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Debtors in Possession

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

<b>In re:</b>	§	
	§	<b>Case No. 08-45664 (DML)</b>
<b>Pilgrim's Pride Corporation, et al.,</b>	§	
	§	<b>Chapter 11</b>
<b>Debtors.</b>	§	
	§	<b>Jointly Administered</b>

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**DEBTORS' THIRTY-SEVENTH OMNIBUS OBJECTION (NO LIABILITY- CLINTON  
GROWER CLAIMS RELATED TO ARNOLD LITIGATION)**

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")<sup>1</sup> file this their

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<sup>1</sup> The Debtors are Pilgrim's Pride Corporation, 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.

Thirty-Seventh Omnibus Objection (No Liability-Clinton Grower Claims Related to *Arnold* Litigation) (the “Objection”) and respectfully represent in support thereof:

### **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 Bankruptcy Code (the “Bankruptcy Code”) in the Bankruptcy Court for the Northern District of Texas, Fort Worth Division (the “Bankruptcy Court”). 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. 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. 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.

**Additional Background Relevant To This Objection**

5. On September 10, 2008, a complaint (the “Complaint”) was filed against PPC and two PPC representatives in the Circuit Court of Van Buren County, Arkansas (Case No. CV2008-196) styled “*Ricky Arnold, et al. v. Pilgrim’s Pride Corp., et al.* (the “Arnold Case”). The Complaint was filed by numerous independent contract poultry growers and their spouses asserting claims of fraud and deceit, constructive fraud, fraud in the inducement, promissory estoppel, and violations of the Arkansas Livestock and Poultry Contract Protection Act relating to PPC’s idling of its Clinton, Arkansas processing plant (collectively, the “Clinton Growers”).

6. PPC filed an answer to the Complaint (the “Answer”), which is attached hereto as **Exhibit A** and incorporated herein for all purposes.

7. Subsequently, the Debtors filed their bankruptcy petitions. On March 31, 2009, this Court entered the Order Pursuant to Section 502(b)(9) of the Bankruptcy Code and Bankruptcy Rule 3003(c) Establishing the Deadline for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof [Docket Number 1352] (the “Bar Date Order”). The Bar Date Order set June 1, 2009 as the deadline (the “General Bar Date”) for persons or entities to file proofs of claim.

8. On July 21, 2009, the Bankruptcy Court extended the Order Approving Procedures for objecting to Proofs of Claim and for Notifying Claimants of Such Objections [Docket Number 2723] (the “Claim Objection Order”).

9. The Claim Objection Order authorizes the Debtors to file a single omnibus objection to Claim Nos. 3867 through 3898, 3919 through 3921, 3924 through 3925, 3927, 3930 through 3931, 3933 through 3934, 3937 through 3938, 3941 through 3942, 3944, 3946 through 3947, 3949, 3951, 3980 through 3983, 3986, 3990 through 3992, 3994 through 4021, 4405

through 4406, 4793 through 4797, 4800 through 4802, 4915, 4926, 4932 through 4934, 4988, and 5174 through 5179 (collectively, the “Clinton Grower Claims”).<sup>2</sup>

### **Jurisdiction**

10. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Relief Requested**

11. Pursuant to Bankruptcy Rule 3007 and section 502 of the Bankruptcy Code, the Debtors object to each of the Clinton Grower Claims.<sup>3</sup> The Debtors seek an order: (a) sustaining the Objection; and (b) disallowing each of the Clinton Grower Claims in their entirety since the Debtors are not liable for the allegations therein.

### **Objections**

#### **A. General Objection to all of the Clinton Grower Claims**

12. Pursuant to the Claim Objection Order, the Debtors hereby object to each of the Clinton Grower Claims set forth in **Exhibit B**. Each of the Clinton Grower Claims are unenforceable against the Debtors for the reasons asserted in the Answer.

13. Each of the Clinton Grower Claims grow out of the pre-petition idling of the Clinton, Arkansas Complex. The termination of the grower contracts was justified due to economic necessity. Termination was not improper, rather it was permitted, as each of the Clinton Growers had been for some time, on flock to flock contracts which allowed for early termination by Pilgrim’s. Additionally, the damages sought by the Clinton Growers are

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<sup>2</sup> Upon information and belief, the Clinton Grower Claims includes claims filed by individuals that were planning to be, but were not yet joined as, Plaintiffs in the *Arnold* Case.

