EXHIBIT 1

THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

IN RE PILGRIM'S PRIDE STOCK INVESTMENT PLAN ERISA LITIGATION	**Civil Action:** 2:08-cv-00472-TJW-CE

CONSOLIDATED COMPLAINT FOR
VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

Plaintiffs Kenneth Patterson and Denise M. Smalls (collectively, the "Plaintiffs") allege the following based upon personal information as to themselves and the investigation of Plaintiffs' counsel, which included a review of U.S. Securities and Exchange Commission ("SEC") filings by Pilgrim's Pride Corporation ("Pilgrim's Pride" or the "Company"), including the Company's proxy statements (Form 14A), annual reports (Form 10-K), quarterly reports (Form 10-Q), current reports (Form 8-K), and the annual reports (Form 11-K) filed on behalf of the Pilgrim's Pride Retirement Savings Plan (the "Savings Plan") and the To-Ricos, Inc. Employee Savings and Retirement Plan (the "To-Ricos Plan") (collectively, the "Plans"); a review of the Form 5500s filed by the Savings Plan and To-Rico Plan with the U.S. Department of Labor ("DOL"); and a review of available documents governing the operations of the Savings Plan. Plaintiffs believe that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

I. NATURE OF THE ACTION

1. Plaintiffs bring this action on behalf of the Plans, pursuant to § 502(a)(2) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1132(a)(2) and (a)(3), against the fiduciaries of the Plans for violations of ERISA.

2. The Savings Plan is a retirement plan sponsored by Pilgrim's Pride. *See* Summary Plan Description for the Pilgrim's Pride Retirement Savings Plan, dated July 1, 2005 ("SPD") at 1 ("The Pilgrim's Pride Retirement Savings Plan helps you to provide for your retirement security by making it simple and convenient for you to contribute to your retirement savings regularly").

3. Upon information and belief, the To-Ricos Plan is a retirement plan sponsored by Pilgrim's Pride. On January 20, 2009, pursuant to Section 104(b)(4) of ERISA, 29 U.S.C. § 1132, Plaintiff Smalls requested by letter plan documents concerning the To-Ricos Plan. Such documents and other documents concerning the To-Ricos Plan were also requested in this lawsuit pursuant to requests for production served on August 7, August 8 and August 23, 2009. As of the date of the filing of this consolidated complaint, Defendants have not produced any plan documents regarding the To-Ricos Plan.

4. Plaintiffs are participants in the Savings Plan. The law is plain that once a potential ERISA class representative establishes his or her own standing to sue his or her own ERISA-governed plan, there is no additional constitutional standing requirement related to his or her suitability to represent the putative class of members of other plans to which he or she does not belong.

5. Plaintiffs' claims arise from the failure of Defendants, who are fiduciaries of the Plans, to act solely in the interest of the participants and beneficiaries of the Plans, and to exercise the required skill, care, prudence, and diligence in administering the Plans and the Plans' assets during the period January 29, 2008 through December 1, 2008 (the "Class Period").

6. Defendants allowed the imprudent investment of the Plans' assets in Pilgrim's Pride common stock ("Pilgrim's Pride Stock" or "Company Stock") throughout the Class Period

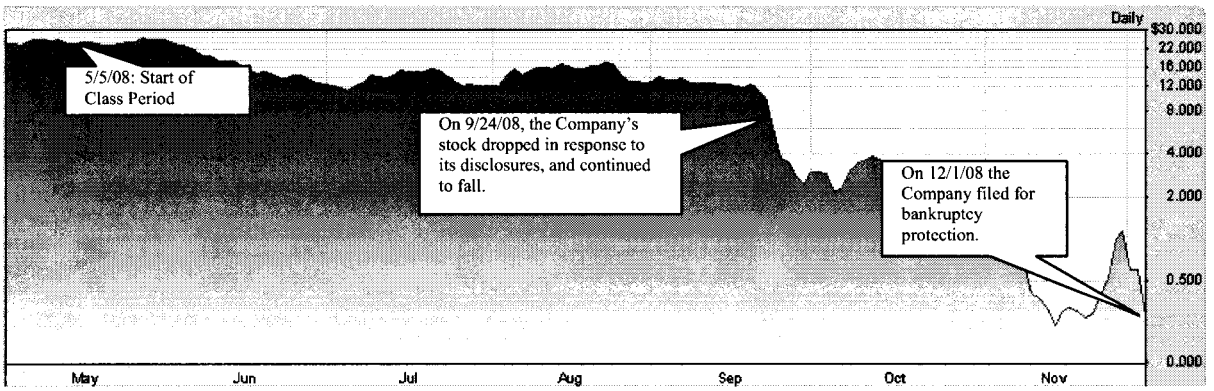
even though they knew or should have known that such investment was unduly risky and imprudent. Specifically, Defendants knew or should have known that during the Class Period Pilgrim's Pride was plagued by undisclosed but pervasive problems that infected every part of the Company's business and which when ultimately disclosed, drove the Company into bankruptcy protection. The Company had a debilitating debt load created by its acquisition of rival Gold Kist, Inc. ("Gold Kist") in 2007 and was being choked by undisclosed operational problems such as significant increases in its costs, lower demand for its products, a decline in the price at which it could sell its products, and losses it incurred from transactions it had entered to hedge against rising grain prices. During the Class Period: (a) Pilgrim's Pride was overleveraged due to the its acquisition of Gold Kist, making the Company vulnerable to any fluctuations in the market; (b) the Company would be unable to meet its loan obligations in the event that the Company faced any financial difficulties; (c) the Company's transactions in an attempt to hedge against its higher costs would be unduly risky and eventually caused significant losses to the Company particularly during the Company's fourth quarter; and (d) the Company paid more than fair value for the Gold Kist and was therefore overvaluing the acquisition.

7. During the Class Period the Company's problems described in paragraph 6 above led to the artificial inflation of Pilgrim's Pride Stock and created dire financial circumstances for the Company. As a result, Pilgrim's Pride Stock was (a) artificially inflated because of the problems described in ¶ 6 above and (b) unduly risky because of the problems described in ¶ 6 above.

8. As is more fully explained below, during the Class Period, Defendants with responsibility for the Plans' investments imprudently permitted the Plans to hold and acquire millions of dollars in Pilgrim's Pride Stock despite the Company's serious mismanagement and

improper business practices. Based on publicly available information for the Plans, Defendants' breaches caused millions of dollars of losses to the Plans.

9. Specifically, when the Company began to disclose the true extent and nature of its problems as described above in ¶ 6, the Company's Stock collapsed and the Company was eventually forced to file for bankruptcy as illustrated by the chart below:



10. This action is brought on behalf of the Plans and seeks to recover losses to the Plans for which Defendants are personally liable pursuant to ERISA §§ 409 and 502(a)(2), 29 U.S.C. §§ 1109, and 1132(a)(2). In addition, under § 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), Plaintiffs seek other equitable relief from Defendants, including, without limitation and as available under applicable law, constructive trust, restitution, equitable tracing, and other monetary relief.

11. ERISA §§ 409(a) and 502(a)(2) authorize participants such as Plaintiffs to sue in a representative capacity for losses suffered by the Plans as a result of breaches of fiduciary duty. Pursuant to that authority, Plaintiffs bring this action on behalf of the Plans and, alternatively, as a class action under Fed. R. Civ. P. 23 on behalf of all participants and beneficiaries of the Plans whose plan accounts were invested in Pilgrim's Pride Stock during the Class Period.

12. In addition, because the information and documents on which Plaintiffs' claims are based are, for the most part, solely in Defendants' possession, certain of Plaintiffs'

allegations are made by necessity on information and belief. At such time as Plaintiffs have had the opportunity to conduct discovery, Plaintiffs will, to the extent necessary and appropriate, amend this Complaint to add additional facts that further support Plaintiffs' claims.

II. JURISDICTION AND VENUE

13. ***Subject Matter Jurisdiction***. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

14. ***Personal Jurisdiction***. ERISA provides for nationwide service of process. ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2). All Defendants are either residents of the United States or subject to service in the United States. Therefore, this Court has personal jurisdiction over them. This Court also has personal jurisdiction over Defendants pursuant to Fed. R. Civ. P. 4(k)(1)(A) because they would all be subject to the jurisdiction of a court of general jurisdiction in the State of Texas.

15. ***Venue***. Venue is proper in this district pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plans are administered in this district, some or all of the fiduciary breaches for which relief is sought occurred in this district, and Pilgrim's Pride has its principal place of business in this district.

III. PARTIES

A. Plaintiffs

16. Plaintiff Kenneth Patterson is a resident of the State of Louisiana, County of Caddo. Patterson is a participant in the Savings Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7), and held Pilgrim's Pride Stock in the Savings Plan during the Class Period.

17. Plaintiff Denise M. Smalls is a resident of the State of Georgia, County of Dekalb. Smalls is a participant in the Savings Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7), and held Pilgrim's Pride Stock in the Savings Plan during the Class Period.

B. Non-Party Pilgrim's Pride

18. Non-party Pilgrim's Pride is a producer of poultry in the United Sates, Mexico and Puerto Rico. Pilgrim's Pride principal place of business is located at 4845 U.S. Highway 271 North, P.O. Box 93, Pittsburg, Texas 75686.

19. On December 1, 2008, Pilgrim's Pride filed for bankruptcy relief under Title 11 of the United States Code, 11 U.S.C. §§ 101, *et. seq.*, in the United States Bankruptcy Court for the Northern District of Texas. Just over a year later, on December 28, 2009, the Company exited bankruptcy with a reorganization plan in place. Prior to December 1, 2008, the Company's Stock traded on the New York Stock Exchange under the symbol PPC.

C. Defendants

1. Board of Directors

20. The Company acted through the Director Defendants (defined below) in carrying out its duties under the Plans. Pursuant to the Savings Plan's January 1, 2004 Amendment and Restatement (the "Plan Document"), "[a]ny act authorized, permitted, or required to be taken under the Plan by the Sponsor [the Company] and which has not been delegated in accordance with Section 18.1, ***may be taken by a majority of the members of the board of directors of the Sponsor***, either by vote at a meeting, or in writing without a meeting, or by the employee or employees of the Sponsor ***designated by the board of directors*** to carry out such acts in behalf of the Sponsor." Plan Document, Article XVIII, § 18.3 at 69 (emphasis added).

21. The Board of Directors (the "Board") controls and manages the Savings Plan. The Savings Plan provides:

> The Sponsor, ***which shall be the administer for purposes of ERISA***, and the plan administer for purposes of the Code, shall be responsible for the administration of the Plan and, in addition to the powers and authorities expressly conferred upon it in the Plan, including the power and authority to interpret and construe the provisions of the Plan, to make benefit determinations, and to resolve any disputes which arise under the Plan. The Sponsor shall be a "named fiduciary" as that term is defined under ERISA Section 402(a)(2). ***The Sponsor, by action of its board of directors***, may:
>
> (a) allocate any of its powers, authority, or responsibilities for the operation and administration of the Plan (other than trustee responsibilities as defined in ERISA Section 405(c)(3)) among named fiduciaries; and
>
> (b) designate a person or persons other than a named fiduciary to carry out any of such powers, authority, or responsibilities . . . .

See Plan Document, Article XVIII, § 18.1 at 69 (emphasis added).

22. The Plan Document also states that "[i]n carrying out their duties under the Plan, including making benefit determinations, interpreting or construing the provisions of the Plan, and resolving disputes, the Sponsor (or any individual to whom authority has been delegated in accordance with Section 18.1) ***shall have absolute discretionary authority***." Plan Document, Article XVIII, § 18.2 at 69. Additionally, Pursuant to the Trust Agreement:

> The Employer shall be responsible for determining benefit rights under the Plan, instructing the Trustee in the disbursement of benefits, investment management, soliciting stock voting instructions from participants, directing the Trustee in voting proxies and performing those plan administration functions specified in the Plan.

See Trust Agreement Establishing the WLR Foods, Inc. Profit Sharing and Salary Plan and Trust by and between WLR Foods, Inc. and CG Trust Company ("Trust Agreement"), Section 2, at 1.

23. The Board allocated its administrative, discretionary and fiduciary powers under the Plans to the Pension Committee (defined below) including, but not limited to, the power and discretionary authority: (a) to determine the selection of investments offered under the Plans; (b) whether matching contributions were made in cash or Company Stock; (c) establishing rules and procedures regarding transferring Company Stock or other investments into other forms of investments such as cash; (d) and evaluating the prudence of investments offered to the Plans' participants.

24. On information and belief, in order to comply with ERISA, the Board exercised responsibility through the Administrative Committee (defined below) for communicating with participants regarding the Plans in a plan-wide, uniform, mandatory manner by providing participants with information and materials required by ERISA. *See, e.g.*, ERISA § 101(a)(1), 29 U.S.C. § 1101(a)(1) (requiring the plan administrator to furnish to each participant covered under the plan and to each beneficiary who is receiving benefits under the plan a summary plan description). In this regard, the Company (through its Board) and the Administrative Committee were bound by a general duty to disclose, among other things, Pilgrim's Pride inaccurate SEC filings and other inaccurate and misleading statements. On information and belief, in order to comply with ERISA, the Board delegated its power to manage and supervise the Plans and therefore had a duty to monitor and supervise the Pension Committee.

25. The Board is also charged with the appointment, monitoring, and removal of the Trustee and execution of the Trust documents with the Trustee to provide for the investment, management, and control of the assets of the Plans. Trust Agreement, Section 10(a) at 5 ("The Employer (through the Board of Directors) may remove the Trustee at any time . . .").

26. The Board exercised control over the activities of its employees who performed fiduciary functions with respect to the Plans, including the Pension Committee and the Administrative Committee. The Board, on information and belief, can hire or appoint, terminate, and replace such employees at will. Thus, the Board is responsible for the activities of its employees as fiduciaries with respect to the Plans through traditional principles of agency and *respondeat superior* liability.

27. Consequently, in light of the foregoing duties, responsibilities, and actions, the Board was both named fiduciary of the Plans pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), and *de facto* fiduciaries of the Plans within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), during the Class Period because they exercised discretionary authority or discretionary control over the management of the Plans, exercised authority or control over the management or disposition of the Plans' assets, and/or had discretionary authority over or discretionary responsibility for the administration of the Plans.

(a) Individual Director Defendants

28. ***Defendant Lonnie Bo Pilgrim*** ("L. Pilgrim") is the founder of the Company and was, at all relevant times, a director and Senior Chairman of the Board. By virtue of his position, he was intimately involved with every aspect of the Company's business. During the Class Period, Defendant L. Pilgrim was a fiduciary within the meaning of ERISA because (i) he exercised discretionary authority or discretionary control with respect to the appointment of the Pension Committee and with respect to the management of the Plans; (ii) he possessed discretionary authority or discretionary responsibility in the administration of the Plans; and (iii) he exercised authority or control with respect to the management of the Plans' assets. Defendant L. Pilgrim is also a member of the Compensation Committee. As a member of the

Compensation Committee, he was responsible for administering certain aspects of the Company, including Executive bonuses, and therefore had intimate knowledge of the Company and the performance of its officers.

