FACTS

8. On December 3, 2008, the Court entered an order jointly administering the above-captioned bankruptcy cases (the “Bankruptcy Cases”).
9. IntegriTax is an unsecured creditor in these Bankruptcy Cases.
10. IntegriTax is an accounting firm that, among other things, reviews State sales and use tax records and seeks tax refunds on behalf of their clients.
11. On May 6, 2003, prior to the Petition Date, IntegriTax entered into an agreement with Gold Kist, Inc. (the “Agreement”), a true and correct copy of the Agreement is attached hereto as **Exhibit “A”**, and incorporated herein by reference. Pilgrim’s Pride later purchased Gold Kist, Inc. (“Gold Kist”) and continued performing under the Agreement.
12. Pursuant to the terms of the Agreement, IntegriTax performed reviews of the Gold Kist’s sales, use or miscellaneous tax records in the States of Georgia, Florida, North Carolina and Alabama.
13. When such reviews resulted in a finding that Gold Kist had overpaid these taxes, IntegriTax filed the necessary refund claims with the respective taxing authorities or vendors. Tax refund checks would be sent directly to Gold Kist from the respective taxing authorities.
14. After the receipt of the refunds from the taxing authorities, and pursuant to the

Agreement, Pilgrim's Pride sent IntegriTax a commission which represented 33.33% of the entire refund.

15. As of the Petition Date, Pilgrim's Pride had received some recovered refunds. In turn, IntegriTax had received some commissions. However, since the Petition Date, Pilgrim's Pride has received additional sales and use tax refunds, giving rise to additional commissions due to IntegriTax.

16. In approximately March and August of 2009, IntegriTax learned that the States of Alabama and Florida, respectively, had sent post-petition tax refund checks to Pilgrim's Pride. These refunds were a direct result of the refund petitions submitted by IntegriTax.

17. Specifically, the State of Alabama sent Pilgrim's Pride a total of \$34,033.36 in refunds. A representative of the Alabama Department of Revenue confirmed the State's treasury had paid the checks on the following dates/amounts: (a) March 23, 2009; \$13,744.98; and (b) March 24, 2009; \$20,277.68, for a total of \$34,022.66 (together, the "Alabama Refunds"). Email correspondence acknowledging the payment of these checks, from the State of Alabama's Treasury, is attached hereto as **Exhibit "B"**, and incorporated herein by reference.

18. Further, the State of Florida sent Pilgrim's Pride two refund checks for refund petitions submitted by IntegriTax, each dated August 25, 2009, in the following amounts: (a) \$115,953.25; and (b) \$121,542.82, for a total of \$237,496.07 (the "Florida Refunds" and together with the Alabama Refunds, the "Refunds"). True and correct copies of the Florida Refund checks are attached hereto as **Exhibit "C"**, and incorporated herein by reference.

19. Pilgrim's Pride received \$271,518.73 in Refunds. As a result IntegriTax is entitled to a commission of \$90,415.74 (the "Commission") pursuant to the Agreement.

20. 11. In April of 2009, IntegriTax received a notice of that the general bar date in these Bankruptcy Cases was June 1, 2009 (the "Bar Date"). Upon review, the principals at

IntegriTax mistakenly concluded that filing a proof of claim was not necessary because no commissions on refunds were due as of the Petition Date. However, after the discovery of the Refunds/efforts to collect the Commissions, IntegriTax realized the role of the proof of claim process in the bankruptcy cases and the need to file such a claim. IntegriTax contacted legal counsel who later put them in contact with bankruptcy counsel. As a result, IntegriTax seeks the relief requested in this Motion.

RELIEF REQUESTED

21. By this Motion, IntegriTax seeks the entry of an order permitting IntegriTax leave to file a proof of claim out of time, pursuant to of the Rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure (the “Rules”).

ARGUMENT

22. IntegriTax seeks the Court’s permission to filed a proof of claim out of time. A copy of the proof of claim is attached hereto as **Exhibit “D”**, and incorporated herein by reference. IntegriTax’s failure to file a timely proof of claim constitutes “excusable neglect” pursuant to Rule 9006(b)(1), which states, in relevant part:

In General. Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by notice given thereunder or by order of court, the court for cause shown may at any time in its discretion . . . (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of *excusable neglect*.

Fed. R. Bankr. Pro. 9006(b)(1) (emphasis added).

