Joseph M. Coleman (TSBN 04566100)
George H. Barber (TSBN 01705650)
Gregory M. Zarin (TSBN 24060871)
KANE RUSSELL COLEMAN & LOGAN PC
3700 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
Telephone: (214) 777-4200
Fax: (214) 777-4299

Nolan E. Awbrey
James J. Thompson, Jr.
HARE, WYNN, NEWELL & NEWTON, L.L.P.
The Massey Building
2025 Third Avenue North
Birmingham, Alabama 35203
Telephone: (205) 328-5330

ATTORNEYS FOR CERTAIN ARKANSAS POULTRY GROWERS AND KPS LIVE HAUL, INC.

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)

LIMITED OBJECTION TO THE DEBTORS' AMENDED JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

TO THE HONORABLE D. MICHAEL LYNN,
UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, certain Arkansas poultry growers (the "Growers") and KPS Live Haul, Inc. ("KPS") (collectively, the "Arkansas Claimants"),[1] and file this their limited objection (the "Objection") to the *Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of The Bankruptcy Code* (the "Plan") [D.E. 4035], and would respectfully show this Court as follows:

BACKGROUND FACTS

1. On September 10, 2008, certain of the Growers filed suit against Pilgrim's Pride Corporation ("PPC") in the case styled *Ricky Arnold, et al. v. Pilgrim's Pride Corporation, Danny Boone and Jamie Statler*, Case No. CV2008-198-5, in the Circuit Court of Van Buren

[1] The Arkansas Claimants are identified in **Exhibit "A"** attached hereto.

County, Arkansas (the "Prepetition Lawsuit"). The Prepetition Lawsuit was pending when PPC and its affiliated debtors (collectively, the "Debtors") filed for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in this Court on December 1, 2008 (the "Petition Date").

2. The plaintiffs in the Prepetition Lawsuit, together with additional claimants asserting substantially similar claims and causes of action against PPC (the Arkansas Claimants), timely filed 110 individual proofs of claim in PPC's bankruptcy case on or about May 28, 2009.[2] The Arkansas Claimants' claims against PPC are General Unsecured Claims in the aggregate amount of approximately $48 million.

3. On October 19, 2009, the Debtors filed the Plan and *Disclosure Statement for the Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the "Disclosure Statement") [D.E. 3767]. The Disclosure Statement was approved by the Court on October 22, 2009 [D.E. 3828]. The Court set December 1, 2009 at 4:00 p.m. as the deadline for creditors to file objections to the Plan (the "Objection Deadline"). A confirmation hearing on the Plan is set for December 8, 2009 at 9:30 a.m. (the "Confirmation Hearing").

OBJECTION TO THE PLAN

4. In order to confirm the Plan, this Court must be satisfied that the Plan complies with all of the requirements of 11 U.S.C. § 1129(a). *See, e.g.*, *In re Lakeside Global II, Ltd.*, 116 B.R. 499, 505 (Bankr. S.D. Tex. 1989). The proponent of the plan has the burden of establishing that the plan complies with all the requirements of the Code. *Id.*

[2] The Arkansas Claimants' claims are more specifically described in each of their respective Proofs of Claim identified in Exhibit A.

5. In this case, the Plan fails to satisfy Bankruptcy Code section 1129(a)(1) because it does not comply with 11 U.S.C. § 502(c) ("Section 502(c)"), which authorizes estimation of claims in bankruptcy.

6. Under Section 502(c), estimation of claims is only permitted where the fixing or litigation of "any contingent or unliquidated claim … would unduly delay administration of the case." 11 U.S.C. § 502(c)(1). The purpose of estimation of claims in bankruptcy is "to avoid delays that may arise from waiting to fix the value of contingent claims." *In re Stone & Webster, Inc.*, 279 B.R. 748, 810 (Bankr. D. Del. 2002); *see also In re Continental Airlines, Inc.*, 981 F.2d 1450, 1461 (5th Cir. 1993) ("In order for the estimation process … to apply, … fixing the claim must entail undue delay in the administration of justice.").

7. Claim estimation is typically utilized to advance the plan confirmation process, including the determination of plan feasibility, and to resolve various voting and confirmation issues prior to plan confirmation. *See, e.g.,In re Roman Catholic Archbishop of Portland in Oregon*, 339 B.R. 215 (Bankr. D. Oregon 2006) (discussing estimation of claims to establish feasibility of plan); *In re Dow Corning*, 211 B.R. at 566 (discussing the benefits and risks of estimating claims in a bankruptcy case). Estimation of claims in bankruptcy is not without limits, and "[i]n reality, estimating a claim for purposes of allowance [pursuant to Section 502(c)] typically has the same effect as actually liquidating the claim." *In re Dow Corning*, 211 B.R. at 574-75.