29. ***Defendant Lonnie Ken Pilgrim*** ("L.K. Pilgrim") is the son of L. Pilgrim and was, at all relevant times, a director of the Company and Chairman of the Board. By virtue of his position, he was intimately involved with every aspect of the Company's business. In addition, during part of the Class Period, Defendant L.K. Pilgrim served as interim President and Chief Executive Officer ("CEO") of the Company. During the Class Period, Defendant L.K. Pilgrim was a fiduciary within the meaning of ERISA because (i) he exercised discretionary authority or discretionary control with respect to the appointment of the fiduciaries and with respect to the management of the Plans; (ii) he possessed discretionary authority or discretionary responsibility in the administration of the Plans; and (iii) he exercised authority or control with respect to the management of the Plans' assets. Defendant L.K. Pilgrim is also member of the Compensation Committee. As a member of the Compensation Committee, he was responsible for administering certain aspects of the Company, including Executive bonuses, and therefore had intimate knowledge of the Company and the performance of its officers.

30. ***Defendant Charles L. Black*** ("Black") was, at all relevant times, a director of the Company. During the Class Period, Defendant Black was a fiduciary within the meaning of ERISA because (i) he exercised discretionary authority or discretionary control with respect to the appointment of the fiduciaries and with respect to the management of the Plans; (ii) he possessed discretionary authority or discretionary responsibility in the administration of the Plans; and (iii) he exercised authority or control with respect to the management of the Plans' assets.

31. ***Defendant Linda Chavez*** ("Chavez") was, at all relevant times, a director of the Company. During the Class Period, Defendant Chavez was a fiduciary within the meaning of ERISA because (i) she exercised discretionary authority or discretionary control with respect to the appointment of the fiduciaries and with respect to the management of the Plans; (ii) she possessed discretionary authority or discretionary responsibility in the administration of the Plans, and (iii) she exercised authority or control with respect to the management of the Plans' assets. Defendant Chavez is also a member of the Audit Committee. As a member of the Audit Committee, he was responsible for, among other things reviewing the financial performance of the company and the system of internal account controls, and therefore had intimate knowledge of the Company and the performance of its officers.

32. ***Defendant S. Key Coker*** ("Coker") was, at all relevant times, a director of the Company. During the Class Period, Defendant Coker was a fiduciary within the meaning of ERISA because (i) he exercised discretionary authority or discretionary control with respect to the appointment of the fiduciaries and with respect to the management of the Plans; (ii) he possessed discretionary authority or discretionary responsibility in the administration of the Plans; and (iii) he exercised authority or control with respect to the management of the Plans' assets.

33. ***Defendant Keith W. Hughes*** ("Hughes") was, at all relevant times, a director of the Company. During the Class Period, Defendant Hughes was a fiduciary within the meaning of ERISA because (i) he exercised discretionary authority or discretionary control with respect to the appointment of the fiduciaries and with respect to the management of the Plans; (ii) he possessed discretionary authority or discretionary responsibility in the administration of the Plans; and (iii) he exercised authority or control with respect to the management of the Plans'

assets. Defendant Hughes is also a member of the Audit Committee. As a member of the Audit Committee, he was responsible for, among other things reviewing the financial performance of the company and the system of internal account controls, and therefore had intimate knowledge of the Company and the performance of its officers.

34. ***Defendant Blake D. Lovette*** ("Lovette") was, at all relevant times, a director of the Company. During the Class Period, Defendant Lovette was a fiduciary within the meaning of ERISA because (i) he exercised discretionary authority or discretionary control with respect to the appointment of the fiduciaries and with respect to the management of the Plans; (ii) he possessed discretionary authority or discretionary responsibility in the administration of the Plans; and (iii) he exercised authority or control with respect to the management of the Plans' assets. Defendant Lovette is a member of the Compensation Committee. As a member of the Compensation Committee, he was responsible for administering certain aspects of the Company, including Executive bonuses, and therefore had intimate knowledge of the Company and the performance of its officers.

35. ***Defendant Vance C. Miller*** ("Miller") was, at all relevant times, a director of the Company. During the Class Period, Defendant Miller was a fiduciary within the meaning of ERISA because (i) he exercised discretionary authority or discretionary control with respect to the appointment of the fiduciaries and with respect to the management of the Plans; (ii) he possessed discretionary authority or discretionary responsibility in the administration of the Plans; and (iii) he exercised authority or control with respect to the management of the Plans' assets. Defendant Miller is a member of the Audit Committee and the Compensation Committee. As a member of these committees, he was responsible for administering certain

aspects of the company as well as monitoring its financial performance, and therefore had intimate knowledge of the Company and the performance of its officers.

36. ***Defendant James G. Vetter, Jr.*** ("Vetter") was, at all relevant times, a director of the Company. During the Class Period, Defendant Vetter was a fiduciary within the meaning of ERISA because (i) he exercised discretionary authority or discretionary control with respect to the appointment of the fiduciaries and with respect to the management of the Plans; (ii) he possessed discretionary authority or discretionary responsibility in the administration of the Plans; and (iii) he exercised authority or control with respect to the management of the Plans' assets. Defendant Vetter is a member of the Compensation Committee. As a member of the Compensation Committee, he was responsible for administering certain aspects of the Company, including Executive bonuses, and therefore had intimate knowledge of the Company and the performance of its officers.

37. ***Defendant Donald L. Wass*** ("Wass") was, at all relevant times, a director of the Company. During the Class Period, Defendant Wass was a fiduciary within the meaning of ERISA because (i) he exercised discretionary authority or discretionary control with respect to the appointment of fiduciaries and with respect to the management of the Plans; (ii) he possessed discretionary authority or discretionary responsibility in the administration of the Plans; and (iii) he exercised authority or control with respect to the management of the Plans' assets.

38. ***Defendant J. Clinton Rivers*** ("Rivers") was, at all relevant times, a director of the Company. On March 5, 2008, the Board unanimously elected Defendant Rivers President and CEO of the Company and a member of the Pension Committee. Prior to his appointment as President and CEO, Defendant Rivers served as Chief Operating Officer ("COO"). During the Class Period, Defendant Rivers was a fiduciary within the meaning of ERISA because (i) he

exercised discretionary authority or discretionary control with respect to the appointment of the fiduciaries and with respect to the management of the Plans; (ii) he possessed discretionary authority or discretionary responsibility in the administration of the Plans; and (iii) he exercised authority or control with respect to the management of the Plans' assets.

39. ***Defendant Richard A. Cogdill*** ("Cogdill") was, at all relevant times, Executive Vice President, Chief Financial Officer ("CFO"), Treasurer and Secretary of Pilgrim's Pride as well as a director of the Company. During the Class Period, Defendant Cogdill served as Chairman of the Pension Committee. During the Class Period, Defendant Cogdill was a fiduciary within the meaning of ERISA because (i) he exercised discretionary authority or discretionary control with respect to the appointment of the fiduciaries and with respect to the management of the Plans; (ii) he possessed discretionary authority or discretionary responsibility in the administration of the Plans; and (iii) he exercised authority or control with respect to the management of the Plans' assets. Further, Defendant Cogdill signed all of the Company's Forms 8-K during the Class Period, the Company's Forms 10-Q and Sarbanes-Oxley ("SOX" certifications for the financial periods ended March 29, 2008 and June 28, 2008. Defendant Cogdill also made statements in press releases and during analyst conference calls throughout the Class Period. Upon information and belief, these SEC filings were fiduciary communications as they were incorporated into the Plans documents.

40. Defendants L. Pilgrim, L.K. Pilgrim, Rivers, Cogdill, Black, Chavez, Coker, Hughes, Lovette, Miller, Vetter, and Wass are herein collectively referred to as the "Director Defendants."

2. **Defendant Pilgrim's Pride Pension Committee**

41. ***Defendant Pilgrim's Pride Pension Committee*** (the "Pension Committee") had, at all relevant times, the power and authority to manage the affairs and supervise the administration of the Plans. The Pension Committee exercised these fiduciary powers through Pension Committee members. During the Class Period, the Pension Committee was composed of the following individual officers of the Company: the President and CEO of the Company, the CFO the COO and the Vice President of Human Resources.

42. During the Class Period, the Pension Committee (and its members) was charged with the authority and responsibility to carry out fiduciary responsibilities under the Plans and ERISA, including evaluating and determining whether the Company Stock was a prudent investment. As a result, the Pension Committee (and its members) is a functional fiduciary under ERISA.

43. Specifically, the Pension Committee (and its members) had the power and authority to manage and supervise the administration of the Plans and exercised that power and authority during the Class Period.

44. Consequently, in light of the foregoing duties, responsibilities, and actions, the Pension Committee (and its members) was both a named fiduciary of the Plans pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), and *de facto* fiduciary of the Plans within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), during the Class Period because it exercised discretionary authority or discretionary control over the management of the Plans, exercised authority or control over the management or disposition of the Plans' assets, and/or had discretionary authority over or discretionary responsibility for the administration of the Plans.

(a) **Pension Committee Defendants**

45. Defendant L. K. Pilgrim was, during the Class Period at least until March of 2008, a member of the Pension Committee. During the Class Period, Defendant L. K. Pilgrim was a fiduciary within the meaning of ERISA, because he possessed discretionary authority or discretionary responsibility in the administration of the Plans, and he exercised authority or control with respect to the management of the Plans' assets.

46. ***Defendant Robert A. Wright*** ("Wright") was, at all relevant times, COO of the Company and a member of the Pension Committee. By virtue of his position he had intimate knowledge of the Company and the performance of its officers. As a member of the Pension Committee during the Class Period, Defendant Wright was a fiduciary within the meaning of ERISA because (i) he possessed discretionary authority or discretionary responsibility in the administration of the Plans and (ii) he exercised authority or control with respect to the management of the Plans' assets.

47. ***Defendant Jane Brookshire*** ("Brookshire") was, at all relevant times, a member of the Pension Committee and the Senior Vice President of Human Resources of the Company. SPD at 1. By virtue of her position she had intimate knowledge of the Company and the performance of its officers. As a member of the Pension Committee during the Class Period, Defendant Brookshire was a fiduciary within the meaning of ERISA because (i) she possessed discretionary authority or discretionary responsibility in the administration of the Savings Plan and (ii) she exercised authority or control with respect to the management of the Savings Plan's assets.

48. Defendant Rivers was, during the Class Period, a member of the Pension Committee. During the Class Period, as a member of the Pension Committee, Defendant Rivers was a fiduciary within the meaning of ERISA because (i) he possessed discretionary authority or

discretionary responsibility in the administration of the Plans and (ii) he exercised authority or control with respect to the management of the Plans' assets.

49. Defendant Cogdill was, during the Class Period, Chairman of the Pension Committee. During the Class Period, as a member of the Pension Committee, Defendant Codgill was a fiduciary within the meaning of ERISA because (i) he possessed discretionary authority or discretionary responsibility in the administration of the Plans and (ii) he exercised authority or control with respect to the management of the Plans' assets.

50. Defendants L.K. Pilgrim, Wright, Brookshire, Rivers, and Cogdill were members of the Pension Committee are collectively referred to as the "Pension Committee Defendants."

3. Defendant Benefits Manager

51. ***Defendant Renee N. Debar*** ("DeBar") was, at all relevant times, employed by Pilgrim's Pride as its Benefits Manager and was identified as the Administrator of the Savings Plan on the most-recent annual reports filed by the Savings Plan with the DOL. During the Class Period, Defendant DeBar was a fiduciary within the meaning of ERISA because (i) she possessed discretionary authority or discretionary responsibility in the administration of the Savings Plan and (ii) she exercised authority or control with respect to the management of the Savings Plan's assets.

52. During the Class Period, the Company relied on the Defendant DeBar to carry out her fiduciary responsibilities under the Plans and ERISA. As a result, the Defendant DeBar is a functional fiduciary under ERISA.

53. Consequently, in light of the foregoing duties, responsibilities, and actions, the Defendant DeBar was both named fiduciary of the Plans pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), and *de facto* fiduciary of the Plans within the meaning of ERISA § 3(21),

29 U.S.C. § 1002(21), during the Class Period because (i) she exercised discretionary authority or discretionary control over the management of the Plans; (ii) exercised authority or control over the management or disposition of the Plans' assets; and/or (iii) had discretionary authority over or discretionary responsibility for the administration of the Plans.

4. Defendant Pilgrim's Pride Administrative Committee

54. ***Defendant Pilgrim's Pride Administrative Committee*** (the "Administrative Committee") was, at all relevant times, the administrator of the Savings Plan. *See* Summary of Material Modifications to Pilgrim's Pride Retirement Savings Plan ("Modification Plan Document") at 1. Moreover, the Administrative Committee was responsible for the "day-to-day operations of the Plan." *See* Savings Plan, Sixth Amendment at 1 (redefining "Administrator").

55. Defendant Administrative Committee has the following power and authority regarding the Savings Plan:

> The Administrative Committee shall have complete control of the administration of the Plan (subject to the authority of the Sponsor) with all powers necessary to enable it to properly carry out the provisions of the Plan. In addition to all implied powers and responsibilities necessary to carry out the objectives of the Plan and to comply with the requirements of the Code and ERISA, the Administrative Committee shall have the following specific powers and responsibilities:
>
> (a) To construe the Plan and Trust Agreements and to determine all questions arising in the administration, interpretation and operation of the Plan;
>
> (b) To decide all questions relating to the eligibility of Employees to participate in the benefits of the Plan and Trust Agreements;
>
> (c) To determine the benefits of the Plan to which any Participant, Beneficiary or other person may be entitled;
>
> (d) To keep records of all acts and determinations of the Committee, and to keep all such records, books of accounts, data and other documents as may be necessary for the proper administration of the Plan;

(e) To prepare and distribute to all Plan Participants and Beneficiaries information concerning the plan and their rights under the Plan, including, but not limited to, all information that is required to be distributed by ERISA or the Code, the regulations thereunder, or by any other applicable law;

(f) To file with the Secretary of Labor such reports and additional documents as may be required by ERISA or the Code, and regulations issued thereunder, including, but not limited to, summary plan descriptions, modifications and changes, annual reports, terminal reports and supplemental reports;

(g) To file with the Secretary of the Treasury all reports and information required to be filed by the Code or ERISA, and regulations issued thereunder; and

(h) To do all things necessary to operate and administer the Plan in accordance with its provisions and in compliance with applicable provisions of federal law.

See Sixth Amendment to Pilgrim's Pride Retirement Savings Plan January 1, 2004 Restatement (the "Sixth Amendment") at 14-15.

56. Further, pursuant to the Company's Sixth Amendment to the Plan:

> The Sponsor shall establish an Administrative Committee. The Administrative Committee shall consist of one or more individuals who shall be appointed by, and serve at the pleasure of, the Sponsor. Any Participant, officer, or director of the Sponsor shall be eligible to be appointed a member of the Administrative Committee, and all members shall serve as such without compensation. Upon termination of employment, or upon ceasing to be an officer or director, if not an employee, a committee member shall no longer be eligible to serve on the Administrative Committee at any time, with or without cause. A member may resign at any time by written notice to the Sponsor. If a vacancy in the Administrative Committee should occur, a successor shall be appointed by the Sponsor. The Administrative Committee shall by written notice keep the Trustees notified of the current membership of the Administrative Committee and its officers and agents. The Administrative Committee shall furnish the Trustees a certified signature card for each member of the Administrative Committee and for all purposes hereunder the Trustee shall be conclusively entitled to rely upon such certified signature. ***The Administrative Committee shall be a "named fiduciary" as that term is defined in ERISA Section 402(a)(2).***

> The Sponsor may appoint a chairman and a secretary from among the members of the Administrative Committee. All resolutions, determinations and other actions shall be by a majority vote of its members. The Administrative Committee may appoint such agents, who need not be members of the Administrative Committee, as it deems necessary for the effective performance of its duties, and may delegate to such agents such powers and duties, whether ministerial or discretionary, as the Administrative Committee deems expedient or appropriate. The compensation of such agents shall be fixed by the Administrative Committee; provided, however, that in no event shall compensation be paid if such payment violates the provisions of ERISA Section 406 and is not exempted from such prohibitions by ERISA Section 408.