<sup>3</sup> The lone exception is Claim No. 4926 which was filed by KPS Live Haul, Inc. Pilgrim’s anticipates the filing of a separate objection against this Claim.

untenable. Most notably they seek payment for lost profits spanning more than a decade and reimbursement for any capital expenditure ever made, including some that appear to go back more than thirty years. In short, these claims are wholly without merit.

**B. Specific Objection to claims for promissory estoppel**

14. With regard to the Clinton Growers' alleged promissory-estoppel claims, the Debtors submit that the doctrine of promissory-estoppel applies only where no contract on the subject matter exists. "By its very nature, promissory estoppel serves as a basis for recovery under circumstances when there is *not* a contract." *C.R. Lehman Props. L.P. v. Conopco, Inc.*, 2005 U.S. Dist. LEXIS 40847 (W.D. Ark. Dec. 20, 2005)(citing *MDH Builders, Inc. v. Nabholz Constr. Corp.*, 70 Ark. App. 284, 17 S.W.3d 97 (2000)).

15. However, each of the Clinton Growers raised poultry for at least one of the Debtors under a written Production Agreement.<sup>4</sup> Each Production Agreement includes a clause providing that the respective Production Agreement constitutes the "entire agreement between the parties" and that the Production Agreement "supersedes all oral understandings and other communications made before the execution of those documents."<sup>5</sup> The Agreement also contains language that the Clinton Grower "has not relied upon any statements that are not contained in [the Agreement]."<sup>6</sup>

16. The Debtors submit that all of the alleged promises complained of were governed, by the Production Agreement; hence, the promissory estoppel claims are barred as a matter of law.

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<sup>4</sup> See, e.g.; Pilgrim's Pride Corporation Broiler Production Agreement with Clinton Grower Roy W. Sullivan, Jr. d/b/a Seven Oaks Farm, a copy of which is attached hereto as **Exhibit C**. Pilgrim's submits that the Production Agreements for the remaining Clinton Growers are largely identical to the one contained in Exhibit C. Due to their voluminous nature, Pilgrim's has elected not to produce copies of all of the Production Agreements at this time, however such are available for review and copying upon request.

<sup>5</sup> *Id.* at pp. 4-5.

<sup>6</sup> *Id.*

17. Moreover, none of the Clinton Growers conceal the existence of these Production Agreements. In fact, the complaint attached as an exhibit to the proofs of claim repeatedly refers to the contractual arrangement with Pilgrim's. As a result, it is apparent that the Production Agreements are central to each of the Clinton Grower Claims.

18. Even assuming the grower agreements do not prevent the Clinton Growers from pursuing promissory-estoppel claims, none of the Clinton Growers provide sufficient information to support their claims. As the Honorable Terry Means previously decided in a similar dispute between contract poultry growers and Debtor Pilgrim's Pride Corporation, "vague and indefinite statements that amount to no more than speculation about future events..... are insufficient to support a claim for promissory estoppel."<sup>7</sup> Judge Means also concluded that if the alleged promises are indefinite then a party would not be reasonable in relying on them.<sup>8</sup>

19. Pilgrim's therefore submits that it has no liability for the promissory estoppel allegations.

**C. Specific Objection to fraud allegations**

20. The Clinton Growers' fraud claims are likewise similarly deficient. None of the Clinton Growers allege when the fraudulent statements were made, who made them, and why they were fraudulent. The Clinton Growers "must allege specific facts in support of each element of [their] claims, not vague characterizations of the actions allegedly taken by

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<sup>7</sup> See, Order Granting in Part and Denying in Part Motion to Dismiss in *Adams, et al v. Pilgrim's Pride Corporation*, Civil No. 09-386 at pp. 15-16 (N.D. Tex. September 14, 2009) (the "Adams Order") (citing *City of Beaumont v. Excavators & Constructors, Inc.*, 870 S.W. 2d 123, 138 (Tex. App. – Beaumont 1993, writ denied) (concluding statement that amounted to speculation about future events and that did not set a time frame for performance of the alleged promise could not support claim for promissory estoppel); *Gillum v. Republic Health Corp.*, 778 S.W. 2d 558, 570 (Tex.App.—Dallas, 1989, no writ) (concluding that a vague and indefinite promise could not support claim for promissory estoppel); cf. *Iraola & CIA, S.A. v. Kimberly-Clark Corp.*, 325 F.3d 1274, 1281 (11th Cir. 2003) ("[P]romissory estoppel has no application where the promise relied upon is for an indefinite duration").

