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

In re:	(Chapter 11)
PREMIER KINGS, INC., *et al.*,[1]	Case No. 23-02871 (TOM11)
Debtors.	Jointly Administered

DEBTORS' PRE-HEARING MEMORANDUM IN SUPPORT OF CONFIRMATION OF THE SECOND AMENDED PLAN OF LIQUIDATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE PROPOSED BY THE DEBTORS

Dated: April 29, 2024

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

COLE SCHOTZ P.C.
Gary H. Leibowitz (admitted *pro hac vice*)
Irving E. Walker (admitted *pro hac vice*)
H.C. Jones III (admitted *pro hac vice*)
1201 Wills Street, Suite 320
Baltimore, MD 21231
Telephone: (410) 230-0660
Facsimile: (410) 230-0667
gleibowitz@coleschotz.com
iwalker@coleschotz.com
hjones@coleschotz.com

Counsel for Debtors and Debtors-in-Possession

[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.

Premier Kings, Inc. and its debtor affiliates, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (each a "Debtor" and, collectively, the "Debtors" or the "Plan Proponents"), by their undersigned counsel, hereby submit this Memorandum in support of confirmation of the *Second Amended Plan of Liquidation under Chapter 11 of the Bankruptcy Code Proposed by the Debtors* [Doc. No. 554] (the "Plan"),[2] and respectfully request that the Court enter the proposed *Findings of Fact, Conclusions of Law and Order Confirming the Debtors' Second Amended Plan of Liquidation under Chapter 11 of the Bankruptcy Code Proposed by the Debtors*, substantially in the form of the proposed order filed contemporaneously herewith [Doc. No. 617] confirming and implementing the Plan as set forth therein (the "Proposed Confirmation Order").

The background history of these Chapter 11 cases and the Plan are set forth in detail in the *Declaration of David M. Baker in Support of First-Day Motions* [Doc. No. 20] (the "First-Day Declaration") and the *Second Amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code with Respect to Second Amended Plan of Liquidation* [Doc. No. 554] (the "Disclosure Statement"), as approved by this Court in its Order approving the Disclosure Statement, entered on March 20, 2024 [Doc. No. 559] (the "Disclosure Statement Order"). The facts set forth in the First-Day Declaration and Disclosure Statement are hereby incorporated by reference to the extent not explicitly set forth below.

In further support of this Memorandum, the Debtors rely upon the *Certification of Jeffrey R. Miller with respect to the Tabulation of Votes on the Second Amended Plan of Liquidation under*

[2] Any capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Plan.

Chapter 11 of the Bankruptcy Code Proposed by the Debtors [Doc. No. 613] (the "Voting Certification"), and respectfully represent as follows:

I. INTRODUCTION

A. Preliminary Statement

No party has filed an objection raising any issue with respect to the fact that the Plan meets all of the requirements for confirmation under Section 1129 of the Bankruptcy Code. Although three limited objections were filed, they either have been resolved or raise an issue that does not concern confirmation of the Plan and is not within the proper scope of the Confirmation Hearing. Accordingly, the Debtors expect that the case for confirmation to be presented at the Confirmation Hearing should not be opposed on any ground relevant to confirmation.

B. Background

1. The Plan satisfies the requirements of the Bankruptcy Code and, with the protection and oversight of the Court, is the culmination of the successful administration of three complicated chapter 11 cases (the "Chapter 11 Cases"). Between October 25, 2023 (the "Petition Date") and the date of this Memorandum, the Debtors successfully stabilized three floundering businesses that employed more than 3,500 people between communities spread across Alabama, Georgia, Tennessee, South Carolina, and Florida. Nearly all those jobs were saved and the value of the Debtors' businesses and assets were preserved and maximized for the benefit of the Debtors' creditors.

2. Prior to the Petition Date, the Debtors had suffered operating losses of more than $27 million the prior year and their liabilities exceeded the value of their assets. They were faced with operational disorganization in the wake of their owner's death, a secured lender group owed approximately $87 million with a blanket lien on all the Debtors' assets, tightening liquidity, and

a number of issues with landlords across its locations as well as past-due amounts owed to certain vendors. Through the hard work and cooperation of the Debtors' professionals, in particular the Debtors' Chief Restructuring Officer and firm, Aurora Management Partners, Inc., and certain key parties in interest, the Debtors, under this Court's supervision, were able to streamline operations and right-size the Debtors' businesses for a sale on the open market.