See Sixth Amendment at 13-14; Summary of Material Modifications of Pilgrim's Pride Retirement Savings Plan ("Summary Modifications"), at p. 1 ("Effective as of January 1, 2008, the Administrative Committee is responsible for the day-to-day operations of the Plan") (emphasis supplied).

57. The Plan Document also states that "in carrying out their duties under the Plan, including making benefit determinations, interpreting or construing the provisions of the Plan, and resolving disputes, the Administrative Committee and the Sponsor [...] shall have absolute discretionary authority." *See* Plan Document, Article XVIII, § 18.3 at 69.

58. During the Class Period, the Administrative Committee (and its members) is specifically named as a fiduciary to the Plans. As a result, the Administrative Committee (and its members) is a named fiduciary under ERISA. *See* Sixth Amendment at 13-14 ("The Administrative Committee shall be a "named fiduciary" as that term is defined in ERISA Section 402(a)(2)").

59. In addition to being named fiduciaries of the Plans, the Administrative Committee (and its members) had the power and authority to administer the Plans as previously described and was therefore *de facto* fiduciary of the Plans within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), during the Class Period because (i) it exercised discretionary authority or

discretionary control over the management of the Plans, (ii) exercised authority or control over the management or disposition of the Plans' assets; and/or (iii) had discretionary authority over or discretionary responsibility for the administration of the Plans.

60. Consequently, in light of the foregoing duties, responsibilities, and actions, the Administrative Committee (and its members) was both a named fiduciary of the Plans pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), and a *de facto* fiduciary of the Plans within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), during the Class Period because (i) it exercised discretionary authority or discretionary control over the management of the Plans; (ii) exercised authority or control over the management or disposition of the Plans' assets; and/or (iii) had discretionary authority over or discretionary responsibility for the administration of the Plans.

(a) Administrative Committee Defendants

61. Defendant DeBar was, at all relevant times, a member of the Administrative Committee and served as its Chairperson. During the Class Period, Defendant DeBar was a fiduciary within the meaning of ERISA because (i) she possessed discretionary authority or discretionary responsibility in the administration of the Savings Plan; and (ii) she exercised authority or control with respect to the management of the Savings Plan's assets. Upon information and belief, Defendant DeBar was also a fiduciary within the meaning of ERISA of the To-Rico Plan because (i) she possessed discretionary authority or discretionary responsibility in the administration of the To-Rico Plan and (ii) she exercised authority or control with respect to the management of the To-Rico Plan's assets.

62. Defendant Brookshire was, at all relevant times, a member of the Administrative Committee and the Senior Vice President of Human Resources of the Company. SPD at 1.

Upon information and belief, during the Class Period, Defendant Brookshire was a fiduciary within the meaning of ERISA because (i) she possessed discretionary authority or discretionary responsibility in the administration of the Savings Plan and (ii) she exercised authority or control with respect to the management of the Savings Plan's assets. Upon information and belief, Defendant Brookshire was also a fiduciary within the meaning of ERISA of the To-Rico Plan because (i) she possessed discretionary authority or discretionary responsibility in the administration of the To-Rico Plan and (ii) she exercised authority or control with respect to the management of the To-Rico Plan's assets.

63. ***Defendant Gerry Evenwez*** ("Evenwez") was, at all relevant times, a member of the Administrative Committee. *See* Pilgrim's Pride Retirement Savings Plan Loan Policy ("Loan Policy") at 2. During the Class Period, Defendant Evenwez was a fiduciary within the meaning of ERISA because (i) he possessed discretionary authority or discretionary responsibility in the administration of the Savings Plan and (ii) he exercised authority or control with respect to the management of the Savings Plan's assets. Upon information and belief, Defendant Evenwez was also a fiduciary within the meaning of ERISA of the To-Rico Plan because (i) she possessed discretionary authority or discretionary responsibility in the administration of the To-Rico Plan and (ii) she exercised authority or control with respect to the management of the To-Rico Plan's assets.

64. ***Defendant Stacy Evans*** ("Evans") was a member of the Administrative Committee. Defendant Evans is a named fiduciary. Upon information and belief, during the Class Period, Defendant Evans was a fiduciary within the meaning of ERISA because (i) she possessed discretionary authority or discretionary responsibility in the administration of the Savings Plan and (ii) she exercised authority or control with respect to the management of the

Savings Plan's assets. Upon information and belief, Defendant Evans was also a fiduciary within the meaning of ERISA of the To-Rico Plan because (i) she possessed discretionary authority or discretionary responsibility in the administration of the To-Rico Plan and (ii) she exercised authority or control with respect to the management of the To-Rico Plan's assets.

65. ***Defendant Judith Sitton*** ("Sitton") was a member of the Administrative Committee. Upon information and belief, during the Class Period, Defendant Sitton was a fiduciary within the meaning of ERISA because (i) she possessed discretionary authority or discretionary responsibility in the administration of the Savings Plan and (ii) she exercised authority or control with respect to the management of the Savings Plan's assets. Upon information and belief, Defendant Sitton was also a fiduciary within the meaning of ERISA of the To-Rico Plan because (i) she possessed discretionary authority or discretionary responsibility in the administration of the To-Rico Plan and (ii) she exercised authority or control with respect to the management of the To-Rico Plan's assets.

66. ***Defendant Evelyn Boyden*** ("Boyden") was a member of the Administrative Committee. Upon information and belief, during the Class Period, Defendant Boyden was a fiduciary within the meaning of ERISA because (i) she possessed discretionary authority or discretionary responsibility in the administration of the Savings Plan and (ii) she exercised authority or control with respect to the management of the Savings Plan's assets. Upon information and belief, Defendant Boyden was also a fiduciary within the meaning of ERISA of the To-Rico Plan because (i) she possessed discretionary authority or discretionary responsibility in the administration of the To-Rico Plan and (ii) she exercised authority or control with respect to the management of the To-Rico Plan's assets.

67. Defendants Evenwez, Brookshire, Evans Sitton, and Boyden are herein referred to as the "Administrative Committee Defendants."

68. ***Defendants John Does 1-10*** ("John Does 1-10") are residents of the United States and are or were fiduciaries of the Plans during the Class Period. These defendants whose identities are currently unknown to Plaintiffs (and Defendants have refused to identify them in response to interrogatories served in this lawsuit on August 12, 2009) may include additional Pilgrim's Pride employees or directors of the Company. Once their identities are ascertained, Plaintiffs will seek leave to join them under their true names.

D. Defendants Fiduciary Status

69. ***Named Fiduciaries***. ERISA requires every plan to have one or more "named fiduciaries." ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1). The person named as the "administrator" in the plan instrument is automatically a named fiduciary, and in the absence of such a designation, the sponsor is the administrator. ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A).

70. ***De Facto Fiduciaries***. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under § 402(a)(1), but also any other persons who in fact perform fiduciary functions. *See* ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i). Thus, a person is a fiduciary to the extent "(i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan." *Id.*

71. Each of the Defendants was a fiduciary with respect to the Plans and owed fiduciary duties to the Plans and the participants in the manner and to the extent set forth in the Plans' documents, under ERISA, and through their conduct.

72. As fiduciaries, Defendants were required by ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), to manage and administer the Plans and the Plans' investments solely in the interest of the Plans' participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

73. Plaintiffs do not allege that each Defendant was a fiduciary with respect to all aspects of the Plans' management and administration. Rather, as set forth below, Defendants were fiduciaries to the extent of the fiduciary discretion and authority assigned to or exercised by each of them, and the claims against each Defendant are based on such specific discretion and authority.

74. Instead of delegating all fiduciary responsibility for the Plans to external service providers, the Company chose to delegate its responsibility regarding the administration of the Plans to the Board and the Administrative Committee. *See* Plan Document, Article XVIII, §§ 18.1, 18.3. Further, the Company chose to assign the appointment and removal of fiduciaries to the Board (Plan Document, Article XVIII, § 18.3, at p. 69), who, in turn, selected the members of the Administrative Committee. *See* Sixth Amendment to Pilgrim's Pride Retirement Savings Plan January 1, 2004 Restatement ("Sixth Amendment") ¶ 27, § 18.2 at 13-14 ("The Sponsor [who acts only through the Board of Directors of the Company] shall establish an Administrative Committee. The Administrative Committee shall consist of one or more individuals who shall be appointed by, and serve at the pleasure of, the Sponsor").

75. ERISA permits fiduciary functions to be delegated to insiders without an automatic violation of the rules against prohibited transactions. ERISA § 408(c)(3), 29 U.S.C. § 1108(c)(3). However, insider fiduciaries, like external fiduciaries, must act solely in the interest of participants and beneficiaries, not in the interest of the Plans' sponsors.

IV. THE PLANS

A. The Savings Plan

76. The Savings Plan, sponsored by Pilgrim's Pride, is a defined contribution plan. *See* Plan Document at 1; SPD at 4. The Savings Plan is a legal entity that can sue and be sued. ERISA § 502(d)(1), 29 U.S.C. § 1132(d)(1). However, in a breach of fiduciary duty action such as this, the Savings Plan is neither a defendant nor a plaintiff. Rather, pursuant to ERISA § 409, 29 U.S.C. § 1109, and the law interpreting it, the relief requested in this action is for the benefit of the Savings Plan and its participants and beneficiaries.

77. The Savings Plan is a voluntary contribution plan whereby participants make contributions to the Savings Plan and direct the Savings Plan to purchase investments with those contributions from options pre-selected by Defendants, which are then allocated to participants' individual accounts. *See* SPD at 4.

78. The Savings Plan, originally effective as of January 1, 1969, was amended and restated on January 1, 2004 and January 1, 2008.

79. On information and belief, there were approximately 16,000 participants invested in the Savings Plan with investments in Company Stock during the Class Period.

80. On January, 26, 2001, Pilgrim's Pride purchased WLR Foods, Inc. On June 26, 2001, the WLR Foods, Inc. Profit Sharing and Salary Savings Plan ("WLR Plan") was merged in

the Savings Plan. On that same date, Pilgrim's Pride continued the existing Trust Agreement for the Savings Plan as merged with the WLR Plan.

81. Pursuant to the Trust Agreement, "[t]he Employer [acting through the Board] shall control and manage the operation of the Plan. The Employer [acting through the Board] shall be responsible for determining benefit rights under the Plan, instructing the Trustee in the disbursement of benefits, investment management, soliciting stock voting instructions from participants, directing the Trustee in voting proxies and performing those plan administration functions specified in the Plan." *See* Trust Agreement, Section 1, at 1.

82. Pursuant to the Company's 2008 Form 5500, the Savings Plan held $35,083,429 in Pilgrim's Pride Stock at the beginning of year. *See* 2008 Form 5500, Schedule H at 2. Further, pursuant to the 2008 Form 5500, there were 22,051 Savings Plan participants at the beginning of the year. By the end of the 2008, after the market learned about the Company's previously undisclosed problems, the Savings Plan held only $725,413.00 in Company Stock. *See* 2008 Form 5500, Schedule H at 2.

83. The Pilgrim's Pride Stock Fund (the "Pilgrim's Pride Stock Fund") invested in Pilgrim's Pride Stock (Plan Document, Article VIII, § 8.4), and was one of twenty (20) plan investment options during the Class Period. *See* 2008 Form 5500, Schedule H.

84. The SPD allows a participant in the Savings Plan to invest some or all of the employer contributions to the Pilgrim's Pride Stock Fund. *See* SPD at 19.

85. The Savings Plan allows its participants to build income from two sources: (i) pre-tax deferrals by participants themselves and (ii) matching contributions that may be made by the Company. *See* SPD at 4, 13; Plan Document, Article IV, §§ 4.1, 4.2 at 18; Article VI, § 6.6 at 22. More specifically, each Savings Plan participant is eligible to contribute up to 20% of his

or her annual compensation to the Savings Plan on a pre-tax basis through payroll deductions. *See* Plan Document, Article IV, § 4.2; SPD at 8.

86. The Pension Committee Defendants and the Administrative Committee Defendants have complete discretion and authority to decide all matters involving the administration of the Savings Plan, including, (i) selecting the Savings Plan's investment options; (ii) reviewing the performance of the Savings Plan's investments; and (iii) appointing and retaining trustees and investment managers for the Savings Plan. *See* Pilgrim's Pride Board of Director Minutes March 18, 2009 (". . . the Company's Pension Committee, to which the Board had previously delegated the power and authority to manage the affairs and supervise the administration of the Company's pension Plans"); *see also* Modification Plan Document at 1 ("Effective as of January 1, 2008, the Administrative Committee is responsible for the day-to-day operations of the Plan").

87. Pursuant to the Plan Document, the term "Investment Funds" means "any separate investment Trust Fund maintained by the Trustee as may be provided in the Plan or the Trust Agreement or any separate investment fund maintained by the Trustee . . . ." *See* Plan Document at 7. The term "Investment Fund" also includes the Employer Stock Investment Fund.

88. Pursuant to the Plan Document, "[t]he Sponsor shall direct the establishment and maintenance of an Employer Stock Investment Fund to which Employer Contributions shall be allocated together with any other contributions that a Participant elects to have allocated to the Employer stock Investment Fund." *See* Plan Document, Article VIII, § 8.4 at 40.

89. Upon information and belief, the Pilgrim's Pride Stock Fund is not a mandatory investment option in the Plans. Further, the Savings Plan did not mandate that the Company's

match be made in the Pilgrim's Pride Stock Fund. *See* Plan Document, Article X, § 10.2 (indicating that all matching contribution "be deposited in the Trust and allocated among the Investment Funds" based on participants' investment election and setting the default investment as the Guaranteed Income Fund).

1. The Company's Matching Contributions

90. Pursuant to the SPD, the Company makes matching contributions. The SPD states in relevant part:

> Generally, a Matching Contribution is a contribution made by the Employer that is connected to the amount of money you elect to contribute to the Plan. The Employer may make two separate types of Matching Contributions to your Account. The first type of Matching Contribution is made weekly and is called a "Regular Matching Contribution." The second type of Matching Contribution is made at the end of the Plan Year to Participants who meet certain eligibility requirements and is called a "Profit-Sharing Contribution Tier 2."

SPD at 13.

91. On and after January 1, 2008, Regular Matching Contributions and Profit-Sharing Contribution Tier 2 were replaced with Employee 2008 Matching Contributions which was a new fixed matching contribution formula. *See* Modification Plan Document at 3. Under the fixed formula, the Company match would be 30% of the participants' tax-deferred contribution for the payroll period unless the participant worked in one of the four locations that required that the match be 25% of the participants' tax-deferred income. *Id.* The new fixed match was provided up to 6% percent of the participants' tax -deferred contribution. *Id.*

92. Prior to the fixed formula that began on January 1, 2008, the Company match was a two tiered system. *Id.* The Company would make a general match of 100% of a participants weekly period up to $7.00 per week. *Id.* The Company would also make a Tier 2 discretionary

match equal to 100% of the participants tax deferred contribution in excess of $7.00 per week up to 6% of the participants' contributions. *Id.*

93. Upon information and belief, in or around October 2008, the Board unanimously adopted and approved a resolution from the Pension Committee authorizing the suspension of investment of matching contributions in Company Stock.

