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Case No. 2018-0058-JTL

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

MATTHEW SCIABACUCCHI, Plaintiff, v. JBS S.A., JBS USA HOLDING LUX S.À R.L., JOSÉ BATISTA SOBRINHO, FLORA MENDONÇA BATISTA, VALÉRE BATISTA MENDONÇA RAMOS, VANESSA MENDONÇA BATISTA, WESLEY MENDONÇA BATISTA, JOESLEY MENDONÇA BATISTA, VIVIANNE MENDONÇA BATISTA SILVEIRA, WILLIAM LOVETTE, DAVID BELL, MICHAEL COOPER, CHARLES MACALUSO, ANDRE NOGUEIRA DE SOUZA, GILBERTO TOMAZONI, TAREK FARAHAT, DENILSON MOLINA, and WALLIM CRUZ DE VASCONCELLOS JR, Defendants, and PILGRIM'S PRIDE CORPORATION, Nominal Defendant.	C.A. No. 2018-0058-JTL Public Version Filed: January 29, 2018 Original Version Filed: January 24, 2018

VERIFIED DERIVATIVE COMPLAINT

Plaintiff, Matthew Sciabacucchi ("Plaintiff"), brings suit against Defendants JBS S.A. ("JBS"), JBS USA Holding Lux S.À R.L. ("JBS Lux"), José Batista Sobrinho ("José Batista"), Flora Mendonça Batista ("Flora Batista"), Valére Batista Mendonça Ramos ("Valére Batista"), Vanessa Mendonça Batista ("Vanessa

Batista"), Wesley Mendonça Batista ("Wesley Batista"), Joesley Mendonça Batista ("Joesley Batista"), Vivianne Mendonça Batista Silveira ("Vivianne Batista"), William Lovette ("Lovette"), David Bell ("Bell"), Michael Cooper ("Cooper"), Charles Macaluso ("Macaluso"), Andre Nogueira De Souza ("Nogueira"), Gilberto Tomazoni ("Tomazoni"), Tarek Farahat ("Farahat"), Denilson Molina ("Molina"), and Wallim Cruz De Vasconcellos Jr ("Vasconcellos") (collectively, "Defendants"). Plaintiff brings suit derivatively on behalf of Nominal Defendant Pilgrim's Pride Corporation ("Pilgrim's Pride," "PPC," or the "Company") and asserts claims against all Defendants for breaches of fiduciary duty.

NATURE OF THE ACTION

1. This is a derivative action challenging a conflicted transaction between Pilgrim's Pride and its majority stockholder, JBS: the sale to Pilgrim's Pride by JBS of Moy Park, a UK-based poultry producer (the "Transaction" or the "Moy Park Transaction").[1]

2. In May 2017, the holding company that owns JBS, J&F Investimentos, agreed to pay a $3.2 billion fine in connection with a massive bribery scandal. To

fund those payments, JBS needed to sell assets—quickly.

3. The largest asset JBS planned to sell was Moy Park, which JBS acquired from Marfrig Global Foods SA in 2015. [redacted] Pilgrim's Pride's Board formed a Special Committee—consisting of Defendants Bell, Cooper, and Macaluso—to consider the proposal.

4. [redacted] the Special Committee—which was comprised of three conflicted directors—[redacted]

5. [redacted]

[redacted] [2]

6. [redacted]

[redacted]

[redacted].

7. In short, because Defendants did not seek or obtain the approval of the Company's minority stockholders for the Moy Park Transaction, it must be reviewed under the entire fairness standard. And for the reasons set forth above it was not. Defendants owe the Company damages.

8. Finally, demand would have been futile because, among other things, six of the nine members of Pilgrim's Pride's Board were selected for that role by JBS and five of those six directors derive their principal income from their positions with JBS or a company controlled by JBS.[3]

PARTIES

9. Plaintiff Matthew Sciabacucchi ("Plaintiff") is a beneficial owner of Pilgrim's Pride common stock and has continuously been a stockholder of the Company since at least December 2, 2015.

10. Defendant JBS S.A. ("JBS") is a Brazilian corporation.

11. Defendant JBS USA Holding Lux S.à r.l. ("JBS Lux") is a private limited liability company (*société à responsabilité limitée*) incorporated and existing

[redacted]

under the laws of Luxembourg. JBS Lux is a wholly-owned subsidiary of JBS. JBS and JBS Lux are the "JBS Defendants."

12. Defendant José Batista is the founder and CEO of JBS and is a citizen of Brazil.

13. Defendant Flora Batista is the wife of José Batista and, upon information and belief, a citizen of Brazil.

14. Defendant Wesley Batista is a son of José Batista and Flora Batista and is a citizen of Brazil. Wesley Batista was a member of Pilgrim's Pride's Board of Directors from December 2009 to June 14, 2017. Plaintiff's claim against Wesley Batista relates solely to his role as a controlling stockholder of the Company.