23. The Supreme Court of the United States has articulated Rule 9006(b)’s “excusable neglect” standard in *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 395, 113 S. Ct. 1489, 1498 (1993). In *Pioneer*, the Supreme Court concluded that Rule 9006(b) grants parties “a reprieve to out-of-time filings that were

delayed by ‘neglect.’” *Id.* at 388. “Neglect” was found to include both simple, faultless omissions to act, omissions caused by carelessness, and inadvertent failure to file a proof of claim. *See id.* at 388-89 and 395. In making such findings, the Supreme Court illustrated the flexibility of Rule 9006(b)(1).

24. The Court then went on to identify four factors used to determine whether “excusable neglect” exists to support extension of a proof of claim bar date: (a) whether the extension will be prejudicial to the debtor; (b) the length of the delay; (c) the reason for the delay; and (d) the good faith of the claimant seeking the extension. *Id.* at 395.

**a. Permitting the Out of Time Filing of
IntegriTax’s Proof of Claim Will Not Prejudice Pilgrim’s Pride.**

25. Due to IntegriTax’s efforts, Pilgrim’s Pride has received \$271,518.73 in Refunds since the Petition Date. IntegriTax simply seeks their total commissions, as calculated under the Agreement, of \$90,415.74. This will provide Pilgrim’s Pride with a net sum of approximately \$181,102.99—funds that were not available to them before. IntegriTax’s efforts have benefitted the Bankruptcy Estates; there is no risk of prejudice to Pilgrim’s Pride by finding that conduct constitutes “excusable neglect.”

b. The Length of Delay is Minimal.

26. IntegriTax filed this Motion approximately four and one-half months after the Bar Date. Such filing was made as soon as practicable after IntegriTax realized and was counseled on the import of and need to file a proof of claim. At least one Fifth Circuit case has found that a delay of six to eight months is excusable in terms of filing a proof of claim out of time. *See In re Eagle Bus Mfg., Inc.*, 62 F.3d 730 (5th Cir. 1995).

c. IntegriTax’s Reason for the Delay/Acting in Good Faith.

27. As explained above, IntegriTax did not fully understand the necessity of filing a proof of claim when it received the Bar Date notice. In fact, IntegriTax believed that since no

commissions were owed to it as of the Petition Date, then filing a proof of claim was unnecessary. However, when the various taxing authorities approved/sent the Refunds, IntegriTax then became entitled the commissions under the Agreement. Thereafter, IntegriTax discovered the impact of the Bankruptcy Cases on the Agreement and the collection of their commissions. At that point, IntegriTax diligently sought legal counsel and gather information to pertinent to filing this Motion and a proof of claim. By filing this Motion/proof of claim, IntegriTax is not purposefully acting in an untimely manner, nor is it trying to gain an advantage in the Bankruptcy Cases.

CONCLUSION

WHEREFORE, for the reasons set forth herein, IntegriTax respectfully requests that this Court enter an order (i) extending the time in which IntegriTax may file its proof of claim; (ii) allow IntegriTax to file its proof of claim after the Bar Date; and (iii) grant such other or further relief as the Court deems just and proper.

Dated: October 21, 2009

By: 

Julie A. Linares

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USA, INC. AND INTEGRITAX**

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing *Motion to File Proof of Claim Out of Time* was filed and served on October 21, 2009, on (1) the parties receiving electronic notice via the Court's Electronic Case Filing System, and (2) the following via Regular U.S. Mail:

Pilgrim's Pride Corporation Attn: Gary Tucker 4845 U.S. Highway 271 N. Pittsburg, Texas 75686	Pilgrim's Pride Processing c/o Kurtzman Carson Consultants LLC 2335 Alaska Avenue El Segundo, California 90245
Weil, Gotshal & Manges, LLP Attn: Gary T. Holzer & Russell Brooks 767 Fifth Avenue New York, New York 10153	Weil, Gotshal & Manges, LLP Attn: Steven A. Youngman 200 Crescent Court, Suite 300 Dallas, Texas 75201-6950
Andrews Kurth LLP Attn: Jason D. Brookner 1717 Main Street, Suite 3700 Dallas, Texas 75201	Andrews Kurth LLP Attn: Paul N. Silverstein 450 Lexington Avenue New York, New York 10017


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