B. To-Ricos Plan

94. Upon information and belief, the To-Ricos Plan, sponsored by Pilgrim's Pride, is a defined contribution plan. The To-Ricos Plan is a legal entity that can sue and be sued. ERISA § 502(d)(1), 29 U.S.C. § 1132(d)(1). However, in a breach of fiduciary duty action such as this, the To-Ricos Plan is neither a defendant nor a plaintiff. Rather, pursuant to ERISA § 409, 29 U.S.C. § 1109, and the law interpreting it, the relief requested in this action is for the benefit of the To-Ricos Plan and its participants and beneficiaries.

95. Upon information and belief, the To-Ricos Plan is a voluntary contribution plan whereby participants make contributions to the plan and direct the To-Ricos Plan to purchase investments with those contributions from options pre-selected by Defendants, which are then allocated to participants' individual accounts.

96. As of the date of the filing of this Consolidated Complaint, Defendants have failed to produce any documents regarding the To-Ricos Plan as requested on January 20, 2009, and as requested in this lawsuit pursuant to requests for production served on August 7, August 8 and August 12, 2009.

C. The Plans Incurred Significant Losses During The Class Period

97. During the Class Period, a significant amount of the Plans' assets were invested in Pilgrim's Pride Stock. Upon information and belief, as of December 31, 2007, the Company's

Stock was the second highest investment within the Savings Plan. As of December 31, 2007, the Savings Plan held $35,083,429 in Pilgrim's Pride Stock. *See* 2008 Form 5500, Schedule H at 2. By December 31, 2008, the Savings Plan held $725,413.00 in Pilgrim's Pride Stock. *See* 2008 Form 5500, Schedule H at 2.

98. Upon information and belief, between December 31, 2007 and December 31, 2008, the Company's Stock in the Savings Plan dropped 97.82%. The Company Stock Fund was the worst performing fund in the Savings Plan for 2008 and other funds offered in the Savings Plan were more prudent investments than Company Stock.

99. At the end of the Class Period, Pilgrim's Pride Stock traded at approximately $0.62 per share, representing a significant decline from the beginning of the Class Period of more than $25.00. As a result, the Plans incurred substantial losses due to their investment in Pilgrim's Pride Stock.

100. During the Class Period, and not known by participants in the Plans, Pilgrim's Pride Stock was an imprudent investment for participants' retirement savings because the Company Stock was artificially inflated and an unduly risky investment because: (i) the Company was overleveraged due to the its acquisition of Gold Kist, making the Company vulnerable to any fluctuations in the market; (ii) the Company would be unable to meet its loan obligations in the event that the Company faced any financial difficulties; (iii) the Company's transactions in an attempt to hedge against its higher costs would be unduly risky; and (iv) the Company paid more than fair value for the Gold Kist and was therefore overvaluing the acquisition.

101. Despite the Plans' substantial investment in Pilgrim's Pride Stock, Defendants failed to protect the Plans from the risks of the Company's reckless and improper conduct.

Defendants continued to hold the Plans' shares of Pilgrim's Pride Stock and compounded the problem (and the losses) by allowing participants in the Plans to acquire additional shares during the Class Period, causing millions of dollars in losses to the Plans.

VI. RELEVANT BACKGROUND

102. Pilgrim's Pride is one of the largest chicken companies in the United States, Mexico and Puerto Rico. The Company's prepared chicken products meet the needs of some of the largest customers in the food service industry across the United States. Its fresh chicken retail line is sold in the southeastern, central, southwestern and western regions of the United States, throughout Puerto Rico, and in the northern and central regions of Mexico. Additionally, the Company exports commodity chicken products to eighty (80) countries. As a vertically integrated company, Pilgrim's Pride controls every phase of the production of its products. It operates feed mills, hatcheries, processing plants and distribution centers in fourteen (14) U.S. States, Puerto Rico and Mexico.

103. Pilgrim's Pride was not always one the largest chicken companies. Beginning with its purchase of WLR Foods, Inc. in 2001, the Company started to acquire other chicken companies. The Company then purchased the chicken division of ConAgra Foods, Inc. in 2003.

104. Not satisfied with its status, in 2006, Pilgrim's Pride sought to become the world's leading chicken producer. In an attempt to meet this goal, the Company acquired its lesser competitor Gold Kist to overtake another competitor, Tyson Foods, as the number one chicken company in North America.

VII. FACTS BEARING ON FIDUCIARY BREACH

105. In August 2006, Pilgrim's Pride initiated a hostile takeover of Gold Kist. The two companies were able to reach an agreement in December of 2006 with Pilgrim's Pride paying

$21.00 per share for Gold Kist and assuming $144 million of Gold Kist's debt. The winning offer represented approximately a 62% premium over Gold Kist's closing stock price on August 18, 2006, which was the last day of trading before Pilgrim's Pride notified Gold Kist's board of directors that it was offering to buy the company.

106. On December 27, 2006, the Company acquired a majority of the outstanding shares of Gold Kist for $1.139 billion through a tender offer. Shortly thereafter, on January 9, 2007, the Company acquired all of the remaining shares of Gold Kist.

107. In order to acquire Gold Kist, the Company had to borrow a significant amount of money. Thus the acquisition of Gold Kist increased the Company's indebtedness significantly and as a result the Company was overleveraged.

108. As a result of the Gold Kist acquisition, the Company was plagued by enormous debt and was being adversely implicated by fundamental problems with its business which threatened its financial viability.

109. Specifically, in addition to the choking debt, Pilgrims' Pride was being adversely affected by higher expenses (including higher costs for feed and energy) and an oversupply of chicken which handicapped the Company's ability to raise the price of its product to compensate for its higher costs.

110. In early 2008, Pilgrim's Pride's problems caused the Company to begin selling certain businesses and shutting processing facilities in an attempt to stop hemorrhaging. The Company sold its turkey business, closed three processing facilities and seven distribution centers, shortened its annual fixed price sales contracts to generally 90-day periods, cutback production and reduced capital spending. *See* Disclosure Statement For the Debtors' Joint Plan

of Reorganization Under Chapter 11 Of The Bankruptcy Code, *In re Pilgrim's Pride Corp. et al.*, Case No. 08-45664 (DML) (Bnkr. N.D. Texas Sept. 17, 2009) at DS-21—DS-22.

111. The adverse financial impact was exacerbated because Pilgrim's Pride had overpaid to acquire Gold Kist. In fact, in early 2008, Defendants knew that the purchase price paid by the Company far exceeded the fair value of Gold Kist's net assets by approximately $505 million. As a result, the Company booked $505 million as "goodwill" – the difference between the purchase price and the fair value of Gold Kist's net assets – as an asset on its balance sheet.

112. At the very start of the Class Period, the Company valued the goodwill of the Gold Kist acquisition at approximately $505 million. The Company based its valuation on its annual test for impairment conducted as of September 29, 2007 pursuant to Statement of Financial Accounting Standards ("SFAS") No. 142, and reported the valuation in the Company's fiscal results for the year-ended September 27, 2007 filed with the SEC on Form 10-K FAS No. 142 also requires that Companies recalculate the value of goodwill for impairments if and when an "event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying value." The Company included this identical amount of goodwill on its balance sheet for the fiscal first quarter ended December 27, 2007, the fiscal second quarter ended March 29, 2008 and the fiscal third quarter ended June 28, 2008.

113. Before the Class Period, the Company had been experiencing negative cash flow from its operating activities for several quarters. For example, at the end of fiscal first quarter ended December 27, 2007, the Company had a negative cash flow from operating activities of $35.2 million. As early as January 2008, the rising cost of feed ingredients and weak demand for breast meat, as well as the oversupply of chicken and other animal-based proteins in the United States was exerting downward pressure on the Company's earnings and intangible assets.

114. By the end of fiscal second quarter ended March 29, 2008, the Company's negative cash flow from operating activities grew to $245.7 million. At the end of fiscal third quarter ended June 28, 2008, the Company's negative cash flow from operating activities was up by more than 43% to $351.8 million.

115. Defendants knew or should have known that the extreme increase in the Company's negative cash flow made it more likely than not that that the fair value of the Company's chicken segment had been materially reduced during the second and third fiscal quarters. Notwithstanding the declining earnings and obvious change in business conditions, Defendants continued to misrepresent the value of the goodwill in the Company's chicken segment as approximately $505 million in direct contravention of SFAS No. 142 and its stated accounting practices, all the while imprudently continuing to offer Company Stock as a plan option.

116. Defendants, in their fiduciary capacity, were obligated to correct the misrepresentations of the Company and their co-defendants or to cease the imprudent investment of the Plans' assets into Company Stock.

117. At no point during the Class Period did Defendants inform the market (including the Plans participants) of the full extent of such impairments, again causing the Company Stock to trade at inflated values.

118. Further, before and during the Class Period, the Company had begun to engage in speculative derivative commodity transactions, also causing the Company Stock to trade at inflated prices and to be an imprudent investment for the Plan's retirement assets.

119. On July 16, 2007, the Company issued a press release announcing that W. Edwin Carter ("Carter") had joined the Company as Senior Vice-President of commodity risk

management. This press release was filed with the SEC on a Form 8-K. The press release stated in relevant part:

> In this newly created position, Mr. Carter is responsible for setting the strategic direction and exposure to all commodity-based items such as grains, meals, oils, gas and diesel. Pilgrim's Pride ranks among the largest grain buyers in the nation, purchasing approximately 324 million bushels of corn and 3 million tons of soybean meal annually. He will report to O.B. Goolsby Jr., Pilgrim's Pride president and chief executive officer.
>
> "Soaring prices for corn, soybean meal and other commodities represent one of the biggest operating challenges facing the chicken industry today, so it is imperative that we seize every opportunity to manage these costs and reduce our exposure to market volatility," said Mr. Goolsby. "Edwin has a proven track record of managing risk in a wide variety of commodity markets, and we are confident that he will be a valuable addition to our senior management team."
>
> Mr. Carter has more than 20 years of experience in trading and risk management in commodity markets.

120. From the onset, the Company refused to provide any information regarding Mr. Carter's impact on its commodity procurement policies or the operations of the business. For example, on January 29, 2008, the Company held its fiscal first quarter 2008 earnings conference call. During this call, the following dialogue took place:

> **Christine McCracken - Cleveland Research**
>
> All right, you have a new head of risk management coming in here, what some might call the most difficult commodity environment, maybe ever. I'm wondering have you changed your policies, did the timing of his addition have any impact on how you prepared for the run up in grain or maybe you can talk about, you don't have to get specific, how you approached on the volatility in these markets because there are grains and oilseeds go back here in the last week or so, and might have given you an opportunity to lock in some, how do you prepare for potential drought? And maybe you can just talk about how your approach to risk management might have changed now, especially, given that you've dedicated more resources to that?
>
> **Defendant Cogdi**ll

> Yeah, I think as I mentioned on prior calls, the environment that we're in today with this ethanol demand driving a lot of the consumption side of the corn crop has really changed the dynamics of the seed ingredient procurement side. ***And that's why we went out and we brought in somebody to really make that their focal point of attention, as to study not only those commodities but all the other commodities as well, we're looking at diesel and natural gas and soybean oil and other things that we use in our business model and it hasn't changed our approach***. I'll say, yes, we basically have gotten a lot more focused to looking for opportunities to cover percentages of our usages as opposed to relying more on the markets to get steady flow of transactions. ***So, we're not giving any specifics where we're on any kind of hedges or positions that we might or might not have. We're not going to talk about that now or in the future but we're more actively looking at these markets and deciding when is the right time for us to take long positions as opposed to market positions***.

(Emphasis added).

121. When Defendants made these statements, Defendant Cogdill knew or should have known that the Company had begun to engage in speculative derivative commodity transactions. As a fiduciary of the Plans, Defendant Cogdill was obligated under ERISA to inform the Plans' participants and his co-fiduciaries of the current dangers facing the Company related to its speculative transactions, but failed to do so.

122. On February 4, 2008, the Company filed its Form 10-Q for the quarterly period ended December 29, 2007 ("December 29, 2007 Form 10-Q") with the SEC. This document was signed by Defendant Cogdill and made available to participants in the Plans.

123. Once the December 29, 2007 Form 10-Q was made available to the Plans' participants it became fiduciary communication.

124. The December 29, 2007 Form 10-Q reflected a net loss of $32,329,000 for the quarter which the Company attributed to "the higher costs of feed ingredients . . . along with deferred income tax asset valuation allowances recognized in Mexico and interest expense recognized on borrowings incurred due to the acquisition of Gold Kist." The December 29, 2007

Form 10-Q contained certifications signed by Defendants Cogdill and L. Pilgrim which represented:

> 1. I have reviewed this quarterly report on Form 10-Q for the fiscal quarter ended December 29, 2007, of Pilgrim's Pride Corporation;
>
> 2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
>
> 3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report.
>
> * * *
>
> The Quarterly Report on Form 10-Q for the quarter ended December 29, 2007 (the "Form 10-Q") of the Company fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, and information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

125. The December 29, 2007 Form 10-Q also stated: "As market conditions dictate, we will from time to time lock in future feed ingredient prices using a variety of natural hedges and derivative instruments such as forward purchase agreements with suppliers and futures contracts." However, it provided no disclosures regarding Pilgrim's Pride commodity acquisition policies or the condition of hedges and derivative instruments that the Company had already entered into. The December 29, 2007 Form 10-Q was inaccurate because it failed to disclose that the Company had engaged in speculative derivative commodity transactions that were adversely affecting the Company.

126. The certifications signed by Defendants Cogdill and L. Pilgrim were inaccurate because the December 29, 2007 Form 10-Q omitted to state material facts concerning Pilgrim's

Pride derivative commodity transactions that in light of the circumstances were necessary to not be misleading, and because the financial statements included in the December 29, 2007 Form 10-Q did not fairly represent in all material respects the financial condition, results of operations and cash flows of the Pilgrim's Pride during the Class Period.

127. Moreover, Defendants knew or should have known the risks and uncertainties associated with the Company's derivative commodity transactions. As fiduciaries of the Plans, Defendants were obligated to either inform the Plans' participants of the present condition of the Company's commodity acquisition policies and the rapidly declining value of the contracts that the Company had already entered into or cease offering the increasingly imprudent Company Stock as an investment alternative. They did neither.

128. On May 5, 2008, the Company issued a press release entitled *Pilgrim's Pride Corporation Reports Financial Results for Second Quarter of Fiscal 2008*, which announced its results for the second quarter 2008, including a net loss of $111.4 million, or $1.67 per share for the second fiscal quarter ended March 29, 2008. This press release was filed on Form 8-K and made available to the Plans' participants.

129. On that same day, the Company filed its Form 10-Q for the quarterly period ended March 29, 2008 ("March 29, 2008 Form 10-Q") with the SEC. The March 29, 2008 Form 10-Q contained certifications signed by Defendants Rivers, Codgill, L. Pilgrim which were substantially identical to the certifications which were contained within the December 29, 2007 Form 10-Q. The March 29, 2008 Form 10-Q was also made available to the Plans participants and was a fiduciary communication. The March 29, 2008 Form 10-Q reflected a net loss of $111.4 million for the quarter which the Company attributed to "higher costs of feed ingredients

. . . along with the interest expense recognized on borrowings incurred due to the acquisition of Atlanta-based Gold Kist Inc."

