

Martin A. Sosland (18855645)
Stephen A. Youngman (22226600)
WEIL, GOTSHAL & MANGES LLP
200 Crescent Court, Suite 300
Dallas, Texas 75201
Telephone: (214) 746-7700
Facsimile: (214) 746-7777

-and-

Gary T. Holtzer (*pro hac vice*)
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

Attorneys for Debtors and
Debtors in Possession

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

In re

PILGRIM'S PRIDE CORPORATION, *et al.*,

Debtors.

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Chapter 11

Case No. 08-45664 (DML)

JOINTLY ADMINISTERED

**MOTION PURSUANT TO SECTION 365(a) OF THE BANKRUPTCY CODE
AND BANKRUPTCY RULES 6006 AND 9014 AUTHORIZING THE DEBTORS
TO REJECT CERTAIN EXECUTORY CONTRACTS AND
CERTAIN UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY**

**A HEARING WILL BE CONDUCTED ON THIS MATTER ON JANUARY 27, 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 JANUARY 20, 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").

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

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.

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's products are sold to foodservice, retail and frozen entrée customers, distributed primarily through retailers, foodservice 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 consolidated 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.

Jurisdiction and Venue

7. 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

8. Pursuant to section 365(a) of the Bankruptcy Code and Bankruptcy Rules 6006 and 9014, the Debtors seek authorization to reject those executory contracts and unexpired leases identified on Exhibit A attached hereto (the “Executory Contracts” and “Unexpired Leases,” respectively).²

9. The Debtors have evaluated each of the Executory Contracts and Unexpired Leases and have examined the costs associated with the Debtors’ obligations thereunder. Based upon this evaluation, the Debtors have concluded that continued compliance with the terms of the Executory Contracts and Unexpired Leases would be burdensome and would provide no corresponding benefit to the Debtors or their estates.

Description of the Executory Contracts

10. The Debtors seek to reject certain contracts pursuant to which the Debtors are provided with various types of goods or services. Specifically, the Debtors seek to reject multiple contracts under which the Debtors receive either (i) natural gas (the “Natural Gas Contracts”), (ii) soybean oil (the “Soybean Oil Contracts”), and (iii) corn (the “Corn Supply Contracts”). The Natural Gas Contracts and Soybean Oil Contracts are hedging contracts, pursuant to which the Debtors agreed to purchase a defined amount of either natural gas or soybean oil at a fixed price on a set future date. Pursuant to the Corn Supply Contracts, the Debtors purchase corn to be delivered to their facilities in Mexico and used in the production of

² Copies of individual Executory Contracts and Unexpired Leases will be made available to any party in interest upon request to the Debtors’ undersigned attorneys. This Motion is without prejudice to the Debtors’ right to claim that any Executory Contract or Unexpired Lease expired by its own terms or was terminated prior to the effective date of rejection, as the case may be. Moreover, nothing herein shall be deemed an admission that the Executory Contracts and Unexpired Leases are enforceable obligations of the Debtors, are executory in nature, or that the contract counterparty identified on Exhibit A has a valid claim against the Debtors as a result of the rejection requested herein.

chicken feed. Additionally, the Debtors seek to reject several services contracts pursuant to which a third party either (i) recycles breading and fryer crumb material (the "Breeding Contracts"), or (ii) provides consulting services regarding the disposal of the Debtors' sold waste (the "Waste Disposal Contracts" and, together with the Breeding Contracts, the "Services Contracts").

11. The Debtors also seek to reject a contract pursuant to which the Debtors sell, as opposed to receive, goods. Specifically, the Debtors seek to reject a contract under which the Debtors sell approximately 300,000 pounds of poultry per week to a third party for resale (the "Poultry Supply Contract").

12. In addition, the Debtors seek to reject multiple contracts (the "Grower Contracts") with independent contract growers with whom the Debtors contract to (i) house and care for the Debtors' breeder hens and roosters (the "Breeder Growers"), and (ii) raise and care for the Debtors' broiler chickens (the "Broiler Growers," and, together with the Breeder Growers, the "Growers"). Pursuant to the Grower Contracts, the Growers own and operate the farm, chicken houses, equipment, utilities and labor required to raise and care for the Debtors' chickens, while the Debtors provide the live poultry as well as feed, veterinary services, technical assistance, and the Debtors' recommendations as to the technical aspects of efficiently growing, feeding and caring for the chickens.