15. Defendant Joesley Batista is the son of José Batista and Flora Batista, a brother of Wesley Batista, and a citizen of Brazil. Joesley Batista was a member of Pilgrim's Pride's Board of Directors from December 2009 to May 25, 2017. Plaintiff's claim against Joesley Batista relates solely to his role as a controlling stockholder of the Company.

16. Defendant Vanessa Batista is a daughter of José Batista and Flora Batista, the sister of Wesley Batista and Joesley Batista, and, upon information and belief, a citizen of Brazil.

17. Defendant Vivianne Batista is a daughter of José Batista and Flora Batista, the sister of Wesley Batista, Joesley Batista, and Vanessa Batista, and, upon information and belief, a citizen of Brazil.

18. Defendant Valére Batista is a daughter of José Batista and Flora Batista, the sister of Wesley Batista, Joesley Batista, Vanessa Batista, and Vivianne Batista, and, upon information and belief, a citizen of Brazil. José Batista, Flora Batista, Valére Batista, Vanessa Batista, Wesley Batista, Joesley Batista, and Vivianne Batista are, collectively, the "Batista Defendants" and with the "JBS Defendants," the "Stockholder Defendants."

19. Defendant Lovette is Pilgrim's Pride's Chief Executive Officer and President and has served in those roles since January 3, 2011. Lovette is a member of Pilgrim's Pride's Board of Directors and has served in that role since February 21, 2011. Upon information and belief, Lovette derives his principal income from his employment with Pilgrim's Pride. In fiscal year 2016, Lovette received over $2.9 million in compensation from Pilgrim's Pride. In fiscal year 2015, Lovette received over $6.5 million in compensation from Pilgrim's Pride. In fiscal year 2014, Lovette received over $9.2 million in compensation from Pilgrim's Pride.

20. Defendant Bell is a member of Pilgrim's Pride's Board of Directors and has served in that role since July 2012. Bell served as a member of the Special Committee.

21. Defendant Cooper is a member of Pilgrim's Pride's Board of Directors and has served in that role since December 2009. Cooper served as a member of the Special Committee.

22. Defendant Macaluso is a member of Pilgrim's Pride's Board of Directors and has served in that role since December 2009. Macaluso served as a member of the Special Committee. Bell, Cooper, and Macaluso are, collectively, the "Special Committee."

23. Defendant Nogueira is a member of Pilgrim's Pride's Board of Directors and has served in that role since 2014. Since January 1, 2013, Nogueira has served as President and Chief Executive Officer of JBS USA Food Company Holdings ("JBS USA Holdings"), a Delaware corporation and a wholly-owned subsidiary of JBS. Nogueira served as JBS USA Holding's Chief Financial Officer from 2007 through 2011. In 2012, Nogueria served as Chief Executive Officer of JBS Australia, a wholly-owned subsidiary of JBS. Upon information and belief, Nogueira derives his principal income from his employment with JBS USA Holdings.

24. Defendant Tomazoni is the Chairman of Pilgrim's Pride's Board of Directors and has served in that role since July 2013. Tomazoni is an officer of JBS, serving as JBS's President of Global Operations. Tomazoni owes a fiduciary duty of

loyalty to JBS[4] and Tomazoni derives his principal income from his employment with JBS.

25. Defendant Farahat is a member of Pilgrim's Pride's Board of Directors and has served in that role since May 25, 2017. Farahat has been the chairman of JBS's board of directors since May 2017, has been a member of JBS's board of directors since 2013, and has been an officer of JBS as its Global President of Marketing and Innovation since 2015. Farahat owes a fiduciary duty of loyalty to JBS and derives his principal income from his employment with JBS.

26. Defendant Molina is a member of Pilgrim's Pride's Board of Directors and has served in that role since June 14, 2017. Molina is currently the Chief Financial Officer of JBS USA Food Company, a Delaware corporation and a wholly owned subsidiary of JBS. Upon information and belief, Molina derives his principal income from his employment with JBS USA Food Company.

27. Defendant Vasconcellos is a member of Pilgrim's Pride's Board of Directors and has served in that role since December 2009.

28. Lovette, Nogueira, Tomazoni, Farahat, Molina, and the Special Committee are, collectively, the "Director Defendants."

29. Nominal Defendant Pilgrim's Pride is a Delaware corporation, headquartered in Greeley, Colorado.

OTHER RELEVANT INDIVIDUALS

30. J&F Investimentos S.A. ("J&F") is a Brazilian corporation. J&F owns 100% of FB Participações S.A, a Brazilian corporation, which owns approximately 44.15% of the outstanding capital of JBS.

31. Fabio Sandri is Pilgrim's Pride's Chief Financial Officer and has served in that role since June 6, 2011.

FACTUAL ALLEGATIONS

A. JBS and the Batista Family Control Pilgrim's Pride

32. As set forth in the Company's most recent annual proxy, filed March 31, 2017, JBS Lux owns 195,445,936 shares of the Company's common stock accounting for over 78% of its total voting power. In turn, JBS Lux is controlled by JBS of which it is a wholly owned subsidiary. The Company's annual proxy states "[w]e are a 'controlled company' under the NASDAQ listing standards because JBS owns or controls over 50% of the voting power for the election of directors of the outstanding common stock as of the Record Date."