130. Addressing the adverse impact of the higher cost of feed, the March 29, 2008 Form 10-Q stated that the Company was endeavoring to achieve profitability by shifting to the production and marketing of prepared foods products:

> In an effort to reduce price volatility and to generate higher, more consistent profit margins, we have concentrated on the production and marketing of prepared foods products. We believe that prepared foods products will generally have higher profit margins than our other products. Also, we believe that the production and sale in the US of prepared foods products will generally reduce the impact of feed ingredient costs on our profitability. Feed ingredient costs become a decreasing percentage of a product's total production cost as further processing is performed, thereby generally reducing their impact on our profitability. However, because a significant portion of these products have typically been sold under fixed price contracts, often only negotiated on an annual basis, in periods of rapidly escalating feed ingredient prices, such as that experienced in the past year, sales of these products may not generate higher, more consistent profit margins as we are less often able to pass these higher costs on to our customers until the previous negotiated contract terms have expired.

131. The March 29, 2008 Form 10-Q stated that the Company "will from time to time lock in future feed ingredient prices using a variety of natural hedges and derivative instruments such as forward purchase agreements with suppliers and futures contracts." However, the March 29, 2008 Form 10-Q provided no disclosures regarding Pilgrim's Pride commodity acquisition policies or the adverse condition of hedges and derivative instruments that the Company had already entered into.

132. In the March 29, 2008 Form 10-Q, the Company also stated that under its credit facilities, it is required "to maintain certain levels of working capital and net worth, to limit dividends to a maximum of $26.0 million per year, and to maintain various fixed charge,

leverage, current and debt-to-equity ratios" and that as "[a]t March 29, 2008, the Company has fully complied with these covenants."

133. Additionally, in the March 29, 2008 Form 10-Q, the Company stated that "[i]n April 2008, the Company and its lenders amended certain covenants in its credit facilities and receivables purchase facility effective through the end of fiscal 2009 to levels the Company believes it can comply with in the near-term despite the current economic issues facing the chicken industry."

134. The statements set forth in ¶¶ 119-120, 124-125, 128-133 were inaccurate because (a) the financial statements failed to disclose that the Company had in fact engaged in speculative derivative commodity transactions or the gains and losses associated with this activity as required by General Accepted Accounting Practice ("GAAP") (FASB Statement No. 133); (b) Defendants knew or should have known the risks and uncertainties associated with the Company's derivative commodity transactions, and they should have disclosed these risks and uncertainties in the Company's MD&A section of the March 29, 2008 Form 10-Q in observance of SEC Rules and in the Company's financial statements in observance of GAAP (Statement Of Position 94-6); (c) Defendants knew or should have known that adverse events and circumstances described throughout this consolidated complaint existed which should have caused them to revalue and impair the Company's goodwill under GAAP as of March 29, 2008; and (d) that, as a result of the adverse events and circumstances, Defendants knew or should have known that the Company's goodwill was materially impaired under GAAP as of March 29, 2008.

135. From at least January 2008, Defendants failed to disclose to investors (which included the Plans' participants) that the goodwill the Company recognized in the Gold Kist

acquisition was worth significantly less than previously reported. While the materially overstated level of goodwill served to temporarily maintain the Company's debt covenants – even at the lower levels agreed to by the Company's lenders on April 30, 2008 – and allowed the Company to conduct a secondary offering of 7.5 million shares for $177 million in proceeds ("Secondary Offering"), Defendants were inaccurately overstating the Company's operations, prospects, and financial condition and failed to disclose that the Company was in serious jeopardy of insolvency.

136. Defendants, as fiduciaries of the Plans, were obligated to inform the Plans' participants of the inaccuracies contained in the Company's public statement or cease offering the increasingly imprudent Company Stock as an investment alternative, but failed to do so.

137. On May 5, 2008, the Company held a conference call for investors (which included the Plans participants) to discuss its second quarter results. During this conference call, Defendant Cogdill made statements relating to recent amendments to the Company's credit agreements:

> This morning we also reported that we had taken proactive steps to add greater flexibility to our existing covenants under our credit facilities. ***These steps also will provide substantial room to grow our business under normal practices*** as we seek to put the challenging industry's conditions behind us . . . As we have stated in the past, we have a good group of lenders who have faith in our management team and understand the cyclical nature of the chicken industry and the challenges facing us today. They appreciate ***the proactive steps we have taken to improve our competitive position and our focus on generating long-term value for our shareholders***. With these amendments, they have shown their support by relaxing certain of our covenants ***to afford our business the room we would need under all but the most dire of circumstances through the end of fiscal 2009.***

(Emphases added).

138. During this conference call, Defendant Codgill also stated in relevant part:

Eric Katzman -- Deutsche Bank:

Okay. And then I guess just the last question on the covenant charge, Rick. What are you – I guess what are you suggesting that we use for a new kind of annualized kind of interest expense level, given the changes that you put through today?

Defendant Cogdill:

Yes, the – the total interest expense itself is not going to be materially different, at least at this point. What we did is we wanted – basically coming out of last earnings release it was clear that there was a lot more focus and attention being levied on the covenants than what we appreciated and ***we wanted to get out ahead of that*** and make sure people understood that to the extent there was going [t]o be stress, we could get our banks to go along with us and some kind of a reasonable transition.

(Emphasis added).

139. During this conference call, Defendant Cogdill also noted that the Company "proactively went out to [its] lenders" to get "some relief under our financial covenants, just to make sure that our public and our interested shareholders understand that our bank agreements are there for us, and the liquidity that we need to operate this business will not be affected."

140. In response to a different question from an analyst, Defendant Cogdill made the following statement:

Ken Zaslow (BMO Nesbitt Burns):

I get a question a lot from investors just over the recent transaction. Can you help us understand why PPC needed to actually raise the equity, given that you're negotiating your covenants, your available credit clearly exceeds any of your needs. What was the purpose of actually needing to go to the equity market, given it's a relatively more expensive market?

Defendant Cogdill:

I think it was more insurance than anything else. It was not a pressing need. It was something we wanted to take little bit of the pressure off the balance sheet as a proactive measure. I would say it falls in line with the realignment of the bank covenants. ***We really didn't have any covenant issues either, but we wanted to get out ahead of the curve.***

(Emphasis added).

141. Further, at this conference call, the Company refused to provide any information regarding the Company's commodity procurement policies or the operations of the business as evidenced by the following dialogue:

> **Ken Zaslow - BMO Capital Markets**
>
> Have you been starting, I know historically Pilgrim's Pride has been of the mindset we don't really take positions on the corn that aggressively, has that changed, are you starting to take positions, are you hedged X percentage, can you just give us an idea of how you guys have changed your processes?
>
> **Defendant Rivers**
>
> We don't want to comment on the positions that we've taken except that we are trying to benefit from Edwin being here and the work that he is doing.

142. The statements above in ¶¶ 137-141 were inaccurate when made because (a) Defendants knew or should have known the risks and uncertainties associated with the Company's derivative commodity transactions, and they should have disclosed these risks and uncertainties to the Plans' participants and (b) contrary to Defendant Cogdill's statements that the decision to amend the Company's debt covenants – including the fixed charge covenant ratio – was a step to "provide substantial room to grow our business," to get "ahead of the curve," "a proactive measure" and "more insurance than anything else," Defendants amended the debt covenants because they knew or should have known that (i) the Company's goodwill recognized in the Gold Kist acquisition was significantly impaired as of January 2008 and (ii) coupled with the high costs of producing chicken, the inability to pass such costs onto customers, the oversupply of chicken and poor pricing for breast meat, such material impairment would likely cause the Company to fail to comply with its fixed charge covenant ratio, thereby triggering an event of default under its credit facilities.

143. Moreover, Pilgrim's Pride continued to value the goodwill recognized in the Gold Kist acquisition at approximately $505 million which was well above market value.

144. On May 14, 2008, the Company completed a secondary offering of 7.5 million shares for $177 million in proceeds. In a June and July 2008 conference call with investors (which included the Plans participants), Defendants explained that the purpose of the Secondary Offering was to provide the Company with greater financial "flexibility" and "liquidity."

145. As set forth in more detail below, Defendants' statements regarding the purpose of the Secondary Offering were inaccurate when made because Defendants failed to disclose the problems that Pilgrim's Pride was experiencing and that the Company had inflated the goodwill recognized in the Gold Kist acquisition. By concealing the impairment, Defendants were able to avoid an event of default under the Company's debt covenants and complete the Secondary Offering.

146. Defendants, as fiduciaries to the Plans, were obligated to correct these inaccuracies or cease offering the increasingly imprudent Company Stock as an investment alternative, but failed to do so.

147. On June 4, 2008, Defendants Rivers and Cogdill spoke at the Stephens Inc. Spring Investment Conference. During this conference, Defendant Cogdill stated in relevant part:

> On the financial side, we've tried to do everything we can to make sure we have the flexibility we need to run the business. ***We started by getting out ahead of the debt agreements we had, made sure that we had plenty of flexibility there, and we amended our covenant structure through the end of 2009***. We then issued 7.5 million shares of equity mid-month last month, raised $177 million net proceeds on that. ***And those two combined, I'll show you a little bit later the effect they had on some of our flexibility***.

(Emphases added).

148. Defendant Cogdill further stated at this conference:

> If you look at the covenants that were amended, basically it all kind of comes to roost in the tangible net worth. If you look at where we were at the end of the second quarter, we had tangible net worth of $451 million with a revised covenant of $250 million.

> ***So, where we are today is we have about $380 million of cushion, if you will, in that covenant, and that was basically $200 million created through the amendment to the credit facilities, and the other $180 million approximately through the equity issuance.*** And so, I think just going forward what you're going to see from us on the balance sheet side is ***to continue to be proactive in managing the flexibility.*** We've always carried a lot of flexibility to weather the cyclicality that we have in this industry.

(Emphasis added).

149. The statements above in ¶¶ 144, 147-148 were inaccurate when made because contrary to Defendant Cogdill's statements that (i) the Company was "getting out ahead of the debt agreements" in order to make sure that Pilgrim's Pride had "plenty of flexibility," and (ii) the Company had a $380 million cushion as a result of amending its debt covenants and the Secondary Offering, Defendants amended the debt covenants and completed the Secondary Offering because they knew or should have known that (i) the Company's goodwill recognized in the Gold Kist acquisition was significantly impaired as of January 2008 and (ii) coupled with the high costs of producing chicken, the inability to pass such costs onto customers, the oversupply of chicken and poor pricing for breast meat, such material impairment would likely cause the Company to fail to comply with its fixed charge covenant ratio, thereby triggering an event of default under its credit facilities.

150. Defendants, as fiduciaries of the Plans, were obligated to inform the Plans' participants of these inaccuracies or cease offering the increasingly imprudent Company Stock as an investment alternative, but failed to do so.

151. On July 29, 2008, the Company made available to investors (which included the Plans' participants) a press release entitled "*Pilgrim's Pride Corporation Reports Financial Results for Third Quarter of Fiscal 2008*," disclosing its fiscal third quarter financial results, including a net loss from continuing operations of $48.3 million or $0.69 per share. In the press release, Defendant Rivers stated that the Company "amended [its] debt covenants and completed

a stock offering for $177 million ***to provide us with more financial flexibility*** to manage our business through a tumultuous period." (Emphasis added). On this same day, Defendants caused this press release to be filed with the SEC on Form 8-K which Defendants made available to Plan participants and was a fiduciary communication.

152. Further, on that same day, the Company held an earnings conference call. The Company further continued to refuse to provide any information regarding the impact of the hedging transactions on the Company's financials:

> **Ken Zaslow - BMO Capital Markets**
>
> Okay, the other question is where they're hedging in, in this quarter? It looks like you probably bought forward corn pretty well, is that a fair assessment?
>
> **Defendant Cogdill**
>
> Yes. As we have said in the past, we continue to be active in the markets and trying to mitigate all of our commodity risks and we really do not talk about the effect of those. So, we are going to continue to not discuss that.
>
> * * *
>
> **Farha Aslam - Stephens Inc.**
>
> Okay and my final question it goes back to Ken, in this quarter, did you benefit at all from grain hedging and going forward because your results were surprisingly good. Going forward do you anticipate any, could you comment at all on what type of grain hedges you might benefit from in the fourth quarter?
>
> **Defendant Cogdill**
>
> ***Now we are really not going to comment on our hedging activity. As we have mentioned more than a year ago, when we brought on a senior executive in that arena that we intended to get more active and looking at all the commodity risk exposure we had and we said that we will use all tools to our disposal whether they are put through calls or hedges or what have you and we continue to do that and have done that. So, beyond that we are not going to disclose specifically where we are on hedges or what the results are as we really do not think from a competitive nature we need to be talking about that.***
>
> * * *

Carla Casella – JPMorgan

Hi, and my question is around the hedging I know it is been about a year now since you brought in the new head of commodity, risk management, can you just talk about anything you are doing to certainly now versus than do you think there are significant opportunities going forward as well or you like to see your commodity risk management say similar to how it operates today?

Defendant Rivers

Well Carla I would say just you know we operate different today than we did over year ago when that is the reason we brought in someone in that level. ***While we do not comment on our hedging strategies*** I mean they are as volatile as these markets have been, its been difficult to figure out what type of positions to take and I will tell you as that we are active on a regular basis communicating and trying to do things that we think are smart for our business. We continue to do that on our ongoing basis.

* * *

Chris Bradshaw - Lehman Brothers

Just follow up on Carla's question if, if you did have a hedge in place in the quarter. Would that have had a cash benefit or would it really just depend on the duration of their grain hedge?

Defendant Rivers

Well I mean any hedges or green activity can go with either direction there, either making money or losing money but to cash in recent terms of one sort of a final resolution and settlement. Clearly if you have open positions you have margin issues that you got to deal with, so I am assuming a whole lot of them that had a deal with something. I have not seen a whole lot of them that have not generally had a corresponding cash impact.

Chris Bradshaw - Lehman Brothers

Yes. On the timing it just depends on whether the position was still open at the end of the quarter? Is that what you are saying and that and then you are not going to be help us with on disclosing your hedge position obviously. So then I will ask you the next question is in the quarter if, I just think about the cash burn rate from your operations and can certainly wait for the 10-Q to get some of this, but I would be curious what that cash burn rate was if you have that handy and what I am really trying to get out is, had the current run rate because you have already said 4Q could be really no better. So at the current run-rate how many quarters of liquidity and flexibility would you have before running into a bit of a problem?

Defendant Rivers

Yes, I am not going to speculate into that activity but when you get to Q, you can analyze about it.

(Emphasis added).

153. During this same conference call, Defendant Rivers stated that "during the quarter we also modified our debt covenants and raised $177 million in a stock offering ***to gain greater financial flexibility*** and to provide added liquidity to manage our business in this volatile time." (Emphasis added). Defendant Cogdill also reported that "in spite of high feed costs," the Company "achieved $16.9 million positive EBITDA for the third fiscal quarter."

154. During this conference call, Defendant Cogdill stated in relevant part:

Carla Casella (JP Morgan):

And it sounded as if you are comfortable with your debt covenants through the remainder of the year and into early next year. Is that correct?

Defendant Cogdill:

Yes, when we realigned those debt covenants last quarter we tried to get something ***that would give us enough room for the 2008, 2009 year to weather these challenges that we foresaw ahead of us.*** Obviously, debt covenants are something you get to continue to keep your eye out for, and it is not a thing that you don't actively look at and manage on a day-to-day basis. But we are going to be fairly proactive in our entire capital structure like we always have in the past.

Casella:

When you set those covenants, I'm assuming they were set assuming that commodity prices at the time remain at those levels or does it take in some improvement in [commodities].

Defendant Cogdill:

We did a range of analysis from base case to worst case and best case, and it was somewhere in those ranges is where we came up with where we thought was reasonable to go to the banks with.

(Emphasis added).