<sup>8</sup> See, *Adams Order* at p. 16 (citing *Montgomery County Hosp. Dist. v. Brown*, 965 S.W. 2d 501, 503 (Tex. 1998)) (concluding that a party may not reasonably or justifiably rely on an indefinite promise.)

Pilgrim's.”<sup>9</sup> Pilgrim's therefore submits that it has no liability for the fraud allegations.

**D. Specific Objection to Arkansas Livestock and Poultry Contract Protection Act Allegations**

21. The Clinton Growers' statutory causes of action based on the Arkansas Livestock Poultry Contract Protection Act (“ALPCPA”) fail as a matter of law because the express terms of the poultry grower agreements at issue do not violate the ALPCPA. Additionally, to the extent that the Clinton Growers allege that the inclusion of an arbitration clause in the poultry grower agreements constitute a violation of the ALPCPA, the Clinton Growers' claims are untenable because the poultry grower agreements are governed by the Federal Arbitration Act (“FAA”), which preempts the ALPCPA. Further, neither the ALPCPA nor the underlying facts establish a basis for the recovery of monetary and equitable relief (in the form of injunctive and/or declaratory relief) that the Clinton Growers seek in this case. Finally, the Clinton Growers released and waived their claims under the ALPCPA by accepting flocks and receiving pay for rendering poultry grower services under the poultry grower agreements at issue.

**Reservation of Rights**

22. The Debtors reserve the right to further object to each of the Clinton Grower Claims on any other ground.

**Notice**

23. Notice of this Objection has been provided to: (i) the U.S. Trustee; (ii) the counsel to the statutory committees appointed in these chapter 11 cases; (iii) counsel to the Debtors' prepetition secured lenders; (iv) counsel to the Agent to the Debtors' postpetition lenders; (v) the names and addresses where notices should be sent as listed on the Clinton Grower Claims; and (vi) the Master Service List filed with this Court. The Debtors submit that

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<sup>9</sup> See, Adams Order at pp. 18-19.

no other or further notice need be provided.

WHEREFORE the Debtors respectfully request that the Court issue an order (a) sustaining the Objection; (b) disallowing the Clinton Grower Claims in their entirety; and (c) granting such other legal and equitable relief as to which the Debtors are entitled.

Dated: November 30, 2009  
Dallas, Texas

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Attorneys for Debtors and Debtors in Possession



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  
§  
§ Hearing Date and Time: January 5, 2010 at 10:30 a.m.  
§ Response Deadline: December 30, 2009 at 4:00 p.m.

**NOTICE OF DEBTORS' OBJECTION TO YOUR CLAIM**

TO THE CLAIMANTS IDENTIFIED ON *EXHIBIT* ANNEXED TO DEBTORS'  
*THIRTY-SEVENTH OMNIBUS OBJECTION (NO LIABILITY- CLINTON GROWER*  
*CLAIMS RELATED TO ARNOLD LITIGATION)*:

PLEASE TAKE NOTICE THAT ALTHOUGH YOU HAVE FILED A PROOF OF  
CLAIM (THE "CLAIM"), PILGRIM'S PRIDE CORPORATION ("PPC") AND ITS  
DEBTOR AFFILIATES, AS DEBTORS AND DEBTORS IN POSSESSION IN THE  
ABOVE-REFERENCED CASES (COLLECTIVELY, THE "DEBTORS") HAVE NOW  
FILED AN OBJECTION SEEKING TO DISALLOW YOUR CLAIM (THE  
"OBJECTION"). THE OBJECTION IS APPENDED TO THIS NOTICE AND IS  
ENTITLED "THIRTY-SEVENTH OMNIBUS OBJECTION (NO LIABILITY-CLINTON  
GROWER CLAIMS RELATED TO ARNOLD LITIGATION)." THE OBJECTION  
SEEKS TO DISALLOW YOUR CLAIM IN ITS ENTIRETY. THEREFORE, YOU  
SHOULD READ THIS NOTICE AND THE ATTACHED OBJECTION CAREFULLY.