3. Following a thorough marketing and auction process conducted with the approval of the Court, most of the restaurants comprising the Debtors' ongoing businesses were sold as a going concern, free and clear of all liens, claims, and encumbrances, recovering nearly $55 million for the benefit of the Debtors' estates and creditors. The Debtors' few remaining assets consist primarily of a plot of real estate that is the subject of a sale motion filed at Doc. No. 597 and certain Causes of Action, as that term is defined in the Plan. The Plan provides for the appropriate disposition, liquidation, and distribution of these remaining assets.

4. All that is left now is for this Court to confirm the Plan and permit the appropriate distribution of the Debtors' assets to creditors. The Debtors submit this Memorandum to help guide the Court in its analysis of whether to confirm the Plan at the hearing scheduled for May 1, 2024 (the "Confirmation Hearing") and ask that the Court confirm the Plan by entering the Proposed Confirmation Order, submitted contemporaneously herewith, so that these Chapter 11 Cases may fulfill their potential for the Debtors' estates and creditors.

C. Structure of the Plan and its Provisions

5. The Plan was negotiated in detail between counsel and representatives of the Debtors, the Unsecured Creditors' Committee (the "Committee"), the Prepetition Agent on behalf of the Prepetition Lenders, and other parties in interest. Except for a few minor objections—each of which has been resolved as explained in Section III, Table 1, *infra*, or does not require resolution

at this stage—the Plan has not drawn substantive objections and represents the best way to maximize the distribution to its creditors.

6. The Plan establishes the following Classes:

Class	Designation	Impairment	Entitled to Vote (subject to F.R.Bankr.P. 3018)
1	Secured Claims asserted by Prepetition Agent	Impaired	Yes
2	Non-priority Tax Claims	Unimpaired	No (deemed to accept)
3	General Unsecured Claims	Impaired	Yes
4	Equity Interests	Impaired	No (deemed to reject)

7. The voting classes, Class 1 consists of the secured claims and deficiency claims of the Prepetition Lenders and Class 3 consists of the claims of general unsecured creditors.

8. Following the Effective Date, all the Debtors' rights and obligations under the Plan shall vest in the Plan Administrator, Mark Smith of Vantage Point Advisory, including the right to make distributions, prosecute Causes of Action, and resolve Disputed Claims. Implementation of the Plan is to occur primarily through (i) cash on hand, (ii) proceeds from the sale of real property contemplated at Doc. No. 597, and from the Causes of Action. Generally, the proceeds from the Causes of Action will be distributed on account of the Class 1 Allowed Claim, except for the Specified Litigation Proceeds, which will be split between Class 1 (90%) and Class 3 (10%).

II. THE PLAN SATISFIES THE REQUIREMENTS OF SECTION 1129 OF THE BANKRUPTCY CODE

9. To obtain confirmation of the Plan, the Debtors must demonstrate that the Plan satisfies the provisions of Section 1129 of the Bankruptcy Code. For purposes of the Confirmation Hearing, none of the objections filed dispute that the Plan meets all of the requirements for confirmation under Section 1129. Given the absence of any such challenge, the Debtors will focus below primarily on the three aspects of Section 1129 generally known as (A) feasibility (Section

1129(a)(11)); (B) the "best interests of creditors" test (Section 1129(a)(7)); and (C) the "fair and equitable test" (Section 1129(b)(1)-(2)).

10. As a preliminary matter, the only impaired classes entitled to vote on the Plan, Class 1 and Class 3, voted overwhelmingly to accept the Plan. *See* Voting Certification, p. 5. In fact, the only ballot cast voting to reject was by one Class 3 creditor who the Debtors maintain was fully paid and has no valid claim. Class 2 is unimpaired and deemed to accept the Plan and Class 4, Equity Interests, is impaired and deemed to reject. However, as discussed below, there are no classes of claims junior to Class 4, and the Plan does not unfairly discriminate against any impaired classes and treats them fairly and equitably. The Plan therefore meets the acceptance requirements of Section 1129(a)(7)–(10).

11. Additionally, the Debtors have disclosed the identity of the Plan Administrator, Mark Smith of Vantage Point Advisory, in Section 1.49 of the Plan. Appointment of the Plan Administrator is in the best interests of creditors and other interested parties because, as set forth in the Plan, certain of the Debtors' assets must be liquidated in order to maximize distributions. The Plan therefor satisfies Section 1129(a)(5) of the Bankruptcy Code.