155. The statements in ¶¶ 151-154 above were inaccurate when made because (a) Defendants knew or should have known the risks and uncertainties associated with the

Company's derivative commodity transactions, and they should have disclosed these risks and uncertainties to the market (which included the Plans participants); (b) contrary to Defendants Rivers and Cogdill's statements that the Company amended its debt covenants and conducted the Secondary Offering to achieve "greater financial flexibility" and "to give the company enough room for the 2008, 2009", Defendants amended the debt covenants and completed the Secondary Offering because they knew or should have known that (i) the Company's goodwill from the Gold Kist acquisition was significantly impaired as of January 2008 and (ii) coupled with the high costs of producing chicken, the inability to pass such costs onto customers, the oversupply of chicken and poor pricing for breast meat, such material impairment would likely cause the Company to fail to comply with its fixed charge covenant ratio, triggering an event of default under its credit facilities.

156. Defendants, as fiduciaries of the Plans, were obligated to inform the Plans' participants of these inconsistencies or cease offering the increasingly imprudent Company Stock as an investment alternative but failed to do so.

157. On July 29, 2008, the Company filed its Form 10-Q for the quarterly period ended June 28, 2008 ("June 28, 2008 Form 10-Q") with the SEC. It contained certifications signed by Defendants L. Pilgrim, Rivers, and Codgill, which were substantially identical to the certifications which were contained within the December 29, 2007 Form 10-Q.

158. The June 28, 2008 Form 10-Q reflected a net loss of $52,781,000 for the quarter which the Company attributed to "higher costs of feed ingredients . . . along with the interest expense recognized on borrowings incurred due to the acquisition of [...] Gold Kist Inc." Addressing the adverse impact of the higher cost of feed, the June 28, 2008 Form 10-Q reiterated

that the Company was endeavoring to achieve profitability by shifting to the production and marketing of prepared foods products.

159. The June 28, 2008 Form 10-Q also stated that the Company "will from time to time lock in future feed ingredient prices using a variety of natural hedges and derivative instruments such as forward purchase agreements with suppliers and futures contracts." However, it provided no disclosures regarding the Company's commodity acquisition policies or the adverse impact that the hedging transactions were having on the Company's financial results. The Form 10-Q was also made available to the Plans participants.

160. Further, in the June 28, 2008 Form 10-Q, the Company stated that under its credit facilities, it is required "to maintain certain levels of working capital and net worth, to limit dividends to a maximum of $26.0 million per year, and to maintain various fixed charge, leverage, current and debt-to-equity ratios" and that as "[a]t June 28, 2008, the Company has fully complied with these covenants."

161. Additionally, in the June 28, 2008 Form 10-Q, the Company stated that "[i]n April 2008, the Company and its lenders amended certain covenants in its credit facilities and receivables purchase facility effective through the end of fiscal 2009 to levels the Company believes it can comply with in the near-term despite the current economic issues facing the chicken industry."

162. The statements in ¶¶ 157-161 above were inaccurate because: (a) Defendants knew or should have known that adverse events and circumstances existed and were worsening, which caused them or should have caused them to substantially impair the Company's goodwill under GAAP. From at least January 2008, the Company failed to disclose that the goodwill it recognized in the Gold Kist acquisition was worth materially less than what the Company had

represented. While the overstated level of goodwill served to temporarily maintain the Company's debt covenants – even at the lower levels recently agreed to by the Company's lenders on April 30, 2008 – and allow the Company to complete the Secondary Offering, it also masked the fact that Defendants were inaccurately overstating the Company's operations, prospects, and financial condition and that the Company faced insolvency.

163. Defendants, as fiduciaries of the Plans, were obligated to inform the Plans' participants of these material facts or cease offering the increasingly imprudent Company Stock as an investment alternative but failed to do so.

VIII. ADDITIONAL FACTS BEARING ON THE IMPRUDENCE OF INVESTING IN PILGRIM'S PRIDE STOCK

164. During the Class Period, Pilgrim's Pride Stock was an imprudent investment for the Plans' retirement assets because of the significant, undisclosed risks of investing in Pilgrim's Pride Stock. In particular, the Plans' investment in Pilgrim's Pride Stock was jeopardized by the problems facing Pilgrim's Pride's core operations. *See* ¶¶ 105-163.

165. Instead of truthfully disclosing the risk to the Plans and the risk of investing retirement assets in Pilgrim's Pride Stock or ceasing to offer Company Stock as an investment alternative, Defendants continued to offer Pilgrim's Pride Stock as an investment to the Plans participants in clear violation of their fiduciary duties.

166. Throughout the Class Period, Defendants fostered a positive attitude toward the Company's Stock and/or allowed participants in the Plans to follow their natural bias towards investing in the equities of their employer by not disclosing negative material information concerning investment in the Company's Stock. Moreover, during the Class Period, Defendants distributed SEC filings that contained inaccurate statements to the Plans participants.

167. As such, Defendants' management of the Plans and their assets was imprudent, disloyal to the Plans' participants and failed to apprise participants of the Plans of the imprudent nature of investing in Company Stock during the Class Period.

168. In addition, as fiduciaries responsible for monitoring investing the Plans' assets, Defendants failed to adequately and timely review the performance of Pilgrim's Pride Stock or the performance of the other fiduciaries to ensure that they were fulfilling their ERISA duties.

169. Defendants, as fiduciaries of the Plans, failed to protect the Plans and their participants against lost profits and the inevitable diminution in vested benefits.

170. A prudent fiduciary acting under similar circumstances would have acted to protect participants against lost profits and unnecessary diminution of vested benefits, and would have made a different investment decision or different disclosures.

171. Defendants had available to them several different options for satisfying this duty, including: (i) making appropriate disclosures to the Plans and their participants; (ii) divesting the Plans of Company Stock; (iii) offering the Plans and their participants alternative investments in the Plans instead of in Pilgrim's Pride Stock; (iv) consulting independent fiduciaries regarding appropriate measures to take in order to prudently and loyally serve the participants of the Plans; (v) maintaining the Plans participants investments in cash instead of investing them in Company Stock or (vi) resigning as fiduciaries of the Plans to the extent that as a result of their employment by the Company they could not loyally serve participants in the Plans in connection with the Plans' acquisition and holding of Company Stock.

172. Despite the availability of these and other options, Defendants failed to take appropriate action to protect the Plans or their participants from lost profits or a diminution of

vested benefits as a result of the Plans' investment in Pilgrim's Pride Stock or in the Pilgrim's Pride Stock Fund.

173. Pilgrim's Pride's Stock was an imprudent investment for the Plans because (a) the Company had engaged in speculative derivative commodity transactions; (b) Defendants knew or should have known the risks and uncertainties associated with the Company's derivative commodity transactions, and they should have disclosed these risks and uncertainties; (c) Defendants knew or should have known that adverse events and circumstances existed which should have caused them to revalue and impair the Company's goodwill under GAAP; and (d) that, as a result of the adverse events and circumstances, Defendants knew or should have known that the Company's goodwill was materially impaired under GAAP as of March 29, 2008, the price of Pilgrim's Pride Stock decreased dramatically.

IX. THE IMPRUDENCE CONTINUES IN SPITE OF IMPENDING BANKRUPTCY

174. On September 24, 2008, after the markets closed, the Company issued a press release entitled *Pilgrim's Pride Corporation Issues Statement in Response to Recent Trading Activity in Its Common Stock*, which disclosed that it had notified its lenders that it expected to report a significant loss for the fiscal 2008 fourth quarter ended September 27, 2008. The press release further stated:

> Pilgrim's Pride Corporation today announced that, based on preliminary results, it notified its lenders that the company expects to report a significant loss in the fiscal fourth quarter ending September 27, 2008. The company attributed the anticipated loss to high feed-ingredient costs, continued weak pricing and demand for breast meat, and the significant negative impact of hedged grain positions during the quarter.
>
> As a result of this expected loss, Pilgrim's Pride recently informed its lenders that it does not expect to be in compliance with its fixed-charge coverage ratio covenant under its principal credit facilities as of the fiscal year ending September 27, 2008, but

> expects to be in compliance with all other covenants as of the end of the 2008 fiscal year.
>
> Pilgrim's Pride also announced that it believes it has reached an understanding with the agents under its credit facilities to temporarily waive the fixed-charge coverage ratio covenant through October 28, 2008, and to provide continued liquidity under these facilities during this same period. The temporary waiver will be subject to the negotiation of a definitive written agreement with the lenders, and there can be no assurance that this negotiation will result in a waiver acceptable to Pilgrim's Pride and its lenders. Failure to obtain a waiver or amendment of this covenant may preclude the company from drawing funds under these facilities and permit the lenders to declare an event of default, either of which would have a material adverse effect on the company.

175. Disclosure of the existence of hedged grain positions sufficient to cause a "significant negative impact" on the Company's financial caused the price of the Company's Stock to decline precipitously. With the news of Pilgrim's Pride's significant losses, the Company Stock plunged approximately 40% to $3.84 per share on September 25, 2008 from $10.26 per share on September 23, 2008.

176. On September 25, 2008, the Company revealed that it did not expect to be in compliance with its Fixed Charge Ratio covenant due to a large loss for the fiscal year ended September 27, 2008. Thereafter, the Company obtained temporary waivers from its lenders until October 26, 2008 and November 26, 2008.

177. On September 29, 2008, the Company issued a press release entitled *Pilgrim's Pride Corporation Announces Definitive Written Agreement With Lenders on Temporary Covenant Waiver*. The Company requested waivers from its lenders as a result of its anticipated non-compliance with its fixed charge coverage ratio under its principal credit facilities as of the fiscal year ending September 27, 2008. As disclosed in the press release, the waiver was required due to a "significant loss" emanating from "the significant negative impact of hedged grain positions during the quarter." This press release stated in relevant part:

> Pilgrim's Pride had requested the temporary waiver after notifying lenders that it expects to report a significant loss in the fourth quarter of fiscal 2008, which ended September 27, when it files its Form 10-K for such period. The company attributed the anticipated loss to high feed-ingredient costs, continued weak pricing and demand for breast meat, ***and the significant negative impact of hedged grain positions during the quarter. The company does not anticipate that any significant hedging gains or losses will be recognized beyond the fourth quarter of fiscal 2008 on the few positions that remained open past the end of such period.***

(Emphasis added).

178. The Company also announced in this press release that it had retained Bain Corporate Renewal Group to work with management on strategic issues and operational improvement. Further, the Company announced that it had engaged Lazard Inc. as its investment banker to also provide strategic advice regarding refinancing and recapitalization opportunities. On the news, the price of the Company's Stock fell to $2.79, an additional 21.4% drop, on heavy volume.

179. On October 16, 2008, the Pension Committee held a special meeting to discuss the continued prudence of investing in Pilgrim's Pride Stock in the Savings Plan. In attendance were Defendants Cogdill, Rivers, and Brookshire. At this meeting, there was a belated discussion of whether it was prudent for the Savings Plan to continue to invest up to 25% in Pilgrim's Pride Stock. At that meeting, those in attendance finally approved suspending new investment in Company Stock and making Goal Maker MO3 Fund the interim default investment fund as soon as administratively practicable. The pension Committee, however, did not take any action to liquidate the Company Stock Fund as an investment alternative in the Savings Plan.

180. On October 17, 2008 Pilgrim's Pride told a news agency that the company was not seeking bankruptcy protection and was working vigorously to solve its problems.

181. On October 18, 2008 Pilgrim's Pride Stock plunged 23.5% trading at $2.44 (down 92% for the year to date) on speculation that the Company would be forced to file for bankruptcy.

182. On October 21, 2008 the entire Board participated in a special meeting to discuss among other things the Pension Committees unanimous decision on October 16, 2008 to suspend new investment in the Company Stock Fund. At that meeting the Board unanimously adopted and approved the Pension Committee's October 16, 2008 resolution.

183. On October 24, 2008, Pilgrim's Pride Stock was permanently removed as an available option for any new matching contributions in the Savings Plan. However, it remained in the Plans as a retirement investment. On that day, Pilgrim's Pride Stock closed at a trading price of $2.17 per share.

184. On October 27, 2008, the Company issued a press release entitled *Pilgrim's Pride Corporation Announces Extension of Temporary Covenant Waiver With Lenders*, announcing that it had extended the agreement with its lenders to waive the fixed-charge coverage ratio covenant under its credit facilities through November 26, 2008. The lenders agreed to provide continued liquidity under the credit facilities. The Company also announced that it planned to exercise the 30-day grace period in making the $25.7 million interest payment due November 3, 2008, on its 7-5/8% Senior Notes and 8-3/8% Senior Subordinated Notes.

185. On that same day, Defendants sent notices out to Savings Plan participants informing them that Pilgrim's Pride Stock was temporarily suspended as a new investment option for the Company's matching contribution in the Savings Plan but that this suspension would be reevaluated each quarter.

186. By October 30, 2008, the Company's Stock was trading below $1.00 per share.

187. On November 10, 2008, the Savings Plan participants were informed that the prior notices were incorrect and that Pilgrim's Pride Stock was actually permanently discontinued as a new investment option for the Company's matching contribution in the Savings Plan. At that point, however, it was too late for the Plans' participants to avoid the catastrophic losses to their retirement savings.

188. On November 26, 2008, the Company issued a press release entitled *Pilgrim's Pride Corporation Announces Third Extension of Temporary Covenant Waiver With Lenders*, announcing that the Company had reached an agreement with its lenders to extend the temporary waiver under its credit facilities through December 1, 2008.

189. On November 28, 2008, the Company filed a Form NT 10-K with the SEC which revealed that the Company's Form 10-K would be filed late because the Company was engaged in "ongoing discussions with its lenders regarding temporary waivers under its credit facilities and related financial uncertainties." The Company also stated the following:

> The Company anticipates reporting a net loss of $802.0 million, or $10.83 per share, on sales of $2.17 billion for the fourth fiscal quarter ended September 27, 2008. These results are anticipated to include a non-cash charge of $501.4 million, or $6.77 per share, primarily related to the impairment of goodwill acquired in connection with the Company's acquisition of Gold Kist Inc. and an income tax valuation allowance of $35.0 million, or $0.47 per share, against net operating losses generated by the Company. Excluding these items, the Company's anticipated net loss would have been $265.6 million, or $3.59 per share. ***Also anticipated to be included in the fourth fiscal quarter ended September 27, 2008 are losses on feed ingredient derivative contracts of approximately $155.7 million, which are anticipated to be $96.9 million, or $1.31 per share, net of tax. The Company anticipates recognizing losses on feed ingredient derivative contracts for the first quarter of fiscal 2009 of $21.8 million, which are anticipated to be $13.4 million, or $0.18 per share, net of tax, with respect to feed ingredient derivative contracts that remained open at September 27, 2008. These feed ingredient derivative contracts were closed in October 2008. For the fiscal year ended***

> ***September 27, 2008, the Company anticipates reporting losses on feed ingredient derivative contracts of approximately $38.3 million, which are anticipated to be $23.8 million, or $0.34 per share, net of tax, which represents less than 1% of the Company's $3.4 billion total feed ingredient spend for fiscal 2008. For the fourth quarter of fiscal 2007, the Company reported a net profit of $33.2 million, or $0.50 per share, on total sales of $2.11 billion.***
>
> For the full 2008 fiscal year, Pilgrim's Pride anticipates reporting a net loss of $998.6 million, or $14.40 per share, on net sales of $8.5 billion. ***These results are anticipated to include a non-cash charge of $501.4 million, or $7.23 per share, primarily related to goodwill impairment from the Gold Kist acquisition and an income tax valuation allowance of approximately $60.0 million, or $0.87 per share, against net operating losses generated by the Company.*** Excluding these items, the Company's anticipated net loss would have been $437.2 million, or $6.31 per share. In fiscal 2007, the Company reported net income of $47.0 million, or $0.71 per share, on sales of $7.50 billion.