33. Pursuant to Section 5.2(b) of the Company's Amended and Restated Certificate of Incorporation, six of the nine members of the Company's Board of Directors must be "JBS Directors" who are selected solely by JBS's representatives

on the Board. Lovette, Nogueira, Vasconcellos, Tomazoni, Farahat, and Molina are all JBS Directors and serve on the Pilgrim's Pride Board at the pleasure of JBS.

34. In turn, JBS is controlled by the Batista Defendants. As set forth in the Company's most recent annual proxy:

> JBS USA Holding Lux S.à r.l. (formerly known as JBS USA Holdings, Inc. ('JBS Lux')) is a wholly owned, indirect subsidiary of JBS and indirectly beneficially owns 195,445,936 shares of our common stock. JBS is ultimately controlled by the Batista family, which is comprised of José Batista Sobrinho, the founder of JBS, Flora Mendonça Batista, and five of their children, Valére Batista Mendonça Ramos, Vanessa Mendonça Batista, Wesley Mendonça Batista, Joesley Mendonça Batista and Vivianne Mendonça Batista Silveira. The Batista family indirectly owns 78.78% of the issued and outstanding shares of J&F Investimentos S.A., a Brazilian corporation, which owns 100% of FB Participações S.A, a Brazilian corporation, which owns approximately 44.15% of the outstanding capital of JBS. Additionally, the Batista family controls Banco Original S.A., a Brazilian corporation which owns 0.19% of the outstanding capital of JBS.

35. Wesley Batista was the CEO of JBS from 2011 until September 17, 2017 when he was arrested for insider trading.

36. José Batista founded JBS, which bears his initials, in 1953. On September 17, 2017, he replaced Wesley Batista as CEO of JBS.

37. Joesley Batista was, until his own September 2017 arrest for insider trading, President of the Board of Directors of JBS. He served as the Chief Executive Officer of JBS from March 2006 until January 2011.

38. Wesley and Joesley Batista's brother, José Batista Jr., is a Director of JBS. Wesley Batista's 25-year-old son, Wesley Batista Jr., is the head of JBS USA's beef division.

B. Trouble at JBS

39. For the past five years, Brazilian society has been convulsed by a massive corruption scandal known as *Lava Jato* (or Operation Carwash), which involves an extensive network of high-ranking politicians and business executives engaged in bribes, kickbacks, and money laundering. The most prominent company involved in the scandal is Brazil's state-owned oil company Petróleo Brasileiro S.A.—Petrobras ("Petrobras"). *See generally In re Petrobras Sec. Litig.*, 116 F. Supp. 3d 368 (S.D.N.Y. 2015). But the investigation soon came to the doors of JBS.

40. In November 2015, Reuters reported that Brazil's Tribunal de Contas da União (Federal Court of Accounts) (the "TCU") was investigating the relationship between JBS and the state-run Brazilian Development Bank (the "BNDES"), including alleged preferential treatment of JBS in connection with loans made to help finance its takeovers of Swift & Co in 2007, Smithfield Beef Group in 2008, and Pilgrim's Pride in 2009.

41. On January 26, 2016, Reuters reported that Brazilian prosecutors had accused Joesley Batista and eight other senior J&F executives of violating Brazilian lending laws by arranging for related party loans:

> The statement from prosecutors said J&F Investimentos and another subsidiary in Grupo JBS, Flora Produtos de Higiene e Limpeza, obtained an 80 million reais ($19.7 million) loan from Banco Rural in 2011 and passed it on to the group's bank, Banco Original.
>
> Banco Original then loaned the funds back to Banco Rural's holding group Trapezio S.A.
>
> Triangular operations in which two financial institutions from different economic groups issue credit to companies that also are part of these conglomerates violate loan laws in Brazil, the prosecutors said.

42. On March 17, 2017, federal authorities in Brazil announced that they were investigating whether a number of large meat producing companies, including JBS, had bribed government officials to approve the export and sale of contaminated meat.

43. On May 17, 2017, Brazil's prominent daily newspaper O Globo reported that JBS executives had provided secret testimony to Brazil's Supreme Court regarding bribery of Brazil's president, Michel Temer.

44. On May 19, 2017, the Financial Times reported that JBS executives had agreed to pay large fines and that JBS was facing a new investigation by Brazil's securities regulator:

> This week seven executives of JBS and J&F Investments, its holding company, agreed to pay fines of [225 million real] and tell prosecutors everything they knew about corruption in Brazil in exchange for leniency. The plea bargain contains a secret tape of a conversation in which Michel Temer, Brazil's president, allegedly endorsed an account by Joesley Batista, JBS's chairman, of paying bribes to one of the president's former coalition partners, according

> to supreme court documents. The court has authorised an investigation, and on Friday released plea bargain testimonies.
> …
> "We erred and we ask for forgiveness," Joesley Batista said in an open letter.
> …
> Whether or not it will be enough to topple Mr Temer, JBS's own troubles have just begun, analysts say, with regulators in multiple jurisdictions likely to be interested in the company's plea bargain with Brazilian authorities.
>
> Brazil's securities regulator on Friday said it had launched fresh probes into suspicious trades — including "signs of possible insider trading" — made by JBS, and other businesses controlled by J&F Investments, before markets were shaken by the plea deal revelations.