A. <u>The Plan is Feasible (Section 1129(a)(11))</u>.

12. Section 1129(a)(11) requires the Court to find that the Plan is not likely to be followed by the liquidation or further financial reorganization of the Debtors or their successors, unless such further reorganization is provided for in the Plan. Some courts have recognized that the feasibility requirement is not applicable in cases where, as it is here, liquidation is proposed as part of the plan. *See In re Heritage Organization, L.L.C.*, 375 B.R. 230, 311 (Bankr. N.D. Tex. 2007) (citing *In re Pero Bros. Farms, Inc.*, 90 B.R. 562, 563 (Bankr. S.D. Fla. 1988) and *In re 47th and Belleview Partners*, 95 B.R. 117, 120 (Bankr. W.D. Mo. 1988)). But even where courts

have conducted a feasibility analysis in the context of a liquidating plan, the crux of the inquiry is simply whether the plan "offer[s] a reasonable prospect of success and [is] workable." *In re Holmes*, 301 B.R. 911, 915 (Bankr. M.D. Ga. 2003).

13. Here, there will be no issues with the Debtors' implementation of the Plan. The Debtors will present evidence at the Confirmation Hearing showing that the Debtor will have sufficient funds to meet their obligations under the Plan, including to pay all Allowed Administrative Expense Claims and other priority claims on the Effective Date, based on the Debtors' current level of cash on hand and the expected proceeds of the real estate to be sold following confirmation. Therefore, the Plan satisfies the feasibility requirement of Section 1129(a)(11) of the Bankruptcy Code.

B. <u>The Plan Satisfies the "Best Interests of Creditors Test" (Section 1129(a)(7))</u>.

14. Section 1129(a)(7) protects creditors and other parties in interest that are impaired and have not voted to accept the plan. The requirement is that the Court can only confirm the plan if holders of impaired claims and interests who vote not to accept the plan:

> [r]eceive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 [of the Bankruptcy Code] on such date.

Id. In essence, the "best interests of creditors test" requires that each holder of a claim or interest has either accepted the plan or will receive no less than they would have received under Chapter 7 of the Bankruptcy Code. The focus is on individual dissenting creditors rather than classes of claims.

15. Here, the "best interests of creditors test" is satisfied. The Debtors' initial analysis was attached as Exhibit B to the Disclosure Statement and compares the proceeds to be realized if

the Debtors were to be liquidated under Chapter 7 to the results expected to be realized under the Plan. The Debtors will move an updated version into evidence at the Confirmation Hearing, which will reinforce the analysis. The analysis will show that each holder of an Allowed Claim or Interest will receive or retain property, as of the Effective Date of the Plan, of at least as much value as if the Debtors were to be liquidated under Chapter 7.

16. The Plan therefore satisfies Section 1129(a)(7) of the Bankruptcy Code.

C. <u>The Plan is Fair and Equitable (Section 1129(b)(1)–(2))</u>.

17. Section 1129(a)(8) of the Bankruptcy Code requires that, "[w]ith respect to each class of claims or interests—(A) such class has accepted the plan; or (B) such class is not impaired under the plan." 11 U.S.C. § 1129(a)(8). Section 1129(b)(1) further states that, to the extent an impaired class of claims or interests has not voted to accept the plan, the Court nevertheless "shall confirm the plan" if it does not "discriminate unfairly" and is "fair and equitable."

18. Here, the voting classes—Class 1 and Class 3, voted almost unanimously to accept the Plan and, with respect to such classes, the requirements of Section 1129(a)(8) have been satisfied and there is no need to reach the requirements of Section 1129(b)(1). Class 2 is unimpaired and deemed to accept the Plan.

19. With respect to Class 4, Equity Interests, which is deemed to reject the Plan because members of the Class will receive no distribution on account of the Plan, it consists exclusively of insiders and has not filed an objection to confirmation. The Plan certainly does not unfairly discriminate against equity holders—nor has anyone asserted that it does—and Section 1129(b)(C) provides explicit guidance as to the meaning of the phrase "fair and equitable." It means that:

> (i) each equity interest holder will receive or retain property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder

> is entitled, or the value of such interest; **or** (ii) *the holder of any interest that is junior to the interests of such class will not receive or retain any property under the plan on account of such junior interest*.

11 U.S.C. § 1129(b)(2)(C) (emphasis added). Here, there are no holders of any interest junior to Class 4, so no such holder could receive or retain any property under the plan on account of an interest junior to that of Class 4.