(Emphasis added).

190. As a result of the disclosure of a $155.7 million fiscal fourth quarter loss on derivative financial instruments and a fiscal full year loss of $38.3 million on these instruments, it became apparent that the:

(a) fiscal 2008 first quarter financial statements, the fiscal 2008 second quarter financial statements, and the fiscal 2008 third quarter financial statements were materially inaccurate; and

(b) $196,558,000 reported net loss for the nine months ended June 28, 2008 would have been staggeringly higher, but for the Company's non-disclosed losses related to the speculative commodity transactions.

191. On December 1, 2008, the Company filed for Chapter 11 bankruptcy protection. The price of the Company's Stock dropped to ten cents per share upon dissemination of this news.

192. In conjunction with the bankruptcy filing, the Company sought approval to enter into a $50 million debtor-in-possession ("DIP") financing facility. As a result of the Company's filing of its Chapter 11 petitions, the NYSE suspended all trading in Pilgrim's Pride Stock. When the NYSE suspended trading in the Company's Stock, it was trading at $0.62 per share.

193. On December 12, 2008, the Company filed its results for the fiscal year ended September 27, 2008 with the SEC on Form 10-K. The Company disclosed the following about the $501 million pre-tax impairment charge:

> As the result of the downward pressure placed on earnings ***by the increased cost of feed ingredients, weak demand for breast meat and the oversupply of chicken and other animal-based proteins in the US, the Company evaluated the carrying amount of its goodwill for potential impairment at September 27, 2008.*** We obtained valuation reports as of September 27, 2008 that indicated ***the carrying amount of our goodwill should be fully impaired based on current conditions.*** As a result, we recognized a pretax impairment charge of $501.4 million during 2008.

(Emphasis added).

194. On December 16, 2008, Defendant Rivers and Wright resigned from their positions and membership on the Board.

X. THE RELEVANT LAW

195. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), provides, in pertinent part, that a civil action may be brought by a plan participant for relief under ERISA § 409, 29 U.S.C. § 1109.

196. An individual may be a fiduciary for ERISA purposes either because the plan documents explicitly describe fiduciary responsibilities or because that person functions as a fiduciary. *See* U.S.C. § 1002(21)(A); *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 262 (1993); *Concha v. London*, 62 F.3d 1493 (9th Cir. 1995).

197. When fiduciaries put the interests of the company or their own interests ahead of the interests of plan participants, they violate ERISA. A fiduciary may, therefore, be personally

liable to plan participants for breaching the responsibilities, obligations, or duties imposed under the plan and must restore any losses to the plan with any profits the fiduciary made through use of plan assets. ERISA § 409(a), 29 U.S.C. § 1109(a).

198. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes individual participants to seek equitable relief from fiduciaries, including, without limitation, injunctive relief and, as available under applicable law, constructive trust, restitution, and other monetary relief.

199. ERISA §§ 404(a)(1)(A) and (B), 29 U.S.C. §§ 1104(a)(1)(A) & (B), provide, in pertinent part:

> A fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and their beneficiaries, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

200. These fiduciary duties under ERISA §§ 404(a)(1)(A) and (B) are referred to as the duties of loyalty, exclusive purpose, and prudence and are the "highest known to the law." *Donovan v. Bierwirth*, 680 F.2d 263, 272 n.8 (2d Cir. 1982); *see Bussian v. RJR Nabisco, Inc.*, 223 F.3d 286, 294 (5th Cir. 2000).

201. A fiduciary breaches the duty of loyalty when the fiduciary withholds information that the fiduciary knows or should know a participant would need to make an informed decision. Therefore, the duty of loyalty includes: (i) a negative duty not to misinform; (ii) an affirmative duty to inform when the fiduciary knows or should know that silence might be harmful; and (iii) a duty to convey complete and accurate information material to the circumstances of participants and beneficiaries.

202. A fiduciary must avoid conflicts of interest and resolve them promptly when they do occur. As such, a plan fiduciary must always administer a plan with an exclusive purpose or

"eye single" to the interests of the participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the plan sponsor. *Bierwirth*, 680 F.2d at 271.

203. A plan fiduciary is also responsible for the investment and monitoring of plan investments, ensuring that only prudent investments are offered as plan options, and monitoring such investments to ensure that they remain prudent and suitable for the plan. *In re ADC Telecomm, ERISA Litig.*, No. 03-2989, 2004 U.S. Dist. LEXIS 14383 (D. Minn. July 26, 2004). This includes the duty to conduct an independent and thorough investigation into, and to continually monitor, the merits of all the investment alternatives of a plan to ensure that each investment is a suitable option for the plan.

204. ERISA § 405(a), 29 U.S.C. § 1105(a), "Liability for Breach by Co- Fiduciary," provides, in pertinent part:

> In addition to any liability which he may have under any other provision of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:
>
> (1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach;
>
> (2) if, by his failure to comply with section 404(a)(1), 29 U.S.C. § 1104(a)(1), in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or
>
> (3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

205. Co-fiduciary liability is an important part of ERISA's regulation of fiduciary responsibility. Because ERISA permits the fractionalization of a fiduciary duty, there may be, as in this case, several ERISA fiduciaries involved in a given decision, such as the role of company stock in a plan. In the absence of co-fiduciary liability, fiduciaries would be incentivized to limit their responsibilities as much as possible and to ignore the conduct of other fiduciaries. The

result would be a setting in which a major fiduciary breach could occur, but the responsible party could not easily be identified. Co-fiduciary liability obviates this. Even if a fiduciary did not participate in a breach, if he knows of a breach, he must take steps to remedy it.

> [I]f a fiduciary knows that another fiduciary of the plan has committed a breach, and the first fiduciary knows that this is a breach, the first fiduciary must take reasonable steps under the circumstances to remedy the breach. . . . [T]he most appropriate steps in the circumstances may be to notify the plan sponsor of the breach, or to proceed to an appropriate Federal court for instructions, or bring the matter to the attention of the Secretary of Labor. The proper remedy is to be determined by the facts and circumstances of the particular case, and it may be affected by the relationship of the fiduciary to the plan and to the co-fiduciary, the duties and responsibilities of the fiduciary in question, and the nature of the breach.

1974 U.S.C.C.A.N. 5038, 1974 WL 11542, at 5080.

206. Plaintiffs bring this action under the authority of ERISA § 502(a)(2) for relief under ERISA § 409(a) to recover losses sustained by the Plan arising out of the breaches of fiduciary duties by Defendants for violations under ERISA § 404(a)(1) and ERISA § 405(a).

XI. CAUSATION

207. The Plans suffered millions of dollars in principal losses because Defendants imprudently invested the Plans' assets in Pilgrim's Pride Stock during the Class Period, in breach of Defendants' fiduciary duties.

208. Moreover, in the alternative, participants in the Plans are presumed to have relied on statements made by Defendants and the Company in determining whether to invest their retirement savings in Pilgrim's Pride Stock.

209. As fiduciaries of the Plans, Defendants were obligated to correct any misstatements or inaccuracies in relation to the value of the Company Stock and the condition of the Company but failed to do so. Due to Defendants' failure to act in accordance with their

ERISA fiduciary obligations, participants in the Plans saw their retirement savings decimated without any warning or opportunity to take action to protect themselves.

210. Defendants are liable for the Plans' losses in this case because the Plans' investment in Pilgrim's Pride Stock was the result of Defendants' decision to imprudently offer Pilgrim's Pride Stock as a plan investment and maintain the assets of the Plans in Pilgrim's Pride Stock. Thus, Defendants are liable for these losses because they failed to take the necessary and required steps to ensure effective and informed independent participant control over the investment decision-making process.

211. Had Defendants properly discharged their fiduciary and co-fiduciary duties, including the monitoring and removal of fiduciaries who failed to satisfy their ERISA-mandated duties of prudence and loyalty, eliminating Pilgrim's Pride Stock as an investment alternative when it became imprudent, and divesting the Plans of Pilgrim's Pride Stock when maintaining such an investment became imprudent, the Plans would have avoided some or all of the losses that it, and indirectly, the participants suffered.

XII. REMEDY FOR BREACHES OF FIDUCIARY DUTY

212. Defendants breached their fiduciary duties in that they knew or should have known the facts as alleged above, and therefore knew or should have known that the Plans' assets should not have been invested in Pilgrim's Pride Stock during the Class Period.

213. As a consequence of Defendants' breaches, the Plans suffered significant losses.

214. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2) authorizes a plan participant to bring a civil action for appropriate relief under ERISA § 409, 29 U.S.C. § 1109. Section 409 requires "any person who is a fiduciary . . . who breaches any of the . . . duties imposed upon fiduciaries .

. . to make good to such plan any losses to the plan." Section 409 also authorizes "such other equitable or remedial relief as the court may deem appropriate."

215. With respect to calculation of the losses to the Plans, breaches of fiduciary duty result in a presumption that, but for the breaches of fiduciary duty, the Plans would not have maintained its investments in the challenged investment and, instead, prudent fiduciaries would have invested the Plans' assets in the most profitable alternative investment available to them. The Court should adopt the measure of loss most advantageous to the Plans. In this way, the remedy restores the Plans' lost value and puts the participants in the position they would have been in if the Plans had been properly administered.

216. Plaintiffs and participants in the Plans are therefore entitled to relief from Defendants in the form of: (i) a monetary payment to the Plans to make good to the Plans the losses to the Plans resulting from the breaches of fiduciary duties alleged above in an amount to be proven at trial based on the principles described above, as provided by ERISA § 409(a), 29 U.S.C. § 1109(a); (ii) injunctive and other appropriate equitable relief to remedy the breaches alleged above, as provided by ERISA §§ 409(a), 502(a)(2) and (3), 29 U.S.C. §§ 1109(a), 1132(a)(2) and (3); (iii) injunctive and other appropriate equitable relief pursuant to ERISA § 502(a)(3), 29 U.S.C. 1132(a)(3), for knowing participation by a non-fiduciary in a fiduciary breach; (iv) reasonable attorney fees and expenses, as provided by ERISA § 502(g), 29 U.S.C. § 1132(g), the common fund doctrine, and other applicable law; (v) taxable costs and interest on these amounts, as provided by law; and (vi) such other legal or equitable relief as may be just and proper.

217. Under ERISA, each Defendant is jointly and severally liable for the losses suffered by the Plans in this case.

XIII. CLASS ACTION ALLEGATION

218. ***Class Definition***. Plaintiffs bring this action on behalf of the Plans or alternatively as a class action pursuant to Rules 23(a), (b)(1), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the Plaintiffs and the following class of persons similarly situated (the "Class"):

> All persons, other than Defendants, who were participants in or beneficiaries of the Plans at any time between January 29, 2008 through December 1, 2008, and whose accounts included investments in Pilgrim's Pride Stock.

219. ***Class Period***. The fiduciaries of the Plans knew or should have known at least by January 29, 2008, that the Company's material weaknesses were so pervasive that Pilgrim's Pride Stock could no longer be offered as a prudent investment for the retirement Plans.

220. ***Numerosity***. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to the Plaintiffs at this time, and can only be ascertained through appropriate discovery, Plaintiffs believe there are over 32,524 participants or beneficiaries in the Savings Plan. *See* Savings Plan's Form 5500 for Plan year 2007.

221. ***Commonality***. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

- whether Defendants each owed a fiduciary duty to Plaintiffs and members of the Class;
- whether Defendants breached their fiduciary duties to Plaintiffs and members of the Class by failing to act prudently and solely in the interests of the Plans' participants and beneficiaries;
- whether Defendants violated ERISA; and

- whether the Plans have suffered losses and, if so, what is the proper measure of damages.

222. ***Typicality***. Plaintiffs' claims are typical of the claims of the members of the Class because: (1) to the extent Plaintiffs seek relief on behalf of the Plans pursuant to ERISA § 502(a)(2), their claims on behalf of the Plans are not only typical to, but identical to a claims under this section brought by any Class member; and (2) to the extent Plaintiffs seek relief under ERISA § 502(a)(3) on behalf of themselves for equitable relief, that relief would affect all Class members equally.

223. ***Adequacy***. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class action, complex, and ERISA litigation. Plaintiffs have no interests antagonistic to or in conflict with those of the Class.

224. ***Rule 23(b)(1)(B) Requirements***. Class action status in this ERISA action is warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the actions, or substantially impair or impede their ability to protect their interests.

225. ***Other Rule 23(b) Requirements***. Class action status is also warranted under the other subsections of Rule 23(b) because: (1) prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants; (2) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole; and (3) questions of law or fact common to members of the Class

predominate over any questions affecting only individual members and a class action is superior to the other available methods for the fair and efficient adjudication of this controversy.

226. In the alternative, shall proceed under ERISA Section 502(a)(2), 29 U.S.C. § 1132(a)(2). Section 502(a)(2), 29 U.S.C. § 1132(a)(2) states that "[a] civil action may be brought —" "by the Secretary [of Labor], or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title[.]" ERISA Section 409(a), 29 U.S.C. § 1109(a), sets forth that:

> Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable ***to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary***, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

(Emphasis added).

227. Further, ERISA §§ 409(a) and 502(a)(2) authorize participants such as Plaintiffs to sue in a representative capacity for losses suffered by the Plans as a result of breaches of fiduciary duty. Pursuant to that authority, Plaintiffs bring this action as a Class action under Fed. R. Civ. P. 23 on behalf of all participants and beneficiaries of the Plans whose plan accounts were invested in Pilgrim's Pride Stock during the Class Period.

XIV. CAUSES OF ACTION

COUNT I:

Failure To Prudently And Loyally Manage The Plans And Assets Of The Plans

228. Plaintiffs incorporate by this reference the paragraphs above.

229. This Count alleges fiduciary breach against the following Defendants: Pension Committee, Administrative Committee and the members of Pension Committee and the Administrative Committee, and Defendant DeBar (collectively, the "Prudence Defendants")

230. As alleged above, during the Class Period, the Prudence Defendants were named fiduciaries pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), or *de facto* fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, they were bound by the duties of loyalty, exclusive purpose, and prudence.

231. As alleged above, the scope of the Prudence Defendants' fiduciary duties and responsibilities included managing the assets of the Plans for the sole and exclusive benefit of the Plans participants and beneficiaries, and with the care, skill, diligence, and prudence required by ERISA. Therefore, the Prudence Defendants were directly responsible for selecting prudent investment options, eliminating imprudent options, determining how to invest employer contributions to the Plans, and directing the Trustee regarding same. The Prudence Defendants were also responsible for, among other things, evaluating the merits of the Plans' investments on an ongoing basis, and taking all necessary steps to ensure that the Plans' assets were invested prudently.

232. Yet, contrary to their duties and obligations under ERISA, the Prudence Defendants failed to loyally and prudently manage the assets of the Plans. Specifically, during the Class Period, the Prudence Defendants knew or should have known that Pilgrim's Pride no longer was a suitable and appropriate investment for the Plans, but was, instead, a highly speculative and risky investment in light of the Company's fundamental weaknesses. Nonetheless, during the Class Period, the Prudence Defendants continued to offer Pilgrim's Pride Stock as an investment option for the Plans' participants' contributions.