8. Moreover, bankruptcy's "general rule is to liquidate, not to estimate." *In re Dow Corning*, 211 B.R. 545, 563 (Bankr. E.D. Mich. 1997). The liquidation of claims is preferred because it eliminates any risk that the estimates are inaccurate, it eliminates the time, delay, or expense associated with litigation over how best to estimate the claims, and it eliminates the

duplicative time and expense associated with the estimation process itself while liquidation of the claim is still ultimately necessary. *Id.* at 563.

9. In this case, the Debtors provide for a process of post-confirmation estimation of claims in Article 7.5 of the Plan. Article 7.5 states, in relevant part, as follows:

> The Debtors or the Reorganized Debtors may <u>at any time request that the Bankruptcy Court estimate any Contingent Claim, Unliquidated Claim, or Disputed Claim</u> pursuant to section 502(c) of the Bankruptcy Code regardless of whether any of the Debtors or the Reorganized Debtors previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court will retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including, without limitation, during the pendency of any appeal relating to any such objection ....

Plan, Art.7.5 (emphasis added).

10. Under Section 502(c)(1), the Debtors or Reorganized Debtors are only entitled to estimate contingent or unliquidated claims where the fixing or liquidation of such claims would unduly delay administration of the case. 11 U.S.C. § 502(c)(1). By Article 7.5 of the Plan, the Debtors expand the use of estimation beyond the parameters of Section 502(c) because they (1) seek to estimate claims without regard to whether the fixing or liquidation of such claims will cause undue delay in the administration of the case,[3] and (2) seek to estimate disputed claims that are not otherwise contingent or unliquidated.

11. The Plan may only be confirmed if it complies with all applicable provisions of the Bankruptcy Code. *See* 11 U.S.C. § 1129(a)(1). Here, the Plan does not comply with the Bankruptcy Code's requirements to estimate claims under Section 502(c). As a result, the Plan

[3] Indeed, in this case, it is questionable whether the liquidation of *any* General Unsecured Claims post-confirmation would cause undue delay in the administration of the bankruptcy case. Under the Plan, distribution of Allowed General Unsecured Claims will not be delayed pending liquidation of any contingent or unliquidated General Unsecured Claim under article 4.7(b) of the Plan.

does not satisfy section 1129(a)(1) of the Bankruptcy Code and confirmation of the Plan should therefore be denied.

WHEREFORE the Arkansas Claimants request that the Court sustain this Objection and deny confirmation of the Plan for the foregoing reasons. The Arkansas Claimants request such other and further relief as is just and proper.

DATED: November 30, 2009.

Respectfully submitted,

KANE RUSSELL COLEMAN & LOGAN PC

By: */s/ Gregory M. Zarin*

Joseph M. Coleman (TSBN 04566100)
George H. Barber (TSBN 01705650)
Gregory M. Zarin (TSBN 24060871)
3700 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
Telephone - (214) 777-4200
Telecopier - (214) 777-4299
Email: ecf@krcl.com

-and-

HARE, WYNN, NEWELL & NEWTON, L.L.P.

Nolan E. Awbrey
James J. Thompson, Jr.
The Massety Building
2025 Third Avenue North
Birmingham, Alabama 35203
Telephone: (205) 328-5330

ATTORNEYS FOR CERTAIN ARKANSAS POULTRY GROWERS AND KPS LIVE HAUL, INC.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing document has been served (i) electronically on all parties receiving ECF notifications in this proceeding, and (ii) in compliance with the O*rder Pursuant to Sections 105, 502 1125, 1126 and 1128 of the Bankruptcy Code and the Bankruptcy Rules 2002, 3003, 3017, 3018, and 3020, (I) Approving the Proposed Disclosure Statement, (II) Approving the Procedures to Solicit Acceptances of Debtors' Proposed Plan, and (III) Scheduling a Hearing and Establishing Notice and Objection Procedures for Confirmation of the Debtors' Proposed Plan* upon the parties listed below via Federal Express, Overnight Morning Delivery, on this 30th day of November 2009.

Weil, Gotshal & Manges LLP
Attn: Stephen A. Youngman, Esq.
200 Crescent Court
Suite 300
Dallas, Texas 75201

Office of the U.S. Trustee
Attn: Lisa L. Lambert, Esq.
1100 Commerce Street
Room 976
Dallas, Texas 75242

Andrews Kurth, LLP
Paul N. Silverstein, Esq.
Jonathan I. Levine, Esq.
450 Lexington Avenue
New York, NY 10017

Weil, Gotshal & Manges LLP
Attn: Victoria Vron, Esq.
767 Fifth Avenue
New York, NY 10153

Andrews Kurth, LLP
Jason S. Brookner, Esq.
1717 Main Street
Suite 3700
Dallas, Texas 75201

Brown Rudnick LLP
Jeremy B. Coffey, Esq.
One Financial Center
Boston, MA 02111

By: *_/s/ Gregory M. Zarin_*
Gregory M. Zarin