**IF YOU AGREE WITH THE OBJECTION TO YOUR  
CLAIM, YOU DO NOT NEED TO TAKE ANY ACTION  
IN RESPONSE TO THIS NOTICE OR THE OBJECTION.**

**IF YOU DISAGREE WITH THE OBJECTION,  
PLEASE FOLLOW THE INSTRUCTIONS BELOW  
FOR FILING A RESPONSE TO THE OBJECTION.**

PLEASE TAKE NOTICE that you may contact the Debtors at **(877) 512-0008**,  
or by email at [Claiminfo@pilgrimspride.com](mailto:Claiminfo@pilgrimspride.com), to ask questions or to attempt to resolve  
the Objection to the Claim outside of court and without the need to hire an attorney. You must  
clearly provide the following information to the Debtors: (1) the name of the claimant(s) that  
you are calling or emailing about, (2) the title of the Objection (here, the "Thirty-Seventh

Omnibus Objection (No Liability-Clinton Grower Claims Related to *Arnold* Litigation”), and (3) either a phone number or email address that the Debtors may use to contact you to attempt to resolve the Objection to the Claim.

**PLEASE TAKE FURTHER NOTICE** that if you disagree with the Objection and are unable or unwilling to resolve the Objection with the Debtors, you or your attorney **must** both (1) attend the hearing on the objection (the “Hearing”) in person or, consistent with court procedures, by telephone and (2) file a written response (the “Response”) to the Objection with the Clerk of the United States Bankruptcy Court, Eldon B. Mahon U.S. Courthouse, 501 West Tenth Street, Fort Worth, Texas 76102 **no later than December 30, 2009 at 4:00 p.m. (Prevailing Central Time)**. You must file and serve copies of the Response on (1) the Debtors’ attorneys: Attn: R. Adam Swick, Baker & McKenzie LLP, 2300 Trammell Crow Center, 2001 Ross Avenue, Dallas, Texas 75201; (fax) 214-965-7045; and (2) the Official Committee of Unsecured Creditors: Attn: Monica S. Blacker, Andrews Kurth LLP, 1717 Main Street, Suite 3700, Dallas, TX 75201; (fax) 214-659-4844; so as to be **received** no later than **December 30, 2009 at 4:00 p.m. (prevailing Central Time)** (the “Response Deadline”).

**PLEASE TAKE FURTHER NOTICE** that your Response must contain, at a minimum, the following:

- (i) A caption setting forth the name of the Court, the name of the debtors, the case number and the title of the Omnibus Objection to which the Response is directed;
- (ii) The name of the Claimant and description of the basis for the amount of the Claim;
- (iii) A concise statement setting forth the reasons why the Claim should not be disallowed for the reasons set forth in the Objection, including, but not limited to, the specific factual and legal bases upon which the claimant will rely in opposing the Objection;
- (iv) The name, address(es), telephone number and facsimile number of the person(s) (who may be the Claimant and/or the Claimant’s legal representative) to whom counsel for the Debtors should serve any reply to the Response, and who possess the authority to reconcile, settle, or otherwise resolve the Objection on the Claimant’s behalf.

**PLEASE TAKE FURTHER NOTICE** that, if you or your designated attorney or representative do not timely file and serve the Response in accordance with the above-referenced procedures **and** attend the Hearing (in the absence of a written agreement between you and the Debtors providing otherwise), the Court may enter an order granting the relief requested in the Objection. **If you fail to respond in accordance with this Notice, the Court may grant the relief requested in the Objection without further notice or hearing.**

**PLEASE TAKE FURTHER NOTICE** that if you or your designated representative or attorney do file a Response, the Hearing on the Objection will automatically be adjourned to another hearing that is at least 30 days thereafter to allow the Debtors to file a reply to your Response. Only those Responses made in accordance with the above-referenced requirements and timely filed and received by the Court and the Debtors' attorneys will be considered by the Court at a hearing on the Objection.

**PLEASE TAKE FURTHER NOTICE** that nothing in this Notice or the accompanying Objection constitutes a waiver of the Debtors' right to assert any claims, counterclaims, rights of offset or recoupment, preference actions, fraudulent-transfer actions, or any other bankruptcy or nonbankruptcy claims against you. The Debtors also reserve the right to assert additional objections to your Claim.

Dated: November 30, 2009  
Fort Worth, Texas