233. They did so despite evidence that (a) the acquisition of Gold Kist had overleveraged the Company and; (b) the Gold Kist acquisition had left the Company vulnerable to changes in market conditions; (c) the Company's financial statements failed to disclose that it had engaged in speculative derivative commodity transactions and the gains and losses associated with this activity as required by GAAP (FASB Statement No. 133); (d) Defendants knew or should have known the risks and uncertainties associated with the Company's derivative commodity transactions, and they should have disclosed these risks and uncertainties; (e) Defendants knew or should have known that adverse events and circumstances existed which should have caused them to revalue and impair the Company's goodwill under GAAP; and (f) that, as a result of the adverse events and circumstances, Defendants knew or should have known that the Company's goodwill was materially impaired under GAAP. Further, from at least January 2008, Defendants failed to disclose to investors (which included the Plans participants) that the goodwill it recognized in the Gold Kist acquisition was worth significantly less than previously reported. While the materially overstated level of goodwill served to temporarily maintain the Company's debt covenants – even at the lower levels agreed to by the Company's lenders on April 30, 2008 – and allowed the Company to conduct the Secondary Offering, Defendants were misrepresenting the Company's operations, prospects, and financial condition and failing to disclose that the Company was in serious jeopardy of insolvency.

234. The Prudence Defendants were obliged to prudently and loyally manage all of the Plans' assets. However, their duties of prudence and loyalty were especially significant with respect to Company Stock because: (a) company stock is a particularly risky and volatile investment, even in the absence of company misconduct; and (b) participants tend to underestimate the likely risk and overestimate the likely return of investment in company stock.

In light of this, the Prudence Defendants were obliged to institute a regular, systematic procedure for evaluating the prudence of investment in Company Stock.

235. Moreover, the Prudence Defendants failed to conduct an appropriate investigation of the merits of continued investment in Pilgrim's Pride Stock, even though the Company's financial situation posed a great danger to the Plans. Such an investigation would have revealed to a reasonably prudent fiduciary the imprudence of continuing to maintain investment in Pilgrim's Pride Stock under these circumstances.

236. The Prudence Defendants' decisions regarding the Plans' investment in Pilgrim's Pride Stock described above, under the circumstances alleged herein, constituted an abuse of fiduciary discretion because a prudent fiduciary acting under similar circumstances would have made different investment decisions. A prudent fiduciary would not have reasonably believed that continued investment of the Plans' contributions and assets in Pilgrim's Pride Stock was in keeping with the Plans settlor's expectations of how a prudent fiduciary would operate.

237. The Prudence Defendants were obligated to discharge their duties with respect to the Plans with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

238. According to DOL regulations and case law interpreting the statutory provision above, a fiduciary's investment or investment course of action is prudent if: (a) he has given appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the role the investment or

investment course of action plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties; and (b) he has acted accordingly.

239. Again, according to DOL regulations, "appropriate consideration" in this context includes, but is not necessarily limited to:

> (1) a determination by the fiduciary that the particular investment or investment course of action is reasonably designed, as part of the portfolio (or, where applicable, that portion of the plan portfolio with respect to which the fiduciary has investment duties), to further the purposes of the plan, taking into consideration the risk of loss and the opportunity for gain (or other return) associated with the investment or investment course of action; and
>
> (2) consideration of the following factors as they relate to such portion of the portfolio:
>
> (a) the composition of the portfolio with regard to diversification;
>
> (b) the liquidity and current return of the portfolio relative to the anticipated cash flow requirements of the plan; and
>
> (c) the projected return of the portfolio relative to the funding objectives of the plan.

240. Given the conduct of and problems with the Company as described above, the Prudence Defendants did not act prudently when they continued to invest the Plans' assets in Pilgrim's Pride Stock because, among other reasons, these Defendants knew or should have known: (a) the Company was overleveraged due to its Gold Kist acquisition; (b) the Gold Kist acquisition made the Company extremely vulnerable to any changes in market conditions (c) the Company engaged in speculative derivative commodity transactions to achieve profitability; (d) the Gold Kist goodwill was overvalued; (e) the adverse events and circumstances which should have caused the Company to revalue and impair its goodwill under GAAP; and (f) the Company's goodwill was materially impaired under GAAP. While the materially overstated

level of goodwill served to temporarily maintain the Company's debt covenants and allowed the Company to conduct the Secondary Offering, Defendants were inaccurately overstating the Company's operations, prospects, and financial condition and that the Company was in serious jeopardy of insolvency.

241. As such, the risk associated with the investment in Pilgrim's Pride Stock during the Class Period was far above the normal, acceptable risk associated with investment in Company Stock. Yet, the Plans' participants were unaware of this risk. The Prudence Defendants knew participants were unaware of the risk – as was the market generally – because these Defendants never disclosed it.

242. Thus, given this inequity, the Prudence Defendants had a duty to avoid permitting the Plans or any participant to invest the Plans' assets in Pilgrim's Pride Stock.

243. Further, knowing the Pilgrim's Pride Stock Fund in the Plans was not a diversified portfolio but was heavily invested in Company Stock, these defendants had a heightened responsibility to divest the Plans of Company Stock if it became or remained imprudent.

244. The fiduciary duty of loyalty entails, among other things, a duty to avoid conflicts of interest and to resolve conflicts promptly when they occur. A fiduciary must always administer a plan with single-minded devotion to the interests of the participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the plan sponsor. Certain Defendants were motivated to inflate the perceived success of the Company and boost its apparent performance, because the better the Company's performance and, consequently, the higher the price of the Company's stock, the larger certain Defendants' salaries and incentive compensation. Fiduciaries laboring under such conflicts must, in order to comply with the duty

of loyalty, make special efforts to assure that their decision-making process is untainted by the conflict and is made in a disinterested fashion, typically by seeking independent financial and legal advice obtained only on behalf of the plan.

245. The Prudence Defendants breached their duty to avoid conflicts of interest and to promptly resolve them by: (i) failing to engage independent advisors who could make independent judgments concerning the Plans' investment in Pilgrim's Pride Stock; (ii) failing to notify appropriate federal agencies, including the DOL, of the facts and circumstances that made Pilgrim's Pride Stock an unsuitable investment for the Plans; (iii) failing to take such other steps as were necessary to ensure that participants' interests were loyally and prudently served; (iv) failing to disregard the impact of their duty to avoid conflicts of interest on their own compensation; and (v) placing their own and Pilgrim's Pride improper interests above the interests of the participants with respect to the Plans' investment in Pilgrim's Pride Stock.

246. Moreover, a fiduciary's duties of loyalty and prudence require it to disregard plan documents or directives that it knows or reasonably should know would lead to an imprudent result or would otherwise harm plan participants or beneficiaries. ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D). Thus, a fiduciary may not blindly follow plan documents or directives that would lead to an imprudent result or that would harm plan participants or beneficiaries, nor allow others, including those who they direct or who are directed by the plan, to do so.

247. The Prudence Defendants breached this duty by: (i) continuing to offer Pilgrim's Pride Stock as an investment option for participants of the Plans; (ii) continuing to invest assets of the Plans in Pilgrim's Pride Stock rather than in cash or other short-term investment options; and (iii) engaging in this course of conduct when Defendants knew or should have known that Pilgrim's Pride Stock no longer was a prudent investment for participants' retirement savings.

248. As a consequence of the Prudence Defendants' breaches of fiduciary duty alleged in this Count, the Plans suffered tremendous losses. If these Defendants had discharged their fiduciary duties by prudently investing the Plans' assets, the losses suffered by the Plans would have been minimized or avoided. Therefore, as a direct and proximate result of the breaches of fiduciary duty alleged herein, the Plans, and indirectly Plaintiffs and the other Class members, lost millions of dollars of retirement savings.

249. Pursuant to ERISA §§ 409, 502(a)(2) and (a)(3), 29 U.S.C. §§ 1109(a), 1132(a)(2) and (a)(3), the Prudence Defendants are liable to restore the losses to the Plans caused by their breaches of fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

COUNT II:

Failure To Monitor Fiduciaries

250. Plaintiffs incorporate by this reference the allegations above.

251. This Count alleges fiduciary breach against the following Defendants: the Director Defendants, the Pension Committee and the Pension Committee Defendants (the "Monitoring Defendants").

252. As alleged above, during the Class Period, the Monitoring Defendants were named fiduciaries pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), or *de facto* fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, they were bound by the duties of loyalty, exclusive purpose, and prudence.

253. The scope of the Monitoring Defendants' fiduciary responsibilities includes the responsibility to appoint and remove, and thus monitor the performance of other fiduciaries. The Monitoring Defendants exercises their plan administrator functions through the Pension

Committee and the Administrative Committee Defendants with respect to the Plans. Thus, the Monitoring Defendants who were Directors had a duty to monitor Pension Committee and the Administrative Committee Defendants and the Monitoring Defendants who were on the Pension Committee had a duty to monitor the Administrative Committee Defendants.

254. Under ERISA, a monitoring fiduciary must ensure that the monitored fiduciaries are performing their fiduciary obligations, including those with respect to the investment and holding of plan assets, and must take prompt and effective action to protect the plan and participants when they are not.

255. The monitoring duty further requires that appointing fiduciaries have procedures in place so that on an ongoing basis they may review and evaluate whether the "hands-on" fiduciaries are doing an adequate job (for example, by requiring periodic reports on their work and the plan's performance, and by ensuring that they have a prudent process for obtaining the information and resources they need). In the absence of a sensible process for monitoring their appointees, the appointing fiduciaries would have no basis for prudently concluding that their appointees were faithfully and effectively performing their obligations to plan participants or for deciding whether to retain or remove them.

256. Furthermore, a monitoring fiduciary must provide the monitored fiduciaries with complete and accurate information in their possession that they know or reasonably should know that the monitored fiduciaries must have in order to prudently manage the plan and the plan assets, or that may have an extreme impact on the plan and the fiduciaries' investment decisions regarding the plan.

257. On information and belief, the Monitoring Defendants breached their fiduciary monitoring duties by, among other things: (i) failing, at least with respect to the Plans'

investment in Company Stock, to monitor their appointees, to evaluate their performance, or to have any system in place for doing so, and standing idly by as the Plans suffered enormous losses as a result of their appointees' imprudent actions and inaction with respect to Company Stock; (ii) failing to ensure that the monitored fiduciaries appreciated the true extent of Pilgrim's Pride highly risky and inappropriate business practices, and the likely impact of such practices on the value of the Plans' investment in Pilgrim's Pride Stock; (iii) ensuring that appointees provided complete and accurate information to the Plans' participants related to investment in Company Stock during the Class period; (iv) to the extent any appointee lacked such information, failing to provide complete and accurate information to all of their appointees such that they could make sufficiently informed fiduciary decisions with respect to the Plans' assets; and (v) failing to remove appointees whose performance was inadequate in that they continued to maintain investments in Pilgrim's Pride Stock despite their knowledge of practices that rendered Pilgrim's Pride Stock an imprudent investment during the Class Period for participants' retirement savings in the Plans, and who breached their fiduciary duties under ERISA.

258. As a consequence of the Monitoring Defendants' breaches of fiduciary duty, the Plans suffered tremendous losses. If the Monitoring Defendants had discharged their fiduciary monitoring duties as described above, the losses suffered by the Plans would have been minimized or avoided. Therefore, as a direct and proximate result of the breaches of fiduciary duty alleged herein, the Plans, and indirectly the Plaintiffs and the other Class members, lost millions of dollars of retirement savings.

259. Pursuant to ERISA §§ 409, 502(a)(2) and (a)(3), 29 U.S.C. §§ 1109(a), 1132(a)(2) and (a)(3), the Monitoring Defendants are liable to restore the losses to the Plans caused by their

breaches of fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

COUNT III:

Co-Fiduciary Liability

260. Plaintiffs incorporate by this reference the allegations above.

261. This Count alleges co-fiduciary liability against all Defendants.

262. As alleged above, during the Class Period, Defendants were named fiduciaries pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), or *de facto* fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, they were bound by the duties of loyalty, exclusive purpose, and prudence.

263. As alleged above, ERISA § 405(a), 29 U.S.C. § 1105, imposes liability on a fiduciary, in addition to any liability which he may have under any other provision, for a breach of fiduciary responsibility of another fiduciary with respect to the same plan if knows of a breach and fails to remedy it, knowingly participates in a breach, or enables a breach. Defendants breached all three provisions.

264. ***Knowledge of a Breach and Failure to Remedy***. ERISA § 405(a)(3), 29 U.S.C. § 1105, imposes co-fiduciary liability on a fiduciary for a fiduciary breach by another fiduciary if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach. Upon information and belief, each defendant knew of the breaches by the other fiduciaries and made no effort to remedy those breaches. In particular, they did not communicate their knowledge of the Company's activity to the other fiduciaries.

265. Pilgrim's Pride, through its officers and employees, was unable to meet its business goals, engaged in highly risky and inappropriate business practices, withheld material information from the market, and profited from such practices.

266. Because Defendants knew of the Company's failures and inappropriate business practices, they also knew that Defendants were breaching their duties by continuing to maintain the Plans investments in Company Stock. Yet they failed to undertake any effort to remedy these breaches. Instead, they compounded them by downplaying the significance of Pilgrim's Pride failed and inappropriate business practices and by obfuscating the risk that these practices posed to the Company, and, thus, to the Plans.

267. ***Knowing Participation in a Breach.*** ERISA § 405(a)(1), 29 U.S.C. § 1105(1), imposes liability on a fiduciary for a breach of fiduciary responsibility of another fiduciary with respect to the same plan if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach. The Monitoring Defendants knowingly participated in the breaches of Defendants who failed to loyally and prudently manage the Plan because, as alleged above, they had actual knowledge of the facts that rendered Pilgrim's Pride Stock an imprudent retirement investment and yet, ignoring their oversight responsibilities, permitted these Defendants to breach their duties.

268. ***Enabling a Breach.*** ERISA § 405(a)(2), 29 U.S.C. § 1105(2), imposes liability on a fiduciary if by failing to comply with ERISA § 404(a)(1), 29 U.S.C. §1104(a)(1), in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled another fiduciary to commit a breach.

269. The Monitoring Defendants' failure to monitor the Administrative Committee Defendants enabled the Administrative Committee to breach its duties.

270. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plans, and indirectly the Plaintiffs and the Plans' other participants and beneficiaries, lost millions of dollars of retirement savings.

271. Pursuant to ERISA §§ 409, 502(a)(2) and (a)(3), 29 U.S.C. §§ 1109(a), 1132(a)(2) and (a)(3), all Defendants are liable to restore the losses to the Plans caused by their breaches of fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

XV. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for:

A. A Declaration that each and every Defendant has breached his or her ERISA fiduciary duties to the participants;

B. An Order compelling Defendants to make good to the Plans all losses to the Plans resulting from Defendants' breaches of their fiduciary duties, including losses to the Plans resulting from imprudent investment of the Plans' assets, and to restore to the Plans all profits Defendants made through use of the Plans' assets, and to restore to the Plans all profits which the participants would have made if Defendants had fulfilled their fiduciary obligations;

C. Imposition of a Constructive Trust on any amounts by which any Defendant was unjustly enriched at the expense of the Plans as the result of breaches of fiduciary duty;

D. Actual damages in the amount of any losses the Plans suffered, to be allocated among the participants' individual accounts in proportion to the accounts' losses;

E. An Order awarding costs pursuant to 29 U.S.C. § 1132(g);

F. An Order awarding attorneys' fees pursuant to the common fund doctrine, 29 U.S.C. § 1132(g), and other applicable law; and

G. An Order for equitable restitution and other appropriate equitable and injunctive relief against Defendants.

Dated: March 2, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2010, a copy of the foregoing **Consolidated Complaint For Violations Of The Employee Retirement Income Security Act** was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system:

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