

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:

PREMIER KINGS, INC., *et al.*,¹

Debtors.

(Chapter 11)

Case No. 23-02871-TOM

Joint Administration Requested

NOTICE OF MODIFICATION OF PROPOSED ORDER

Premier Kings, Inc., and its debtor affiliates, as debtors and debtors-in-possession in the above-captioned chapter 11 cases, pursuant to the Court's direction at the hearing held today in the above styled matter, hereby submit this Notice of Modification of Proposed Order in connection with the *Motion of the Debtors and Debtors in Possession for an Order (I) Authorizing the Debtors to Pay Prepetition Claims of Certain Critical Vendors and (II) Granting Related Relief* [Dkt. No. 9] and offers the attached revised **Exhibit "A"**. The proposed order is subject to being entered by the Court exactly 45 minutes following the filing time of this notice unless chambers is notified via email at orderstom@alnb.uscourts.gov.

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification numbers, are: Premier Kings, Inc. (3932); Premier Kings of Georgia, Inc. (9797); and Premier Kings of North Alabama, LLC (9282). The Debtors' address is 7078 Peachtree Industrial Blvd., Suite #800, Peachtree Corners, GA 30071. The Debtors have filed a motion for joint administration with the Court.



2302871231030000000000022

Dated: October 30, 2023
Birmingham, Alabama

/s/ Jesse S. Vogtle, Jr.

Jesse S. Vogtle, Jr.
Eric T. Ray
HOLLAND & KNIGHT LLP
1901 Sixth Avenue North, Suite 1400
Birmingham, Alabama 35203
Telephone: (205) 226-5700
Facsimile: (205) 214-8787
jesse.vogtle@hkllaw.com
etray@hkllaw.com

-and-

COLE SCHOTZ P.C.

Gary H. Leibowitz*
Irving E. Walker*
H.C. Jones III*
J. Michael Pardoe*
COLE SCHOTZ PC
1201 Wills Street, Suite 320
Baltimore, MD 21231
(410) 230-0660
(410) 230-0667
g Leibowitz@coleschotz.com
iwalker@coleschotz.com
hjones@coleschotz.com
mpardoe@coleschotz.com

Proposed Attorneys for the Debtors and Debtors-in-Possession

** Admitted Pro Hac Vice*

EXHIBIT "A"

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

In re:

PREMIER KINGS, INC., *et al.*,¹

Debtors.

(Chapter 11)

Case No. 23-02871 (TOM)

Joint Administration Requested

**INTERIM ORDER AUTHORIZING DEBTORS AND DEBTORS-IN-POSSESSION
(I) TO PAY PREPETITION CLAIMS OF CERTAIN CRITICAL VENDORS
AND (II) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)² of the Debtors for entry of an order (a) authorizing, but not directing, the Debtors to pay, in the ordinary course of business certain Critical Vendor Claims, and (b) granting related relief; and upon consideration of all pleadings related thereto, including the Baker Declaration; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, and their creditors; and after due deliberation and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT, ADJUDGED, AND DECREED THAT:

1. The Motion is granted on an interim basis.

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification numbers, are: Premier Kings, Inc. (3932); Premier Kings of Georgia, Inc. (9797); and Premier Kings of North Alabama, LLC (9282). The Debtors’ address is 7078 Peachtree Industrial Blvd., Suite #800, Peachtree Corners, GA 30071. The Debtors have filed a motion for joint administration with the Court.

² All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

2. The final hearing (the “Final Hearing”) on the Motion shall be held on _____, 2023, at ___:___ .m. (CST). Any objection or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., CST, on _____, 2023, and shall be served on: (a) the Office of the Bankruptcy Administrator for the Northern District of Alabama; (b) the holders of the forty (40) largest unsecured claims against the Debtors on a consolidated basis; (c) counsel to BKCI; (d) counsel to Wells Fargo Bank, National Association, as Administrative Agent for the Lender Group; (e) the United States Attorney’s Office for the Northern District of Alabama; (f) the Internal Revenue Service; (g) the office of the Attorney General for the State of Alabama; (h) the Securities and Exchange Commission; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

3. The Debtors are authorized, but not required, in their sole and absolute discretion and in the exercise of their business judgment, to pay the Critical Vendor Claims in an amount not to exceed the McLane 503(b)(9) Claims plus \$175,000 in the aggregate, subject to the conditions set forth in this Order; provided however, the Critical Vendor Claims of McLane Foodservice, Inc., McLane Foodservice Distribution, Inc. or their affiliates (collectively “McLane”) shall be treated as provided in Paragraph 9 below.

4. Except with respect to McLane, which is addressed in Paragraph 9 below, the Debtors may, in their discretion, apply all payments of Critical Vendor Claims first to the Critical Vendor’s claims for goods received by the Debtors within 20 days prior to the Petition Date.

5. Except with respect to McLane, which is addressed in Paragraph 9 below, the Debtors are hereby authorized, but not directed, to obtain written verification before issuing payment to a Critical Vendor that such Critical Vendor will continue to provide goods and services to the Debtors on the Existing Trade Terms for the remaining term of the Critical Vendors’

agreement(s) with the Debtors or until the conclusion of these Chapter 11 Cases, whichever occurs first; provided, however, that the absence of such written verification will not limit the Debtors' rights hereunder.