20. Accordingly, the Plan complies with the "fair and equitable" requirements of section 1129(b)(2) of the Bankruptcy Code with respect to the lone class that is technically deemed not to have accepted the Plan.

21. For these reasons, the Plan satisfies all applicable provisions of Section 1129 of the Bankruptcy Code and should be confirmed.

III. OBJECTIONS

22. Each of the objections to the Plan, formal and informal, is addressed in Table 1, below.

[Table 1 on Next Page]

Table 1. Objections to Confirmation.

Objecting Party	Nature of the Objection	Measures Taken to Resolve Objection	Objection Resolved (Yes/No)
McLane Foodservice, Inc. [Doc. No. 596] (Reservation of Rights)	McLane noted its objection to the Plan informally and filed a reservation of rights in case the resolution negotiated with the Debtors is not included in the Confirmation Order. The nature of McLane's informal objection was a request for the addition of language to the Plan noting that the Debtors will be treated as a single consolidated debtor for purposes of causes of action and defenses arising under Chapter 5 of the Bankruptcy Code.	McLane's requested language was added to the Proposed Confirmation Order modifying Section 6.3 of the Plan.	Yes
RRG of Jacksonville, LLC [Doc. No. 603]	RRG filed its objection to note (i) that it was inadvertently referred to as "BRG" in a portion of the Plan and (ii) that it did not intend to, and does not believe it has, assumed a particular contract that is now the subject of Adversary Proc. No. 23-02871 initiated by Premier Holdings (defined in footnote 3 below).	The Debtors have added language to the Proposed Confirmation Order at Paragraph 17 correcting the typo in the Plan and addressing RRG's concern. Beyond that, RRG's objection does not concern an issue relevant to confirmation and simply reserved RRG's rights in unrelated litigation with a non-Debtor party.	Yes
Burger King Company LLC [Doc. No. 605] [Doc. No. 608, *Amended*]	BKC filed its objection, as amended, to note its position that certain Post-Petition R/E Taxes, as defined therein, are owed to BKC under the Settlement Agreement dated as of December 7, 2023 with the Debtors and Prepetition Lenders. BKC further notes that it does not oppose confirmation provided that these amounts are paid, or at a	The Debtors acknowledge that BKC has a claim in the amount of approximately $168,000 for unpaid R/E Taxes due under leases assumed and assigned as part of the sale of the Debtors' businesses and assets. However, there is a dispute as to whether BKC's claim is for "pre-petition Cure Costs" that were limited to the amounts in Exhibit C to the	No

	minimum funds are reserved to pay the claim in the event the claim is allowed by the Court as an Administrative Expense.	Settlement Agreement and were fully paid, or as BKC asserts, are for "post-petition administrative expenses" that were to be paid after entry into the Settlement Agreement. The Plan provides for administrative expense applications to be filed within 30 days after the Effective Date, and for parties to object to such application. Accordingly, if the BKC claim is not resolved prior to the Confirmation Hearing, BKC and any interested party opposing its claim will have the opportunity to address the BKC claim when BKC files a motion for payment of its claim after confirmation. The Debtors propose to reserve sufficient funds to pay the BKC claim in the event it were to be allowed as an Administrative Expense. This issue does not require resolution at the Plan confirmation stage.[3]	

[3] Premier Holdings, LLC, Premier Holdings of Georgia, LLC, Premier Kings Holdings, LLC, Premier Kings Holdings of Alabama, LLC, and Premier Kings Holdings of Georgia, LLC filed a Reply [Doc No. 614] to RRG's Limited Objection, correctly noting that the Plan does not in any way affect the rights, claims or defenses of RRG or Premier Holdings in the Adversary Proceeding.

[Remainder of Page Intentionally Left Blank]

IV. CONCLUSION

23. For the foregoing reasons and those to be presented through argument and demonstrated through evidence to be presented at the Confirmation Hearing, and given that the three limited objections filed have been resolved or, with respect to the BKC objection, does not concern confirmation and can be resolved as part of the process of allowance or disallowance of claims, the Debtors respectfully submit that the Plan satisfies all the requirements of Section 1129 of the Bankruptcy Code, is in the best interest of the Debtors, their creditors, and the Estates, and should be confirmed.

Dated: April 29, 2024
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@hklaw.com
etray@hklaw.com

-and-

COLE SCHOTZ P.C.

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

Attorneys for the Debtors and Debtors-in-Possession

**admitted pro hac vice*