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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 SECTIONS 105 AND 363(b) OF
THE BANKRUPTCY CODE FOR AUTHORIZATION TO USE
PROPERTY OF THE ESTATES TO PAY LEGAL COSTS OF EMPLOYEES IN
PENDING RICO ACTION AND FOR AN ORDER AUTHORIZING BAKER &
MCKENZIE, LLP TO DEFEND SUCH EMPLOYEES**

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON
DECEMBER 1, 2009 AT 10:30 AM (CT) AT THE ELDON B.
MAHON U.S. COURTHOUSE, 501 W. TENTH STREET FORT**

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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 NOVEMBER 24, 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.

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 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").

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

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

Jurisdiction

5. 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

6. By this Motion, the Debtors request, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, an order authorizing the Debtors to pay legal costs for two of its employees in connection with the RICO Action (as defined below) and authorizing Baker & McKenzie, LLP ("B&M") to continue representing the two employees in their defense.

The RICO Action

7. On March 16, 2007, Jennifer Hall ("Hall") filed a class action complaint (the "RICO Action") against Paul White and Phyllis Thomas ("Thomas"), two employees of the Debtors' Russellville, Alabama chicken processing plant. The RICO Action has not been certified as a class action, but another plaintiff, Jose Rocha ("Rocha" and together with Thomas, the "Plaintiffs") has been added. Paul White has been dismissed from the suit and another employee, Gloria Fisher ("Fisher"), has been added as a defendant.

8. The Plaintiffs in the RICO Action have alleged that Thomas, the Complex Manager at the Russellville facility, and Fisher, the Human Resources Clerk at the Russellville Facility, conspired with other of the Debtors' human resources personnel to depress wages by knowingly hiring large numbers of illegal immigrants to work in the Debtors' facilities.

9. Following the filing of the RICO Action, PPC requested that B&M defend Thomas and Fisher (the "Employees") and Paul White when he was a party. B&M

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provided such defense up to the time of the Commencement Date, and the Debtors paid the cost of the defense.

10. The Plaintiffs have claimed, among other things, that the Employees have knowingly employed illegal immigrants in the Debtors' facilities, that they have personally approved and implemented hiring policies geared toward hiring illegal immigrants rather than legal workers, and that they have purposefully recruited illegal workers for the Debtors' facilities. Plaintiffs have claimed such actions are part of a conspiracy and a company-wide scheme to hire more illegal workers than legal workers. The Debtors have always denied these allegations.

11. Prior to the Commencement Date, the District Court required the Plaintiffs to file an amended complaint and limited the discovery in the RICO Action to the Russellville, Alabama facility only. Copies of the Second Amended Complaint and the court's Order are attached hereto as **Exhibits A & B** respectively.

12. Also prior to the Commencement Date, B&M, on behalf of the Employees, filed a motion for summary judgment, which, if granted, could dispose of the entire case. The Plaintiffs responded to the motion for summary judgment and designated expert testimony in support of their response. The Employees moved to exclude the expert testimony.

13. Since the Commencement Date, the RICO Action has remained inactive, and the motion for summary judgment and motion to exclude expert testimony filed by the Employees have remained pending. Based on the inactivity, it has not been necessary for B&M to take any actions on behalf of the Employees.

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14. Recently, the District Court in the RICO Action set a hearing on Thomas and Fisher's motion to exclude the plaintiffs' expert testimony for November 17, 2009. Plaintiffs recently filed a motion to continue that hearing until December 3 or 4, 2009. Now that the RICO Action is active again, the Debtors seek to ensure that the Employees are defended.

Payment of Legal Costs of the Employee

15. In the ordinary course of business it is common for large corporations to pay for the representation of employees in connection with lawsuits related to such employees' job responsibilities.

16. Indeed, prior to the Commencement Date, the Debtors paid for counsel for other employees. Accordingly, paying legal costs of the Employees in connection with the RICO Action would be in line with the ordinary course of business of the Debtors and the practice of most major corporations.

17. The Debtors believe that representation of the Employees in the RICO Action is in the best interests of not only the Employees, but of the Debtors and their estates. This is why prior to the Commencement Date, the Debtors retained Baker & McKenzie as counsel for the Employees.