6. Except as provided in Paragraph 9 below, notwithstanding anything contained in the Motion or this Final Order, any payment authorized to be made by the Debtors herein shall be subject to and consistent with the terms and conditions contained in any orders entered by this Court authorizing the use of cash collateral and any order authorizing postpetition financing (collectively, "Financing Order"), including compliance with any budget or cash flow forecast in connection therewith.

7. Except with respect to McLane, which is addressed in Paragraph 9 below, nothing in the Motion or this Order, or the Debtors' payment of any claims pursuant to this Order, shall be deemed or construed (a) as an admission as to the validity of any claim or lien against the Debtors or their estates, (b) as a waiver of the Debtors' rights to dispute any claim or lien, (c) to prejudice any of the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any Critical Vendor, or (d) an assumption of any executory contract.

8. Except as provided in Paragraph 9 below, notwithstanding anything to the contrary contained herein, any payment made, authorization contained, or claim for which payment is authorized hereunder, shall be subject to any order approving debtor-in-possession financing and allowing use of cash collateral entered in these cases.

9. Notwithstanding anything herein to the contrary, the provisions in this Paragraph 9 shall govern with respect to McLane.

- a. The Debtors and McLane shall work in good faith to complete, within three (3) days of the entry of this Order, a final reconciliation and agreement of the amounts owed to McLane on account of goods delivered by McLane to the Debtors during

the twenty (20) days prior to the Petition Date, which McLane and the Debtors understand to be approximately \$1,324,412.57 (the “McLane 503(b)(9) Claims”).

- b. The Debtors are authorized and directed, subject to the reconciliation of amounts owed as provided herein, to: (i) pay, or cause to be paid, the McLane 503(b)(9) Claims no later than upon the date(s) provided in Paragraph 9(c), and (ii) subject to the Approved Budget (as defined in the Financing Order) to pay, or cause to be paid, any and all amounts due to McLane on account of goods provided by McLane to the Debtors after the Petition Date (the “McLane 503(b)(1) Claims”) no later than (A) in accordance with the 7 day terms provided by McLane to the Debtors in the ordinary course prior to the Petition Date or (B) if sooner, as provided in Paragraph 9(c). Notwithstanding anything herein to the contrary, payments on account of McLane 503(b)(1) Claims for any periods shall not exceed the amounts designated for McLane in the Approved Budget; provided, however, for purposes of this limitation, payments to McLane shall be considered on a rolling four-week basis such that if the budgeted payments made to McLane during a particular week exceed the actual payments to McLane during such week, the excess may be used and applied during any of the three following weeks. The Debtors shall provide McLane with six (6) Business Days’ notice prior to reducing the amounts payable to McLane in any Approved Budget. The amounts designated for McLane in the Approved Budget shall be used solely for payments to McLane on account of the McLane 503(b)(1) Claims.
- c. Upon the closing of any sale of one or more restaurant locations, the Debtors shall immediately and concurrently pay to McLane: (i) until the McLane 503(b)(9) Claim is paid in full, an amount equal to 1% of the McLane 503(b)(9) Claims (fixed as of

the Petition Date)³ per restaurant location subject to such sale, with such payments to be applied to the McLane 503(b)(9) Claims; and (ii) any unpaid amount of the McLane 503(b)(1) Claims incurred on account of goods shipped to such restaurant locations. Upon the date that 100 restaurant locations have been sold (that is, the closing date has occurred with respect to the sale of at least 100 of the Debtors' restaurant locations, such date the "\$0 Exposure Date") the Debtors shall immediately and concurrently pay to McLane in full any unpaid amount of the McLane 503(b)(1) Claims to the extent such amounts are contemplated in the Approved Budget (including budgeted cash amounts in the week immediately following the closing of such sale).

- d. McLane reserves all rights under the Bankruptcy Code and applicable law with respect to its claims.
- e. It is understood and agreed by the Debtors that McLane has the right to refuse to extend any credit or ship any further goods to the Debtors: (i) if any of the Debtors or the Lender Group files a motion seeking, or otherwise seeks, to modify McLane's treatment as provided herein without McLane's written consent, (ii) an order is entered modifying McLane's treatment as provided herein without McLane's written consent, or (iii) any Debtor fails to timely make any payment required hereunder. Subject to the foregoing, (A) until the occurrence of the \$0 Exposure Date, McLane agrees to continue to deliver goods on credit to the Debtors consistent with the terms of this Order, and (B) after the occurrence of the \$0

³ For example, if the McLane 503(b)(9) Claims total \$1,324,412.57 on the Petition Date, the amount paid per restaurant location, from the 1st to the 100th location, would be equal to \$13,244.13.

Exposure Date, provided that the McLane 503(b)(1) Claims and McLane 503(b)(9) Claims are indefeasibly paid in full, McLane agrees to continue to deliver goods to the Debtors provided that McLane is prepaid for such goods.

10. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

11. The requirements of Bankruptcy Rule 6004(a) are waived.

12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

13. This Court shall retain jurisdiction over any and all matters arising from the interpretation or implementation of this Order.

14. (Additional language to be inserted by the Court emphasizing that this is an Interim Order and Interim Order only.)

Dated: _____, 2023
Birmingham, Alabama

UNITED STATES BANKRUPTCY JUDGE