Description of Nonresidential Real Property Leases

13. The Debtors seek to reject three nonresidential real property leases. The three parcels are located in Jackson, Mississippi (the “Mississippi Facility”) and Oskaloosa, Iowa (the “Iowa Facility”). The Mississippi Facility and the Iowa Facility served as distribution centers.

BASIS FOR RELIEF REQUESTED

Rejection of the Executory Contracts and Unexpired Leases Is Supported by the Debtors’ Business Judgment and Should be Approved by the Court

14. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a); *see also Stewart Title Guar. Co. v. Old Republic Nat’l Title Insurance Co.*, 83 F.3d 735, 741 (5th Cir. 1996). “This provision allows a [debtor] to relieve the bankruptcy estate of burdensome agreements which have not been completely performed.” *Id.* (quoting *In re Murexco Petroleum, Inc.* 15 F.3d 60, 62 (5th Cir. 1994)).

15. Courts defer to a debtor’s business judgment in rejecting an executory contract or unexpired lease, and upon finding that a debtor has exercised its sound business judgment, approve the rejection under section 365(a) of the Bankruptcy Code. *See Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) (recognizing the “business judgment” standard used to approve rejection of executory contracts); *In re Food City, Inc.*, 94 B.R. 91, 93 (Bankr. W.D. Tex. 1988) (same); *In re Child World, Inc.*, 142 B.R. 87, 89 (Bankr. S.D.N.Y. 1992) (stating that a debtor may assume or reject an unexpired lease under § 365(a) in the exercise of its “business judgment”). In applying the business judgment standard, courts show great deference to a debtor’s decision to reject executory contracts. *See Summit Land Co. v. Allen (In re Summit*

Land Co.), 13 B.R. 310, 315 (Bankr. D. Utah 1981) (absent extraordinary circumstances, court approval of a debtor's decision to assume or reject an executory contract "should be granted as a matter of course.").

16. The Debtors have ample justification to reject the Executory Contracts and Unexpired Leases. The Natural Gas Contracts and Soybean Oil Contracts are, as described above, hedging contracts, which were entered into at a time when the goods sold pursuant to those contracts were more costly than they currently are. Accordingly, rejection of these Executory Contracts will eliminate the administrative expenses attendant thereto and allow the Debtors to purchase the same goods they purchased pursuant to these Executory Contracts at a lower price. Similarly, because the Debtors believe they can purchase corn at lower prices than as set forth in the Corn Supply Contracts, it is in the best interests of the Debtors to reject these contracts and buy corn at a lower price.

17. The Debtors' decision to reject the Services Contracts and the Poultry Supply Contract is similarly justified. The terms of these contracts are unfavorable, and unnecessarily burden the Debtors. The Debtors believe that they can receive the same services as are rendered to them under the Services Contracts on more favorable terms than they are otherwise receiving. Likewise, the Debtors believe that the costs associated with the Poultry Supply Contract outweigh the benefits.

18. Due to a reduction in operations, the Debtors no longer need to maintain the same number of Growers they formerly used at specified facilities. Accordingly, the Debtors believe it is in their best interests to reject certain of the Grower Contracts.

19. With respect to the Unexpired Leases of nonresidential real property, the Debtors no longer occupy the premises relating to the Unexpired Leases. Based upon the

Debtors' efforts to date and their understanding of the current market conditions, the Debtors do not believe it is in the Debtors', the estates', or the creditors' interests to market the leases in an attempt to sublease the affected premises. Accordingly, the Debtors submit that there is no potential value that might be realized by a future sale or sublease of the Unexpired Leases.

20. Pursuant to section 365 of the Bankruptcy Code, the Debtors seek to reject the Executory Contracts and Unexpired Leases effective as of the dates indicated on Exhibit A (the "Proposed Rejection Dates"). The Proposed Rejection Dates are either (i) the date hereof, (ii) a date subsequent to the date hereof, but prior to the hearing on this Motion, or (iii) with respect to two Corn Supply Contracts (the "J.D. Heiskell & Co. Contract"), December 2, 2008. While section 365 of the Bankruptcy Code does not specifically address whether the Court may order rejection to be effective retroactively, many courts, including those in this district, have held that bankruptcy courts may, in their discretion, authorize rejection retroactive to a date prior to entry of the order authorizing such rejection. *See e.g., In re Cafeteria Operations, L.P.*, 299 B.R. 384, 394 (Bankr. N.D. Tex. 2003) (finding that the equities of the case allowed rejection retroactive to the later of (i) the date the debtors filed their motion to reject or (ii) the date the leased space was vacated, where the debtors received no benefit from the leased properties after the debtors vacated the properties and the landlords had notice of debtors intent to reject prior to the filing of the rejection motions); *In re At Home Corp.*, 392 F.3d 1064, 1065-66 (9th Cir. 2004) (affirming bankruptcy court's approval of retroactive rejection), *cert. denied sub nom. Pacific Shores Dev., LLC v. At Home Corp.*, 546 U.S. 814 (2005); *In re CCI Wireless, LLC*, 297 B.R. 133, 140 (D. Colo. 2003) (holding that "because section 365 does not, as a matter of law, prohibit selection of a retroactive date for rejection, the bankruptcy court has authority under section 365(d)(3) to set the effective date of rejection at least as early as the filing date of the