45. On May 31, 2017, it was reported that JBS's controlling shareholder, J&F Investimentos, had agreed to pay a fine of 10.3 billion real ($3.2 billion USD) for its role in the bribery scandal. Joesley Batista and Wesley Batista agreed to cooperate with prosecutors in exchange for a plea bargain that allowed them to escape jail time.

46. In September 2017, Joesley and Wesley Batista were arrested for insider trading in connection with their sales of JBS shares ahead of the news of the plea bargain. In October 2017, a Brazilian court ruled that the brothers must stand trial on these allegations.

C. JBS Starts Selling Assets

47. In order to pay the massive fine, JBS started selling assets. Even before the final amount of the fine was announced, Reuters reported (on May 23, 2017) that

"JBS and J&F had hired Banco Bradesco SA's investment bank to work on a plan to sell several assets."

48. On June 20, 2017, Reuters reported that "Brazilian meatpacker JBS SA revealed plans to sell assets worth $1.8 billion on Tuesday, putting dairy, poultry and cattle feeding units on the block to cut debt after a corruption scandal raised concerns about its financing costs. … The sales, which aim to raise 6 billion reais ($1.8 billion), include a 19.2 percent stake in Brazil-based dairy company Vigor Alimentos SA, along with its Northern Ireland unit Moy Park Ltd and Five Rivers Cattle Feeding in North America. **The largest asset on the block is Moy Park, which JBS bought from Brazilian rival Marfrig Global Foods SA two years ago for $1.5 billion.**" (emphasis added).

49. On June 21, 2017, Reuters reported that a Brazilian judge had blocked JBS's planned $300 million sale of a South American unit, citing concerns that the sale could harm the ongoing corruption investigation.

D. JBS and Pilgrim's Pride Begin Negotiating A Sale of Moy Park

50. According to [redacted]

[redacted]

[redacted]

51. [redacted]

[redacted]

52.

53. Each member of the Special Committee was conflicted and unable to act independently of JBS:

a. Defendant Bell is a professor at the Harvard Business School. In recent years, Bell has published multiple case studies about JBS. *See*

Bell, David E., *JBS*, Harvard Business School Case 515-066, (December 2014); Bell, David E., and Cathy Ross, *JBS Swift & Co.*, Harvard Business School Case 509-021 (December 2008). At the Harvard Business School, "the ability to write and teach cases effectively is the primary measure of faculty performance…" Duff MacDonald, THE GOLDEN PASSPORT: HARVARD BUSINESS SCHOOL, THE LIMITS OF CAPITALISM, AND THE MORAL FAILURE OF THE MBA ELITE 45-46 (2017). And in order to write those cases, HBS faculty must remain on good terms with their subjects: "companies have veto power over any cases that are written about them." *Id.* at 47.

b. Defendant Cooper is currently a Managing Director and Vice Chairman Emeritus of Kincannon & Reed, an executive search firm for the food and agribusiness sectors, where he has been employed since July 2004. It is incumbent upon Kincannon & Reed to stay on good terms with JBS, which is the world's largest processor of fresh beef and pork and, thus, a significant potential employer for food and agribusiness executives. JBS executives are also a significant potential resource for other companies in the sector. As a 2015 article explained, Kincannon & Reed believes that Brazilian agribusiness executives are a hot commodity: "For Joseph Sherman,

executive director of agribusiness recruitment firm Kincannon & Reed, Brazilian executives have an important knowledge of how to operate in unstable situations … Kincannon & Reed arrived in Brazil two years ago and has among [its] customers industry multinationals seeking Brazilian professionals for jobs in other countries." Alessandra Ribeiro, Brazilian agribusiness execs coveted abroad, *Valor* (June 23, 2015), http://www.valor.com.br/node/4105730.

c. Defendant Macaluso was, on January 30, 2017, nominated by JBS as a member of the Board of Directors of JBS Foods International, a wholly owned JBS subsidiary, in connection with its pending (and ultimately cancelled) IPO.[7]

54. [redacted]. In March 2017, Barclays acted as financial advisor to JBS in connection with its $230 million acquisition of

[redacted]

Plumrose USA from Danish Crown A/S. At the same time that it was acting as Pilgrim's Pride's financial advisor in connection with the Moy Park Transaction, Barclays was acting as lead underwriter for the pending (and ultimately cancelled) IPO of JBS Foods International, a wholly owned JBS subsidiary which filed an initial registration statement for an initial public offering in December 2016 and withdrew its registration in October 2017.

55. Notwithstanding Barclays's conflicts, according to [redacted]

56. [redacted]

57.