18. It is the Debtors' belief that the Plaintiffs' counsel will attempt to use the discovery process, as Plaintiff's counsel has in cases against other companies², to expand the RICO Action to include other of the Debtors' plants and that it is the Plaintiffs' intent

² See *Williams v. Mohawk Indus., Inc.*, 568 f.3d 1350, 1352 (11th Cir. 2009); *Carpenter v. Mohawk Indus., Inc.*, 541 F.3d 1048, 1050 (11th Cir. 2008); *Canyon County v. Syngenta Seeds, Inc.*, 519 f.3d 969, 971 (9th

to ultimately reach the Debtors for satisfaction of any damages they can prove. In fact, Plaintiffs have sought discovery on topics specifically intended to result in the addition of Debtors as a party. Such topics include the Debtors' agreements with third-party recruiting agencies.

19. This is the only logical conclusion based on Plaintiffs' allegations. Indeed, they seek a nationwide class of employees who seek lost wages dating back at least three years. Plaintiffs cannot, and do not, believe that two individual defendants will be able to satisfy any judgment related to those allegations.

20. Although the Debtors do not believe that approval of the Court is required to pay legal costs of counsel for the Employees because such practice is in the ordinary course of business, to the extent property of the Debtors' estates is being used outside the ordinary course of business, out of abundance of caution, the Debtors request authority to use property of the estate to pay legal costs of counsel for the Employees.

21. It is within the ordinary course of the Debtors' business to pay the legal expenses of its employees and to have B&M defend such employees to the extent there is no conflict between the Debtors and such employees.

Authorization to Use Property of the Estates to Pay Legal Costs and to Allow B&M to Defend the Employees is Warranted

22. As noted, the Debtors do not believe Court approval is required to pay B&M to defend the Employees. As provided in section 363(c) of the Bankruptcy Code,

[i]f the business of the debtor is authorized to be operated under section 721, 1108, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may

Cir. 2008); *Trollinger v. Tyson Foods, Inc.*, 370 F.3d 602, 605 (6th Cir. 2004); *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163, 1166 (9th Cir. 2002).

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enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c).

23. To the extent Court approval is required, however, ample justification exists for incurring costs to defend the Employees and for having B&M defend them. Section 363(b) of the Bankruptcy Code provides that “the [debtor], 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). A court should approve a request for relief under section 363 of the Bankruptcy Code where the debtor demonstrates a sound business justification for seeking such relief. *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”); *accord In re Continental Air Lines, Inc.*, 780 F.2d 1223, 1225 (5th Cir. 1986). In this regard, courts have applied the business judgment rule. *In re Integrated Resources, Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992); *Matter of St. Petersburg Hotel Assoc. Ltd.*, 37 B.R. 341, 343 (Bankr. M.D. Fla. 1983). 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.” *Integrated Resources, Inc.* 147 B.R. at 656 (internal citations and quotations omitted). Courts are loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence. *Id.*

24. The RICO Action involves serious allegations about the conduct of the Debtors’ businesses and their hiring practices. The Employees do not have the resources

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to defend the extensive and complicated RICO Action on their own. If the Employees are not defended, there may be court or jury findings that would have negative impact on the Debtors. Indeed, as stated above, the Debtors believe that the Plaintiffs will use the discovery process in the RICO Action to gather information that can be used to later bring an action against the Debtors.

25. Based on the foregoing, the Debtors submit that paying legal costs for counsel for the Employees is warranted under section 363 of the Bankruptcy Code and is in the best interests of the Debtors, their estates and creditors.

26. The Debtors further submit that it is in the best interest of the Debtors, their estates and creditors, for B&M to defend the Employees. B&M has been involved in the defense of the RICO Action since its inception. B&M disclosed the representation of the Employees in its application to be employed as special counsel for the Debtors and the Affidavit of David W. Parham filed in support thereof. The Debtors believe that it is appropriate to have B&M continue to defend the Employees in the RICO Action, because there is no conflict between the Debtors and the Employees and because the RICO Action has a significant impact on the Debtors and their businesses.

Notice

27. Notice of this Motion has been provided to: (i) the Office of the United States Trustee; (ii) counsel to the statutory committees; (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.

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No Previous Request

28. 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 grant the relief requested herein and such other and further relief as it deems just and proper.

Dated: November 4, 2009

Respectfully submitted,

/s/ Stephen A. Youngman
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**ATTORNEYS AND DEBTORS IN
POSSESSION FOR THE DEBTORS**

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