motion to reject”); *In re Jamesway Corp.*, 179 B.R. 33, 36-37 (S.D.N.Y. 1995) (recognizing that section 365 does not include “restrictions as to the manner in which the court can approve rejection”).

21. This Court has held that where a debtor vacates the premises of its leased properties, or informs a contract counterparty it no longer seeks to receive goods or services under the contract, the equities favor a rejection of such leases and/or contracts retroactive to the date the motion to reject was filed. *In re Cafeteria Operations, L.P.*, 299 B.R. at 94. Here, the balance of the equities favor a retroactive rejection date to Proposed Rejection Dates. With respect to the Unexpired Leases of nonresidential real property, the Debtors will have vacated the premises prior to the Proposed Rejection Date. Additionally, with respect to the Executory Contracts whose Proposed Rejection Dates are the date hereof, the Debtors have informed substantially all of the contract counterparties that they no longer seek to obtain goods and/or services pursuant to the contracts. With respect to the Executory Contracts whose Proposed Rejection Dates are a date subsequent to the date hereof, the contract counterparties to those contracts will receive notice of the proposed rejection prior to the Proposed Rejection Dates. Finally, with respect to the J.D. Heiskell & Co. Contract, the Debtors informed the contract counterparty of its intent to reject as of December 2, 2008 on that date. Since that time, the Debtors have received no benefit under the contract – that is, no goods have been delivered to the Debtors pursuant to the J.D. Heiskell & Co. Contract as of December 2, 2008 and the relationship between the contract counterparties has terminated.

22. Without a retroactive date of rejection, the Debtors will be forced to incur unnecessary administrative expense charges for leases and contracts that no longer provide any tangible benefit to the Debtors’ estates. The counterparties to the Executory Contracts and

Unexpired Leases will not be prejudiced by retroactive rejection as of the Proposed Rejection Dates because these parties will have received, or have already received, advance notice of the Debtors' intent to reject their respective contract or lease. *See e.g., In re Mid Region Petroleum, Inc.* 111 B.R. 968 (Bankr. N.D. Okla. 1990) (effective date of rejection of leases was the date the trustee gave notice to lessor of intent to reject); *Carlisle Homes Inc., v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 535 (Bankr. D.N.J. 1988) (holding that a debtor may reject executory contracts by clearly communicating intention to reject).

23. The Debtors request that the Court direct that any claim for damages arising as a result of the rejection of the Executory Contracts or Unexpired Leases must be filed by such date as may be fixed by the Court at a later date for the filing of rejection damages claims.

24. In light of the foregoing, the Debtors respectfully request that the Court approve rejection of the Executory Contracts and Unexpired Leases under section 365(a) of the Bankruptcy Code in the manner requested herein as a sound exercise of the Debtors' business judgment.

NOTICE

25. Notice of this Motion has been provided to: (i) the U.S. Trustee; (ii) counsel to the committee of unsecured creditors; (iii) counsel to the Debtors' prepetition secured lenders; (iv) counsel to the Agent to the Debtors' postpetition lenders, and (v) the counterparties to the Executory Contracts and Unexpired Leases (collectively, the "Notice Parties"). The Debtors submit that no other or further notice need be provided.

No Previous Request

26. No previous request for the relief sought herein has been made by the Debtors 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: December 31, 2008
Fort Worth, Texas

/s/ Stephen A. Youngman
Martin A. Sosland (18855645)
Stephen A. Youngman (22226600)
WEIL, GOTSHAL & MANGES LLP
200 Crescent Court, Suite 300
Dallas, Texas 75201
Telephone: (214) 746-7700
Facsimile: (214) 746-7777

-and-

Gary T. Holtzer (*pro hac vice*)
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
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