58.

59.

the £1.0 billion/$1.3 billion price that it ultimately paid:

60.

61. For one thing, "[a]cquiring firms seem to consistently overestimate how much synergy there is in mergers and underestimate how much time it will take them to deliver this

synergy." Aswath Damodaran, DAMODARAN ON VALUATION 570 (2006). "Most mergers fail in delivering any synergy." *Id.* 574.

62. Moreover, [redacted]

[redacted]

63. Most of the remaining synergies—including "Increasing foodservice sales to maximize production" (£5.6 million); "Reduction of SKUs [stock keeping

units] with low sales" (£5.0 million);[8] "Lower chicken costs through enhanced production planning via technology" (£2.8 million); "Improving yields on breading products / packaging" (£2.8 million); "Maximize Ballymena operation with new

64.

that Janet McCollum, Moy Park's CEO, and the rest of the Moy Park management team would remain in place to continue to manage Moy Park after the Transaction closed. And

65.

Privileged and Confidential

Pinta Base Case

67.

68. [redacted]. The so-called "Winner's Curse" concept recognizes that "[i]n an auction of an asset of uncertain value, bidders are vulnerable to the 'winner's curse': Even if they estimate value accurately on average, they win the bidding primarily when they overestimate an asset's true value, and thus tend to overpay on average." Bernard S. Black, *Bidder Overpayment in Takeovers*, 41 STAN. L. REV. 597, 625 (1989); *see also* Jeffrey N. Gordon, *Corporations, Markets, and Courts*, 91 COLUM. L. REV. 1931, 1988 (1991) ("an auction process so structured as to extract the highest possible bid … [is] especially vulnerable to the 'winner's curse,' an empirically identified phenomenon of certain auctions in which the high bidder overestimates the value of the firm."). The "Winner's Curse" phenomenon is "particularly severe" in auctions involving a large number of bidders. Guhan Subramanian, DEALMAKING: THE NEW STRATEGY OF NEGOTIATION 91 (2010).

69. On July 31, 2017, Reuters reported that JBS had retained BNP Paribas SA to help sell Moy Park. The Reuters report identified a number of potential acquirers:

> Some companies that have expressed interest in purchasing Moy Park include China's WH Group and subsidiary Smithfield Foods Inc and middle-market buyout firm CapVest Partners LLP, according to local reports. Others include French commodities giant Louis Dreyfus Co and Groupe Bigard, as well as British foodmaker Two Sisters Food Group, a report by O Estado de S. Paulo newspaper said last week.

70. [redacted]

71. [redacted]

72. [redacted]

73.

74.

75.

76.

77.

78. On August 19, 2017, the Telegraph reported that China's New Hope was among the bidders for Moy Park:

> Industry sources said that New Hope was now the frontrunner to clinch Moy Park after the firm was put up for sale in June by its Brazilian owners in the wake of a political corruption scandal.
> JBS bought the business just two years ago for £1.2bn but is now rapidly trying to offload assets to cut its debt pile. Its weak financial position has been exacerbated after its controlling shareholder, J&F Investimentos, entered into a 10.3bn real (£2.5bn) plea bargain for its role in a political corruption scandal in Brazil.
>
> Moy Park is the largest private employer in Northern Ireland with 6,300 workers based in County Armagh.
>
> Chinese group WH, which controls the world's largest pork producer Smithfield Foods, has also previously been tipped as a suitor for the business. Other companies believed to be interested include US-based Tyson Foods, Brazilian food company BRF and private equity firm CapVest.

79.

80. [redacted]

81. [redacted]

82. [redacted]

[redacted]

83. [redacted]

84. [redacted]

85. [redacted]

86. [redacted]

87. [redacted]

88. . The Transaction was memorialized in a Share Purchase Agreement among (1) JBS S.A.; (2) Granite Holdings S.À R.L.; (3) Onix Investments UK Ltd, a wholly-owned subsidiary of Pilgrim's Pride; and (4) Pilgrim's Pride.

89. In response to Plaintiff's pre-litigation books-and-records demand, the Company produced a

pt

[redacted]

(Emphasis added).

90. On September 8, 2017, the full Board adopted an amendment to the Company's Amended and Restated Corporate Bylaws, adding an exclusive forum provision, providing, among other things, that any person holding any interest in shares of the capital stock of the Company shall be deemed to have consented to a Delaware forum for any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, other employee or stockholder of the Company to the Company or the Company's stockholders:

> Unless the Corporation consents in writing to the selection of an alternative forum, and to the fullest extent permitted by law, the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) **any action asserting a claim of**

> **breach of a fiduciary duty owed by any current or former director, officer, other employee or stockholder of the Corporation to the Corporation or the Corporation's stockholders**, (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, the Certificate of Incorporation or these Bylaws or as to which the Delaware General Corporation Law confers jurisdiction on the Court of Chancery of the State of Delaware, or (iv) any action asserting a claim governed by the internal affairs doctrine shall be the Court of Chancery of the State of Delaware and any state appellate court therefrom within the State of Delaware (or, if the Court of Chancery of the State of Delaware declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware). **Any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article 10.**

(Emphasis added).

