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ATTORNEYS FOR THE TEXAS
COMPTROLLER OF PUBLIC ACCOUNTS

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

In re:	§	
	§	CASE NO. 08-45664-DML-11
PILGRIM'S PRIDE CORPORATION, <i>et al.</i> ,	§	(Jointly Administered)
	§	Chapter 11
Debtors	§	

**TEXAS COMPTROLLER OF PUBLIC ACCOUNTS' OBJECTION
TO CONFIRMATION OF AMENDED JOINT PLAN**

The Texas Comptroller of Public Accounts ("Texas Comptroller"), appearing through the Texas Attorney General's Office, objects on the following grounds to confirmation of the Debtor's Amended Joint Plan dated October 21, 2009 (the "Plan"):

1. Plan Art.10.4 proposes to enjoin creditors from exercising setoff rights with respect to any claim. Pursuant to 11 U.S.C. § 553, setoff rights survive bankruptcy and are not affected by other sections of the Bankruptcy Code, including § 1141. IRS v. Luongo (In re Luongo), 259 F.2d 323 (5th Cir. 2001); Alta + Cast, 2004 WL 484881 (Bankr. D. Del.)(confirmation objection to attempt to affect setoff rights is sufficient to preserve those rights). The Comptroller objects to any alteration of its setoff rights. Because the Plan's prohibition against setoff does not comply with § 553, the Plan cannot be confirmed, pursuant to § 1129(a)(1).

2. Plan Article XII attempts to create "exclusive" jurisdiction forever in this Court over "all matters arising out of, arising under, and related to the Chapter 11 Cases and the Plan," over all

distributions under the Plan, over all disputes arising in connection with the enforcement of the Plan, and over "any other matters that may arise in connection with or are related to the Plan." Such permanent, exclusive jurisdictional provisions conflict with 28 U.S.C. § 1334(b), which vests only concurrent jurisdiction in federal district courts (and, by orders of reference, bankruptcy courts) over civil proceedings arising in or related to cases under Title 11. Most courts, when presented with the issue, have limited, rather than purported to expand, post-consummation jurisdiction over plan enforcement. In particular, should the reorganized Debtors default under the Plan, creditors should be free to pursue default remedies in non-bankruptcy forums, without returning to this court. Claybrook Drilling Co. v. Divanco, 336 F.2d 697, 700 (10th Cir. 1964)(the bankruptcy court "may not keep the corporation in 'perpetual tutelage' by ... assuming jurisdiction over controversies between the reorganized corporation and third parties"); Warren v. Calania Corp., 178 B.R. 279, 282 (M.D. Fla. 1995)("a bankruptcy court does not remain forever involved in the postconfirmation affairs of its reorganized debtors"); In re Bankeast Corp., 142 B.R. 12 (Bankr. D. N.H. 1982)(Judge Yacos applied plan language, which he had mandated, 132 B.R. 665, to refuse to hear post-consummation disputes that belonged in state court). As the Fifth Circuit has put it, "bankruptcy court jurisdiction does not last forever." Bank of Louisiana v. Craig's Stores of Texas, Inc. (In re Craig's Stores of Texas, Inc.), 266 F.3d 388, 389 (5th Cir. 2001). The ex-debtor "may not come running to the bankruptcy court every time something unpleasant happens.... No longer is expansive bankruptcy court jurisdiction required to facilitate 'administration' of the debtor's estate, for there is no estate left to reorganize." *Id.* at 390.

3. Recognizing that creditors should not be required to return to a bankruptcy court with purported "exclusive jurisdiction" to enforce a reorganized debtor's obligations under a plan, default

remedy language similar to the following has been approved in many bankruptcy cases in this and other districts and should be included in either an amended plan or the confirmation order in this case:

A failure by the reorganized Debtors to make a payment to priority tax creditors pursuant to the terms of the Plan shall be an Event of Default. If the reorganized Debtors fail to cure an Event of Default as to tax payments within ten (10) days after service of a written notice of default from a priority tax creditor, then a priority tax creditor may (a) enforce the entire amount of its claim, (b) exercise any and all rights and remedies under applicable nonbankruptcy law, and (c) seek such relief as may be appropriate in this court or any other court of competent jurisdiction.

4. Plan Arts. 10.8 and 10.9 contains broad exculpation and release provisions that could excuse exculpated parties' non-compliance with applicable statutes, including tax laws. Federal law requires that debtors in possession comply with applicable laws, specifically including tax laws, in operating businesses under Chapter 11. 28 U.S.C. §§ 959 & 960. Post-confirmation, compliance with applicable state and federal statutes is required, as for all other entities. There is no legal authority to excuse non-compliance with the law, and statutory violations (including violations of tax laws) should be excepted from the exculpation and release provisions of Arts. 10.8 and 10.9. Those articles, which propose a "willful misconduct, gross negligence, fraud, [or] criminal misconduct" standard of care, may be read to impose a different standard of care than applicable statutes such as 26 U.S.C. § 6672 and Texas Tax Code § 111.016(a). To the extent Arts. 10.8 and 10.9 may alter applicable statutory standards of care, they should not be approved. Just as Art. 10.9 includes an exception to exculpation provisions for applicable federal and state securities laws, Arts. 10.8 and 10.9 should include an exception for applicable federal and state tax laws.

Wherefore, unless the foregoing defects are cured by plan amendments or court order, the Texas Comptroller requests that confirmation of the Plan be denied and that the Texas Comptroller

have such other relief to which it may be entitled.

Respectfully submitted,

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