E. Sale Announced

91. On September 11, 2017, Pilgrim's Pride issued a press release announcing the Transaction:

> **PILGRIM'S ACQUIRES MOY PARK FOR $1.3 BILLION (£1.0 BILLION)**
>
> *Creates Leading Global Poultry and Prepared Foods Company*
>
> *Increases Pilgrim's Geographic Diversity by Expanding Operations Across the UK and Continental Europe*
>
> *Transaction Expected to be Immediately Accretive to Pilgrim's EPS*
>
> *Company to Host Conference Call Today at 8:00 a.m. ET to Discuss Transaction*
>
> GREELEY, Colo., September 11, 2017 – Pilgrim's Pride Corporation (Nasdaq: PPC) ("Pilgrim's" or the "Company") today announced that

it has acquired Moy Park, a leading poultry and prepared foods supplier with operations in the United Kingdom and Continental Europe, from JBS S.A., in a transaction valuing the equity interest of Moy Park at approximately $1.0 billion (or approximately £790 million based on a 1.31 exchange rate as of September 8, 2017), implying an enterprise value of approximately $1.3 billion (or approximately £1.0 billion). The transaction was unanimously approved by a Special Committee of the Pilgrim's Board of Directors. Comprised entirely of independent equity directors elected to the Board by a vote controlled by the shareholders unaffiliated with JBS S.A., the Special Committee was delegated the full authority of the Pilgrim's Boards of Directors with respect to the transaction.

"We are pleased to announce the acquisition of Moy Park, which will position Pilgrim's to become a global player, with an improved and more stable margin profile on the chicken business and an expanded portfolio of prepared foods," said Bill Lovette, Pilgrim's Chief Executive Officer. "Following our successful acquisitions of GNP and the assets in Mexico, Moy Park represents a logical next step in the evolution of our geographical and brands footprint. The acquisition gives us access to the attractive UK and European markets, which advances our strategy of diversifying our portfolio to be more global while reducing volatility across our businesses. We will have new business opportunities through the addition of Moy Park's fully integrated poultry production platform and its strong presence in prepared foods. Moy Park strengthens Pilgrim's' leading portfolio of brands and brings strong value-added innovation capabilities, access to new markets, a best-in-class production platform and strong farmer partner relationships. In addition, Moy Park shares Pilgrim's long-standing commitment to become the best and most respected company in our industry."

Mr. Lovette continued, "We welcome the talented Moy Park team members and management team, led by Janet McCollum, to Pilgrim's, and we look forward to working closely with them and their family farm partners to drive growth and deliver value for our shareholders."

Janet McCollum, Chief Executive of Moy Park, said, "This announcement is a positive development for Moy Park and all our colleagues employed across the business. Pilgrim's is one of the leading

chicken producers in the world with a proven track record and we see great opportunities for Moy Park as part of this successful business. Joining Pilgrim's gives us the opportunity to accelerate our growth plans, share best practices and leverage Pilgrim's expertise and operational excellence. Moy Park will provide Pilgrim's with a platform for growth in Europe as well as access to innovation and increased exposure to prepared foods. Both Moy Park and Pilgrim's have a long heritage in agriculture and poultry production going back over 70

years and we share the same values. We look forward to this new and exciting phase of Moy Park's development as we continue to meet and exceed the needs of our customers and consumers, providing fresh, locally-sourced poultry and top quality, innovative products."

Since its founding in Northern Ireland in 1943, Moy Park has established a strong reputation for providing fresh, high-quality and locally farmed poultry products, as well as a track record of delivering top quartile profit growth. As a top 10 UK food company and one of Europe's leading poultry producers, Moy Park brings to Pilgrim's a fully integrated, market-leading platform with more than 800 farmers across the UK. Moy Park processes more than 5.7 million birds per week and has 13 processing plants located in the UK, Ireland, France and the Netherlands supplying major food retailers and restaurant chains in the UK and Continental Europe. Pilgrim's anticipates incremental annual revenue of approximately $2.0 billion as a result of the transaction.

Pilgrim's expects to achieve approximately $50 million in annualized synergies over the next two years, primarily from the optimization of sourcing and production, and cost savings in purchasing, production, logistics and SG&A. Pilgrim's expects the combination to be immediately accretive to earnings per share.

Company Approvals

The transaction was negotiated and unanimously approved by a Special Committee of the Pilgrim's Board of Directors, which is comprised of three independent equity directors, David E. Bell, Michael L. Cooper and Charles Macaluso. The Special Committee was advised

independently and had been granted full authority over all aspects of the transaction by the Board of Directors.

Mr. Cooper, Chairman of the Special Committee, said, "The independent directors on the Special Committee conducted a comprehensive review of the transaction, including the valuation and the potential strategic benefits of this acquisition. Based on this review, which included receipt of a fairness opinion from our independent financial advisor, we unanimously believe that the acquisition of Moy Park on the terms we negotiated is in the best interest of Pilgrim's and its shareholders."

Management and Headquarters

Pilgrim's believes in the importance of its local business model and is committed to its team members across its global operations. Moy Park will remain headquartered in Craigavon, Northern Ireland. The Moy Park management team, led by Janet McCollum, will continue to lead the business, and the rest of the Moy Park employee base will remain in place. Moy Park will operate as a business unit within Pilgrim's and will maintain its day-to-day operations and strategic focus.

Financing

The transaction was funded by a combination of Pilgrim's cash on hand, existing credit facilities and a Subordinated Seller Financing Note issued by a wholly-owned subsidiary of Pilgrim's to JBS S.A., which the Company intends to replace with the issuance of permanent financing. Pilgrim's believes that its strong cash flow generation and the additional cash flow resulting from the acquisition will allow the company to maintain its strong credit profile while providing ample free cash flow for delevering and facilitating further strategic acquisitions.

Advisors

Barclays is acting as financial advisor to Pilgrim's. Evercore is acting as financial advisor to the Special Committee of the Pilgrim's Board of Directors and Paul, Weiss, Rifkind, Wharton & Garrison LLP is acting as legal advisor.

92. In a conference call with analysts that same day, an analyst from Goldman Sachs keyed in on the implausibility of the Company's synergy projections:

> **Adam L. Samuelson Goldman Sachs Group Inc., Research Division – Lead Analyst**
> Maybe my first question, going back to the synergies and really to the timing of this. JBS bought Moy Park in 2015, was there serious consideration at that time to acquire the business at the Pilgrim's level? And if not, why such that it would make sense today?
>
> **William W. Lovette Pilgrim's Pride Corporation – President, CEO & Director**
> Well, we've long admired Moy Park, and we've known the business. At the time, there was not a lot of detail that we looked at. It was a fairly quick deal between Marfrig and JBS. And it got closed very quickly. And so we were focusing on other things at that time.
>
> **Adam L. Samuelson Goldman Sachs Group Inc., Research Division – Lead Analyst**
> Okay. And then I guess, on the synergy question, I'm just trying to reconcile, I mean, JBS -- Moy Park and Pilgrim's are both kind of -- are both subsidiaries of JBS. And I'm trying to understand the incremental synergy opportunities that would come from having Moy Park as part of Pilgrim's where Moy Park is still going to be a separately kind of run entity in the U.K. for all intents and purposes. And just things that -- what can you bring to bear Bill, Fabio that wasn't being done at the JBS level? And to clarify the targeted $50 million synergies, are those a net number? Are those gross before any inflation that as Janet alluded to earlier could end up getting passed back to the customers?
>
> **William W. Lovette Pilgrim's Pride Corporation – President, CEO & Director**
> Yes, great question, Adam. So -- now you have to understand, you know, Moy Park has been its own business with its own balance sheet that was just owned 100% by JBS. And then also in that context, Pilgrim's is a separate company with our own balance sheet, our own

> credit facility, our own governance and board of directors, and obviously publicly listed. And as we looked at the synergies, we acquired again -- like I just said the same model that we used for the Mexican assets and GNP. And it really was not related to what JBS had identified and was doing. And I think we've got a great track record of capturing the synergies that we say we are going to capture and we have a lot of confidence that this will be no different. This is in -- within our core competency. We know this business well. It's interesting that a lot of things that have happened in Europe, especially, in the retail space, it also happened in the U.S. And so while some may think the marketplace is different in Europe than it is the U.S., there is actually more similarities than I think are differences. So we know this business very well and have a lot of confidence that we can deliver this.
>
> **Fabio Sandri Pilgrim's Pride Corporation – CFO**
> I think it's all about focus, right. So we have the track record, this is like Bill said, in our core competency, and relatively utilize the same approach with Moy Park that we had with the integrations in GNP and in Mexico. And we believe that we're confident on the $50 million over the next 2 years, and we're going to use our management method to achieve these continuous improvements, on both organizations.

93. Later, in response to another analyst's question, Lovette confirmed that the projected synergies were not traditional synergies realized from economies of scale, greater pricing power, or financial synergies but simply managerial synergies: "We go in, we have a distinct labor-management system and process that we use based on engineering standards, we will employ that. We have techniques that we use to enhance yield. We have techniques that we use in managing live production that have proven successful. And so it's a comprehensive review of the management processes and methods that we will go in and make an assessment, offer Janet and her team the tools that we've used to improve our base business in Pilgrim's plus the

Mexican business and now GNP. So it's not going to be anything different than that. ***It's basic blocking and tackling***. It's the fundamentals in taking care of the business." (emphasis added).

F. The Unfair Process Resulted In An Unfair Price

94. Both the process and the price were unfair. The process was unfair [redacted]

95. [redacted]

96. [redacted]

97.

98.

99.

100.

DERIVATIVE/DEMAND-FUTILITY ALLEGATIONS

101. Plaintiff did not make a demand on the Board. Demand would have been futile because the Board is incapable of making an independent and disinterested decision to prosecute this action. As set forth above, a majority of the Company's nine Board members are conflicted and are therefore not capable of disinterested evaluation of claims arising from the Transaction:

a. Six directors—Lovette, Tomazoni, Farahat, Nogueira, Molina, and Vaconcellos—are JBS Directors and serve at JBS's pleasure;

b. Five of those six—Lovette, Tomazoni, Farahat, Nogueira, and Molina—derive their principal income from their positions with companies controlled by JBS;

c. Four of those five—Tomazoni, Farahat, Nogueira, and Molina—are dual fiduciaries who owe duties to both the Company and JBS or a JBS subsidiary;

d. Bell is a professor at the Harvard Business School. In recent years, Bell has published multiple case studies about JBS. *See* Bell, David E., *JBS*, Harvard Business School Case 515-066, (December 2014); Bell, David E., and Cathy Ross, *JBS Swift & Co.*, Harvard Business School Case 509-021 (December 2008). At the Harvard Business School, "the ability to write and teach cases effectively is the

primary measure of faculty performance…" Duff MacDonald, THE GOLDEN PASSPORT: HARVARD BUSINESS SCHOOL, THE LIMITS OF CAPITALISM, AND THE MORAL FAILURE OF THE MBA ELITE 45-46 (2017). And in order to write those cases, HBS faculty must remain on good terms with their subjects: "companies have veto power over any cases that are written about them." *Id.* at 47.

e. Cooper is currently a Managing Director and Vice Chairman Emeritus of Kincannon & Reed, an executive search firm for the food and agribusiness sectors, where he has been employed since July 2004. It is incumbent upon Kincannon & Reed to stay on good terms with JBS, which is the world's largest processor of fresh beef and pork and, thus, a significant potential employer for food and agribusiness executives. JBS executives are also a significant potential resource for other companies in the sector. As a 2015 article explained, Kincannon & Reed believes that Brazilian agribusiness executives are a hot commodity: "For Joseph Sherman, executive director of agribusiness recruitment firm Kincannon & Reed, Brazilian executives have an important knowledge of how to operate in unstable situations … Kincannon & Reed arrived in Brazil two years ago and has among [its] customers industry

multinationals seeking Brazilian professionals for jobs in other countries." Alessandra Ribeiro, Brazilian agribusiness execs coveted abroad, *Valor* (June 23, 2015), http://www.valor.com.br/node/4105730.

f. Macaluso was, on January 30, 2017, nominated by JBS as a member of the Board of Directors of JBS Foods International, a wholly owned JBS subsidiary, in connection with its pending (and ultimately cancelled) IPO.[10]

102. Moreover, this action brings claims against sitting board members—*i.e.*, the Director Defendants—for which they face a substantial risk of liability. The presence of a controlling shareholder on both sides of the transaction means that the entire fairness standard applies to the claims against these directors and demand is therefore excused under the second prong of the *Aronson* test. *Parfi Hldg. AB v. Mirror Image Internet, Inc.*, 794 A.2d 1211, 1231 n.47 (Del. Ch. 2001) (Strine, V.C.) ("The complaint pleads particularized facts that suggest that the entire fairness standard of review—rather than the business judgment rule—would apply to the Transactions and that the Transactions might not have been fair. As a result, the

complaint satisfies the second prong of *Aronson*."), *rev'd on other grounds*, 794 A.2d 1211 (Del. 2002).

Count I

Derivative Claim for Breach of Fiduciary Duty Against The Director Defendants

103. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

104. The Directors Defendants owed the Company the utmost fiduciary duties of loyalty.

105. By reason of the foregoing, the Director Defendants breached their fiduciary duties. In particular, the Director Defendants violated their fiduciary duty of loyalty by promoting, approving, and entering into the Transaction without ensuring that the Transaction was entirely fair to the Company.

106. As a result of the foregoing, the Company was harmed.

Count II

Derivative Claim for Breach of Fiduciary Duty Against The Stockholder Defendants

107. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

108. At all relevant times, the Stockholder Defendants were (and are) the Company's controlling stockholders and, as such, owed fiduciary duties of care and loyalty to the Company.

109. The Controlling Stockholders violated those duties by entering into the Transactions, a conflicted transaction that was not entirely fair and which benefitted the Controlling Stockholders at the expense of the Company.

110. As a result of the foregoing, the Company was harmed.

Prayer For Relief

WHEREFORE, Plaintiff demands judgment and relief in his favor and in favor of the Company and against all Defendants as follows:

A. Declaring that the Defendants breached their fiduciary duties in connection with the Transaction;

B. Awarding monetary damages to the Company, including pre- and post-judgment interest;

C. Awarding Plaintiff the costs and disbursements of this action, including attorneys' and experts' fees; and

D. granting the Company and/or Plaintiff such further relief as the Court deems just and proper.

HEYMAN ENERIO
GATTUSO & HIRZEL LLP

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Dated: January 24, 2018